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July 4, 2013

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Attention: Mr. Mike Redmond, Chief, Tariff Investigation

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Air Canada
Air Canada's denied boarding compensation rules (domestic)
File No.: M 4120-3/11-06673
Comments on Air Canada's submissions dated June 28, 2013

Please accept the following submissions in relation to the above-noted matter in response to Air Canada's June 28, 2013 submissions, as per Decision No. 204-C-A-2013 of the Agency.

OVERVIEW

On May 27, 2013, in Decision No. 204-C-A-2013, the Agency disallowed Air Canada's Domestic Tariff Rules 245(E)(1)(b)(iv) and 245(E)(2) as being unreasonable, contrary to s. 67.2(1) of the *Canada Transportation Act*, S.C. 1996, c. 10 (the "CTA"). The Agency also ordered Air Canada to show cause, within 30 days, why certain tariff provisions should not be imposed upon Air Canada. Air Canada filed its response to Decision No. 204-C-A-2013 on June 28, 2013.

The Applicant submits that the tariff provisions proposed by Air Canada in its June 28, 2013 submissions fail to address and implement the Agency's findings, contain no evidence about the "carrier's financial burden," and provide for a compensation scheme that is substantially worse than what was proposed by the Applicant or what is already in force in the United States. The Applicant further submits that Air Canada failed to address the show-cause order of the Agency.

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I. Preliminary matter: Media reports about Air Canada “consulting” with the Agency

Decision No. 204-C-A-2013 of the Agency has been widely reported by the press, both in Canada and internationally. A number of these reports refer to a statement by Air Canada that it would consult the Agency about how to revise its denied boarding compensation policies. For example, the Canadian Press reported that:

“At this time it would be inappropriate to comment as we are currently in consultation with the Canadian Transportation Agency on this topic,” said airline spokeswoman Isabelle Arthur.

Exhibit “A”

These reports create the appearance of Air Canada having and/or having had some kind of private communications with the Agency about the subject of the present proceeding, other than Air Canada’s June 28, 2013 submissions. It goes without saying that such private communications would be grossly inappropriate and would create a reasonable apprehension of bias.

Thus, in order to alleviate the negative impact of Air Canada’s public statements on the appearance of the fairness of the present proceeding, the Applicant is asking the Agency to confirm that the only communication it had with Air Canada about the subject of the present proceeding since the release of Decision No. 204-C-A-2013 is Air Canada’s June 28, 2013 submissions.

In the highly unlikely event that the Agency did communicate with Air Canada about the subject of the present complaint since the release of Decision No. 204-C-A-2013 (other than Air Canada’s June 28, 2013 submissions), the Applicant is asking the Agency to disclose to him all such communications, and to provide him with a fair and meaningful opportunity to make submissions on the contents of the communications as well as the issue of reasonable apprehension of bias.

II. Substitution with an aircraft of lesser capacity

A. Decision No. 204-C-A-2013

In Decision No. 204-C-A-2013, the Agency considered the reasonableness of Air Canada's Domestic Tariff Rule 245(E)(1)(b)(iv):

EXCEPTION: The passenger will not be eligible for compensation:

[...]

(iv) if, for operational and safety reasons, his aircraft has been substituted with one having lesser capacity.

[...]

(i) Key findings

In Decision 204-C-A-2013, the Agency made the following findings:

- If Air Canada is able to demonstrate that the events prompting the substitution of an aircraft were beyond its control, Air Canada should have the flexibility to control its fleet and determine when an aircraft should be substituted for operational and safety reasons (para. 41).
- The burden must rest with Air Canada to establish that the events prompting the substitution were beyond its control and that it took all reasonable measures to avoid the substitution or that it was impossible for Air Canada to take such measures (para. 44).
- In order to relieve itself from the obligation to pay denied boarding compensation, Air Canada must demonstrate that:
 - (1) substitution occurred for operational and safety reasons beyond its control, and
 - (2) it took all reasonable measures to avoid the substitution or that it was impossible for Air Canada to take such measures.

If Air Canada fails to demonstrate both of these, then compensation should be due to the affected passengers (para. 44).

Based on these findings, the Agency concluded that in the absence of specific language that establishes context or qualifies Air Canada's exemption from paying denied boarding compensation, Rule 245(E)(1)(b)(iv) is unreasonable (para. 45).

(ii) Show-cause order

The Agency disallowed the Existing Rule 245(E)(1)(b)(iv), and provided Air Canada with 30 days to show cause why this rule should not be substituted with a provision that incorporates the Agency's findings:

[81] Further, the Agency provides Air Canada with an opportunity to show cause, within 30 days from the date of this Decision, why:

1. with respect to Rule 245(E)(1)(b)(iv), the revised provision should not contain language consistent with the finding in this Decision that, in the absence of Air Canada demonstrating that all reasonable measures were taken to avoid substitution to a smaller aircraft, denied boarding compensation will be tendered to affected passengers; [...]

[Emphasis added.]

B. Air Canada's response

In its submissions of June 28, 2013, Air Canada addressed Rule 245(E)(1)(b)(iv) at the top of page 2, and proposed to amend it to read as follows (the "Proposed Rule 245(E)(1)(b)(iv)"):

(iv) if, for operational or safety reasons occurring beyond carrier's control, his aircraft has been substituted with one of lesser capacity.

(i) Air Canada failed to address the show-cause order

The Applicant submits that Air Canada presented no evidence, representations, or arguments in response to the above-noted show cause order issued by the Agency with respect to Rule 245(E)(1)(b)(iv).

Thus, the Applicant submits that Rule 245(E)(1)(b)(iv) ought to be revised in a way that gives effect to Decision No. 204-C-A-2013 of the Agency, namely, that in the absence of Air Canada demonstrating that all reasonable measures were taken to avoid substitution to a smaller aircraft, denied boarding compensation will be tendered to affected passengers.

(ii) Proposed Rule 245(E)(1)(b)(iv) is unreasonable

Proposed Rule 245(E)(1)(b)(iv) addresses only one aspect of the Agency's findings in Decision No. 204-C-A-2013, and conveniently ignores the other two. Indeed, the Agency also held that the burden of proof must rest with Air Canada, and furthermore, that Air Canada must also demonstrate that it has taken all reasonable measures to avoid the substitution or that it was impossible for Air Canada to take such measures (para. 44).

Indeed, as the Agency explained in *Lukács v. Porter*, 16-C-A-2013, it is not sufficient for a carrier to demonstrate that a delay is for reasons beyond its control. What determines the obligation to pay compensation is how the carrier reacts to events, even if they are due to third parties:

[105] Accordingly, what is at issue, in terms of avoiding liability for delay, is not who caused the delay but, rather, how the carrier **reacts** to a delay. In short, did the carrier's servants and agents do everything they reasonably could in the face of air traffic control delays, security delays on releasing baggage, delays caused by late delivery of catered supplies or fuel to the aircraft and so forth, even though these may have been caused by third parties who are not directed by the carrier?

[Emphasis is in the original.]

Thus, the Applicant submits that Proposed Rule 245(E)(1)(b)(iv) is unreasonable in that it fails to place the burden of proof upon Air Canada, and it fails to incorporate "all reasonable measures to avoid the substitution" as a precondition for Air Canada to exonerate itself from the obligation to pay denied boarding compensation.

C. Conclusions

Air Canada's Proposed Rule 245(E)(1)(b)(iv) is inconsistent with the Agency's findings in Decision No. 204-C-A-2013 that in the absence of Air Canada demonstrating that all reasonable measures were taken to avoid substitution to a smaller aircraft, denied boarding compensation must be tendered to affected passengers (paras. 44 and 81(1)).

Air Canada failed to show cause why Rule 245(E)(1)(b)(iv) should not be revised to contain language that in the absence of Air Canada demonstrating that all reasonable measures were taken to avoid substitution to a smaller aircraft, denied boarding compensation must be tendered to affected passengers (para. 81(1)).

Therefore, it is submitted that Rule 245(E)(1)(b)(iv) ought to be substituted with the following provision, which conforms to Decision No. 204-C-A-2013:

(iv) if the Carrier can demonstrate both that:

- (1) for operational or safety reasons beyond the Carrier's control, his aircraft has been substituted with one of lesser capacity; and
- (2) the Carrier took all reasonable measures to avoid the substitution or that it was impossible for the Carrier to take such measures.

III. Amount of denied boarding compensation in cash

A. Decision No. 204-C-A-2013

In Decision No. 204-C-A-2013, the Agency considered Domestic Tariff Rule 245(E)(2) of Air Canada, which provides for denied boarding compensation in the amount of \$100 in cash or \$200 in travel vouchers.

(i) Key findings

In Decision No. 204-C-A-2013, the Agency made the following findings:

- The mere fact that a carrier's term and condition of carriage is comparable to that applicable to other carriers does not render that term and condition reasonable (para. 70).
- Air Canada failed to demonstrate how a higher level of compensation would place it in a disadvantageous position relative to other domestic air carriers (para. 71).
- The fact that Air Canada's extensive network may allow for the timely re-protection of passengers who are denied boarding does not justify the current level of compensation tendered by Air Canada (para. 71).

Based on these findings, the Agency concluded that Rule 245(E)(2) is unreasonable (para. 72).

The Agency also considered what might be reasonable options to replace Rule 245(E)(2), and made the following findings (para. 74):

- The distance of the flight does not necessarily correlate with the inconvenience experienced by a passenger who is denied boarding.
- The length of the time by which a passenger is delayed more accurately reflects the damage sustained by a passenger who is denied boarding.
- Both the denied boarding compensation schemes of the United States and the one proposed by the Applicant (which calls for a cash compensation in the amount of \$200, \$400, or \$800, depending on the length of the delay) are reasonable options.

(ii) Show-cause order

The Agency disallowed Existing Rule 245(E)(2), and provided Air Canada with 30 days to show cause why this rule should not be substituted with the denied boarding compensation regime of the United States or the one proposed by the Applicant:

[81] Further, the Agency provides Air Canada with an opportunity to show cause, within 30 days from the date of this Decision, why:

⋮

2. with respect to the disallowed Rule 245(E)(2), Air Canada should not apply either the denied boarding compensation regime in effect in the United States of America or the regime proposed by Mr. Lukács.

B. Denied boarding compensation amounts proposed by Air Canada

In its June 28, 2013 submissions, Air Canada proposed a new denied boarding compensation scheme:

Delay at arrival	Air Canada’s proposed denied boarding compensation amounts	Air Canada’s voucher amounts
0 to 1 hour	\$100CAD	or \$150CAD voucher
1 to 6 hours	100% of one-way air transportation charges but no less than \$100CAD and no more than \$400CAD.	or \$400CAD voucher
6 hours and more	200% of one-way air transportation charges but no less than \$100CAD and no more than \$800CAD.	or \$800CAD voucher

The following features of Air Canada’s proposal are noteworthy:

- Unlike the American compensation scheme, the proposed scheme uses “air transportation charges” for the calculation of the amount of compensation. This excludes all taxes and airport fees, which comprise a significant portion of the total cost of transportation.
- The proposed scheme considers delays between 1 and 6 hours as causing the same amount of inconvenience and damage. (The American regime is based on 3 tiers of delays: 0-1 hour, 1-2 hours, and over 2 hours.)
- In many cases, the proposed scheme provides for less than half of the amount of compensation under the American regime.
- The proposal is a mere framework, and does not disclose the concrete wording of the tariff provision that Air Canada intends to use to replace Rule 245(E)(2). In particular, it fails to address where the choice with respect to the form of the compensation (cash or voucher) lies.

C. Comparison of Air Canada’s proposal with reasonable compensation regimes

In Decision No. 204-C-A-2013, the Agency identified two compensation regimes that were reasonable in the Agency’s opinion (para. 74). The first is the American one, which is cited in the Appendix to Decision No. 204-C-A-2013. The American regime is based on the notion of “fare” that is defined by 14 CFR Part 250.1 as:

Fare means the price paid for air transportation including all mandatory taxes and fees. It does not include ancillary fees for optional services.

[Emphasis added.]

The American denied boarding compensation regime provides for cash compensation based on the length of the delay caused and the “fare” as follows:

Length of delay	Compensation
Less than 1 hour	\$0
1 hour or more, but less than 2 hours	200% of the Fare Maximum: \$650
2 hours or more	400% of the Fare Maximum: \$1,300

The second denied boarding compensation regime that the Agency found to be reasonable was proposed by the Applicant, and is based on a notion of a “Base Amount” (explained below):

Length of delay	Compensation
Less than 2 hours	50% of the Base Amount
2 hours or more, but less than 6 hours	100% of the Base Amount
6 hours or more	200% of the Base Amount

Unfortunately, Air Canada provided only very limited and unreliable data on its fares, which notably excluded any information about the taxes and/or the “total price” paid by passengers. Based on this information, the Applicant’s position was:

1. Air Canada's data and datasets are unreliable, artificially deflated, and cannot be the rational basis for determining the amount of denied boarding compensation.

⋮

4. Assuming that Air Canada's data is reliable, the Base Amount for denied boarding compensation ought to be \$400.00 in cash.

Applicant's Submissions (January 15, 2013), p. 23

In what follows, a comparison between Air Canada's proposed compensation scheme and the two reasonable compensation regimes is presented using concrete examples. (For the sake of the comparison, an exchange rate of US\$1 = CAD\$1 is assumed.) Since Air Canada's proposal to continue to provide compensation by way of travel vouchers is addressed as a separate issue, the examples below focus on the amount of cash compensation.

(i) Vancouver (YVR) to Calgary (YYC)

A copy of an Air Canada itinerary from Vancouver (YVR) to Calgary (YYC) for August 27, 2013 is attached and marked as Exhibit "B". The "air transportation charges" are \$127.00, while the "fare" (or "total price") is \$161.83.

Delay	Air Canada	Dr. Lukács	American
0 - 1 hour	\$100.00	\$200.00	\$0
1 - 2 hours	\$127.00	\$200.00	\$323.66
2 - 6 hours	\$127.00	\$400.00	\$647.32
over 6 hours	\$254.00	\$800.00	\$647.32

(ii) Halifax (YHZ) to North Bay (YYB)

A copy of an Air Canada itinerary from Halifax (YHZ) to North Bay (YYB) for August 27, 2013 is attached and marked as Exhibit "C". The "air transportation charges" are \$328.00, while the "fare" (or "total price") is \$418.66.

Delay	Air Canada	Dr. Lukács	American
0 - 1 hour	\$100.00	\$200.00	\$0
1 - 2 hours	\$328.00	\$200.00	\$650
2 - 6 hours	\$328.00	\$400.00	\$1,300
over 6 hours	\$656.00	\$800.00	\$1,300

(iii) Montreal (YUL) to Regina (YQR)

A copy of an Air Canada itinerary from Montreal (YUL) to Regina (YQR) for August 27, 2013 is attached and marked as Exhibit “D”. The “air transportation charges” are \$242.00, while the “fare” (or “total price”) is \$319.69.

Delay	Air Canada	Dr. Lukács	American
0 - 1 hour	\$100.00	\$200.00	\$0
1 - 2 hours	\$242.00	\$200.00	\$639.38
2 - 6 hours	\$242.00	\$400.00	\$1,278.76
over 6 hours	\$484.00	\$800.00	\$1,278.76

(iv) St. John’s (YYT) to Winnipeg (YWG)

A copy of an Air Canada itinerary from St. John’s (YYT) to Winnipeg (YWG) for August 27, 2013 is attached and marked as Exhibit “E”. The “air transportation charges” are \$332.00, while the “fare” (or “total price”) is \$410.33.

Delay	Air Canada	Dr. Lukács	American
0 - 1 hour	\$100.00	\$200.00	\$0
1 - 2 hours	\$332.00	\$200.00	\$650.00
2 - 6 hours	\$332.00	\$400.00	\$1,300.00
over 6 hours	\$664.00	\$800.00	\$1,300.00

(v) The pattern

These four examples demonstrate common features that form a pattern:

- In all cases, Air Canada’s proposal provides a lower amount of cash compensation than at least one (and often both) reasonable regimes.
- With the exception of very short delays (less than an hour), the American regime provides the highest amount of cash compensation.
- For shorter, cheaper flights (such as Vancouver to Calgary), Air Canada’s proposal provides virtually the same amount of compensation for delays between 0 to 6 hours, and fails to provide an incentive for the airline to reprotect passengers in a timely manner.

D. Misleading and unsubstantiated statements in Air Canada's June 28, 2013 submissions

(i) Adopting the Applicant's approach "with certain modifications"

Air Canada is attempting to pass off its proposed denied boarding compensation scheme as being essentially what the Applicant proposed. Indeed, at the top of page 3 of its June 28, 2013 submissions, Air Canada stated that:

Air Canada suggests the adoption of Mr. Lukács' denied boarding compensation approach, with certain modifications as set out below.

This could not be farther from the truth. The very essence of the Applicant's proposal was to adopt the egalitarian principle of *Anderson v. Air Canada*, 666-C-A-2001 that the compensation ought not depend on the price paid. The Applicant proposed to determine the amount of compensation solely based on the length of the delay at arrival caused by the denied boarding. The Applicant's position on this point is accurately summarized by the Agency at paragraph 55 of Decision No. 204-C-A-2013:

Mr. Lukács agrees with the egalitarian principle formulated in that Decision that the amount of denied boarding compensation should not depend on the fare paid by the individual passenger. He submits, however, that a single rate of compensation that is independent of the length of the delay caused by the denied boarding does not serve the purpose of encouraging air carriers to mitigate the inconvenience experienced by persons who are denied boarding.

This is clearly not what Air Canada is proposing. Instead, Air Canada attempts to use the "Base Amount" (\$400) and 200% of the "Base Amount" (\$800) proposed by the Applicant as the ceiling (maximum) of the the compensation it is willing to pay. This is absurd, and it grossly misrepresents the Applicant's January 15, 2013 submissions on this point.

Applicant's Submissions (January 15, 2013), p. 23

Air Canada's proposal is entirely incomparable with the compensation regime that was proposed by the Applicant. As the examples above demonstrate, in the vast majority of the cases, Air Canada's scheme provides for substantially lower compensation amounts than what was proposed by the Applicant. The only exception is for delays ranging from 1 hour to 2 hours, where Air Canada's scheme is more generous in some, but not all, cases.

An additional, qualitative difference between Air Canada's scheme and the compensation regime proposed by the Applicant is that Air Canada proposes to treat delays between 1 hour to 6 hours as causing the same amount of inconvenience, while the regime proposed by the Applicant proposes to do so only with respect to delays between 2 to 6 hours.

This is a substantial difference, for two reasons. First, there is a qualitative difference between the inconvenience of a delay of 1 hour and 5 minutes and a delay of 2 hours and 30 minutes (see

p. 22 for details on this delineation). Second, it is very rare for a carrier to be able to reprotect passengers who are denied boarding so efficiently that their delay at arrival is less than one (1) hour; it is far more common and realistic to do so with a delay of less than two (2) hours at arrival. Consequently, the compensation regime proposed by Air Canada fails to adequately consider the inconvenience caused to passengers and fails to create an incentive for Air Canada to reprotect passengers efficiently.

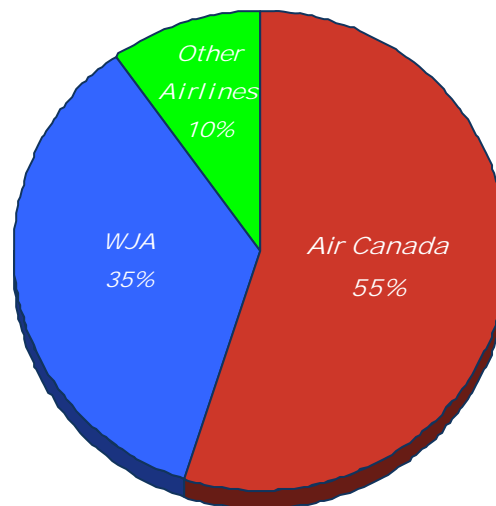
(ii) “Air Canada would have the most generous denied boarding compensation amounts”

Air Canada claims on page 4 of its June 28, 2013 submissions that:

With the above proposal, Air Canada would have the most generous denied boarding compensation amounts amongst Canadian carriers.

While this statement may be technically correct, it is grossly misleading in that it fails to disclose the commercial and competitive realities within the Canadian air transportation industry.

Pages 12-13 from Air Canada’s Annual Information Form for year 2012, outlining Air Canada’s competitive environment in the Canadian domestic market, are attached as Exhibit “F”. The pie chart from Exhibit “F”, illustrating Air Canada’s domestic market share, is reproduced below:



As the diagram demonstrates, Air Canada’s share of the domestic market is 55%, and it is followed by its main competitor, WestJet, with 35% of market share. (The total market share of all other airlines in the domestic market is 10%.) As a matter of fact, WestJet does not commercially oversell its flights. This leaves Air Canada the only major airline in the domestic market that engages in the practice of overselling its flights.

Thus, Air Canada offering the “most generous denied boarding compensation” is virtually meaningless, because no other major airline in the domestic market oversells its flights as part of its business model.

(iii) Air Canada’s “financial burden” and competitive disadvantage: lack of evidence

At the bottom of page 3 of its June 28, 2013 submissions, Air Canada refers to the “financial burden from compensating passengers.”

The “financial burden” that Air Canada mentions in its submissions is simply the common and ordinary obligation of every person to compensate others for damage the person causes to them, and it is not special to Air Canada or the airline industry.

The Applicant submits that there is not even a scintilla of evidence to suggest that adequately compensating passengers would create any noteworthy or significant financial burden for Air Canada. On the contrary, in Decision No. 204-C-A-2013, the Agency found that:

[71] The Agency is also of the opinion that Air Canada has failed to demonstrate how a higher level of compensation would place it in a disadvantageous position relative to other domestic air carriers. [...]

The Applicant notes that Air Canada chose not to lead any evidence on this (or any other) point in its response to Decision No. 204-C-A-2013. Nor did Air Canada seek and obtain leave to appeal Decision No. 204-C-A-2013. Thus, these findings of the Agency are equally applicable at the present stage of the proceeding.

There is no doubt that paying compensation to passengers who are robbed of their opportunity to travel on the flights paid for will cost Air Canada, the same way that one has to pay for any other damage that one causes to others.

Overselling flights, however, is not an act of God that is outside of Air Canada’s control, but rather part of Air Canada’s business model, and as such, Air Canada has full control over it. In particular, Air Canada can substantially decrease its exposure to the obligation of paying denied boarding compensation by decreasing its oversell rates.

According to Air Canada’s representations, which the Applicant accepts as true, only 0.09% of Air Canada’s domestic passengers are affected by denied boarding. This means that increasing the amount of denied boarding compensation payable in cash from \$100 to \$650 (the maximum under the American regime, for delays up to 2 hours) would amount to only an additional cost of \$0.495 per passenger. Similarly, increasing the amount of compensation to \$400 (the amount proposed by the Applicant for delays up to 6 hours) would amount to only an additional cost of \$0.27 per passenger. Moreover, if Air Canada is able to reprotect passengers more efficiently, then these costs can be further reduced.

Therefore, the Applicant submits that Air Canada’s reference to the “financial burden from compensating passengers” is misguided, and represents an insignificant additional cost that Air Canada can not only easily afford, but can also easily control by changing its oversell rates.

(iv) Refundable tickets and no-shows: lack of evidence

Air Canada claims on page 1 of its June 28, 2013 submissions that:

[...] the practice of selling refundable tickets results in customer no-show rates that are much higher than those of carriers that do not offer the option to their customers to purchase such tickets.

The Applicant would like to draw attention to the complete and absolute lack of evidence on record in support of this submission of Air Canada.

Air Canada tendered absolutely no evidence with respect to the various fares it offers to passengers (i.e., non-refundable or refundable), about the portion of passengers choosing to purchase refundable tickets, or its “no show” rates. Furthermore, it is difficult to understand what Air Canada’s basis for comparison is, given that it is very unlikely that Air Canada has access to sensitive commercial information, such as the no-show rates of other airlines that do not sell refundable tickets.

In the case of Air Canada, refundable tickets are sold at a substantial premium, costing approximately 2-3 times the price of a non-refundable ticket. For example, the same itinerary from St. John’s to Winnipeg that normally costs \$410.33 (Exhibit “E”) is priced at \$1119.97 if the ticket is refundable (see Exhibit “G”).

The rationale for this premium is that it offsets the risk (and costs) associated with passengers holding refundable tickets cancelling their travel within a few hours of their scheduled departure. The practice of overselling flights is a second windfall for Air Canada, because it allows the carrier to both collect the premium fare for refundable tickets and at the same time fill all seats, even if some of the travellers cancel their itineraries in the last minute.

Thus, Air Canada cannot rely on its business decision to sell refundable tickets at a premium price and oversell its flights as a justification for failing to adequately compensate passengers who are denied boarding as a result.

Moreover, it is submitted that if refundable tickets are such an economic burden for Air Canada, then the solution is for Air Canada to increase the price of refundable tickets, which are already sold at a premium price, and use the extra revenue to adequately compensate those passengers who are denied boarding due to oversale.

The Applicant submits that the general travelling public, which typically purchases non-refundable tickets, should not bear the burden and costs of the sale of refundable tickets.

Finally, the Applicant notes that Air Canada’s main domestic competitor, WestJet, offers several types of fares, including ones that allow for changing the itinerary free of charge (Exhibit “H”). Thus, on a balance of probabilities, the financial burden associated with passengers cancelling their travel in the last minute is not unique to Air Canada or its business model, but also affects its competitors.

(v) **Misstatement of the Applicant's submissions**

On page 4 of its June 28, 2013 submissions, Air Canada claims that:

The upper limit of the compensation is set as per Mr. Lukacs' recommendation and calculation. Using such levels as maximum amounts allows for the assurance that, according to Mr. Lukacs' submissions, between 84% to 90% of persons who purchased economy cabin tickets that may be denied boarding are compensated adequately based on the fares paid.

The Applicant submits that Air Canada grossly misstates his position and his submissions dated January 15, 2013.

First, the Applicant's submissions on this issue were preambled by the following:

The submissions in this section refer to the case that the Agency finds that Air Canada's dataset is reliable insofar as it speaks to the per-segment revenue of Air Canada from domestic flights.

Applicant's Submissions (January 15, 2013), p. 16

Indeed, the reliability of Air Canada's dataset was heavily contested by the Applicant, and the Agency made no findings with respect to this issue in Decision No. 204-C-A-2013.

Second, the Applicant never stated that being compensated based on the air transportation charges paid or in the amount equal to 100% of the air transportation charges constitutes a fair and adequate method to compensate passengers. The Applicant's submission on this point was:

The Applicant agrees with the egalitarian principle formulated by the Agency in *Anderson v. Air Canada, 666-C-A-2001*, that the amount of denied boarding compensation should not depend on the fare paid by the individual passenger. However, the Applicant submits that a single rate of compensation that is independent of the length of the delay caused by the denied boarding does not serve the purpose of encouraging airlines to mitigate the inconvenience suffered by victims of denied boarding.

Thus, the Applicant submits that a reasonable denied boarding compensation policy ought to distinguish between those cases where stranded passengers are quickly re-routed and reach their final destinations within a short time (less than 2 hours) after the originally booked time, and those cases where the delay is more significant. Furthermore, those passengers who suffer very significant delays (over 6 hours) in reaching their final destinations ought to be very substantially compensated.

Applicant's Submissions (January 15, 2013), p. 20

The Applicant then proposed a compensation regime that depends on a “Base Amount” of compensation, and suggested the following method for determining the “Base Amount”:

The Applicant submits that the Base Amount for denied boarding compensation should lie between the sum of the average and standard deviation of the one-way domestic economy cabin fares (which corresponds, in the case of normal distribution of data, to the 84.13th percentile) and the 90th percentile of the same dataset.

In other words, the Applicant’s position on this point was of a statistical nature, describing a possible method for determining a reasonable “Base Amount” by analyzing statistical quantities of the air transportation fares (in the absence of data on the “total price” paid by passengers). In particular, the Applicant did not suggest that simply paying passengers the amount equal to 100% of their air transportation charges would adequately compensate 84% to 90% of the passengers.

Air Canada appears to commit an error that is common among students who are introduced to statistics and probability theory for the first time, and may think: “If the probability of getting *heads* when I toss a coin is 0.5, then by tossing a coin twice, I must get *heads* at least once.”

(vi) Misstatement of the Agency’s decision

Air Canada argues on page 2 of its June 28, 2013 submissions that the Agency already departed from the spirit of the American denied boarding compensation regime by holding that Air Canada must compensate passengers who are denied boarding as a result of “downgates” (substitution with an aircraft of lesser capacity) in certain cases.

The Applicant respectfully disagrees.

The Appendix to Decision No. 204-C-A-2013 reproduces the relevant provisions of 14 CFR 250.5 that the Agency was considering in the context of the appropriate amount of denied boarding compensation.

The Applicant submits that the Appendix removes any possible ambiguity as to the Agency’s intentions, and clearly demonstrates that the Agency was referring solely to the provisions governing the amount of compensation payable, which the Agency considered to be reasonable; the Agency did not intend to “import” the entire American regulatory scheme.

Consequently, the Agency’s decision with respect to the reasonableness of Air Canada’s Existing Rule 245(E)(1)(b)(iv) is not a departure from and is not inconsistent with the Agency’s finding that the American denied boarding compensation regime governing the amounts payable is a reasonable one.

E. Collateral attacks

Two of Air Canada's arguments presented in its June 28, 2013 submissions appear to be collateral attacks on Decision No. 204-C-A-2013, and the Applicant would like to not only address them, but also to identify them as such below.

(i) Regulation vs. adjudication

Air Canada submits that any initiative regarding imposing denied boarding compensation levels should be done by way of regulation and not adjudication.

The Applicant submits that this is a collateral attack on Decision No. 204-C-A-2013 of the Agency and the show-cause order contained within the decision.

Pursuant to s. 41 of the *CTA*, Air Canada had the right to seek leave to appeal Decision No. 204-C-A-2013 from the Federal Court of Appeal within one month from the date of the decision, that is, until June 27, 2013. Since Air Canada did not bring a motion for leave to appeal, Decision No. 204-C-A-2013 and the show-cause order contained in it has become final, and Air Canada cannot seek to have it overturned in the present proceeding.

As for the merits of Air Canada's arguments, s. 67.2(1) of the *CTA* states that:

67.2 (1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

Subsection 107(1)(n)(iii) of the *Air Transportation Regulations*, S.O.R./88-58 (the "*ATR*") states:

107. (1) Every tariff shall contain

∴

(n) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

∴

(iii) compensation for denial of boarding as a result of overbooking,

Consequently, the *ATR* already imposes on airlines, by way of regulations, the obligation to provide compensation for denied boarding. The carrier's policy on this subject must be reasonable within the meaning of s. 67.2(1) of the *CTA*. Thus, the Applicant submits that there are already regulations governing the subject matter of denied boarding compensation, even if they are perhaps not as comprehensive as Air Canada may wish for.

Since, as noted earlier, Air Canada is the only major domestic carrier that engages in the practice of overselling its flight as part of its business model, it is not clear how much benefit introducing regulations governing denied boarding compensations on domestic flights would have for the travelling public.

Therefore, the Applicant submits that Air Canada's concerns about maintaining "a level playing field" are groundless, as it is the only major domestic player that oversells its domestic flights.

Furthermore, if Air Canada believes that the denied boarding compensation policy of any of its competitors is unreasonable, contrary to s. 67.2(1) of the *CTA*, then there is nothing to prevent Air Canada from bringing a complaint to the Agency against its competitor. Indeed, as the Agency confirmed in numerous decisions in the past, the scope of s. 67.2(1) of the *CTA* is very broad, and allows any person to file a complaint.

(ii) Compensation for substitution with an aircraft of lesser capacity

Air Canada also appears to argue, at the bottom of page 2 of its June 28, 2013 submissions, that the Agency's finding in Decision No. 204-C-A-2013 imposes on Air Canada a greater obligation than the American regulatory scheme imposes on American carriers. According to Air Canada's logic, this justifies Air Canada providing lower denied boarding compensation amounts than what the American regime calls for.

The Applicant submits that this is a collateral attack on the Agency's finding in Decision No. 204-C-A-2013 that Air Canada's Existing Rule 245(E)(1)(b)(iv) was unreasonable. As noted earlier, Air Canada chose to not appeal this decision, and consequently the decision became final and binding upon Air Canada.

As for the merits of Air Canada's argument, Decision No. 204-C-A-2013 clearly states that Air Canada does not have to pay denied boarding compensation if Air Canada can demonstrate that the substitution was for reasons outside of its control and that Air Canada had taken all reasonable measures to avoid substitution.

Consequently, Decision No. 204-C-A-2013 requires Air Canada to compensate passengers who are denied boarding only in cases where Air Canada would be liable for their delay according to the well-established legal principles of the *Montreal Convention*. In particular, by improving its services and avoiding aircraft substitutions within its own control, Air Canada can entirely avoid exposure to this kind of liability of costs.

As for the extent of such substitutions, on July 19, 2012, in Decision No. LET-C-A-105-2012, the Agency directed certain questions to Air Canada, including:

3. For the most recent two-year period for which data are available, how many passengers were unable to be carried on the flight for which they held reservations because of the substitution of a smaller aircraft for a larger aircraft?

The answer to this question is found at the top of page 4 of Air Canada's August 15, 2012 submissions. For the sake of addressing Air Canada's arguments, it suffices to observe that the portion of passengers who are denied boarding due to substitution of a smaller aircraft for a larger aircraft is small compared to the total number of passengers who were denied boarding in the same period.

Therefore, it is submitted that the cost of compensating passengers who are denied boarding as a result of aircraft substitution is negligible compared to the denied boarding compensations payable due to oversale.

F. Air Canada misstates the balancing test

At the bottom of page 3 of its June 28, 2013 submissions, Air Canada states that:

The above proposal strikes a balance between Mr. Lukacs' proposal and the carrier's financial burden from compensating passengers due to oversale while adequate protecting passenger's interests in oversales (and downgauge) situations.

The Applicant submits that Air Canada grossly misstates the nature of the balancing test established by the Agency for determining whether a tariff provision is reasonable within the meaning of s. 67.2(1) of the *CTA*.

In Decision No. 204-C-A-2013, the Agency explained the law governing reasonableness within the meaning of s. 67.2(1) of the *CTA* as follows:

[4] To assess whether a term or condition of carriage is "unreasonable", the Agency has traditionally applied a balancing test, which requires that a balance be struck between the rights of passengers to be subject to reasonable terms and conditions of carriage and the particular air carrier's statutory, commercial and operational obligations. This test was first established in Decision No. 666-C-A-2001 (*Ander-son v. Air Canada*), and was most recently applied in Decision No. 150-C-A-2013 (*Forsythe v. Air Canada*).

[5] The terms and conditions of carriage are set out by an air carrier unilaterally without any input from passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in purely commercial requirements. There is no presumption that a tariff is reasonable.

Thus, the Applicant submits that the tariff provisions must strike a balance between the rights of passengers to be subject to reasonable terms and conditions and the airline's statutory, commercial, and operational obligations. Therefore, Air Canada's attempt to strike a balance between the Applicant's proposal, which was held to be reasonable by the Agency, and Air Canada's "financial burden" is not the legal test that Air Canada's proposal must meet.

G. Air Canada's proposed denied boarding compensation scheme is unreasonable

The Applicant submits that Air Canada's proposed denied boarding compensation scheme is unreasonable for a number of reasons outlined below.

(i) No scintilla of evidence about financial burden

As noted earlier, in spite of Air Canada's reference to the financial burden of paying denied boarding compensation to passengers, there is no evidence on the record to support a finding that paying such compensation would, in any way, affect Air Canada's ability to meet its commercial obligations.

On the contrary, the rate of 0.09% of passengers who are affected by denied boarding demonstrates that the costs of adequately compensating these passengers are negligible and have no impact on Air Canada's ability to meet its commercial obligations.

(ii) Same treatment for delays between 1 hour and 6 hours?

A key element in Air Canada's proposed compensation scheme is that it provides the same amount of compensation for delays between 1 hour and 6 hours. The Applicant submits that this is unreasonable, and fails to provide an incentive for Air Canada to reprotect passengers efficiently and expeditiously.

The Applicant submits that there is a substantial qualitative difference between being delayed by 1 hour and 5 minutes or 5 hours and 5 minutes, in that the latter results in a far more significant disruption of the passenger's day and planned activities. In order to appreciate the qualitative difference, one should bear in mind the significant stress and discomfort for families traveling with young children, who can become restless, tired, hungry, and cranky to a much more significant degree than most single adult travellers.

The Applicant submits that the delineation between a "short" delay and a "medium" delay is somewhere between 1.5 and 2.5 hours, because such a delay results in a loss of at least 25% of passengers' (productive) day, and likely also requires passengers to purchase an additional meal at the airport.

Thus, the Applicant submits that treating delays between 1 hour and 6 hours as identical is unreasonable in that it fails to compensate passengers in proportion to the length of the delay and the damage caused.

The policy objective of creating an incentive for efficient reprotection of passengers is also defeated by providing the same compensation for delays between 1 hour and 6 hours, because reprotecting a passenger in a way that the delay at arrival is less than 1 hour is uncommon due to the frequencies of domestic flights. As a consequence, Air Canada is unlikely to make a genuine effort to reach an

objective that is unrealistic in most cases.

On the other hand, keeping the delay caused by denied boarding under 2 hours is a challenging, but realistic objective, which Air Canada could achieve using its extensive network, provided that it develops adequate and rapid procedures for reprotecting passengers.

Consequently, having a “tier boundary” at a 2-hour delay is more likely to result in a substantial improvement of the services the travelling public receives.

(iii) Air transportation charges vs. total price

Section 135.5 of the *ATR* defines both the “air transportation charges” and the “total price” of a ticket. While the former refers to the portion of the price of the ticket that is the airline’s revenue, the latter (“total price”) is the actual amount paid by the passenger, and it includes all taxes and fees, such as GST, HST, PST, and airport and navigation fees.

Thus, “air transportation charges” are only a portion of the “total price”.

Air Canada proposes to base its denied boarding compensation only on the “air transportation charges” portion of the price paid by passengers, which thus reduces the compensation payable to passengers by 20-30%, depending on the itinerary.

The Applicant submits that this is unreasonable.

First, the American denied boarding compensation regime, which the Agency held in Decision No. 204-C-A-2013 to be reasonable, is based on the notion of “fare” that is defined by 14 CFR Part 250.1 as:

Fare means the price paid for air transportation including all mandatory taxes and fees. It does not include ancillary fees for optional services.

[Emphasis added.]

Thus, the Canadian equivalent of this notion is the “total price” and not the “air transportation charges” used in Air Canada’s proposal.

Second, while the heading of the various components of the total price may matter for Air Canada, it certainly does not matter to passengers, who are consumers. From the perspective of passengers, what matters is the grand total that they have to pay in order to purchase an itinerary, that is, inclusive of all taxes and fees. This is precisely the policy objective that motivated the amendments to the *ATR* governing the advertising of prices (Part V.1).

Thus, it is submitted that if the amount of denied boarding compensation is to be determined based on the price paid by the passenger, then it ought to be based on the total price, and not only on a portion of the price, such as the “air transportation charges.”

(iv) Is 100% or 200% of the price an adequate compensation?

Air Canada proposed to pay 100% of the air transportation charges in the case of delay ranging from 1 hour to 6 hours, and 200% for delays over 6 hours.

With utmost respect, Air Canada provided no explanation as to how it reached these percentages, and what led it to the conclusion that these percentages are reasonable.

The Applicant submits that these percentages are not reasonable in the realities of 2013.

It appears that Air Canada's proposed percentages and caps are based on an old and outdated version of the American denied boarding compensation regime, which called for compensation in the amount of 100% of the fare and up to a maximum of US\$400 for shorter delays, and for 200% of the fare and up to a maximum of US\$800 for longer delays.

In 2011, the US Department of Transportation concluded that this compensation regime was no longer adequate, and in 76 FR 23100, it amended 14 CFR Part 250 to its current state, which is reproduced in the Appendix to Decision No. 204-C-A-2013.

As the Agency noted in Decision No. 204-C-A-2013 (para. 5), there is no presumption that a tariff (or a proposed tariff provision) is reasonable.

The Applicant submits that in the absence of clear and convincing arguments by Air Canada to justify a compensation regime that was found to be inadequate by the Department of Transportation, the Agency ought to also find that these percentages are inadequate, and fail to fairly compensate passengers.

(v) Substantially lower compensation than the two reasonable regimes

As noted earlier, comparison between the denied boarding compensation scheme proposed by Air Canada and the two regimes that the Agency held to be reasonable reveals that the amount of compensation payable according to Air Canada's proposal is substantially lower than what at least one of the reasonable regimes call for.

This difference is particularly striking in the case of delays over 1 hour, where the American denied boarding compensation regime provides the highest amount of cash compensation among the three that were considered (Air Canada's proposal, the Applicant's proposal, and the American regime). Air Canada has provided no explanation or justification for offering significantly lower compensation to passengers who are denied boarding than what was deemed fair and adequate in the United States.

While Air Canada referred, in general terms, to the "issues specific to the U.S. air transportation market," it did not elaborate on this point, and did not put forward any argument to explain why the Canadian air transportation market would call for lower denied boarding compensations.

In sharp contrast to the United States, there is only one major Canadian airline that oversells its flights as part of its business model, and it is Air Canada.

Since Air Canada did not tender any evidence with respect to the financial burden of increasing the denied boarding compensation amounts, and in light of the Agency's finding that Air Canada failed to demonstrate how a higher level of compensation would place it in a disadvantageous position (para. 71 of Decision No. 204-C-A-2013), it is submitted that Air Canada's proposed compensation scheme fails to strike a balance between the rights of passengers and Air Canada's statutory, commercial, and operational obligations.

Therefore, it is submitted that Air Canada's proposed denied boarding compensation scheme is unreasonable.

H. Air Canada failed to show cause

Although Air Canada proposed its own denied boarding compensation scheme in its June 28, 2013 submissions, it failed to address the Agency's show-cause order, directing Air Canada to explain why the Agency should not impose one of the two reasonable denied boarding compensation regimes upon Air Canada.

(i) American denied boarding compensation regime

With respect to the American compensation regime, Air Canada's main objection was a collateral attack, arguing that the Agency's finding that the Existing Rule 245(E)(1)(b)(iv) is unreasonable imposes an additional burden upon Air Canada that is greater than what is provided for in the US legislation.

This argument is meritless, and has been fully addressed on page 20, above.

Even though the Agency provided Air Canada with a more than ample opportunity to do so, Air Canada tendered no evidence with respect to the financial burden of implementing the American compensation regime.

Thus, it is submitted that the Agency ought to draw adverse inference from Air Canada's failure to lead evidence on this point, and conclude (as it did at para. 71 of Decision No. 204-C-A-2013) that implementing the American compensation regime would not affect Air Canada's ability to meet its commercial obligations.

Therefore, it is submitted that Air Canada failed to show cause why the Agency should not impose on it the American denied boarding compensation regime.

(ii) Denied boarding compensation regime proposed by the Applicant

Air Canada chose to make no submissions about the compensation regime proposed by the Applicant, nor did it oppose the Agency imposing that regime upon Air Canada.

Instead, Air Canada proposed its own denied boarding compensation scheme, which it claims is the same as what the Applicant proposed, but “with certain modifications.”

As explained on page 13, Air Canada’s submissions on this point are misleading, to say the very least, and the truth is that Air Canada’s proposal is entirely incomparable and incompatible with the compensation regime that was proposed by the Applicant.

Therefore, it is submitted that Air Canada also failed to show cause why the Agency should not impose on it the denied boarding compensation proposed by the Applicant.

I. Conclusion: The Agency ought to impose a compensation regime on Air Canada

In light of Air Canada’s failure to address the Agency’s show-cause order, it is submitted that the Agency ought to impose a denied boarding compensation regime on Air Canada. The only question that remains is whether it should be the American regime (as described in the Appendix to Decision No. 204-C-A-2013) or the regime proposed by the Applicant.

The Applicant submits that both of these regimes have numerous advantages.

The American regime provides a high amount of compensation after a delay of only 2 hours; however, it depends on the fare (“total price”) paid by the passenger.

The regime proposed by the Applicant is egalitarian, depending only on the length of the delay caused, and it is more straightforward, easier to understand both for passengers and for Air Canada agents, thus leaving less room for calculation errors and disputes. Furthermore, it creates a substantial incentive to reprotect passengers within 2 hours, but does not disproportionately punish carriers if they succeed in doing so only with a delay of less than 6 hours.

The Applicant agrees with the Agency’s finding in Decision No. 204-C-A-2013 that both of these regimes are reasonable, and prefers to leave it to the Agency to decide which of these two it will impose upon Air Canada.

IV. Form of payment of denied boarding compensation: cash vs. voucher

Although both Air Canada and the Applicant made extensive submissions concerning Air Canada's practice of offering denied boarding compensation by way of travel vouchers (MCOs), the Agency did not specifically address this point in Decision No. 204-C-A-2013.

Since Air Canada's proposed denied boarding compensation policy continues to make reference to "Air Canada's voucher," addressing the reasonableness of this method for compensating passengers is inevitable.

A. The general rule: compensation must be in cash or equivalent

In *Lukács v. WestJet*, LET-C-A-83-2011, the Agency held that any compensation paid in accordance with the tariff is to be paid in the form of cash, cheque, credit to a passenger's credit card, or any other form acceptable to the passenger. This finding was reiterated by the Agency in *Lukács v. WestJet*, 227-C-A-2013 in the specific context of denied boarding compensation:

[37] With respect to the form of payment to be offered to passengers affected by denied boarding, the Agency concurs with Mr. Lukács' submission that WestJet's restriction of payment to either a travel credit or refund of the fare paid is inconsistent with the Agency's findings in Decision No. LET-C-A-83-2011. As such, the Agency finds that Proposed Tariff Rule 110(B) would be considered unreasonable if it were to be filed with the Agency.

B. Passengers' acceptance of compensation other than cash must be an informed decision

There is no doubt that passengers may agree to accept other forms of compensation. This acceptance, however, must be an informed decision, based on the passenger being fully informed of the restrictions that accepting an alternative form of compensation may entail.

This principle is common to both the American and the European denied boarding compensation regimes. Indeed, 14 CFR Part 250.5(c) provides that:

(c) Carriers may offer free or reduced rate air transportation in lieu of the cash or check due under paragraphs (a) and (b) of this section, if-

[...]

(2) The carrier fully informs the passenger of the amount of cash/check compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash/check payment; and

(3) The carrier fully discloses all material restrictions, including but not limited to, administrative fees, advance purchase or capacity restrictions, and blackout dates applicable to the offer, on the use of such free or reduced rate transportation before the passenger decides to give up the cash/check payment in exchange for such transportation.

Similarly, Article 7(3) of *Regulation (EC) 261/2004* provides that:

The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

In other words, passengers are entitled to a cash (or equivalent) compensation, but may agree to accept another form of payment if they choose to. The requirement that passengers provide a written agreement confirming that they accept compensation in the form other than cash (or equivalent) underscores the principle that the standard form of compensation is by cash, and that the passengers' decision to depart from this standard must be an informed one.

C. Disadvantages for passengers of compensation by travel vouchers instead of cash

Although in theory, receiving a travel voucher for an amount equal to double or triple the cash DBC (Denied Boarding Compensation) may mutually benefit Air Canada and its passengers, in practice, the vouchers tend to be nearly worthless due to the many restrictions imposed on their use (Exhibit "I"), and benefit only Air Canada:

- Unlike cash, vouchers are valid only for one year, after which they expire and become worthless.
- Unlike cash, vouchers are valid only on transportation on Air Canada or Jazz, and on Air Canada Vacations; they cannot be used on itineraries that also involve a code-sharing partner of Air Canada. The number of the ticket obtained on a voucher must start with 014.
- Unlike cash, taxes, fees, charges and surcharges related to an itinerary cannot be paid by a voucher. The sum of these charges is often equal to or even exceeds the base fare.
- Although travel vouchers can be combined, only a maximum of three vouchers may be used for the purchase of a new ticket.
- It appears from Air Canada's submissions that vouchers received as DBC on domestic flights are valid only for domestic flights, or perhaps flights within North America; they are not valid for transatlantic travel.

The vast majority of passengers are not aware of the aforementioned restrictions, and it is very difficult to verify whether passengers are adequately informed about their rights by the carrier.

Indeed, according to the reports of more than one passenger, Air Canada failed to offer passengers the choice between cash and travel voucher, and simply gave passengers travel vouchers in lieu of denied boarding compensation.

Even if passengers are made aware of all the restrictions and limitations of Air Canada's travel vouchers, they cannot make an informed decision at the airport, in a matter of minutes, as to whether to seek cash compensation or accept a travel voucher instead. Indeed, in *Lukács v. WestJet*, 252-C-A-2012 (para. 83), the Agency recognized the importance of passengers having a reasonable opportunity to fully assess their options:

The Agency is of the opinion that this Proposed Tariff Rule is unreasonable. Proposed Tariff Rule 12.5 does not provide the passenger with a reasonable opportunity to fully assess their options. Instead, the passenger must decide between two options as determined by the carrier, both of which have legal consequences on the passenger's rights without a reasonable period of time to assess the full potential of the impact of selecting one over another.

In the present case, acceptance of compensation by way of travel vouchers may have very significant disadvantages for passengers (although it undoubtedly benefits Air Canada), and there is a very serious concern about passengers being deprived of the ability to make an informed decision, based on considering all pros and cons, about the form of compensation that they wish to receive.

Thus, it is submitted that even if the Agency is of the opinion that paying compensation by way of travel vouchers, with the written consent of the passenger, is a reasonable alternative to a cash compensation, it is submitted that passengers ought to be able to change their minds within a reasonable amount of time, and exchange their travel vouchers to cash compensation.

D. What is the reasonable exchange rate between cash and travel voucher?

Even if passengers may opt for receiving travel vouchers in lieu of denied boarding compensation, it is submitted that the "exchange rate" of 1:1 or 1:1.5 that stems from Air Canada's proposed denied boarding compensation policy is unreasonable in light of the numerous restrictions applicable to travel vouchers.

The Existing Rule 245(E)(2) provides for compensation in the amount of \$100 in cash or \$200 in travel vouchers. This indicates an exchange rate of 1:2, that is, \$1 in cash is considered by Air Canada to be worth \$2 in travel vouchers.

On page 6 of its August 15, 2012 submissions, Air Canada proposed to increase the amount of the travel voucher to \$300, suggesting an exchange rate of 1:3, that is, Air Canada is considering \$1 in cash to be worth \$3 in travel vouchers.

The Applicant submits that if compensation by way of travel vouchers is acceptable at all, then the 1:3 exchange rate that was proposed by Air Canada in 2012 is reasonable, and it is consistent

with the 1:2.5 exchange rate used by Air Canada in the context of denied boarding compensation paid on international flights (International Tariff Rule 89(E)(2)), which is currently \$200 in cash or \$500 in travel vouchers.

E. Conclusions

The general rule is that all compensation payable pursuant to the tariff must be in cash or equivalent. This principle was recently endorsed by the Agency in *Lukács v. WestJet*, 227-C-A-2013 in the specific context of denied boarding compensation.

While passengers may choose to accept compensation in a form other than cash or equivalent, the passengers' decision to do so must be an informed one, and passengers are entitled to a reasonable opportunity to fully assess their options.

The airport does not provide an adequate setting and opportunity for passengers to make an informed decision about their choice of denied boarding compensation.

Thus, requiring carriers to pay denied boarding compensation in cash or equivalent, and not by travel voucher, offers the most protection for passengers.

If carriers are permitted to provide, at the passengers' option, travel vouchers in lieu of denied boarding compensation, the amount of the travel voucher ought to be determined as a multiple of the amount due in cash. Specifically, due to the restrictions imposed on travel vouchers, it is submitted that the exchange rate of 1:3, that is \$1 in cash being equivalent to \$3 in travel vouchers, ought to be applied.

V. Relief sought

The Applicant is respectfully asking the Agency that:

A. the Agency substitute Rule 245(E)(1)(b)(iv) with the following provision:

(iv) if the Carrier can demonstrate both that:

- (1) for operational or safety reasons beyond the Carrier's control, his aircraft has been substituted with one of lesser capacity; and
- (2) the Carrier took all reasonable measures to avoid the substitution or that it was impossible for the Carrier to take such measures.

B. the Agency find that the denied boarding compensation scheme proposed by Air Canada is unreasonable;

C. the Agency impose on Air Canada either the American denied boarding compensation regime (as per the Appendix to Decision No. 204-C-A-2013) or the one proposed by the Applicant;

D. the Agency disallow Air Canada's proposal that permits paying denied boarding compensation by way of travel vouchers, or in the alternative, the Agency impose the following restrictions:

- (1) Air Canada must inform passengers of the amount of cash compensation that would be due, and that the passenger may decline travel vouchers, and receive cash or equivalent;
- (2) Air Canada must fully disclose all material restrictions before the passenger decides to give up the cash or equivalent payment in exchange for a travel voucher;
- (3) Air Canada must obtain the signed agreement of the passenger, confirming that the passenger was provided with the aforementioned information, prior to providing travel vouchers in lieu of compensation;
- (4) the amount of the travel voucher must be not less than 300% of the amount of cash compensation that would be due;
- (5) passengers are entitled to exchange the travel vouchers to cash at the rate of \$1 in cash being equivalent to \$3 in travel vouchers within one (1) year.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Ms. Julianna Fox, Counsel, Regulatory and International, Air Canada

LIST OF AUTHORITIES

Legislation

1. *Air Transportation Regulations*, S.O.R./88-58
2. *Canada Transportation Act*, S.C. 1996, c. 10.

Foreign legislation

3. European Union: *Regulation (EC) 261/2004*.
4. United States: 14 CFR Part 250, as amended by 76 FR 23100.

Case law

5. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
6. *Lukács v. Porter*, Canadian Transportation Agency, 16-C-A-2013.
7. *Lukács v. WestJet*, Canadian Transportation Agency, LET-C-A-83-2011.
8. *Lukács v. WestJet*, Canadian Transportation Agency, 252-C-A-2012.
9. *Lukács v. WestJet*, Canadian Transportation Agency, 227-C-A-2013.

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 The Canadian Press - ONLINE EDITION

Air Canada ordered to boost bumping payout on overbooked domestic flights

By: Ross Marowitz, The Canadian Press

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The Canadian Transport Agency ruled that Air Canada's 12-year-old bumping payout rate doesn't reflect the current price of airline tickets, accommodation and other incidental expenses.

MONTREAL - Air Canada passengers who are bumped from overbooked domestic flights are entitled to higher compensation, a federal agency has ruled.

The Canadian Transportation Agency has decided that the existing practice of paying \$100 cash or \$200 travel voucher is unreasonable.

It has given the airline 30 days to submit new compensation guidelines.

The agency sided with Gabor Lukacs, a former University of Manitoba math professor, who has

**Exhibit "A" to the submissions
of Dr. Gábor Lukács**

July 4, 2013
Page 34 of 47

Air Canada ordered to boost bumping payout on overbo... <http://www.printthis.clickability.com/pt/cpt?expire=&tit...>

challenged several airline industry practices.

"I'm extremely pleased by this decision and it is a very important step forward for Canadian in terms of rights of passengers," he said from Halifax, where he lives.

Lukacs suggested to the agency that passengers be compensated between \$200 and \$800 depending on the length of delay.

Delays of less than two hours would prompt the minimum compensation. Bumped passengers who are delayed two to six hours would get \$400 and the maximum would be given for longer delays.

The agency said the airline must indicate why it shouldn't approve the model suggested by Lukacs or one used in the United States.

Twice the airfare up to a maximum of US\$650 are paid in the U.S. for delays of one to two hours and four times the fare to a maximum of US\$1,300 are paid for delays exceeding two hours.

The federal agency ruled that Air Canada's 12-year-old bumping payout rate is outdated and doesn't reflect the current price of airline tickets, accommodation and other incidental expenses.

"Mr. Lukacs has presented a more compelling case that Air Canada's statutory, commercial and operational obligations fail to outweigh the rights of passengers to be subject to reasonable terms and conditions of carriage," it said in a 17-page ruling.

The ruling doesn't affect WestJet Airlines (TSX:WJA) because it doesn't overbook flights.

Air Canada (TSX:AC.B) could appeal the agency decision to the Federal Court of Appeal.

"At this time it would be inappropriate to comment as we are currently in consultation with the Canadian Transportation Agency on this topic," said airline spokeswoman Isabelle Arthur.

Air Canada successfully argued that it was reasonable to overbook and that the airline can deny compensation when it has to switch to smaller aircraft for operational and security reasons.

Lukacs argued that this was a catch-all excuse the airline can use to deny compensation.

However, the agency agreed Air Canada should have this flexibility as long as it is able to demonstrate that the events prompting the substitution were beyond its control. Otherwise, it must pay compensation.

While the ruling applies only to domestic flights, the agency is considering a complaint filed by another person dealing with international flights.

Lukacs, who has taken Canadian airlines to task over baggage and other fees, said Canadian passengers face what he says are among the worst conditions in the world.

The advocate said he was prompted to file a complaint in December 2011 after he and some passengers were told by Air Canada that they were not entitled to compensation if they responded to a request for volunteers to be bumped.

"As long as we put up with it they will do it and somebody has to stand up and say no, the buck stops here, this is unacceptable and unreasonable," he said.

**Exhibit "A" to the submissions
of Dr. Gábor Lukács**

July 4, 2013
Page 35 of 47

Air Canada ordered to boost bumping payout on overbo... <http://www.printthis.clickability.com/pt/cpt?expire=&tit...>

Find this article at:

<http://www.winnipegfreepress.com/business/air-canada-ordered-to-boost-bumping-payout-on-overbooked-domestic-flights-209191441.html>

Check the box to include the list of links referenced in the article.



Review Flight Details

Time remaining to complete this page: **9:25**. [Learn more](#)

The grand total shown includes all taxes, fees, fuel surcharges where applicable and other charges. Fares shown are the best available uniform rates at this time for the number of tickets requested and the selected travel times and dates. Prices are not guaranteed until payment has been processed, and tickets have been issued.

Review your itinerary

Flight	From	To	Date	Depart	Arrive	Stops	Duration	Aircraft	Fare Type	Meal Service
AC208	Vancouver, Vancouver Intl (YVR) Terminal M	Calgary (YYC)	Tue 27-Aug	10:00	12:25	0	1hr25	E90	Tango, A	

Review final quote details

[Modify your search](#)

Fare Summary

Total charge for 1 adult

Air Transportation Charges

Departing Flight (Tango) **127.00**
(including surcharges)

Taxes, Fees and Charges **34.83**

Grand Total - Canadian dollars **\$161.83**

[Details](#)

[Convert currency](#)
for informational purpose only

Review the fare rules and the general conditions of carriage

Departing Flight Vancouver (YVR) To Calgary (YYC) - Tango

Changes:

- Prior to day of departure - **Change fee** per direction, per passenger, is \$75 CAD plus applicable taxes and any additional fare difference. **Changes** can be made up to 2 hours prior to departure.
- **Same-day confirmed changes at check-in or at the airport** are subject to availability and are permitted only for same-day flights at a fee of \$75 CAD/USD per direction, per passenger.
- **Same-day standby** is not permitted.
- Flights can only be used in sequence from the place of departure specified on the itinerary.

Cancellations:

- Tickets are **non-refundable** and **non-transferable**.
- **Cancellations** can be made up to 45 minutes prior to departure.
- Provided the original booking is cancelled prior to the original flight departure, the value of the unused ticket can be applied within a one year period from date of issue of the original tickets to the value of a new ticket subject to the change fee per direction, per passenger, plus applicable taxes and any additional fare difference, subject to availability and advance purchase requirements. The new outbound travel date must commence within a one year period from the original date of ticket issuance. If the fare for the new journey is lower, any residual amount will be forfeited.
- Customers who **no-show** their flight will forfeit the fare paid.
- **Paid Advance Seat Selection** is available on Air Canada and Air Canada Express (operated by Jazz), subject to availability.
- Flights operated by Air Canada: earn 25% Aeroplan Miles (not qualifying for Altitude Status) for flights within Canada and 50% Aeroplan Miles (Altitude Qualifying Miles) for flights between Canada and the U.S.
- Read complete **fare rules** applicable to this fare.

[View Air Canada's 'General Conditions of Carriage and Tariffs'](#)



Review Flight Details

Time remaining to **complete this page**: **9:18**. [Learn more](#)

The grand total shown includes all taxes, fees, fuel surcharges where applicable and other charges. Fares shown are the best available uniform rates at this time for the number of tickets requested and the selected travel times and dates. Prices are not guaranteed until payment has been processed, and tickets have been issued.

Review your itinerary

Flight	From	To	Date	Depart	Arrive	Stops	Duration	Aircraft	Fare Type	Meal Service
AC603	Halifax, Halifax Int'l (YHZ)	Toronto, Pearson Int'l (YYZ) Terminal 1	Tue 27-Aug	05:40	07:02	0	5hr04	320	Tango, E	F
AC7771 ¹	Toronto, Pearson Int'l (YYZ) Terminal 1	North Bay (YYB)	Tue 27-Aug	08:45	09:44	0		DH1	Tango, P	

F: **Food for purchase onboard** All Onboard Café purchases made on board Air Canada flights are payable only with Visa, MasterCard and American Express credit cards.

Operated by:
¹ Air Canada Express - Jazz

Review final quote details

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Fare Summary

Total charge for 1 adult

Air Transportation Charges

Departing Flight (Tango) (including surcharges) **328.00**

Taxes, Fees and Charges **90.66**

Grand Total - Canadian dollars \$418.66

[Details](#)

[Convert currency](#)
for informational purpose only

Review the fare rules and the general conditions of carriage

Departing Flight Halifax (YHZ) To North Bay (YYB) - Tango

Changes:

- Prior to day of departure - **Change fee** per direction, per passenger, is \$75 CAD plus applicable taxes and any additional fare difference. **Changes** can be made up to 2 hours prior to departure.
- **Same-day confirmed changes at check-in or at the airport** are subject to availability and are permitted only for same-day flights at a fee of \$150 CAD/USD per direction, per passenger.
- **Same-day standby** is not permitted.
- Flights can only be used in sequence from the place of departure specified on the itinerary.

Cancellations:

- Tickets are **non-refundable** and **non-transferable**.
- **Cancellations** can be made up to 45 minutes prior to departure.
- Provided the original booking is cancelled prior to the original flight departure, the value of the unused ticket can be applied within a one year period from date of issue of the original tickets to the value of a new ticket subject to the change fee per direction, per passenger, plus applicable taxes and any additional fare difference, subject to availability and advance purchase requirements. The new outbound travel date must commence within a one year period from the original date of ticket issuance. If the fare for the new journey is lower, any residual amount will be forfeited.
- Customers who **no-show** their flight will forfeit the fare paid.
- **Paid Advance Seat Selection** is available on Air Canada and Air Canada Express (operated by Jazz), subject to availability.
- Flights operated by Air Canada: earn 25% Aeroplan Miles (not qualifying for Altitude Status) for flights within Canada and 50% Aeroplan Miles (Altitude Qualifying Miles) for flights between Canada and the U.S.
- Read complete **fare rules** applicable to this fare.

[View Air Canada's 'General Conditions of Carriage and Tariffs'](#)



Review Flight Details

Time remaining to complete this page: **9:19**. [Learn more](#)

The grand total shown includes all taxes, fees, fuel surcharges where applicable and other charges. Fares shown are the best available uniform rates at this time for the number of tickets requested and the selected travel times and dates. Prices are not guaranteed until payment has been processed, and tickets have been issued.

Review your itinerary

Flight	From	To	Date	Depart	Arrive	Stops	Duration	Aircraft	Fare Type	Meal Service
AC415	Montreal, Trudeau (YUL)	Toronto, Pearson Int'l (YYZ) Terminal 1	Tue 27-Aug	14:00	15:21	0	6hr01	320	Tango, A	
AC1117	Toronto, Pearson Int'l (YYZ) Terminal 1	Regina (YQR)	Tue 27-Aug	16:40	18:01	0		E90	Tango, A	YIS F

YIS F: Food for purchase onboard All Onboard Café purchases made on board Air Canada flights are payable only with Visa, MasterCard and American Express credit cards.

Review final quote details

[Modify your search](#)

Fare Summary

Total charge for 1 adult

Air Transportation Charges

Departing Flight (Tango) **242.00**
(including surcharges)

Taxes, Fees and Charges 77.69

Grand Total - Canadian dollars \$319.69

Details

[Convert currency](#)
for informational purpose only

Review the fare rules and the general conditions of carriage

Departing Flight Montreal (YUL) To Regina (YQR) - Tango

Changes:

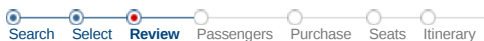
- Prior to day of departure - **Change fee** per direction, per passenger, is \$75 CAD plus applicable taxes and any additional fare difference. **Changes** can be made up to 2 hours prior to departure.
- **Same-day confirmed changes at check-in or at the airport** are subject to availability and are permitted only for same-day flights at a fee of \$150 CAD/USD per direction, per passenger.
- **Same-day standby** is not permitted.
- Flights can only be used in sequence from the place of departure specified on the itinerary.

Cancellations:

- Tickets are **non-refundable** and **non-transferable**.
- **Cancellations** can be made up to 45 minutes prior to departure.
- Provided the original booking is cancelled prior to the original flight departure, the value of the unused ticket can be applied within a one year period from date of issue of the original tickets to the value of a new ticket subject to the change fee per direction, per passenger, plus applicable taxes and any additional fare difference, subject to availability and advance purchase requirements. The new outbound travel date must commence within a one year period from the original date of ticket issuance. If the fare for the new journey is lower, any residual amount will be forfeited.
- Customers who **no-show** their flight will forfeit the fare paid.

- **Paid Advance Seat Selection** is available on Air Canada and Air Canada Express (operated by Jazz), subject to availability.
- Flights operated by Air Canada: earn 25% Aeroplan Miles (not qualifying for Altitude Status) for flights within Canada and 50% Aeroplan Miles (Altitude Qualifying Miles) for flights between Canada and the U.S.
- Read complete **fare rules** applicable to this fare.

[View Air Canada's 'General Conditions of Carriage and Tariffs'](#)



Review Flight Details

Time remaining to complete this page: **9:22**. [Learn more](#)

The grand total shown includes all taxes, fees, fuel surcharges where applicable and other charges. Fares shown are the best available uniform rates at this time for the number of tickets requested and the selected travel times and dates. Prices are not guaranteed until payment has been processed, and tickets have been issued.

Review your itinerary

Flight	From	To	Date	Depart	Arrive	Stops	Duration	Aircraft	Fare Type	Meal Service
AC697	St Johns (YYT)	Toronto, Pearson Int'l (YYZ) Terminal 1	Tue 27-Aug	17:40	19:39	0	7hr11	319	Tango, A	YIS F
AC271	Toronto, Pearson Int'l (YYZ) Terminal 1	Winnipeg (YWG)	Tue 27-Aug	20:45	22:21	0		319	Tango, A	YIS F

YIS F: Food for purchase onboard All Onboard Café purchases made on board Air Canada flights are payable only with Visa, MasterCard and American Express credit cards.

Review final quote details

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Fare Summary

Total charge for 1 adult

Air Transportation Charges

Departing Flight (Tango) (including surcharges) **332.00**

Taxes, Fees and Charges **78.33**

Grand Total - Canadian dollars \$410.33

Details

[Convert currency](#)
for informational purpose only

Review the fare rules and the general conditions of carriage

Departing Flight St Johns (YYT) To Winnipeg (YWG) - Tango

Changes:

- Prior to day of departure - **Change fee** per direction, per passenger, is \$75 CAD plus applicable taxes and any additional fare difference. **Changes** can be made up to 2 hours prior to departure.
- **Same-day confirmed changes at check-in or at the airport** are subject to availability and are permitted only for same-day flights at a fee of \$150 CAD/USD per direction, per passenger.
- **Same-day standby** is not permitted.
- Flights can only be used in sequence from the place of departure specified on the itinerary.

Cancellations:

- Tickets are **non-refundable** and **non-transferable**.
- **Cancellations** can be made up to 45 minutes prior to departure.
- Provided the original booking is cancelled prior to the original flight departure, the value of the unused ticket can be applied within a one year period from date of issue of the original tickets to the value of a new ticket subject to the change fee per direction, per passenger, plus applicable taxes and any additional fare difference, subject to availability and advance purchase requirements. The new outbound travel date must commence within a one year period from the original date of ticket issuance. If the fare for the new journey is lower, any residual amount will be forfeited.
- Customers who **no-show** their flight will forfeit the fare paid.

- **Paid Advance Seat Selection** is available on Air Canada and Air Canada Express (operated by Jazz), subject to availability.
- Flights operated by Air Canada: earn 25% Aeroplan Miles (not qualifying for Altitude Status) for flights within Canada and 50% Aeroplan Miles (Altitude Qualifying Miles) for flights between Canada and the U.S.
- Read complete **fare rules** applicable to this fare.

[View Air Canada's 'General Conditions of Carriage and Tariffs'](#)



2012

Annual Information Form

March 22, 2013

INDUSTRY OVERVIEW AND COMPETITIVE ENVIRONMENT

General

The airline industry has traditionally been dominated by large established network carriers. Network carriers generally benefit from brand name recognition and a long operating history. They offer scheduled flights to major domestic and international cities while also serving smaller cities. They generally concentrate most of their operations in a limited number of hub cities, serving most other destinations in their network by providing one-stop or connecting service through their hubs.

Over the past three decades, governments gradually reduced economic regulation of commercial aviation. This has resulted in a more open and competitive environment for domestic, transborder and international airline services, for both scheduled and leisure charter operations. This deregulation transformed the airline industry and allowed the emergence of low-cost carriers, which resulted in a rapid shift in the competitive environment. With their relatively low unit costs largely resulting from lower labour costs and a simplified operational model and product offering, low-cost carriers are able to operate profitably while generally achieving lower yields than network carriers. By offering lower fares, these carriers have expanded and succeeded in gaining market share from network carriers. While the majority of low-cost carriers offer predominantly point-to-point services between designated cities, some utilize a similar “hub and spoke” strategy to the network carriers. WestJet Airlines Ltd. (“WestJet”) is the largest low-cost carrier in Canada and, at December 31, 2012, offered scheduled service to 81 destinations in North America, Central America and the Caribbean with a fleet of 100 Boeing 737 aircraft. In 2012, WestJet announced that it would be launching a new regional airline, named WestJet Encore, in the second half of 2013, using a fleet of up to 45 Bombardier 78-seat Q400 turboprop aircraft (comprised of 20 committed and 25 optional aircraft), seven of which would be expected to be delivered in 2013. WestJet also announced that WestJet Encore, at maturity, would operate in both the domestic and transborder markets, including to new destinations not currently served by WestJet, on flights between existing destinations not currently flown by WestJet, and on some existing short-haul routes currently flown by WestJet’s Boeing 737 aircraft.

Domestic Market

The Canadian domestic market is characterized by a large geographic territory with a limited number of high density markets accounting for the majority of passenger traffic and revenue. This leads to a concentration of routes in Canada around four major hubs: Toronto, Montreal, Vancouver and Calgary.

Air Canada is the largest provider of scheduled passenger services in the Canadian market. Based on Official Airline Guide (“OAG”) data, during the period from January 1, 2012 to December 31, 2012, Air Canada, together with Jazz and other airlines operating flights on behalf of Air Canada under commercial agreements with Air Canada (which operate under the brand name “Air Canada Express” and which are referred to in this AIF as “Contracted Carriers”), led the Canadian airline industry’s domestic scheduled capacity with an estimated market share of approximately 55% based on Available Seat Miles (“ASMs”).

Air Canada is Canada’s largest domestic airline. Jazz is the largest regional airline in Canada and operates regional services for Air Canada under a capacity purchase agreement (the “Jazz CPA”). Air Canada, together with its Contracted Carriers, carries more passengers, serves more non-stop destinations and provides more flights in the domestic market than any other airline.

Competition in the domestic market is primarily from WestJet. As at December 31, 2012, Air Canada, together with its Contracted Carriers, provided service to 59 domestic destinations within Canada, while WestJet provided service to 31 domestic destinations. WestJet announced that WestJet Encore, at maturity, would operate in eastern and western Canada.

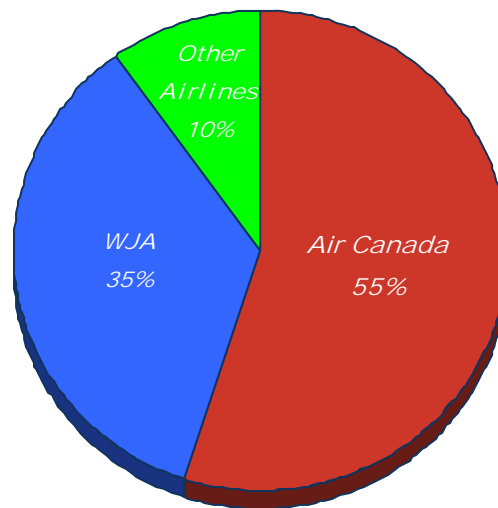
Porter Airlines Inc. (“Porter”) is a regional passenger carrier based at and operating from Billy Bishop Toronto City Airport primarily in the eastern triangle market to compete with Air Canada’s Rapidair services at Toronto Pearson International Airport (“Toronto Pearson Airport”). The airline serves primarily short-haul business markets such as Ottawa, Montreal, New York (Newark), Chicago (Midway) and Boston (Logan) from Toronto, operating with a fleet of 26 70-seat Bombardier Q400 aircraft.

On May 1, 2011, Sky Regional Airlines Inc. (“Sky Regional”) commenced service between Toronto Island’s Billy Bishop Toronto City Airport and Montreal’s Trudeau Airport on behalf of Air Canada and pursuant to a capacity purchase agreement. Air Canada’s schedule provides up to 15 daily non-stop return flights between downtown Toronto and Montreal Pierre Elliott Trudeau International Airport (“Montreal Trudeau Airport”).

Other airlines operating in the domestic market include Canadian North and First Air, based in Yellowknife and Iqaluit, respectively, and they operate services primarily within northern Canada and connecting northern Canada to the rest of the country.

The following chart illustrates the estimated share of the overall domestic scheduled capacity provided by Air Canada, together with its Contracted Carriers, as measured by ASMs.

**Estimated Domestic Scheduled
Capacity Market Share**



(1) Source: OAG data, based on ASMs during the period from January 1, 2012 to December 31, 2012; represents the estimated share of the overall domestic scheduled capacity of Air Canada and its Contracted Carriers. The estimated share of the overall domestic scheduled capacity of the other carriers presented also includes the domestic scheduled capacity of their respective affiliated or contracted regional carrier(s), when applicable.

(2) WJA = Westjet Airlines.

U.S. Transborder Market

In 2012, there were, on average, 1,152 daily scheduled transborder flights operated between Canada and the United States across the industry. Toronto Pearson Airport, Air Canada's largest hub, is the world's largest originator of flights into the United States.

Air Canada is the largest provider of scheduled passenger services in the U.S. transborder market. Based on OAG data, during the period from January 1, 2012 to December 31, 2012, Air Canada, together with its Contracted Carriers, provided more U.S. transborder scheduled capacity than any other airline with an estimated market share of approximately 35% based on ASMs.



Review Flight Details

Time remaining to complete this page: **9:20**. [Learn more](#)

The grand total shown includes all taxes, fees, fuel surcharges where applicable and other charges. Fares shown are the best available uniform rates at this time for the number of tickets requested and the selected travel times and dates. Prices are not guaranteed until payment has been processed, and tickets have been issued.

Review your itinerary

Flight	From	To	Date	Depart	Arrive	Stops	Duration	Aircraft	Fare Type	Meal Service
AC697	St Johns (YYT)	Toronto, Pearson Intl (YYZ) Terminal 1	Tue 27-Aug	17:40	19:39	0	7hr11	319	Latitude, B	F
AC271	Toronto, Pearson Intl (YYZ) Terminal 1	Winnipeg (YWG)	Tue 27-Aug	20:45	22:21	0		319	Latitude, B	F

F: **Food for purchase onboard** All Onboard Café purchases made on board Air Canada flights are payable only with Visa, MasterCard and American Express credit cards.

Review final quote details

[Modify your search](#)

Fare Summary

Total charge for 1 adult

Air Transportation Charges

Departing Flight (Latitude) **960.00**
(including surcharges)

Taxes, Fees and Charges 159.97

Grand Total - Canadian dollars \$1119.97

Details

[Convert currency](#)
for informational purpose only

Review the fare rules and the general conditions of carriage

Departing Flight St Johns (YYT) To Winnipeg (YWG) - Latitude

Changes:

- Changes are permitted and a change fee does not apply.
- Your total ticket price may increase if changes are made and the original fare you booked is no longer available, or if you call Air Canada Reservations, who may not have access to the original fare. Advance purchase may apply.
- Lower Latitude fares may be available only at aircanada.com for selected flights and dates. **Any changes not completed on aircanada.com may result in a higher Latitude fare** than would otherwise be available.
- Same-day standby** is permitted at no charge.
- Flights can only be used in sequence from the place of departure specified on the itinerary.

Cancellations:

- Tickets are **fully refundable** and **non-transferable**. **Partially used** tickets may be submitted for a refund assessment. The refund will be calculated as follows: actual fare paid minus the value of the portion of the journey that has been flown.
- Cancellations** can be made up to 45 minutes prior to departure.

Complimentary Preferred Seat and advance standard seat selection on Air Canada and Air Canada Express (operated by Jazz), subject to availability.

- Within Continental North America, a complimentary snack selection will be offered on most short haul flights between 1.5 and 2 hours (does not apply to Air Canada Express flights operated by Jazz; and a complimentary snack and sandwich selection will be offered on most flights of more than 2 hours (sandwich selection is not offered on Air Canada Express flights operated by Jazz).
- Flights operated by Air Canada: earn 100% Aeroplan Miles (Altitude Qualifying Miles).
- Read complete **fare rules** applicable to this fare.

[View Air Canada's 'General Conditions of Carriage and Tariffs'.](#)

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- Basics

- Security and travel advisories
- Fares, taxes and fees
 - Our fares
 - Service fees
 - Taxes and fees
 - WestJet travel credits
 - GST/HST exemptions
 - Our hurricane promise
 - Booking with AIR MILES®
- Check in and airport arrival
- ID requirements
- Baggage
- Seat selection
- Inflight services
- Children, infants and expectant mothers

+ Special arrangements

Our fares

- [Air-only reservations with WestJet](#)
- [WestJet Vacations package bookings](#)

Air-only reservations with WestJet

- WestJet has no minimum or maximum stay-over requirements. It's up to you how long you stay.
- Fares are quoted on a one-way basis and are subject to change without notice.
- Our lowest fares are limited and may not be available on all flights. Some fares may only be available on certain days and times.
- WestJet offers three fare types: Econo, Flex and Plus. These fare types provide options for a range of travellers. The type of fare determines the price, the seats you will be able to access, your baggage allowance and some fees.

Econo	Flex	Plus
All fees displayed are in CAD/USD and include approximate taxes.		
One complimentary checked bag [†]	One complimentary checked bag [†]	Two complimentary checked bags [†]
Advanced seat selection - \$5-17.25 [†]	Advanced seat selection - \$5-34.50, with access to emergency exit row(s).	Advanced complimentary seat selection, with access to first three rows/emergency exit row(s), which includes advance boarding [†]
\$75-86.25 itinerary change fee plus applicable fare difference	Emergency exit row(s) includes advance boarding*	No itinerary change fee plus applicable fare difference
\$75-86.25 name change fee	\$50-57.50 itinerary change fee plus applicable fare difference	Complimentary name change
\$75-86.25 cancellation fee, balance refunded to travel bank	\$50-57.50 name change fee	\$50-57.50 cancellation fee, balance refunded to original form of payment
	\$50-57.50 cancellation fee, balance refunded to travel bank	Complimentary day-of-flight itinerary changes at the airport [†]
		Priority security screening (as available by airport) [^]

For more information on the differences in our fare types, please see our [service fees](#).

- As seats are sold on the aircraft, the fare increases. We recommend you make your reservation as far in advance as possible.
- Promotional fares may have additional fare rules (specified at the time of booking).
- All website fares are subject to change until payment has been completed.
- WestJet fares are charged in either Canadian or U.S. currency. For reservations made on our website, the currency will be determined by where your travel begins. For example, if you depart from Toronto, your flight cost and any fees will be charged in Canadian dollars. If you depart from a destination outside of Canada, your flight cost and any fees will be charged in U.S. dollars. All new reservations made through our call centre will be charged in Canadian dollars. Fees may be paid at airports within Mexico using Mexican pesos, Canadian dollars, or U.S. dollars.
- Please visit [taxes and fees](#) for information on how your flight's total cost is calculated.
- We do not offer discounted fares for children, students, seniors or military personnel.

Air-only bereavement fares

- Bereavement fares must be booked through our Sales Super Centre at 1-800-581-9499. We will ask for some general information at the time of booking and may call you if we need to know a little more.
- WestJet offers bereavement fares on all of our flights to those who have had a death in their immediate family. WestJet will offer a discount to a guest travelling to several types of funerals, including funerals of fallen firefighters, police officers, military personnel, and emergency services personnel, where the guest would not normally qualify for a bereavement fare.
- Bereavement fares offer maximum flexibility with no fees. We encourage you to look for a lower price on our website prior to booking a bereavement fare, but please note that these fares will be subject to a change fee.

Air-only change and cancel policies

Change and cancel policies vary depending on the fare type you have purchased. Because we know that plans change, all of our fares allow you to change or cancel your WestJet flight(s) for the first 24 hours after booking, and to change or cancel your WestJet flight(s) up to two hours prior to your scheduled time of departure (fees and/or difference in fare may apply). For details about our change and cancel fees, please visit [service fees](#).

Air-only changes to the form of payment

If you have paid for your reservation using a credit card or payment card and you'd like to use your travel bank credits instead, give us a call at 1-800-581-9499 within 24 hours of making your reservation. Unfortunately, changing the form of payment after 24 hours from the time of booking is not permitted.

Air-only no-show policy

Failure to show up for the first flight on a reservation, or failure to complete a round-trip or multi-segment reservation will result in all remaining segments being cancelled. All fares, fees, charges and taxes paid for the reservation will not be refunded or made available for future reservations.

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[Tariffs and conditions of carriage](#)

[Service fees](#)

[Taxes and fees](#)

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WestJet Vacations package bookings

- We require all WestJet Vacations package bookings to be made a minimum of 72 hours in advance.
- Although there is generally no maximum stay requirement, some hotel properties may have a minimum stay requirement.
- Pricing is based on the number of adults, children and infants travelling. Many hotels allow children and infants to stay for free when sharing existing bedding in a room with an adult. The total price will reflect the appropriate pricing based on the number of occupants and may be adjusted for the age of any children you have added to the reservation.
- When pricing a WestJet Vacations package with children and infants, offers such as "stay and/or eat free" are included in the total cost.
- The "Packages from" is the total package cost divided among all guests travelling, including children and infants. All package prices displayed on our website are subject to change until the purchase and approval of the reservation has been completed by WestJet Vacations.
- Prices are quoted in Canadian currency only, and are subject to change without notice and may be subject to additional taxes, fees and surcharges. Please see the cost of your flight for more details.
- WestJet Vacations package bookings are available only for Canadian residents. Please note: if you are travelling from Quebec, you must book through your travel agent.
- Our lowest price is limited and may not be available on all packages. Some packages may only be available on certain days and times or for specific locations.
- Promotional fares may have additional fare rules, specified at the time of booking.
- Payment in full at the time of booking is required. WestJet Vacations accepts American Express®, Visa®, MasterCard® and WestJet dollars for payment. WestJet credits and gift certificates are not accepted as payment.

WestJet Vacations bereavement fares

WestJet Vacations does not offer bereavement fares.

WestJet Vacations change and cancel policies

- Changes must be done by WestJet Vacations during business hours.
- Changes will be accepted by WestJet Vacations until 21 days prior to departure; however, some suppliers may not accept changes.
- All changes are subject to a fee per guest plus any applicable supplier rates and charges.
- Name changes are not permitted, with the exception of name corrections.
- A change of property is treated as a cancellation, not as a change.

WestJet Vacations changes to your form of payment

You may request a change to your form of payment within 24 hours of the completion of your booking at no charge. Changes to the form of payment are not permitted after 24 hours.

WestJet Vacations cancellation

- Cancellations must be done by calling WestJet Vacations during business hours.
- Cancellations outside of 21 days are subject to a fee per person, plus applicable supplier rates and charges, with the remainder of the package price refunded to the original credit cards.
- Cancellations within 21 days of departure will result in a full forfeit of the amount paid. We recommend the purchase of travel insurance.

Missed or unused flights or package components

**Exhibit “H” to the submissions
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WestJet fares

<http://www.westjet.com/guest/en/travel/basics/fares/our-...>

Missed flights or unused package components are non-refundable and non-creditable.

†Not applicable on flights operated by our airline partners.

^Priority security screening is available to guests purchasing a Plus fare type at [select airports](#) and varies by routing. Present your boarding pass at security to be directed to the priority lane.

Exhibit "T" to the submissions of Dr. Gábor Lukács

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Terms and conditions

- Your travel voucher is valid for 1 (one) year from the date of issue.
- If you're giving your MCO to someone else, you must include a signed note specifying your authorization for the MCO to be used by that person and include their new ticket number.
- Your travel voucher is valid for **air transportation** on Air Canada or Jazz operated flights and on Air Canada Vacations flight portion only (excludes taxes, fees, charges and surcharges).
- The new ticket number must start with 014.
- The refund request must be received no more than 90 days after completion of travel on the new ticket.
- Travel vouchers can be combined to purchase a ticket (maximum of three vouchers per ticket).
- **Note:** Only travel vouchers issued **prior** to the new ticket issue date will be accepted.
- If the cost of the new ticket is less than the value of the MCO(s), a new voucher will be issued for the balance.
- If you do not see the credit on your online credit card statement within 20 business days or if you do not see the credit appear on your paper credit statement within 2 billing periods, you may contact Refund Services for information on the status:
 - Call: 204 941-2851
 - Fax 204 941-2789
 - Email: refundservices@aircanada.ca