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***Submitted via the online feedback form.***

## **Re: Proposed Air Travel Complaints Fee**

On behalf of our members that operate services to, from, and within Canada,<sup>1</sup> the International Air Transport Association (IATA) appreciates the opportunity to provide comments in response to the proposal from the Canadian Transportation Agency (CTA) to impose an Air Travel Complaints Fee for processing air travel complaints.

IATA's approach to the current consultation is guided by our Core Principles on Consumer Protection.<sup>2</sup> In line with these principles, any regulatory intervention should seek to achieve a balance between the protection of consumers legitimate interests and safeguarding airlines' ability to offer consumers affordable air connectivity. Moreover, the focus of any regulatory regime and its application should be on improved network performance (in terms of reduced delays and cancellations) rather than punitive compensation. Compensation-based regimes that are not designed around improving consumer outcomes simply drive up the cost of travel and do not serve consumers' interests.

### **Summary**

IATA considers the complaint fee proposals to be disproportionate in terms of the scale of the costs and the design of the proposed scheme to be contrary to accepted principles of fair process.

In order to improve the functioning of the Air Passenger Protection Regulations (APPR) framework, the CTA should streamline its complaint adjudication process. The current process is time-consuming and inefficient, creating an administrative burden for both airlines and the CTA. The volume of evidence which must be compiled and then reviewed for each case is excessive and is a major contributor to the current backlog and the CTA's high costs for complaint processing.

We believe that adopting our proposed amendments to the text of the APPR (or issuing guidance to achieve the same effect) would improve the functioning of the APPR framework, enhance trust in the system by all parties, and lead to a consequent sharp reduction in claims to the CTA. At the same time,

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<sup>1</sup> IATA represents some 320 airlines around the world, including Air Canada, WestJet, Air Transat, and Cargojet in Canada.

<sup>2</sup> [https://www.iata.org/contentassets/2e46aace261040b9a47fb7b9da18efc9/consumer\\_protection\\_principles.pdf](https://www.iata.org/contentassets/2e46aace261040b9a47fb7b9da18efc9/consumer_protection_principles.pdf).

streamlining the complaint adjudication process would significantly reduce the costs to the CTA of handling each complaint. As a result, the proposed fee could be reduced by a large amount.

However, without action in these areas, the complaint fee proposals merely address the symptoms of the backlog rather than the root causes. Indeed, IATA's expectation is that introduction of the fee as proposed will make the situation worse because the design of the proposed scheme creates strong incentives to lodge a complaint even if airlines have applied the APPR correctly.

## **Discussion**

### **The current situation is unsurprising. The Regulatory Impact Analysis Statement for the original APPR was unrealistic.**

The complaint fee proposal has its origin in the current backlog of APPR claims at the CTA. IATA anticipated this situation during the various consultation exercises that were conducted prior to the APPR being adopted. The Regulatory Impact Analysis Statement accompanying the original APPR proposals estimated administration costs to the government at an average of CAD 1.4 million per annum<sup>3</sup>, including initial set-up costs, and just CAD 400,000 in the final year of the appraisal period. The analysis estimated there would no additional administration costs for airlines.

IATA's extensive experience with EU261 and other compensation-based regimes gave us a very clear indication that such figures were wholly unrealistic. The European Commission's own analysis<sup>4</sup> confirmed this in 2020 with the estimate that the administration costs for air carriers alone associated with EU261 represent up to 0.5 percent of total airline operating costs, which would equate to CAD 1.5 billion today.

If the CTA had assessed administrative costs for the CTA at CAD 30 million per annum and costs for airlines at 0.5 percent of operating costs, then the cost-benefit analysis for the APPRs would have been strongly negative and it is questionable whether the Treasury Board would have approved the scheme in the first place.

### **The proposed cost of the complaint fee is disproportionate.**

IATA considers the proposed complaint handling fee of CAD 790 to be entirely disproportionate. By way of illustration, CAD 790 is equivalent to approximately double the compensation payable for a delay of between 3-6 hours and is higher than the average flight segment fare charged by airlines.

IATA is not aware of any other regulator or enforcement body globally with a similar level of charges for complaint processing. By way of comparison, **Annex 1** sets out current practice in a sample of European markets. The great majority of European National Enforcement Bodies do not charge for complaint handling. Indeed, to the best of our knowledge, only three markets charge a fee. In Iceland, the fee is approximately CAD 50 while it is approximately CAD 120 in Austria. The highest fee that IATA is aware of

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<sup>3</sup> <https://otc-cta.gc.ca/eng/air-passenger-protection-regulations-regulatory-impact-analysis-statement>.

<sup>4</sup> European Commission: Directorate-General for Mobility and Transport and Kouris, S., *Study on the current level of protection of air passenger rights in the EU – Final report – Study contract*, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>.

is applied in the UK by the CAA's Passenger Advice and Complaints Team (PACT), which charges GBP 150 per claim (approximately CAD 270). However, it is important to note that, in the UK as in other European markets, Alternative Dispute Resolution is available, for which the costs are much lower (~CAD 150 per claim).

This comparison with Canada's European counterparts shows that the proposed fee is off the scale in terms of the high cost it would represent. Canada is already a very high-cost market in terms of the taxes, fees, and charges that are levied. Applying a complaint fee of the magnitude that is envisaged will exacerbate that situation and will inevitably impact ticket costs and endanger Canada's connectivity.

### **The design of the fee scheme creates incentives to file claims and will increase complaints.**

IATA is concerned that the elevated charge proposed in Canada may be seen as an attempt to encourage airlines into settling complaints rather than contesting claims. This would undermine the principles of due process and procedural fairness to which we understand the Canadian government to be committed.

In addition, IATA considers it wholly unreasonable for airlines to have to pay the complaint fee, even if the complaint review process finds in the airline's favor, while there are no cost implications for consumers of taking cases to the CTA. IATA considers this construct to be contrary to principles of natural justice, and contrary to established practice in most courts.

A likely unintended consequence of the asymmetry is that it will significantly increase the number of spurious claims as customers (and, of most concern, claim farms) will know that airlines will have to pay CAD 790 in case they file a complaint before the CTA and understand it is less costly for the airline to pay the claimed APPR compensation rather than pay the CTA fee. With no fee levied on consumers or claim farms for lodging a complaint, it would become the rational decision for any consumer to file a complaint whenever the airline rejects their claim, regardless of whether the airline's decision is justified or not. As unfounded claims are paid by airlines to avoid the CTA's fee, more and more claims are expected to be filed.

In short, the design proposed by CTA encourages litigious behavior. Given that one of the drivers of the complaint handling fee is the current complaint backlog, the way the scheme is designed is likely to make the problem worse, not better.

### **The proposed scheme will encourage claim farms to expand their operations in Canada.**

The asymmetry in the proposed fee scheme design and the perverse incentives it creates will encourage the growth of a claims management industry, as experienced in Europe. These claim management companies or claim farms do not operate in the consumer interest. In Europe, such companies retain a significant portion of the compensation due to passengers by charging high fees for the simple task of filing a claim. The commission charged can range from 30-50 percent depending on the complexity of the case.<sup>5</sup>

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<sup>5</sup> IATA notes that Section 113.1(2) of the Air Transportation Regulations states that "If the written complaint is with respect to a term or condition of carriage concerning an obligation prescribed by regulations made under subsection 86.11 (1) of the Act, it must have been filed by a person adversely affected by the failure to apply the term or condition." We do not believe that language will be a deterrent to a claim farm preparing the claim and then having the consumer actually doing the filing.

### **Small claim courts should be a reference point for the CTA in terms of costs and process.**

Not only are the fees proposed by the CTA high in international terms, they are also out of scale with Canada's small claims court system.

In Canada's small claims courts, plaintiffs must pay between CAD 50 and CAD 230 to lodge a claim, with the fee varying depending on the value of the claim. IATA understands that the costs levied on defendants range from CAD 0 to CAD 364. In other words, the fee proposed by the CTA is more than double the highest fee that airlines could expect to face if the claim were handled by a small claims court. Moreover, in a small claims court setting, fees can typically be recovered by the successful party.

However, the CTA does not propose to charge a fee for lodging a claim and further proposes that the fee be payable by the airline regardless of the outcome of the claim. Not only will this increase airline costs, but it removes the deterrent effect that the prospect of paying a fee would have on unfounded or spurious claims. If the CTA does not intend to charge a fee for filing claims, then it should implement alternative measures to discourage frivolous or spurious claims which would simply add to the existing claims backlog.

### **Cost recovery without proper oversight will not encourage CTA to operate efficiently.**

IATA is concerned that there is no independent or external oversight of the proposed fee or any incentives for efficiency. For example, the current complaint process involves an excessive burden of proof from airlines in terms of supporting evidence. This is time consuming for airlines to compile and for the CTA to review in order to reach a decision. CTA should focus on streamlining its procedures to reduce processing times, which would reduce its costs significantly. Moreover, suitable safeguards should be put in place to ensure that there is no cross-subsidization of any CTA activities beyond the APPRs.

IATA encourages the CTA to adopt responsive regulation principles to its oversight of APPR claims. For example, where the CTA is familiar with the procedures and systems that airlines use to avoid the propagation of delays and to recover speedily when disruptions arise, they should rely on their own holistic assessments rather than conduct a thorough and time-consuming review of each individual claim.

### **The CTA should reconsider its proposal and develop an alternative approach.**

As set out in this submission, IATA has serious concerns about the proposals as formulated in the consultation document. Action to streamline the complaint adjudication process is a pre-requisite for ensuring a cost-efficient system for administering the APPR.

IATA's preference would be for the complaints handling process to be free for all parties, as it is in most of Europe for complaints under EU261. However, if the CTA does proceed with the implementation of a complaint handling fee, the following suggestions could achieve a better balance between the respective interests of the CTA, consumers, and airlines:

- Claim farms and consumers should be charged a fee or deposit to lodge a claim, as they are in small claims courts. This would be returned in the event of a successful claim but retained in case the claim is deemed to be unfounded or the CTA confirms that the airline has properly applied the APPR. This would address the misaligned incentives in the current proposal and deter the growth of a claims management industry.
- Airlines should only be charged a reasonable cost recovery fee in completed cases where the airline is found to have breached its legal obligations. Claim farms should be charged the same fee for the claims they lose. Cost recovery should be based on reasonable costs.
- Any complaint handling fees (for consumers or airlines) should be approved by an oversight body to ensure cost efficiency and avoid any cross-subsidization.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Douglas E. Lavin". The signature is written in a cursive, flowing style.

Douglas E. Lavin  
Vice President, Member and External Relations – North America  
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**Annex 1: Charging policies for complaint processing in select European markets.**

<b>Country</b>	<b>Status</b>
Austria	EUR 78 fee per claim (~CAD 120)
Denmark	No fee
Bulgaria	No fee
Croatia	No fee
Cyprus	No fee
Czechia	No fee
Estonia	No fee
Finland	No fee
France	No fee
Germany	No fee
Greece	No fee
Hungary	No fee
Iceland	ISK 5000 fee per claim (~CAD 50)
Ireland	No fee
Italy	No fee
Latvia	No fee
Lithuania	No fee
Luxembourg	No fee
Malta	No fee
Netherlands	No fee
Norway	No fee
Poland	No fee
Romania	No fee
Slovakia	No fee
Slovenia	No fee
Sweden	No fee
Switzerland	No fee
United Kingdom	GBP 150 fee per claim handled by UK CAA (~CAD 270). ADR costs lower