



Paterson, MacDougall LLP
BARRISTERS, SOLICITORS

Box 100, Suite 900
1 Queen Street East
Toronto, Ontario
M5C 2W5

T: (416) 366-9607
F: (416) 366-3743
Website: pmlaw.com

Carol McCall
Direct Tel: (416) 643-3309
cmccall@pmlaw.com

August 23, 2013

Via E-mail: Secretary@otc.cta.gc.ca
Shanda.Frater@otc-cta.gc.ca

The Secretary
Canadian Transportation Agency
Ottawa, Ontario
K1A 0N9

Attention: Shanda Frater, Analyst

Dear Madam Secretary:

**RE: File No. M4120/13-00661
Dr. Gabor Lukacs and British Airways Plc.
British Airways' Answers to Questions of Dr.
Lukács**

Q2. The British Airways' spreadsheet of the amounts of denied boarding compensation paid by British Airways to individual passengers departing from the United Kingdom to Canada in the years 2010, 2011, and 2012 is attached as Exhibit 'C'.

Q4. 'COMPCARD' means a cash payment, as opposed to a voucher (MCO) which can be used as a credit for future travel.

Q5. The compensation in Exhibit 'B' is tendered in a cash form. The passenger has the option of receiving a larger amount in a credit voucher form (MCO) that can be used for future travel. None of the passengers listed in Exhibit 'B' opted to receive a credit voucher (MCO) for a larger amount.

Q6. For compensation for passengers rerouted to arrive at last destination not more than 4 hours after original STA, cash of GBP 125.00 is the amount. For compensation for passengers rerouted to arrive at last destination more than 4 hours after original STA, cash of GBP 250.00 is the amount.

Q7. The issue is not competitive advantage with respect to the position of Dr. Lukács that British Airways should be required by the Agency to incorporate *Regulation (EC) No. 261/2004* into British Airways' Canadian International Tariff. British Airways complies with *Regulation (EC) No. 261/2004* that applies, pursuant to Article 3, section 1(a) 'to passengers departing from an airport located in the territory of a Member State to which the Treaty applies' and posts all notices and provides all rights set out therein. *Regulation (EC) No. 261/2004* was legislated by the European Parliament and provides

rights to passengers under that law, and not pursuant to the provisions of a contract of carriage. The *Regulation* provides in Article 15 that the obligations pursuant to the Regulation may not be limited or waived by any clause in a contract of carriage. By Article 16, infringements of the *Regulation* are to be dealt with by bodies designated by each Member State that are to be responsible for enforcement of the *Regulation* and are to receive passenger complaints about infringement of the *Regulation* by air carriers. The *Regulation* does not provide passengers with any contractual rights and does not provide for the enforcement of the rights under the *Regulation* by legal proceedings before the general courts of law. Article 12 provides only that passengers' rights to further compensation are not prejudiced by the *Regulation*.

With respect to Dr. Lukács's position that the British Airways' Canadian International Tariff ought to reflect the legal obligations in accordance with *Regulation (EC) No. 261/2004*, British Airways takes serious objection. What Dr. Lukács is seeking is the assistance of the Agency in providing passengers with contractual rights that the *Regulation* itself does not provide to passengers. As noted above, *Regulation (EC) No. 261/2004* is a regulatory scheme only and does not require the addition of any provisions to the passengers' contracts of carriage.

British Airways submits that it is inappropriate for the Agency to be enforcing foreign laws by requiring air carriers to include provisions of a European regulation in Canadian contracts of carriage. Further, by requiring the incorporation of the rights provided under foreign law in the case of the *EC Regulation*, the Agency changes the very nature of the effect of the *Regulation* by creating contractual rights and thereby contractual remedies that can be exercised by legal proceedings before the courts. In such a way, the Agency would change the effect of a foreign law in a manner that does not respect the European Parliament. Had the European Parliament intended the rights set out in *Regulation (EC) No. 261/2004* to be contractual rights, it would have so legislated.

Further, in Part II of *The Canada Transportation Act*, there are no provisions granting the Canadian Transportation Agency the power or authority to enforce foreign statutes and regulations. It is a general principle of law that what is not permissible or allowed to be done directly, cannot be done indirectly. Accordingly, as the Canadian Transportation Agency does not have the power or authority under its enabling statute to enforce the statutes and regulations of foreign states, it cannot indirectly enforce such statutes and regulations by requiring air carriers to incorporate the statutes and regulations of foreign states into the international tariffs of air carriers, which would then allow the Agency to enforce foreign statutes and regulations on the basis of its jurisdiction to receive and decide passenger complaints based on the failure of air carriers to comply with the provisions of their international tariffs.

British Airways submits that the Agency has no jurisdiction to require it to include any reference, directly or indirectly, to *Regulation (EC) No. 261/2004* in its Canadian Tariff Rules.

Q8. As noted in the British Airways' response to Q7, the issue with respect to the incorporation of the regulatory legislation of foreign jurisdictions, including the United States of America, the European Union, Andean Community Countries, Argentina and

Israel is not one of competitive advantage; it is one of the jurisdiction of the Canadian Transportation Agency. The position set out in Q7 also applies to Q8.

All of which is respectfully submitted.



Carol E. McCall
Solicitor for British Airways Plc.

cc Dr. Gabor Lukács
(by e-mail to Lukacs@AirPassengerRights.ca)

EXHIBIT 'C' DBC PAID FROM U.K. TO CANADA

Departure Date	Depart	Arrive	Carrier	Flt No	Cabin	Reason	Rte Typ	Offloads	Total DBC	Currency
11-Feb-10	LHR	YUL	BA	95 M	C	C	L	1	525	GBP
23-Jul-10	LHR	YUL	BA	95 M	C	C	L	1	507	GBP
27-Jul-10	LHR	YUL	BA	95 M	C	C	L	2	1014	GBP
28-Jul-10	LHR	YUL	BA	95 M	C	C	L	2	1000	GBP
18-Aug-10	LHR	YUL	BA	95 M	C	C	L	1	492	GBP
24-Sep-10	LHR	YUL	BA	95 M	C	C	L	1	501	GBP
02-Oct-10	LHR	YUL	BA	95 M	C	C	L	1	512	GBP
28-Dec-10	LHR	YUL	BA	95 M	C	C	L	2	1022	GBP
24-Jun-11	LHR	YUL	BA	95 M	C	C	L	4	2128	GBP
08-Jul-11	LHR	YUL	BA	95 M	O	C	L	3	1626	GBP
22-Jul-11	LHR	YUL	BA	95 M	C	C	L	6	3156	GBP
29-Jul-11	LHR	YUL	BA	95 M	C	C	L	4	2116	GBP
01-Aug-11	LHR	YUL	BA	95 M	C	C	L	4	2116	GBP
02-Aug-11	LHR	YUL	BA	95 M	C	C	L	10	5290	GBP
01-Oct-11	LHR	YUL	BA	95 M	O	C	L	21	11046	GBP
17-Dec-11	LHR	YUL	BA	95 M	C	C	L	4	2055	GBP
07-Jan-12	LHR	YUL	BA	95 M	C	C	L	3	1506	GBP
09-Jan-12	LHR	YUL	BA	95 M	C	C	L	5	2500	GBP
26-Feb-12	LHR	YUL	BA	95 M	C	C	L	4	2000	GBP
26-Feb-12	LHR	YUL	BA	95 M	O	C	L	1	500	GBP
18-Mar-12	LHR	YUL	BA	95 M	C	C	L	2	1004	GBP
01-Apr-12	LHR	YUL	BA	95 M	C	C	L	5	2510	GBP
21-Apr-12	LHR	YUL	BA	95 M	O	C	L	24	11880	GBP
22-Apr-12	LHR	YUL	BA	95 M	O	C	L	1	495	GBP
08-Jun-12	LHR	YUL	BA	95 M	C	C	L	4	1952	GBP
23-Jun-12	LHR	YUL	BA	95 M	C	C	L	5	2425	GBP
02-Jul-12	LHR	YUL	BA	95 M	C	C	L	1	484	GBP
08-Jul-12	LHR	YUL	BA	95 M	C	C	L	2	972	GBP
09-Jul-12	LHR	YUL	BA	95 M	C	C	L	1	486	GBP
27-Jul-12	LHR	YUL	BA	95 M	O	C	L	33	14477	GBP
14-Oct-12	LHR	YUL	BA	95 M	O	C	L	19	9196	GBP
25-May-10	LHR	YVR	BA	85 M	C	C	L	4	2052	GBP
26-May-10	LHR	YVR	BA	85 M	C	C	L	3	1566	GBP
04-Jul-10	LHR	YVR	BA	87 M	C	C	L	3	1479	GBP
13-Jul-10	LHR	YVR	BA	87 M	C	C	L	2	996	GBP
23-Jul-10	LHR	YVR	BA	85 M	C	C	L	3	1521	GBP
25-Jul-10	LHR	YVR	BA	87 M	C	C	L	1	507	GBP
27-Jul-10	LHR	YVR	BA	85 M	C	C	L	2	1014	GBP

29-Jul-10	LHR	YVR	BA	87 M	C	L	1	500 GBP
05-Mar-11	LHR	YVR	BA	85 M	C	L	6	3084 GBP
27-Mar-11	LHR	YVR	BA	85 M	O	L	13	6825 GBP
23-May-11	LHR	YVR	BA	85 M	C	L	1	526 GBP
29-May-11	LHR	YVR	BA	85 M	C	L	3	1575 GBP
23-Jun-11	LHR	YVR	BA	85 M	C	L	3	1596 GBP
24-Jun-11	LHR	YVR	BA	85 M	C	L	2	1064 GBP
11-Jul-11	LHR	YVR	BA	85 M	O	L	15	8130 GBP
14-Jul-11	LHR	YVR	BA	87 M	C	L	5	2665 GBP
20-Jul-11	LHR	YVR	BA	87 M	C	L	1	526 GBP
24-Jul-11	LHR	YVR	BA	85 M	O	L	3	1578 GBP
25-Jul-11	LHR	YVR	BA	85 M	C	L	1	526 GBP
29-Jul-11	LHR	YVR	BA	85 M	C	L	4	2116 GBP
31-Jul-11	LHR	YVR	BA	85 M	C	L	10	5288 GBP
01-Aug-11	LHR	YVR	BA	85 M	C	L	4	2115 GBP
04-Aug-11	LHR	YVR	BA	85 M	C	L	3	1578 GBP
04-Aug-11	LHR	YVR	BA	87 M	C	L	1	526 GBP
15-Aug-11	LHR	YVR	BA	85 M	C	L	2	1040 GBP
17-Dec-11	LHR	YVR	BA	85 M	C	L	2	1028 GBP
29-Dec-11	LHR	YVR	BA	85 M	C	L	1	501 GBP
04-Jan-12	LHR	YVR	BA	85 M	C	L	3	1506 GBP
10-Feb-12	LHR	YVR	BA	85 M	O	L	5	2495 GBP
17-Feb-12	LHR	YVR	BA	85 M	O	L	2	1006 GBP
17-Mar-12	LHR	YVR	BA	85 M	O	L	6	3012 GBP
24-Mar-12	LHR	YVR	BA	85 M	C	L	3	1500 GBP
29-Mar-12	LHR	YVR	BA	85 M	C	L	7	3514 GBP
30-Mar-12	LHR	YVR	BA	85 M	C	L	14	7028 GBP
31-Mar-12	LHR	YVR	BA	85 M	C	L	5	2510 GBP
01-Apr-12	LHR	YVR	BA	85 M	C	L	4	2008 GBP
02-Apr-12	LHR	YVR	BA	85 M	O	L	3	1506 GBP
05-Apr-12	LHR	YVR	BA	85 M	C	L	3	1503 GBP
19-May-12	LHR	YVR	BA	85 M	C	L	4	1956 GBP
24-May-12	LHR	YVR	BA	85 M	C	L	2	966 GBP
13-Jun-12	LHR	YVR	BA	85 M	C	L	1	486 GBP
23-Jun-12	LHR	YVR	BA	85 M	C	L	6	2910 GBP
23-Jun-12	LHR	YVR	BA	87 M	C	L	4	1940 GBP
24-Jun-12	LHR	YVR	BA	85 M	C	L	2	970 GBP
24-Jun-12	LHR	YVR	BA	85 W	C	L	1	485 GBP
09-Jul-12	LHR	YVR	BA	85 M	C	L	3	1458 GBP

11-Jul-12	LHR	YVR	BA	87 M	C	L	1	477 GBP
01-Aug-12	LHR	YVR	BA	87 M	C	L	3	1419 GBP
01-Aug-12	LHR	YVR	BA	87 M	O	L	1	473 GBP
27-Aug-12	LHR	YVR	BA	85 M	C	L	1	471 GBP
12-Jan-10	LHR	YYC	BA	103 M	C	L	1	534 GBP
18-Feb-10	LHR	YYC	BA	103 M	C	L	5	2615 GBP
15-Mar-10	LHR	YYC	BA	103 M	C	L	2	1082 GBP
25-Mar-10	LHR	YYC	BA	103 M	C	L	3	1623 GBP
30-Mar-10	LHR	YYC	BA	103 M	C	L	2	1082 GBP
15-Aug-10	LHR	YYC	BA	103 M	C	L	2	1000 GBP
19-Sep-10	LHR	YYC	BA	103 J	C	L	1	200 GBP
02-Oct-10	LHR	YYC	BA	103 M	C	L	3	1536 GBP
02-Oct-10	LHR	YYC	BA	103 M	O	L	1	512 GBP
27-Feb-11	LHR	YYC	BA	103 M	C	L	1	505 GBP
28-Mar-11	LHR	YYC	BA	103 M	C	L	4	2020 GBP
23-May-11	LHR	YYC	BA	103 M	C	L	4	2104 GBP
25-May-11	LHR	YYC	BA	103 M	C	L	4	2100 GBP
25-May-11	LHR	YYC	BA	103 M	O	L	3	1575 GBP
04-Jun-11	LHR	YYC	BA	103 M	C	L	5	2600 GBP
05-Jun-11	LHR	YYC	BA	103 M	C	L	1	520 GBP
08-Jun-11	LHR	YYC	BA	103 M	C	L	3	1605 GBP
19-Jun-11	LHR	YYC	BA	103 M	C	L	1	531 GBP
23-Jun-11	LHR	YYC	BA	103 M	C	L	1	532 GBP
23-Jun-11	LHR	YYC	BA	103 M	O	L	2	1064 GBP
24-Jun-11	LHR	YYC	BA	103 M	C	L	2	1064 GBP
13-Jul-11	LHR	YYC	BA	103 M	C	L	3	1599 GBP
14-Jul-11	LHR	YYC	BA	103 M	C	L	5	2399 GBP
30-Jul-11	LHR	YYC	BA	103 M	C	L	2	1058 GBP
02-Aug-11	LHR	YYC	BA	103 M	C	L	8	4228 GBP
06-Aug-11	LHR	YYC	BA	103 M	C	L	3	1578 GBP
04-Jan-12	LHR	YYC	BA	103 M	C	L	3	1506 GBP
06-Jan-12	LHR	YYC	BA	103 M	C	L	1	502 GBP
08-Jan-12	LHR	YYC	BA	103 M	C	L	2	1004 GBP
22-Feb-12	LHR	YYC	BA	103 M	C	L	2	500 GBP
02-Apr-12	LHR	YYC	BA	103 M	C	L	1	502 GBP
12-May-12	LHR	YYC	BA	103 M	C	L	1	487 GBP
24-May-12	LHR	YYC	BA	103 M	C	L	6	2898 GBP
25-May-12	LHR	YYC	BA	103 M	C	L	1	483 GBP
26-May-12	LHR	YYC	BA	103 M	C	L	2	966 GBP

21-Jun-12	LHR	YYC	BA	103 M	C	L	2	970 GBP
11-Jul-12	LHR	YYC	BA	103 M	C	L	1	477 GBP
12-Jul-12	LHR	YYC	BA	103 M	C	L	3	1431 GBP
13-Aug-12	LHR	YYC	BA	103 M	O	L	4	1900 GBP
05-Sep-12	LHR	YYC	BA	103 M	C	L	4	1906 GBP
07-Sep-12	LHR	YYC	BA	103 M	C	L	4	1908 GBP
11-Sep-12	LHR	YYC	BA	103 M	C	L	1	477 GBP
19-Mar-10	LHR	YYZ	BA	99 M	C	L	1	544 GBP
22-Mar-10	LHR	YYZ	BA	99 M	O	L	1	544 GBP
27-Jun-10	LHR	YYZ	BA	99 M	C	L	1	502 GBP
17-Aug-10	LHR	YYZ	BA	99 M	C	L	2	1000 GBP
19-Sep-10	LHR	YYZ	BA	99 M	C	L	2	498 GBP
26-Sep-10	LHR	YYZ	BA	99 M	C	L	6	2006 GBP
28-Sep-10	LHR	YYZ	BA	99 M	C	L	1	501 GBP
02-Oct-10	LHR	YYZ	BA	99 M	C	L	1	512 GBP
03-Oct-10	LHR	YYZ	BA	99 M	C	L	1	512 GBP
13-Nov-10	LHR	YYZ	BA	93 M	O	L	7	3640 GBP
13-Nov-10	LHR	YYZ	BA	99 M	O	L	6	3120 GBP
05-Dec-10	LHR	YYZ	BA	99 M	C	L	1	508 GBP
06-Dec-10	LHR	YYZ	BA	99 M	C	L	2	1016 GBP
23-Dec-10	LHR	YYZ	BA	93 J	C	L	1	511 GBP
23-Dec-10	LHR	YYZ	BA	93 M	C	L	2	1021 GBP
03-Jan-11	LHR	YYZ	BA	99 M	O	L	4	2040 GBP
05-Mar-11	LHR	YYZ	BA	99 M	C	L	2	1028 GBP
18-Mar-11	LHR	YYZ	BA	99 M	C	L	2	1038 GBP
19-Mar-11	LHR	YYZ	BA	93 M	C	L	2	1650 EUR
19-Mar-11	LHR	YYZ	BA	93 M	C	L	4	1817 GBP
19-Mar-11	LHR	YYZ	BA	93 M	O	L	2	779 GBP
19-Mar-11	LHR	YYZ	BA	99 M	C	L	9	4671 GBP
21-Mar-11	LHR	YYZ	BA	93 M	O	L	2	1038 GBP
22-Mar-11	LHR	YYZ	BA	99 M	C	L	1	519 GBP
25-Mar-11	LHR	YYZ	BA	93 M	C	L	5	2625 GBP
25-Mar-11	LHR	YYZ	BA	93 M	O	L	1	525 GBP
25-Mar-11	LHR	YYZ	BA	93 W	O	L	1	525 GBP
25-Mar-11	LHR	YYZ	BA	99 M	C	L	2	1050 GBP
19-Jun-11	LHR	YYZ	BA	93 M	C	L	1	266 GBP
24-Jun-11	LHR	YYZ	BA	99 M	C	L	1	532 GBP
27-Jul-11	LHR	YYZ	BA	93 M	C	L	3	1323 GBP
31-Jul-11	LHR	YYZ	BA	99 M	C	L	2	530 GBP

02-Aug-11	LHR	YYZ	BA	93 M	C	L	1	529 GBP
02-Aug-11	LHR	YYZ	BA	99 M	C	L	4	2128 GBP
02-Aug-11	LHR	YYZ	BA	99 M	O	L	8	4232 GBP
03-Aug-11	LHR	YYZ	BA	93 M	O	L	9	2893 GBP
03-Aug-11	LHR	YYZ	BA	99 M	C	L	3	1578 GBP
03-Aug-11	LHR	YYZ	BA	99 M	O	L	8	4208 GBP
04-Aug-11	LHR	YYZ	BA	93 M	C	L	3	1578 GBP
08-Sep-11	LHR	YYZ	BA	99 M	C	L	2	1054 GBP
15-Sep-11	LHR	YYZ	BA	93 M	C	L	3	777 GBP
17-Sep-11	LHR	YYZ	BA	99 M	O	L	6	3114 GBP
13-Nov-11	LHR	YYZ	BA	99 M	C	L	3	1548 GBP
13-Nov-11	LHR	YYZ	BA	99 M	O	L	1	516 GBP
04-Dec-11	LHR	YYZ	BA	99 M	C	L	4	1032 GBP
12-Dec-11	LHR	YYZ	BA	99 M	C	L	1	516 GBP
04-Jan-12	LHR	YYZ	BA	93 M	C	L	1	502 GBP
04-Jan-12	LHR	YYZ	BA	99 M	C	L	3	1506 GBP
09-Jan-12	LHR	YYZ	BA	93 M	C	L	1	502 GBP
09-Jan-12	LHR	YYZ	BA	99 M	C	L	2	1004 GBP
09-Jan-12	LHR	YYZ	BA	93 M	C	L	4	2008 GBP
16-Mar-12	LHR	YYZ	BA	99 M	C	L	1	502 GBP
16-Mar-12	LHR	YYZ	BA	93 M	C	L	13	3263 GBP
18-Mar-12	LHR	YYZ	BA	99 M	C	L	10	5020 GBP
18-Mar-12	LHR	YYZ	BA	93 M	C	L	7	3012 GBP
19-Mar-12	LHR	YYZ	BA	99 M	C	L	12	6024 GBP
19-Mar-12	LHR	YYZ	BA	99 M	C	L	1	499 GBP
24-Mar-12	LHR	YYZ	BA	93 M	C	L	3	1506 GBP
31-Mar-12	LHR	YYZ	BA	99 M	C	L	1	502 GBP
31-Mar-12	LHR	YYZ	BA	99 W	C	L	2	492 GBP
28-Apr-12	LHR	YYZ	BA	93 M	C	L	1	483 GBP
21-May-12	LHR	YYZ	BA	93 M	C	L	11	5313 GBP
21-May-12	LHR	YYZ	BA	99 M	C	L	6	1449 GBP
22-May-12	LHR	YYZ	BA	93 M	C	L	1	481 GBP
31-May-12	LHR	YYZ	BA	99 M	C	L	2	962 GBP
06-Jun-12	LHR	YYZ	BA	93 M	C	L	1	244 GBP
07-Jun-12	LHR	YYZ	BA	99 M	C	L	2	968 GBP
30-Jun-12	LHR	YYZ	BA	99 M	O	L	5	1909 GBP
11-Jul-12	LHR	YYZ	BA	93 M	C	L	1	237 GBP
01-Aug-12	LHR	YYZ	BA	93 M	C	L	1	475 GBP
11-Aug-12	LHR	YYZ	BA	93 M	C	L	1	475 GBP
11-Aug-12	LHR	YYZ	BA	99 M	O	L	7	3325 GBP

18-Aug-12	LHR	YYZ	BA	99 M	C	L	5	2355 GBP
03-Sep-12	LHR	YYZ	BA	93 M	C	L	1	238 GBP
03-Sep-12	LHR	YYZ	BA	93 M	O	L	2	438 GBP
03-Sep-12	LHR	YYZ	BA	99 M	O	L	1	475 GBP
27-Oct-12	LHR	YYZ	BA	93 M	C	L	3	976 GBP
28-Oct-12	LHR	YYZ	BA	93 M	C	L	2	976 GBP
30-Oct-12	LHR	YYZ	BA	99 M	O	L	1	488 GBP
25-Nov-12	LHR	YYZ	BA	99 M	O	L	2	964 GBP
25-Nov-12	LHR	YYZ	BA	99 W	O	L	1	482 GBP
26-Nov-12	LHR	YYZ	BA	99 M	C	L	2	482 GBP