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April 15, 2013

VIA EMAIL

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

Attention: Ms. Sylvie Giroux, Analyst

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. United Airlines
Complaint about United Airlines' prohibition against onboard photography and audio or video recording
Motion / Questions and notice/request of production directed to United Airlines
Reply to United Airlines' answer of April 12, 2013**

On April 10, 2013, the Applicant brought a motion pursuant to Rule 32, asking the Agency:

1. to resume consideration of the Applicant's motion dated February 27, 2013 to compel United Airlines to answer the unanswered questions (Q3, Q5, and Q6);
2. to set a deadline, pursuant to Rule 20(1), for United Airlines to answer the questions directed to United Airlines below;
3. to set a deadline for United Airlines to produce the documents listed below;
4. to extend the Applicant's deadline to file his reply pursuant to Rule 44, and allow him 10 days from the the receipt of full and complete answers to all outstanding questions and receipt of the sought documents.

On April 12, 2013, United Airlines filed its answer, pursuant to Rule 32(4), to the Applicant's motion. United Airlines is accusing the Applicant of abuse of process, and asking that the Agency refuse to grant the sought extension and that the Agency deprive the Applicant of his right to file a

reply in the main proceeding, pursuant to Rule 44; however, interestingly, United Airlines' answer failed to address the other three matters raised in the Applicant's motion.

Please accept the following submissions as a reply to United Airlines' answer of April 12, 2013, pursuant to Rule 32(5).

I. United Airlines misconstrues the reasons for the extension sought

It appears that United Airlines incorrectly believes that the extension is sought because the Applicant did not have sufficient time to prepare his reply. However, the Applicant is seeking an extension to file his reply pursuant to Rule 44 because United Airlines failed to answer questions Q3, Q5, and Q6 that the Applicant directed to United Airlines, and thus it is United Airlines' conduct that has been preventing the Applicant from filing a reply. Furthermore, United Airlines' answer of April 4, 2013 raised a number of additional questions, answers to which are necessary in order to enable the Applicant to adequately address the submissions made by United Airlines.

In these circumstances, a revision of the deadline set by the Agency is necessary in order to allow the Agency to adequately consider and determine an outstanding motion, dated February 27, 2013, to compel United Airlines to answer certain questions, and the present motion (dated April 10, 2013), asking that the Agency set a deadline for United Airlines to answer questions arising from United Airlines' answer.

II. The Agency's past practices with respect to interrogatories

The process of pleadings is described in Rules 40-44 of the *Canadian Transportation Agency General Rules*, S.O.R./2005-35. Rule 5 confirms the Agency's powers to extend any time limit set by the Rules or the Agency, either before or after the expiry of the time limit. Rules 15-20 provide for discovery procedures before the Agency, and allow parties to direct questions to each other as well as seek production of documents.

The Agency's past practices have been to suspend deadlines for filing submissions in relation to the main proceeding until after all discovery-related motions are determined by the Agency:

1. *Lukács v. WestJet* (File No.: M4120-3/09-04027)

In this case, WestJet directed several questions to the complainant, which the complainant refused to answer on the grounds that they were irrelevant. In Decision No. LET-C-A-141-2009, the Agency agreed with the complainant that the questions were irrelevant, but nevertheless, granted WestJet an extension of 20 days from the date of the decision to file its answer in the main proceeding.

2. *Lukács v. Air Canada* (File No.: M4120-3/09-03560)

In this case, the complainant directed certain questions to Air Canada after the latter filed its answer. In Decision No. LET-C-A-177-2009, the Agency directed Air Canada to answer the questions, and granted the complainant 5 days from the receipt of Air Canada's answer to file his reply.

Since Air Canada did not answer the questions in full, in Decision No. LET-C-A-115-2010, the Agency directed Air Canada to answer the questions, and granted the complainant 10 business days from the receipt of Air Canada's answers to file his reply.

Since Air Canada still did not answer all questions in full, in Decision No. LET-C-A-140-2010, the Agency directed Air Canada once more to answer the questions, and allowed the complainant 10 days from the receipt of Air Canada's answer to file his reply.

Subsequently, in Decision No. LET-C-A-226-2010, the Agency also addressed the issue of Air Canada's confidentiality claim, and revised the timeline for making submissions once more.

3. *Azar v. Air Canada* (File No.: M4120-3/12-02098)

In this case, the complainant made a motion to the Agency pursuant to Rule 32 in relation to a variety of discovery issues (refusals and productions), and also sought an extension to file her reply to Air Canada's answer. In Decision No. LET-C-A-140-2012, the Agency granted the complainant's motion, directed Air Canada to answer the questions and produce the documents, and revised the timelines for the filing of the complainant's reply.

Since Air Canada refused to answer certain questions and subsequent motions were brought, in Decision No. LET-C-A-145-2012, the Agency set a schedule of deadlines for making submissions with respect to the discovery motions, and extended the deadline for the filing of the reply pursuant to Rule 44 to 10 days after the receipt of the information and/or documents sought by the complainant. In Decision No. LET-C-A-150-2012, the Agency revised the timelines set earlier by the Agency (at Air Canada's request).

In Decision No. LET-C-A-180-2012, the Agency compelled Air Canada to answer certain questions, and set a deadline for answering them as well as for the filing of a reply in the main proceeding. In several subsequent decisions (Nos. LET-C-A-189-2012, LET-C-A-18-2013, LET-C-A-23-2013, LET-C-A-42-2013, and LET-C-A-50-2013) the Agency repeatedly revised the timelines set by it to ensure that both parties were provided with adequate opportunities to make submissions.

As these examples demonstrate, it is perfectly normal and ordinary for a party to seek and be granted an extension to file the final reply in a proceeding (pursuant to Rule 44) due to outstanding refusals and production motions, and the Agency has routinely been setting and revising timelines for making submissions to ensure that such motions are given adequate consideration.

There is a very good reason and rationale for the practice the Agency has developed in this respect. Indeed, filing several partial and incomplete replies, which are prepared without answers to outstanding questions and production requests, unnecessarily complicates the proceeding and results in the Agency having to consider multiple submissions in relation to the main proceeding.

On the other hand, allowing the Agency to first consider and determine all disputes related to refusals and productions results in reduction of the number of pleadings to be considered in the main proceeding: the complaint, the answer, and the reply; this is because the party filing the reply will have an opportunity to incorporate all answers and documents into its reply.

Therefore it is submitted that the Applicant's request for an extension in the present motion is both consistent with the Agency's past practices and is reasonable and logical in the circumstances.

III. Timing of the present motion

United Airlines appears to be also taking an issue with the timing of the present motion, and accuses the Applicant of abuse of process. The Applicant respectfully disagrees with United Airlines, and submits that United Airlines' position on this point is woefully misguided.

In Decision No. LET-C-A-53-2013, the Agency decided to hold the Applicant's motion dated February 27, 2013 to compel United Airlines to answer questions in abeyance until the receipt of United Airlines' answer to the complaint. Moreover, some of the questions directed to United Airlines in the present motion *arise* from United Airlines' answer of April 4, 2013. In these circumstances, the Applicant could not have possibly brought the present motion earlier, before he had received United Airlines' answer.

The motion was filed before the deadline set by the Agency in Decision No. LET-C-A-53-2013; whether it was submitted 5 days or 5 minutes before the expiry of the deadline is of no relevance. Although it is none of United Airlines' business, but as a matter of respect to the Agency, the Applicant would like to remind the Agency of the circumstances that were impeding his ability to make submissions, which are known to Agency staff (Ms. Mariko Nagata and Ms. Lora Thacker).

Finally, the Applicant notes that United Airlines has not identified any prejudice to it by the extension sought, and indeed no such prejudice exists. Therefore, it is submitted that the motion ought to be granted in its entirety.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Drew Tyler, Counsel for United Airlines