

COMPETITION LAW COMPLIANCE POLICY OF THE NATIONAL AIRLINES COUNCIL OF CANADA

Agreed to by Air Canada, Air Transat, Jazz Aviation LP, and WestJet on June 18, 2008. Approved by the Board of Directors November 25, 2008.

Revised, and approved by the Board of Directors October 26, 2015.

BACKGROUND

WestJet, Air Canada, Air Transat and Jazz Aviation LP have formed THE NATIONAL AIRLINES COUNCIL OF CANADA (the “**NACC**”), an air carrier association that will focus on issues of concern to national and international passenger air carriers, that hold the required licenses to operate domestic and international scheduled passenger air services, and that become members (“**Members**”) of NACC.

OBJECTIVES AND MANDATE

The objectives of NACC are to:

- promote the development of sound public policy with respect to the air carrier passenger services provided by the Members in, to and from Canada; and
- serve as a voice of its Members when engaging or otherwise dealing with government and non-government stakeholders on any matter, including all public policy, legislative, safety and regulatory issues that impact the Members.

STATEMENT OF INTENTION TO COMPLY WITH COMPETITION LAWS

NACC and its Members intend to operate in compliance with all applicable Canadian laws, regulations and directives, including the *Competition Act* and any regulations made thereunder (“**Competition Laws**”).

In support of their respective intentions to comply with Competition Laws, the NACC and its Members hereby adopt the Competition Law compliance guidelines set out below (“**Compliance Guidelines**”). The Compliance Guidelines replace and supersede the Compliance Guidelines adopted by the Board of Directors November 25, 2008.

The Compliance Guidelines will be strictly followed by NACC employees and Members in connection with the formation of NACC and the carrying out of its activities. Failure to comply with these Guidelines may result in disciplinary action by NACC to be determined by the Board of Directors at its sole discretion.

All employees of the NACC, and all employees of NACC Members who participate in NACC meetings and activities will, prior to any such participation, execute and deliver to the NACC Compliance Officer a copy of the NACC Competition Law Compliance Certificate (attached hereto as Schedule “A”), certifying that the individual has received and understood the NACC Compliance Guidelines and commits to complying with their terms. All employees of the NACC, and all employees of NACC Members who participate in NACC meetings and activities will, at the beginning of each of calendar year, execute an annual NACC Competition Law Compliance Certificate (attached hereto as Schedule “B”). It is the responsibility of the

NACC Members to ensure compliance with this requirement and to ensure that executed copies of the Certificates are delivered to the NACC Compliance Officer in a prompt manner.

RESPONSIBILITY FOR COMPETITION LAW COMPLIANCE

The Executive Director will act as Compliance Officer for the NACC. While the Compliance Officer manages the Policy, daily responsibility for compliance with the law rests with each and every NACC employee, NACC Director and Executive Committee Member and NACC Member because compliance with the law protects not only the NACC, but also each of the Members.

COMPETITION LAW COMPLIANCE GUIDELINES

To avoid violation of any Competition Laws, every NACC employee, Member or external participant in NACC's meetings or activities must adhere to the following Compliance Guidelines at all times, including during any informal or social gatherings where Members and other NACC participants happen to meet.

1. NACC Meetings

- (a) **Agendas and Minutes.** In conducting any meeting of the Board of Directors, of the Executive Committee, of any NACC Committee or sub-committee, the Chair or Secretary of each such meeting shall prepare and follow a formal agenda. The items on the agenda will have a clear and legitimate NACC purpose and the Chair or Secretary will ensure that discussions are confined to the items on the agenda. Minutes of all such meetings shall be maintained, accurately reflecting the subjects discussed and action taken in relation to each item on the agenda. All such minutes shall be promptly made available to any Members eligible to vote at the meetings who shall be entitled to comment and propose corrections to the extent that the minutes do not accurately reflect the subjects that were discussed or the actions that were taken. Revised minutes shall be promptly circulated. Copies of the final minutes, and any attachments, will be delivered promptly to the Compliance Officer and kept safe for a period of six (6) years from the date of the meeting.
- (b) **Acknowledgement of the Compliance Guidelines.** At the beginning of each meeting, the Chair or Secretary shall remind attendees of the existence of the Compliance Guidelines, including the restrictions on information sharing listed below and identified as the Restricted Subjects.
- (c) **Legal Counsel.** In the event that the Chair or Secretary determines that an agenda item may lead to discussions involving topics which might raise competition law concerns, the Chair or Secretary will request to the Compliance Officer that legal counsel be present (in person or via teleconference) for all or part of the meeting.

2. **NACC and Committees.** Neither NACC nor any of its committees or activities shall be used, directly or indirectly, for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to any matters dealing with competitively sensitive issues, including, without limitation:

- (a) **price components**, including, without limitation, input prices and sources, fares, fees, rates, charges or surcharges, fees schedules, pricing policies, pricing formulas and pricing initiatives;
- (b) **pricing methods**, including, without limitation, any and all terms or conditions of sale, including discounts, discount structures and credit terms, or other competitive terms of sale (for example rebates);
- (c) **cost/revenue data**, including, without limitation, current/future profits and profit margins or profitability targets on any services, products or projects;
- (d) **capacity**, including, without limitation, capacity of any kind, including cargo or passengers;
- (e) **plans**, including, without limitation, marketing and capital investment plans, budgets, forecasts, planned price changes, route or schedule changes, product or service/product development plans, business strategy, or strategies or policies, including relating to competitors;
- (f) **supplying of products/services**, including, without limitation, quality, cost or revenue of supplying products/services, licensing of products or services;
- (g) **markets/customers**, including, without limitation, market shares, identity of customers or suppliers or potential customers or suppliers, distribution, territories, allocation of territories, city pairs;
- (h) **channels or methods of distribution**;
- (i) **research and development/production and sales**, including, without limitation, the timing and the limitation on the timing, cost or volume of research, production or sales;
- (j) **calls for bid or tender**;
- (k) **intellectual property rights**, including discussions relating to the collective exercise of such rights
- (l) **complaints** about another competitor, whether or not a Member or potential Member; and
- (m) any other information that would materially influence conduct in the marketplace.

(collectively the “**Restricted Subjects**”)

3. **Prohibited Discussions at NACC Members' Meetings and Informal Gatherings.** To the extent possible, NACC Members are encouraged to conduct all NACC business during meetings. NACC Members should avoid holding unscheduled or informal meetings amongst competitors. The activities of NACC and of its Members are not intended to prevent, limit, restrain, injure, lessen or to otherwise have an adverse effect on competition, either by purpose or effect. For greater certainty, during any meeting of NACC or during any informal gathering or social gathering

where one or more members or other NACC participants meet there shall be no discussions or communications of any form whatsoever regarding or involving competitively-sensitive issues, including, without limitation, the Restricted Subjects. If a Member is concerned that a discussion in a meeting of Members may involve or lead to a discussion of a Restricted Subject, the Member must advise the Chair and the Chair must terminate the discussion and arrange for the matter to be reviewed by legal counsel.

4. **Collection of Data.** Activities undertaken by NACC that pertain to the collection of data supplied by the Members or non-Members, as applicable, shall:
 - (a) be voluntary and shall include historical data only;
 - (b) be collected by an independent third party;
 - (c) be presented to the Members only in aggregated form, with no individual Members identified;
 - (d) generally be made available to non-Members for a reasonable fee; and
 - (e) be analyzed separately by each Member for the purpose of making independent business decisions based on the data.
5. **Independent Judgment.** Each Member is obligated and required to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete. A Member will not inform other members of its future business or plans.
6. **No Boycotts.** No activity or communication of NACC, or any of its Members in connection with their participation in NACC, shall include any discussion or statement which could reasonably be construed as an agreement or understanding among Members to refrain, or to encourage other Members to refrain, from purchasing any raw materials, product, equipment, services or other supplies from any supplier or from dealing with any supplier, customer or non-Member.
7. **Free Market Access.** No activity or communication of NACC, or that of its Members in connection with their participation in NACC, shall include any discussion which could reasonably be construed as an attempt to prevent any person or business entity from gaining access to any market, city pair or customer for goods and services, or to prevent any business entity from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market. (This paragraph is not intended to preclude a member from disclosing and asserting its intellectual property rights.)
8. **NACC Membership.** The qualifications for membership will be set forth in the by-laws of NACC. No applicant for membership that meets the qualifications set forth in the by-laws and pays the applicable membership fees shall be denied membership. No Member shall be excluded from a working group of NACC for an anti-competitive reason or purpose.

9. **Standards and Specifications.**

- (a) To the extent that NACC develops, promulgates, approves, or adopts proposed standards or specifications, adherence to such proposed standards or specifications shall be voluntary on the part of its Members, and shall in no way be compelled or coerced by NACC or any committee or Member thereof, it being solely a voluntary and unilateral decision on the part of the particular Member or Members as to whether to adhere to or comply with any such proposed standard or specification. Any such standards or specifications shall generally be made available to non-Members for a reasonable fee.
- (b) Any specifications or standards that may be developed, promulgated, approved, or adopted by NACC in order to effectuate its purposes shall be based upon relevant considerations, and shall not be based upon any effort, intention, purpose or effect to prevent, limit, restrain, injure, lessen, or to otherwise have an adverse effect on competition or to otherwise reduce or eliminate competition in the sale or supply of products and services.
- (c) Any standards or specifications should focus on technical and operational factors and avoid unnecessarily addressing commercial factors. If Members compete on the basis of a difference that will be eliminated by a standard or specification, the standard or specification should be reviewed by antitrust counsel before it is adopted.
- (d) NACC shall not impose sanctions for the violation of, nor shall it enforce compliance with, standards or specifications developed, promulgated, approved, or adopted by NACC.

10. **Public Statements.** No person, including the Compliance Officer, is authorized to make any official or any public statement on behalf of NACC regarding the implementation and application of the Compliance Guidelines unless such authority is specifically conferred in writing by the Board of Directors.

11. **Disclosure of Information.** During the course of the activities of NACC, no Member will disclose any information to any other Member that can be construed in its use as having any anti-competitive purpose.

Individual Member Guidelines / Compliance Guidelines. NACC and its Members consider it appropriate that Members individually and independently develop and maintain their own competition law compliance programs and all other applicable conformity policies and guidelines, in compliance with the competition laws applicable to the Member. Nothing in these Competition Guidelines abrogates the independent and individual obligations of each NACC Member in this regard.

Schedule "A"

NACC COMPETITION LAW POLICY CERTIFICATE

Whereas the NACC Competition Law Policy Guidelines require that, prior to any participation in NACC meetings and activities, all employees of the NACC, and all employees of NACC Members who intend to participate in NACC meetings and activities, execute and deliver to the NACC Compliance Officer a copy of the NACC Competition Law Compliance Certificate,

I, (name & title) _____,

[check one]

an employee of the NACC (position) _____ OR

an employee of a NACC Member (airline) _____,

affirm that I have received, read, understood, and will comply fully with the Competition Law Compliance Policy Guidelines of the National Airlines Council of Canada.

Signed: _____

Date: _____

Witnessed by: _____

Please return to the Compliance Officer of the National Airlines Council of Canada:

By Email: morourke@airlinecouncil.ca

By Mail: 116 Lisgar Street, Suite 600, Ottawa, Ontario K2P 0C2

Schedule "B"

2015 NACC COMPETITION LAW POLICY ANNUAL CERTIFICATE

Whereas the NACC Competition Law Compliance Policy Guidelines require that at the beginning of every calendar year, each Member shall sign a certificate indicating that all employees of the Member who participated in NACC meetings and activities, executed and delivered to the NACC Compliance Officer a copy of the NACC Competition Law Compliance Certificate indicating that he/she had read, understood and committed to complying fully with these Compliance Guidelines,

I, (name & title) _____,

on behalf of NACC Member (airline) _____ (the "Member"),

affirm that all employees of the Member who participated in NACC meetings and activities, executed and delivered to the NACC Compliance Officer a copy of the NACC Competition Law Compliance Certificate indicating that he/she had read, understood and committed to complying fully with the Compliance Guidelines and will comply fully with the Competition Law Compliance Policy Guidelines of the National Airlines Council of Canada.

Signed: _____

Date: _____

Witnessed by: _____

Please return to the Compliance Officer of the National Airlines Council of Canada:

By Email: morourke@airlinecouncil.ca

By Mail: 116 Lisgar Street, Suite 600, Ottawa, Ontario K2P 0C2