

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

B E T W E E N:

**DELTA AIR LINES INC.**

Appellant  
(Respondent)

- and -

**DR. GÁBOR LUKÁS**

Respondent  
(Appellant)

**MOTION RECORD OF THE PROPOSED INTERVENER,  
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION  
LEAVE TO INTERVENE**

(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)

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# TAB 1

**IN THE SUPREME COURT OF CANADA  
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**NOTICE OF MOTION OF THE PROPOSED INTERVENER,  
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION  
LEAVE TO INTERVENE**

(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)

**TAKE NOTICE** that the International Air Transport Association (“IATA”) hereby applies to a judge of the Court, pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada* for an order:

- (a) granting IATA leave to intervene in this appeal;
- (b) permitting IATA to file a memorandum of argument not exceeding 15 pages;
- (c) permitting IATA to present oral argument not exceeding 10 minutes; and
- (d) for such further or other order as this Court may deem appropriate.

**AND FURTHER TAKE NOTICE** that the following documents will be referred to in support of the motion:

- (a) a Memorandum of Argument;
- (b) the affidavit of Nicola Colville, affirmed 16 June 2017; and
- (c) such further and other material as counsel may advise and this Court may permit.

**AND FURTHER TAKE NOTICE** that the motion shall be made on the following grounds:

- (a) IATA is the international trade association for the world’s airlines;
- (b) IATA’s 274 airline members are located throughout the world, in 117 nations, and account for approximately 83% of the world’s total air traffic;
- (c) Headquartered in Montreal, IATA is a Canadian corporation established by a Special Act of Parliament in 1945, (*An Act to Incorporate the International Air Transport Association*, SC 1945, c 51));
- (d) IATA’s purposes, objects and aims are:
  - (i) to promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith;
  - (ii) to provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport service; and
  - (iii) to co-operate with the International Civil Aviation Organization and other international organizations.
- (e) IATA has had and continues to have a broad role in the global aviation sector;
- (f) IATA has worked with and continues to work with its international members and other airline industry participants to develop and improve global aviation standards;
- (g) IATA has provided and continues to provide professional support services to various participants in the airline industry to ensure that its members operate safely, securely, efficiently and economically;
- (h) IATA, as a result of its expertise and specialized role in the domestic and international aviation industry, has made and continues to make presentations and provide detailed airline industry information and data to governments and various decision makers to assist them in dealing with a broad range of issues which affect the aviation sector globally;
- (i) IATA proposes to advance submissions at the hearing of this appeal that will be relevant to this appeal, useful to the Court, and different from those of the parties;

- (j) IATA's proposed submissions will be distinct from those of the appellant in that they will be from the perspective of an international organization concerned with the development of aviation regulation and policy;
- (k) IATA anticipates that it will make the submissions in the following areas:
- (i) The Canadian Transportation Agency's (the "Agency") decisions affect all air carriers holding international licenses under the Act. The Agency has a broad discretion, consistent with the National Transportation Policy and Canada's international obligations with respect to international air travel, to inquire into, hear and determine a complaint pertaining to services provided by or policies of an international airline operating in Canada, including the discretion to determine a person's standing to make a complaint to the Agency against an international licence holder operating in Canada. The Agency, when considering the question of standing — particularly when the putative complainant person is not and would never be directly affected by the decision or policy in issue — should properly consider a number of factors. In addition to such factors as the nature of the complaint and its urgency, the limits of the Agency's scarce and limited resources and whether the complainant has the best evidence, the factors should include whether the person would have standing before a foreign regulator or decision maker in similar circumstances or whether the nature of the service, policy or decision subject of the putative complaint is one permitted or not prohibited under foreign and international practices, policies, international treaties or foreign law. With its members holding both domestic and international licenses, IATA is uniquely placed make such submissions to assist this Honourable Court on these issues;
  - (ii) The Federal Court of Appeal held that the use of the term "any person" in s 67.2(1) of Canada Transportation Act (the "Act") implies that Parliament intended to grant to any person, directly affected or not, the ability to bring a complaint to the Agency. Delta has argued that s

67.2(1) does not apply as that section only applies to holders of domestic licenses. Delta holds an international license. IATA will provide submissions to this Honourable Court which focus on this issue from a global perspective and not one not limited either to Delta's or Dr. Lukács' individual circumstances; and

(iii) IATA will provide this Honourable Court with submissions on the impact of Agency decisions on domestic and international air carriers to attempt to clarify, from a global perspective, the regulatory scheme and statutory framework under which the Agency functions as the Federal Court of Appeal appears to have taken a narrow approach in considering the scope of the Agency's powers and did so without consideration of the international or global impact of the Agency's power;

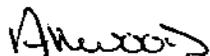
(l) the proposed intervention will not cause delay or prejudice to the parties;

(m) Rules 47 and 55 of the *Rules of the Supreme Court of Canada*; and

(n) such further and other grounds as counsel may advise and this Court permit.

Dated at Toronto this 19<sup>th</sup> day of June, 2017

Signed by:



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**Ottawa Agent for Counsel for the  
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Court File No.: 37276

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IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF  
APPEAL)

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BETWEEN:

DELTA AIR LINES INC.

Appellant  
(Respondent)

- and -

DR. GÁBOR LUKÁS

Respondent  
(Appellant)

NOTICE OF MOTION OF THE PROPOSED  
INTERVENER, THE INTERNATIONAL AIR  
TRANSPORT ASSOCIATION, FOR LEAVE TO  
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---

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TAB 2

SCC File Number: 37276

**IN THE SUPREME COURT OF CANADA  
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B E T W E E N:

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**DR. GÁBOR LUKÁCS**

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(Appellant)

**AFFIDAVIT OF NICOLA COLVILLE  
(Affirmed 16 June 2017)  
(In support of the Motion for Leave to Intervene of the Proposed Intervener,  
the International Air Transport Association (IATA))**

I, Nicola Colville, of the City of Montreal, in the Province of Quebec, make oath and say:

1. I am the Area Manager, Canada and Bermuda of the International Air Transport Association (“IATA”) and as such have personal knowledge of the matters set out below, except where this knowledge is based on information and belief provided by others, in which case I verily believe it to be true.
2. Founded in 1945, IATA is an international trade association for the airline industry. IATA has 274 airline members located in 117 countries and its members account for approximately 83 percent of the world’s total air traffic. Approximately 65 IATA member airlines hold licenses to fly into, out of, and within Canada. Attached as Exhibit “A” to this Affidavit is a list of IATA’s members with Canadian domestic or international licences.
3. Headquartered in Montreal, IATA is a Canadian corporation established by a Special Act of Parliament in 1945, (*An Act to Incorporate the International Air Transport Association*, SC 1945, c 51)). IATA’s purposes, objects and aims are:

- (a) to promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith;
- (b) to provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport service; and
- (c) to co-operate with the International Civil Aviation Organization and other international organizations.

4. IATA's responsibilities include operating a variety of financial services and settlement systems catering to a vast array of aviation stakeholders, including international airlines, travel agents, cargo agents, airports, civil aviation authorities and other public sector agencies, and ground handling companies. IATA is also the industry's commercial standard-setter, maintains a comprehensive program of regular airline safety audits, liaises with governments and organizations around the world on matters affecting air transport in areas such as safety, flight operations, industry standards, and training, and provides relevant and timely information and guidance to stakeholders throughout the global aviation sector.

### **The Parties and Issues Raised on this Appeal**

5. In its Factum, Delta Air Lines Inc. ("Delta") described the "central issue" in the appeal as "whether the Canadian Transportation Agency (the "Agency") has the authority to decline to hear an air travel complaint through its formal adjudicative process on the basis of a lack of standing."<sup>1</sup>

6. Accordingly, in this appeal, IATA anticipates that this Honourable Court will consider, amongst other issues:

- (a) whether the Agency has a discretion under the *Canada Transportation Act*, SC 1996, c.10 (the "Act") to inquire into, hear or determine a complaint pertaining to services provided by or policies of an international airline operating in Canada;

<sup>1</sup> Factum of the Appellant, Delta Air Lines Inc., at para 1.

- (b) whether the Agency has the discretion to grant or refuse standing to a person who seeks to bring a complaint to the Agency against the holder of international licence granted under the Act;
- (c) whether the Agency has a residual discretion to determine if it ought to hear such a complaint on its merits; and
- (d) the scope of or basis upon which the Agency may exercise properly any such discretion.

7. The Agency did not participate in the appeal before the Federal Court of Appeal. Accordingly, the Agency is not expected to appear before this Honourable Court on this appeal.

8. In its Factum, Delta submits that the Federal Court of Appeal erred when it held that the Agency was incorrect when it exercised its discretion and held that Dr. Gabor Lukács did not have standing to bring a complaint against that airline. Dr. Lukács, who was not directly affected by Delta's alleged actions that gave rise to Dr. Lukács' complaint to the Agency, submits he ought to have public interest standing.

9. Unlike Delta and Dr. Lukács, who will present arguments on appeal based on their own individual perspectives, IATA is uniquely placed to and can assist this Court on the issues raised on this appeal from a global aviation industry perspective.

10. IATA can assist by addressing the Agency's broad regulatory powers, generally, and, in particular, whether the Agency has the discretion to inquire into, hear and determine a complaint against an international air carrier holding an international licence under the Act, if such a discretion includes the discretion to determine if a person ought properly to be granted standing to bring such a complaint and, if so, the factors that ought properly to be considered — from a global air travel sector perspective — for the exercise of that discretion.

## **IATA**

11. IATA has had and continues to have a broad role in the global aviation sector. First, IATA has worked with and continues to work with its international members and other airline industry participants to develop and improve global aviation standards. Second, IATA has

provided and continues to provide professional support services to various participants in the airline industry to ensure that its members operate safely, securely, efficiently and economically. Third, and germane to this application for leave to intervene, IATA, as a result of its expertise and specialized role in the domestic and international aviation industry, has made and continues to make presentations and provide detailed airline industry information and data to governments and various decision makers to assist them in dealing with a broad range of issues which affect the aviation sector globally.

### **IATA's Knowledge and Expertise in Domestic and International Aviation**

12. IATA is an internationally recognized leader in the aviation sector. IATA has been and continues to be a vital source of practical industry-based information for the International Civil Aviation Organization ("ICAO"), a specialized United Nations agency dedicated to producing Standards, Recommended Practices and policies for international aviation. IATA has worked and continues to work with ICAO to advance international airline industry standards and policies. To that end, IATA participates directly in the work of 18 technical and 6 policy drafting bodies of ICAO as well as in three of their governance bodies, the Air Navigation Commission and the Air Transport Committee, and the Legal Committee.

13. IATA frequently presents working papers at ICAO. These working papers range in topics and include:

- (a) presentations on a range of safety issues including the use of safety data, and promoting various safety standards;
- (b) the economic impact of taxation on air carriers;
- (c) comments on the cost impact of a global carbon offsetting mechanism;
- (d) aircraft leasing; and
- (e) the prevention of illegal wildlife trafficking.

14. Attached as Exhibit "B" to this affidavit is a listing of the recent IATA presentations and working papers presented to ICAO.

15. In addition, IATA operates a comprehensive training program that has included ICAO and government officials. Attached as Exhibit “C” to this affidavit is a list of all courses offered by IATA.

#### **IATA Routinely Assists with the Development of Aviation Regulations and Policies**

16. Since its origin, IATA has been at the forefront of global aviation regulation and policy development. It regularly makes submissions to all forms of governments and to various policy and regulation making bodies.

17. For example, in 2011, IATA made submissions to the Australian Competition and Consumer Commission regarding the Air Services Australia Draft Pricing proposal. Attached as Exhibit “D” to this affidavit is a copy of IATA’s 27 July 2011 submissions.

18. More recently, IATA, in conjunction with other aviation industry groups, made submissions to the Mexican Senate on the Mexican proposed passenger rights legislation. Attached as Exhibit “E” to this affidavit is a copy of the August 2013 submissions.

19. IATA also made submissions to the Irish Commission for Aviation Regulation regarding regulatory policies, methodologies and data sources proposed to be used to determine charges at the Dublin Airport. Attached as Exhibit “F” to this affidavit is a copy of IATA’s 27 September 2013 submissions.

20. In 2014, IATA made submissions before the US Department of Transportation regarding the Department’s proposed consumer protection legislation. Attached as Exhibit “G” to this affidavit is a copy of IATA’s 29 September 2014 submissions.

21. In addition to the submissions referenced in paragraphs 16 to 19, in the past 5 years, IATA has provided detailed submissions on a wide variety of topics including consumer and economic regulations to governments including those of Bahrain, Brazil, Chile, China, Colombia, Costa Rica, India, Israel, Jordan, Korea, Mexico, Nigeria, Oman, Palau, Philippines, Qatar, South Africa and Vietnam.

22. Moreover, IATA has recently developed a policy to increase partnerships with governments to promote “smarter regulations” with the goal of assisting governments in their

promulgation of air regulations. The “Smarter Regulation Policy’s” objective is to deliver clearly defined, measureable objectives in the least burdensome way. IATA believes this can be achieved through a transparent, objective, and consultative process. The “Smarter Regulation” policy can be found at <http://www.iata.org/policy/promoting-aviation/Pages/smarter-regulation.aspx>.

23. IATA has made several presentations regarding the “Smarter Regulation,” including presenting to the ICAO Economic Commission. Attached as Exhibit “H” to this affidavit is a copy of the IATA Working Paper delivered to ICAO’s 39<sup>th</sup> Session of the Economic Commission.

24. Finally, IATA has provided commentary on Canadian legislation. IATA provided submissions to the Canadian Transportation Act Review Secretariat in February 2015 when it undertook a review of the Act. Attached as Exhibit “I” to this affidavit is a copy of the IATA 6 February 2015 submission.

25. Also, on 16 May 2017, Minister of Transport Marc Garneau introduced Bill C-49, the Transportation Modernization Bill, that proposes to amend several key provisions of the *Canada Transportation Act*. Bill C-49, as currently drafted, authorizes the Agency to make regulations in respect of various matters affecting air passengers. The Agency has sought IATA’s input with regard to the regulations it will draft. IATA is actively participating in the consultation process with Transport Canada and the Agency on this topic.

#### **IATA Involvement in the Development of Case Law**

26. IATA has assisted in the development of the law with respect to international airline and air-travel issues. It has done so both by bringing proceedings itself and by intervening in proceedings commenced by others.

27. For example, in 2006, IATA was a complainant before the Court of Justice of the European Union in *International Air Transport Association and European Low Fairs Airline Association v Department for Transport* (C-344/04, [2006] ECR I-00403). The European Commission Legal Services lists this case amongst its “Important Judgements” because of the decision’s role in establishing the parameters of the scope of the European Commission’s

regulatory powers. Attached as Exhibit “J” to this Affidavit is a copy of the European Commission’s summary of the judgment.

28. IATA also intervened in the 2011 Court of Justice of the European Union case of *Air Transport Association of America and Others*, where IATA and several American airlines challenged the inclusion of aviation in the EU’s emissions trading scheme.

29. In the United States, IATA was an *amicus curiae* in the US Supreme Court case of *Northwest, Inc v Ginsberg*, No-12-462, where IATA presented arguments that addressed the effect of the US *Airline Deregulation Act*, as it applied to foreign air transportation, in the context of the international obligations that bind the United States.

30. Recently, IATA appeared as *amicus curiae* in the High Court of Australia in the case of *Australian Competition and Consumer Commission v Flight Centre Travel Group Limited*, [2016] HCA 49 (14 December 2016), which dealt with questions of agency and competition law.

#### **Overview of IATA’S Submissions on this Appeal**

31. I believe that IATA’s submissions will assist this Honourable Court when it considers the important issues raised in this appeal. Made from a perspective different from those of Delta and Dr. Lukács, the immediate parties, and likely other possible interveners, IATA’s submissions on these issues will be grounded in the Association’s expertise with global aviation policymaking and international regulation.

32. If this Court grants IATA leave to intervene in this appeal, I anticipate that IATA will present an approach that:

- (a) focuses on the global policy implications of Agency decisions, the nature and scope of the Agency’s discretion to inquire into, hear and determine a complaint pertaining to services provided by or policies of an international airline operating in Canada, including the nature and scope of the Agency’s discretion to determine a person’s standing to make a complaint to the Agency related to an air service provided by or a policy of an international licence holder under the Act, as well as

the factors that are to be properly considered in the exercise of any such discretion; and

- (b) presents a global perspective on those issues derived from its international experience, knowledge and expertise.

33. If granted leave to intervene, I anticipate that IATA's submissions will include the following:

- (a) The Agency's decisions affect all air carriers holding international licenses under the Act. The Agency has a broad discretion, consistent with the National Transportation Policy and Canada's international obligations with respect to international air travel, to inquire into, hear and determine a complaint pertaining to services provided by or policies of an international airline operating in Canada, including the discretion to determine a person's standing to make a complaint to the Agency against an international licence holder operating in Canada. The Agency, when considering the question of standing — particularly when the putative complainant person is not and would never be directly affected by the decision or policy in issue — should properly consider a number of factors. In addition to such factors as the nature of the complaint and its urgency, the limits of the Agency's scarce and limited resources and whether the complainant has the best evidence, the factors should include whether the person would have standing before a foreign regulator or decision maker in similar circumstances or whether the nature of the service, policy or decision subject of the putative complaint is one permitted or not prohibited under foreign and international practices, policies, international treaties or foreign law. With its members holding both domestic and international licenses, IATA is uniquely placed make such submissions to assist this Honourable Court on these issues;
- (b) The Federal Court of Appeal held that the use of the term "any person" in s 67.2(1) of Act implies that Parliament intended to grant to any person, directly affected or not, the ability to bring a complaint to the Agency. Delta has argued that s 67.2(1) does not apply as that section only applies to holders of domestic



## IATA Members and Flight Paths

Member	Flies into/out of Canada
Adria Airways	
Aegean Airlines	
Aer Lingus	Yes
Aero Contractors	
Aero República	
Aeroflot	
Aerolineas Argentinas	
Aerolineas Galapagos S.A.—Aerogal	
Aeromexico	Yes
Aigle Azur	
Air Algerie	Yes
Air Arabia	
Air Astana	
Air Austral	
Air Baltic	
Air Berlin	
Air Botswana	
Air Burkina	
Air Cairo	
Air Caledonie	
Air Canada	Yes
Air Caraibes	
Air China	Yes
Air Corsica	
Air Europa	
Air France	Yes
Air India	
Air Koryo	
Air Macau	
Air Madagascar	
Air Malta	
Air Mauritius	
Air Moldova	
Air Namibia	
Air New Zealand	Yes
Air Niugini	
Air Nostrum	
Air Serbia a.d. Beograd	
Air Seychelles	
Air Tahiti	
Air Tahiti Nui	
Air Transat	Yes
Air Vanuatu	

AirBridgeCargo Airlines	
Aircalin	
Airlink	
Alaska Airlines	Yes
Alitalia	Yes
All Nippon Airways	Yes
Allied Air	
AlMasria Universal Airlines	
American Airlines	Yes
Arik Air	
Arkia Israeli Airlines	
Asiana Airlines	Yes
ASL Airlines Belgium	
Atlas Air	
AtlasGlobal	
Austral	
Austrian	Yes
Avianca	Yes
Avianca Brasil	
Azerbaijan Airlines	
Azul Brazilian Airlines	
Bahamasair	
Bangkok Air	
Belavia—Belarusian Airlines	
BH Air	
Biman—Bangladesh Airlines	
Binter Canarias	
Blue Air	
Blue Panorama	
bmi Regional	
Boliviana de Aviación—BoA	
Braathens Regional Aviation AB	
British Airways	Yes
Brussels Airlines	Yes
Bulgaria Air	
C.A.L. Cargo Airlines	
Camair-Co	
Capital Airlines	
Cargojet Airways	
Cargolux	
Caribbean Airlines	Yes
Carpatair	
Cathay Dragon	
Cathay Pacific	Yes
Cemair	
China Airlines	Yes
China Cargo Airlines	

China Eastern Airlines	Yes
China Postal Airlines	
China Southern Airlines	Yes
CityJet	
Comair	
Condor	Yes
Copa Airlines	Yes
Corendon Airlines	
Corsair International	
Croatia Airlines	
Cubana	Yes
Czech Airlines	
Delta Air Lines	Yes
DHL Air	
DHL Aviation	
Dniproavia	
Egyptair	Yes
EI AI	Yes
Emirates	Yes
Ethiopian Airlines	Yes
Etihad Airways	Yes
Euroatlantic Airways	
European Air Transport	
Eurowings	
EVA Air	Yes
Federal Express	Yes
Fiji Airways	
Finnair	Yes
flybe	
flydubai	
FlyEgypt	
Freebird Airlines	
Garuda Indonesia	
Georgian Airways	
Germania	
Guangxi Beibu Gulf Airlines	
Gulf Air	
Hahn Air	
Hainan Airlines	Yes
Hawaiian Airlines	
Hi Fly	
Hong Kong Airlines	
Hong Kong Express Airways	
Iberia	Yes
Icelandair	Yes
InselAir	
Interjet	Yes

Iran Air	
Iran Airtour Airlines	
Iran Aseman Airlines	
Israir Airlines	
Japan Airlines	Yes
Jazeera Airways	
Jet Airways (India)	Yes
Jet Lite (India)	
JetBlue	
Jordan Aviation	
JSC Nordavia-RA	
Juneyao Airlines	
Kenya Airways	
Kish Air	
KLM	Yes
Korean Air	Yes
Kuwait Airways	
LACSA	
LAM—Linhas Aéreas de Moçambique	
Lao Airlines	
LATAM Airlines Argentina	
LATAM Airlines Brasil	
LATAM Airlines Colombia	
LATAM Airlines Ecuador	
LATAM Airlines Group	
LATAM Airlines Paraguay	
LATAM Airlines Peru	
LATAM Cargo Brasil	
LATAM Cargo Chile	
LATAM Cargo Mexico	
LIAT Airlines	
LLC Nordwind	
LOT Polish Airlines	Yes
Loong Air	
Lucky Air	
Lufthansa	Yes
Lufthansa Cargo	Yes
Lufthansa CityLine	
Luxair	
Mahan Air	
Malaysia Airlines	
Malindo Air	
Mandarin Airlines	
Martinair Cargo	
Mauritania Airlines International	
MEA—Middle East Airlines	
Meridiana fly	

MIAT Mongolian Airlines	
Mistral Air	
MNG Airlines	
Montenegro Airlines	
Myanmar Airways International	
Neos	
NESMA Airlines	
Nextjet	
NIKI	
Nile Air	
Nippon Cargo Airlines (NCA)	
Nouvelair	
Okay Airways	
Olympic Air	
Oman Air	
Onur Air	
Overland Airways	
Pegas Fly (LLC "IKAR")	
Pegasus Airlines	
PGA—Portugália Airlines	
Philippine Airlines	Yes
PIA—Pakistan International Airlines	Yes
Precision Air	
PrivatAir	
Qantas	Yes
Qatar Airways	Yes
Rossiya Airlines	
Royal Air Maroc	Yes
Royal Brunei	
Royal Jordanian	Yes
RwandAir	
S7 Airlines	
SAA—South African Airways	
Safair	
Safi Airways	
Santa Barbara Airlines	
SAS	Yes
SATA Air Açores	
SATA Intenaçional	Yes
Saudi Arabian Airlines	Yes
SF Airlines	
Shandong Airlines	
Shanghai Airlines	
Shenzhen Airlines	
SIA—Singapore Airlines	Yes
SIA Cargo	
Sichuan Airlines	Yes

Silk Way West Airlines	
Silkair	
SKY Airline	
South African Express Airways	
SriLankan Airlines	
SunExpress	
Surinam Airways	
SWISS	Yes
Syrianair	
TAAG—Angola Airlines	
TACA	
TACA Peru	
TACV Cabo Verde Airlines	
TAM—Transportes Aéreos del Mercosur	
TAME—Linea Aérea del Ecuador	
TAP Portugal	Yes
TAROM	
Tassili Airlines	
Thai Airways International	Yes
Thai Lion Air	
THY—Turkish Airlines	Yes
Tianjin Airlines	
TUIfly	
Tunis Air	Yes
T'way Air	
Ukraine International Airlines	
United Airlines	Yes
UPS Airlines	Yes
Ural Airlines	
UTair	
Uzbekistan Airways	
Vietjet	
Vietnam Airlines	
Virgin Atlantic	
Virgin Australia	
Volaris	
Volga-Dnepr Airlines	
VRG Linhas Aéreas—Grupo GOL	
Vueling Airlines	
Wamos Air	
Westjet	Yes
White Airways	
Wideroe	
Xiamen Airlines	Yes

**Total Members:**

**Total Flying Into/Out of Canada = at least 65**

**276 as per 2017 Annual Review**  
**274 as per current tracking**

**IATA Worker Papers Presented to IACO**

Reference Number	Title	Date
A39-WP/116	TE/39 THE NEED FOR STANDARDS IN SUPPORT OF HARMONIZED UAS OPERATIONS	(04/08/2016)
A39-WP/117	TE/40 THE USE OF SAFETY DATA AND SAFETY INFORMATION AT THE STATE LEVEL	(30/08/2016)
A39-WP/118	TE/41 IMPACT TO FLIGHT & ATM OPERATIONS FROM HARMFUL INTERFERENCE TO GNSS	(01/08/2016)
A39-WP/120	LE/6 PROMOTION OF THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR (MONTREAL CONVENTION OF 1999)	(27/07/2016)
A39-WP/123	A39-WP/123 TE/44 ENHANCED ICAO AOC REGISTRY	(08/08/2016)
A39-WP/123 Revision No. 1	TE/44 ENHANCED ICAO AOC REGISTRY	(12/08/2016)
A39-WP/126	TE/47 IATA SAFETY AUDIT FOR GROUND OPERATIONS (ISAGO) * Information Paper	(05/08/2016)
A39-WP/127	EC/10 THE ECONOMIC IMPACT AND CHALLENGES RELATED TO THE PROLIFERATION OF UNJUSTIFIED AND EXCESSIVE TAXATION	(02/08/2016)
A39-WP/134	EC/13 REPATRIATION OF AIRLINES' OVERSEAS REVENUES	(04/08/2016)
A39-WP/139	LE/7 PROMOTION OF THE PROTOCOL TO AMEND THE CONVENTION ON OFFENSES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT DONE AT MONTREAL ON 4 APRIL 2014 (MONTREAL PROTOCOL 2014)	(04/08/2016)
A39-WP/140	EC/14 SMARTER REGULATION: ENSURING THAT NO COUNTRY IS LEFT BEHIND	(05/08/2016)
A39-WP/152	EX/56 ICAO STANDARDS AND POLICIES RELATED TO ENVIRONMENTAL PROTECTION	(09/08/2016)

A39-WP/153	EX/57 COMMENTS ON THE COST IMPACT OF A GLOBAL CARBON OFFSETTING MECHANISM *Information Paper	(09/08/2016)
A39-WP/153 Revision No. 1	EX/57 COMMENTS ON THE COST IMPACT OF A GLOBAL CARBON OFFSETTING MECHANISM	(16/08/2016)
A39-WP/154	EX/58 PHASED IMPLEMENTATION UNDER THE GLOBAL MBM *Information Paper	(09/08/2016)
A39-WP/154 Revision No. 1	EX/58 PHASED IMPLEMENTATION UNDER THE GLOBAL MBM	(16/08/2016)
A39-WP/155	EX/59 INDUSTRY VIEWS ON A GLOBAL MARKET-BASED MEASURE FOR INTERNATIONAL AVIATION	(09/08/2016)
A39-WP/155 Revision No. 1	EX/59 INDUSTRY VIEWS ON A GLOBAL MARKET-BASED MEASURE FOR INTERNATIONAL AVIATION	(31/08/2016)
A39-WP/163	EX/61 A GLOBAL MARKET-BASED MEASURE FOR INTERNATIONAL AVIATION – MONITORING, REPORTING AND VERIFICATION (MRV), EMISSIONS UNIT CRITERIA (EUC) AND REGISTRIES CONSIDERATIONS *Information Paper	(09/08/2016)
A39-WP/166	TE/60 IATA PROGRESS OF AIRCRAFT LEASING GUIDELINES AND BEST PRACTICES *Information Paper	(26/08/2016)
A39-WP/167	TE/61 IATA UPDATE ON ENHANCING FUELLING SAFETY: THE IMPACT OF ICAO DOC 9977	(12/08/2016)
A39-WP/185	EX/71 ENHANCING AIR CARGO SECURITY TRAINING	(12/08/2016)
A39-WP/185 Revised	EX/71 ENHANCING AIR CARGO SECURITY TRAINING	(22/08/2016)
A39-WP/235	TE/90 PORTABLE FIRE EXTINGUISHERS AND HALON REPLACEMENT	(14/09/2016)
A39-WP/235 Revision No. 1	TE/90 PORTABLE FIRE EXTINGUISHERS AND HALON REPLACEMENT	(19/09/2016)

A39-WP/243	TE/95 DISTRIBUTED MULTI-NODAL AIR TRAFFIC FLOW MANAGEMENT (ATFM) NETWORK IMPLEMENTATION IN THE ASIA-PACIFIC REGION	(19/08/2016)
A39-WP/243 Revision No. 1	TE/95 DISTRIBUTED MULTI-NODAL AIR TRAFFIC FLOW MANAGEMENT (ATFM) NETWORK IMPLEMENTATION IN THE ASIA-PACIFIC REGION	(20/09/2016)
A39-WP/243 Revision No. 2	TE/95 DISTRIBUTED MULTI-NODAL AIR TRAFFIC FLOW MANAGEMENT (ATFM) NETWORK IMPLEMENTATION IN THE ASIA-PACIFIC REGION	(23/09/2016)
A39-WP/256	EX/101 (WITHDRAWN) *Information Paper	(12/08/2016)
A39-WP/305	EX/110 PREVENTION OF ILLEGAL WILDLIFE TRAFFICKING VIA COMMERCIAL AVIATION *Information Paper	(18/08/2016)
A39-WP/306	TE/133 (WITHDRAWN)	(25/08/2016)
A39-WP/309	EX/112; TE/68 SAFETY AND AIR NAVIGATION CAPACITY AND EFFICIENCY:ENSURING THAT NO AFI COUNTRY IS LEFT BEHIND *Information Paper	(01/09/2016)
A39-WP/340	EC/33 AIRPORT SLOT ALLOCATION	(30/08/2016)
A39-WP/340 Revision No. 1	EC/33 РАСПРЕДЕЛЕНИЕ СЛОТОВ АЭРОПОРТОВ	(15/09/2016)
A39-WP/374	EX/148 AVIATION'S CONTRIBUTION TOWARDS THE UNITED NATIONS 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT	(06/09/2016)
A39-WP/413	EX/157 INDUSTRY VIEWS ON VOLUNTARY PARTICIPATION IN CORSIA	(12/09/2016)

## IATA Course Offerings

### Air Navigation Services

Advanced Safety Management Systems (SMS) in Civil Aviation (Classroom, 5 days)

Aeronautical Information Management (AIM) (Classroom, 5 days)

Aeronautical Information Services (AIS) (Classroom, 3 days)

Air Transportation Management (Classroom, 5 days)

Airborne Collision Avoidance System / T-CAS Training for Air Traffic Controllers and Pilots (Classroom, 3 days)

Airspace Strategy (ASM-STRAT) - with the EUROCONTROL Institute of ANS

Area Navigation in European Terminal Control Areas (TMAs) (NAV-PRNAV—RNAV1)

ATC Team Resource Management (TRM) and Safety (Classroom, 5 days)

Aviation English Language Solution - Assessment

Aviation English Language Solution - Training

Aviation Law for Managers (non-lawyers) (Classroom, 5 days)

Aviation System Block Upgrades (ASBUs) Implementation (Classroom, 5 days)

Benchmarking and Best Practices for Air Navigation Service Providers (Classroom, 5 days)

Building a Future ATM System (GEN-FUT) - with the EUROCONTROL Institute of ANS

Business Transformation for ANS Providers (Classroom, 5 days)

Change Management (Classroom, 3 days)

Civil Military ATM Cooperation (GEN-CIV/MIL) - with the EUROCONTROL Institute of ANS

Civil, Military Co-operation - with Entry Point North (Classroom)

Clase magistral sobre planificación de comunicaciones, navegación y vigilancia /gestión del tránsito aéreo (CNS/ATM) (presencial, 5 días)

CNS/ATM Planning Master Class (Classroom, 5 days)

Collaborative Decision Making (CDM) and A-CDM (Classroom, 4 days)

Competence Assessor - with Entry Point North (Classroom)

Compétences en Communication (Classroom, 5 days)

Cost Reduction Strategies for Air Navigation Service Providers (ANSPs) (Classroom, 5 days)

Customer Service for Civil Aviation Authorities (CAA) and Air Navigation Service (ANS) Providers (Classroom, 5 days)

Dirección de Derecho y Finanzas para Proveedores de Servicio Aéreos de la Navegación (presencial, 5 días)

Effective Communication Skills (Classroom, 5 days)

Emergency Response Planning for CAAs and Air Navigation Service Providers

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Factores Humanos en la Aviación (presencial, 5 días)

Fatigue Risk Management Systems (FRMS) (Classroom, 3 days)

Foundations of CNS/ATM (Classroom, 5 days)

Gerencia del Transporte Aéreo (presencial, 5 días)

Gestión de amenazas y errores (TEM) en la Gestión del tráfico aéreo (ATM)

Gestión de calidad y servicio en la aviación (presencial, 5 días)

Gestión de la Información Aeronáutica (AIM) (presencial, 5 días)

Gestión de riesgos operacionales (ORM) y aviación civil (presencial, 5 días)

Gestión de Servicios de Navegación Aérea (presencial, 5 días)

Gestión del Desempeño del Personal (presencial, 5 días)

Gestion des risques opérationnels (ORM) pour l'aviation civile (en salle de cours, 5 jours)

Gestion du Transport Aérien (en salle de cours, 5 jours)

Human Factors in Aviation - Italian (Classroom, 5 days)

Human Factors in Aviation (Classroom, 5 days)

Implementing Performance-Based Navigation (PBN) in ECAC - with the EUROCONTROL Institute of ANS (Classroom, 4 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Integrated Aviation Management System - IAMS (Classroom, 5 days)

Introduction to Air Traffic Flow and Capacity Management (ASM-ATFCM) - with the EUROCONTROL Institute of ANS

Leadership Development and Succession Planning (Classroom, 5 days)

Legal and Financial Issues for Air Navigation Service Providers (Classroom, 5 days)

Management of Air Navigation Services (Classroom, 5 days)

Management of Aviation Quality and Service - Civil Aviation (Classroom, 5 days)

Management of Training (Classroom, 5 days)

Managing Aircraft Accident and Incident Investigation (Classroom, 5 days)

Managing ATM and the Environment (Classroom, 3 days)

Managing People Performance (Classroom, 5 days)

Managing the Implementation of Aviation System Block Upgrades (ASBUs) in the African Context (Classroom, 2 days)

Mejoras por bloques del sistema de aviación (ASBU) (presencial, 5 días)

Meteorological Observation (EMO) - with Entry Point North (Classroom)

Meteorological Observation (EMO) Refresher - with Entry Point North (Classroom)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

National and International Aviation Systems (Classroom, 5 days)

Navegación basada en el desempeño (PBN) I (presencial, 5 días)

Network Capacity Planning (ASM-CAP) - with the EUROCONTROL Institute of ANS

OJTI Refresher - with Entry Point North (Classroom)

On-the-job Training Instructor (OJIT) - with Entry Point North (Classroom)

Operational Airspace Management (ASM-OPS) - with the EUROCONTROL Institute of ANS

Operational Risk Management (ORM) in Civil Aviation (Classroom, 5 days)

Performance Based Navigation (PBN) Awareness Package (NAV-PBN-AWR) - with the EUROCONTROL Institute of ANS - E-Learning - English

Performance-Based Navigation (PBN) I (Classroom, 5 days)

Performance-Based Navigation (PBN) II (Classroom, 5 days)

Performance-Based Navigation (PBN) Implementation Workshop (Classroom, 5 days)

Personal Conflict Handling - with Entry Point North (Classroom)

Phraseology and Safety Training for Air Traffic Controllers and Pilots (Classroom, 5 days)

Pilot's Guide to Air Traffic Control - with Entry Point North (Classroom)

Planning and Strategic Direction in Civil Aviation (Classroom, 5 days)

Procesos de Gestión de Seguridad y Calidad (presencial, 5 días)

Project Management Essentials (30 PDUs, classroom, 5 days)

Quality Management Systems (QMS) for Civil Aviation Authorities (CAA) and Air Navigation Service (ANS) Providers (Classroom, 5 days)

Refresher Training for ATCs - with Entry Point North (Classroom)

Remote Operated Towers - Introduction - with Entry Point North (Classroom)

Root Cause Analysis for Civil Aviation Authorities and Air Navigation Service Providers (Classroom, 5 days)

Rough Guide to Air Traffic Control - with Entry Point North (Classroom)

Safety (SMS) and Quality Management (QMS) Processes in Civil Aviation (Classroom, 5 days)

Safety Management Systems (SMS) for Civil Aviation (Classroom, 5 days)

Safety, Legal and Regulatory Aspects of Remotely Piloted Aircraft Systems (RPAS) (Classroom, 5 days)

Security Management in ATM (GEN-SEC) - with the EUROCONTROL Institute of ANS

Services d'information aéronautique (AIS) (Classroom, 3 days)

Sistema de Dirección de Seguridad (SMS) para Aviación Civil - Nivel Avanzado (presencial, 5 días)

Sistemas de gestión de seguridad (SMS) para la aviación civil (presencial, 5 días)

Sustainable Aviation - Improving Environmental Performance (Classroom, 5 days)

Synthetic Training Device Instructor - with Entry Point North (Classroom)

System Wide Information Management (SWIM) (Classroom, 2 days)

Systèmes de gestion de la sécurité (SMS) pour l'aviation civile (en salle de cours, 5 jours)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Threat and Error Management (TEM) in ATM (Classroom, 5 days)

Train the Trainer - with Entry Point North (Classroom)

Train the Trainer for CNS, AIS and MET (Classroom, 5 days)

Training Needs Assessment (Classroom, 3 days)

Unusual / Emergency Situations for Pilots and Air Traffic Controllers (Classroom, 5 days)

### **Airlines**

Adquisición y Financiamiento de Aeronaves (presencial, 4 días)

Aeronautical Information Services (AIS) (Classroom, 3 days)

Air Cargo Management - University of Geneva (Classroom, 3 days)

Air Cargo Management (Classroom, 5 days)

Air Cargo Security (Classroom, 5 days)

Air Transportation Management (Classroom, 5 days)

Airborne Collision Avoidance System / T-CAS Training for Air Traffic Controllers and Pilots (Classroom, 3 days)

Aircraft Acquisition and Financing (Classroom, 4 days)

Aircraft Recovery (Classroom, 5 days)

Aircraft Turnaround Coordination and Loading Supervision with RampVR (Classroom, 5 days)

Aircraft Weight and Balance (Classroom, 5 days)

Airline Business Foundations (Classroom, 5 days)

Airline Business Models and Competitive Strategies (Classroom, 5 days) Virtual Simulation Program

Airline Contract Law (Classroom, 4 days)

Airline Customer Service: Strategy Design and Implementation (Classroom, 3 days)

Airline Finance and Accounting Management - University of Geneva (Classroom, 3 days)

Airline Finance and Accounting Management (Distance Learning)

Airline Finance and Accounting Management for the Leadership & Management Training Program

Airline Financial Management (Classroom)

Airline Marketing - Introduction (Classroom, 3 days)

Airline Sales and Key Account Management (Classroom, 4 days)

Airline Security Operations Optimization (Classroom, 5 days)

Airport Services - Passenger Handling (Classroom, 5 days)

Airside Operations - Safety Compliance (Classroom, 5 days)

Audit, Quality and Risk Management for Temperature Controlled Cargo (Classroom, 5 Days)

Aviation and the Environment (Classroom, 5 days)

Aviation Fuel Management Essentials (Classroom, 3 days)

Aviation Law for Managers (non-lawyers) (Classroom, 5 days)

Aviation Policy and Advocacy - University of Geneva (Classroom, 3 days)

Aviation Security Management - Advanced (Classroom, 5 days)

Aviation Security Management - University of Geneva (Classroom, 3 days)

Aviation Security Management (Classroom, 5 days)

Aviation Security Train the Trainer - Italian (Classroom, 5 days)

Aviation Security Train the Trainer (Classroom, 5 days)

AVSEC Background Vetting and Insider Threat Mitigation (Classroom, 3 days)

BSP Esenciales para Agentes de Viajes - Examen final - E-Learning - Español

BSP Essentials for Travel Agents: Final Examination - E-Learning - English

Cargo Airline Customer Service (Classroom, 3 days)

Cargo Marketing and Advertising (Classroom, 4 days)

Cargo Sales and Key Account Management (Classroom, 4 days)

Cargo Skills and Procedures (Classroom, 5 days)

Cargo XML Messaging and Standards (Classroom, 3 days)

Collaborative Decision Making (CDM) and A-CDM (Classroom, 4 days)

Compétences en Communication (Classroom, 5 days)

Consumer Protection in Air Transport (Classroom, 3 days)

Contabilización y Control Interlínea de Pasajeros (presencial, 5 días)

Curso avanzado de entrenamiento para capacitadores (presencial, 3 días)

Customs Security and Facilitation (Classroom, 3 days)

Dangerous Goods Regulations (DGR) for Flight Crew and Load Planners - E-Learning - English

Data Link Implementation in Europe (Classroom, 5 days)

Derecho Aeronáutico Internacional (presencial, 5 días)

Deregulation and Open Skies, Alliances, Equity Partnerships and Strategic Partnerships (Classroom, 5 days)

Document Control Systems (Classroom, 4 days)

Drive Corporate Performance (Classroom, 5 days)

Effective Communication Skills (Classroom, 5 days)

El manejo de combustible de jets/aeronaves (presencial, 3 días)

Emergency Planning and Response for Airlines (Classroom, 3 days)

European Union (EU) Aviation Law (Classroom, 3 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Factores Humanos en la Aviación (presencial, 5 días)

Formation des formateurs - Avancé (salle de cours, 3 jours)

Fundamentos de la Manipulación de Elementos Unitarios de Carga (presencial, 3 días)

Gerencia del Transporte Aéreo (presencial, 5 días)

Gestión de la Carga Aérea (presencial, 5 días)

Gestión de la Seguridad Aérea (presencial, 5 días)

Gestión de riesgos operacionales (ORM) y aviación civil (presencial, 5 días)

Gestion des risques opérationnels (ORM) pour l'aviation civile (en salle de cours, 5 jours)

Gestion du Transport Aérien (en salle de cours, 5 jours)

Human Factors in Aviation - Italian (Classroom, 5 days)

Human Factors in Aviation (Classroom, 5 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

International Air Law - University of Geneva (Classroom, 3 days)

International Air Law for Lawyers and Legal Professionals (Classroom, 5 days)

Introduction to Flight Operations Management (Classroom, 5 days)

Introduction to Safety Management Systems (SMS)

Introduction to the Airline Industry

Introduction to the Airline Industry for the Leadership & Management Training Program

ISAGO for Auditors (Classroom, 4 days)

Law of Aviation Insurance (Classroom, 3 days)

Live Animals Regulations (LAR) - Acceptance Staff - E-Learning - English

Live Animals Transportation (Classroom, 3 days)

Management of Aviation Quality and Service - Civil Aviation (Classroom, 5 days)

Management of Training (Classroom, 5 days)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Navegación basada en el desempeño (PBN) I (presencial, 5 días)

Normativas relativas a Animales Vivos (presencial, 3 días)

Operational Risk Management (ORM) in Civil Aviation (Classroom, 5 days)

Passenger Fares and Ticketing - Advanced (Classroom, 10 days)

Passenger Interline Accounting and Control (Classroom, 5 days)

Performance-Based Navigation (PBN) I (Classroom, 5 days)

Procesos de Gestión de Seguridad y Calidad (presencial, 5 días)

Project Management Essentials (30 PDUs, classroom, 5 days)

Quality Management (QMS) for Airlines (Classroom, 4 days)

Quality Management Systems (QMS) Awareness (Classroom, 2 days)

Recurrent Aviation Security Training - Italian (Classroom, 3 days)

Recurrent Aviation Security Training (Classroom, 3 days)

Relationships and Coalitions (Classroom, 3 days)

Revenue Management - Introductory (Classroom, 3 days)

Safety (SMS) and Quality Management (QMS) Processes in Civil Aviation (Classroom, 5 days)

Safety Management Systems (SMS) - Implementation and Control (Classroom, 3 days)

Safety Management Systems (SMS) for Airlines (Classroom, 5 days)

Safety Performance Indicators (Classroom, 3 days)

Safety, Legal and Regulatory Aspects of Remotely Piloted Aircraft Systems (RPAS) (Classroom, 5 days)

Sales Accounting and Control (Classroom, 5 days)

Sécurité relative au fret aérien (en salle de cours, 5 jours)

Security Audit and Quality Control (Classroom, 5 days)

Security X-ray Screening Operations (Classroom, 4 days)

Services d'information aéronautique (AIS) (Classroom, 3 days)

Special Fares and Ticketing - Intermediate (Classroom, 5 days)

Station / Ground Handling Management (Classroom, 5 days)

Sustainable Aviation - Improving Environmental Performance (Classroom, 5 days)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Técnicas y Procedimientos Relativos a la Carga (presencial, 5 días)

Train the Trainer - Advanced (Classroom, 3 days)

Training Needs Assessment (Classroom, 3 days)

ULD Operations (Classroom, 3 days)

ULD 管理基础课程

Understanding NDC Architecture (Classroom, 2 days)

活体动物运输规定

## **Airport**

Aeronautical Information Services (AIS) (Classroom, 3 days)

Air Transportation Management (Classroom, 5 days)

Aircraft De-icing Operations Management (Classroom, 3 days)

Aircraft Recovery (Classroom, 5 days)

Airport Certification and Infrastructure Standards (Classroom, 5 days)

Airport Master Planning (Classroom, 5 days)

Airport Operations - Advanced (Classroom, 5 days)

Airport Security Operations Optimization (Classroom, 5 days)

Airport Services - Passenger Handling (Classroom, 5 days)

Airport Strategic Management with Business Simulation (Classroom, 10 days)

Aviation and the Environment - Managing Green Airports (Classroom, 5 days)

Aviation and the Environment (Classroom, 5 days)

Aviation Law for Managers (non-lawyers) (Classroom, 5 days)

Aviation Security Management - Advanced (Classroom, 5 days)

Aviation Security Management (Classroom, 5 days)

AVSEC Background Vetting and Insider Threat Mitigation (Classroom, 3 days)

Baggage Handling Services and Systems (Classroom, 3 days)

Collaborative Decision Making (CDM) and A-CDM (Classroom, 4 days)

Compétences en Communication (Classroom, 5 days)

Curso avanzado sobre Operaciones Aeroportuarias (presencial, 5 días)

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Factores Humanos en la Aviación (presencial, 5 días)

Gerencia del Transporte Aéreo (presencial, 5 días)

Gestión de la Seguridad Aérea (presencial, 5 días)

Gestión de riesgos operacionales (ORM) y aviación civil (presencial, 5 días)

Gestion des risques opérationnels (ORM) pour l'aviation civile (en salle de cours, 5 jours)

Gestion du Transport Aérien (en salle de cours, 5 jours)

Human Factors in Aviation - Italian (Classroom, 5 days)

Human Factors in Aviation (Classroom, 5 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Introduction to Safety Management Systems (SMS)

Management of Training (Classroom, 5 days)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Normas y Certificación Aeroportuarias (presencial, 5 días)

Operaciones de seguridad aeroportuarias (presencial, 5 días)

Operational Risk Management (ORM) in Civil Aviation (Classroom, 5 days)

Project Management Essentials (30 PDUs, classroom, 5 days)

Safety Management Systems (SMS) - Implementation and Control (Classroom, 3 days)

Safety Management Systems (SMS) for Airports (Classroom, 5 days)

Safety, Legal and Regulatory Aspects of Remotely Piloted Aircraft Systems (RPAS) (Classroom, 5 days)

Security Audit and Quality Control (Classroom, 5 days)

Security X-ray Screening Operations (Classroom, 4 days)

Services d'information aéronautique (AIS) (Classroom, 3 days)

Sustainable Aviation - Improving Environmental Performance (Classroom, 5 days)

Systèmes de gestion de la sécurité (SMS) pour les aéroports (en salle de cours, 5 jours)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Training Needs Assessment (Classroom, 3 days)

### **Cargo**

危险品规则 (DGR) 培训师复训课程

Air Cargo Management - University of Geneva (Classroom, 3 days)

Air Cargo Management (Classroom, 5 days)

Air Cargo Security (Classroom, 5 days)

Audit, Quality and Risk Management for Temperature Controlled Cargo (Classroom, 5 Days)

Cargo Airline Customer Service (Classroom, 3 days)

Cargo Marketing and Advertising (Classroom, 4 days)

Cargo Sales and Key Account Management (Classroom, 4 days)

Cargo Skills and Procedures (Classroom, 5 days)

Cargo Supply Chain and Transport Modes

Cargo XML Messaging and Standards (Classroom, 3 days)

Compétences en Communication (Classroom, 5 days)

Compétences professionnelles pour instructeurs en DGR - catégories 1, 2, 3, 6 (salle de cours, 5 jours)

Cualificaciones Profesionales para Instructores en DGR - Categorías 1, 2, 3, 6 (presencial, 5 días)

Dangerous Goods Regulations (DGR) - Initial - Category 6 (Classroom, 5 days)

Dangerous Goods Regulations (DGR) - Instructor Refresher (Classroom, 3 days)

Dangerous Goods Regulations (DGR) - Recurrent - Category 6 (Classroom, 3 days)

Dangerous Goods Regulations (DGR) for Flight Crew and Load Planners - E-Learning - English

Dangerous Goods Regulations (DGR) for General Cargo Acceptance Personnel - E-Learning - English

DGR教员专业技能培训

e-Cargo Business Process and Standards (Classroom, 4 days)

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Fundamentos de la Manipulación de Elementos Unitarios de Carga (presencial, 3 días)

Gestión de la Carga Aérea (presencial, 5 días)

Infectious Substances Transport - Train the Trainer (Classroom, 5 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Instructional Techniques for DGR - Categories 4, 5, 7, 8, 9, 10, 11, 12 (Classroom, 5 days)

Introduction to Safety Management Systems (SMS)

Live Animals Regulations (LAR) - Acceptance Staff - E-Learning - English

Live Animals Transportation (Classroom, 3 days)

Management of Training (Classroom, 5 days)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Normativas de la IATA relativas a mercancías peligrosas (DGR) - formación continua categoría 6 (presencial, 3 días)

Normativas de la IATA relativas a mercancías peligrosas (DGR) - introducción categoría 6 (presencial, 5 días)

Normativas relativas a Animales Vivos (presencial, 3 días)

Normativas relativas a Mercancías Peligrosas – Actualización para instructores (presencial, 3 días)

Perishable Cargo Regulations (PCR)

Professional Skills for DGR Instructors - Categories 1,2,3,6 (Classroom, 5 days)

Project Management Essentials (30 PDUs, classroom, 5 days)

Règlements de l'IATA relatifs aux matières dangereuses (DGR) - Cours de perfectionnement - Catégorie 6 (en salle de cours, 3 jours)

Règlements de l'IATA relatifs aux matières dangereuses (DGR) - Catégorie initiale 6 (salle de cours, 5 jours)

Sécurité relative au fret aérien (en salle de cours, 5 jours)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Enseñanza sobre Mercancías Peligrosas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Técnicas y Procedimientos Relativos a la Carga (presencial, 5 días)

Training Needs Assessment (Classroom, 3 days)

ULD Operations (Classroom, 3 days)

ULD 管理基础课程

危险品规则-初训

危险品规则-复训

活体动物运输规定

课程名称：危险品教学技巧(第5类、第8类、第9类、第10类、第11类、第12类) (教室课程, 五天)

### **Civil Aviation Authority**

Advanced Safety Management Systems (SMS) in Civil Aviation (Classroom, 5 days)

Aeronautical Information Management (AIM) (Classroom, 5 days)

Aeronautical Information Services (AIS) (Classroom, 3 days)

Air Transportation Management (Classroom, 5 days)

Alta Gerencia de la Aviación Civil (presencial, 10 días)

Aviation and the Environment (Classroom, 5 days)

Aviation Law for Managers (non-lawyers) (Classroom, 5 days)

Aviation Security Management - Advanced (Classroom, 5 days)

Aviation Security Management (Classroom, 5 days)

Aviation System Block Upgrades (ASBUs) Implementation (Classroom, 5 days)

Collaborative Decision Making (CDM) and A-CDM (Classroom, 4 days)

Compétences en Communication (Classroom, 5 days)

Data Link Implementation in Europe (Classroom, 5 days)

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Factores Humanos en la Aviación (presencial, 5 días)

Foundations of CNS/ATM (Classroom, 5 days)

Gerencia del Transporte Aéreo (presencial, 5 días)

Gestión de la Información Aeronáutica (AIM) (presencial, 5 días)

Gestión de la Seguridad Aérea (presencial, 5 días)

Gestión de riesgos operacionales (ORM) y aviación civil (presencial, 5 días)

Gestion des risques opérationnels (ORM) pour l'aviation civile (en salle de cours, 5 jours)

Gestion du Transport Aérien (en salle de cours, 5 jours)

Human Factors in Aviation - Italian (Classroom, 5 days)

Human Factors in Aviation (Classroom, 5 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Introduction to Safety Management Systems (SMS)

Management of Aviation Quality and Service - Civil Aviation (Classroom, 5 days)

Management of Training (Classroom, 5 days)

Managing the Implementation of Aviation System Block Upgrades (ASBUs) in the African Context (Classroom, 2 days)

Mejoras por bloques del sistema de aviación (ASBU) (presencial, 5 días)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

National and International Aviation Systems (Classroom, 5 days)

Navegación basada en el desempeño (PBN) I (presencial, 5 días)

Operational Risk Management (ORM) in Civil Aviation (Classroom, 5 days)

Performance-Based Navigation (PBN) I (Classroom, 5 days)

Procesos de Gestión de Seguridad y Calidad (presencial, 5 días)

Project Management Essentials (30 PDUs, classroom, 5 days)

Quality Management Systems (QMS) for Civil Aviation Authorities (CAA) and Air Navigation Service (ANS) Providers (Classroom, 5 days)

Safety (SMS) and Quality Management (QMS) Processes in Civil Aviation (Classroom, 5 days)

Safety Management Systems (SMS) for Civil Aviation (Classroom, 5 days)

Safety, Legal and Regulatory Aspects of Remotely Piloted Aircraft Systems (RPAS) (Classroom, 5 days)

Senior Civil Aviation Management (Classroom, 10 days)

Services d'information aéronautique (AIS) (Classroom, 3 days)

Sistema de Dirección de Seguridad (SMS) para Aviación Civil - Nivel Avanzado (presencial, 5 días)

Sistemas de gestión de seguridad (SMS) para la aviación civil (presencial, 5 días)

State Safety Program (SSP) (Classroom, 5 days)

Sustainable Aviation - Improving Environmental Performance (Classroom, 5 days)

Systèmes de gestion de la sécurité (SMS) pour l'aviation civile (en salle de cours, 5 jours)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Training Needs Assessment (Classroom, 3 days)

### **Corporate (General)**

Building Teamwork and Stakeholder Management (Classroom, 3 days)

Compétences en Communication (Classroom, 5 days)

Curso avanzado de entrenamiento para capacitadores (presencial, 3 días)

Drive Corporate Performance (Classroom, 5 days)

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Formation des formateurs - Avancé (salle de cours, 3 jours)

Human Resources Management (Classroom, 5 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Management of Training (Classroom, 5 days)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Procurement and Contracts Management (30 PDUs, classroom, 5 days)

Project Management - Advanced (30 PDUs, classroom, 5 days)

Project Management Essentials (30 PDUs, classroom, 5 days)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Train the Trainer - Advanced (Classroom, 3 days)

Training Needs Assessment (Classroom, 3 days)

### **Ground Services**

危险品规则 (DGR) 培训师复训课程

Aircraft De-icing Operations Management (Classroom, 3 days)

Aircraft Marshalling and Ramp Hand Signals with RampVR (Classroom, 1 day)

Aircraft Turnaround Coordination and Loading Supervision with RampVR (Classroom, 5 days)

Aircraft Weight and Balance (Classroom, 5 days)

Airport Operations - Advanced (Classroom, 5 days)

Airport Security Operations Optimization (Classroom, 5 days)

Airport Services - Passenger Handling (Classroom, 5 days)

Audit, Quality and Risk Management for Temperature Controlled Cargo (Classroom, 5 Days)

Baggage Handling Services and Systems (Classroom, 3 days)

Cargo XML Messaging and Standards (Classroom, 3 days)

Collaborative Decision Making (CDM) and A-CDM (Classroom, 4 days)

Compétences en Communication (Classroom, 5 days)

Compétences professionnelles pour instructeurs en DGR - catégories 1, 2, 3, 6 (salle de cours, 5 jours)

Cualificaciones Profesionales para Instructores en DGR - Categorías 1, 2, 3, 6 (presencial, 5 días)

Curso avanzado sobre Operaciones Aeroportuarias (presencial, 5 días)

Dangerous Goods Regulations (DGR) - Initial - Category 6 (Classroom, 5 days)

Dangerous Goods Regulations (DGR) - Instructor Refresher (Classroom, 3 days)

Dangerous Goods Regulations (DGR) - Recurrent - Category 6 (Classroom, 3 days)

Dangerous Goods Regulations (DGR) for Flight Crew and Load Planners - E-Learning - English

DGR教员专业技能培训

Document Control Systems (Classroom, 4 days)

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Fundamentos de la Manipulación de Elementos Unitarios de Carga (presencial, 3 días)

Human Factors in Ground Operations (Classroom, 3 days)

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Instructional Techniques for DGR - Categories 4, 5, 7, 8, 9, 10, 11, 12 (Classroom, 5 days)

Introduction to Safety Management Systems (SMS)

ISAGO for Ground Service Providers (Classroom)

Live Animals Regulations (LAR) - Acceptance Staff - E-Learning - English

Live Animals Transportation (Classroom, 3 days)

Management of Training (Classroom, 5 days)

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Normativas de la IATA relativas a mercancías peligrosas (DGR) - formación continua categoría 6 (presencial, 3 días)

Normativas de la IATA relativas a mercancías peligrosas (DGR) - introducción categoría 6 (presencial, 5 días)

Normativas relativas a Animales Vivos (presencial, 3 días)

Normativas relativas a Mercancías Peligrosas – Actualización para instructores (presencial, 3 días)

Operaciones de seguridad aeroportuarias (presencial, 5 días)

Perishable Cargo Regulations (PCR)

Professional Skills for DGR Instructors - Categories 1,2,3,6 (Classroom, 5 days)

Project Management Essentials (30 PDUs, classroom, 5 days)

Règlements de l'IATA relatifs aux matières dangereuses (DGR) - Cours de perfectionnement - Catégorie 6 (en salle de cours, 3 jours)

Règlements de l'IATA relatifs aux matières dangereuses (DGR) - Catégorie initiale 6 (salle de cours, 5 jours)

Safety Management Systems (SMS) for Airports (Classroom, 5 days)

Security Audit and Quality Control (Classroom, 5 days)

Station / Ground Handling Management (Classroom, 5 days)

Systèmes de gestion de la sécurité (SMS) pour les aéroports (en salle de cours, 5 jours)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Enseñanza sobre Mercancías Peligrosas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Training Needs Assessment (Classroom, 3 days)

ULD Operations (Classroom, 3 days)

ULD 管理基础课程

危险品规则 - 初训

危险品规则 - 复训

活体动物运输规定

课程名称：危险品教学技巧(第5类、第8类、第9类、第10类、第11类、第12类) (教室课程, 五天)

### **Travel Agency**

BSP and BSPLink Training for Travel Agents in Africa (Classroom)

BSP Esenciales para Agentes de Viajes - Examen final - E-Learning - Español

BSP Essentials for Travel Agents: Final Examination - E-Learning - English

Compétences en Communication (Classroom, 5 days)

Contabilización y Control Interlínea de Pasajeros (presencial, 5 días)

Cours d'introduction en voyage et tourisme avec Abacus

Cours d'introduction en voyage et tourisme avec Amadeus

Cours d'introduction en voyage et tourisme avec Galileo

Cours d'introduction en voyage et tourisme avec Sabre

Curso para Consultores de Viajes

Effective Communication Skills (Classroom, 5 days)

Evaluación de las Necesidades de Capacitación (presencial, 3 días)

Foundation in Travel and Tourism with Abacus

Foundation in Travel and Tourism with Abacus for the Leadership & Management Training Program

Foundation in Travel and Tourism with Amadeus

Foundation in Travel and Tourism with Amadeus for the Leadership & Management Training Program

Foundation in Travel and Tourism with Galileo

Foundation in Travel and Tourism with Galileo for the Leadership & Management Training Program

Foundation in Travel and Tourism with Sabre

Foundation in Travel and Tourism with Sabre for the Leadership & Management Training Program

Instructional Design (Classroom, 5 days)

Instructional Techniques (Classroom, 5 days)

Management of Training (Classroom, 5 days)

Managing the Travel Business

Managing the Travel Business for the Leadership & Management Diploma

Monitoring and Controlling Multiple Projects, 30 PDUs (Classroom, 5 days)

Passenger Fares and Ticketing - Advanced (Classroom, 10 days)

Passenger Interline Accounting and Control (Classroom, 5 days)

Project Management Essentials (30 PDUs, classroom, 5 days)

Selling and Managing Airline Reservations and Travel in Galileo (SMART Galileo)

Special Fares and Ticketing - Intermediate (Classroom, 5 days)

Techniques d'enseignement (salle de cours, 5 jours)

Técnicas de Comunicación Efectivas (presencial, 5 días)

Técnicas de Instrucción (presencial, 5 días)

Training Needs Assessment (Classroom, 3 days)

Travel and Tourism Consultant

Travel and Tourism Consultant for the Leadership & Management Diploma



**IATA submission in response to the Australian  
Competition & Consumer Commission (ACCC) preliminary  
views on Airservices Australia's Draft Price Notification  
2011-2016**

27 July 2011

This submission presents the response of the International Air Transport Association (IATA). IATA's mission is to represent, lead and serve the airline industry and brings together over 230 member airlines whose flights account for 93% of all international scheduled air traffic.

IATA welcomes this opportunity to submit its comments to ACCC on its preliminary views regarding Airservices Australia's (AsA) Draft Pricing proposal for 2011-2016. IATA's comments are from an international perspective and are based on the requirements of, and practices in, international civil aviation.

Overall, IATA supports the ACCC's preliminary view to object to AsA's proposed increases in TN and ARFF services. As the ACCC rightly points out, there are significant issues linked to the consultation of the capital program, the lack of adequate benchmarking measures as well as the substantially overestimated cost of capital proposed in the Draft Price Notification. These issues need to be amended before the submission of the Final Price Notification.

In this regard, IATA supports the ACCC's proposed solutions to address these concerns such as the provision of detailed information on a project-by-project level and the reduction of the required revenue by about AUD100 million from applying a cost of capital that truly reflects AsA's risks.

Another important contribution from the ACCC is the need to implement an adequate monitoring mechanism on a project-by-project level in order to ensure a prudent and efficient delivery of the capital program. This is necessary as the current capex risk sharing mechanism could provide a perverse incentive to invest in unnecessary projects in order to reach the minimum thresholds.

Finally, IATA supports the ACCC's recommendation to link non-compliance of the charter's KPI's with financial penalties. This will ensure that AsA does not "cut corners" in order to outperform its cost targets.

However, there are some important areas of the ACCC's preliminary views that continue to be of concern to IATA. The key IATA concerns are:

**1) Cross subsidies:** IATA considers that many airlines, and ultimately the passengers paying for their services, are being significantly and unjustifiably hit by the compounded effect of a number of cross subsidies<sup>1</sup> designed to favor specific segments of users (i.e. General aviation). IATA considers that it should be the State (the ANSP owner) that bears the cost of any desired subsidies to these aviation segments rather than other users. The fair way of achieving this is by forgoing the cost of capital related to the provision of services for these targeted segments.

Moreover, as stated by the ACCC, Ramsey pricing relates to the allocation of common costs (i.e. human resources, finance, etc.) and not to costs across distinct services at different locations. However, there has been no proof that only the common costs have been "redistributed". As a minimum, the ACCC should ensure that the cross subsidies allowed in the Price notification are consistent and follow this principle.

Most importantly, although the cross subsidy among services decreases over the period, the cross subsidy distortion increases among users within the same service (i.e. larger airports

<sup>1</sup> - Subsidies from en route to TN and ARFF services  
 - Subsidies from oceanic to continental services  
 - Subsidies from larger TN locations to smaller regional ones  
 - Subsidies from the application of network pricing at ARFF Category 6 services  
 - Subsidies from the application of weight based charging formulas

fund a higher portion of the TN costs of subsidized airports over time). This is contrary to the ACCC's statement that it seeks for a gradual shift to site-specific pricing. The ACCC should at least ensure that the value being cross subsidized among users of the same service does not increase by the end of the period.

2) **Depreciation**: IATA urges the ACCC to review in more detail AsA's actual depreciation versus forecast in the LTPA 2005-09 period as IATA believes that the former has been substantially lower. Given that charges are set on the basis of forecast depreciation, this differential implies that airspace users have been overcharged during the LTPA 2005-09 period potentially by around AUD90 million. This is shown in Table 1.

Table 1: Forecast depreciation LTPA 2005-09 and actual depreciation from the AsA's annual reports

AUD million	2003	2004	2005	2006	2007	2008	2009	Total
LTPA 2005-09			77.1 m	74.4 m	76.8 m	78.6 m	78.3 m	385.2 m
Actuals (Annual reports) <sup>2</sup>	47.6 m (2002-2003)	72.2 m (2003-2004)	64.4 m (2004-2005)	53.1 m (2005-2006)	52.1 m (2006-2007)	62.0 m (2007-2008)	61.5 m (2008-2009)	293.0 m
Amount potentially overcharged								92.2 m

It should be noted that neither the Draft notification nor the ACCC documents provide a detailed year-by-year comparison between the actual and forecast levels of depreciation for the LTPA 2005-09 period. Such table is necessary in order to clarify our concerns.

Unlike "operating costs" where differences can allegedly be attributed to outperformance, large changes in depreciation can rarely be considered as such particularly given the fact that the delivered capital expenditure has been similar to that proposed in the LTPA.

As previously stated, there are two options for dealing with this overcharged amount:

- a) Implement a revenue claw back in favor of users, or
- b) Adjust (i.e. reduce) the opening asset base using the notional depreciation values presented at the LTPA 2005-09.

It should also be noted that in other regulatory environments (i.e. UK CAA, AERA), the depreciation used to roll forward the asset base is the one assumed in the previous price determination rather than actual depreciation. This is done precisely in order to avoid any gaming in the forecasting of depreciation.

IATA urges the ACCC to reconsider its views and take the necessary steps in order to compensate users for revenue previously collected to cover costs that did not actually exist.

3) **International benchmarking**: IATA insists that there is a need for further development of international benchmarking. In our opinion, the current comparisons provided by AsA do not provide the necessary information to determine whether AsA is more or less efficient

<sup>2</sup> There is a timing mismatch between the LTPA (calendar year) and the annual reports (financial year). The table uses the Jul 2004- June 2009 period as comparator. Had the Jul 2005 -June 2010 period been used as comparator, the overall difference between the annual reports depreciation and the LTPA depreciation is AUD 80 million. Still, this is a considerably high amount.

than its peers. For instance, only a clear separation of costs between continental and oceanic services will provide a relevant base point for comparisons.

Although the ACCC emphasizes the need for internal benchmarking, it has stated its satisfaction with the international benchmarking data provided by AsA. IATA urges the ACCC to reconsider and encourage the development of more accurate external benchmarking tools in conjunction with stakeholders in order to validate any cost targets.

In summary, the ACCC's preliminary views provide some important and welcomed improvements compared to the proposals of the draft price determination. IATA considers that a meaningful consultation, the implementation of relevant and challenging targets, the introduction of penalties on KPI non-compliance, and a cost of capital that truly reflect the risks of the regulated company are some of the key cornerstones of any regulatory process.

However, and as noted above, there are areas where IATA has still some major concerns and urges the ACCC to further develop its views in this regard, mainly:

- The need for a dramatic reversal in the increasing level of subsidies.
- The need to compensate users for any amounts overcharged in the previous period.
- The need to develop appropriate international benchmarking tools.

IATA is ready to engage in any consultation processes as necessary aimed at solving the above-mentioned concerns as soon as possible.

For additional information or clarification, please contact:

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## PASSENGER RIGHTS REGIMES IN MEXICO – POSITION PAPER

August 2013

The air transport industry welcomes the opportunity to express its concerns with the proposed passenger rights amendments before the Senate. While the industry recognizes the need to extend basic protections to passengers, we believe that the proposals do not strike a balance between protecting passengers and maintaining industry competitiveness, to the detriment of both passengers and the industry.

### 1. Concerns with the present legislative proposals before Congress

#### (a) Increased compensation for flight cancellation

There are proposals to increase compensation levels from 25% to 50% or 100% of the ticket price in the case of a flight cancellation (LAC artículos 52). The industry also notes a separate proposal to regulate airline tariffs and increase cancellation compensation to 300% of the ticket price (LFD iniciativa artículos 8 bis). These proposals would create an extraordinary and arguably punitive burden on the industry that is unprecedented in passenger rights laws in other jurisdictions. It could also place the Mexican air transport industry at a competitive disadvantage vis-a-vis competitors, as these burdens are either passed on to customers in the form of higher fares or render existing routes unviable. In addition, the principle of proportionality must apply and compensation claims should be assessed on a case-by-case basis that takes into account the individual circumstances of each passenger.

#### (b) Care and assistance

The industry notes the new care and assistance provisions proposed for cases of delay (LAC iniciativa artículos 52 y 53). We understand that many full-service carriers serving Mexico offer comparable amenities today. These care obligations, however, should be (a) capped (both financially and temporally) and (b) include appropriate exceptions for widespread disruptions. The European Union, for instance, is in the process of amending EU Regulation 261-2004 to insert similar exceptions (i.e. a maximum sum of money per passenger for accommodation for a maximum number of nights).

#### (c) Delay compensation

The industry also notes a proposal (REF 063 Anexo LXII Legislatura) to compensate cases of delay and cancellation according to a fixed scale based on minimum salary units. It considers that such provisions may breach the Montreal Convention 1999 (MC99) which provides the exclusive remedy for delay claims (see article 19 MC99) and prohibits non-compensatory or punitive damages (see article 29 MC99). Fixed-sum payments do not correlate with the actual loss suffered by individual passengers and are therefore non-compensatory by nature. The fact that the defenses available in the Civil Aviation Law are different from those prescribed under MC99 also places Mexico in breach of its treaty obligations under the Convention.

#### (d) Baggage entitlements

There are proposals to increase the limits applicable in the case of loss or damage to baggage. For international flights, MC99 and other treaties govern baggage liability and prescribe fixed limits for the recovery of damages. These rules should be expressly reflected in any baggage liability amendments to the Civil Aviation Law. Proposals that would require carriers to 'split the difference' between a recovery limit and the actual value of baggage (proposed article 62) or accept a special declaration of value without additional payment (proposed article 62) would likely breach MC99 (see article 22, paragraph 2 MC99). MC99 also distinguishes between checked and unchecked (i.e. cabin) baggage. In the case of cabin baggage, which is typically within the care and custody of the passenger, MC99 provides that a carrier does not bear liability

unless loss or damage results from the proven fault of the carrier or its employees (see article 17, paragraph 2 MC99). It would appear that the proposed amended text of article 62, however, places full responsibility upon the carrier.

(e) Extraterritoriality

Conflicting standards between the many different overlapping passenger rights laws of the world create confusion for passengers and cost and complexity for carriers. Today, there are 55 countries with various forms of passenger rights legislation. These regimes are not coordinated. It is therefore important that passenger rights laws contain both adequate defenses for events outside a carrier's control and sufficiently clear provisions drawing the boundaries between one or more passenger rights regimes which could potentially apply. In the industry's view, Mexican passenger rights protections should only apply to flights departing from airports in Mexican territory and this should be expressly stated in the Civil Aviation Law. In an effort to bring greater coordination and harmonization in this area, IATA member airlines have adopted a set of global principles on passenger rights legislation. These principles, which are based on lessons learned from existing regimes, aim to strike a balance between protecting passengers and ensuring industry competitiveness. We invite the Mexican government to incorporate these principles into its revision of passenger rights legislation.

**2. The unintended consequences of passenger rights regimes**

(a) Reducing market choice

Consumers are at the heart of every airline's business model, whether they be low-cost carriers or traditional full-service airlines. As a result, carriers are highly incentivized to find solutions that benefit the greatest number of passengers in the event of a delay or cancellation. Consumers have the option of a variety of prices that match a variety of service levels. People can vote with their feet, and their wallets, to travel on other airlines should their experience on a certain carrier be unsatisfactory. Market forces should determine what service carriers provide to passengers and allow carriers to innovate in order to capture greater market share. In the case of Singapore, a highly liberalized market with a variety of choices for customers, the decline in the number of complaints against carriers between 2010 and 2012 illustrates the market's ability to compel airlines to respond to customer needs. Passenger rights regulation, if it exists at all, should not interfere with these market forces, which will allow passengers to make their own price-service trade-offs. Rather than a focus on regulation, a focus should be on education, ensuring that consumers have access to the information necessary to make an informed choice amongst the different options present in the market.

(b) More cancellations

Requiring compensation after a delay of a certain number of hours could have the perverse effect of causing more cancellations and more serious disruption to passengers. When compensation is imposed, airlines may no longer have an incentive to incur the marginal costs of delaying the flight, leading to a more likely cancellation. A cancellation is a more stressful and uncertain experience for the passenger. If a flight early in the day is delayed, passengers would normally be able to fly to their destination once the problem is resolved. If the flight was cancelled instead, passengers on the original flight would only be able to travel if and when seats were available on later flights or on other airlines. Evidence of increased cancellations can be found in the US, where according to a study by the government flights were 24% more likely to be cancelled before leaving the gate after the US tarmac delay rules went into effect. In addition, the majority of delays (60% in Europe) are outside an airline's control, due to weather, air traffic congestion, or other factors. We therefore ask the Mexican government to consider removing compensation in case of a flight delays as part of proposed new regime.

(c) Economic costs

Increasing mandatory passenger compensation and care will increase an airline's expected costs of operation. Depending on the extent to which airlines can pass through the cost to passengers, the result will be either higher costs for all passengers and/or lower profitability for airlines. In the latter case, certain services also may no longer be profitable and may be cut, reducing connectivity and its associated economic and social benefits. Mexico's integration into the global air transport network transforms the possibilities for the Mexican economy by:

- Opening up foreign markets to Mexican exports;
- Lowering transport costs, and helping to increase competition because suppliers can service a wider area and potentially reduce average costs, through increased economies of scale;
- Encouraging Mexican businesses to invest and specialize in areas that play to the economy's strengths;
- Speeding the adoption of new business practices, such as just-in-time-inventory management that relies on quick and reliable delivery of essential supplies;
- Raising productivity and hence the economy's long-run supply capacity. It is estimated that a 10% improvement in connectivity relative to GDP would see an MXN 7.6 billion per annum increase in long-run GDP for the Mexican economy.

We therefore ask the Mexican government to conduct a rigorous cost-benefit analysis of any proposed regimes prior to implementation to reduce unintended consequences on Mexican aviation, consumers and businesses.

At its 69th annual general meeting, IATA airlines, representing 84% of international air traffic, unanimously endorsed a set of core principles for governments to consider when adopting consumer protection regulation. Based on lessons learned from existing regimes, the principles aim to offer a proposed way forward on greater global compatibility and convergence. They serve as industry acknowledgement of basic protections for consumers and strike a balance between these protections and ensuring industry competitiveness. We also request that the Mexican government consider incorporating these best practice principles into its passenger rights regime.



## PASSENGER RIGHTS REGIMES IN MEXICO – POSITION PAPER

August 2013

The air transport industry welcomes the opportunity to express its concerns with the proposed passenger rights amendments before the Senate. While the industry recognizes the need to extend basic protections to passengers, we believe that the proposals do not strike a balance between protecting passengers and maintaining industry competitiveness, to the detriment of both passengers and the industry.

### 1. Concerns with the present legislative proposals before Congress

#### (a) Increased compensation for flight cancellation

There are proposals to increase compensation levels from 25% to 50% or 100% of the ticket price in the case of a flight cancellation (LAC artículos 52). The industry also notes a separate proposal to regulate airline tariffs and increase cancellation compensation to 300% of the ticket price (LFD iniciativa artículos 8 bis). These proposals would create an extraordinary and arguably punitive burden on the industry that is unprecedented in passenger rights laws in other jurisdictions. It could also place the Mexican air transport industry at a competitive disadvantage vis-a-vis competitors, as these burdens are either passed on to customers in the form of higher fares or render existing routes unviable. In addition, the principle of proportionality must apply and compensation claims should be assessed on a case-by-case basis that takes into account the individual circumstances of each passenger.

#### (b) Care and assistance

The industry notes the new care and assistance provisions proposed for cases of delay (LAC iniciativa artículos 52 y 53). We understand that many full-service carriers serving Mexico offer comparable amenities today. These care obligations, however, should be (a) capped (both financially and temporally) and (b) include appropriate exceptions for widespread disruptions. The European Union, for instance, is in the process of amending EU Regulation 261-2004 to insert similar exceptions (i.e. a maximum sum of money per passenger for accommodation for a maximum number of nights).

#### (c) Delay compensation

The industry also notes a proposal (REF 063 Anexo LXII Legislatura) to compensate cases of delay and cancellation according to a fixed scale based on minimum salary units. It considers that such provisions may breach the Montreal Convention 1999 (MC99) which provides the exclusive remedy for delay claims (see article 19 MC99) and prohibits non-compensatory or punitive damages (see article 29 MC99). Fixed-sum payments do not correlate with the actual loss suffered by individual passengers and are therefore non-compensatory by nature. The fact that the defenses available in the Civil Aviation Law are different from those prescribed under MC99 also places Mexico in breach of its treaty obligations under the Convention.

#### (d) Baggage entitlements

There are proposals to increase the limits applicable in the case of loss or damage to baggage. For international flights, MC99 and other treaties govern baggage liability and prescribe fixed limits for the recovery of damages. These rules should be expressly reflected in any baggage liability amendments to the Civil Aviation Law. Proposals that would require carriers to 'split the difference' between a recovery limit and the actual value of baggage (proposed article 62) or accept a special declaration of value without additional payment (proposed article 62) would likely breach MC99 (see article 22, paragraph 2 MC99). MC99 also distinguishes between checked and unchecked (i.e. cabin) baggage. In the case of cabin baggage, which is typically within the care and custody of the passenger, MC99 provides that a carrier does not bear liability

unless loss or damage results from the proven fault of the carrier or its employees (see article 17, paragraph 2 MC99). It would appear that the proposed amended text of article 62, however, places full responsibility upon the carrier.

(e) Extraterritoriality

Conflicting standards between the many different overlapping passenger rights laws of the world create confusion for passengers and cost and complexity for carriers. Today, there are 55 countries with various forms of passenger rights legislation. These regimes are not coordinated. It is therefore important that passenger rights laws contain both adequate defenses for events outside a carrier's control and sufficiently clear provisions drawing the boundaries between one or more passenger rights regimes which could potentially apply. In the industry's view, Mexican passenger rights protections should only apply to flights departing from airports in Mexican territory and this should be expressly stated in the Civil Aviation Law. In an effort to bring greater coordination and harmonization in this area, IATA member airlines have adopted a set of global principles on passenger rights legislation. These principles, which are based on lessons learned from existing regimes, aim to strike a balance between protecting passengers and ensuring industry competitiveness. We invite the Mexican government to incorporate these principles into its revision of passenger rights legislation.

**2. The unintended consequences of passenger rights regimes**

(a) Reducing market choice

Consumers are at the heart of every airline's business model, whether they be low-cost carriers or traditional full-service airlines. As a result, carriers are highly incentivized to find solutions that benefit the greatest number of passengers in the event of a delay or cancellation. Consumers have the option of a variety of prices that match a variety of service levels. People can vote with their feet, and their wallets, to travel on other airlines should their experience on a certain carrier be unsatisfactory. Market forces should determine what service carriers provide to passengers and allow carriers to innovate in order to capture greater market share. In the case of Singapore, a highly liberalized market with a variety of choices for customers, the decline in the number of complaints against carriers between 2010 and 2012 illustrates the market's ability to compel airlines to respond to customer needs. Passenger rights regulation, if it exists at all, should not interfere with these market forces, which will allow passengers to make their own price-service trade-offs. Rather than a focus on regulation, a focus should be on education, ensuring that consumers have access to the information necessary to make an informed choice amongst the different options present in the market.

(b) More cancellations

Requiring compensation after a delay of a certain number of hours could have the perverse effect of causing more cancellations and more serious disruption to passengers. When compensation is imposed, airlines may no longer have an incentive to incur the marginal costs of delaying the flight, leading to a more likely cancellation. A cancellation is a more stressful and uncertain experience for the passenger. If a flight early in the day is delayed, passengers would normally be able to fly to their destination once the problem is resolved. If the flight was cancelled instead, passengers on the original flight would only be able to travel if and when seats were available on later flights or on other airlines. Evidence of increased cancellations can be found in the US, where according to a study by the government flights were 24% more likely to be cancelled before leaving the gate after the US tarmac delay rules went into effect. In addition, the majority of delays (60% in Europe) are outside an airline's control, due to weather, air traffic congestion, or other factors. We therefore ask the Mexican government to consider removing compensation in case of a flight delays as part of proposed new regime.

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Increasing mandatory passenger compensation and care will increase an airline's expected costs of operation. Depending on the extent to which airlines can pass through the cost to passengers, the result will be either higher costs for all passengers and/or lower profitability for airlines. In the latter case, certain services also may no longer be profitable and may be cut, reducing connectivity and its associated economic and social benefits. Mexico's integration into the global air transport network transforms the possibilities for the Mexican economy by:

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**IATA submission in response to the Commission for Aviation  
Regulation "Issues Paper" on Maximum Levels of Airport  
Charges at Dublin Airport**

**27 September 2013**

This submission presents the response of the International Air Transport Association (IATA). IATA's mission is to represent, lead and serve the airline industry and brings together some 240 member airlines comprising 84% of the global air traffic.

IATA welcomes the opportunity to provide comments to the Commission for Aviation Regulation on regulatory policies, methodologies and data sources to be used in the next determination on charges at Dublin Airport.

Please find below our responses to the questions raised by the CAR in the paper.

#### **Approach to regulation.**

**What changes, if any, should be made to the approach to regulation that the commission adopted in 2009?**

1) What should be the duration of the next determination?

- In order to provide the adequate incentives for outperformance, a long regulatory period is needed. In this regard, we support implementing 5-year periods for setting charges.

2) Should the DAA face incentives to beat efficiency targets?

- In the absence of competition, incentive regulation (via the implementation of price caps) is the "second best" solution. The implied incentive would be that DAA would get the rewards from outperformance (and assume the costs if it does not reach its targets).
- In order for this approach to work it is necessary that the CAR sets challenging efficiency targets.

3) How should risk be treated? What cost and demand risks should the DAA have to assume?

- We consider that the current setup should be maintained. DAA should face traffic risk. Otherwise, airlines would not only face their own traffic risk, but also the airport's traffic risk.
- The DAA should also face the cost risk. Otherwise, incentive regulation would not exist.
- It should be noticed that the DAA is already being compensated for these risks via the allowed cost of capital.

#### **Passenger forecast issues.**

**What is the appropriate approach we should adopt for making passenger forecasts at Dublin airport?**

4) What information should a traffic forecast model for Dublin airport include?

- A combination of a generic (simple approach) with a more specific route analysis might be the best solution. However, inputs from airlines are a must, particularly when two airlines hold a significant proportion of the airport's traffic.
- Probably the most important variables to take into consideration include GDP (Irish, UK, US) and oil prices. The significance of these variables should be able to be determined by simple statistical analysis. There should not be a great number of variables, as that could make the model meaningless.

5) Which strategies should be adopted to deal with uncertainty in traffic forecasts?

- As answered in question 3, traffic risk should be borne by the airport. However, there could be thresholds which could reset the calculation of charges when there are significant changes in traffic (i.e. when traffic is above/below 10% of the assumed forecast).

IATA submission – Response to CAR – Issues Paper on Maximum Levels of Airport Charges at Dublin airport

- It is difficult to have a situation in which the DAA would be unbiased. Unless such forecasts are agreed with the airline community, it should be responsibility of the CAR validate such results (and decide whether the CAR itself should carry out its own analysis).

6) What forecast methods and external data sources should we consider?

- The CAR should consider GDP figures from the IMF, Governmental sources and other respected private forecasts. The CAR should apply its judgment in deciding which final figure to use.

### **Operating expenditure issues**

#### **What allowance should we make for operating costs at Dublin airport after 2014?**

7) How significant are economies of scale? How might the efficiency frontier shift in response to changing passenger numbers?

- In an industry in which large investment costs are required (a runway, a terminal, etc) there is scope for economies of scale once the asset is better utilized. Although this applies to a higher degree when dealing with capital costs (i.e. depreciation), this should also apply to a certain degree to operating costs, as some of these costs are linked to the size of the asset, rather than traffic (maintenance, energy, cleaning, etc.). In this regard, the frontier, on a per passenger basis, could shift.

8) What is the potential for "catch up" by the DAA so as to realize efficient operating costs?

- The CAR should determine the catch-up factor by using the methods that have been described in the paper (i.e. a combination of bottom up and top-down approaches). However, the CAR should review why there was a significant difference between the operating expenditure assumptions in the last determination and the actual operating expenditure reported by DAA (and amend its bottom up approach accordingly).
- As well, measures such as total factor productivity should also be taken into account as a measure to recognize the frontier "shifts" over time.

9) What measures, such as rolling schemes, should be adopted to change the incentives for the DAA to realize efficiency gains?

- The underlying idea behind rolling incentives is to encourage the regulated company to also outperform on the latter years of the regulatory period. From this point of view, rolling incentives might be an acceptable regulatory tool. However, it is imperative that challenging efficiency target is set. Otherwise, rolling incentives would just prolong any windfall gains for the airport due to soft targets (i.e. there is a significant difference between the existing determination forecast and actual operating expenditure, which bring some doubts on whether these targets were really challenging).
- If rolling incentives are applied, we favor option 2.

**Page 46, commercial revenue issues****What assumptions should we make about commercial revenues at Dublin airport after 2014?**

10) What relationships between passenger numbers and commercial revenues should we assume? Are there other factors that are significant?

- In principle, there should be a positive correlation between traffic growth and the increase in commercial revenues. This assumption should be maintained by the CAR. However, some adjustments might be necessary after understanding the "passenger mix" at the airport. For instance, if the overall share of passenger flying on low cost airlines increases, it might be possible that commercial revenues, on per passenger basis, decreases. The CAR would need to verify first if such an assertion was true.

11) Aside from outturn data at Dublin airport, what information should we look at before forecasting future commercial revenues?

- There is published information of revenue/passenger for a number of airports worldwide (i.e. Leigh-Fisher). The CAR should be able to use this information as an additional input when forecasting commercial revenues.

12) For what categories, if any, should we change the incentives for the DAA to maximize commercial revenues? How?

- We do not favor rolling incentives on commercial revenues.

**Capital costs issues****What return on and return of capital should we permit?**

13) What level of investment would be appropriate for the next four-plus years at Dublin airport?

- The level of investment should be decided after consultation with users. If no agreement can be made, it should be the responsibility for the CAR to determine the appropriate capital expenditure allowance.
- Care is needed when profiling the investments. Profiling should be based on when the capital expenditure is needed. Otherwise, if too much capital expenditure is allowed at the beginning of the period, the airport might be incentivized to delay those investments towards the end of the period (as that would allow the airport to enjoy from "free" depreciation and cost of capital allowances due to the timing differences). A solution could be to implement an adjustment to the price cap formula if capital expenditure is not delivered on time.
- We favor triggers for large capital investment projects.
- Aggregation: The difficulty that we found from aggregation is that it is not possible to measure outperformance/underperformance. It might be necessary to budget on a project by project basis. If there was a change needed throughout the period, then this should be agreed with the airlines.

14) Given previous regulatory commitments and outturn investment levels, what should the opening RAB in 2014 be?

- It should not be enough that the overall level of capital expenditure is in line with the allowance in the determination. The CAR should disallow from the RAB elements in which is confirmed that there has been underperformance in the delivery (i.e. if the T2 was EUR 150 higher than expected due to underperformance, it is not fair to reduce capital expenditure at other projects. That would imply "cutting corners", and this is not something that the CAR would like to pursue.
- In order to determine the opening RAB we fully support the process described by the car on slide 50 (scenarios 1 to 7)

IATA submission – Response to CAR – Issues Paper on Maximum Levels of Airport Charges at Dublin airport

15) What is an appropriate cost of capital to allow?

- The appropriate cost of capital should reflect the low risks that an airport, as a monopoly, bears.
- We support the methodology used by the CAR in the past for determining a return (WACC, CAPM, etc).
- We support the usage of UK gilts and German bonds (as latter being the "safest" bond in EUR denomination) for the assessment of the risk free rate.
- We support the inclusion of a debt premium. The CAR maybe should revise whether a BBB rating is acceptable enough, or if whether a "BBB+" or a "A-" rating could be achievable. This clearly has an influence on the amount allowed for debt premium.
- We do not support the usage of "embedded" debt, as that would significantly lower the airport's incentives to be minimize the interest rate it pays (i.e. if a bond is sold at a high interest rate, even if the airport lose out during that determination, the airport would be guaranteed that an automatic adjustment in the next determinations).
- We do not believe that airports have become "riskier" since the last determination. For DAA, this can be seen from the healthy financial ratios it has (despite the fact that Ireland has been in a very difficult economic situation).
- We support the theoretical approach for adopting a gearing ratio, as that would be consistent with the minimum credit rating assumed.

**Financial viability issues**

**What is the appropriate approach we should adopt to assess financial viability of the DAA?**

16) Has the DAA's financial position changed significantly since 2009?

- Based on the information presented in the Issues paper, it is clear that DAA's financial viability is improving. This is reflected in the improvement of the DAA's credit rating from BBB Neg to BBB stable. As such, we do not see any reason for charging airport charges to adjust for financial viability (i.e. via accelerated depreciation).

17) How should financially viable operations at Dublin airport be enabled?

- In principle, we do not believe that adjustments should be made for "financial" viability. An airport is rewarded for its risk via a cost of capital. The airport's owner should be responsible for correcting any viability issues that have been caused by financial mismanagement (i.e. via equity capital increases) rather than via airport charges.
- We believe that financial viability should only be assessed from a Dublin airport's operations perspective (i.e. as a standalone business) and not the group. It would be unfair to make adjustments to airport charges due to any mismanagement/increased risk from unrelated ventures.
- We do not believe that risks should be reduced to make the company more financially viable (as these risks will automatically need to be "transferred" to users). If the CAR continues looking at this path, then it should also reduce substantially the cost of capital being assigned to the airport (i.e. compared to that allowed in the previous determination).

18) What developments in the financial markets, if any, might be relevant?

- No comments at this moment.

**Page 80, quality of service issues**

**How should we treat service quality when making a determination for Dublin airport?**

19) What service quality targets should be set for the DAA?

- There is room for tightening the securing targets. A 20 minutes target might be necessary in order to ensure that passengers arrive on time at the gate (instead of the existing 30 minutes).

IATA submission – Response to CAR – Issues Paper on Maximum Levels of Airport Charges at Dublin airport

- As well, and additional security measure could be considered in order to encourage that, on the majority of the time, security queues are much lower (i.e. 5 minutes 95% of the time).

20) What aspects are important when thinking about service quality at Dublin airport and how might they be measured?

- No comments at this moment.

21) What link should there be between service quality and the price cap

- The current price cap adjustment (up to 4.5%) could be higher (in Heathrow and Gatwick it is up to 7%) in order to maintain adequate incentives to meet all targets.
- We support the view that there should only be penalties (via lower caps) should DAA fail to meet its Service Level targets.
- We do not believe that there should be bonuses for meeting the targets. By definition, the price caps should already allow DAA to reach those targets. Also, the CAR should note that outperformance might not be desirable, as that could imply unnecessary/expensive investments being made for very little gains.

#### **Other issues**

**What other factors should we consider, and how, when making the 2014 determination?**

22) Should we require differential pricing?

- Differential charges could only be justified when there is a genuine difference in the level of service being provided (i.e. boarding bridges). Moreover, any differential should be cost related. Finally, it is imperative that access to the facility (that has such differential charge) be made available to anyone that wishes use it (i.e. no discrimination via the utilization of restrictive conditions of use).
- We do not favor the implementation peak charges as that would not affect airline behavior (scheduling issues, passenger requests). If the a peak charge is being proposed on the basis the additional capacity it would generate, the CAR should also take into consideration the commercial revenues that such type of airlines/passengers would generate at this particular time (i.e. it would be unfair to introduce peak charges for some users, when all users benefit from the commercial revenues that are generated at this moment in time).

23) How should Shannon airport's separation from the DAA Group affect our determination?

- No comments at this moment.

24) Are changes needed to the price cap formula or the way that we ensure compliance?

- The formula looks acceptable.

For additional information or clarification, please contact:

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**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

**In the matter of:**

**Docket OST-2014-0056**

**Notice of Proposed Rulemaking  
Transparency of Airline Ancillary  
Fees and Other Consumer Protection  
Issues**

**Comments of the International Air Transport Association**

September 29, 2014

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**BEFORE THE  
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**In the matter of:**

**Docket OST-2014-0056**

**Notice of Proposed Rulemaking  
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Fees and Other Consumer Protection  
Issues**

**Comments of the International Air Transport Association**

The International Air Transport Association (IATA) is pleased to submit the following comments on the U.S. Department of Transportation's Notice of Proposed Rulemaking on "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues" ("NPRM").<sup>1</sup> IATA represents the interests of approximately 240 international airlines, 93 of which fly to and from the United States on a regularly scheduled basis. As such, IATA has a significant interest in the outcome of this proceeding.

**I. Introduction.**

As noted in the NPRM, DOT has been considering regulations to improve the flow of information to air travellers who purchase airline tickets from ticket agents since before it issued its final so-called Consumer Rule II. DOT has consistently expressed its belief that passengers are unable to make informed decisions when purchasing tickets via travel agents because they are not getting the information they need on ancillary services being offered by the airline

<sup>1</sup> 79 Fed. Reg. 29970 (May 23, 2014).

distributing base tickets through that channel. Over the past three years, IATA, Airlines for America and other regional and global associations, worked closely with DOT to seek the most effective way to provide consumers with the information that DOT deems essential to the ticket purchasing process. We appreciate DOT affording us multiple opportunities to provide input on this issue.

Since this proposed rule was first discussed, IATA has focused its discussions with DOT primarily on the proposed mandate on ancillary services. The bulk of these comments will focus on that area. However, IATA will also include comments and input on some of the other proposals contained in the NPRM that would impact our member airlines.

The following summarizes our comments on the ancillary services section of the NPRM:

- Because the market has fundamentally changed since the GDSs first encouraged DOT to promulgate a regulation along these lines, consumers now have more than ample access to information about ancillary services and fees in advance of any purchase decision. Consumers, therefore, are not suffering any harm today in this connection, let alone subject to any “unfair” or “deceptive” practice within the meaning of 49 U.S.C. §41712. Accordingly, the Department lacks statutory authority to promulgate this regulation.
- Moreover, even assuming the Department had statutory authority to promulgate the rule, it has failed to demonstrate that its benefits to consumers would outweigh the costs industry would incur in complying with its requirements, as required by Presidential Executive Order 13563.
- Even if the Department disagrees that its proposal fails to meet these fundamental requirements, there is no actual need for the proposed regulation. Today, all of the players in the distribution value chain are actively seeking to address the issue first identified by DOT more than three years ago. Airlines are economically motivated to provide complete information on all ancillaries through all sales channels. The market therefore is already providing solutions.

- If adopted, DOT's proposed approach would undermine these positive market developments and thus harm the very consumer interests DOT is seeking to protect.
- IATA therefore urges DOT to resist the temptation to intervene in a deregulated market that is working to meet the needs of consumers.

## **II. DOT Does Not Possess the Statutory Authority to Promulgate the Proposed Rule**

### **A. History and Scope of DOT's Consumer Protection Authority**

The history of DOT's consumer protection authority is rooted in a provision initially contained in Section 411 of the Civil Aeronautics Act of 1938, which created a new regulatory agency—the Civil Aeronautics Authority (“CAA”)—and vested in it the power to regulate “unfair or deceptive practices...in air transportation.”<sup>2</sup> This regulatory authority was modeled after a nearly identical provision contained in the Federal Trade Commission Act (“FTCA”) passed just months prior to adoption of the Civil Aeronautics Act.<sup>3</sup> Initially, Section 411 represented only part of the CAA's broad authority over the airline industry, which included the power to control airline rates, routes and conditions of carriage as well as competition between carriers. Section 411 was retained with the adoption of the Federal Aviation Act of 1958, as were the majority of the agency's regulatory powers.

In 1978, Congress dramatically reshaped the airline regulatory regime when it adopted the Airline Deregulation Act (“ADA”). The ADA withdrew the federal government – as well as state governments – from the business of

<sup>2</sup> 52 Stat. 1003.

<sup>3</sup> *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 422 (1992); see also *infra* p.8 (discussing the relationship between Section 411—and its successor Section 41712—and Section 5 of the FTCA).

regulating most economic aspects of the airline industry. In place of prescriptive economic regulation, Congress determined that “maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety and quality of air transportation services.”<sup>4</sup>

Despite stripping the CAB of most of its regulatory authority, the ADA preserved Section 411 and transferred the authority to regulate unfair or deceptive practices to the Department of Transportation once the CAB was phased out in 1985.<sup>5</sup> At that time, Congress recognized that the “regulations [under Section 411] *touch[ed] relatively limited areas of airline operations,*” but concluded that in a deregulated industry “they furnish[ed] important protections for consumers.”<sup>6</sup> Section 411 is currently codified in the Transportation Code at 49 U.S.C. § 41712.

**B. Congress’s Clear Intent in Adopting the Airline Deregulation Act of 1978 Was to Replace Onerous Economic Regulation with Market Discipline**

The language that has historically been used to describe Congress’ legislative intent in enacting the ADA is instructive with respect to determining the appropriate scope of DOT’s authority under Section 41712. Starting with the ADA itself, Congress set forth general public interest policies intended to permeate the provisions of the law and guide DOT in the exercise of its regulatory powers.<sup>7</sup> Among these public interest factors was a mandate to place

<sup>4</sup> *Morales v. TWA*, 504 U.S. 374, 378 (1992).

<sup>5</sup> Civil Aeronautics Board Sunset Act of 1984, Pub.L. 98-443, § 3, 98 Stat. 1703; 49 U.S.C.App. § 1551.

<sup>6</sup> H.R. Rep. No. 98-793, at 4 (1984).

<sup>7</sup> Airline Deregulation Act of 1978, 49 U.S.C. § 40101 (formerly 49 U.S.C. § 1302).

“maximum reliance on competitive market forces and on actual and potential competition.”<sup>8</sup>

Courts have consistently noted Congress’ clear intent to replace economic regulation with market discipline, while preserving only limited regulatory authority to prevent unfair, deceptive, or anti-competitive behavior adverse to consumers in the marketplace. For instance, in *Northwest, Inc. v. Ginsberg*, the Court noted that “the ADA is based on the view that the best interests of airline passengers are most effectively promoted, in the main, by allowing the free market to operate.”<sup>9</sup> As a result, while the ADA preserved limited consumer protection authority, it “eliminated federal regulation of rates, routes, and services in order to allow those aspects of air transportation to be set by market forces.”<sup>10</sup>

Some of the most robust statements regarding Congress’ deregulatory intent come from DOT itself. For example, DOT has commented on the scope of its regulatory authority under the ADA, noting that it “has extremely limited powers with respect to domestic airfares and related conditions.”<sup>11</sup> Mindful of its authority limitations, DOT has previously attempted to craft its rules “to produce the minimum intervention necessary to prevent the abuses [it] detect[s].”<sup>12</sup> DOT

<sup>8</sup> *Id.* § 40101(a)(6).

<sup>9</sup> 134 S. Ct. 1422, 1430 (2014); *see also Morales*, 504 U.S. at 378 (describing Congress’ commitment to replacing government regulation with reliance on free market forces); *Air Transp. Ass’n of America, Inc. v. Cuomo*, 520 F.3d 218, 222 (2d Cir. 2008) (noting that Congress “overarching goal” in passing the ADA was to ensure “maximum reliance on competitive market forces.”).

<sup>10</sup> *Id.* at 1433.

<sup>11</sup> *Petition of Joel Kaufman re Ticket Change Penalties*, Order 2003-3011, at 2 (DOT Mar. 18, 2003).

<sup>12</sup> *Carrier-Owned Computer Reservations Systems*, 49 Fed. Reg. 32,540, 32,553 (Aug. 15, 1984) (codified at 14 C.F.R. pt. 255) (further noting that the DOT has “repeatedly stressed [its] desire to

has also emphasized that to exercise its consumer protection authority under Section 41712 in a manner consistent with congressional intent requires it to find “compelling evidence of consumer deception or unfair methods of competition.”<sup>13</sup> Absent such evidence, DOT notes that its role is to permit “the marketplace to govern carrier decisions regarding fares and their associated conditions.”<sup>14</sup>

The Supreme Court’s recent decision in *Northwest, Inc. v. Ginsburg* provides additional insight into judicial evaluation of the scope of DOT’s authority in the broader context of Congress’ deregulatory intent.<sup>15</sup> The primary issue in *Ginsburg* was whether the ADA preempts state common law claims for breach of the implied covenant of good faith and fair dealing. The Court thus was required to determine the scope of a saving clause from the Federal Aviation Act of 1958, which preserved then-existing statutory and common law provisions apparently permitting a regulatory role for state judiciaries.<sup>16</sup> When Congress overhauled the airline industry through passage of the ADA, it included a provision explicitly preempting any “State, political subdivision of a State, or political authority of at least 2 States” from “enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . .”<sup>17</sup> Despite this preemption provision designed to “ensure that the

(Continued)

limit [its] intervention to deal effectively with the evils [it] see without creating more problems or inefficiencies”).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 134 S.Ct. 1422 (2014).

<sup>16</sup> *Id.* at 1428.

<sup>17</sup> 49 U.S.C. § 41713(b)(1).

States would not undo federal deregulation with regulation of their own,” the pre-existing saving clause was not repealed.<sup>18</sup>

Ultimately, the Court concluded that state common law rules were preempted by the ADA. In reaching its conclusion, the Court found that the scope of the saving clause was limited by the deregulatory intent of Congress in passing the ADA, as specifically evidenced by the language of the ADA’s preemption provision. Exempting state common law rules from preemption, the Court reasoned, would “disserve the central purpose of the ADA” by merely replacing federal regulation of the airline industry with state regulation.<sup>19</sup> As the Court noted in *Morales*, “we do not believe Congress intended to undermine this carefully drawn statute through a general saving clause.”

The *Ginsburg* Court’s reasoning for limiting the saving clause is also instructive with regard to the scope of DOT’s unfair or deceptive practices authority. The pre-ADA general saving clause was limited when it was found to conflict with the ADA’s clear deregulation mandate and a specifically worded preemption provision. Like the saving clause, DOT’s pre-ADA unfair and deceptive practices authority must be limited when its application undermines Congress’ intent to replace economic regulation of the airline industry with market discipline. When Congress prohibited economic regulation of the airline industry, it preserved only a limited exception for protecting against unfair or deceptive practices. As a result, DOT’s authority to regulate unfair or deceptive practices represents a limited exception to an otherwise blanket prohibition of

<sup>18</sup> *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992).

<sup>19</sup> *Ginsburg*, 134 S. Ct. at 1430.

economic regulation. Under the reasoning of *Ginsburg*, Courts—and DOT—should thus refrain from reading Section 41712 to confer the broadest power possible consistent with the plain meaning of the text. Instead, questions regarding the scope of DOT’s authority to regulate unfair or deceptive practices should be resolved with an eye toward confining the provision firmly within the deregulatory spirit of the ADA.<sup>20</sup> Thus, any regulatory initiative that purports to enhance airline performance rather than cure an established malpractice must be viewed skeptically.

### C. The Scope of DOT’s Authority to Regulate Unfair and Deceptive Practices Is Narrow

As noted above, DOT’s consumer protection authority was derived from nearly identical language in Section 5 of the FTCA granting the FTC authority to regulate unfair or deceptive practices. As a result, courts have often relied on interpretations of the FTC’s power under Section 5 to delineate DOT’s authority under Section 41712.<sup>21</sup> In addition to the courts, DOT has repeatedly recognized the close relationship between its consumer protection authority and that of the FTC—noting that the two provisions have the “same general purposes.”<sup>22</sup>

<sup>20</sup> *Id.* at 1429-31.

<sup>21</sup> See *Am. Airlines v. N. Am. Airlines*, 351 U.S. 79, 82 (1956) (“we may profitably look to judicial interpretation of [Section] 5 as an aid in the resolution of questions raised under [Section 41712]”); *Pan Am. World Airways, Inc. v. United States*, 371 U.S. 296, 306 (1963) (explaining that the “words ‘unfair practices’ and ‘unfair methods of competition’ as used in [section 41712]... derive...from the Federal Trade Commission Act”); *United Air Lines, Inc. v. C.A.B.*, 766 F.2d 1107, 1111-1112 (7th Cir. 1985) (“[S]ection [41712] is essentially a copy of section 5 of the Federal Trade Commission Act.”).

<sup>22</sup> *Carrier-Owned Computer Reservations Systems*, Notice of Proposed Rulemaking, 49 Fed. Reg. 11644 (March 27, 1984) (“Section [41712] was patterned—indeed is virtually identical to—section 5 of the Federal Trade Commission Act.”); see also *Computer Reservations System (CRS) Regulations*, 69 Fed. Reg. 976, 994 (Jan. 7, 2004) (codified at 14 C.F.R. 255) (acknowledging that “Congress modeled [its] authority under section [41712] on the Federal Trade Commission’s authority under section 5 of the Federal Trade Commission Act”).

The FTC engages in a different analysis depending on whether it is regulating an act as unfair or deceptive. While both analyses involve application of a multiple factor test, there is a substantial difference between the two with respect to the foundation the Commission must lay to appropriately find a practice unfair or deceptive. As described below, the FTC is obligated to identify a concrete, substantial injury to consumers when regulating a practice as unfair.<sup>23</sup> When regulating practices deemed to be deceptive, however, the Commission is not required to prove any actual injury to consumers—the practice at issue merely must have “the tendency or capacity to deceive.”<sup>24</sup> In fact, courts have held that the Commission may determine whether a practice is deceptive “on the basis of common sense and experience, without taking testimony about consumers’ actual behavior.”<sup>25</sup>

While the Commission has broad authority to determine what qualifies as a deceptive practice, courts have limited that authority somewhat with a three part test. In finding a practice to be deceptive under Section 5, the Commission must establish: “(1) there was a representation; (2) the representation was likely to mislead customers acting reasonably under the circumstances, and (3) the representation was material.”<sup>26</sup> Despite application of this test, however, the Commission’s obligation to set a foundation for a deceptive practices

<sup>23</sup> See *infra* notes 27-32 and accompanying text.

<sup>24</sup> *F.T.C. v. Tashman*, 318 F.3d 1273, 1283 (11th Cir. 2003); see also *F.T.C. v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1072 (C.D. Cal. 2012) (noting that “proof of actual deception is unnecessary”).

<sup>25</sup> *United Air Lines, Inc. v. C.A.B.*, 766 F.2d 1107, 1112 (7th Cir. 1985); (citing *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391–92 (1965)).

<sup>26</sup> *Tashman*, 318 F.3d at 1277.

determination appears substantially less exacting than that required for a more amorphous finding of unfairness.

Thus, while the FTC has the ability to prohibit *deceptive* practices without offering proof of actual deception, its ability to regulate *unfair* practices is subject to more stringent requirements. Following a series of increasingly expansive rulemakings in the late 1970s – culminating in the FTC’s controversial “Kidvid” rulemaking—Congress (and the Commission itself) took steps to constrain the FTC’s unfairness authority.<sup>27</sup> Ultimately, the FTC adopted—and Congress codified—a specific three pronged standard for determining whether a potentially unfair practice is prohibited under Section 5.<sup>28</sup> To trigger the Commission’s Section 5 regulatory authority, an alleged injury must satisfy the following tests: “(1) the respondent/defendant has engaged in an act or practice that caused, or is likely to cause, substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury to consumers is not outweighed by countervailing benefits to consumers or to competition.”<sup>29</sup> Furthermore, the FTC has noted that its application of Section 5 is guided by an overarching goal of addressing only market imperfections stemming from “seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.”<sup>30</sup>

<sup>27</sup> Letter from Federal Trade Commission to Senators Ford and Danforth (Dec. 17, 1980), reprinted in H.R.Rep. No. 156, Pt. 1, 98th Cong., 1st Sess. 33–40 (1983) (hereinafter “Policy Statement”). The Commission’s unfairness test—as set forth in the Policy Statement—was codified by Congress in 1994 at 15 U.S.C. § 45(n).

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Timothy J. Muris, Chairman, Federal Trade Commission, to the United States Department of Transportation (June 6, 2003).

<sup>30</sup> Policy Statement at 36.

While DOT is not formally bound by the FTC's approach, the Department has adopted aspects of the FTC's standard when considering potentially harmful practices under its own consumer protection authority. For instance, in a recent proceeding regarding the use of cell phones on commercial aircraft, DOT explained that it "has found acts to be 'unfair' if they are harmful to passengers but could not be reasonably avoided by passengers."<sup>31</sup> Furthermore, in a rulemaking conducted by the CAB—after adoption of the ADA—the FTC's standard for determining unfairness was adopted almost verbatim by the CAB: "Under section [41712], conduct may be found unlawful because of its effects on consumers if (1) it causes substantial consumer injury, (2) that is not outweighed by any consumer or competitive benefits from the conduct, and (3) the injury cannot reasonably be avoided by consumers."<sup>32</sup> Arguably, if DOT has opted to import the FTC standard—almost verbatim, as evidenced above—the standard should be imposed in accordance with the guidelines discussed.

#### **D. DOT's Proposed Rule Fails the Established Tests**

It is clear that the proposed rule on the display of ancillary services fails to satisfy any of the FTC tests discussed above.

For example, the proposed rule requiring carriers to provide ticket agents with "usable, accurate, and current" information on ancillary fees seems to exceed the scope of DOT's unfairness authority when considered under the FTC's standard. First, DOT must point to some tangible substantial injury to

<sup>31</sup> *Use of Mobile Wireless Devices for Voice Calls on Aircraft*, Advanced Notice of Proposed Rulemaking, 79 Fed. Reg. 10,049, 10,051 (Feb. 24, 2014).

<sup>32</sup> *Carrier-Owned Computer Reservations Systems*, 49 Fed. Reg. 32,540, 32,547 (Aug. 15, 1984) (codified at 14 C.F.R. pt. 255).

consumers resulting from carriers not providing ancillary fee information to ticket agents. As discussed above, while the injury asserted can be based on aggregate harm to a large group of people, it cannot be merely speculative or trivial. Furthermore, as the FTC recognized in its Policy Statement, most injuries deemed to be substantial involve monetary harm.<sup>33</sup> Considering the fact that charges for bags and premium seating are a common industry practice—and that most consumers are aware that fees are associated with these ancillary services—it is difficult to see how requiring ticket agents to retrieve ancillary fee information on their own from readily available public sources results in any concrete harm to consumers.

Moreover, as DOT recognizes in the NPRM, carriers already provide ancillary fee information on their own websites.<sup>34</sup> As a result, while it might be more convenient to ease consumer access to this information at the point of sale—regardless of which entity sells the underlying airline ticket—consumers and agents acting on their behalf can reasonably avoid potential harm simply by visiting an airline’s website (or one of the many third party websites providing such information). As a result, consumers have ample opportunity to avoid any harm without DOT inserting itself into the process. Viewed in the context of DOT’s stated intent to avoid unnecessary interference in the market, as well as in light of the fundamental purposes of the ADA, this rule clearly exceeds the scope of DOT’s authority.

<sup>33</sup> Policy Statement at 36.

<sup>34</sup> *Id.* at 17.

**E. DOT's Proposed Rules Clearly Contravene Congress's Deregulatory Intent in Crafting the Airline Deregulation Act and thus Exceed the Department's Regulatory Authority**

As DOT continues to build on prior regulations to expand its oversight of the airline industry, it seems increasingly clear that the Department is no longer confining itself to protecting consumers against unfair and deceptive practices, but is engaging in a tacit reregulation of the industry. Litigation surrounding the FDA's attempts to regulate cigarettes serves as a helpful analogy.

In *Food & Drug Administration v. Brown & Williamson Tobacco Corp.*, the Supreme Court considered a challenge to the FDA's assertion of jurisdiction to regulate cigarettes.<sup>35</sup> The Court began its analysis by considering whether Congress had directly addressed the question of FDA authority over cigarettes. Noting that "a reviewing court should not confine itself to examining a particular statutory provision in isolation...[when] determining whether Congress has specifically addressed the question at issue," the Court considered the FDA's authority in the context of the broader "statutory scheme" involved.<sup>36</sup> The Court ultimately concluded that while no statutes directly prohibited the FDA from regulating cigarettes, the broader statutory scheme governing drug regulation in general—and the regulation of cigarettes in particular—unambiguously precluded the FDA from doing so.<sup>37</sup>

The Court first considered the FDA's authority under the Food, Drug, and Cosmetic Act (FDCA), concluding, essentially, that the FDA's authority involved

<sup>35</sup> 529 U.S. 120 (2000).

<sup>36</sup> *Id.* at 132-33.

<sup>37</sup> *Id.* at 125-26.

determining whether drugs and devices were safe and could thus be permitted in the marketplace. Furthermore, the Court found that under the FDCA, the FDA is required to deny market access to drugs and devices it deems to be unsafe.<sup>38</sup> Because the FDA had long argued that cigarettes were unsafe, the Court concluded that if the FDA did in fact have jurisdiction to regulate cigarettes, it would be required by the FDCA to prohibit them from being sold.<sup>39</sup> Considered in concert with several post-FDCA laws relating to various aspects of tobacco product regulation, the Court ultimately determined that Congress had clearly not granted the FDA authority to regulate tobacco products.<sup>40</sup>

As the Court in *Brown & Williamson* stated, agencies “must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.” Based on the clear legislative intent—embodied in the ADA—to largely free the airline industry of economic regulation, DOT has clearly “extended the scope” of its consumer protection authority “beyond the point where Congress indicated it would stop” by expanding its regulatory authority under the unfair and deceptive practices exception to deregulation. Based on the broad statutory scheme governing regulation of the airline industry, Congress has unambiguously expressed its intent to achieve “maximum reliance on competitive market forces” and promote “the best interests of airline passengers...by allowing the free market to operate.”<sup>41</sup> As a result, DOT’s efforts

<sup>38</sup> *Id.* at 134.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 161 (noting that “an administrative agency’s power to regulate in the public interest must always be grounded in a valid grant of authority from Congress”).

<sup>41</sup> *Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422, 1430 (2014).

to expand its economic regulation of the industry lack “a valid grant of authority from Congress.”<sup>42</sup>

### **III. Cost – Benefit Analysis**

During its consideration of the NPRM, DOT gave IATA and A4A the opportunity to provide input to be considered in the required Regulatory Impact Assessment (RIA). A noted economist retained by IATA and A4A completed a study that demonstrated that any suggestion that the benefits of a requirement that airlines display ancillaries through the indirect channel would have difficulty withstanding serious cost benefit analysis. Unfortunately, the RIA that has been offered by DOT in the NPRM only confirms our conclusion that the proposed rule cannot pass this mandatory test.

Presidential Executive Order 13563 sets out the general principles of regulation and rulemaking, requiring DOT to: ‘propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs’ and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.” In other words, any new federal regulation should be supported by a cost-benefit analysis that shows a clear net benefit.

The RIA accompanying the NPRM shows that quantified costs outweigh monetized benefits by a factor of three to one. In fact, the RIA shows no benefits at all for most areas of the proposed regulation. It is not surprising that the RIA shows negative impacts given the lack of a clear or compelling rationale for regulatory intervention. Indeed, the RIA shows net costs for each cost-benefit

<sup>42</sup> *Brown & Williamson* at 161.

category that was quantified. Nonetheless, the NPRM justifies proceeding with the rule-making based on consideration of asserted but unproven non-monetized impacts. However, DOT provides no credible arguments why non-monetized benefits would be expected to be much larger than the quantified cost impacts.

Search cost savings are a critical parameter in this cost-benefit analysis. In undertaking this analysis, the RIA proposes answers to the following core questions on search: how many passengers would realize time savings under this mandate and how much search time would be saved? The proposals set out in the NPRM would only potentially reduce costs for passengers:

- booking on an airline that sells its base fare through the indirect channel;
- who need the ancillaries mandated by DOT; and
- for whom a search is required.

The RIA analysis concludes that less than 1% of passengers would benefit from this mandate. However, the costs of providing information that is of no or little value to 99% of the travelling public would be paid by all passengers. The average time saving set out in the RIA is approximately 4 minutes per transaction, yet the RIA acknowledges that this estimate is not based on any kind of robust input data. In fact, as will be described below, the rule as currently envisioned would likely substantially increase search time (due to the amount of data needed to be queried to present the ancillary price and the amount of information being proposed to be included in the start page) for all consumers, not just those who are interested in purchasing ancillaries.

Another important element of DOT's justification for the rulemaking proposals is that they would increase competition and reduce fees. Although no attempt is made to quantify this potential benefit, it serves as a primary foundation for the suggestion of non-monetized benefits. However, we believe that these proposals would have no positive impact on competition or fares on ancillaries. To the contrary, as noted above, provisions that in effect would serve to eliminate variable pricing solutions would sharply reduce competition in ancillaries. This in turn could result in higher base airfares (to make up for lost ancillary revenue) and cause airlines to remove such features as premium economy seats.

DOT's approach to non-monetized benefits is open to challenge on at least two fronts. First, the RIA states that the per-passenger benefit associated with the non-monetized benefits that would be required to shift the cost-benefit analysis from negative to positive is less than one cent. Based on the findings of the quantitative analysis, this is not an appropriate test. Monetized costs outweigh monetized benefits by a factor of three to one. Moreover, the one area for which benefits have been quantified is the largest cost area, accounting for 50% of total monetized costs. DOT provides no credible evidence to support the view that non-monetized benefits would exceed costs by a similar scale.

Secondly, the RIA assumes that all consumers would benefit equally from the Proposed Rule. That this is highly unlikely is illustrated by the fact that by DOT's own calculations, of 261 million tickets sold by reporting carriers, only 2.5 million passengers, or less than 1% of the total, would save time purchasing

ancillary products as a result of the proposals set out in the NPRM. If the per-passenger allocation of non-monetized benefits only considers those passengers that DOT estimates would benefit, then the threshold required to deliver a positive benefit-cost ratio would be much higher than the one cent proposed by DOT. Further, as noted above, the time savings is spurious even for this subset of passengers and the time effect will be highly negative for all passengers due to lost time awaiting search results from overburdened IT systems attempting to display the multitudes of variables inherent in these ancillaries. Passengers seeking only the base fare and schedule will have to navigate multiple search screens, because the first screens will be taken up with DOT-mandated ancillary information. Permitting roll-overs and pop ups does not cure this problem.

We therefore conclude that DOT has failed to demonstrate that the cost of this rule (either monetized or non-monetized) is less than the benefit offered to consumers. We endorse the comments and analysis of the DOT cost benefit analysis presented by economist Daniel B. Rubinfeld that accompanied the comments of Airlines for America in this proceeding.

#### **IV. The Proposed Rule on the Display of Ancillary Services Is Unnecessary**

Quite apart from whether the Department agrees that the enhanced access to information about ancillary services and fees that travellers enjoy today divests it of the ability to regulate in this area, or that the proposed rule fails the benefit-cost analysis required by Executive Order 13563, the rapid changes currently taking place in distribution, as described in greater detail below, should make clear that (1) there is simply no need for the proposed regulation, and (2)

any effort to promulgate a static rule would actually visit harm on consumers by encouraging a suboptimal solution less capable of supporting meaningful competition in the ancillaries category than is likely to be produced from the industry's own emerging solutions.

**A. The Rapidly Changing Airline Distribution Landscape Is Making Information about Ancillary Services Readily Available to Travelers**

In the NPRM, DOT repeats the same justification for this proposed ancillary rule that it relied upon when it was first considered more than three years ago: “we believe that consumers continue to have difficulty finding ancillary fee information”<sup>43</sup> and that “the Department remains of the view that . . . passengers need to be protected from hidden and deceptive fees and allowed to price shop for air transportation in an effective manner.”<sup>44</sup> While the Department acknowledges that it lacks “sufficient data to be able to quantify the extent of this problem for consumers”<sup>45</sup> or to show that the costs of complying with this proposed rule do not exceed the benefits to consumers, it concludes that regulation is necessary and appropriate under the “unfair and deceptive” standard.

In addition to the absence of any evidence of unfair and deceptive practices, there is no justification for DOT to intervene in this market at this time. Airline distribution has fundamentally changed since this issue was first raised more than three years ago. When airlines first unbundled, it was not clear to

<sup>43</sup> 79 Fed. Reg. 29975.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

anyone (including the airlines themselves) that customers would value these ancillary services to the degree that they do today nor that the revenues generated could represent the difference between a profitable and unprofitable business. Today, airlines are committing substantial resources to provide customers with complete information about the ancillary services they offer with the goal of selling as many of them as possible. As competition among airlines on these ancillaries grows, the risk airlines run for presenting opaque or confusing ancillary offers increases substantially. Airlines do not need regulation to tell them that they need to offer ancillaries in a user friendly manner through all sales channels.

It is also important to note that consumer behavior and experience in ancillaries has changed substantially since they were first offered by carriers. Experienced travellers both are well aware that most airlines charge for bags and advanced seat selection and are very familiar with how to navigate airline websites and third party sites that aggregate and compare this information. DOT should not be imposing costly regulations on a deregulated industry for the benefit of the very small percentage of travellers who consider the cost and scope of ancillaries a key part of their airline ticket purchase evaluation but lack the skill to access this widely available information.

Further, in terms of the agent channel, neither DOT nor consumer groups have offered any credible evidence that travel agents (traditional or OTAs) today have difficulty obtaining complete information on airline ancillaries through their own channel (via the GDSs that have contracted with airlines to distribute this

information), through airline websites or through third party websites. Simply put, DOT should not propose to address through a regulation a shortcoming that does not exist.

Today those that called for this regulation and those opposed to it are working together to meet the needs of the consumers whom the Department is proposing to help. They are doing so in a vibrant marketplace where strong competitors negotiate agreements that are consistent with their economic requirements. The competitive market place, not the threat of government intervention, has driven industry players to work together to enhance the transparency of airline distribution.

The market evolution is addressing the needs of consumers identified by the Department in this NPRM. For the reasons stated below, we believe that government regulation will harm, rather than encourage, this positive distribution revolution.

A review of the market developments by channel since concern about the transparency of ancillary services and fees was first expressed will support this conclusion:

- 1. Direct Distribution**

When this rule was first contemplated, airline websites offered only content similar to that available from to the OTA websites and traditional travel agencies: price and availability of baseline tickets. There was little information on the ancillary services being offered by the carrier or any significant opportunity for consumers to personalize their travel.

Since then, airlines have made substantial investments in Internet based technologies to market their ancillary services through their own websites. Airlines are seeking to do what other industries do in merchandising their products and services: offering their customers the right product or service at the right time and at the right price. In order to achieve this, the airlines need to have the capability to factor in a multitude of factors (outside price and availability) that will present a result that meets both consumer and airline needs. Most leading airline websites now enable passengers to personalize their travel experience through the effective management of both their base ticket and their desired ancillary services. Further, airline websites provide passengers the added option (not requirement) to authenticate themselves and receive special travel offers based on their particular status. We are witnessing a market evolution that will fundamentally change the way customers purchase commercial aviation.

While more work needs to be done, airline websites today already offer the most comprehensive and accurate information on airline ancillaries available in the marketplace and that consumers (and travel agents) have full access to that information. Today, consumers also can access so-called "meta-search" websites that also compile information about ancillary services available on airline websites and enable comparison between competing offers.

At the time this rule was first conceived, some consumer groups argued that airline websites hid the true cost of core ancillaries in a manner that was both unfair and deceptive. DOT addressed this perceived direct channel shortfall in Consumer Rule II by requiring airlines to display ancillaries in a transparent

manner. As such, airline websites today present ancillary information in a manner that DOT has determined meets consumer needs. Airlines' interests in selling ancillary services and the Department's enforcement authority guarantee wide compliance with Consumer Rule II.

In the NPRM, DOT contends that consumers cannot rely on airline websites to determine the cost of travel since airlines provide ranges of fees for ancillary services in a static format. Rather than fraud or deception, this evidences the complexity of capturing the wide variety of factors that are considered when dynamically setting the price for a specific ancillary for a specific customer. It is important to note that DOT has nowhere suggested that consumers do not know the price of ancillary services before they purchase them, nor that customers that have a pre-existing relationship with the airline are often eligible for discounts on the base ancillary fee.

## **2. Indirect Distribution**

When the possible need for this NPRM was first discussed, the GDSs argued that regulation was required because airlines and GDSs were unable to come to agreement on the distribution of ancillaries through the agent channel, i.e. that the market was broken. Today, it would be difficult, if not impossible, to sustain such a claim.

IATA's quick review of public announcements by the three major GDSs identifies 53 different agreements between airlines and GDSs to enable the GDSs to distribute ancillary services directly to agents, with many more in the

pipeline.<sup>46</sup> These include six of the top eight global airlines distributing through GDSs.<sup>47</sup> In its comments, A4A notes that the three largest U.S. carriers are already distributing seat and baggage information via three GDSs.

It should come as no surprise to DOT that GDSs are reaching agreements with airlines to distribute ancillary services directly to the agent channel rather than through the legacy fare filing system. The market dictated that the airlines needed systems to support the distribution of their unbundled products and services in a manner consistent with those offered via the airline websites. While presentation of these ancillaries is possible via fare filing (as evidenced by the filing of baggage allowance information as required by Consumer Rule II), that legacy network does not allow for the type of dynamic pricing and merchandising airlines today are employing through their direct channel. The GDSs decision to evolve their own business to deliver airline ancillary offers via proprietary Internet based platforms directly to agents rather than through the legacy distribution network (in which they have had a substantial investment) is the best evidence available that the industry is committed to leveraging capabilities that were not available when the current distribution infrastructure was created more than 30 years ago. While airline/GDS negotiations are never simple or easy, rarely does a week go by that an airline/GDS ancillary agreement is not announced. The entire market has moved quickly to address the need that DOT perceived three years ago.

<sup>46</sup> See Attachment 1 hereto, a slide listing agreements identified via Google search as well as A4A's comments outlining specifics on those agreements.

<sup>47</sup> American, Delta, United, Lufthansa, EasyJet, Air China. The only two major global airlines that have not announced ancillary agreements with the GDSs are China Eastern and China Southern.

### 3. New Distribution Capability (NDC)

The NPRM acknowledges that carriers (supported by IATA) are developing an Internet-based data transmission standard to support the distribution of ancillaries through the agent channel. While DOT is quick to dismiss NDC as a potential near term solution, it is clear that this development along with the change in the GDS model evidences the fact that (1) airlines are committed to providing consumers as much information as possible about ancillaries and (2) the industry as a whole is moving quickly to provide consumers full content on all ancillaries. The September 3, 2014 announcement that Amadeus would support United's delivery of premium seating through the indirect channel using the NDC standard is the first of what is expected to be many such deployments of this global standard in the future.

In its approval of Resolution 787, the enabling resolution for NDC, the Department noted that 787 could "facilitate the marketplace development of distribution practices and channels that would make it easier for consumers to compare competing carriers' fares and ancillary products across multiple distribution channels, make purchasing more convenient, allow carriers to customize serve and amenity offers, and increase transparency, efficiency and competition."<sup>48</sup> Any development and implementation of a new global industry standard takes time, particularly one that on the one hand could fundamentally change a more than 30-year old way of distributing through this channel and on the other offers the promise of achieving the public benefits outlined in the DOT

<sup>48</sup> Order to Show Cause on Agreement Among Member Carriers of the International Air Transport Association Concerning an Agreement (Resolution 787) of the Passenger Services Conference, May 21, 2014, page 9.

decision. The controversy surrounding the initial filing of 787, the eventual agreement on conditions to be imposed on 787 and the yearlong review before DOT approved the Resolution are all evidence of the fact that implementing global standards is both difficult and time consuming.

The same was true when IATA supported the development and implementation of such critical industry standards as tickets, bar coded boarding passes and common use self-service kiosks. When this proposed rule was first envisioned three years ago, NDC was only a concept. Today, it offers to provide the transparency and efficiency DOT is seeking through this NPRM. To simply dismiss it just as it enters the market adoption phase and when the Department itself lauds the opportunities it presents seems counterintuitive.

In sum, since this rule was first conceived, the market has moved to address the need for broad and accurate information flow from airlines to consumers on ancillary services. Today, airline websites present consumers with both full information on available ancillaries prior to purchase and also the ability to personalize their travel experience. Travel agents access those websites to support their customers' travel requests because they know it is the most reliable information available. GDSs are developing and marketing platforms to support airlines in presenting the information on the airline website to travel agents. The airlines are developing a data transmission standard to make this flow of information between airlines and agents more efficient and robust. DOT has required that the ancillary information being presented be usable,

accurate and current by aggressively enforcing Consumer Rule II.<sup>49</sup> Given all of these developments, it is difficult to identify a justification for further government intervention.

#### 4. The Proposed Rule

In the NPRM, DOT indicates that it is seeking solutions that “find the most beneficial disclosure rule for consumers while avoiding any adverse impact on innovations in the air transportation marketplace, contract negotiations between carriers and their distribution partners, and a carrier’s ability to set its own fees and fares in response to its commercial strategy and market forces.”<sup>50</sup> This is an extremely difficult task and one that DOT should approach with great care.

In an attempt to thread a very small needle, DOT is proposing to require that carriers present information on their website as well as to travel agents (either directly or through GDSs) on what it considers three core ancillary services: first and second checked bag, one carry-on item and advanced seat selection.<sup>51</sup> In the direct channel, this information would have to be expressed as specific charges by itinerary or by passenger (if the passengers chose to identify themselves). In the indirect channel, travel agents would be required to display the information in an itinerary specific fashion. Fee information would need to be displayed adjacent to the first page on which a fare is requested for a specific itinerary. Information provided would have to be “usable, accurate and current.”

<sup>49</sup> *Enhancing Airline Passenger Protection; Final Rule*, 76 Fed. Reg. 23, 110 (April 25, 2011).

<sup>50</sup> 29 Fed. Reg. 29977.

<sup>51</sup> IATA’s comments only address the checked baggage and advanced seat selection. We are not aware of any IATA member airline that charges for carry on items.

It is useful to consider the direct and indirect channel separately when considering this regulation.

As noted above, the airlines have invested in Internet based technologies to ensure that they are providing their customers usable, accurate and current information on the ancillaries via their website and that they also present those ancillaries in a way that best meets the needs of the specific airline customer. This includes personalization, packages as well as rewards for customers who have established a prior relationship with the airline. It also includes the airline's judgement on how best to present the information on the ancillaries being offered. For DOT to decide for the airlines how to display this ancillary information would in effect substitute the government's judgement for an airline's commercial strategy in clear contravention of the Airline Deregulation Act's mandate that the Department place "maximum reliance" on the competitive market.<sup>52</sup>

The control airlines have over their direct channel does not necessarily mean that the retrofit called for by the NPRM will be a simple task. For example, airlines may not have optimal access to pricing or availability of seat assignments (for example) on code share partners' flights marketed through the airline website. The same is true on seat pricing for multi-segment itineraries when seat assignments are priced differently and/or may be unavailable in some segments. Returning accurate ancillary pricing on the first search screen for searches involving multiple individuals whose identity is not known to the carrier is

<sup>52</sup> See footnotes 8 and 9, *supra*, and the accompanying text.

something that may not be achievable today. Finally, the amount of data that carriers would have to pull to make this ancillary pricing available on the first search screen would slow the basic flight and schedule search process significantly, by one airline's estimate by six to ten seconds per search.

The challenges of meeting the proposed DOT requirements are significantly higher via the indirect channel, in which airlines are a secondary player with little direct control over how their products and services are delivered. To its credit, the NPRM acknowledges this fact by placing some responsibilities on agents and GDSs to deliver this ancillary information. That being said, a mandate focused primarily on requiring airlines to display ancillaries through a channel airlines do not control will inhibit achievement of DOT's goals in this regulation. When considering how to achieve these goals, it is important to consider how this information should be delivered, what barriers exist to the delivery of this information, and what is a reasonable timeline to deliver this information in the format DOT is seeking.

## **5. How to Deliver the Information**

As noted by carriers on numerous occasions prior to the issuance of the NPRM, the airline product being offered today is significantly different than it was 30-plus years ago when much of the industry distribution infrastructure was first developed. The main frame – dumb terminal approach to computing, with its reliance on slow and expensive telecoms, has been replaced by the distributed computing architecture with the Internet providing universal connectivity. This in turn has enabled airlines to directly manage and market their product and service offerings through their websites to every potential consumer and now with NDC

to all their agents as well. At that time there was no prospect for a network connection between airlines and their agents – they needed an intermediary that would take care of connections to agents and to whom the airline could supply pricing and schedule information via the filing agencies (typically ATPCO and OAG) with just seat availability being advised through teletype messages between airlines and the GDSs.

As business and customer needs changed and the Internet provided universal connectivity, airlines began to seek better ways to distribute their products and services through the indirect channel. It is for this reason that IATA has supported its member airlines in the development of an Internet-based data transmission standard for direct communication between airlines and travel agents. It is also why the GDSs have marketed Internet based proprietary platforms (and more recently the NDC global standard) to enable airlines to deliver this information to agents.

IATA is concerned that a DOT regulatory requirement to deliver this information on these ancillaries via the agent channel could have the unintended consequence of shifting the current market momentum from Internet based dynamic solutions to inferior solutions offered by the legacy infrastructure. The GDSs are adopting Internet based solutions because their airline partners demand this rich, dynamic capability. A DOT mandate to deliver this data in the short term could force both the airlines and the GDSs to fall back to the legacy platform to deliver this information. While that platform has evolved to allow for more up-to-date data to be delivered via the GDS network, it does not

accommodate the desire of airlines to prepare and deliver dynamic offers directly to agents to meet their customers' particular requirements. In order to make the information "usable, accurate and current" airlines would have to eliminate most of the pricing variables in favor of more one-price-fits-all offers. This will likely not be as attractive from a cost perspective to consumers who may otherwise have benefitted from lower prices from dynamic pricing and or free ancillaries based on their relationship with the airline. Further, it will impede airlines' ability to market and price their products in a manner they consider optimal to meet their business needs, a consideration DOT acknowledges as valid in its NPRM.<sup>53</sup>

IATA's concern is that DOT's proposed rule could serve to impede progress being made in modernizing the distribution platform to meet the needs of both airlines and their customers. Whether or not NDC is the ultimate global solution, it is hard to dispute that the Internet enables the transmission of rich dynamic content that offers consumers shopping capabilities that are preferable to that being offered by the indirect channel today and closer to those DOT is striving for via this regulation.

An example of our concern about this approach can be found via DOT's requirement in Consumer Rule II related to baggage allowances and fees<sup>54</sup> and baggage notice.<sup>55</sup> The short time frame for compliance with the rule established

<sup>53</sup> The NPRM notes that "the Department is striving to find the most beneficial disclosure rule for consumers while avoiding any adverse impact on innovations in the air transportation marketplace, contract negotiations between carriers and their distribution partners, and a carrier's ability to set its own fees and fares in response to its own commercial strategy and market forces." 79 Fed. Reg. 29977.

<sup>54</sup> 14 CFR 399.87.

<sup>55</sup> 14 CFR 399.85(c).

by the Department necessitated a sub-optimal solution that effectively prevented carriers from dynamically pricing baggage services that, in a competitive environment, would likely have resulted in lower bag fees for some passengers.<sup>56</sup>

The baggage example demonstrates the unintended adverse impact such government action can have this ability of airlines to set their own fees and fares competitively in the interest of consumers.

Complying with the Department's baggage rule was a complex process that took the industry almost two years to complete via the legacy fare filing system. However, the filing of approximately 600 bag fees pales in comparison to what could be more than a million variations of advance seat selection, a product that many airlines price dynamically today through their own websites and other distribution methods in which they participate. Again, IATA is concerned that near term DOT deadlines will force airlines to revert to suboptimal solutions that eliminate their ability to merchandise their products in a manner that meets their customer and business needs.

It is important to note that this mandate as set forth in the NPRM would not only eliminate dynamic pricing in the agent channel. It is not practical or in some cases contractually permitted for airlines to sell products/services through their website dynamically and offer more static fares through the agent channel. DOT's action would therefore have a dramatic negative impact on the ability of airlines to merchandise their products and services through all channels or, in DOT's words, to "set [their] own fees and fares in response to its commercial

<sup>56</sup> 79 Fed. Reg. 29977.

strategy and market forces.” One airline estimates that this could result in the airline industry losing up to \$100 million in annual revenue, not including the investment already made in differentiated seat products. This in turn could have passengers paying more for airline services than would have been possible absent a DOT mandate and losing the variety of seat selections that they enjoy today.

DOT has asked for comments on two options for the delivery of this information via the agent channel: distribute the ancillary information to ticket agents and GDSs or simply to ticket agents. While IATA appreciates this apparent attempt on DOT's part to accommodate airlines' expressed concerns about GDS market power, we do not consider this an appropriate choice for DOT to make. DOT's goal, repeated throughout the NPRM, is to ensure that customers using the indirect channel to purchase commercial aviation products and services have access to usable, accurate and current information on three ancillaries. DOT also clearly states that it is up to the carriers to decide how to deliver that information:

This requirement would place a legal obligation on carriers to disseminate this information to all of their agents; however, the Department is not stating the methods the carriers must use to distribute the information, as long as it is in a form that would allow the fee information to be displayed on the first itinerary specific results page in a schedule/fare database. Carriers would be free to develop cost effective methods for distributing this information to their agents. Carriers could use existing channels, such as filing the fee information through the ATPCO, or they could develop their own systems to disseminate the information, in conjunction with the agents who would receive the information.<sup>57</sup>

<sup>57</sup> 79 Fed. Reg. 29978.

If DOT decides, despite the principled objections of the airline industry to intervene in this marketplace, it should follow its own rationale and give the carriers the ability to decide how best to meet the rule's requirements. As noted above, the distribution market is evolving and the industry players' role in that market is evolving (including airlines, agents and GDSs). For practical purposes, a short DOT timeframe for compliance would almost certainly require airlines and GDSs to collaborate to determine how best to provide baseline information through the legacy platform (as noted above, a result we would hope DOT would not seek to encourage). Over the longer term, airlines may choose to deliver these ancillaries directly to agents, with or without GDS involvement (depending on a multitude of business, contractual and technical factors that cannot be assessed at this time). It is the end result, not proposal one or proposal two, that counts. The NPRM places the burden on airlines to deliver this information to agents. If DOT decides to finalize this rule despite ample evidence that it is not needed, it should at a minimum allow airlines to decide how to meet the requirement.

We also remain concerned that any requirement that carriers deliver this information to the GDSs will interfere unfairly with airline-GDS business negotiations. As noted above, carriers and GDSs have enjoyed significant success negotiating agreements on delivery of ancillary services from airlines to agents via the GDS without any government interference or mandate. DOT's wise decision not to regulate that market in Consumer Rule II permitted the market to work by allowing an exchange of value between the airlines and GDSs

for this content. This has strengthened the airline industry and benefitted consumers. To require now that carriers deliver this information through the GDSs would take away one key tool in any negotiators' arsenal: the ability to walk away from the table. Armed with DOT's proposal rule, the GDSs could insist on terms that are not only to their advantage, but also maintain their current market dominance. Since there is clearly no market failure and the industry is moving quickly to support rich content, there is no call for any proposed requirement that in effect would put a finger on the negotiating scale this way.

DOT also asks whether the Department should set design standards for the transmission of ancillary fee data from airlines to agents and agents to consumers. IATA strongly opposes any suggestion that governments have the ability or authority to set standards for airline distribution. DOT is not equipped, competent or authorized to dictate how a private industry delivers its products or services, particularly in a complex industry like commercial aviation. As such we would strongly oppose any DOT effort to establish a particular transmission standard. As the Department knows, IATA strongly believes NDC will improve transparency, enhance innovation and encourage new market entry. NDC should stand or fall based on market needs, not government mandate.

## **6. Barriers to Success**

As noted earlier, IATA does not agree that DOT needs to address distribution issues through regulation to meet the needs of the airline consumer. However, if DOT nevertheless chooses to regulate, it must recognize that there would be market barriers to satisfying these regulatory requirements that are beyond the control of the airlines.

We anticipate that GDSs and agents will argue that the fact that airlines and GDSs have entered into contracts to deliver ancillaries to the agent channel is proof that this can be done in an efficient and timely manner once a government mandate is in place. Actually, the opposite is true. Airlines have demonstrated the capability to deliver ancillaries via the agent channel either directly or through the GDSs using Internet based technologies. Overcoming GDS and agent barriers to the seamless delivery of these ancillaries is always challenging. The GDSs' financial and contractual requirements severely limit the ability of airlines to deliver ancillaries in the manner in which airlines want them delivered. While agents are eager to display new content, they are resource constrained and resistant to any system that could undermine their economics. Those economies are driven more by GDS booking fee splits than airline or passenger commissions or fees.

Putting the business issues aside, GDS and agent inability to support dynamically priced ancillaries and agent unwillingness to expend the resources to present these offerings to consumers also prevent air travellers from receiving the information they seek and impede the ability of airlines to achieve their indirect channel goals. Airlines have worked hard with GDSs to overcome these barriers but these negotiations and subsequent implementations take time and expense. A government mandate on one party (airlines) to deliver a product that depends on the capabilities and good will of three parties (airlines, GDSs and agents) will get DOT no closer to its goal in this regard. Any rule promulgated in

this connection needs to be clear that travel agents will be held accountable and liable for any failures to display the required ancillary information.<sup>58</sup>

One of the biggest impediments carriers will encounter in attempting to meet DOT's requirements on the three ancillaries is existing contracts between GDSs and agents and GDSs and airlines. IATA has limited information on the terms of the contracts. In its preamble to the NPRM, DOT indicated that it did not require this display of ancillary information in Consumer Rule II because it needed more information on the "contractual and historical relationships between the GDSs and the carriers."<sup>59</sup> DOT has indicated that since that rule, it has "conducted an inquiry regarding current distribution models as well as the contractual and historical relationships between the GDSs and the carriers."<sup>60</sup> Stringent bilateral confidentiality clauses preclude IATA from reviewing these contracts to determine the impact they may have on this proposed information sharing.

We understand that the GDS-agent contracts severely limit the ability of agents to access information directly from airlines. Further, carrier-GDS contracts also dictate the way in which data on base fares is presented by the carriers to the GDS. We anticipate that these clauses might be used by GDSs to require carriers to deliver ancillary information in a format of the GDSs' choosing that might be more costly and less efficient than other alternatives.

<sup>58</sup> Even in the much simpler and well-established area of codeshare disclosure, while carriers disclose the identity of the operating carriers to GDSs, DOT's own recent enforcement experience shows that agents do not always disclose this information to their customers.

<sup>59</sup> 79 Fed. Reg. 29975.

<sup>60</sup> *Id.*

Clearly, DOT recognizes the dangers inherent in attempting to navigate existing GDS contracts. First, DOT proposes to prevent GDSs from using these contracts to “prohibit travel agents, carriers, or applications software providers from integrating the ancillary fee information with information obtained by the GDSs.”<sup>61</sup> Second, DOT is proposing that GDSs work in “good faith” with carriers to allow the information to be delivered from airlines directly to agents.<sup>62</sup> While we appreciate the fact that DOT recognizes this challenge, we think that these assurances fall short of ensuring that these highly complex and multi-level contracts will not inhibit the ability of carriers to comply with these requirements in a timely way. We recommend that DOT put clear language in the final rule detailing this “good faith” standard along with enforcement mechanisms to ensure compliance. We also urge DOT to ensure that the language prohibiting GDSs from imposing charges on carriers for the distribution of ancillary fee information above and beyond that already charged for the distribution in the base fare be included in any final rule.

#### **7. Timing of Mandate**

As noted above, the industry is moving quickly to meet consumer needs for usable, accurate and current information on ancillary services via all channels. The NPRM suggests that DOT is not confident that market forces will meet consumer needs. If regulation is deemed necessary, it is important for DOT to provide the industry the time needed to meet these new requirements.

<sup>61</sup> 79 Fed. Reg. 29979.

<sup>62</sup> *Id.*

Airlines already provide usable, accurate and current information on the three ancillaries in question through their own websites, as required by the Consumer Rule II and the NPRM cites no reliable data to suggest that customers are unable to find information about ancillary pricing when booking directly with airlines.

For the reasons set forth above, it will be difficult for carriers to meet the requirements of proposed 399.85 for their own channels given the highly prescriptive nature of the rule. If DOT concludes that regulation above and beyond Consumer Rule II is required, it should simply require airlines to ensure that correct pricing of basic ancillaries is clearly disclosed to customers before making a final purchase and then let airlines decide how best to present that information. If DOT concludes that a short time frame for implementation is appropriate (two years or less), it should not require airlines to provide information beyond standard baggage fees or a range of seat fees for a particular city pair. Airlines would be unable to provide the fee specificity sought by DOT in the short term as the current distribution system does not support that functionality.

Making that information available via the agent channel as proposed under 399.90 is more problematic. If DOT establishes a short time frame for compliance (three years or less), we anticipate that airlines would have to work with GDSs and ATPCO to file static prices for the three ancillaries. While this would meet the bare essentials of DOT mandate, it would severely inhibit market progress towards rich dynamic content that is searchable, comparable and

transactable. It would roll back positive developments taking place in the market already today. It is important to reiterate that this would also reduce the ability of airlines to merchandise their products through the direct channel (as you cannot offer dynamic pricing on the direct channel when it is not available via the indirect channel). New regulation that forces airlines to revert to traditional fare filing will lead immediately to dramatic changes in the air service market that the NPRM and regulatory impact analysis ignore. Airlines will end dynamic pricing for seats since fare filing cannot support such pricing. Passengers in turn will lose access to discounted seat assignments just as they have lost the opportunity for discounted bags due to previous regulation. Air fares will increase to address the lost revenue opportunity for discounted seats and carriers will lose close to a billion dollars in investment in higher quality seats since they cannot price those seats to market.

Alternatively, the Department could avoid all of these negative consequences for consumers and the air transportation system by continuing to permit the development of a market-driven solution more robust than what a short term deadline would allow. Clearly the market is moving towards that solution – evidenced by both the 53 bilateral agreements to sell these ancillaries through the agent channel and IATA's New Distribution Capability. Given time, this market evolution will exceed DOT's requirements and thereby more fully support consumers' information and buying needs.

#### **B. Transactability**

The NPRM indicates that DOT has tentatively decided not to require that these three ancillaries be "transactable" via the agent channel and that airlines

would continue to have the ability to determine where and how its ancillary services may be purchased. We commend DOT for this element of the NPRM.

IATA strongly opposes any effort by government to prescribe how and where airlines can sell their products and services. Airlines need the right enjoyed by any other private enterprise to distribute their products and services in a way that maximizes their financial return. There has been no credible evidence offered by the GDSs or consumer groups that passengers are disadvantaged by purchasing ancillaries via a carrier website. It is unlikely that consumers would get a different result from the agent channel and the airline website unless the consumer or agent delayed making the purchase until the price changed or the commodity (seat) was no longer available. This is analogous to a consumer allowing a merchandising website to “time out,” only to find the price is different or the product is sold upon logging back in. This cannot be considered an unfair or deceptive practice under even under the broadest reading of that provision.

Transactability should not be required by government edict. Instead the GDSs and the airlines need the freedom to negotiate contracts that define economics that make sense to both sides. As noted earlier, airlines and GDSs are negotiating those agreements on a regular basis. Requiring transactability would unbalance the playing field in those negotiations, putting the GDSs in the position of being able to dictate terms to the airlines seeking to sell their products/services through the agent channel.

### **C. Summary**

In summary, the Department needs to avoid the adverse unintended consequences of its regulatory intervention. As demonstrated above, the market is moving quickly to address the needs of consumers identified by the Department. IATA believes that unless DOT is judicious in determining whether to intervene in this market, it will significantly inhibit the ability of the market to meet consumers' short and long term travel needs.

### **V. Other Provisions in the NPRM**

In addition to our concerns regarding the ancillary fee issue, we offer the following comments on the other provisions of the Consumer Rule III NPRM:

#### **A. Mistaken Fares**

IATA appreciates the Department's willingness to revisit its policy on post purchase price increases to remedy mistaken fares. IATA strongly endorses the comments of Swiss Airlines on this issue. We urge the Department to apply the unilateral mistake doctrine to these circumstances and allow the airlines to void contracts when (1) the mistake makes enforcement of the contract unconscionable; and/or (2) the other party had reason to know of the mistake. This principle has been applied across other industries and by other aviation regulatory authorities. For example, the recent Canadian Transport Agency decision on this topic stated that since those who purchased the mistaken tickets knew or should have known the fare was a mistake, there was no meeting of the minds and therefore no valid contract.<sup>63</sup>

<sup>63</sup> CTA Decision No. 177-C-A-2014, May 9, 2014; CTA Decision No. 202-C-A-2014, May 27, 2014.

**B. Customer Service Commitments for Large Ticket Agents (Part 399.80)**

IATA supports the extension of customer service commitments to large ticket agents in order to ensure consistency of the passenger experience via the direct or the agent channel. IATA opposes the extension of the 24-hour reservation hold without penalty to large ticket agents for the same reason it opposed this requirement being placed on airlines: it is neither unfair nor deceptive for an airline to treat a ticket purchase as final and immediately subject to whatever terms have been established for that fare, particularly fares that have been set at discounted levels in return for the customer's willingness to access a non refundability condition. DOT's interference in this element of the transaction clearly contravenes the Airline Deregulation Act's intention that DOT place maximum reliance on the competitive marketplace in regard to rates, routes and services. If DOT does impose this requirement it must allow carriers to decide which type of refunding they wish to offer through agents. To that end, we strongly endorse the comments of Airlines for America (A4A) on this matter.

**C. Civil Penalty Violation for Each Individual Passenger (Part 259)**

IATA strongly opposes DOT's proposal to amend the tarmac delay rule to clarify that the Department has the authority to impose penalties for tarmac delay violations on a per passenger basis. We endorse the legal analysis of this issue included in the A4A comments. The statute that forms the basis for this fine is clear: a separate violation can be imposed for each day or for each flight, but not for each passenger. DOT's determination to protect individual passengers from infrequent tarmac delays does not give the Department the right to ignore clear

Congressional language and intent and impose fines that are not commensurate with the harm suffered by individual passengers.

Respectfully submitted,



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Attachment 1

## AGREEMENTS TO SELL ANCILLARIES

Travelport	Sabre	amadeus
<ul style="list-style-type: none"> <li>• Air Canada</li> <li>• Delta</li> <li>• AA</li> <li>• EasyJet</li> <li>• Air France/KLM</li> <li>• Transavia</li> <li>• <u>Tigerair</u></li> <li>• Alitalia</li> <li>• EI AJ</li> <li>• WestJet</li> <li>• Aegean</li> <li>• Copa</li> <li>• AirAsia</li> <li>• BA/Iberia (IAG)</li> <li>• <u>Orbitz</u></li> <li>• IAL</li> <li>• United</li> <li>• Virgin Atlantic</li> <li>• Hainan</li> <li>• Air China</li> <li>• Peruvian Airlines</li> </ul>	<ul style="list-style-type: none"> <li>• United</li> <li>• <u>Finnair</u></li> <li>• Alitalia</li> <li>• EI AJ</li> <li>• EasyJet</li> <li>• Air New Zealand</li> <li>• <u>Transaero</u></li> <li>• Spirit</li> <li>• BA/Iberia (IAG)</li> <li>• SAS</li> <li>• Etihad</li> <li>• Virgin Australia</li> <li>• Qantas</li> </ul>	<ul style="list-style-type: none"> <li>• Lufthansa</li> <li>• Austrian</li> <li>• EasyJet</li> <li>• AA</li> <li>• <u>Tigerair</u></li> <li>• EI AJ</li> <li>• Spirit</li> <li>• Air Berlin</li> <li>• Air France</li> <li>• Air New Zealand</li> <li>• Alitalia</li> <li>• <u>Belair</u></li> <li>• Corsair</li> <li>• <u>Finnair</u></li> <li>• Iberia</li> <li>• <u>Niki</u></li> <li>• SAS</li> <li>• United</li> <li>• <u>Germanwings</u></li> </ul>



International Civil Aviation Organization

**WORKING PAPER**

A39-WP/140<sup>1</sup>

EC/14

5/8/16

## ASSEMBLY — 39TH SESSION

### ECONOMIC COMMISSION

#### Agenda Item 39: Economic Regulation of International Air Transport — Policy

#### SMARTER REGULATION: ENSURING THAT NO COUNTRY IS LEFT BEHIND

(Presented by IATA)

#### EXECUTIVE SUMMARY

Recognizing the value of aviation to the wider economy and society, ICAO's strategic objectives include the economic development of air transport. The Organization has also embarked on the "No Country Left Behind (NCLB)" program – which aims to ensure that all States have access to aviation's significant socio-economic benefits through the adoption of regulations consistent with ICAO policies. Regulations inconsistent with these policies act as a hindrance on aviation's ability to serve as a catalyst for economic and social development and a key contributor to the achievement of the UN's Sustainable Development Goals (SDG). Many governments have also embarked on smarter regulation initiatives, which seek to develop rules that are proportionate, clear and transparent. IATA asks the Assembly to consider incorporating such initiatives into ICAO's NCLB work, and asks governments to consider applying smarter regulation principles to the air transport sector in order to remove barriers to sustainable growth.

**Action:** The Assembly is invited to:

- a) recognize the value that aviation can deliver to a broad range of stakeholders and the contribution that aviation can make to the achievement of the Sustainable Development Goals (SDG);
- b) request that ICAO augment its "No Country Left Behind" initiative by developing a work program on smarter regulation, which could include:
  - 1) an implementation guide of relevant ICAO policy guidance, SARPs and conventions for member States, including examples of State implementation;
  - 2) capacity building sessions on designing smarter regulation approaches, at the request of member States; and
  - 3) all other relevant measures to ensure widespread knowledge and awareness of ICAO policies as well as use of guidance material on economic regulation;
- c) urge Member States in their regulatory functions to have regard for the policies and guidance material developed by ICAO on economic regulation of international air transport, such as those contained in Doc 9587, Policy and Guidance Material on the Economic Regulation of International Air Transport; and
- d) invite Member States to consider incorporating smarter regulation principles when developing and implementing air transport regulation.

<sup>1</sup> English, Arabic, Chinese, French, Russian and Spanish versions provided by IATA.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives D — <i>Economic Development of Air Transport</i>
<i>Financial implications:</i>	The activities referred to in this paper will be undertaken subject to the resources available in the 2017-2019 Regular Programme Budget and/or from extra-budgetary contributions. IATA is willing to contribute to this work.
<i>References:</i>	A39-WP/8, Consolidated statement of continuing ICAO policies in the air transport field A39-WP/66, Report on Implementation of Recommendations of ATConf/6 and Decisions of A38

## 1. INTRODUCTION

1.1 Aviation is a vital engine of the global economy. The industry flies a third of world trade by value. It transports over half of international tourists. Aviation is also a connector of nations, families and businesses. It is a direct link between the rapidly developing economies of Asia, Africa and Latin America and the more established European and North American markets.

1.2 Today, aviation supports nearly 63 million jobs and US\$2.7 trillion in global GDP. Over the course of the next 20 years, these figures are expected to rise significantly, to a total of 99.1 million jobs and US\$5.9 trillion in GDP<sup>2</sup>.

1.3 The greatest opportunity for aviation to fulfil its potential as a catalyst for economic and social development is in emerging economies. Today, aviation in the developing world supports 38 million jobs and US\$561 billion in GDP. Growth in revenue passenger kilometres is expected to be 5% per annum in emerging markets over the next 20 years, outstripping the 4.3% growth rate worldwide and the 3.5% growth rate expected in OECD countries. Aviation therefore has the potential to make a crucial contribution to the United Nations' Sustainable Development Goals (SDG). In this context, aviation is a key driver of 'sustained, inclusive and sustainable economic growth' and 'full and productive employment'. It also generates higher levels of health and well-being and lifelong learning opportunities.

1.4 However, there is also a risk of falling short. A proliferation of regulations and policies inconsistent with ICAO SARPS and policy guidance, or which are simply detrimental to the growth and sustainability of the aviation sector, creates additional difficulties for aviation to deliver on its promise. Indeed, if aviation growth rates in the emerging world slow by just 1%, the level of jobs created could drop by 8%, and corresponding economic activity by 17%<sup>3</sup>:

**Table 1: Total Jobs and GDP generated by air transport in emerging markets**

	<b>Jobs</b>	<b>GDP Contribution</b>
2014	38 million	US\$561 billion
2034	61 million	US\$1.56 trillion
2034 – assuming 1% lower growth annually	56 million	US\$1.29 trillion

<sup>2</sup> *Aviation: Benefits Beyond Borders*, Air Transport Action Group, July 2016

<sup>3</sup> *Analysis undertaken by Oxford Economics on behalf of the Air Transport Action Group*

1.5 One way of helping aviation deliver on its potential is by applying a “smarter regulation” approach to the sector. A national or regional policy framework consistent with ICAO SARPS and policy guidance, and with globally accepted smarter regulation principles, can unlock the full value of aviation.

## 2. DISCUSSION

2.1 A number of governments and international organizations around the world have adopted “smarter” or “better” regulation initiatives in order to improve regulatory practice and support economic growth. Examples include:

- a) the Council of Australian Governments’ best practice regulation guide, adopted in 2007;
- b) the OECD Council’s Recommendation on Regulatory Policy and Governance, adopted in 2012;
- c) Canada’s Red Tape Reduction Initiative, which began in 2012;
- d) Malaysia’s Best Practice Regulation Handbook, adopted in 2013; and
- e) the European Commission’s Better Regulation Initiative, announced in 2015.

2.2 Following the lead of governments in this area, IATA adopted its own smarter regulation methodology in 2014. The set of principles seeks to capture the common themes among the various government or international organization programs worldwide. It includes policy design and development principles, and is available in Appendix 1. Key examples include:

- a) consistency and coherence – regulations should be consistent with existing (and planned) rules and practices, so that there are no overlaps and contradictions (nationally or internationally);
- b) there should be an assessment of the regulation impacts;
- c) the drafting of the regulation should involve those who are potentially affected; and
- d) The decision making process should be transparent and objective.

2.3 IATA is seeking to partner with ICAO and Member States to apply smarter regulation principles to the air transport sector, thereby enhancing connectivity and aviation’s role as a social and economic enabler. One opportunity would be assisting in the implementation of policies which are consistent with ICAO standards, recommended practices and policy guidance. Such regulations will offer a coherent, proportionate approach. Examples where progress can be made include:

- a) broader ratification of the Convention for the Unification of Certain Rules for International Carriage by Air - Montreal, 28 May 1999, creating a universal liability regime as per ICAO Resolution A38/20;

- b) implementing taxation legislation consistent with ICAO's policies on taxation (Doc 8632), ensuring economic sustainability of air connectivity;
- c) implementing API/PNR requirements consistent with ICAO standards, allowing efficient, effective use of data; and
- d) taking into consideration the ICAO core principles on consumer protection when designing consumer protection regimes, ensuring a balance between protecting passengers and industry competitiveness.

2.4 Another application of smarter regulation is the provision to policy makers of capacity building necessary to design regulations themselves (e.g. best practices on conducting impact assessments and consultations), thereby providing Member States with the tools necessary to enact policy frameworks that are conducive to sustainable aviation growth. IATA stands ready to assist as appropriate in this effort.

### 3. CONCLUSIONS

3.1 The Assembly is invited to:

- a) recognize the value that aviation can deliver to a broad range of stakeholders and the contribution that aviation can make to the achievement of the Sustainable Development Goals (SDG);
  - b) Request that ICAO augment its "No Country Left Behind" initiative by developing a work program on smarter regulation, which could include:
    - 1) an implementation guide of relevant ICAO policy guidance, SARPs and conventions for member States, including examples of State implementation;
    - 2) capacity building sessions on designing smarter regulation approaches, at the request of member States; and
    - 3) all other relevant measures to ensure widespread knowledge and awareness of ICAO policies as well as use of guidance material on economic regulation.
  - c) urge Member States in their regulatory functions to have regard to the policies and guidance material developed by ICAO on economic regulation of international air transport, such as those contained in Doc 9587, Policy and Guidance Material on the Economic Regulation of International Air Transport; and
  - d) invite Member States to consider incorporating smarter regulation principles when developing and implementing air transport regulation.
-

## APPENDIX

### IATA'S SMARTER REGULATION METHODOLOGY

#### Definition Statement

Smart regulation delivers clearly defined, measurable policy objectives in the least burdensome way. It is achieved through a transparent, objective, and consultative process.

#### Policy Design Principles

- Consistency and coherence – Regulations should be consistent with existing (and planned) rules and practices that are applicable to regulated activities so that there are no overlaps and contradictions (nationally or internationally). They should also be predictable and applied with clear oversight responsibility and without discrimination against those being regulated.
- Proportionality – Regulations should be used only when their necessity is demonstrated and should be proportionate to the problems identified so that the costs of compliance are minimized by pursuing the most cost-effective solution.
- Targeted at risk – Regulations should have specific and well-defined objectives that respond directly to the problems identified. Whenever appropriate, flexibility should be given to those being regulated to meet defined objectives.
- Fair and non-distortive – Regulations should be applied fairly and not create discriminatory burdens on any group/s in particular.
- Clarity and certainty – Audiences subject to regulatory compliance need to clearly know the regulations that will apply, what is expected of them, and have sufficient time to be able to comply with new requirements.

#### Process Principles

- The objective of the regulation should be identified based on sound evidence and available alternatives must be considered to select the most appropriate solution.
- There should be an assessment of the impacts from the regulation.
- The drafting of the regulation should involve those who are potentially affected; the decision making process should be transparent and objective.
- The process of developing the regulation should focus on reducing the compliance burden and allow for regular and systematic review (and subsequent modification, if needed) to ensure that the regulation is still appropriate.
- There should be clear procedures to respond to adjudications and appeals and to revise the regulation if necessary.

— END —

February 6<sup>th</sup>, 2015

Canada Transportation Act Review Secretariat  
350 Albert Street, Suite 330  
Ottawa, ON K1A 0N5

**Re: Review of the Canada Transportation Act (CTA)**

To whom it may concern:

We are pleased to have the opportunity to submit these comments on the Review of the Canada Transportation Act (CTA) on behalf of the International Air Transport Association (IATA). IATA is a Canadian non-profit organization that represents the interests of 250 Member Airlines, 50 of which fly into and out of Canada on a regular scheduled basis. As such, we have a direct stake and an avid interest in the outcome of this review.

A great deal has changed in Canadian aviation since the last CTA review in 2001. At that time, Canada was beginning to reap the benefits of significant changes to its national aviation system it implemented in the 1990s, including the privatization and deregulation of the airlines, the privatization of the air navigation system, and the leasing of key government owned airports to local airport authorities. The 2001 CTA review of commercial aviation focused primarily on the need to ensure that Air Canada's market power did not impede on the positive returns the government expected from this deregulation and privatization process. The review recommendations focused on the need to promulgate various laws, regulations and policies to encourage airline competition in the Canadian market, primarily from foreign carriers through both open skies agreements and the removal of other structural barriers to foreign competition.

Clearly, it is not appropriate to focus on Air Canada's market power in the 2015 CTA, particularly given the competition the airline is facing both domestically and from

abroad. In addition, the competitive forces released by the privatization and deregulation initiatives in the 1990s have produced a world class aviation infrastructure capable of supporting a high growth aviation market. In fact, the World Economic Forum's 2013 Travel and Competitiveness Index ranked Canada first out of 140 countries surveyed in terms of air transport infrastructure. <sup>1</sup>

A competitive, deregulated market, world class infrastructure and diminishing barriers to entry would normally be expected to translate into a strong commercial aviation market. Indeed, Canada's commercial aviation industry generates significant levels of wealth, employment and taxes.

- Directly employs 141,000 people and supports almost 405,000 in different sectors
- Total economic footprint of C\$34.9B in GDP
- Each direct job results in C\$ 248,000 in total GDP
- Contributes over C\$12 billion to federal and provincial treasuries, including over C\$7B in taxes<sup>2</sup>

The question is whether Canadian commercial aviation is reaching its full potential. There are clear signs in the WEF report that this not the case:

- Canada is ranked 136<sup>th</sup> out of 140 countries in terms of ticket taxes and airport charges.
- Canada is ranked 48<sup>th</sup> in terms of government prioritization of the travel and tourism industry (behind countries like the United Arab Emirates, which was ranked 6<sup>th</sup>) and 49<sup>th</sup> in terms of government expenditures on the sector.
- Canada fell from the 7<sup>th</sup> most visited country in the world in 2002 to the 17<sup>th</sup> in 2013, behind Russia (number 9) and even Ukraine (number 14).
- Canada's international travel deficit (the difference between the amount of money spent by Canadians traveling abroad vs the amount spent by international

<sup>1</sup> World Economic Forum Travel and Tourism Competitiveness Report 2013, page 131.

<sup>2</sup> "Growing Canada's Economy – A New National Air Transportation Policy": the Conference Board of Canada, September 2013

visitors in Canada) reached a record of \$17.8B in 2012, a 6.5% increase over 2011

A vibrant and growing commercial aviation industry is an essential component of any national tourism strategy. While Canada is well positioned in terms of aviation infrastructure, inefficient government policies have served to reduce commercial aviation's positive impact on Canada's economy and general well-being.

Over the past several years, IATA, Canadian airlines, airports, hotels, and the associations that represent them, as well as the Standing Senate Committee on Transport and Communications have all urged the government to address impediments to the growth of commercial aviation in Canada. IATA has been a strong supporter of efforts by the National Roundtable on Travel and Tourism (NRTT) to encourage the Government to develop a national air travel policy that reflects the importance of this industry to Canada's national economy. To date, our collective advocacy efforts have been unsuccessful.

We are very pleased that the CTA has included in its broad mission the charge to determine how "the vitality of the Canadian aviation sector, air connectivity, and Canada's ability to attract visitors and transiting travelers can be maintained and augmented in light of the range of cost factors and competitive global markets." We are confident that a well-crafted and implemented national air travel policy will produce the results called for in the CTA mission.

It is unlikely we or our partners will be offering arguments in our submissions that have not been raised before by one or all of us concerned about the health of commercial aviation in Canada. This is a reflection of how long we have collectively tried to get this message across and how little success we have achieved from that effort.

### **National Air Travel Policy**

Any national air travel policy should address the following issues:

## 1. Taxes and charges:

The fundamental challenge facing Canadian commercial aviation is the high costs associated with operating in this country. The Standing Senate Committee on Transport and Communications captured this issue well:

In short, air travel in Canada is not structured by the government to be an economic enabler; rather, it is treated as a source for public revenue. The result of this is that the Canadian air travel industry is not well positioned to compete in the future in an increasingly competitive global air travel market. Worse, Canada's air travel industry is already contributing far less than its potential to Canada's overall economic growth, with serious problems manifesting in the Canadian market place – leakage to U.S. border airports being a symptom.<sup>3</sup>

Representatives from Air Canada testified before the Senate Standing Committee that the infrastructure costs, landing fees, airport improvement fees, air navigation charges and security charges at four American border airports (Buffalo, Niagara Falls, Plattsburgh and Bellingham) are 229% lower than equivalent costs at competing Canadian airports. As a result, more than five million Canadians drive to U.S. airports rather than paying the exorbitant fees/charges imposed in Canada. Canadian aviation cannot compete with other markets around the world for air traffic if the Government continues to treat the industry as a revenue generator rather than an economic engine.

These taxes reduce the opportunity for Canada to be a hub for global aviation connectivity. Airports like Toronto and Vancouver are geographically positioned as natural hubs, particularly between the growing Asian and Latin American markets. Several studies have shown that increased air connectivity will raise the level of long-run productivity in the economy - a 10% increase in connectivity (relative to GDP) will raise the level of long-run productivity in the economy by 0.07-0.5%.<sup>4</sup> Improved connectivity can also enhance an economy's performance by making it easier for firms

<sup>3</sup> Report on the Future Growth and Competitiveness of Canada's Airports: Prepared for the Standing Senate Committee on Transport and Communications. June 2012, page 4.

<sup>4</sup> Oxford Economic on behalf of EUROCONTROL 2005, Oxford Economics 2006, InterVISTAS Consulting Inc. 2006.

to invest outside their home country. Without a transparent and fair taxes and charges system Canadian airports could lose the potential of the economic benefits generated by the industry.

The following are the taxes and charges that warrant a detailed review by Transport Canada and the Ministry of Finance:

### **Airport rent**

Airport rent continues to be one of the most significant barriers to Canadian commercial aviation competitiveness. Today, airport rent can be as high as 12% of an airports gross revenues – despite the fact that the cost of the original facilities have long been paid back and that a significant portion of those gross revenues are being generated by facilities /businesses that did not exist at the time of the government handover of the airport to the private entity. As explained in detail in the comments of the NRTT submission to this review, airport rent makes it difficult for airports to generate the supplemental revenue from concessions that normally serve to offset landing fees and other airline charges. Airports have no choice but to pass rent on to airlines that in turn must pass those costs on to airline passengers in the form of higher ticket prices, thereby reducing economic activity. Airport rent is estimated to represent approximately one third of landing fees at major airports.

Over the past ten years, IATA has worked closely with airport authorities to challenge Transport Canada and the Ministry of Finance on the airport rent issue. According to the NRTT, eliminating airport rent would generate 600,000 new air passengers, 5,500 jobs and \$720m in economic activity. The 2013 Conference Board of Canada report concluded that it is safe to assume that these decreased airport/airline costs will ultimately result in lower ticket prices.<sup>5</sup>

Transport Canada and the Ministry of Finance have to date been unwilling to entertain a decrease or elimination of airport rent despite the positive impact it will have on

<sup>5</sup> Conference Board of Canada, "Growing Canada's Economy: A New National Air Transportation Policy. September 2013, page 9

Canadian aviation competitiveness. While Transport Canada has at least entertained the possibility of some relief from these onerous charges, Finance has consistently expressed their preference for the certainty of collecting this rent (which in 2013 alone totaled \$291,718,265) over speculative gains resulting from increased economic activity. We are hopeful that both the significant negative impact this has on Canadian competitiveness along with the projected 2015 Federal budget surplus may convince both Transport Canada and Finance that now is the time to address this continued challenge to the Canadian aviation market. This can be accomplished in a number of ways: elimination or decrease in airport rent, a calculation of airport rent based on a measure other than gross revenue, transferring full ownership of the airports to the operating authority or the offsetting of other taxes and charges (such as security fees) with the proceeds of airport rent. We strongly endorse the recommendation of the National Airlines Council of Canada (NACC) that the Government considers reinvesting any airport rent back into air transport.

### **Other fees/charges**

According to evidence presented to the Standing Senate Committee, “passengers departing Canadian airports often pay between 60 and 75% above the airline’s base fare to cover taxes and charges, compared to between 10 and 18% in the U.S.”<sup>6</sup> While airport rent is the biggest contributor to this disparity, Canada continues to find multiple ways to inhibit aviation growth through taxes and fees upon the industry. As many stakeholders have noted in the past, the “user-pay” model pushed by the last CTA review has slowly become the “user pay plus” system, whereby passengers are ultimately responsible for satisfying continued government financial demands, often with little or no connection to aviation. For example, Federal government budget documents show that in 2013-2014 the Air Traveler’s Security Charge (ATSC) used to fund CATSA security services received more from passengers (\$662M) than from the CATSA budget (\$559M). The \$123M surplus was contributed to the Government’s general revenue

<sup>6</sup> “The Future of Canadian Air Travel: Toll Booth or Spark Plug?” Report on the Future Growth and Global Competitiveness of Canada’s Airports. P.7

fund rather than being reinvested in aviation.<sup>7</sup> IATA endorses calls for a review of the user pay system to ensure that it reflects an equitable contribution between the user and the Canadian Government that benefits from the positive economic impact of a competitive aviation industry.

### **Fuel taxes**

The NACC sets forth a compelling case for a reduction in the Federal excise tax on fuel and to invest funds collected in the aviation sector rather than treating them as general revenues. IATA is also concerned about the propensity of provincial governments to tax aviation fuel, including those that impose those taxes on international fuel uplift. The most recent example of this is the Provincial Government of Ontario's decision to more than double the province's aviation fuel tax from C2.7 cents per liter to C6.7 cents per liter by 2017. The existing fuel tax already costs Ontario travelers and shippers over C\$60 million annually. The increase will add more than C\$100 million per year to the cost of air transport in the province when fully rolled out in 2017.

The unintended consequence of this action will be exactly the opposite of what the government hopes to achieve, which is to boost the province's lackluster economic performance. An analysis by Dr. Fred Lazar of York University estimates that if implemented, this tax hike actually will *decrease* provincial GDP by up to \$97 million in 2017, with the loss of up to 2,900 jobs in Ontario.<sup>8</sup> By contrast, the BC Government dropped its aviation fuel tax on international flights, which resulted in \$20m in new payroll and consumption taxes (vs. the \$12M tax loss). Ironically, at the same time that it is raising the cost of doing business, the Ontario government proposes to spend some C\$2.5 billion to attract more businesses to the province.

Despite the latest developments in the global fuel market, jet fuel remains a major cost line item for airlines, reaching in average 31% in 2014 and expected to be around 26% in 2015. Taxing fuel for international flights (including trans-border flights) increases consistently the cost to travel and also violates longstanding international treaty

<sup>7</sup> Government of Canada, "Public Accounts of Canada" (2014) at 61; CATSA Annual Report 2014 @ 56.

<sup>8</sup> "The Economic Impact of the Proposed Increases to the Ontario Fuel Tax" June 2014, page 5.

agreements, including the Chicago Convention that created ICAO. Furthermore, it contravenes all aviation agreements signed and approved by the national government in Ottawa. And contrary to recent assertions by the provincial government, very few jurisdictions tax fuel for international uplift - and fewer still when we look at jurisdictions with cities comparable in national importance to Toronto, such as London, Paris, Chicago and New York.

## **2. Airport consultation process**

IATA believes that transparency and consultation between airlines and the airports they serve are a benefit to both stakeholders and the industry they serve. As airlines are captive clients of airports, consultation is of tremendous importance to ensure that airport authorities provide adequate information to users relating to charging systems and level of charges. Such consultations on charges should be held in a dedicated forum (distinct from the airport consultative committees) and subject to transparency requirements in order to justify the cost-efficiency and cost-relatedness of airport charges. It must also be ensured that proper consideration to the views of users is given, and in case no agreement is reached between an airport authority and its users, there should be an arbitration process available for stakeholders.

Canada in its role as chairman of the ICAO Panel on Airport and Air Navigation Service Economics has been instrumental in maintaining and updating ICAO policies on charges as set forth in ICAO Doc 9082. Many countries have adopted these policies as national regulations. We believe that Canada's adoption of the principles of 9082 should be part of any new aviation policy.

## **3. Security and facilitation**

IATA has appreciated the opportunity over the last several years to share our perspectives on aviation security both formally and informally with both Transport Canada and the Canadian Air Transport Security Authority (CATSA). We have also shared comments through the Canadian Air Transport Security Authority Act review process. We also work closely on passenger data issues with Public Safety Canada

and the Canada Border Services Agency. While we were pleased that the Government of Canada has an open door policy on taking in stakeholder input, we continue to find that meeting the security needs of aviation travelers in Canada is not being done in a cost effective manner and opportunities are being missed. This in turn impacts the competitiveness of Canada's aviation industry. Many of the points we have raised in previous consultations remain relevant today including:

- The Air Travelers Security Charge is one of the highest in the world. The international ATSC charge of CAD \$25.91 per passenger on exit discourages travel to Canada while high domestic security charges have a negative impact on intra-Canada travel.
- We believe that Transport Canada needs to embrace additional risk based security measures such as a fully integrated known traveler system, whereby passengers are screened according to risk category and not simply moved to the front of the line. This helps reduce security lines and passenger waiting times at the checkpoints for all, while making better use of the available resources, especially security screening staff.
- We also strongly encourage Transport Canada to move away from a "one size fits all" approach to security regulations to a more risk based approach. This means replacing prescriptive security programs with performance based systems, much like the UK is implementing through Outcome Focused Risked Based security (OFRB) as well as Security Management Systems (SeMS).
- Given the importance of the U.S. market and trans border air travel, we strongly encourage Transport Canada to complete implementation of the Beyond the Boarder Action Plan as well as to continue to strive for equivalent screening capabilities, regulations and manage emergency orders with those of TSA and DHS generally. A good example of the need for this equivalence is with airport hold baggage security system.
- We encourage the Government to accelerate the changes required to implement the One Stop Security (OSS) agreement with the European Union. OSS has the

potential to eliminate duplicate screening activities between these two regulatory regimes and free up resources to focus on high risk areas.

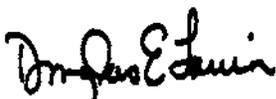
- The efficiency of Canada's security checkpoints remains below other similarly developed countries. We encourage Transport Canada to conduct a thorough screening re-engineering study to determine how best to use risk based security techniques to speed up its security screening process. The Government needs to shorten the chronically long lines at checkpoints. Anecdotal reports and evidence suggests that Canadian checkpoints are processing only 60 passengers per hour, well below the global average of 150 passengers per hour.
- While we understand the role of passenger data in identifying higher risk passengers, airlines should not have to pay a government for processing the data which it provides. Currently, airlines servicing Canada are required to pay in excess of \$25K for each connection to CBSA, as well as a yearly maintenance fee for processing.
- A national airline policy should consider using the new Electronic Travel Authorization (eTA) in place of traditional visas whenever possible to encourage more travel to and from Canada, particularly from emerging markets. Similarly, expansion of the Transit Without Visa Program for passengers transiting Canada on the way to the United States offers the possibility of generating significant revenue to Canadian gateway airports and supporting Canadian tourism generally. Consideration should be given to waiving eTA requirements for those simply transiting Canada to another country.
- We encourage Transport Canada to create a formal government consultative body that gives airlines a vehicle to provide the Authority with meaningful input on aviation security matters. Such a body would contribute a current operational perspective on pending changes to the security regime.

## Conclusion

Canada offers both visitors and citizens opportunities found in very few countries in the world. Natural beauty, sophisticated business environment, highly educated workforce, safe cities, a world class aviation infrastructure and world class airlines. While Canada's aviation industry is prepared to meet the needs of business and consumer travelers, the Government's approach to fees and taxation has inhibited the growth that should be expected in this market. We strongly believe that now is the time for the Government of Canada to step up and begin to treat Canadian aviation as an economic engine rather than just a means to fund federal and provincial coffers. The potential rewards to the Government and people of Canada are well known. It has been almost 20 years since the Government of Canada had the foresight to allow market forces to produce a robust aviation system with a firm foundation. We hope that the CTA review will serve to eliminate government barriers to the type of growth this industry is posed to deliver.

Thank you for your consideration.

Sincerely,



Douglas Lavin  
Vice President for North America  
International Air Transport Association



Nicola Colville  
Area Manager, Canada and Bermuda  
International Air Transport Association



**C-344/04 International Air Transport Association, European Low Fares Airline Association / Department for Transport, judgment of 10.1.2006**

**Regulation on compensation and assistance to air passengers / the co-decision procedure, in particular the conciliation procedure and the role of the Commission**

The judgment, issued after a preliminary ruling, allowed the Court to give its opinion for the first time on the limits of the co-decision procedure under Article 251 EC and to discuss more particularly the conciliation procedure.

The IATA (International Air Transport Association), an association comprising the airline companies carrying 98% of scheduled international air passengers worldwide, and the ELFAA (European Low Fares Airline Association) contested the validity of the Regulation laying down common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights<sup>1</sup>.

The Court confirmed first that where a national court considers that one or more arguments for invalidity of a Community act are well founded, it must make a reference to the Court for a preliminary ruling on the act's validity<sup>2</sup>.

The High Court of Justice also raised a question concerning a phase of the co-decision procedure - conciliation. For the record, this phase is launched when the Council does not approve all the amendments adopted by the European Parliament at second reading<sup>3</sup>.

In this case, the conciliation had resulted in an agreement under which a provision was removed which stated that air carriers could rely on the extraordinary circumstances defence in order to be exempted from their obligations. This exemption had been introduced by the Council in two articles in the draft, whereas the Parliament had retained it in only one article. The claimants posited that the Conciliation Committee had exceeded the limits of its powers in the Treaty since the Regulation adopted removed the derogation in both articles.

The Court judgment specified the function of the conciliation procedure and of the Conciliation Committee, giving it a wide discretion. It pointed out that the Conciliation Committee has the task not of coming to an agreement on the amendments proposed by the Parliament but of reaching agreement on a joint text. The wording of Article 251 EC does not therefore itself include any restriction in this respect. In using the term 'conciliation', the authors of the Treaty intended to make the procedure adopted effective and to confer a wide discretion on the Conciliation Committee, allowing it to reconcile the points of view on the basis of examination of all the aspects of the disagreement<sup>4</sup>.

The Court underlined the active participation of the Commission in this process: it has the task of taking "all the necessary initiatives with a view to reconciling the positions of ... Parliament and the Council" and to apply fully its power to mediate<sup>5</sup>.

The Court fully agreed with the observations submitted by the Commission, concluding that the Conciliation Committee did not exceed the limits of its powers, and confirmed the validity of the Regulation.

<sup>1</sup> Regulation 261/2004 of 11 February 2004, OJ L 46 of 17 February 2004, p. 1.

<sup>2</sup> Paragraph 32 of the judgment.

<sup>3</sup> Article 251, paragraphs 3 to 6 of the EC Treaty.

<sup>4</sup> Paragraph 57 and 58 of the judgment.

<sup>5</sup> Paragraph 58 and 59 of the judgment.

TAB 3

IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

DELTA AIR LINES INC.

Appellant  
(Respondent)

- and -

DR. GÁBOR LUKÁS

Respondent  
(Appellant)

MEMORANDUM OF ARGUMENT OF THE PROPOSED INTERVENER,  
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,  
MOTION FOR LEAVE TO INTERVENE

OVERVIEW

1. The International Air Transport Association (“IATA”) seeks leave to intervene in this appeal and to file a memorandum of argument of up to 15 pages and to present oral submissions of up to 10 minutes.
2. This appeal is likely to present the Court with an opportunity to consider, among other issues:
  - (a) whether the Canadian Transportation Agency (the “Agency”) has a discretion under the *Canada Transportation Act*, SC 1996, c.10 (the “Act”) to inquire into, hear or determine a complaint pertaining to services provided by or policies of an international airline operating in Canada;<sup>1</sup>

<sup>1</sup> *Canada Transportation Act*, SC 1996, c 10 [“*Canada Transportation Act*”].

- (b) whether the Agency has the discretion to grant or refuse standing to a person who seeks to bring a complaint to the Agency against the holder of international licence granted under the Act;
- (c) whether the Agency has a residual discretion to determine if it ought to hear such a complaint on its merits; and
- (d) the scope of or basis upon which the Agency may exercise properly any such discretion.<sup>2</sup>

3. IATA will provide this Honourable Court with submissions on the impact of Agency decisions on holders of domestic and international licenses, and will clarify, from an international perspective, the regulatory scheme and statutory framework under which the Agency functions. IATA's submissions will help to clarify the Federal Court of Appeal's misunderstanding and narrow approach towards the Agency's powers and reach.<sup>3</sup> IATA takes no position on the outcome of the appeal.

## **PART I - STATEMENT OF FACTS**

4. IATA accepts the facts of the appeal as set out in the factum of the appellant.

### **A) IATA's History, Expertise and Interest in this Appeal**

5. Founded in 1945, IATA is an international trade association for the airline industry. IATA has 274 airline members located in 117 countries and its members account for approximately 83 percent of the world's total air traffic. Approximately 65 IATA member airlines hold licenses to fly into, out of, and within Canada.<sup>4</sup>

6. IATA's responsibilities include operating a variety of financial services and settlement systems catering to a vast array of aviation stakeholders, including international airlines, travel

<sup>2</sup> Affidavit of Nicole Colville, affirmed 16 June 2017 ["Colville Affidavit"], para 6.

<sup>3</sup> Colville Affidavit, para 33.

<sup>4</sup> Colville Affidavit, para 2.

agents, cargo agents, airports, civil aviation authorities and other public sector agencies, and ground handling companies. IATA is also the industry's commercial standard-setter, maintains a comprehensive program of regular airline safety audits, liaises with governments and organizations around the world on matters affecting air transport in areas such as safety, flight operations, industry standards, and training, and provides relevant and timely information and guidance to stakeholders throughout the global aviation sector.<sup>5</sup>

7. IATA has had and continues to have a broad role in the global aviation sector. First, IATA has worked with and continues to work with its international members and other airline industry participants to develop and improve global aviation standards. Second, IATA has provided and continues to provide professional support services to various participants in the airline industry to ensure that its members operate safely, securely, efficiently and economically. Third, and germane to this application for leave to intervene, IATA, as a result of its expertise and specialized role in the domestic and international aviation industry, has made and continues to make presentations and provide detailed airline industry information and data to governments and various decision makers to assist them in dealing with a broad range of issues which affect the aviation sector globally.<sup>6</sup>

8. IATA seeks leave to intervene in order to advance a principled approach to the interpretation and application of the Act and the role of Agency.

9. IATA's members include air carriers who hold both international and domestic licenses to fly into and out of Canada and well as within Canada.<sup>7</sup> As a result, IATA can offer this Court a perspective different from those of the immediate parties. IATA's submissions will be grounded in the organization's unique perspective drawn from its expertise in creating international and domestic aviation standards, as well as its knowledge of its members' perspectives.

<sup>5</sup> Colville Affidavit, para 4.

<sup>6</sup> Colville Affidavit, para 11.

<sup>7</sup> Colville Affidavit, para 2.

**B) The Submissions to be Advanced by IATA on This Appeal**

10. If granted leave to intervene, IATA will take no position on the outcome of this appeal. Instead of focusing on the parties involved, IATA's submissions will address the broader impact of this appeal.

11. IATA will present an approach that:

- (a) focuses on the global policy implications of Agency decisions, the nature and scope of the Agency's discretion to inquire into, hear and determine a complaint pertaining to services provided by or policies of an international airline operating in Canada, including the nature and scope of the Agency's discretion to determine a person's standing to make a complaint to the Agency related to an air service provided by or a policy of an international licence holder under the Act, as well as the factors that are to be properly considered in the exercise of any such discretion; and
- (b) presents a global perspective on those issues derived from its international experience, knowledge and expertise.<sup>8</sup>

12. IATA's submissions will include the following:

- (a) The Agency's decisions affect all air carriers holding international licenses under the Act. The Agency has a broad discretion, consistent with the National Transportation Policy and Canada's international obligations with respect to international air travel, to inquire into, hear and determine a complaint pertaining to services provided by or policies of an international airline operating in Canada, including the discretion to determine a person's standing to make a complaint to the Agency against an international licence holder operating in Canada. The Agency, when considering the question of standing — particularly when the putative complainant person is not and would never be directly affected by the

<sup>8</sup> Colville Affidavit, para 32.

decision or policy in issue — should properly consider a number of factors. In addition to such factors as the nature of the complaint and its urgency, the limits of the Agency's scarce and limited resources and whether the complainant has the best evidence, the factors should include whether the person would have standing before a foreign regulator or decision maker in similar circumstances or whether the nature of the service, policy or decision subject of the putative complaint is one permitted or not prohibited under foreign and international practices, policies, international treaties or foreign law. With its members holding both domestic and international licenses, IATA is uniquely placed make such submissions to assist this Honourable Court on these issues;

- (b) The Federal Court of Appeal held that the use of the term “any person” in s 67.2(1) of Act implies that Parliament intended to grant to any person, directly affected or not, the ability to bring a complaint to the Agency.<sup>9</sup> Delta has argued that s 67.2(1) does not apply as that section only applies to holders of domestic licenses. Delta holds an international license. IATA will provide submissions to this Honourable Court which focus on this issue from a global perspective and not one not limited either to Delta's or Dr. Lukács' individual circumstances; and
- (c) IATA will provide this Honourable Court with submissions on the impact of Agency decisions on domestic and international air carriers to attempt to clarify, from a global perspective, the regulatory scheme and statutory framework under which the Agency functions as the Federal Court of Appeal appears to have taken a narrow approach in considering the scope of the Agency's powers and did so without consideration of the international or global impact of the Agency's power.<sup>10</sup>

13. IATA will expand upon these submissions if leave to intervene is granted.<sup>11</sup>

<sup>9</sup> *Canada Transportation Act*, s 67.2(1).

<sup>10</sup> Colville Affidavit, para 33.

<sup>11</sup> Colville Affidavit, para. 34.

## PART II - QUESTION IN ISSUE

14. The sole question on this motion is whether IATA should be granted leave to intervene in this appeal.

## PART III - STATEMENT OF ARGUMENT

15. On a motion for leave to intervene, the moving party must establish that the proposed submissions will be: (1) relevant, (2) useful to the Court, and (3) made from a perspective distinct from that of the other parties.<sup>12</sup>

16. IATA has satisfied each of these criteria.

17. IATA's proposed submissions will be relevant and useful to this Honourable Court. IATA's submissions will address the Agency's broad regulatory powers. In particular, IATA's submissions will address whether the Agency has the discretion to inquire into, hear and determine a complaint against an international air carrier holding an international licence under the Act, if such a discretion includes the discretion to determine if a person ought properly to be granted standing to bring such a complaint and, if so, the factors that ought properly to be considered — from a global air travel sector perspective — for the exercise of that discretion.<sup>13</sup>

18. These submissions are distinct from those of the immediate parties, and likely other intervenors. IATA's submissions will be based on its extensive and unique knowledge of the aviation industry internationally and the Canadian regulatory context specifically. IATA's knowledge is derived from its extensive experience addressing governments worldwide, as well as its involvement in international litigation. IATA also has the benefit of the collective knowledge of its members, who not only hold international licences (like the one held by Delta) but also domestic licences.

19. IATA respectfully submits that its proposed submissions are useful, made from a perspective distinct from those of the parties, and will contribute to this Court's deliberations.

<sup>12</sup> *Rules of the Supreme Court of Canada*, SOR/2002-156, r. 57(2).

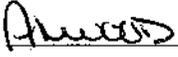
<sup>13</sup> Colville Affidavit, para 10.

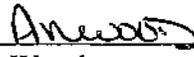
**PART IV - ORDER SOUGHT**

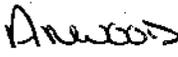
20. IATA respectfully seeks leave to intervene in this appeal, to submit a memorandum of argument not to exceed 15 pages, and to present oral submissions not to exceed 10 minutes. IATA will not seek any costs and asks that no costs be awarded against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

Dated at Toronto, Ontario, this 19<sup>th</sup> day of June, 2017

  
 \_\_\_\_\_  
 David Neave

  
 \_\_\_\_\_  
 Alexi N. Wood

  
 \_\_\_\_\_  
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Counsel for the International Air  
 Transport Association

**PART V - TABLE OF AUTHORITIES**

None.

## PART VI- STATUTORY AUTHORITIES

### *Canada Transportation Act, SC 1996, c.10*

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.

### *Rules of the Supreme Court of Canada, SOR/2002-156*

57. (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

(2) A motion for intervention shall

(a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and

(b) set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

...

57. (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

(2) La requête expose ce qui suit :

(a) la position que cette personne compte prendre relativement aux questions visées par son intervention;

(b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.

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Court File No.: 37276

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IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF  
APPEAL)

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BETWEEN:

DELTA AIR LINES INC.

Appellant  
(Respondent)

- and -

DR. GÁBOR LUKÁS

Respondent  
(Appellant)

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MEMORANDUM OF ARGUMENT OF THE  
PROPOSED INTERVENER, THE INTERNATIONAL  
AIR TRANSPORT ASSOCIATION, FOR LEAVE TO  
INTERVENE

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Counsel for the International Air  
Transport Association

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Court File No.: 37276

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IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF  
APPEAL)

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BETWEEN:

DELTA AIR LINES INC.

Appellant  
(Respondent)

- and -

DR. GÁBOR LUKÁS

Respondent  
(Appellant)

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MOTION RECORD OF THE PROPOSED  
INTERVENER, THE INTERNATIONAL AIR  
TRANSPORT ASSOCIATION, FOR LEAVE TO  
INTERVENE

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