

January 22, 2016

Via email to: [secretaire-secretary@otc-cta.gc.ca](mailto:secretaire-secretary@otc-cta.gc.ca)

Secretary  
Canadian Transportation Agency  
Ottawa (Ontario)  
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## **Re: Consultation on the Requirement to Hold a Licence**

This is in response to the Agency email message of December 21, 2015 advising that the Canadian Transportation Agency (CTA) is undertaking a review on whether persons that do not operate any aircraft but market and sell an air service to the public should be required to hold an Agency licence. As part of this review, the CTA has initiated a public consultation with stakeholders. Air Canada is pleased to provide the following that we trust will be taken into consideration as part of this review, and we thank the Agency for the opportunity to provide input.

It is our view that this review relating to the regulatory environment for an "indirect air service provider" (or a "virtual airline") raises significant issues. It is essential that the outcome produce (1) an appropriate balance in the approach to any regulatory change, (2) a consistent and fair application of conditions and regulations across all stakeholders and finally, (3) no 'unintended consequences'. Therefore, this consultation should not be rushed or done in a cursory manner to meet the needs or requirements of any one entity among the breadth of stakeholders that may be affected by the resulting decision.

A 'hands-off' approach by the CTA risks creating real confusion in the market about by whom and how flights are offered, who is responsible for the control (both commercial and operational), who is responsible to meet all the regulatory requirements, who is responsible for the Contract of Carriage and applicable terms and conditions of carriage, for having a tariff and making it available for public inspection etc. In simple terms, an organization cannot, nor should it be permitted to, offer its services as equivalent to being an airline (or holding out as such), without the same conditions and requirements that are required of all other competitors who are, in fact, licensed airlines. The news in recent days of a new launch of an 'indirect air service provider', in our view, highlights the risks associated with a 'hands-off' approach by the CTA.

Therefore, the issues normally addressed in respect of licencing an airline should be addressed in the context where one holds itself out to be one, including, for example, matters relating to ownership and control (including both operational and commercial control), protection of consumers, financial fitness, and consumer disclosure requirements, to name a few. Similarly, without the requirement to hold a CTA licence it may not be clear to regulators both at a Federal and Provincial level who has jurisdiction over the particular entity. In other words, any decision must carefully be weighed against all requirements of Canada's laws and regulations.

With this as context, Air Canada highlights the following specific points to be kept in mind when determining who should be required to hold a licence:

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1. The requirement to review Canadian status (including ownership and control in fact)
2. The requirement to determine financial fitness and compliance with prescribed financial requirements
3. The requirement to afford consumer protection (including the posting of tariffs and terms and conditions of carriage and having sufficient insurance coverage )
4. The differentiation between commercial control and operational control including the obligation to hold a Canadian Aviation Document and to be designated by the Minister of Transport as eligible to hold such a licence.
5. Importance of providing public disclosure of operator

These elements are of critical importance, and there are sound policy reasons for an airline to satisfy regulatory authorities of such matter. We therefore urge the Agency to consider and review them in this context as part of the review of the requirement to hold a license. Consideration of these matters should not be dependent on the particular business model adopted to provide air services to the public, distorting the competitive landscape by maintaining regulatory requirements for one entity or business model, while taking a hands-off approach with another, one that competes in the same industry. Failing to maintain a consistent approach across the board will ultimately cause confusion in the market, favouring one business over another, as competitors follow different rules.

In addition, we wish to highlight that the elements noted above are of critical importance that the Agency consider with respect to both domestic and international air services.

In summary, Air Canada believes that the person having commercial control and selling the air service should hold a licence and comply with the usual requirements with which “airlines” are expected to comply.

For clarity, the specific questions put forward to stakeholders by the Agency as part of this consultation are included below.

Once again, Air Canada appreciates the opportunity to provide this input, and we remain available to Agency staff should any clarification be required.

Sincerely,



David Waugh  
Director, International Regulatory Affairs and Facilitation

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Questions:

Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;

Answer of Air Canada: As described above, Indirect Air Service Providers should not be afforded the ability to act as an airline, without meeting the requirements and obligations that are placed on airlines. Failure to uphold this principal not only distorts the competitive landscape, it creates confusion as to the rights that are available to consumers.

What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence;

Answer of Air Canada: As outlined above, the person holding commercial control and selling the air service is the person entering into an air services agreement with the consumer, and is therefore the person should pass the test of financial fitness and compliance with prescribed financial requirements, fulfill the statutory requirement to provide consumer protection (including the posting of its tariffs and terms and conditions of carriage) have sufficient insurance coverage and meet the requirements of public disclosure of the operating carrier. In short, this is the person who should hold the licence, which includes complying with the regulatory requirement to ensure differentiation between commercial control and operational control including the obligation to hold a Canadian Aviation Document and to be designated by the Minister of Transport as eligible to hold such a licence.

What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

Answer of Air Canada: Indirect Air Service providers should be required to meet the same requirements of airlines. This includes the elements that are more thoroughly described above. A regulatory environment that favours (by way of less rigorous regulatory requirements) will distort the competitive landscape in Canada, and place airlines in an uncompetitive position due to higher regulatory burden.