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
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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:

- 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 world). 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.” 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

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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 agreements².

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 alternative 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.
C49 – TRANSPORTATION MODERNIZATION ACT

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**

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

FIRST READING, MAY 16, 2017

**PROJET DE LOI C-49**

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

PREMIÈRE LECTURE LE 16 MAI 2017

MINISTER OF TRANSPORT

MINISTRE DES TRANSPORTS
An Act to amend the Canadian Transportation Act and other Acts respecting transportation and to make related and consequential amendments to other Acts

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1 This Act may be cited as the Transportation Modernization Act 1996, c.10

14 The Act is amended by adding the following after section 53.6:

Review of Arrangements Involving Two or More Transportation Undertaking Providing Air Services

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).

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.

(…) Final decision

(8) The Minister shall, within 30 days after the day on which he or she receives a response from the parties under 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.

(…) Varying or rescinding terms and conditions

14 La même Loi est modifiée par adjonction, après l'article 53.6, de ce qui suit:

Examen des ententes entre au moins deux entreprises de transport offrant des services aériens

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).

Processus d’examen

53.73 (1) Le ministre ou une personne désignée par lui examine toute entente soumise au processus d’examen.

(…) 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.

(…) 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.

(...) 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 to the public interest and competition.

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.

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.

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.

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.
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.

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 the Commissioner of Competition before making an application.

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.

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.

Officers, etc., of corporations

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.

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.

Infractions - article 53.72 ou 53.78

53.83(1) Quiconque contrevenant 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 contrevenant à l’article 53.78 commet un acte criminel passible d’une amende maximale de 10 000 000 $.

(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.

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.

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 mandary of the corporation who directed, authorized, consented 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. (...) 

15 The definition Canadian in subsection 55(1) of the Act is replaced by the following:

<table>
<thead>
<tr>
<th>Canadian</th>
<th>means</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Canadian citizen or a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act,</td>
<td></td>
</tr>
<tr>
<td>(b) a government in Canada or an agent or mandary of such a government, or</td>
<td></td>
</tr>
<tr>
<td>(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:</td>
<td></td>
</tr>
<tr>
<td>(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</td>
<td></td>
</tr>
<tr>
<td>(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</td>
<td></td>
</tr>
</tbody>
</table>

(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 La définition de Canadien, au paragraphe 55(1) de la même loi, est remplacée par ce qui suit:

<table>
<thead>
<tr>
<th>Canadien</th>
<th>means</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Citoyen canadien ou résident permanent au sens du paragraphe 2(1) de la Loi sur l’immigration et la protection des réfugiés;</td>
<td></td>
</tr>
<tr>
<td>(b) toute administration publique du Canada ou ses mandataires;</td>
<td></td>
</tr>
<tr>
<td>(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 contrôlés par des Canadiens, étant toutefois entendu:</td>
<td></td>
</tr>
<tr>
<td>(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 pour cent des droits de vote, ou (B) vingt-cinq pour cent 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.</td>
<td></td>
</tr>
<tr>
<td>(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 pour cent des droits de vote, ou (B) vingt-cinq pour cent des droits de vote, peuvent être détenus directement ou</td>
<td></td>
</tr>
</tbody>
</table>

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). (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.

17 The Act is amended by adding the
following after section 67.2:

Person affected

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.

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).

(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.

18(1) The portion of paragraph
86(1)(h) of the English version of the
Act before subparagraph is replaced by
the following:

(h) respecting traffic and tariffs, fares, rates, charges and terms and

indirectement par un ou
plusieurs non-Canadiens
autorisé 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) Les actionnaires d’une société régis
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 La même loi est modifiée par adjonction,
après l’article 67.2, de ce qui suit:

Personne lésée

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).

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) Cette décision de l’Office sera
exclusive de tout autre recours disponible
au passager pour le même événement
dans le cadre d’un autre régime que celui
prévu par la présente loi.

16(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

indirectement par un ou
plusieurs non-Canadiens
autorisé à fournir un service
aérien dans tout ressort,
individuellement, avec une
personne du même groupe ou
avec toute personne agissant
de concert. (Canadian)

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 dissenting shareholders (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

(2) Subparagraph 86(1)(h)(iii) of the Act is replaced by the following:

(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)(b), to the extent that it considers appropriate, and

(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

19 The Act is amended by adding the following after section 86.1:

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,

(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;

(b) respecting the operating carrier’s obligations in the case of flight delay;

(ii) 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 indiquées et de verser des indemnités à la personne lésée par la non-application par le licencié ou le transporteur des prix, taxe, frais ou conditions de transport applicables au service et qui figuraient au tarif,

(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 La même loi est modifiée par adjonction, après l’article 86,1, de ce qui suit:

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) 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) régir les obligations du transporteur opérant dans les cas...
flight cancellation or denial of boarding, including:

(i) the minimum standards of treatment of passengers 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;

(ii) the minimum standards of treatment of passengers that the carrier is required to meet when the delay, cancellation or denial of boarding is due to situations outside the carrier’s control, but is required for safety purposes, including in situations of mechanical malfunctions;

(iii) the carrier’s obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is attributable to a situation outside the carrier’s control, such as natural phenomena and security events, and;

(iv) the carrier’s obligation to provide timely information and assistance to passengers;

(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;

(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 readily available to passengers;

(e) requiring the carrier to establish terms and conditions of carriage with regard to the transportation of musical instruments;

(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

de retard et d’annulation de vols et de refus d’embarquement notamment:

(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) 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) 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) l’obligation, pour le transporteur, de fournir des renseignements et de l’assistance en temps opportun aux passagers;

(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) 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) exiger du transporteur qu’il élabore des conditions de transport applicable au transport d’instruments de musique;

(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
standards of treatment of passengers that the carrier is required to meet; and

(g) respecting any of the carrier’s other obligations that the Minister may issue directions on under subsection (2).

Ministerial directions

(2) The Minister may issue directions to the Agency to make a regulation under paragraph (i)(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.

Restriction

(3) A person shall not receive compensation or benefits from a carrier under regulations made under subsection (1) if that person:

(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

(b) if that person is affected by a delay at arrival at final destination of less than an amount of time prescribed by regulation.

Related and Consequential Amendments

**Competition Act**

Subsection 79(5) of the Competition Act is amended by adding a new sub-section (b):

(b) subsection (1) does not apply in 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 53.7(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.

**Modifications connexes et corrélatives**

**Loi sur la concurrence**

Le paragraphe 79(5) de la Loi sur la concurrence est modifié par l’ajout d’un sous-paragraphe (b):

(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 où l’autorisation n’a pas été révoquée, si la pratique anticoncurrentielle est directement liée à l’objectif de l’entente et raisonnablement nécessaire à la réalisation de cet objectif.