

## **Options for Greater Transparency in Airline Fare Advertising**

### **Stakeholder Consultation Document**

In January 2004, federal, provincial and territorial Ministers responsible for consumer affairs met to discuss consumer protection issues.

A key outcome of this meeting was that Ministers directed their officials on the Consumer Measures Committee (CMC) to begin work on a coordinated approach to ensure consumer protection in the travel industry, including full price advertising of travel services, specifically, airline travel advertising. As indicated by Ministers, "there are gaps in the level of awareness and protection for consumers of travel services due to ongoing changes in the travel industry." Ministers discussed the problem and agreed that a coordinated approach to ensuring consumer protection in the travel industry is necessary.

The CMC is consulting with the public regarding how to achieve greater transparency in airline fare advertising. The CMC Travel Working Group will report back to Ministers with recommendations at their next meeting. Members of the CMC Travel Working Group include representatives from Industry Canada, the Competition Bureau, the Canadian Air Travel Complaints Commissioner's Office, and the Consumer Ministries of Ontario, Quebec, Alberta and British Columbia.

#### **What is the Issue?**

Airline advertising practices in the Canadian travel industry do not currently provide accurate and complete fare information for consumers to base their travel purchasing decisions.

#### **Why is This An Issue?**

There is a growing sense of "sticker shock" in the Canadian airline travel industry. Consumers are generally not aware of the level of surcharges imposed above the advertised price of airline travel services. The undisclosed amounts of travel charges include Nav Canada fees, airport improvement charges, fuel surcharges, insurance and air security charges. Consumers also have to add taxes (G.S.T. or Harmonized Sales Tax, and possibly sales tax or other taxes depending on the province or the country). Once all of these supplementary charges are added to the advertised price, it can amount to airfares that are significantly higher than advertised.

Consumers are increasingly demanding that price information they receive in advertisements reflect the total price of the air service they are purchasing.

Various agencies and consumer protection groups have already begun to advocate greater transparency in airline advertising practices. The lack of transparency in airline advertising practices in Canada was the subject of one of the January-June 2002 recommendations in Canada's *Air Travel Complaints Commissioner's Report* to Parliament.

On December 8, 2003, Option Consommateurs, the Public Interest Advocacy Centre (PIAC) and Transport 2000 Canada called on the federal government to take action to stop what it views as misleading airline advertising practices, and recommended that the federal government adopt an all-in-pricing regulatory framework for airlines.

According to their report, airlines advertise flights at attractive and competitive prices but consumers end up paying hidden fees that raise the travel price by up to 79%. The report also highlighted ads that announced flights to various Canadian destinations and the following chart provides a breakdown of the discrepancies.

Advertisement	Advertised Price	Surcharges	Total Price	Surcharge as a % of Advertised Price
Montreal - Vancouver	\$174	\$61.54	\$ 235.54	35.5%
Montreal –Toronto	\$89	\$48.55	\$137.55	54%
Montreal – Halifax	\$64	\$50.54	\$114.54	79%
Montreal – West Palm Beach Florida	\$99	\$97.64	\$196.64 + GST	98.5%

### Canada's Travel Regulatory Structure

The travel industry in Canada has some unique characteristics. These characteristics include different levels of government having regulatory oversight over various parts of the industry; different channels available to purchase travel (e.g., through a travel agent or a wholesaler, over the internet or directly from an end-supplier); and use of advance payments to purchase the majority of travel services.

Ontario, Quebec and British Columbia regulate travel agents and wholesalers, but regulation of airlines is a federal matter. In some provinces, the advertising practices of all businesses, including the travel sector, are governed by general consumer protection legislation. In others, they are covered by specific sector statutes under their general consumer protection law regimes. Consequently, the regulatory landscape governing travel and travel advertising is fragmented, with different policies and practices occurring under different jurisdictions. Outlined below is a summary of how travel advertising is governed by various jurisdictions in Canada, and internationally.

### Federal Action To Date

There is currently no federal law specifically governing airline travel advertising. Sections 52 (false or misleading representations – knowingly or recklessly), 74.01 (false or misleading misrepresentations to the public), 74.04 (representations as to “bargain price”) and 74.05 (sale above advertised price) of the federal *Competition Act* apply to all advertising but do not specifically address the concept of all-in-price advertising. The federal government’s Bill C-26 proposed the implementation of a price advertising regulation for airlines, but the Bill died on the order paper. The purpose of the advertising standards in Bill C-26 was to ensure that price information consumers received in advertisements reflected the total price of the air service they were purchasing.

Bill C-26 did not propose complete all-in-price advertising. It proposed that fees or charges collected on behalf of an airport authority could be excluded from the total advertised price, as long as they were individually identified and their amount, or range of the amount, was indicated in the advertisement.

Similarly, a charge payable under section 11 of the *Air Travellers Security Charge Act* or any other fees or charges collected on behalf of a government could be excluded from advertised prices only if the fee or charge was individually identified and its amount, or the range of the amount, was indicated in the advertisement.

Bill C-26 would have also required that airlines not advertise one-way tickets where a person needs to buy a round trip to get the exact price that was being advertised.

### **Quebec**

Quebec registrants have operated under an all-in-price airline advertising regime since 1990. Quebec travel registrants have the option to break out the supplementary charges, as long as the most prominent and clearly displayed price in the advertisement is the total price to the consumer.

Quebec is currently exploring the option of allowing travel agents and wholesalers to exclude provincial and federal sales taxes from the all-in-price advertising regulations. Quebec is considering revising its regulations to accommodate national advertising where tax regimes differ.

### **Ontario**

The unproclaimed Ontario *Travel Industry Act, 2002 (TIA, 2002)* states that travel agents and wholesalers are prohibited from making false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to the provision of travel services. The practice of not subscribing to all-in-price airline advertising is not a violation of the *Travel Industry Act, 2002*.

However, *TIA 2002* regulations will propose that Ontario registered travel agents and wholesalers adopt a flexible all-in-price requirement for airline travel advertisements. The model will give Ontario registrants the option of all-in-price advertising, or advertised price plus clear and prominent disclosure of all supplementary charges (both the charge and the amount). It is anticipated that Ontario's new *TIA 2002* regulations, and its accompanying travel advertising requirements, will come into force in early 2005.

### **British Columbia**

British Columbia has just proclaimed their new consumer protection laws. In that project, specific regulation of price transparency with respect to travel advertising was not addressed through statutory reform. Price transparency continues to be covered by their general rules pertaining to "deceptive acts or practices" (section 4 of their new *Business Practices and Consumer Protection Act*) and the making of "representations" that are not truthful.

The province has maintained the ability to expand the scope of these deceptive acts or practices to include price transparency by regulation, if they decide to go in that direction in the future.

### **Alberta**

Price transparency is covered by general rules governing representations made to consumers. Section 4 (s) of the *Fair Trading Act* states that giving less prominence to the total price of goods or services than to the price of a part, or failure to give the total price, are unfair practices.

### **Manitoba**

Price transparency is covered by general rules governing representations made to consumers. Subsection 2(3)(r) of the *Business Practices Act* states that it is an unfair business practice where the price of part of a consumer transaction is given in an advertisement to not give reasonable prominence to the total price.

### **United States**

In the U.S., the Department of Transport governs airline travel advertising and has mandated a form of all-in-price advertising since 1992. The Department's rules state that fare advertisements by air carriers or their agents must state the full price charged to the consumer. Their objective is for consumers to be able to easily determine from a fare advertisement the full price to be paid to the seller for the entire air tour package advertised.

Section 399.84 of the Department's regulations (14 CFR 399.84) requires any advertising or solicitation for air transportation that states a price for such air transportation to state the entire price to be paid to the seller. These "full-price" advertising requirements apply to package offerings where an airfare is bundled with a hotel, cruise, tour, car rental, or other services.

Sellers are permitted to state separately in fare advertisements government-imposed and approved per-passenger taxes and fees, such as customs fees, departure taxes, and passenger facility charges (PFCs). This applies so long as the charges are levied and collected on a per-passenger basis and their existence and amount are clearly indicated in the advertisement.

In situations where passengers incur additional mandatory charges or fees, but the charges or fees are not paid to the seller of the air tour package, the seller must make clear in the advertisement the nature of the fee to be paid and the party (such as, the hotel, car rental company, or travel/vacation club) to whom the surcharge or fee is to be paid. For example, if a hotel, not the seller, collects an "energy surcharge," "linen charge," or "security fee," the advertisement must identify the type of surcharge or fee and note that payment is made directly to the hotel.

**Australia**

Airlines in Australia advertise the total cost of airfares, including charges, taxes and levies. The Australian Competition and Consumer Commission (ACCC) turned its attention to transparency in airfares a few years ago after a dramatic rise in taxes and charges to consumers above and beyond the advertised price. The ACCC held discussions with the airlines and mandated them to adopt inclusive pricing or face potential legal action by the commission.

**Possible Courses of Action**

Please note that all of these options include the following presuppositions: a one-way fare can only be advertised where such one-way ticket is actually on offer; they apply to all media; and they apply to all suppliers of travel services.


**Option 1**

Airline travel advertising must clearly indicate the full price the consumer must pay, including all fees and supplementary charges. Sales taxes need not be incorporated, but the advertisements must state that sales taxes are extra. In this option, the price the consumer sees in an advertisement is the price they will pay (plus sales taxes) when reserving their travel.

	<p><b>Montreal to Toronto</b>  <b>\$200</b>                  (plus applicable sales taxes)</p>
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**Option 2 (Ontario Model)**

An all-in-price advertising requirement providing the advertised price plus clear and prominent disclosure of all supplementary charges the consumer will pay, and their value. Sales taxes may be stated as payable in addition to the total price reflected in the ads. In this option, the consumer will be required to add the advertised price with the supplemental charges to ascertain the full and final price.

	<p><b>Montreal to Toronto</b>  <b>\$100</b>                  (applicable sales taxes extra)</p>	<p><b>Plus</b></p>	<p>\$20 Nav Canada fee                  \$10 airport imp. fee                  \$25 air security charge                  \$35 fuel surcharge                  \$10 insurance fee</p>
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**Option 3 (Quebec Model)**

An all-in-pricing requirement providing the one entire all-in-price, but advertisers are permitted to separately list the supplementary charges and their value. Sales taxes may be stated as payable in addition to the total.

	<p><b>Montreal to Toronto</b>  <b>\$200</b>                  (applicable sales taxes extra)</p>	<p><b>Price Includes</b></p>	<p>\$20 Nav Canada fee                  \$10 airport imp. fee                  \$25 air security charge                  \$35 fuel surcharge                  \$10 insurance fee</p>
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## Your Views

The CMC has been tasked with examining options for greater transparency in airline fare advertising. The input and advice of consumers and business will help the CMC to develop fair, equitable and practical recommendations to Ministers.

To assist us with this task, we ask for your responses to the following questions. Please provide an explanation for your answers.

## Consultation Questions

1. Should airline advertising be regulated?

Yes       No       Don't know / no opinion

Comment(s) / reason(s) for your answer

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2. Of the three options for advertising air travel prices provided in this document, which is your preferred option?

1     2     3

Comment(s) / reason(s) for your answer

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3. If you do not prefer any of the above options, how would you suggest that airline prices be advertised?

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4. Do the options presented above provide an adequate level of consumer protection?

Yes       No       Don't know / no opinion

Comment(s) / reason(s) for your answer

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5. Do the options presented above go far enough/not far enough? That is to say, do they provide sufficient clarity? Are they too onerous?

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6. Are there fees and taxes other than those in the sample advertisements on page 6 which should be considered as part of the all-in price? Should any of the fees or taxes that are listed be removed from the all-in price?

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7. Do you feel that there are other ways to achieve greater levels of consumer protection (in terms of clarity or transparency) in price advertising other than through all-in pricing?

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8. What will be the impact for the travel industry if your recommendation is adopted? Please supply comment(s) / reason(s) for your answer

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9. Do you have any additional comments or suggestions?

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**Please fill in the information below (fields indicated with an asterisk are mandatory).**

* Complete Name	
* Organization	
Complete Address	
Phone number	
Fax	
E-Mail	

Please submit your written responses to the following address by *September 14, 2004*:

Consumer Measures Committee  
Office of Consumer Affairs  
Industry Canada  
235 Queen Street  
Ottawa, Ontario  
K1A 0H5  
Phone (613) 957-8717  
Fax (613) 952-6927  
e-mail : [clarke.david@ic.gc.ca](mailto:clarke.david@ic.gc.ca)

Any personal information provided is subject to federal, provincial and territorial privacy laws. The information will be used to assist us in conducting and evaluating the results of the consultation, which may involve disclosing your comments to other interested parties during and after consultation. Please note that, individuals' names and other identifying information will not be disclosed to the public without their consent.