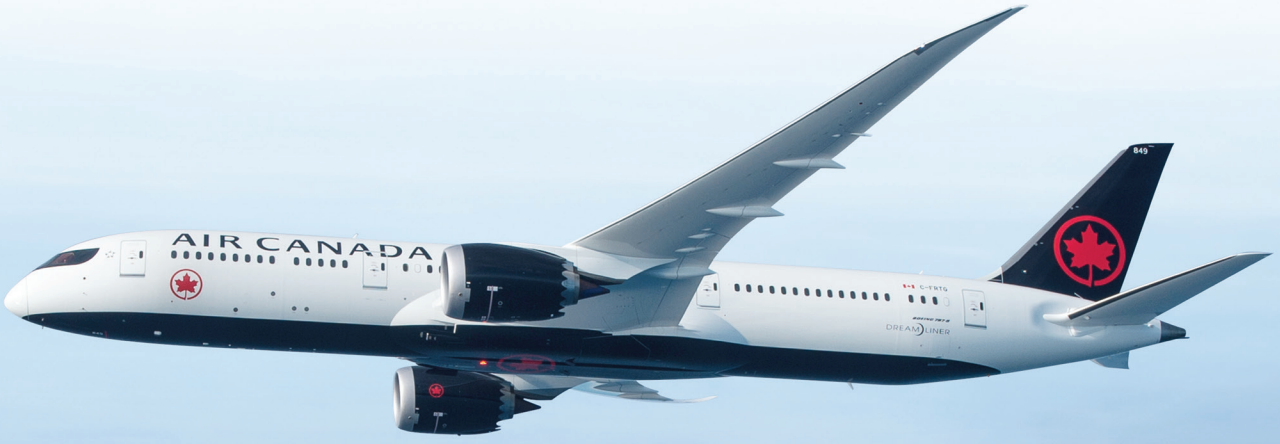
Air Canada Submission to the House of Commons Standing Committee on Transport, Infrastructure and Communities

Bill C- 49

Transportation Modernization Act

An Act to amend the Canada Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts

September, 2017



AIR CANADA

Table of Contents

Introduction

About Air Canada

Air Canada is Canada's largest airline and the largest provider of scheduled passenger services in the Canadian market, the Canada-U.S. trans-border market and in the international market to and from Canada. In 2016, Air Canada, together with its Air Canada Express regional partners, carried close to 45 million passengers, offering direct passenger service to more than 200 destinations on six continents and being amongst the 20 largest airlines in the world. 2017 is also another year of growth with new routes being added and record numbers of passengers flying.

To support our operations, Air Canada currently employs 30,000 people. Due to the significant growth over the last several years, 3,000 of these employees were hired in the last three years alone. Headquartered in Montreal, Air Canada operates four hubs: Toronto Pearson as the primary global hub, Vancouver as the premier gateway to Asia-Pacific, Montreal as a gateway to French and key international markets, and Calgary. This provides travelers on Air Canada unparalleled access to tourism and business around the world.

Air Canada's Growth

Air Canada circles the world and continues to grow with the announcement of new destinations launching in 2017 and 2018:

- Toronto to Mumbai, Berlin, Reykjavik, San Antonio, Memphis, Savannah.
- Montreal to Algiers, Marseille, Shanghai, Reykjavik, Tel Aviv, Tokyo.
- Vancouver to Taipei, Nagoya, London-Gatwick, Frankfurt and Melbourne, our third Australian city. Belize and Saint-Vincent & the Grenadines are launching in December.

In 2016, Air Canada launched 28 new routes, including 15 new international routes:

- Toronto to Seoul, London-Gatwick, Prague, Budapest, Glasgow, Warsaw, Port of Spain.
- Vancouver to Brisbane, Dublin, Delhi.
- Montreal to Lyon, Casablanca, San Jose (Costa Rica), Puerto Rico, Puerto Vallarta.

Air Canada's extensive global network provides scheduled passenger service directly to **64** airports in Canada, **57** in the United States and **91** in Europe, Africa, the Middle East, Asia, Australia, the Caribbean, Mexico, Central America and South America. Air Canada, Air Canada Rouge and its Air Canada Express regional partners operate on average **1,580** scheduled flights each day. Together with its Star Alliance™ partner airlines, Air Canada offers services to 1,300 airports in 190 countries and provides reciprocal top tier frequent flyer benefits.

Air Canada's Objectives

As part of Air Canada's new objectives, we have placed a large focus on customer service, and we are proud of the manner in which our employees have responded and of the recognition from industry and our passengers. We are the only international network carrier in North America to receive a Four-Star ranking, according to independent U.K. research firm Skytrax and have been once more voted "Best Airline in North America" by readers of

Global Traveler magazine. Outside of North America, readers of Premier Traveler have voted Air Canada "Best North American Airline for International Travel." We have also been recognized for "Best Flight Attendants in North America," "Best North American Airline for Business-Class Service," and "Best Airline Website," proving to us that our focus on customer service has been well-placed.

In this submission, we focus on key aspects of Bill C-49 aimed at our industry from both a commercial and passenger rights perspective. While Air Canada is generally supportive of the bill, we have identified some concerns that can be addressed easily and have included proposed language that would address them. In the area of passenger rights, the bill does not address certain important details, mandating the Canadian Transportation Agency (CTA) to develop these in the regulatory phase. Therefore, in this area, we simply describe some of the concerns and pitfalls that the government and the CTA should avoid in order to protect the integrity of the sector and improve the overall experience of the traveler.

1. Joint Ventures

Joint ventures (JVs) between global carriers, with antitrust immunity, have become increasingly common over the last two decades with the increasing liberalization of the air industry. These "immunized" ventures provide numerous benefits for consumers by allowing more collaboration between carriers to provide passengers with more seamless travel benefits, in a way closer to what a merger of two companies would(since transnational mergers among international airlines are prevented as a result of foreign ownership restrictions around the word). As a result, airline cooperation through JVs have become increasingly common globally. They are an efficient vehicle for integration and the unlocking of synergies between carriers that lead to enhanced travel options and passenger convenience, optimized schedules and reduced costs.

The importance and benefits of these JVs cannot be overstated: they allow airlines to achieve economies of scale on international routes , thereby reducing costs. In turn, they provide consumers increased access to flights and a greater inventory of seats, more destinations, more routings, better connections, enhanced service and more competitive price options. The integration of planning, pricing and sales of airline JV partners enhances the carriers' ability to compete effectively with other carriers and alliances, benefiting, in turn, the customers.

According to L.E.K. Consulting, a global consulting firm with aviation expertise, JVs were responsible for "30% of all global long-haul traffic in 2013, up from 9% a decade ago", and "by 2023, 45% of all global long-haul traffic will be part of a JV.[1] With Transatlantic markets largely mature, this substantial growth is likely to come from increased collaboration between developed and developing markets."

In light of this growing trend, the ability of Canadian airlines to compete globally and serve the Canadian market efficiently will depend on their ability to enter into international joint ventures. For a global network carrier, organic growth is not itself sufficient. Despite Air Canada's absolute growth (45% growth in Available Seat Miles (ASMs) between 2000

[1] *Reaching New Heights Together: How Airlines Can Maximize the Value of Joint Ventures",* L.E.K. Consulting, Insights@Work (2014)

and 2016), its relative size has diminished in the last 20 years, having gone from the 10th largest carrier in the world in the late 1990s (based on ASMs) to among the 20 largest carriers today. The Canadian market is small in a global context, and future growth for Canadian airlines and their ability to serve the Canadian market effectively will increasingly depend on their ability to compete on international routes and tap additional sources of traffic in large foreign markets such as the US, China, the EU, etc. International joint ventures provide an essential means to tap additional sources of traffic needed to support the growth of new, efficient, and convenient international routes. Unless Canadian carriers are in a position to participate in the growth enabled by international joint ventures, Canada risks losing ground in the convenience of its international air transportation route infrastructure, as carriers from other countries favour and build connections and routes focused on hubs in other markets.

International JVs between airlines require significant resources and financial commitment to their implementation. Given airlines' historically slim profit margins and high capital expenditure requirements, extreme caution and a prudent level of certainty is required before making such large investments.

There is currently no legislative regime for reviewing joint ventures that takes into account the broader public interest and policy objectives associated with the benefits of a well-developed international air transportation infrastructure when compared with the more general objective of antitrust legislation. Canadian airlines are currently missing key growth opportunities to grow through JVs worldwide, in the same way as other foreign airlines are doing, as a result of the state of the current legislative regime for JV reviews. Having a regime that promotes the public interest and the transportation policy adopted by the Canadian government will offer a broader range of advantages for the travelling public and airlines alike, while providing a regulatory framework that is more aligned with the government's policy objectives for growth and Canada's role in the international sector. Airlines provide gateways, international aviation "super-highways", that are catalysts for opportunities to grow trade, immigration and tourism and improve innovation, all part of Canada's international competitiveness.

In light of the above, Air Canada supports the amendments to the *Canada Transportation Act*, that would establish a process for the review of arrangements involving two or more air carriers taking into account broader considerations respecting public interest.

Although the proposed regime is a significant step in the right direction, we submit that changes should be made to maximize its impact and fully realize its potential benefits.

The Review of the Arrangement (Section 53.77)

We agree with the need for a mechanism to review the authorization granted with respect to an arrangement between carriers. However, JVs are often complex agreements that take time to mature and be fully implemented. They often require a massive commitment of time, money and technology. Investment can run in the tens of millions of dollars, if not hundreds. As such, depending of scope and considering the seasonality of our industry, several years can be necessary to fully realise and appreciate their effect, and assess their contribution to the growth of the transportation infrastructure. In other jurisdictions, the anti-trust immunity granted for these agreements is typically for periods of 5 to 10 years,

which provide a sufficient level of certainty to encourage at the outset airlines partners to enter into these agreements[2].

Moreover, JVs cannot be implemented overnight, following authorization. Authorization is what allows parties to start exchanging vital information to setup a JV as an initial step to creating its structure and organization. It may take several months following authorization before the Parties are able to implement the JV.

We therefore submit, based on experience, that a longer period, of *at least* three years (vs two), is needed and that this time period must be calculated from the JV's *implementation* (*vs authorization*).

A Sufficient Delay Needed to Address Concerns (Section 53.79(2))

In order to offer the level of certainty that encourages investment, once a notification is received from the Minister to the effect that the JV raises concerns with respect to the public interest and competition, a sufficient delay should be provided for the Parties to address those concern(s) and review the terms of the authorization. Indeed, if an agreement cannot be reached, the winding down of a JV relationship is a complex process that require redeployment of valuable assets, at the global level. A period of *at least* one year would be appropriate.

Reasonable Sanction Regime (Section 53.83)

Under the proposed wording, imprisonment could be a consequence for even an inadvertent breach of terms and conditions. Such a strong penal consequence could be a significant impediment to the use of the regime (dissuading especially foreign carriers from partnering with Canadian carriers) and render virtually impossible the achievement on any JV.

Imprisonment is neither a consequence in any other jurisdictions for a similar offence regarding such good faith businesses arrangements between airlines, nor a common consequence for a civil matter. It would seem more appropriate if the risk of imprisonment be restricted to 53.72 where a decision to not to complete an arrangement without the Minister's approval is sufficiently clear for the parties to fully understand the potential risk and may not be in good faith. We are also proposing to add a notice requirement prior to enforcement action.

2. Foreign Ownership

Air Canada supports an increase to foreign ownership limits to 49 per cent for all Canadian airlines. It would provide improved access to international investors and global capital markets. It would also give Canadian investors greater liquidity in their Canadian air carrier investments. It would have been preferable that this was accompanied by reciprocity so Canadians would like acquire 49% of carriers in other countries such as the United States.

[2] For example, the European Union and the United States.

However, we submit that changes would be required to the definition of "Canadian" in Bill C-49 to ensure that the policy objectives underlying the new foreign ownership rules are met by:

(i) Ensuring that non-Canadians are not inadvertently provided with undue influence;

(ii) Clarifying terms to ensure that non-Canadians cannot circuitously acquire greater control; and

(iii) Ensuring that Canadian airlines may readily and effectively implement the changes to the foreign ownership rules.;

(i) Imposing Ownership Cap to Prevent Undue Influence by Non-Canadians

Bill C-49 contemplates (in addition to increasing the percentage of voting interests which may be held by non-Canadians from 25% to 49%) two additional categories of non-Canadians (referred to here as "single non-Canadians" and "one or more non-Canadian airlines") who are each restricted to no more than 25% of the voting interests.

To comply with the current definition of "Canadian" in the CTA, all publicly-traded Canadian airlines adopted a dual capital structure with voting shares held by Canadians, and variable voting shares held by non-Canadians. Voting interests attached to shares held by non-Canadians are currently automatically prorated down to 25%, or such higher percentage as may be approved by regulation of the Governor in Council (as contemplated in the current CTA definition of "Canadian").

The two classes of shares adopted by Canadian airlines results from corporate law concepts that the shares of a single class should carry equal rights. Therefore, without specific legislative authority providing otherwise, proration of the voting interests of non-Canadians may not be achieved in compliance with corporate law if they are within the same class as Canadians.

The creation of two additional, separate classes contemplated by Bill C-49 could result in instances where the shares held in these two additional categories would be afforded a right to vote as a class, and therefore have veto rights in certain circumstances undermining the purpose of the restriction, providing undue influence on the limited number of holders of shares of those classes of non-Canadians, to impact important matters. There would also be significant complexity in administering a capital structure (with now four classes) and the challenges of having it understood by investors, with the potential risk of making Canadian airlines *less* attractive to investors, rather than more.

To address this concern, we propose adding an ownership cap to clarify that airlines may restrict the number of issued and outstanding shares which can be held by a "single non-Canadian" or "one or more non-Canadian airlines" to 25% (in addition to the voting cap currently contemplated by Bill C-49).This would avoid the creation of two additional classes of shares (which would be required to vary the pro-ration of

voting interests among what would be three types of non-Canadian shareholders since all shares of a single class must carry equal rights), and thereby avoid giving a non-Canadian a veto right over significant changes (which would be contrary to the policy objective sought to be achieved by the restrictions).

This proposed additional ownership restriction would allow for "constraints" (as defined in the *Canada Business Corporations Act* ("CBCA")) to the variable voting shares under Section 174 of the CBCA which would then (i) require shareholders to disclose whether they are "single non-Canadians" or "non-Canadian airlines", individually or in affiliation, (ii) prevent any "single non-Canadian", or "one or more non-Canadian airlines" from owning more than 25% of the issued and outstanding shares (which would never represent more than 25% of the voting interests since no share carries more than one vote), and (iii) allow the airline to force the sale of, and prohibit the exercise of the voting rights attached to, shares held in contravention of such requirements. This would also further policy objective sought to be achieved by Bill C-49.

(ii) Clarifying "Affiliation" and Direct/Indirect Holdings

The terms "individually or in affiliation with another person" contained in the Bill C-49 definition of Canadian does not clearly refer to a recognized legal concept and could create interpretation issues as to whether it only refers to controlled affiliates or also encompasses other entities or arrangements. If it is not interpreted as not encompassing other entities or arrangements, non-Canadians may structure their means of ownership to acquire a greater control of a Canadian airline than would otherwise be permitted.

As well, the limit imposed on a non-Canadian airline under Bill C-49 does not refer to voting interests being held "directly or indirectly". This may permit non-Canadian airlines to adopt indirect methods of ownership which could circumvent the restriction.

In addition to adding the terms "directly or indirectly" in the Bill C-49 limit imposed on a non-Canadian airline, we also propose replacing "in affiliation" with "affiliate" and supplementing it with the concept of "joint actors", a recognized legal concept under the securities laws of the Canadian provinces, i.e. "either individually or acting jointly or in concert with another person", which would be broad enough to include controlled affiliates but would also encompass other arrangements where parties are acting in concert without any formal corporate affiliation. These changes would therefore help ensure that non-Canadians cannot circuitously acquire greater control of a Canadian airline than would otherwise be permitted.

(iii) Amending Corporate Articles and Related Dissent Rights

As mentioned above, all publicly traded Canadian airlines adopted language in their articles to allow for increases to the maximum voting interest which can be held by non-Canadians provided such increases are made by regulation (as the CTA currently contemplates). The amendment of the articles of publicly-traded airlines to reflect the new definition of "Canadian" provided for in a statute (as opposed to a regulation), and to incorporate "legal constraints" referred to above on the categories of "single non-Canadians" and "one or more non-Canadian airlines", would require a special

resolution passed by 66 2/3% of the votes cast by all of the shareholders. It could arguably require a special resolution passed by 66 2/3% of the votes cast by the holders of the class of variable voting shares, voting as a separate class (pursuant to Section 176 of the CBCA).

Since the articles adopted by publicly traded Canadian airlines already contemplate increases to foreign ownership (by regulation) (and this had been approved by shareholders previously), it would be appropriate for Bill C-49 to confirm that publicly-traded airlines who have already adopted a dual-class voting structure in order to comply with the definition of "Canadians" should be permitted to amend such articles without shareholder approval. Taking into account the expectation of shareholders that increases to the permitted non-Canadian ownership level would be automatically implemented through the wording of the articles without any further shareholder approval or dissent rights, the subsequent use of more elaborate amendments of the definition of "Canadian" should not allow non-Canadian shareholders to exercise dissent rights requiring the company to repurchase their variable voting shares at fair value. Nor should they be allowed to use the threat of an exercise of such rights to gain bargaining leverage over Canadian airlines.

3. Passengers Rights Regime

Given our focus on customer service improvement, Air Canada welcomes the government's intention to establish an air passenger rights regime that is clear, consistent, transparent and fair for passengers and air carriers industry-wide. For too long Canadians and passengers flying in Canada have been compensated differently depending on the airline on which they flew. The current framework that assesses carriers on a narrow complaint-based approach results in a situation in which different airlines have different rules, which ultimately leads to confusion for passengers. Air Canada has been pleased to participate in consultations with Transport Canada and the Canadian Transportation Agency to begin simplifying the current environment in order to improve the overall travel experience for consumers.

Air Canada's Focus on Customer Service

Air Canada is proud to have always been among the industry's leading airlines when it comes to passenger compensation when unfortunate situations arise as they sometimes do as a result of the complex operational environment in which we operate. In fact, in 2009 Air Canada was among a group of Canadian airlines that helped develop Flight Rights Canada, a voluntary code for airlines to follow with respect to customer service. Not only were we among those who helped develop the program, we were also one of the first to hold ourselves to its standards. More recently, we have redesigned and simplified our own **Customer Service Plan** and made it available to our passenger on our website in a clear manner so that passenger can easily identify a remedy in the event of an unplanned circumstance. Air Canada has also modernized different aspects of our Customer Service Plan to ensure that we treat our passengers correctly during those times when things don't always go as planned.

In addition to our redesigned Customer Service Plan, our current $10 billion fleet renewal program has provided us with an opportunity to improve many other aspects of the customer service experience; taking it to a realm far above avoidance of negative experiences.

Fleet Improvements

- With respect to aircraft, our new fleet will be largely comprised of Boeing 777s and state-of-the-art Boeing 787 Dreamliners, with new Boeing 737MAX aircraft arriving in 2017 and Bombardier C-Series jets entering the fleet in 2019. These aircraft will feature a host of customer-friendly features such as:
  - Refitted cabin interiors across its wide-body fleet, including the introduction of the first lie-flat business seat fleetwide in North America and the first dedicated Premium Economy cabin in North America;
  - In-flight Wi-Fi connectivity fleet-wide in North America to complement Air Canada's personal seatback In-Flight Entertainment System offering hundreds of hours of free digital audio-visual content including original anglophone and francophone Canadian content.

Improved Customer Service Interactions

We are also investing in new customer service training for employees across the company:

- New programs have been introduced to our customer-facing inflight, airport, baggage and call center employees.
- We have expanded language programs. Today, there are an estimated 80 languages spoken by Air Canada employees and in addition to English and French service at our call-centers, we also offer service in Spanish, Mandarin, Cantonese, Korean and Japanese. Outside of North America, we have facilities that offer service in Portuguese, Spanish, German, Italian, Hebrew, Mandarin, Cantonese and Japanese.

In addition, we are improving all aspects of customer interaction at the technological level:

- New technological innovations to facilitate customer interactions, including a new website compatible with all types of devices for a consistent experience, ongoing refinements of mobile technology, and increased investments in artificial intelligence are all being developed to further improve our customer-focused capabilities and information management.

Customer-Friendly Policies

Responding to situations that have arisen and listening to our customers, we have also taken a proactive approach to other areas of customer service that have been well-received by our passengers such as:

- Complimentary proximity seating arrangements for families and processes to ensure that families are seated together;
- Innovative policies for musicians travelling with instruments including a 50% discount for a second-seat for instruments too valuable to travel in our cargo holds and priority boarding for musicians and their instruments so that they can safely stow their

instruments in overhead baggage bins. In fact, this policy has garnered Air Canada recognition from the International Federation of Musicians (FIM), which represents professional musicians and their trade unions in more than 60 countries, that awarded the newly created FIM Airline of Choice award to Air Canada.

Recommended Improvements to Bill C-49

While Air Canada supports the government's initiative for improving the travel experience for those traveling in Canada through Bill C-49, we also urge caution. Unintended consequences have been realized in other countries where similar regimes have been legislated. Examples of such unintended consequences are increased costs and decreased savings for travelers due to decreasing flexibility on the part of carriers, high punitive costs to carriers for events out of their control, and distorted competitive playing fields between carriers operating under different regimes in neighboring countries or within the same country.

To that end, Air Canada submits that the government should consider certain minor but important amendments to the draft legislation that would maintain Canadian competitiveness on the international market given our proximity to carriers in the US and along the Canada-US border, satisfy passenger expectations of a modern air industry, and create a level playing field for all carriers.

(i) Double compensation (Section 67.4 (2))

As drafted, Bill C-49 allows for passengers to claim compensation for the same event in both their origin country and their destination country. This scenario could arise because of the application of the Canadian Passenger Rights regime to flight **to** Canada, and because of regime is not restricted to **operating** carriers. As drafted, the current bill could lead to scenarios of so-called double compensation.

Air Canada proposes the regime apply only to flights "from Canada" and not to flights "to" Canada, for any carrier. This would address the extra-territorial application of Canadian law and potential foreign conflict of law issues or duplicative recourses since the vast majority of foreign passenger rights regime apply at country of departure only.

Restrictions currently included in the bill should also be clarified, and proposed draft amendments are submitted for this purpose. As written, interpreting the term, "a same event," in the complex airline industry could create ambiguity and confusion and lead to cases of double compensation.

For example, it is not clear whether a delay at departure resulting in a delay at arrival is one event, or two separate events that can be compensated under two different regimes. For example, EU law rightly calls for compensation at arrival at final destination, which is the only moment at which compensation for damages could be warranted. Indeed, delay at departure can be minimized through shorter flight times or alterative routings.

As well, it should be clarified that the regime applies only to the operating carrier (in case of code share or another arrangement) to be consistent with other regimes around the world.

It is important to align Canada with best-practices found around the world and benefit from their experience including those found in the US and EU. Missing this opportunity to align Canada with other regimes around the world would put Canadian airlines at a disadvantage versus international airlines, without additional protection for passengers. In fact, a misalignment here would likely result in more confusion for passengers and fail to achieve the benefits of clarity and certainty that a well-designed passenger rights regime can provide.

(ii) Baggage liability (Section 86.11 (1) (c))

Air Canada staff handle millions of pieces of luggage every day, and despite significant investments in staff training and technology designed to facilitate the process, baggage is occasionally delayed or damaged during transportation. When such events occur, Air Canada believes airlines should be held responsible and passengers entitled to equivalent compensation, regardless of the airline they choose.

On domestic flights, Air Canada believes the government should set a minimum limit of liability for lost, delayed or damaged baggage and provides recommended amendments to the bill.

Internationally, passengers are already protected in the same way. The Montreal and Warsaw Convention systems, incorporated in Canada by the *Carriage by Air Act*, already provides this compensation framework for international carriage.

Canada would be off-side of its international obligations under these conventions if it departs from the maximum limits set in these conventions, with respect to international travel. Air Canada recommends that prescribed limits are needed for domestic carriage only (as the US has done in 14 CFR Part 254.4).

(iii) Clarifying the scope (Section 67.3) + (67.4(1))

When damages are owed to passengers, it is important that only passengers – persons directly affected by the event – be eligible for compensation. The Bill should therefore be specific to avoid any misinterpretation that would not be consistent with the legislators' intention.

In addition, the decision to extend compensation to other passengers of the same flight should not be arbitrary and take into account each passenger's individual circumstances. Not all passengers affected by the same event are impacted in the same manner. For example, passengers making their scheduled connection to a subsequent flight might not be impacted at all.

(iv) Future amendments (Section 86.11 (2))

As air travel and passengers' requirements continue to evolve, so should the laws regulating the industry. Air Canada believes in the need to revisit and adapt the passenger's bill of rights as appropriate when that process includes all relevant stakeholders and agrees with the principle of developing future regulatory amendments.

Air Canada is concerned however that powers granted to the Agency, in the bill's current form, could develop new rules without having to go through a due consultative process which often elucidates matters (such as complex operational ones) that benefit the integrity of the objective being sought.

We therefore recommend that this paragraph be removed or include further clarification on stakeholder consultations in the regulatory process moving forward.

4. The Canadian Air Transport Security Agency and Cost Recovery

Canada Must Support the Growth of the Aviation Industry

An important part of growth opportunities for Canadian carriers depends on the ability to attract passengers from foreign countries (predominantly those flying from or to the United States) to connect through a Canadian hub airport and use a Canadian carrier to reach their final destination. It is therefore important that the relevant policy and processes be implemented to make sure that Canadian hubs are globally competitive. Indeed, total flight time and the ease of connectivity are key factors in passengers' selection of their flight routing and choice of airlines.

In this respect, government agencies must support Canadian airline growth - with the appropriate level of resources - to contribute to their success. Unfortunately, the current model in which CATSA operates does not account for this necessity.

Cost Recovery Approach Could Hinder Growth

Despite the unprecedented growth in passenger traffic (and associated increase of Air Travelers Security Charges (ATSC) collected), the CATSA budget has remained relatively flat over the last five years. As a direct result, wait times are longer, particularly at major hub airports, and are not competitive when compared to foreign airlines hubs located outside of Canada. This risks stunting the growth of Canadian airlines and reducing the efficiency of international routes through and from Canada.

Bill C-49 and its amendment proposing additional CATSA services on a cost-recovery basis could set the stage for a user-pay 'plus' model where passengers pay the ATSC and then airports have to pay for an additional fee for increased service, which will be passed to carriers and ultimately to passengers. This can only increase the cost of air fare to passengers traveling through Canadian airports and further impact the competitiveness of the Canadian industry, again stunting the growth of international services from and through

Canada to the detriment of consumers, and Canada's international growth objectives which are impacted by the efficiency of its international route infrastructure.

The most concerning aspect of this amendment however, is the precedent that it sets for increasing services at an extra cost to passengers that already pay a fee for security screening in Canada. It stands to reason that in a user-pay model in which Canadian airports, carriers and passengers find themselves in, fees collected for security screening through the Air Traveler Security Charge (ATSC) should be returned to the system to ensure that service levels remain reasonable even as passenger volumes increase. Over the years however, this has not been the case. CATSA has been subject to funding cuts in the same way as other federal departments. Despite the significant increase in the amount of fees collected through the ATSC, CATSA remains chronically underfunded and unable to deal efficiently with increasing passenger volumes at Canadian airports.

While there may not currently be a better solution to address long wait-times at security screening points, the government, opposition and committee members need to be aware that there is a risk that this becomes a structural increase in cost to travelers in a system that was initially designed to pay for itself as it grew.

Conclusion

Air Canada supports the amendments to the *Canada Transportation Act*, that would establish a process for the review of arrangements involving two or more air carriers taking into account broader public interest considerations and has proposed minor but important amendments which would help the proposed regime secure the objectives sought.

Air Canada supports an increase to foreign ownership limits to 49 per cent for all Canadian airlines. It would provide improved access to international investors and global capital markets. It would also give Canadian investors greater liquidity in their Canadian air carrier investments.

However, we submit that changes would be required to the definition of "Canadian" in Bill C-49 to ensure that the policy objectives underlying the new foreign ownership rules are met.

Air Canada also supports the government's initiative to improve passenger rights in Canada. Unfortunately, and for far too long, passengers have been treated differently and entitled to varying compensation depending on the airline they flew. As one of the Canadian airlines that contributed to the creation of Flight Rights Canada, we know first-hand the value in creating a uniform set of standards and consistency in passenger compensation that will eliminate confusion for passengers and airlines alike.

Passengers expect fast and easy service when flying in Canada and we always aim to deliver on those expectations. In 2016, Air Canada flew close to 45 million passengers and despite massive investments in infrastructure, information technology, staff training and the overall passenger experience, mishaps occasionally arise. Air Canada, therefore urges caution and asks the government to strike a balance with the implementation of Bill C-49 so as not to put Canada or Canadian airlines at a competitive disadvantage.

A 2013 Senate report, and more recently the Emerson report, Pathways: Connecting Canada's Transportation System to the World, identified Canada's aviation industry, an important part of the overall transportation sector, as an economic enabler that the government must support in an effort to help the economy grow.

We believe that with the minor but important amendments outlined in this submission, Bill C-49 will achieve its intended results while limiting the unintended consequences many other jurisdictions have experienced with similar legislative initiatives.

We thank the government for the opportunity to share our views on Bill C-49, The Transportation Modernization Act, and we look forward to working collaboratively on the drafting of regulations.

Below are extracts of the provisions of Bill C-49 relevant to Air Canada with changes proposed for your consideration, incorporated into the text and highlighted, as well as accompanying marginal notes explaining the basis for the changes sought.

BILL C-49	**PROJET DE LOI C-49**
An Act to amend the Canadian Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts	Loi apportant des modifications à la Loi sur les transports au Canada et à d'autres lois concernant les transports ainsi que des modifications connexes et corrélatives à d'autres lois
FIRST READING, MAY 16, 2017	PREMIÈRE LECTURE LE 16 MAI 2017
MINISTER OF TRANSPORT	MINISTRE DES TRANSPORTS

HOUSE OF COMMONS OF CANADA BILL C-49	CHAMBRE DES COMMUNES DU CANADA PROJET DE LOI C-49
An Act to amend the Canadian Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts	Loi apportant des modifications à la Loi sur les transports au Canada et à d'autres lois concernant les transports ainsi que des modifications connexes et corrélatives à d'autres lois
Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :	Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte:
Short Title	Titre abrégé
Short Title	Titre abrégé
1 This Act may be cited as the *Transportation Modernization Act*	1 *Loi sur la modernisation des transports*
1996, c.10	1996, c.10
Canada Transportation Act	Loi sur les transports au Canada
(…)	(…)
14 The Act is amended by adding the following after section 53.6:	14 La même Loi est modifiée par adjonction, après l'article 53.6, de ce qui suit:
Review of Arrangements Involving Two or More Transportation Undertaking Providing Air Services	Examen des ententes entre au moins deux entreprises de transport offrant des services aériens
(…)	(…)
Prohibition 53.72 If a notice has been given under subsection 53.71(1), the proposed arrangement shall not be completed without the Minister's authorization under subsection 53.73(8).	Interdiction 53.72 Lorsqu'un avis a été donné au titre du paragraphe 53.71(1), il est interdit de conclure l'entente visée sans avoir obtenu l'autorisation du ministre du titre du paragraphe 53.73(8).
Review process 53.73(1) The Minister, or a person designated by the Minister, shall examine the proposed arrangement, if it is subject to the review process.	Processus d'examen 53.73 (1) Le ministre ou une personne désignée par lui examine toute entente soumise au processus d'examen.
(…)	(…)
Final decision (8) The Minister shall, within 30 days after the day on which he or she receives a response from the parties un- der subsection (7), render a final decision. The Minister may, if satisfied that the proposed arrangement is in the public interest, authorize it and specify any terms and conditions relating to the public interest and competition that the Minister considers appropriate.	Décision définitive relative à son autorisation (8) Dans les trente jours suivant la date de réception de la réponse prévue au paragraphe (7), le ministre rend une décision définitive. Il peut, s'il est convaincu que l'entente servirait l'intérêt public, autoriser celle-ci selon les conditions, portant sur les questions d'intérêt public et de concurrence, qu'il estime indiquées.
(…)	(…)
Varying or rescinding terms and conditions	Modification ou annulation des conditions

53.75 On application by any party who is subject to terms and conditions of an authorization, the Minister may, after consulting with the Commissioner of Competition, vary or rescind the terms and conditions.	53.75 Le ministre peut, après avoir consulté le commissaire de la concurrence, modifier ou annuler les conditions de l'autorisation, à la demande de toute partie tenue de s'y conformer.
(…)	(…)
Concerns regarding authorized arrangement 53.77(1) The Minister may, at any time after the [**third** anniversary of the day on which an arrangement is **implemented**, notify the parties of any concerns raised by the arrangement with respect is to the public interest and competition.	Préoccupations relatives à une entente autorisée 53.77(1) Le ministre peut, en tout temps après le [**troisième** anniversaire] de la date ou l'entente a été **mise en œuvre**, aviser les parties des préoccupations d'intérêt public et de concurrence qu'elle soulève.
Measures to address concerns 53.77(2) The parties shall, within 45 days after the day on which they receive the notice under subsection (1), provide a response in writing to the Minister, specifying, among other things, any measures they are prepared to undertake to address those concerns. The parties may propose amendments to the arrangement.	Prise de mesures par les parties 53.77(2) Les parties disposent d'un délai de quarante-cinq jours suivant la date de réception de l'avis prévu au paragraphe (1) pour répondre par écrit au ministre et préciser notamment les mesures qu'elles sont disposées à prendre pour répondre à ces préoccupations. Elles peuvent proposer des modifications à l'entente.
Continuing the authorization 53.77(3) If, after consulting with the Commissioner, the Minister determines that the arrangement is still in the public interest, the authorization is continued subject to any new or amended terms and conditions specified by the Minister to address the concerns referred to in subsection (1) **and accepted by the parties**.	Maintien de l'autorisation 53.77(3) Si, après avoir consulté le commissaire de la concurrence, le ministre décide que l'entente sert toujours l'intérêt public, l'autorisation est maintenue sous réserve des conditions ou des modifications aux conditions existantes qu'il peut préciser pour répondre aux préoccupations visées au paragraphe (1) **et que les parties auront acceptées**.
Obligation to comply with terms and conditions 53.78 Every person who is subject to terms and conditions under subsection 53.73(8), section 53.75, paragraph 53.76(a) or subsection 53.77(3) shall comply with them.	Obligation de se conformer aux conditions 53.78 Toute personne assujettie aux conditions visées au paragraphe 53.78(8), à l'article 53.75, à l'alinéa 53.76(a) ou au paragraphe 53.77(3) est tenue de s'y conformer.
Revoking authorization - false or misleading information 53.79(1) The Minister may revoke an authorization at any time if it was granted on the basis of information that is false or misleading in a material respect or if the parties fail to comply with any of the authorization's terms or conditions.	Révocation de l'autorisation - renseignements faux ou trompeurs 53.79(1) Si l'autorisation du ministre a été donnée à la lumière de renseignements qui sont faux ou trompeurs sur un point important ou si les parties omettent de se conformer aux conditions de l'autorisation, celle-ci peut être révoquée par le ministre en tout temps.

Comment [AC1]: This is a significant impediment to realizing the benefits of the proposed regime:

-**First:** Without sufficient certainty at the outset and time to establish the JV and its benefits, parties may be unlikely to avail themselves of the proposed regime and it might not be successful in encouraging and generating the investment required to build Canada's international transportation infrastructure, precluding realizing the benefits sought by the new regime.

Based on international practice and our experience in implementing JVs in many foreign jurisdictions, we suggest a longer period of three years from implementation as an appropriate review period, that would meet the objective of the proposed regime.

-**Second**: full JV benefits take time before fully materializing and therefore insufficient time will have passed before any meaningful assessment could be made.

-**Third**: There is always a lengthy time period between the approval of a JV and its implementation or entry into force.

- Once a JV is approved, parties may only then begin exchanging competitive information in order to finalize their commercial arrangement and plan its implementation (e.g. agreeing on an effective date to start revenue-sharing, finalizing the contract and revenue-sharing model, filing of any changes to pricing options, etc…).
- It usually take several months or even longer depending of the complexity of the arrangement, its scope, any terms of conditions imposed, any foreign equivalent approval process, etc… for these final steps to be discussed, agreed to, and only then implemented. These steps cannot be completed until the JV is approved, as parties must continue to act as competitors and cannot exchange sensitive competitive information, or discuss or align on items that they would normally compete on outside the scope of a JV.

-**Fourth:** JV clearance in other major jurisdictions are obtained for longer time periods (e.g. EU – 10 years; more recently, DOT clearance for ATI awards were granted for indefinite periods. More recently, DOT approved a 5-year immunity for DL/AM) https://www.transportation.gov/briefing-room/dot-grants-antitrust-immunity-delta-aeromexico

Comment [AC2]: This is intended to contemplate two scenarios – one (this one) where the parties agree to changes, and the other, (s. 53.78(2)), which may lead to a revocation.

Revoking authorization - other grounds (2) The Minister may also revoke the authorization of an arrangement if (a) that arrangement is significantly amended without prior authorization; or (b) **At any time after the first anniversary of the day on which the Minister notifies the parties under the subsection 53.77(1)**, the Minister, after considering any response of the parties to the concerns raised under subsection 53.77(1), is no longer satisfied that the arrangement is in the public interest.	Révocation de l'autorisation - autres motifs (2) Le ministre peut aussi révoquer l'autorisation donnée à l'égard d'une entente dans l'un ou l'autre des cas suivants: (a) l'entente est modifiée de façon importante sans autorisation préalable; (b) **À n'importe quel moment suivant le premier anniversaire de l'avis du ministre donné suivant l'article 53.77(1),** le ministre n'est plus convaincu, compte tenu de la réponse des parties aux préoccupations visées au paragraphe 53.77(1), que l'entente sert l'intérêt public.
Order 53.82 If a person contravenes sections 53.72 or 53.78, a superior court may, on application by the Minister, order the person to cease the contravention or do anything that is required to be done, and may make any other order that it considers appropriate, including an order requiring the divestiture of assets. The Minister shall notify mi- the Commissioner of Competition before making an application.	Ordonnance 53.82 En cas de contravention aux articles 53.72 ou 53.78, toute cour supérieure peut, à la demande du ministre, enjoindre au contrevenant de mettre fin à la contravention ou d'y remédier et rendre toute autre ordonnance qu'elle estime indiquée, notamment pour obliger une personne à se départir d'éléments d'actif. Le ministre avise le commissaire de la concurrence avant de présenter la demande.
Offence - section 53.72 or 53.78 53.83(1) Every person who contravenes section 53.72 is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years or to fine of not more than $10,000,000, or to both. **(2) Every person who contravenes section 53.78 is guilty of an indictable offence and is liable to a fine of not more than $10,000,000.** **(3) If the Minister believes that a person has, contrary to this Act, failed to comply with section 53.72 or 53.78, the Minister shall first send a demand to the person requiring that they immediately, or within any period that may be specified in the demand, cease the contravention, remedy the default or show cause why there is no contravention of the Act.**	Infractions - article 53.72 ou 53.78 53.83(1) Quiconque contrevient **à l'article 53.72** commet un acte criminel passible d'un emprisonnement maximal de cinq ans et d'une amende maximale de 10 000 000 $, ou de l'une de ces peines. **(2) Quiconque contrevient à l'article 53.78 commet un acte criminel passible d'une amende maximale de 10 000000$** **(3) Si le Ministre considère qu'une personne a, contrairement à la présente loi, omis de se conformer aux articles 53.72 et 53.78, le ministre doit premièrement envoyer une mise en demeure exigeant de la personne que, sans délai ou dans le délai imparti, elle mette fin à la contravention, elle se conforme à la présente loi ou elle démontre que celle-ci n'a pas été violée**
Continuing Offence (4) If an offence under subsection (1) for the contravention of section 53.78 is committed or continued on more than one day, the person who commits it is liable to be convicted for a separate offence for each day on which it is committed or continued.	Infractions continues (4) Il est compté une infraction distincte pour chacun des jours au cours desquels se commet où se continue l'infraction visée au paragraphe (1) pour une contravention à l'article 53.78.
Officers, etc., of corporations	Administrateurs, dirigeants et mandataires

Comment [AC3]: This time period provides an opportunity to demonstrate whether the concerns identified have been in fact adequately addressed. In our experience, depending on the nature and extent of the concerns raised, a sufficient period of time is needed to address and discuss them.

If an agreement cannot be reached, the JV parties need sufficient time to plan next steps such as unwinding their JV integration.

Comment [AC4]: -Imprisonment is not a consequence in any other jurisdictions for a similar offence regarding JVs.

-Although imprisonment is not a common consequence for a civil matter such as this in any respect, it would seem more appropriate if at least restricted to 53.72 alone since a decision to not to complete an arrangement without the Minister's approval is sufficiently clear (as opposed to abiding by terms and conditions which can sometimes be unclear in all respects).

-For a potentially inadvertent breach of terms, imprisonment seems to be too draconian a measure and potentially too significant a risk which could be a significant impediment for the use of the regime (dissuading especially foreign partners).

-The goal should be compliance and ensuring that the JV delivers public benefits, not imprisonment of good faith employees.

Comment [AC5]: - A prior notice is in line with similar legislation (e.g. *Investment Canada Act)*

(5) If a corporation commits an offence under subsection any officer, director or agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.	(5) En cas de perpétration par une personne morale d'une infraction visée au paragraphe (1), ceux de ses administrateurs, dirigeants ou mandataires qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participe, sont considérés comme coauteurs de l'infraction et sont passibles, sur déclaration de culpabilité, de la peine prévue pour l'infraction en cause, que la personne morale ait été ou non poursuivie ou déclarée coupable.
(…)	(…)
15 The definition *Canadian* in subsection 55(1) of the Act is replaced by the following:	15 La définition de *Canadien,* au paragraphe 55(1) de la même loi, est remplacée par ce qui suit:
Canadian means	*Canadien*
(a) Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act,*	(a) Citoyen canadien ou résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés;
(b) a government in Canada or an agent or mandatary of such a government, or	(b) toute administration publique du Canada ou ses mandataires;
(c) a corporation or entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 51% of the voting interests are owned and controlled by Canadians and where:	(c) personne morale ou entité, constituée ou formée au Canada sous le régime de lois fédérales ou provinciales et contrôlée de fait par des Canadiens et dont au moins cinquante et un pour cent des **droits de vote** sont détenus et contrôles par des Canadiens, étant toutefois entendu:
(i) no more than **(A) 25% of the issued and outstanding shares or other equity securities, which in any event shall not represent more than** 25% of the voting interests**, or (B) 25% of the voting interests**, are owned directly or indirectly by any single non-Canadian, either individually**, or together with an affiliate or acting jointly or in concert** with another person, and	(i) qu'au plus **(A)** vingt-cinq pour cent des **actions ou autres titres de participation émis et en circulation, représentant au plus vingt-cinq pourcent des** droits de vote, **ou (B) vingt-cinq pourcent des droits de vote,** peuvent être détenus directement ou indirectement par un non-Canadien, individuellement**, avec une** personne du même groupe **ou avec toute personne agissant de concert**.
(ii) no more **than (A) 25% of the issued and outstanding shares or other equity securities, which in any event shall not represent more than 25%** of the voting interests, **or (B) 25% of the voting interests,** are owned **directly or indirectly** by one or more non-Canadians authorized to provide an air	(ii) qu'au plus (A) vingt-cinq pour cent **des actions ou autres titres de participation émis et en circulation représentant au plus vingt-cinq pourcent des** droits de vote**, ou (B) vingt-cinq pour cent des droits de vote,** peuvent être détenus **directement ou**

Comment [AC12]: We propose to replace the concept of "intérêts avec droit de vote" in the French translation with "droits de vote" which is a more accurate translation of the English concept of "voting interest".

Comment [AC13]: See comments provided in the English version for an explanation of the changes proposed below.

Comment [AC6]: Required to avoid creating additional classes of shares and thereby giving a non-Canadians a corporate veto right over significant changes (which would be contrary to the policy objective sought to be achieved by the restrictions).

Comment [AC7]: "Affiliation" is not a clear or established legal concept and it may not capture all affiliate relationships; proposed change would better achieve the intended purpose of the foreign ownership limits.

Comment [AC8]: See above comment.

Comment [AC9]: Insertion serves to clarify that direct ***and*** indirect holdings will be included in determining the 25% cap. This is required to prevent indirect holdings from exceeding prescribed limits and to ensure that control actually remains with Canadians.

service in any jurisdiction, either individually**, or together with an affiliate or acting jointly or in concert** with another person;(Canadien)	**indirectement** par un ou plusieurs non-Canadiens autorises à fournir un service aérien dans tout ressort, individuellement, avec **une** personne du même groupe **ou avec toute personne agissant de concert**. *(Canadian)*
15 (1) **The shareholders of a corporation governed by the Canada Business Corporations Act shall not have any dissent right under Section 190 of the Canada Business Corporations Act or otherwise in connection with any amendment to the articles of such corporation in order to reflect the definition of "Canadian" contemplated by this Act.**	15(1) **Les actionnaires d'une société régie par la Loi canadienne sur les sociétés par actions n'auront aucun droit de dissidence en vertu de l'article 190 de la Loi canadienne sur les sociétés par actions ou autrement dans le cadre de toute modification aux statuts de cette société afin de refléter la nouvelle définition de « Canadien » incluse dans la présente loi. "**
17 The Act is amended by adding the following after section 67.2:	17 La même loi est modifiée par adjonction, après l'article 67.2, de ce qui suit:
Person affected	Personne lésée
67.3 Despite sections 67.1 and 67.2, a complaint against the holder of a domestic license related to any term or condition of carriage concerning any obligation prescribed by regulations made under subsection 86.11(1) may only be filed by a person **directly** adversely affected.	67.3 Malgré les articles 67.1 et 67.2, seule une personne **directement** lésée peut déposer une plainte centre le titulaire d'une licence intérieure relativement à toute condition de transport visant une obligation prévue par un règlement pris en vertu du paragraphe 86.11(1).
Applying decision to other passengers 67.4(1) The Agency may, **in appropriate cases based on each passenger's individual circumstances**, make applicable to some or to all passengers of the same flight as the complainant all or part of its decision respecting a complaint related to any term or condition of carriage concerning any obligation prescribed by regulations made under paragraph 86.11(1)(b).	Application de la décision à d'autres passagers 67.4(1) L'Office peut, **dans les circonstances appropriées considérant la situation particulière de chaque passager**, rendre applicable à une partie ou à l'ensemble des passagers du même vol que le plaignant, tout ou partie de sa décision relative à la plainte de celui-ci portant sur une condition de transport visant une obligation prévue par un règlement pris en vertu de l'alinéa 86.11(1)(b).
(2) The Agency's decision shall be exclusive of any other recourse that would otherwise be available to the passenger for the same event, under a different regime than the one provided under this Act.	**(2) Cette décision de l'Office sera exclusive de tout autre recours disponible au passager pour le même évènement dans le cadre d'un autre régime que celui prévu par la présente loi.**
18(1) The portion of paragraph 86(1)(h) of the English version of the Act before subparagraph is replaced by the following:	18(1) Le passage de l'alinéa 86(1)(h) de la version anglaise de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :
(h) respecting traffic and tariffs, fares, rates, charges and terms and	(h) respecting traffic and tariffs, fares, rates, charges and terms and

Comment [AC10]: See above comment.

Comment [AC11]: Airline reporting issuers created 2 classes of shares given current CTA framework, allowing for changes to foreign ownership limits based on regulation, (**not** legislation) without amendment to their articles. Yet the proposed construct requires reporting issuers to amend their articles, arguably permitting dissent rights under corporate law (allowing dissenting shareholders to be paid their fair value), which may obstruct reporting issuers' ability to modify their articles, and avail themselves of the higher limits.

Comment [AC14]: When damages are owed to passengers, it is important that only passengers – persons directly affected by the event – be eligible for compensation. The Bill should therefore be specific to avoid any misinterpretation that would not be consistent with the legislators' intention

Comment [AC15]: The relevant and appropriate circumstances related to each passenger's situation must be considered. For example, some passengers delayed at departing and connecting at flight arrival may still be able to make their connecting flight and arrive on time at final destination, while others on the same flight may suffer a more significant delay at arrival at final destination, due to the same delay at departure. Accordingly, each passenger's compensation must be adjusted based on their individual circumstances, the extent to which they actually suffered.

Comment [AC16]: This language is needed to avoid double compensation if compensation is provided to passengers under this section 67.4, and covers areas where 86.11(3) would not apply. 86.11(3) would restrict compensation available under s. 86.11 if compensation is available under a different regime, whereas this s. 67.4(2) clarifies that if compensation is obtained under the Act, no other compensation can be obtained under a different regime. Such provision is in line with other jurisdictions and laws (e.g. *Carriage by Air Act*)

conditions of carriage for international service, including	conditions of carriage for international service, including
(2) Subparagraph 86(1)(h)(iii) of the Act is replaced by the following:	(2) Le sous-alinéa 86(1)(h)(iii) de la même loi est remplacé par ce qui suit:
(iii) authorizing the Agency to direct a licensee or carrier to take the corrective measures that the Agency considers appropriate and to pay compensation for any expense incurred by a person adversely affected by the licensee's or carrier's failure to apply the fares, rates, charges or terms or conditions of carriage that are applicable to the service it offers and that were set out in its tariffs, if the Agency receives a written complaint and, if the complaint is related to any term or condition of carriage concerning any obligation presented by regulations made under subsection 86.11(1) it is filed by the person adversely affected,	(iii) sur dépôt d'une plainte écrite, laquelle, si elle se rapporte à des conditions de transport visant des obligations prévues par un règlement pris en vertu du paragraphe 86.11(1), doit être déposée par la personne lésée, enjoindre à tout licencié ou transporteur de prendre les mesures correctives qu'il estime indiqués et de verser des indemnités à la personne lésée par la non-application par le licencié où le transporteur des prix, taxe, frais ou conditions de transport applicables au service et qui figuraient au tarif,
(iii.1) authorizing the Agency to make applicable, to some or to all passengers of the same flight as the complainant, all or part of the Agency's decision respecting a complaint related to any term or condition of carriage concerning any obligation prescribed by regulations made under paragraph 86.11(1)(b), to the extent that it considers appropriate, and	(iii.1) rendre applicable, dans la mesure qu'il estime indiquée, à une partie ou à l'ensemble des passagers du même vol que l'auteur d'une plainte qui porte sur une condition de transport visant une obligation prévue par un règlement pris en vertu de l'alinéa 86.11(1)(b), tout ou partie de sa décision relative cette plainte,
19 The Act is amended by adding the following after section 86.1:	19 La même loi est modifiée par adjonction, après l'article 86,1, de ce qui suit:
Regulations - carrier's obligations towards passengers 86.11 (1) The Agency shall, after consulting with the Minister, make regulations in relation to flights from and within Canada, including connecting flights,	Règlements - obligations des transporteurs aériens envers les passagers 86.11 (1) L'Office prend, après consultation du ministre, des règlements relatifs aux vols en provenance et à l'intérieur du Canada, y compris les vols de correspondance, pour:
(a) respecting the carrier's obligation to make terms and conditions of carriage and information regarding any recourse available against the carrier, as specified in the regulations, readily available to passengers in language that is simple, clear and concise;	(a) régir l'obligation, pour le transporteur, de rendre facilement accessibles aux passagers en langage simple, clair et concis les conditions de transport et les renseignements sur les recours possibles contre le transporteur- qui sont précisés par règlements;
(b) respecting the **operating** carrier's obligations in the case of flight delay,	(b) régir les obligations du transporteur **opérant** dans les cas

Comment [AC17]: This provision causes an **extraterritorial** application of Canadian law and risks generating complex and inequitable situations of **conflicts of law** and duplicative recourses.

While 86.11 (3) proposes that a person cannot receive compensation from a carrier under the Canadian law if that same person has already received compensation for the same event under another law, this will be difficult to manage, will not resolve all situations, and in code share situations, there is a *high* risk of **double-compensation.**

Comment [AC18]: -Air carriers operate several international routes through code shares and in practice cannot determine whether a passenger has claimed compensation from one carrier or both.

-As in Europe, the US and most other countries, these obligations should apply to operating carriers only.

-Marketing carriers, in the context of code share situations, cannot manage day-of operational issues and cannot comply with obligations to provide standards of treatment.

- This misalignment with other countries would likely cause inequitable double dipping.

flight cancellation or denial of boarding, including:	de retard et d'annulation de vols et de refus d'embarquement notamment:
(i) the minimum standards of treatment of passen-gers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier's control;	(i) les normes minimales à respecter quant au traitement des passagers et les indemnités minimales qu'il doit verser aux passagers pour les inconvénients qu'ils ont subis, lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable;
(ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is within the carrier's control, but is required for safety purposes, including in situations of mechanical malfunctions;	(ii) les normes minimales relatives au traitement des passagers que doit respecter le transporteur lorsque le retard, l'annulation ou le refus d'embarquement lui est attribuable, mais est nécessaire par souci de sécurité, notamment en cas de défaillance mécanique;
(iii) the carrier's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the carrier's control, such as natural phenomena and security events, and;	(iii) l'obligation, pour le transporteur, de faire en sorte que les passagers puissent effectuer l'itinéraire prévu lorsque le retard, l'annulation ou le refus d'embarquement est attribuable à une situation indépendante de sa volonté, notamment un phénomène naturel ou un événement lié à la sécurité;
(iv) the carrier's obligation to provide timely information and assistance to passengers;	(iv) l'obligation, pour le transporteur, de fournir des renseignements et de l'assistance en temps opportun aux passagers;
(c) prescribing the minimum **limit of liability** for lost**, delayed** or damaged baggage that the carrier is required to pay **for carriage wholly within Canada**;	(c) prévoir **une limite de responsabilité minimale du transporteur envers les** passagers en cas de **délai** perte ou d'endommagement de bagage **pour le transport intérieur;**
(d) respecting the carrier's obligation to facilitate the assignment of seats to children under the age of 14 years near a parent, guardian or tutor at no additional cost and to make the carrier's terms and conditions and practices in this respect readily available to passengers;	(d) régir l'obligation, pour le transporteur, de faciliter l'attribution, aux enfants de moins de quatorze ans, de sièges à proximité d'un parent ou d'un tuteur sans frais supplémentaires et de rendre facilement accessibles aux passagers ses conditions de transport et pratiques à cet égard;
(e) requiring the carrier to establish terms and conditions of carriage with regard to the transportation of musical instruments;	(e) exiger du transporteur qu'il élabore des conditions de transport applicable au transport d'instruments de musique;
(f) respecting the carrier's obligations in the case of tarmac delays over three hours, including the obligation to provide timely information and assistance to passengers, as well as the minimum	(f) régir les obligations du transporteur en cas de retard de plus de trois heures sur l'aire de trafic, notamment celle de fournir des renseignements et de l'assistance en temps opportun aux passagers et les

Comment [AC19]: The Montreal Convention caps the liability of carriers in exchange for a "no-fault" regime to protect passengers from having to prove fault and causality, as would normally be required under tort law.

Therefore, Canada's international obligations are to set a "maximum" compensation for international travel, not minimum compensation. To impose a minimum limit of liability is acceptable and sensible (i.e. the cap for maximum liability), but not minimum compensation.

Setting a minimum would entitle passengers who have suffered virtually no damage to be overly compensated and this would generate gain for these passengers, thus generating ill-founded claims.

The Montreal Convention sets a regime is an exclusive regime. No national law can validly apply and provide compensation in addition to this regime. If the Act contains a minimum compensation, this is likely to be challenged in court.

Comment [AC20]: The Montreal and Warsaw Convention systems, incorporated in Canada by the *Carriage by Air Act*, already set compensation for international carriage;

As stated above, Canada would be off-side its international obligations under these conventions if it set compensation levels that are different from those set in these conventions.

Prescribed amounts are needed for domestic carriage only (as the US has done in 14 CFR Part 254.4). Another option would be to legislate to apply the Montreal Convention to domestic carriage as was done by most European countries and Israel.

Lastly, the Montreal and Warsaw Conventions also provide for compensation for delayed baggage, not just lost or damaged baggage (Art. 22(2))

standards of treatment of passengers that the carrier is required to meet; and	normes minimales à respecter quant au traitement des passagers;
(g) respecting any of the carrier's other obligations that the Minister may issue directions on under subsection (2).	(g) régir toute autre obligation du transporteur sur directives du ministre données en vertu du paragraphe 25 (2).
Ministerial directions (2) The Minister may issue directions to the Agency to make a regulation under paragraph (l)(g) respecting any of the carrier's other obligations towards passengers **relating to any of the obligations under subsection (1)**. The Agency shall comply with these directions.	Directives ministérielles (2) Le ministre peut donner des directives à l'Office lui demandant de régir par un règlement pris en vertu de l'alinéa (l)(g) toute autre obligation du transporteur envers les passagers **relativement à une obligation relative au paragraphe (1)**. L'Office est tenu de se conformer à ces directives.
Restriction (3) A person shall not receive compensation **or benefits** from a carrier under regulations made under subsection (1) if that person:	Restriction (3) Nul ne peut obtenir du transporteur une indemnité **ou avantages** au titre d'un règlement pris en vertu du paragraphe (1) dans le cas où :
(a) **has recourse** to **receive** compensation **or benefits** for the same. **itinerary in another jurisdiction or** under a different regime than the one provided for under this Act**, or unless that person waives his rights to receive such compensation or benefits; or**	(a) il a **un recours pour être** indemnisé **ou avantagé** pour le même évènement **par un autre transporteur impliqué dans le même itinéraire, dans une autre juridiction, ou** dans le cadre d'un autre régime que celui prévu par la présente loi**, à moins qu'il ne cède ses droits à un tel recours; ou**
(b) if that person is affected by a delay at arrival at final destination of less than an amount of time prescribed by regulation.	**(b) si le délai à l'arrivée à la destination finale est de moins que la période de temps établie par règlementation.**
Related and Consequential Amendments	Modifications connexes et corrélatives
Competition Act	***Loi sur la concurrence***
Subsection 79(5) of the *Competition Act* is amended by adding a new sub-section (b):	**Le paragraphe 79(5) de la *Loi sur la concurrence* est modifié par l'ajout d'un sous-paragraphe (b) :**
(b) subsection (1) does not apply is relation to an arrangement, as defined in section 53.7 of the *Canada Transportation Act*, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked, if the anti-competitive act is directly related to, and reasonably necessary for giving effect to, the objective of the arrangement.	**(b) le sous-paragraphe (1) ne s'applique pas à un accord ou un arrangement constituant une entente, au sens de l'article 53.7 de la *Loi sur les transports au Canada*, réalisée ou proposée, autorisée par le ministre des Transports en application du paragraphe 53.78(8) de cette loi, dans la mesure ou l'autorisation n'a pas été révoquée, si la pratique anticoncurrentielle est directement lié à l'objectif de l'entente et raisonnablement nécessaire à la réalisation de cet objectif**

Comment [AC21]: - **The scope of the directions and regulations should be more narrowly defined**. Otherwise, it could theoretically cover any aspect of any airlines' obligations: contractual, operational, obligations under of federal statutes, or even provincial or international law, or the laws of another country.

- **Second, such a broad power is equivalent to a legislative power**: This delegation of power is of a legislation-making nature seem inappropriate as a regulatory delegation of power to an Agency and may not be a permissible delegation of power

Comment [AC22]: - This provision does not adequately limit double compensation. It limits it only where compensation had *already* been awarded **under another *passenger rights* regime**.

- It should be amended to include any compensation **or benefits** awarded under **any other laws in any jurisdiction** – to account for compensation one may receive in countries without a passenger rights regime or with a regime that does not provide specific compensation amounts (e.g. awarded by a court of law).

- Include "or benefits" to avoid double-refunds and other benefits, in line with article 3(b) EC Regulation 261/2004: benefits can include rerouting or refunds. A passenger should not be both rerouted under one regime, and refunded under another.

Comment [AC23]: Interpreting the term "same event" could prove difficult and could lead to cases of double compensation – hence the need to clarify as shown.

For example, it is not clear whether a delay at departure that leads to a delay at arrival is one event, or two separate events, that can be compensated under two different regimes. The new Mexican law, for example, call for compensation for delays at departure, while the EU law calls for compensation at arrival. Accordingly, passengers on an EU-carrier flight can be doubly compensate for a delay at departure in Mexico that leads to a delay at arrival in Europe

Comment [AC24]: s.86.11 should restrict compensation to longs delays on arrival at final destination (amount of time to be specified in regulations). This would prohibit compensation when no damages are suffered (e.g. delay at departure but not at arrival) and conflict of law situations as described in our attached scenarios.

Comment [AC25]: Once approval has been granted, the JV parties should no longer be subject to the risk of proceedings under the abuse of dominance provisions of the Competition Act for conduct that is related or giving effect to objectives of the JV– similar to the protection granted in relation to section 45, 47 and 90.1.