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May 27, 2013

VIA EMAIL

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

Attention: Mr. Mike Redmond, Chief, Tariff Investigations

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. Air Transat
Complaint about Air Transat's International Tariff Rules 5.2(a) and 5.2(b)
File No.: M 4120-3/13-02438
Reply

Please accept the following submissions in relation to the above-noted matter as a reply to Air Transat's May 21, 2013 answer to the complaint.

The present reply is confined to Air Transat's Existing and Proposed tariff rules, and does not address the various false and defamatory allegations that Air Transat made about the undersigned, because these allegations are not relevant to determining the reasonableness of Air Transat's Existing and Proposed tariff rules.

I. Air Transat's Existing Tariff Rules

Air Transat has made no submissions on this issue, and has implicitly conceded that the Existing Tariff Rules are unreasonable.

Thus, the Applicant is asking that the Agency find that Air Transat's Existing Tariff Rules are unreasonable.

II. Air Transat's Proposed Tariff Rules

Air Transat proposes to amend Rules 5 and 21 in response to the complaint, specifically, Rules 5.2, 21.2(i), 21.2(iii), 21.2(iv), and 21.3 (the "Proposed Rules").

The Applicant submits that, with the exception of Proposed Rule 21.2(i), the Proposed Rules address the issues raised in the complaint. At the same time, the Applicant submits that Proposed Rule 21.2(i) fails to be reasonable, because it is excessively restrictive in protecting passengers in the case of advancement of flight schedules:

Given that passengers have the right to take the flight they paid for, if the passenger's journey is interrupted by a flight cancellation, overbooking or in the event that the originally scheduled departure time is advanced by more than six (hours) with less than 48 hours advance notice to the passengers, the Carrier will take into account all circumstances of the case as known to it and will provide the passenger with the option of accepting one or more of the following remedial choices: [...]

[Emphasis added.]

With utmost respect to Air Transat, the Applicant is struggling to understand the rationale for not protecting passengers whose flight is advanced by less than 6 hours, or who are notified more than 48 hours in advance. As the following examples demonstrate, Proposed Rule 21.2(i) fails to adequately protect passengers in the case of advancement of flight schedules.

Example 1. A passenger purchases a ticket on an Air Transat flight that is scheduled to depart at 11:00 am. On the day before the departure, Air Transat notifies the passenger that the flight's departure was advanced to 6:30 am. While this is a very substantial last minute schedule change, the passenger is not entitled to any kind of protection under Proposed Rule 21.2(i), because the flight advancement was not "more than six (hours)."

Example 2. A passenger purchases a ticket on an Air Transat flight that is scheduled to depart at 9:00 pm. Four days before the departure, Air Transat notifies the passenger that the departure time was advanced to 2:00 pm. There is no doubt that this is a substantial schedule change, because it will prevent the passenger from working or doing business on the day of the travel; nevertheless, Proposed Rule 21.2(i) deprives the passenger of protection, because the passenger was notified more than 48 hours before the departure.

The Applicant submits that these examples demonstrate how little protection Proposed Rule 21.2(i) provides to passengers, and how many passengers would fall through the cracks.

The Applicant further submits that Proposed Rule 21.2(i) fails to take into account past decisions of the Agency with respect to Air Transat's tariffs. Indeed, in Decision No. LET-A-112-2003, the Agency considered the issue of flight advancement, and held that:

The Agency is of the opinion that, in the event of a flight advancement, the consumer should be offered alternate travel options immediately. In addition, the Agency

feels it would be beneficial if Air Transat includes a tariff provision that provides for a refund, at the request of the passenger, if such passenger should wish to cancel a reservation for a flight that has been advanced.

[Emphasis added.]

It is important to observe that the Agency was of the opinion that the right for alternative travel options and for a refund (at the passenger's choice) exists regardless of the length of the advancement or the advance notice provided to the passenger. The Agency's decision in *Lipson v. Air Transat*, LET-C-A-59-2003 reflects the same principle. Furthermore, in *Lipson v. Air Transat*, 212-C-A-2004, the Agency explained that:

The changes that have been made to Air Transat's new international scheduled services tariff came about as a result of lengthy discussions between Agency staff and Air Transat representatives, which stemmed, in part, from Mr. Lipson's complaint. These changes, *inter alia*, have redefined schedule irregularity to include flight time advancements greater than Air Transat's minimum check-in time as set out in its tariff. This check-in time is currently set at 45 minutes. [...]

[Emphasis added.]

In other words, back in 2004, Air Transat agreed to consider a flight advancement of more than 45 minutes a "schedule irregularity" that entitles passengers to various forms of protection. Thus, Proposed Rule 21.2(i) is a step backwards compared to what was established in 2004, because it recognizes only flight advancements of more than 6 hours as a schedule irregularity.

Therefore, the Applicant submits that Proposed Rule 21.2(i) is unreasonable in that in many cases, it fails to provide protection to passengers whose flight was advanced.

Based on the Agency's decision in *Lipson v. Air Transat*, 212-C-A-2004, the Applicant submits that passengers ought to be entitled to protection if their departure time is advanced by more than 45 minutes, and regardless of the length of the advance notice that Air Transat provides to the passengers; in particular, such passengers ought to be entitled to choose between alternative transportation and a refund.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. George Petsikas, Air Transat