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February 26, 2016

Via email: Secretariat.Secretariat@otc-cta.gc.ca

The Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

Dear Sirs:

RE: Reconsideration of Decision No. 49-C-A-2016
Case no. 15-05535: Gabor Lukacs v. British Airways

Please accept the following submission to reconsider Decision No. 49-C-A-2016 with respect to the order therein requiring British Airways, in accordance with its election to reflect the regime proposed by Air Canada in the proceedings related to Decision No. 442-C-A-2013, including the incorporation by reference of Regulation (EC) 261/2004, to amend its Tariff by March 10, 2016.

This request is being made pursuant to Section 32 of the **Canada Transportation Act** S.C. 1996, c. 10.

On November 27, 2015, the Federal Court of Appeal, in Docket No. A-366-14, ("FCA decision"), allowed the appeal filed by Gabor Lukacs, ("Lukacs"), respecting Decision No. 201-C-C-2014 and remitted the matter to the Agency for redetermination in accordance with its reasons. The changed circumstances are that the Agency did not provide notice that it was proceeding to make a redetermination without hearing submissions from British Airways and Lukacs.

The Agency proceeded to redetermine its Decision No. 201-C-A-2014 without notice to either British Airways or Lukacs and without providing them with an opportunity to make submissions with respect to the matters being redetermined.

British Airways is asking the Agency to reconsider Decision No. 49-C-A-2016 after it determines the extent of submissions it will require for the redetermination of the issue that it was required to clarify by the FCA decision.

British Airways is asking for the reconsideration of Decision No. 49-C-A-2016 on the following bases:

1. The Agency failed to comply with the FCA decision in making its redetermination in Decision No. 49-C-A-2016. The Agency proceeded to redetermine its Decision No. 201-C-A-2014 without determining the extent of submissions it would require for the redetermination of the issue. The failure by the Agency to allow any submissions at all from British Airways and Lukacs did not comply with the reasons in the FCA decision in that it failed to determine "the extent of submissions it will require for the redetermination of the issue set out above." By necessary implication, the words of the reasons set out clearly contemplate that the Agency would require and receive submissions from British Airways and Lukacs. In the result, the Agency failed to comply with the FCA decision and British Airways and Lukacs were denied the right to make submissions to the Agency on the issues to be redetermined by the Agency.

2. The Agency breached its duty of procedural fairness and deprived British Airways of its right to be heard. The FCA decision stated in its reasons that the Agency "must clearly address how British Airways is to 'meet its tariff obligations of clarity' so that 'the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning' in situations where the tariff is silent with respect to denied boarding compensation for inbound flights to Canada... In particular, the Agency must clarify whether the tariff must in all instances set out denied boarding compensation provided for flights to and from Canada, or whether the fact that British Airways passengers from the E.U. to Canada are covered by E.U. Regulation (EC) No. 261/2004 is sufficient." The issues to be redetermined by the Agency were of such significant importance that failure to allow submissions from British Airways was a denial of natural justice.

3. The FCA decision requires a two step process. Firstly, the Agency had to determine whether the British Airways' tariff in all instances must set out denied boarding compensation provided for flights to and from Canada, or whether the fact that British Airways passengers from the E.U. to Canada are covered by E.U. Regulation (EC) No. 261/2004 is sufficient. If the Agency ultimately determined, after receiving submissions, that British Airways was required to set out denied boarding compensation for flights from the E.U., then secondly, the Agency had to determine how British Airways is to meet its tariff obligations of clarity with respect to passengers travelling from the E.U. to Canada so that 'the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning'. The Agency has neither requested nor received submissions with respect to how British Airways would meet its tariff obligations with respect to passengers travelling from the E.U. to Canada. Decision No. 442-C-A-2013 did not deal with denied boarding compensation for passengers

travelling from the E.U. to Canada, and accordingly the Agency has not considered what tariff wording would provide passengers travelling to Canada from the E.U. with denied boarding compensation enforceable in Canada. The failure of the Agency to allow British Airways to make submissions with respect to the redetermination of Decision No. 201-C-A-2014 in accordance with the FCA decision has deprived the Agency of information on possible tariff provisions for denied boarding compensation applicable to travel from the E.U. to Canada.

4. Requiring British Airways to include a tariff provision similar to the one in Air Canada's Tariff Rule 90 dealing with denied boarding compensation for passengers travelling from the E.U. to Canada fails to clarify anything, and fails to meet the requirement that 'the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning'. The wording is so vague as to result in nothing other than mischief. The wording of the Tariff Rule does not create a clearly enforceable right to denied boarding compensation in Canada, and in the result, fails to address the concern for clarity addressed in the FCA decision.

British Airways is proposing to the Agency that this matter proceed as a reconsideration with submissions from British Airways and Lukacs, rather than proceeding with a leave to appeal to the Federal Court of Appeal or an application for judicial review. An appeal or a judicial review, if successful, would have the likely result in the court sending the issues back to the Agency for redetermination again in any event.

In the circumstances, given the timing for making a leave to appeal or judicial review application and the March 10 deadline for compliance, It would be appreciated if a response to our request for reconsideration be received as soon as possible. In addition, British Airways is requesting an extension of the time for compliance with Decision No. 49-C-A-2014 until March 24, 2016.

All of which is respectfully submitted.

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