

# **Unbridling Canada: Policy Paper Addendum**

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**Policy Paper Supplement for the  
Government of Canada**

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**CANADIAN AIRPORTS COUNCIL  
CONSEIL DES AÉROPORTS DU CANADA**

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## Introduction

This document is intended to serve as a supplement to previous submissions on Canada's international air policy from the Canadian Airports Council. It addresses specific questions raised by the federal government's new policy document.

The federal government's release late last month of its new international air policy (IAP) blueprint has generally been well received by Canada's airports, which acknowledge the comprehensive approach the government has given to Canada's international air policy in its review.

Representing significant change in government policy, the decision to consider airport interests and priorities on air service matters and its stated intention of seeking Open Skies as a primary objective for international air talks, are among the reforms Canada's airports consider long overdue.

According to the IAP blueprint's top three objectives, the government's new international air policy is intended to:

- *Provide a framework that encourages competition and the development of new and expanded international air services to benefit travellers, shippers, and the tourism and business sectors.*
- *Provide opportunities for Canadian airlines to grow and compete successfully in a more liberalized global environment.*
- *Enable airports to market themselves in a manner that is unhindered by bilateral constraints to the greatest extent possible.*

In order to ensure the policy is effective and achieves the government's stated objectives, the CAC recommends some clarifications so that the policy is not misinterpreted.

Canada's airports urge the government to consider amendments to its policy to ensure a clear interpretation of the government's intent and the application of its approach upon the policy's formalization in years to come.

## Policy Objectives and Principles

Canada's airports endorse the IAP blueprint's objectives and principles as the right approach to an international air policy for Canada in the 21<sup>st</sup> century. They correct the imbalance that values airline priorities and interests over all else by recognising the work of airports to attract new services to our communities, the value of competition for all users of the air transportation system, and the important role air transportation plays in international trade objectives.

Canada's airports, however, are concerned that the language in the policy is too broad and could be misinterpreted and lead to uncertainty. Specifically, in the following policy principle:

*Canadian carriers should have the opportunity to compete in international markets on a reasonably level playing field.*

The concern with the clause in this principle is mirrored in airport concerns with other sections of the document that are described in detail later in this position paper. Essentially the clause raises the question: What is considered a reasonably level playing field and who is charged with making an interpretation on this principle?

### **Recommendation:**

- Remove "on a reasonably level playing field" from the third policy principle.

## Proposed Policy Approach

In order to ensure the new international air policy approach is put into practical application, Canada's airports believe it is important that the government be clear in its intentions. The IAP blueprint's policy approach, however, contains qualifiers and caveats that could be very broadly interpreted. The risk is that the new policy could be misinterpreted and not achieve the government's intended objective of liberalization.

### **Opening Paragraph**

In the opening paragraph of the Proposed Policy Approach, the government says that:

*Canada will proactively pursue opportunities to negotiate more liberalized agreements for international scheduled air transportation*

*that will provide maximum opportunity for passenger and all-cargo services to be added according to market conditions.*

The expression “*according to market conditions*” is problematic because it restricts the government’s negotiating activities by an undefined variable that could be subject to very broad interpretation.

For example, “*market conditions*” is an expression widely used by companies to explain their decision to enter or depart from specific markets. In international air policy, this qualifier could be easily interpreted to refer to the perceived profit potential for Canadian carriers in the foreign market. Canada’s airports believe such an interpretation would be counter to the government’s objectives.

**Recommendation:**

- Remove “*according to market conditions*” from the first paragraph of the Proposed Policy Approach.

***Primary Objective***

Another broad qualifier of concern to Canada’s airports is located in the primary objective:

*As a primary objective, Canada will seek to negotiate reciprocal “Open Skies” -type agreements, similar to the one negotiated with the U.S., where it is deemed to be in Canada’s best interest.*

There is significant concern that “*where it is deemed to be in Canada’s best interest*” is extremely vague and open to broad interpretation.

It generally is understood that the Canadian government always will perform its duties with the overall interests of Canada in mind. Therefore, this qualifier is unnecessary.

**Recommendation:**

- Delete “*where it is deemed to be in Canada’s best interests*” from the primary objective.

***Caveats to Open Skies***

The Proposed Policy Approach ends with a section (page 5) that outlines four caveats to Open Skies – scenarios in which the federal government “*may determine that it would not be in Canada’s interests to negotiate an ‘Open Skies’-type agreement.*”

As a matter of principle, Canada's airports believe it always is in Canada's best interests to negotiate an Open Skies agreement. The very nature of Open Skies agreements is such that they remove discrimination and unfair business practices, making the federal government's policy caveats unnecessary.

Furthermore, this section of the IAP blueprint is of perhaps the most concern to Canada's airports because it is open to such broad interpretation. It also is the section most likely to be successfully used by interests opposed to air policy liberalization – either in general or for a particular market – and could as a result make the government's objectives unachievable. The lack of transparency in Canada's current international air service policy process would exacerbate the potential for abuse.

There are specific problems with the bullets as well:

**Caveat 1**

*"the ability of Canadian airlines to operate services is severely limited by discriminatory airport access and/or facilitation issues."*

It is the inherent nature of Open Skies agreements that discrimination in favour of specific carriers is eliminated. As such, this provision is unnecessary.

**Caveat 3**

*"the foreign carrier(s) appears not to be behaving in accordance with rational business principles or is protected from normal market disciplines, resulting in a markedly unbalanced playing field vis-à-vis Canadian airlines"*

This caveat could be used as a mechanism to keep foreign carrier competition out of Canada. How does one define "rational business principles," "normal market conditions," and a "markedly unbalanced playing field" and who is to be charged with making these determinations?

As an example of a potential problem, there exist today several successful international carriers that are partially or wholly government owned and are interested in adding service to Canada. These carriers contend they are not subsidized and are profitable due to their well managed business practices, but remain accused of receiving government benefits by competitor carriers. Government *owned*, however, does not necessarily mean an air carrier acts contrary to rational business principles.

As a measure to be more competitive globally for investment and business, many markets overseas have created environments for business that may be

considered more favourable than the business environment we enjoy in Canada. At what point do measures implemented abroad to promote business and investment become considered "not normal" in Canada, and who is charged with making this determination?

Canada's airports understand the government's desire to guard against unfettered competition by an unviable carrier operating through government support. Nevertheless, decisions made under Canada's new International Air Policy must be established on fact and evidence.

#### **Caveat 4**

*" the foreign carrier(s) would be reasonably expected to offer a level of service to such an extent that competition in some markets/routes would be significantly reduced or effectively eliminated – resulting in a net loss for Canada."*

In accordance with the government's policy objectives and principles, it should be market forces that create the level of service offered in the market.

Canada's airports furthermore contend that at a minimum, consideration of a less-than-Open Skies approach to a particular market based on alleged or perceived business practices, market disciplines or government protection/support should not be conducted in isolation: Airports should be consulted and provided the option of being in attendance as observers for talks.

#### **Recommendations:**

- Remove the text beginning with "In other limited situations...(page 5) until "Other Proposed Policies."

### **Other Proposed Policies**

#### **Air Cargo Transshipment**

Canada's airports agree with the government's intention of opening its air cargo transshipment program to all Canadian airports.

#### **Foreign Carrier Access**

Canada's airports believe that the government is correct in its assessment of the Foreign Carrier Access provisions of the 1994 international air policy as

having "*limited effectiveness*," however, disagree with the suggestion that the program should be terminated.

Canada should consider the U.S. approach on foreign access. Foreign carriers are granted access, regardless of interest from U.S. carriers (as long as the same rights are available to U.S. carriers). Due to the limited resources available for the Canadian government to conduct bilateral talks with all of the nations with which there is demand, it is essential that Canada's IAP blueprint also maintain and strengthen provisions for foreign carriers to commence service "in the meantime" in a timely and viable manner.

In addition, Canada's airports believe there is no valid argument for discrimination against specific Canadian markets when it comes to extra-bilateral foreign carrier access to Canada. As such, the clause in the current FCA provision that excludes foreign carriers from exercising the program in Toronto should be removed.

That only two countries have availed themselves of the FCA provisions is evidence of how restrictive they are. As long as Canadian carriers have reciprocal access to the market and regardless of their interest in availing themselves of this access, foreign carriers should be able to operate a limited viable schedule (up to at least five times a week).

Furthermore, carriers availing themselves of FCA provisions currently are required to re-apply every six months. This not only is burdensome to the carrier, it is a very inefficient use of government resources. Extra-bilateral foreign carrier access should be provided on a reverse onus basis – valid until cancelled by the federal government after a reasonable notice period.

Since Foreign Carrier Access is intended to be a temporary measure – to allow foreign carriers to begin service to Canada in the waiting period before bilateral talks can take place, there should be an incentive for the federal government to move to an Open Skies bilateral regime in a timely manner. This could be achieved with a guarantee that talks with an interested foreign government will take place and within a well-defined and timely period of time.

**Recommendations:**

- Do not abolish Foreign Carrier Access Provisions to Canada's IAP blueprint, but rather strengthen them to allow interested carriers to introduce viable extra-bilateral service to any point in Canada in a timely and efficient manner (up to five frequencies per week).
- Remove the clause in the current FCA provision that says "*with the exception of Toronto.*"

- Regardless of whether a Canadian-based airline has indicated an “interest” in operating own-aircraft or codeshare services on the same route provide extra-bilateral access to foreign carriers on a reverse onus basis – valid until cancelled by the federal government after a reasonable notice period.
- Create an incentive for the negotiators to move to an Open Skies bilateral regime in a timely manner by creating a guarantee that talks with an interested foreign government will take place and within a well-defined and timely period of time

## **Additional Comments and Recommendations**

### **Transparency**

Not contained in the government’s IAP blueprint are provisions to introduce transparency to the government’s international air policy work. A continued climate of secrecy only serves to exacerbate the concern of Canada’s airports over the possible interpretations that could be made of some parts of the document.

Canada’s airports contend that a transparency mechanism must be introduced to Canada’s IAP blueprint in order to ensure the government’s intent of rebalancing stakeholder interests is implemented and to provide a “check” of public opinion to ensure the needs of communities are taken into account.

Meanwhile, the U.S. openly publishes the template text for its Open Skies agreements, which is available to anybody who wishes to view it via the Internet. This is an approach that should be undertaken by Canada.

#### **Recommendation:**

- Introduce transparency mechanisms to Canada’s new IAP blueprint to ensure the government’s intent of rebalancing stakeholder interests is implemented and to provide a “check” of public opinion.

### **Observer Status**

For years, Canada’s airlines have had observer status at bilateral talks. In recognition of our community’s important stake in the outcome of these talks, Canada’s community-based airport authorities should have observer status at the negotiating table as well.

Observer status is an essential balancing measure to ensure that community interests are properly considered and addressed. Its value was proven in the 2005 Canada-U.S. talks in which the presence of observers was instrumental in quickly determining points of agreement and concluding the historic Canada-U.S. Open Skies agreement.

The value of industry observers during bilateral negotiations is an established fact in the U.S., where both airlines and airports play an instrumental role.

**Recommendation:**

- Allow the CAC, and any interested airport, observer status at bilateral air service talks between Canada and other countries to ensure that community interests are properly considered and addressed.

## **Dispute Resolution Mechanism**

Any effective protocol for international trade between two sovereign nations must contain a mechanism for resolution of disputes, but the IAP blueprint fails to detail the federal government's approach in this regard.

One possible approach from which Canada could borrow is set out in the U.S. model. Under the publicly available Open Skies text that forms the template for each new U.S. bilateral agreement, disputes are sent to an arbitration tribunal beginning within 30 days after a request for arbitration. The entire process is geared toward a resolution of the dispute within less than a year, with provisions for interim relief measures possible after as quickly as four months.

Meanwhile, the IAP blueprint creates the potential for serious differences of interpretation regarding how a particular market should be approached, with vital consequences within Canada for the industry stakeholders involved. In addition to a transparent process for decisions on the government's approach to a particular market, it is important that there be a mechanism for resolution of disputes arising from competing stakeholder and government interpretations of the facts related to these decisions.

Without fair, timely mechanisms for the resolution of disputes, Canada's bilateral regimes could languish in inaction. This would not be in the best interests of Canada and the communities our airports serve.

**Recommendation:**

- Create a mechanism for the fair, timely and transparent resolution of disputes related to a government's approach to a particular market, as

well as to disputes arising after bilateral agreements have been signed.

## **Air Traffic Data**

For Canadian communities to be fully competitive in their quest for new international air service, particularly when competing with U.S. airports, they need timely access to credible Canadian air traffic data.

Airports and airlines need data to review current traffic and forecast the potential for new routes. The lack of data available in Canada is in stark contrast to U.S. and other jurisdictions, in which data is much more readily available and distributed in a manipulatable electronic format.

Hindering the ability for Canada's airports to present a clear picture of the potential for their markets, the lack of statistics is a barrier to attracting new international service and the trade and tourism benefits that would result.

### **Recommendation:**

- Make timely passenger and cargo data collection and dissemination a priority and ensure the distribution of aviation data in a manipulatable, electronic format.

## Conclusion

Canada's airports are very supportive of the overall intent of the federal government's new IAP blueprint. A number of changes have been suggested to clarify the policy and ensure that the government's policy objectives can be achieved.

As currently drafted, the IAP blueprint leaves much to interpretation. Canada's airports are concerned that this would lead to an international air policy that is ineffective and impotent in the face of abuse by forces seeking to halt liberalization and keep foreign carrier competition out of Canada.

The federal government clearly has a duty to ensure a fair trading environment for this country. As such, the IAP blueprint needs to be very clear and specific and not be open to interpretation.

Meanwhile, there are no provisions to ensure that Canada's IAP blueprint be implemented in a transparent manner, exacerbating the potential for misinterpretation of the government's intent and result in uncompetitive behaviour. In keeping with the government's commitment for increased transparency and accountability, it is essential that the government's IAP blueprint prescribe transparency in the process.

Today air carriers have a unique advantage to promote their interests by enjoying observer status at bilateral talks. Observer status for airports should be part of the government's IAP blueprint to ensure community interests have fair representation as well.

Similarly, since competing interests could have different interpretations of the facts impacting the government's approach to a particular market, there should be a fair, timely and transparent process for resolution of disputes.

Finally, as the government recognised in its IAP blueprint, Canadian airports already are actively promoting their communities to air carriers of the world. In order to reverse a competitive disadvantage impacting Canadian communities and their potential for air service, the government must provide timely access to credible Canadian air passenger and cargo data.

Canada's airports welcome the government's attention to Canada's international air policy. After years of neglect and recent successful experimentation with liberalization, now is the time for Canada to wholeheartedly implement a fresh new approach to international air service – one that will enable Canadian communities to participate fully in the world of international air transport and the opportunities it has to offer.

## Summary of Recommendations

### ***Policy Principles***

- Remove “on a reasonably level playing field” from the third policy principle (page 4).
- Remove “according to market conditions” from the first paragraph (page 4).

### ***Proposed Policy Approach***

- Delete “where it is deemed to be in Canada’s best interests” from the primary objective (page 4).
- Remove the text beginning with “In other limited situations...(page 5) until “Other Proposed Policies.”

### ***Air Cargo Transshipment***

- Make the air cargo transshipment program standard policy for in-transit international air cargo. (pages 5-6).

### ***Foreign Carrier Access***

- Do not abolish Foreign Carrier Access Provisions to Canada’s IAP blueprint, but rather strengthen them to allow interested carriers to introduce viable extra-bilateral service to any point in Canada in a timely and efficient manner (up to five frequencies per week).
- Remove the clause in the current FCA provision that says “*with the exception of Toronto.*”
- Regardless of whether a Canadian-based airline has indicated an “interest” in operating own-aircraft or codeshare services on the same route, provide extra-bilateral access to foreign carriers on a reverse onus basis – valid until cancelled by the federal government after a reasonable notice period.
- Create an incentive for the government to move to an Open Skies bilateral regime by creating a guarantee that talks with an interested foreign government will take place and in a (well-defined) timely manner.

***Additional Comments and Recommendations  
Transparency***

- Introduce transparency mechanisms to Canada's new IAP blueprint to ensure the government's intent of rebalancing stakeholder interests is implemented and to provide the "check" of public opinion.

***Observer Status***

- Grant the CAC and any interested airport observer status at bilateral air service talks between Canada and other countries to ensure that community interests are properly considered and addressed.

***Dispute Resolution Mechanism***

- Create a mechanism for the fair, timely and transparent resolution of disputes related to a government's approach to a particular market, as well as to disputes arising after bilateral agreements have been signed.

***Air Traffic Data***

- Make timely passenger and cargo data collection and dissemination a priority and ensure the distribution of aviation data in a desegregated, electronic format.



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