Court File No: 16-A-17

IN THE FEDERAL COURT OF APPEAL

BETWEEN:

DR. GABOR LUKACS

Appellant

- and -

CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.

Respondents

MATERIAL IN THE POSSESSION OF THE CANADIAN TRANSPORTATION AGENCY (Pursuant to Rule 318 of the *Federal Courts Rules*)

Dated May 16, 2016

Allan Matte
Counsel
Legal Services Branch
Canadian Transportation Agency
15 Eddy Street, 19th Floor
Gatineau, Quebec
K1A 0N9
Tel: (819)
Fax: (819) 953-9269
Tel: (819) 994-2226
Allan.Matte@otc-cta.gc.ca

CERTIFICATION

I, **Elizabeth C. Barker,** of the city of Ottawa, province of Ontario, Secretary of the Canadian Transportation Agency, **DO HEREBY CERTIFY** that attached hereto are true and correct copies of the following documents which are in the custody of the Secretary:

Submissions from Air Canada dated January 22, 2016

Submissions from Avmax (undated)

Submissions from Canadian Airports Council (CAC) dated January 22, 2016

Submissions from Charles Green (undated)

Submissions from Clark & Company dated January 21, 2016

Submissions from Enerjet dated January 19, 2016

Submissions from Flair Airlines Ltd. (undated)

Submissions from Frances Hudson (undated)

Submissions from Dr. Gabor Lukacs dated January 22, 2016

Submissions from Garry Lewis (undated)

Submissions from Glen Beckett (undated)

Submissions from Intelisys Aviation Systems dated January 19, 2016

Submissions from James Wilson (undated)

Submissions from Jetlines dated January 21, 2016

Submissions from Kelowna International Airport (undated)

Submissions from Kenn Borek Air Ltd. Dated January 21, 2016

Submissions from Liz Throp (undated)

Submissions from Lorna Harlow (undated)

Submissions from NewLeaf Travel Company (undated)

Submissions from Nolinor dated Januar 22, 2016

Submissions from Prince Rupert Airport (undated)

Submissions from Provincial Airlines (undated)

Submissions from Sunwing Industries dated January 22, 2016

Submissions from Travel Industry Council of Ontario dated January 22, 2016

Submissions from VINCI dated January 22, 2016

Submissions from WestJet (undated)

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Official Seal of the Canadian Transportation Agency at Gatineau, province of Quebec, this 16th day of May, 2016.

Elizabeth C. Barker
Secretary

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TAB 1

AIR CANADA

January 22, 2016

Via email to: secretaire-secretary@otc-cta.gc.ca

Secretary
Canadian Transportation Agency
Ottawa (Ontario)
K1A 0N9

Re: Consultation on the Requirement to Hold a Licence

This is in response to the Agency email message of December 21, 2015 advising that the Canadian Transportation Agency (CTA) is undertaking a review on whether persons that do not operate any aircraft but market and sell an air service to the public should be required to hold an Agency licence. As part of this review, the CTA has initiated a public consultation with stakeholders. Air Canada is pleased to provide the following that we trust will be taken into consideration as part of this review, and we thank the Agency for the opportunity to provide input.

It is our view that this review relating to the regulatory environment for an "indirect air service provider" (or a "virtual airline") raises significant issues. It is essential that the outcome produce (1) an appropriate balance in the approach to any regulatory change, (2) a consistent and fair application of conditions and regulations across all stakeholders and finally, (3) no 'unintended consequences'. Therefore, this consultation should not be rushed or done in a cursory manner to meet the needs or requirements of any one entity among the breadth of stakeholders that may be affected by the resulting decision.

A 'hands-off' approach by the CTA risks creating real confusion in the market about by whom and how flights are offered, who is responsible for the control (both commercial and operational), who is responsible to meet all the regulatory requirements, who is responsible for the Contract of Carriage and applicable terms and conditions of carriage, for having a tariff and making it available for public inspection etc. In simple terms, an organization cannot, nor should it be permitted to, offer its services as equivalent to being an airline (or holding out as such), without the same conditions and requirements that are required of all other competitors who are, in fact, licensed airlines. The news in recent days of a new launch of an 'indirect air service provider', in our view, highlights the risks associated with a 'hands-off' approach by the CTA.

Therefore, the issues normally addressed in respect of licencing an airline should be addressed in the context where one holds itself out to be one, including, for example, matters relating to ownership and control (including both operational and commercial control), protection of consumers, financial fitness, and consumer disclosure requirements, to name a few. Similarly, without the requirement to hold a CTA licence it may not be clear to regulators both at a Federal and Provincial level who has jurisdiction over the particular entity. In other words, any decision must carefully be weighed against all requirements of Canada's laws and regulations.

With this as context, Air Canada highlights the following specific points to be kept in mind when determining who should be required to hold a licence:

1. The requirement to review Canadian status (including ownership and control in fact)
2. The requirement to determine financial fitness and compliance with prescribed financial requirements
3. The requirement to afford consumer protection (including the posting of tariffs and terms and conditions of carriage and having sufficient insurance coverage)
4. The differentiation between commercial control and operational control including the obligation to hold a Canadian Aviation Document and to be designated by the Minister of Transport as eligible to hold such a licence.
5. Importance of providing public disclosure of operator

These elements are of critical importance, and there are sound policy reasons for an airline to satisfy regulatory authorities of such matter. We therefore urge the Agency to consider and review them in this context as part of the review of the requirement to hold a license. Consideration of these matters should not be dependent on the particular business model adopted to provide air services to the public, distorting the competitive landscape by maintaining regulatory requirements for one entity or business model, while taking a hands-off approach with another, one that competes in the same industry. Failing to maintain a consistent approach across the board will ultimately cause confusion in the market, favouring one business over another, as competitors follow different rules.

In addition, we wish to highlight that the elements noted above are of critical importance that the Agency consider with respect to both domestic and international air services.

In summary, Air Canada believes that the person having commercial control and selling the air service should hold a licence and comply with the usual requirements with which "airlines" are expected to comply.

For clarity, the specific questions put forward to stakeholders by the Agency as part of this consultation are included below.

Once again, Air Canada appreciates the opportunity to provide this input, and we remain available to Agency staff should any clarification be required.

Sincerely,

David Waugh
Director, International Regulatory Affairs and Facilitation

cc: Ms. Carole Girard, Senior Director Regulatory Approvals and Compliance, Industry Regulation and Determinations Branch
Carole.Girard@otc-cta.gc.ca
Mr. John Touliopoulos, Manager of Financial Evaluation Division
john.touliopoulos@otc-cta.gc.ca

Questions:

Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;

> Answer of Air Canada: As described above, Indirect Air Service Providers should not be afforded the ability to act as an airline, without meeting the requirements and obligations that are placed on airlines. Failure to uphold this principal not only distorts the competitive landscape, it creates confusion as to the rights that are available to consumers.

What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence;

> Answer of Air Canada: As outlined above, the person holding commercial control and selling the air service is the person entering into an air services agreement with the consumer, and is therefore the person should pass the test of financial fitness and compliance with prescribed financial requirements, fulfill the statutory requirement to provide consumer protection (including the posting of its tariffs and terms and conditions of carriage) have sufficient insurance coverage and meet the requirements of public disclosure of the operating carrier. In short, this is the person who should hold the licence, which includes complying with the regulatory requirement to ensure differentiation between commercial control and operational control including the obligation to hold a Canadian Aviation Document and to be designated by the Minister of Transport as eligible to hold such a licence.

What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

> Answer of Air Canada: Indirect Air Service providers should be required to meet the same requirements of airlines. This includes the elements that are more thoroughly described above. A regulatory environment that favours (by way of less rigorous regulatory requirements) will distort the competitive landscape in Canada, and place airlines in an uncompetitive position due to higher regulatory burden.

TAB 2

The Agency invites interested stakeholders to submit their comments on the Agency's proposed approach, including with respect to the following questions:

- Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;

IASP should **not** be required to hold a licence provided the travelling public can be protected in times of business interruption or failure and be guaranteed that their ticket funds can be returned. As an example this may mean a business model that escrows funds until the trip is completed. Naturally the carrier providing the lift would be required to maintain the appropriate CTA licence. In this case the IASP is essentially a storefront for the actual carrier.

- What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence; and

Any time individual seat sales to the travelling public are contemplated, should the IASP not disclose who the carrier is or willfully withhold this information from the travelling public, the IASP would be required to obtain their own CTA licence.

- What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

Merely that in the case of an IASP, full disclosure to the public is required as to the nature of the arrangement between the IASP and the carrier, and with whom the liability for ticket sales resides.

With Kind Regards,

Past Business Development Manager for R1 Airlines in Calgary. Now in regional aircraft leasing at Avmax.

Richard (Rick) Pollock
Business Development Manager, Americas

TAB 3

CANADIAN AIRPORTS COUNCIL
CONSEIL DES AÉROPORTS DU CANADA

January 22, 2016

John Touliopoulos
Manager, Financial Evaluation Division
Canadian Transportation Agency
15 Eddy Street
Gatineau, QC J8X 4B3

Subject: Consultation on the Requirement to Hold a Licence

Dear Mr. Touliopoulos,

On behalf of the Canadian Airports Council's (CAC) members, we thank you for the opportunity to consult on the subject matter and offer the following response to the CTA's request for consultation.

As part of the economic mandate for the communities they serve, the CAC's airport members support and encourage a fair and competitive environment. The 1987 National Transportation Act was enacted to deregulate the aviation industry, encourage competition and allow for the marketplace to determine pricing and delivery models for aviation services. This essentially served to remove the government from direct control or establishing how air service is to be delivered in Canada.

We are confident reasonable outcomes can be achieved regarding this matter and look forward to the opportunity to work through the next step in this process with the Canadian Transportation Agency.

Sincerely,

Daniel-Robert Gooch
President
Canadian Airports Council

The CAC is a Division of Airports Council International-North America
Suite 600, 116 Lisgar Street / 116, rue Lisgar, Bureau 600
Ottawa, Ontario, K2P 0C2
Tel: 613.560.9302 Fax: 613.560.6599

TAB 4

The main point of my statement is to support NewLeaf as an Indirect Air Service Provider (IASP).
My principle comment would be, to paraphrase our fine new Prime Minister, the Honourable Justin Trudeau, responding when questioned about another **OBVIOUS** need for change regarding females in our federal cabinet ..... **BECAUSE IT'S 2016!**

The same principle applies to air service in Canada. ... modernize up! Your 1996 Greyhound Decision is **20 years out of date**. OBVIOUSLY we need a change in airline providers in this great country because we are currently being held hostage by a limited number of providers who have a "too cozy" relationship when it comes to pricing. Come on people, ... Let's move forward!

I am a scientist, not a businessman, but everyone knows the basic principle that:

- more companies in any sector = more choice = more competition = eventually lower prices for consumers (with a choice of product quality).

To address your required three (3) points:

- Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;

NO. The IASP should not be required to hold a licence to sell their services directly to the public for domestic services, , in their own right, when it is not required for international services. It is ridiculous that you have a double standard. To quote directly from your website (https://www.otc-cta.gc.ca/eng/consultation/consultation-requirement-hold-a-licence) **"Consequently, under the current approach, a person who is in commercial control of an air service and does not operate aircraft must hold the licence for domestic, but not for international air services".** Why? .... makes no logical sense. Drop the requirement regarding domestic air services to bring it in line with the requirement for international air services.

- What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence;

This is a moot point, ...it is not necessary. The IASP should not be required to hold the licence.
The only criteria should be enforcement of the criteria that the licensed air carrier(s) with which the IASP is representing or associated **must** hold a valid Canadian Aviation Document (CAD) issued by the Minister of Transport.

- What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

Again a moot point. The IASP should not be required to hold the licence. The regulatory amendments should state that the IASP should not be required to hold the licence as long as the licensed air carrier(s) with which the IASP is representing or associated **holds** a valid Canadian Aviation Document (CAD) issued by the Minister of Transport.

Regards,
Charles Geen

TAB 5

CANADIAN TRANSPORTATION AGENCY REVIEW

CLARK & COMPANY SUBMISSIONS

Overview

In May of 1984, the then Minister of Transport announced "**. . . the first comprehensive reform of Canadian air policy . . .**". focused on the domestic market. In that statement, he indicated that "**. . . it has becoming evident that airline deregulation in the U.S. has delivered many important benefits, including the emergency of new, low-cost airlines offering spectacular price cuts for no frills services on certain routes . . .**". He indicated that less regulation was a desirable approach and that he was instituting the first phase of reform.

It wasn't until January 1, 1988, that the new National Transportation Act, 1987, came into effect as a result of the Minister's mandate. That legislation included the virtual end of economic regulation of Canada's domestic airline, initially just in southern Canada. The legislation provided that Canadian carriers would operate within Canada pursuant to domestic license authorities and removed any distinction between charter and scheduled operations. This allowed domestic service air carriers free to distribute their capacity in whatever manner they desired.

Legislation

The legislation removed the economic test of "hire and reward" from the mandate of the economic bureaucracy, the new Canadian Transportation Agency ("CTA") and establish the less stringent test, being the "publicly available" test. The legislation to effect these changes was contained in Section 61, which clearly provided that the mandated oversight by the CTA was only to be exercised in situations where the entity involved held a Canadian Aviation Document ("CAD"). The authority to issue a CAD, which is defined in Section 3(1) of the Aeronautics Act, continued to be delegated to the technical competency authority, Transport Canada ("TC"). Only with the entity meeting the stricter "hire and reward" test of the Aeronautics Act, and the entity obtaining a CAD from Transport Canada, did the economic oversight authority, the CTA, have any jurisdiction over that entity.

At the time of these legislative enactments, the concept of Indirect Air Carrier was well established in the U.S. legislative framework and provision was made in the new Canadian legislation for control over only those commercial entities that Parliament determined required Canadian control. Thus, the new legislation detailed compliance requirements over the tour operator industry, which federal legislation cannot directly control, by requiring the air carrier to obtain permits for any tour operator contracts. Thus, indirectly by regulation, the Federal Government imposed commercial terms on tour operators in their contracts with the airline, in order that program approvals would be obtained. Parliament, at that time, did not deem it necessary to utilize its legislative authority over any other commercial entities which then, or now, could be considered Indirect Air Service Carriers.

History

The CTA has spent the ensuing nearly three decades attempting by policy and enforcement procedures to expand this authority beyond the clear legislated mandate contained in the now Canada Transportation Act. Through enforcement and court processes, it has attempted to unsuccessfully expand the definition of "publicly available", especially in regard to corporate executive aircraft

operations. More importantly, it has exercised its putative powers to expand licensing requirements over numerous entities that were incapable of obtaining a CAD from Transport Canada.

In order to effect this expansion of policy, the CTA, when investigating an entity operating in the aviation economic community, inquired of TC, based on the business plan of that entity, whether or not the entity required a CAD in order to conduct its operations. The CTA took the numerous negative advisories from TC, in which initially TC indicated that ***"This letter may be considered a Civil Aviation Document for the purpose of your obtaining a CTA license . . ."***, as authority to continue with its bureaucratic process. With those TC letters, the CTA pressed enforcement against numerous entities, all of whom obtained CTA licenses due to the fact that compliance was easier and less expensive than battling the illegitimacy of the CTA policy position through court processes.

This resulted in numerous entities that either contracted for aviation uplift with qualified air carriers and were merely marketing the services of those air carriers, or entities that provided charitable uplift for individuals requiring medical attention remote from their residence, to obtain and maintain CTA licenses notwithstanding that all lacked a CAD. Thus, community air services in numerous communities contracting with a commercial air service for operations to a hub, as well as medical operations putting individuals in private aircraft seats for journeys to major hospitals, such as Hope Air and Angels of Mercy, all were forced to obtain CTA licenses.

Upon the court determination against the CTA in regard to the attempt to expand "privately available" on executive aircraft operations, the CTA amended its position in regard to these marketing operations and a number of these illegitimate CTA licenses were withdrawn by the CTA, due to the fact that they clearly were not authorized without a CAD. As indicated in the Consultation Paper, this has now been reduced to the point where only 16 entities that have no aircraft operational ability, have been forced to maintain CTA economic licenses which in the opinion of the CTA, then allows them to participate in domestic air services. Strangely, the CTA then issued a Decision, rather than an Interpretation Bulletin, on what, in their opinion, constituted an "air service" which analysis was based on risk and reward between the aircraft operating entity and the unrelated marketing entity. By that time, TC had eliminated the statement in its advisories that the CTA could consider the advisory as an equivalent document to a CAD. More recently, Transport Canada has indicated its unwillingness to provide any advisories as to the requirement for a CAD based on any business plans by third parties.

Section 57 of the Canada Transportation Act, clearly prohibits the operation of an air service without a CAD, and equally, Section 61, which sets forth the requirements to obtain a domestic service license, sets out the requirements for a CAD in any licensing process. This was clearly intended to prohibit the CTA from exercising any oversight of any entity that did not possess a CAD in its own name. The CTA's jurisdiction is clearly only over those entities that possess a CAD. The CTA's oversight is clearly limited to that operating entity, and not over any independent entity that markets the commercial air service capacity.

In addition, the deregulation phase clearly obliterated any concept of charter vs. scheduled operations in the domestic marketplace. It is quite confusing for the CTA in its Consultation Paper to now suggest that the marketing entities are legitimate only provided that the marketing entity "*. . . charters the aircraft's entire capacity, for the purpose of resale to the public . . .*". We would again submit that there is no continuing oversight mandate to the CTA in regard to the distribution by a commercial air carrier of its domestic capacity in any manner, and would again point out that the CTA has no domestic regulations defining charter vs. scheduled operations. Indeed, domestic

operators are not even required to file schedules with the CTA if they determine to distribute the capacity on an operation conducted on a regular basis between any two domestic points.

And we would question the rationale of limiting a commercial air service from determining that it will assume a portion of the risk on a new proposed domestic operation, when the risk is shared with a third party marketing entity. The proposal by the CTA for any continuing oversight as to the capacity distribution is totally contrary to their legislated mandate in the domestic market. And their proposal for provided additional oversight by means of legislation on marketing entities, is contrary to the international trend to deregulate domestic air services. In particular, the U.S., since in its deregulation in 1978, has decreased significantly its oversight on Indirect Air Service Carriers. And we would point out that U.S. oversight not impose financial fitness or nationality ownership requirements on these indirect air service carriers; albeit, financial security requirements are imposed on those conducting public charters similarly to those imposed by the ATR's on tour wholesaler approvals.

Opposition

In its Consultation Paper, the CTA has stated that without oversight, Indirect Air Service Providers ***". . . would not be subject to the licensing requirements, contracts they enter with the public would not be subject to tariff protection, nor would they be subject to the financial and Canadian ownership requirements."*** We would point out that the air carrier involved has already met the financial and Canadian ownership requirements that are mandated to the CTA. And we would point out that the air carriers are sufficiently mature to determine the risk of entering into agreements with third party marketing entities, and that the regulator and the public can rely upon the commercial air service not to jeopardize their future existence by entering into agreements with those marketing companies which could jeopardize their financial future.

We also disagree that the contacts for carriage with marketing entities, would not be subject to the tariff provisions of that carrier, notwithstanding the marketing of the capacity by an unrelated third party. That proposition by the CTA would indicate that the millions of Canadians who have travelled on Canadian air carriers whose capacity was contracted by third party tour wholesalers, were not covered by the tariff of those carriers. We appreciate that there is a privity of contract argument; however, all third party marketers and tour wholesalers ensure in their terms and conditions that end supplier terms and conditions including air carriers, hotels and transfers transportation companies are acknowledged as terms and conditions of the third party's contract; and all air carriers require, for liability reasons, that their terms and conditions are acknowledged as being part of the contract between the third party and the passenger.

We appreciate that for commercial reasons, certain Canadian entities will fully support the CTA continuing and expanded oversight proposal contained in its Consultation Paper. However, we would point out that the CTA is not the bureaucracy mandated to determine economic policy regarding the Canadian transportation industry. Self-serving requests from adverse commercial interests cannot be given legitimacy by the CTA, pursuant to its clear restrictive mandate in the Canadian Transportation Act. We would also suggest that question of control over Indirect Air Service Providers has only arisen due to the fact that it has not been any of the major air carriers that are proposing these third party marketing arrangements, as they do not desire to see that type of competition in the Canadian market.

We would also question the timing of the CTA in this consultation on Indirect Service Providers. We are presently in the middle of a statutorily required process for the review of the legislated mandate of the CTA, which is about to report after extensive stakeholder input. While we have not reviewed all submissions for the purposes of this paper, we do not recollect any submissions to that Review even mentioning any requirement for a legislative review of that which the CTA is now referring to as Indirect Air Service Providers. If the CTA has concerns over its legislative authority in this area, its proper recourse was for it to raise this issue to the legislated independent review of its mandate, rather than this self-serving review in an attempt to expand its legislative mandate.

And in conclusion, we would point out that the Minister's expressed hope over 30 years ago that his deregulation would stimulate the low cost carrier business plan, which even then had proven to be successful in the U.S. market, still has not arrived in Canada, largely due to this expansive oversight policy of the CTA in regard to domestic air services.

DATED at Toronto, this 21st day of January, 2016.

CLARK & COMPANY

Per: ______________________

William F. Clark
Principal

TAB 6

January 19, 2016

Submitted via email:
consultations@otc-cta.gc.ca

Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec J8X 4B3

Re: **Consultation on the requirement to hold a licence**

Dear Sirs:

1263343 Alberta Inc.(dba Enerjet) has been asked to participate in a consultation process regarding Indirect Air Service Providers vying for access to the Canadian air travel market. The Canadian Transportation Agency has posed a list of questions and is looking for comments from each Canadian Air Carrier. We have listed each of CTA's questions along with our viewpoints.

- **Whether Indirect Air Service Providers should be required to hold a license to sell their services directly to the public, in their own right. Provide a clear explanation for your position;**

  We believe all providers of Indirect Air Services selling directly to the public should be required to hold a license. This assures a level playing field for all participants accessing this market and does not hold aircraft operators to a higher standard than non-licensed sellers. We also believe allowing seats to be sold by parties not required to meet the CTA's licensing requirements will encourage operators to circumvent the requirements set out for licensed carriers and will result in an erosion in the level of protection accorded to passengers.

  We believe that allowing unlicensed Indirect Air Service Providers to sell their services directly to the public would create an opportunity for the foreign ownership restrictions included within the Canada Transportation Act to be circumvented – a non-Canadian unlicensed seller of seats could potentially assert control over those factors traditionally considered indicative of operating an airline – by virtue of their control of the schedule, sale of seats, selection of routes... This Company could be majority-owned and controlled by foreign entities – a situation that is considered untenable under the Canada Transportation

Ph: 403.648.2800
Fax: 403.648.2840

119-1440 Aviation Park NE
Calgary, Alberta T2E 7E2

Act. In this case the actual Air Carrier who is presently restricted by the ownership rules in the Canadian Transportation Act could simply be a shell corporation which is majority Canadian owned - operating at, or below cost. In this scenario all the profits would be retained by the seller of the seats and this entity would enjoy greater access to capital from foreign markets than those of us who are required to be licensed and compliant with the Canada Transportation Act.

- **What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the license;**

  We contend that a reasonable criteria should involve determining who is taking the financial risk on the flight. The party who takes the financial risk, should, in all circumstances, be fully-licensed. If it is the carrier who is accepting the financial risk associated with the flight (accepting all the funds generated from fares sold and merely paying the seller a commission on seats sold) then this situation should be considered acceptable. Anytime there is no requirement on the part of the air operator to sell seats and individual seats are being sold by the reseller and the reseller is taking the risk on unsold seats then a license should be required for the reseller.

- **What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a license?**

  Anytime a person or company "wet" leases an entire aircraft and then resells seats on an individual basis, a license should be required with the same standards applicable to licensed air carriers.

Thank you for your consideration of these suggestions. Please do not hesitate to contact us directly on this significant matter.

Sincerely,

1263343 Alberta Inc. (dba Enerjet)

Thomas Morgan
President & CEO

Ph: 403.648.2800
Fax: 403.648.2840

119-1440 Aviation Park NE
Calgary, Alberta T2E 7E2

TAB 7

Comments from Flair Airlines Ltd.

We believe the Air Carriers should continue to be the party that holds the licence. Through the Canadian Transportation Act, these Companies have met the statutory requirements and through a commercial agreement are selling the aircraft capacity to an entity or entities depending on whether the contract is exclusive or shared (block seat sale). It should be the Air Carrier, through the commercial agreement and/or contract that insures that the financial and tariff obligations created are adequately safeguarded under the provisions of the Act.

Having said that, it would be prudent within a specified definition of an Indirect Air Service Provider to allow the CTA to review such an enterprise to ensure that both the regulations and spirit of the regulations are met, and the agreement is unambiguous. The CTA should be given the legal authority to accomplish this task.

With clearly defined regulations, a CTA review should be able to identify deficiencies between the agreements and the Regulations and then suggest or require amendments to the agreements that would bring them into compliance. This may also include the ability of the CTA to review and require specific monetary amounts to be placed on deposit or in escrow to ensure financial risks to the carrier and passengers are protected.

TAB 8

Please expedite confirmation of your policy exempting Indirect Air Service Providers from holding a licence to sell air services directly to the public (as long as they charter licenced air carriers to operate the flights). I was delighted to hear of the launch of NewLeaf Travel, and was looking forward to using their service to fly from my home near Abbotsford to eastern Canada. I am 65 years old and have only travelled as far as Saskatchewan. I would dearly love to see the rest of Canada while I am still young enough to do it! Thanks very much!

Frances Hudson

TAB 9

Halifax, NS

lukacs@AirPassengerRights.ca

January 22, 2016

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Consultation on the requirement to hold a licence

Please accept the following submissions concerning the Agency's "Approach under consideration" with respect to the licensing requirements of Indirect Air Service Providers (IASPs). These submissions are made without prejudice to the position that may be taken by the undersigned in any legal proceeding, including but not limited to the application for judicial review currently before the Federal Court of Appeal under File No. A-39-16.

Summary of submissions

1. The circumstances surrounding the consultation create the appearance of an institutional bias and that the consultation serves the purpose of legitimizing a foregone conclusion.

2. The "Approach under consideration" will expose the public to significant risks.

3. Air passengers are entitled to same level of protection regardless of how the various entities participating in providing air service structure their business relationship among themselves.

4. For licensing purposes, the operating of an air service must include any entity who makes a contract of carriage with the public as a principal (i.e., not as an agent).

I. Concerns about the integrity of the consultation

(a) Commenced for the benefit of a specific business

The email of the Secretary of the Agency, dated January 19, 2016, shows that the present consultation was initiated for the sake of a specific Indirect Air Service Provider:

> [...] in the context of the emergence of this new business model and a discussion between the Panel assigned to the NewLeaf matter and Agency staff, the Panel instructed staff to conduct broad consultations with industry as expeditiously as possible to inform the Agency's consideration of this new model.

(b) Not a new business model

The reference to a "new business model" is disingenuous. As the Agency's own announcement concerning the consultation confirms, Indirect Air Service Providers have existed and been regulated in Canada for at least 20 years, since 1996:

> The Agency's current approach to determining which person is operating a domestic air service originated from its 1996 Greyhound Decision and requires the person with commercial control to hold the licence, irrespective of whether the person operates any aircraft. As of December 1, 2015, 16 persons that did not operate any aircraft held licences providing them the authority to operate domestic air services.

(c) Foregone conclusion

The January 19, 2016 email of the Secretary of the Agency goes on to confirm that:

> At this same meeting, the Agency Chair, acting in his capacity as CEO, also instructed staff to not seek a licence application from NewLeaf and other companies like it pending the completion of this consultation and the issuance of an Agency decision on the issue, provided they met three criteria.

Subsequent emails dated January 20-21, 2016 from the Secretary of the Agency also confirm that:

- the meeting in question took place on October 29, 2015, some two months before the present consultation was announced;
- the Agency Chair gave his instructions verbally, without making any order or decision, or any documentation, such as minutes.

These circumstances have created the appearance of an institutional bias and that the consultation serves the purpose of giving an air of legitimacy to a foregone conclusion to unlawfully exclude a specific business from the statutory requirement of holding a licence.

II. Licensing and tariff requirements are to protect consumers

In enacting the *Canada Transportation Act*, S.C. 1996, c. 10 ("*CTA*"), Parliament imposed a scheme for the economic regulation of air service, which is defined in s. 55 as:

> "air service" means a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both;

This regulatory scheme establishes commercial standards and consumer protection measures that regulate the contractual relationship between the consumer and the air service provider. The commercial standards and consumer protection measures are implemented through the statutory requirement that operating an air service requires a licence issued under the *CTA* (s. 57(a)) and the conditions for obtaining and maintaining such a licence (ss. 61 and 69).

(a) Financial fitness (s. 61(a)(iv)): SkyGreece problem

Everyone who seeks to obtain a licence to operate domestic air service (i.e., within Canada) must prove that they have the funds necessary to cover the start-up costs and the operating and overhead costs for a 90-day period of operation of the air service (s. 8.1 of the *Air Transportation Regulations*).

The purpose of this requirement is to prevent a SkyGreece-like scenario, where flights are cancelled due to insolvency of the airline, and passengers who already paid for their tickets are left stranded and fending on their own to get to their destinations.

(b) Liability insurance coverage (s. 57(c)): Lac-Mégantic insurance issue

The holder of a licence must obtain and maintain a liability insurance that covers injury to or death of passengers in the amount of CAD$300,000 times the number of seats on its aircraft used for the air service.

The purpose of this requirement is to prevent a situation similar to what happened following the Lac-Mégantic railway disaster, where the claims arising from a disaster force the company into bankruptcy, leaving passengers or their estates without a remedy.

It is worth noting that Parliament considered this requirement so important that it chose to explicitly withhold from the Agency the power to give an exemption from it (s. 80(2) of the *CTA*).

(c) Establishing and publishing a tariff (ss. 67, 67.1, and 67.2)

The holder of a licence for domestic air service is required to establish and publish a tariff setting out the terms and conditions of the service with respect to a prescribed list of core issues, including overbooking, delay, and cancellation of flights (s. 107 of the *ATR*). The tariff is the contract of carriage between the consumers and the licence holder. The terms and conditions in the tariff must be just and reasonable, and can be reviewed and enforced by the Agency.

These measures recognize the imbalance in the bargaining powers of consumers and air service providers, and that the contract of carriage is by its nature a contract of adhesion. The purpose of these measures is to ensure that air service providers do not unilaterally impose on passengers unfair terms and conditions, and to eliminate any doubt as to the rights of the passengers vis-à-vis the air service provider.

III. The "Approach under consideration" will expose the public to significant risks

As the Agency correctly acknowledged in its consultation announcement, not requiring IASPs to hold a licence removes all the protection that Parliament gave and intended to give to passengers:

> Indirect Air Service Providers would not normally be required to hold a licence to sell air services directly to the public, as long as they charter licenced air carriers to operate the flights. This would apply to the operation of domestic and international air services. As these providers would not be subject to the licensing requirements, contracts they enter into with the public would not be subject to tariff protection, nor would they be subject to the financial and Canadian ownership requirements.
>
> [Emphasis added.]

The main source of the risks identified below is that in the case of an IASP, the contract of carriage is between the IASP and the passenger. The entity who provides the aircraft and the crew is not a party to the contact, and has no contractual obligations to the passengers; the operator of the aircraft and crew has contractual obligations only to the IASP.

1. Without the financial fitness requirements, there is a risk that the IASP lacks the financial means necessary to operate the flights on which tickets were sold (i.e., to pay for the rental of the aircraft and crew).

   If the IASP becomes insolvent, the operator of the aircraft and crew can and will refuse to provide its services to the IASP. The passengers have no recourse against the aircraft operator, because they have no contract with it—their contract is with the IASP.

   Thus, in such a scenario, passengers would be left stranded and would have to pay again for transportation to their respective destinations.

2. Without the insurance coverage requirements, there is a risk that the IASP is unable to meet its liabilities in the case of a disaster (as happened in the case of the Lac-Mégantic rail disaster).

   While the IASP may be liable to the passengers for damages based on the contract of carriage, the aircraft operator's liability is limited to tort law (negligence). Consequently, the liability insurance that the aircraft operator is required to hold as a licence holder is of no help to the passengers or their estates, who may have valid claims only against the IASP.

3. Without the minimal protection that the terms of a tariff may offer, there is a risk that passengers are left with no effective remedy if their flight is overbooked, delayed, or cancelled, or if their baggage is damaged.

   As the Agency correctly noted, the contractual relationship between the IASP and the passengers would not be subject to the protection that the tariff system offers, and the fact that the aircraft operator has a tariff will be of no assistance to passengers in asserting any rights for overbooked, delayed, or cancelled flights, or for baggage-related claims.

These examples demonstrate that requiring only the entity that operates the aircraft and provides the crew to hold a licence defeats the consumer protection measures that Parliament chose to put in place, and thus defeats the purpose of the regulatory scheme.

Higher risk in domestic air service

In the context of liability and recourse of passengers, there is a crucial difference between domestic and international air service in that the vast majority of international carriage is subject to the *Montreal Convention*, which has the force of law in Canada by virtue of the *Carriage by Air Act.*

The entire Chapter V of the *Montreal Convention*, entitled "Carriage by Air Performed by a Person other than the Contracting Carrier," is dedicated to addressing and eliminating issues of the above-noted nature. Notably, Article 41 provides that the contracting carrier and the actual carrier are mutually liable for each other's acts and omissions. Thus, the operator of the aircraft and crew may well be liable to the passengers travelling internationally under the *Montreal Convention* without an actual contract between them.

In sharp contrast, the *Montreal Convention* does not apply to domestic carriage by air (although it has been recognized by the Agency as a persuasive source for determining the reasonableness of terms and conditions).

This difference underscores the need for the full protection of the licensing and tariff requirements for passengers who travel within Canada.

IV. The entity that makes a contract of carriage with the public as a principal must hold a licence

Passengers make a contract of carriage with one air service provider acting as a principal. They cannot reasonably know nor should they be required to inform themselves about the details of the financial structure and business relationship among the various entities that may participate in the air service that they purchased. Parliament intended passengers to have the same level of protection, regardless of the business model chosen by the air service provider.

As the foregoing analysis shows, the objective of the regulatory regime set out in the *CTA* is to establish commercial standards and consumer protection measures, and its subject is the economic relationship between the air service provider and the passengers. Thus, it would defeat the purpose of the *CTA* and it would be unreasonable to interpret "operate an air service" in s. 57 of the *CTA* as excluding IASPs who sell air services as a principal. (It is worth noting that this interpretation is consistent with the terminology of Article 39 of the *Montreal Convention*.)

It is important to stress that none of these affect genuine travel agents, who sell air services of licence holders and are authorized to act as their agents and bind them, provided that the agents do not become or purport to become a party to the contract of carriage.

Therefore, it is submitted that "operate an air service" in s. 57 of the *CTA* includes making a contract of carriage with the public as a principal. Hence, any person, including an IASP, who sells air services to the public in a capacity other than as an agent for a licence holder, is required to hold a licence on its own.

All of which is most respectfully submitted.

Dr. Gábor Lukács

TAB 10

The horrible Canadian duopoly on air travel must end. The winners are the airline shareholders and the losers are Canadian consumers.

I moved to Canada in 2004 from the UK. I used to travel 5 or 6 times a year, and I used to visit cities like Paris, Venice, Dublin etc while paying less than CAD$20 per ticket including taxes.
Since moving to Canada I have not travelled anywhere domestically or to the US, simply because prices are ridiculous and controlled by an obvious price fixing duopoly.
Check out any flight from Toronto to somewhere served by Air Canada and Westjet and you will see every time the price is virtually identical. The fact that there is no competition at all in Canadaian aviation (and yes there are of course smaller airlines that service niche markets – but Bearskin Airlines doesn't help me if I want to fly from YYZ to YVR does it?) is terrible for Canadian travellers.
This is by far the most expensive country I have ever seen to travel in, and because of that I simply don't travel.

Canada desperately needs competition in its aviation sector and give the customer the ability to make choices and open up travel to those who otherwise would choose to stay at home.
The "virtual" airline concept has been successful the World over, and provided that the chosen air carrier is a strong one that is properly regulated, there is little risk.

I work in the industry (not airline) and support a strong regulator with strong values of protecting safety and the public, but this market is stagnant and controlled by two monoliths who have total control of the air market, its time for change.

Sincerely
Garry Lewis

TAB 11

Prefer new leaf

Glen beckett Kelowna BC

TAB 12

InteliSys Aviation Systems
100-75 Prince William Street
Saint John, NB
E2L 2B2

Tuesday January 19, 2016

Canadian Transport Agency
RE: Consultation on the requirement to hold a licence

To Whom it may concern,
I write you today in regards to the suspension and investigation into NewLeaf Travel. To provide some background on myself and my credentials, my name is Frank Kays, CEO of InteliSys Aviation Systems based in New Brunswick. InteliSys provides airline reservations systems across the world to Low Cost Carriers, Regional Carriers, Full Service Carriers, Hybrid Carriers, Corporate Carriers and Virtual Carriers. I have been involved in the aviation industry for over 15 years and have supported airlines throughout Canada, Unites States, Latin America, Southeast Asia, Australia, the Middle East and Europe. Through my time in the industry I have been involved in supporting more than 70 airlines. NewLeaf Travel is a client of InteliSys and are utilizing our ameliaRES system for managing their sales.

I was disappointed to hear the suspension of sales of NewLeaf Travel, as the business model they use is standard practice throughout the world. NewLeaf are a travel company selling tickets on flights operated by another carrier. There has been no attempt by NewLeaf to hide this fact, actually in many press release it was specifically mentioned that Flair Air are the operating carrier. This model, called Virtual Carrier, currently sees *113 carriers of this nature worldwide, either operating or about to start operations. If we include those carriers who went out of business (as many start-ups do, be it a traditional airline or virtual carrier) the number worldwide goes up to *233. The *113 virtual carriers makes up approximately *5.2% of active and starting scheduled carriers (be it traditional or virtual) worldwide. We at InteliSys are very familiar with this model, in fact since January 1, 2015, we have had 8 virtual carriers operating and continue to do so today.

I understand the concern CTA has, as this is not a common model in Canada, however it is a fast growing strategy that is a win win for the operator, seller (virtual airline) and the passengers. It would be very detrimental to our society and traveling public to not allow Canadians to take

advantage of this already proven globally popular business model. This model has seen great success in other areas of the world and I know several other carriers worldwide and in Canada plan to utilize this model in the near future.

It is my hope that the CTA follows the standards set worldwide, and allows a competitive market in Canada; one of the worst served countries in the world in terms of competitive airline ticket prices. We need more competition, with new strategies to get to market. We need to find ways for our population to travel our great country at a lower cost, we cannot allow the duopoly to continue (with all due respect to Porter).

In closing, I hope the CTA follows the proven model set worldwide and allows Canada to come up to speed with other countries including our neighbor the United States who have *19 operating virtual carriers and *2 more planning to start.

I thank you for your time and I look forward to seeing NewLeaf Travel, with the full support of CTA, succeed and open a new style of airline that Canada desperately needs.

Best Regards,
Frank Kays
CEO
InteliSys Aviation Systems
Mobile: +1-902-626-9674
www.intelisysaviation.com

*All statistics thanks to www.ch-aviation.com

75 Prince William Street
14 King Street
Saint John, NB
Canada E2L 2B2

PO Box 20010
Brunswick Square
Saint John, NB
Canada E2L 5B2

Tel +1-506-832-8515
Email:nfo@intelisysaviation.com

TAB 13

Just get the airline up and running... WE NEED COMPETITION

James Wilson Chilliwack BC

TAB 14

Office Address: Room C4408, YVR International Terminal Bldg.,
3211 Grant McConachie Way, Richmond BC, V7B 0A4

Mailing Address: PO Box #32382, YVR Domestic Terminal, R.P.O.,
Richmond BC V7B 1W2

January 21, 2016

SENT ELECTRONICALLY

Canadian Transportation Agency
John Touliopoulos
Manager, Financial Evaluation Division
Ottawa, Ontario
K1A ON9
consultations@otc-cta.gc.ca

CANADIAN TRANSPORTATION AGENCY ("CTA" OR "AGENCY") - CONSULTATION ON THE REQUIREMENT TO HOLD A LICENCE

REFERENCES:

A. CTA – Industry Guidance – Air – Licences and Charter Permits - https://www.otc-cta.gc.ca/eng/licences-and-charter-permits
B. https://www.otc-cta.gc.ca/eng/consultation/consultation-requirement-hold-a-licence

BACKGROUND

The CTA regulates the business side of a Commercial Air Service and issues a licence that permits the business operation and protects the flying public with regard to business/financial matters. Therefore:

- it is a privilege to operate the air service, not a right;
- the licence acts as a control mechanism to ensure compliance with rules and regulations; and
- the licence may be suspended or cancelled for failure to comply with the rules and regulations.

CTA defines an air service requiring CTA licencing "as a service provided by means of an aircraft that is publicly available for the transportation of passengers or goods, or both".

The CTA air service licence is issued when the Agency is satisfied that the applicant:

1. is a Canadian;
2. holds a Canadian aviation document, Air Operator Certificate ("AOC"), in respect of the service to be provided under the licence;

3. has the prescribed liability insurance coverage in respect of the service to be provided under the licence;
4. meets prescribed financial requirements; and
5. has not contravened section 59 in respect of a domestic service within the preceding twelve months.

An Indirect Air Service Provider ("IASP") model as defined by CTA is "where persons have commercial control over an air service and make decisions on matters such as on routes, scheduling, pricing, and aircraft to be used, while charter air carriers operate flights on their behalf".

Notes:

It should be noted that:

1. The term "air service" is included in the IASP definition; and
2. Our response to the request for consultation on this subject uses the term "air service" and "airline" interchangeably as the public and most stakeholders would more readily recognize and understand the term "airline" then they would "air service provider".

AN IASP IS AN AIR SERVICE PROVIDER

While an IASP contracts a separate CTA licenced air service provider to physically operate the aircraft, it is the IASP that is transforming those aircraft into an airline with the activities of controlling all marketing efforts, advertising, selling to the public, reservations systems, inventory management, payload control, route selection, determining if flights will actually be operated, scheduling and other key elements. As a result, without the IASP there would be no air service offered to the public and therefore control of this air service lies with IASP. Thus an IASP must be subject to the same five criteria required to obtain a CTA air service licence, albeit possibly with some modifications to the regulatory requirements as noted below.

DISCUSSION

Canada Jetlines Ltd ("Jetlines") supports the CTA "Approach Under Consideration". The IASP must not be allowed a free path to circumvent the current CTA air service licencing process that protects the Canadian public, and which ensures that the proposed air service is owned by Canadians and has the financial fitness to build out, start-up and sustain itself through initial operations.

Detailed comments aligned to the three questions posed by the Agency follow:

1. Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position:
    a. Canadian Ownership
        i. Canadian ownership of an air service relevant to the current 75%-25% insures that an air service provider is substantively owned and controlled by Canadians;

ii. This requirement acts as a barrier to potential ownership by people or groups who would gain an airline of convenience to apply for bi-lateral routes to the intended country of financial interest (e.g. China – Canada), or intend to harm Canadians, or who are using Canada to launder or move illicit foreign funds. It also ensures compliance with Canadian law; and

iii. Companies using the IASP model should need to demonstrate Canadian ownership and control and therefore must be subject to the same CTA regulatory process as that of a new commercial airline. These companies should use the CTA air carrier application form and follow the same stringent review process. Not ensuring Canadian ownership opens the public and all stakeholders, including CTA, to unwarranted risk and in essence contravenes the laws of Canada;

b. Financial Fitness

i. The purpose of the financial fitness criterion is clear. It is intended that an air service provider has sufficient funds to build-out and operate an airline. This protects the public and contributes to the overall safe and secure operations of the company. It is reckless to attempt to circumvent this requirement based on a notion that the need for service is greater than the need to ensure safe, secure operations, and a properly informed public;

ii. Financial fitness must include the non-operations cost components and capabilities of an airline such as reservations, marketing and sales and human resource costs, exclusive of flight and cabin crew (which should be included in the wet lease costs). These costs associated with the buildout of capabilities unique to the commercial operations of the IASP must also be demonstrated and capital resources identified to the satisfaction of CTA. The CTA "Start-up Costs Worksheet" could be used as the baseline and modified to meet the need;

iii. Financial fitness must include demonstrated financial capital for the first 90-days of operations costs. The "CTA 90 Day Operating Statement Worksheet" could be used as the baseline and details developed in conjunction with the operating licenced air service that is providing the wet lease. This capital funding should be based on the CTA defined "optimum" operations of aircraft, the same as if it was a start-up airline. The aim is to make sure that the IASP has the funds available to pay the wet lease contract which insures they do not have to stop their business after taking reservations and before even starting up. To do anything less would be unfair to companies working to establish a fully integrated new airline; and

iv. Based on our own work at Jetlines, when the need to acquire aircraft, recruit and train flight and cabin crews, and establish maintenance programs are removed from the build-out costs it is estimated that the IASP would save about 20% of their start-up costs. However, if they were required to demonstrate they had the funds to pay the optimum usage

leasing costs for the first 90 days, then the 20% savings would likely be lost to the market costs of a "wet lease";

c. Liability Insurance

   i. The IASP needs to comply with existing Air Transportation Regulations for passenger and third party liability insurance. The existing regulations appear to include licensed carriers who wet lease from other licensed carriers. However, it does not appear that there are any regulations that cover a company operating as an IASP to prove that they have the needed liability and third party insurance coverage; and

   ii. It would be in the best interest of all concerned to insure that this gap is closed such that the IASP proves that it has the essential insurance coverage envisioned by this CTA licencing requirement; and

d. Section 59:

   i. Section 59 states "no person shall sell, cause to be sold or publicly offer for sale in Canada an air service unless, if required under this Part, a person holds a licence issued under this Part in respect of that service and that licence is not suspended"; and

   ii. A business that meets the definition of an IASP model must comply with this requirement.

2. What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence:

   - If the IASP is performing the following list of activities, it is our view that the IASP is an airline and therefore subject to the laws of Canada and CTA regulations and licencing processes:

     - transforming the (wet lease) aircraft into an airline with the activities of controlling all marketing efforts;
     - advertising, selling to the public (this covers Section 59 which by CTA standards must be met in order to be granted a CTA licence);
     - reservations systems;
     - inventory management;
     - payload control;
     - route selection; and
     - determining if flights will actually be operated,
     - scheduling and other key elements;

   - Additional criteria should include whether or not the IASP considers itself an airline in public documentation or discourse. Where the IASP makes public announcements or shows images of aircraft with the IASP livery that persuade the public to believe that they are a new airline, when they are not, then they should come under the CTA

regulatory process. This may be an amended process as noted above to ensure that the five criteria for an air service provider are met.

3. What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

    - The current regulatory process works for new and existing airlines. As noted above, the IASP is acting as an airline and should therefore be subject to the same five criteria (the AOC belongs to the wet lease company) that a start-up airline must satisfy. It is recommended that companies defined as an Indirect Air Service Provider be subject to the same processes, amended as noted above, as are all start-up and existing airlines.

CONCLUSION

There is a large number of travel service companies in Canada who do not hold themselves out to be an airline. There is no need to regulate them as they essentially act as resellers of travel goods and services.

There are several operating airlines in Canada who have gone through the CTA regularity process and the Transport Canada ("TC") AOC process. They accepted the processes, paid their dues and continue to comply with the laws of Canada.

There is more than one company currently working its way through some or all of the CTA and TC processes to establish themselves as a new airline. They have accepted the processes, and are working to obtain the start-up and operating capital to become a new Canadian airline. By definition they are not an IASP, but are instead striving to become a full fledged airline in compliance with the laws of Canada and the CTA regulations that support those laws.

As defined, a company delivering an Indirect Air Service Provider model is acting as an airline and needs to be licensed by CTA. It should therefore be required to complete the process to demonstrate that it meets each of the five criterion (the wet lease service provider would be responsible for the AOC) required to achieve the CTA licence.

Thank you for the opportunity to respond to the subject consultation. I can be reached at the Jetlines office – 1-604-273-5387 or by mobile at 1-604-230-0585 or by email at jim.scott@jetlines.ca .

Original Signed By
Jim Scott
Chief Executive Officer

TAB 15

Hello:

I am providing comments to you with respect to the CTA's request on consultation on whether persons who have commercial control over an air service, but do not operate aircraft (Indirect Air Service Providers – IASP)
should be required to hold a license with the CTA.

The National Transportation Act, developed in 1987 was brought in to deregulate the aviation industry and allow for the marketplace to determine the pricing and delivery models for services, therefore removing the government from direct control or interference on how air services would be delivered in the Country. In a free market system some Airlines have been successful while others have had trouble surviving and that is the way a free market system should work.

It is my belief that creating more regulations under the guise that "you are protecting the consumer" goes against the mandate of the original National Transportation Act. There is adequate regulations today between Transport Canada and the CTA to protect the consumer and therefore I am contending that you do not need to make any changes to the regulations for the following reasons:

1) The air service provider cannot operate an air service without a Civil Aviation Document (CAD) as laid out under Section 57 of the Canada Transportation Act.

2) The Air Service provider (ASP) in its relationship with the IASP will develop agreements that protect the interest of the ASP because of the regulatory climate to hold a license under the CTA and Transport Canada. The ASP would not jeopardize its own operating certificate, and many Airlines operating today have service agreements with their partners to ensure they have protection for the consumer.

3) By introducing more economic regulation (which is what the CTA is proposing) it will continue to strengthen the incumbent air carriers, not allow for new and creative business models to enter the market place and therefore actually hurt the consumer as prices for air fares will continue to soar at the expense of the consumer. Competition in the market place is good for the consumer as well as the Canadian economy.

4) The CTA should not be meddle in what criteria defines an air carrier. This is already defined by Transport Canada under the CAD to get an operating certificate. The CTA has and should not have any jurisdiction in this regard as the regulatory body (Transport Canada) has jurisdiction, which in turn gives the CTA oversight on that operating entity.

5) The CTA should not be in the business of making regulation thru policy. Should the CTA identify areas in which existing legislation and regulation is insufficient, those areas should be referred back to policy-makers for further analysis and consultation with industry stakeholders.

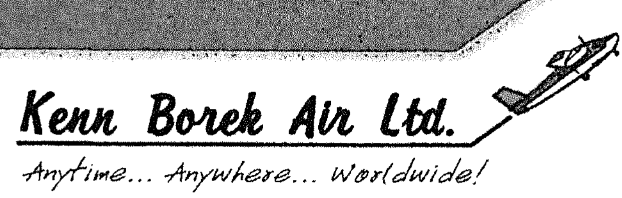
6) Finally, I would contend that if you looked at the detail structure between an ASP and an IASP you would find that the protection offered to the consumer would be no different then what the current air carriers are offering consumers.

In conclusion, I see no need to amend or change the CTA regulations. Let the marketplace choose the business model which will ultimately be of benefit to the consumer thru competitive pricing models and strengthen the Canadian economy.

Sam

Sam Samaddar, Airport Director
Kelowna International Airport

TAB 16



January 21, 2016

Canadian Transportation Agency
Via E-mail to consultations@otc-cta.gc.ca

Re: Consultation on the requirement to hold a licence

I am pleased that the Canadian Transportation Agency is reviewing its air service licencing requirements. It is my observation that the current regulations have been inconsistently applied, and have resulted in unfairness and competitive disadvantage to the Indirect Air Service Providers, ("IASP's) that are licensed.

I agree that IASP's should not be required to hold a licence to sell air services directly to the public as long as they charter licenced air carriers to operate the flights.

I also submit the IASP's which are currently licensed, but operate no differently than many other IASP's in Canada, should be allowed to cancel their license and operate the same as others. The CTA has allowed a significant number of organizations to operate un-licensed, which has created an unfair administrative and regulatory compliance burden on the selected IASP's who have been licenced. For example, a licensed IASP is forbidden from subcontracting work to a different carrier, yet an unlicensed IASP is able to do so with multiple carriers as they wish. In my view, the CTA has not enforced its approach of requiring the person with commercial control to hold the license, or at least some of the current unlicensed IASP's now in operation would be required to hold a license.

It is common practice for IASP's to hold themselves out to the public as an airline. I suggest the CTA consider naming guidelines to alleviate any confusion to the public. Many unlicensed IASP's who operate as travel coordinators or freight expeditors have the word "air", "airline" or "aviation" in the name of their organization, which implies they are operating a commercial air service. It seems to me that if you are unlicensed and are operating as a Travel Agency, rather than as an Airline, that should be addressed in the organization's name. My suggestion is that all IASP's with "airlines", "aviation" or similar words in their name should indeed be licensed by CTA. This suggestion would need more thought and development, and if adopted, a transition period.

admin@borekair.com | www.borekair.com

HEAD OFFICE: 290 McTavish Road NE Calgary Alberta T2E 7G5 • P 403.291.3300 F 403.250.6908

If the current regulatory regime is maintained, I believe there must be more definitive guidelines on who is to be licensed, along with effective enforcement. I believe 'who is in commercial control of an air service and does not operate aircraft' applies to many of the currently un-licenced IASP's discussed above, and so question the evaluation criteria used and enforcement applied to date. If the current approach is maintained, and if CTA would find value in it, I offer to participate in an industry advisory group to develop more definitive guidelines.

I do not have specific regulatory amendment advice to incorporate these comments, but leave that to the CTA to determine, following your deliberations.

Yours truly,

KENN BOREK AIR LTD.

John B. Harmer, CPA, CMA
President

TAB 17

To whom it may concern

With families living all over this vast country it is about time we had options to travel cheaply to visit them. Please reinstate the airline so that they may offer this to all Canadians again. It is long over due.

Thank you
Liz Throp

TAB 18

To Whom It May Concern,

If a company wants to take a chance and provide a service to the citizens, why in the world would would you try and stop them or even make it so difficult? Controlling the market does not give people a choice. If their business idea does not succeed, then so be it, but it's not right to not let them try. A competitive market keeps things fair and keeps the larger companies from abusing their privileges. Even if they provide lousy service, the people have no choices. Air Canada and Westjet do not own the rights for all travel. I stopped using Air Canada many years ago because of the terrible service and uncomfortable planes. I am happy with Westjet but I would certainly would like to have the choice of another company especially if they offer reasonable fares and destinations that are not currently offered.

Lorna Harlow

I VOTE YES!!!

TAB 19

CANADIAN TRANSPORTATION AGENCY REVIEW

Consultation on the Requirement to Hold a Licence

Submission of NewLeaf Travel Company Inc

Overview

The NewLeaf Travel Company was federally incorporated in April of 2015 to offer scheduled domestic and international airline service to Canadians under the Ultra-Low Cost Airline business model. A completely unbundled service, NewLeaf offers its customers a "seat and a seat belt" for a very low price and then offers additional air related amenities and services as well as other travel products and services (hotel and car reservations, ground transportation, destination activities) for additional fees. This model is similar to other successful ULCC enterprises in operation worldwide. It brings meaningful competition to the marketplace, lowers market fares, which gives greater access to consumers for flights. This is something that is increasingly out of reach for the average consumer because of the high cost of air fares created by a coordinated duopoly of the two largest domestic carriers. In fact, Canada is the only G20 country in world without an ultra-low cost airline.

Structured as a tour operator and headquartered in Winnipeg MB, NewLeaf contracts its airlift from Flair Airlines Ltd under the ACMI pricing model (Aircraft, Crew, Maintenance and Insurance). The agreement specifies the route structure, timing, frequency, cost per flight (including fuel and related pass through costs from airports, Nav Canada) as well as payment terms charged by Flair to NewLeaf for providing the service. NewLeaf then markets the flights to the consumer, facilitates all customer interaction pre and post flight, and collects the fares and fees for products and services offered. Flair has full control of the flight operation as they are the holder of both a Candian Transporataion Agency (CTA) licence for domestic scheduled service and a Canadian Aviation Document (CAD) (issued by Transport Canada).

In short, NewLeaf and Flair operate in a very similar fashion to 16 smaller entities in Canada today with the exception that NewLeaf is a national large scale application of the model.

The CTA's role in the oversight of Indirect Air Service Providers

NewLeaf, as a seller of airline seats and in a contractual relationship with a licensed air carrier holding both a CTA licence and a CAD (noted above), contends that the CTA does not hold the legislative authority to impose licensing requirements on the company in order to offer domestic scheduled service to the public. This licence and CAD is with the air operator and is assured through a contractual condition between NewLeaf and that operator. Further the CTA License and CAD holder should remain to be free to market and sell its airline capacity in whatever manner they desire, letting the marketplace determine if it is commercially viable. At the same time, NewLeaf supports the CTA's role in ensuring that consumer protections are in place for customers travelling on all air operators holding a CTA licence and CAD. Duplicate regulation on two bodies for the same customer is not necessary, nor efficient.

Over regulation and rule ambiguity has created marketplace uncertainty

The first comprehensive reform of Canadian air policy was announced in May of 1984 by then Transport Minister Lloyd Axworthy. The P.E. Trudeau government of the day had determined that less regulation was a desirable approach and that they were instituting the first phase of reform.

Four years later, a new National Transportation Act in 1987, came into effect as a result of the Minister's mandate reforming many things. Most importantly, it providing legislation that allowed Canadian carriers to operate within Canada pursuant to domestic licence authorities (the Canadian Transportation Agency) and removed the distinction between charter and scheduled operations. This allowed domestic service air carriers the ability to distribute their capacity in whatever manner they desired.

It was evident to the government of the day that airline deregulation in the US had delivered many important benefits, including the emergence of new, low-cost airlines offering spectacular price cuts for no frills services on certain routes. Now, thirty years later, these benefits have yet to arrive in Canada due to the expansive oversight policy of the CTA. This results in regulatory ambiguity for new entrants with business plans that differ from the typical capital intensive, build from scratch model as well as uncertainty as to what the CTA will rule on next.

Further, we question the timing of this consultation given that a broader statutorily mandated review is under way and that the consultant's report is already on the Minister's desk. Why was the role of Indirect Air Service Providers not studied in the broader consultation process? NewLeaf can only assume that the question of control over IASPs has come up because none of the major air carriers were seeking clarification to do this, and they do not desire to see this type of competition in the Canadian market.

NewLeaf is a strong advocate for its customers who seek lower fares, more route options and more brand choices. The company showed that in just 12 days of sales, Canadians desire change and voted with their hard earned money. NewLeaf's competitors followed suit and lowered fares to previously unseen prices. Fares then went back to previous prices once NewLeaf suspended sales.

Although we were given indication by the CTA that we could proceed, NewLeaf took the difficult decision to cease sales and refund its customers' money due to an onslaught of detractors, status quo seekers and others spreading fear, uncertainty and doubt into the marketplace. Without a clear understanding of what the CTA regulates and doesn't regulate, NewLeaf owed it to our customers to pause sales while we receive clarification from the Canadian government. NewLeaf is now calling on the government to complete its work quickly and efficiently so that we cam resume our work and Canadians can enjoy lower fares in this time of economic uncertainty.

Passengers are protected by business prudence, market forces and the current regulatory framework

There are adequate regulations in place today between Transport Canada, the CTA and other commercial and provincial regulatory schemes that protect passenger rights, the integrity of their trip and their money. These range from segregated accounts holding customer funds on unflown revenues,

credit card holdbacks by the merchant processors, and provincial regulations on tour operators, to name a few.

NewLeaf's stated booking and ticketing policies, baggage liabilities and Flair's NewLeaf related tariff ensure that NewLeaf customers would be protected to the same level as the major carriers. For critics to suggest otherwise demonstrated a lack of understanding of our business prudence and only served to fuel customer uncertainty on behalf of the status quo.

Further, the contractual relationship between the Air Service Provider (ASP) and the Indirect Air Service Provider (IASP) would have to consider the regulatory climate under which the ASP would need to maintain its CTA licence and CAD. ASPs in Canada are sufficiently mature to determine the risk of entering into agreements with IASPs. T hey would not risk their future existence by entering into agreements that could jeopardize their financial future.

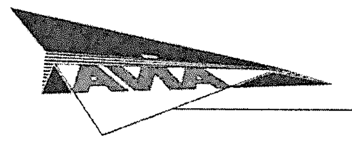
Other Considerations

NewLeaf, with its current indigenous govenernment shareholder, has an option for NewLeaf Travel to become a majority owned indigenous government entity. This creates additional long term opportunity for significant indigenous employment and economic development.

Conclusion

Canadians have spoken, they want more competition in air travel, lower fares and more travel options. The current regulatory framework provides adequate consumer protections. Additional regulation of IASPs serves no useful purpose other than to raise barriers to meaningful competition which in turn will ensure that Canadians do not benefit from a proven business model that is in place around the world. It is time for the Canadian government as a whole to work quickly, communicate clearly to the public and ensure a fair competitive playing field so that all Canadians can enjoy greater mobility throughout this great country of ours at a more affordable price.

TAB 20



Avia Marketing Consultants Inc.

Montréal le 22 Janvier, 2016

N/Réf: JP – 12438-A-NOLINOR
V/D : Consultation FISA

Livraison spéciale par courriel – consultations@otc-cta.gc.ca et john.touliopoulos@otc-cta.gc.ca

M. John TOULIOPOULOS
Gestionnaire – division de l'évaluation financière
OFFICE DES TRANSPORTS DU CANADA
OTTAWA, ON. K1A 0N9

Objet : La consultation sur l'obligation de détenir une licence.

Cher M. Touliopoulos

La présente fait suite à l'invitation de l'Office des Transports du Canada ("Office" &/ou "OTC") en rapport avec l'objet ci-dessus qui a été reçue par le soussigné et retransmise à Nolinor Aviation ("Nolinor et/ou NNR") et aussi par votre collègue de la division des enquêtes M. Jean-Michel Gagnon.

Nolinor nous a mandaté pour vous soumettre des commentaires à titre de personne vivement intéressée par le sujet sous étude car elle dispose maintenant d'un aéronef de catégorie "petits avions" telle que définie dans les règlements de l'Office et qu'elle a aussi participé, indirectement, au cours des trois dernières années à l'expérience de Vinci Aviation, une compagnie reliée, dans le domaine sous étude.

Je suis heureux, de concert avec Monsieur Jacques PRUD'HOMME, Président de Nolinor, à vous soumettre le résultat de notre propre expérience et celle avec VINCI et de vous transmettre nos commentaires et suggestions pour cette ronde de consultation afin de vous aider à proposer une politique de commercialisation de services aériens adaptés qui serait observée par tout fournisseur indirect de services aériens ("FISA') et qui serait équitable, juste, transparente, vérifiable et imputable par tout impétrant et surtout par la multiplicité de "courtiers" qui font office d'agents et dont la nécessité n'est pas primordiale ou par les nombreuses compagnies qui se portent comme acquéreur d'avions, ostensiblement pour leurs besoins "privés" mais qui arrondissent leurs fins de mois par des activités commerciales illicites.

Il est étrange de constater que Nolinor a de plus en plus de difficulté à faire affaire directement avec les vrais clients.

En effet, la grande majorité des vols sont actuellement réalisés <u>via des courtiers qui ne possèdent aucune licence et aucun aéronef.</u>

La présence de ces intervenants ne fait qu'augmenter les coûts de transport aux individus, aux entreprises et à notre gouvernement.

Toute nouvelle réglementation ou assouplissement suggéré qui viendrait rendre encore plus facile la vente de service de transport aérien serait, à notre humble avis, une erreur et il ne faudrait pas la commettre.

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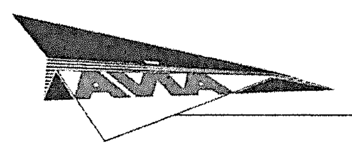

Cette politique éventuelle devrait aussi être avalisée par Transports Canada qui doit émettre son opinion par lettre, laquelle, dans un esprit ingénieux et imaginatif, l'Office a toujours considéré cette dernière comme étant le Document d'Aviation Canadien ("DAC") stipulé par la Loi sur les Transports au Canada (L.C. 1996, ch. 10) (Cf. articles 61 (1) (a) (ii et/ou 73 (1) (a) (ii) si applicable).

Nous sommes familiers avec la lettre envoyée par Vinci dans ce dossier et nous nous attacherons seulement à soumettre des commentaires et suggestions qui, nous l'espérons, sauront vous assister dans votre consultation.

Depuis le mois de Mai 2014, Nolinor exploite un Lear 31 (Catégorie "petits avions") en version exécutive (Décisions No. 187 et 188-A-2014) et s'assure de la conformité pleine et entière de son exploitation alors que d'autres concurrents continuent d'exploiter, sans impunité, leur service aérien non autorisé.

A) Concurrence déloyale

Au Québec, plusieurs entreprises privées font maintenant l'acquisition d'aéronef pour en faire une opération commerciale illicite.

Cet état de fait met plusieurs transporteurs aériens en difficulté face à une réduction de la demande qui se déplace tranquillement vers ces transporteurs illégaux.

Au lieu de rendre plus souple les règles, l'Office devrait au contraire renforcer sa surveillance et, au besoin, ajouter des restrictions pour s'assurer qu'un aéronef privé détenu par une entreprise n'est pas utilisé à des fins commerciales.

Des amendes importantes pourraient ralentir ou freiner cette tendance et avoir un effet dissuasif en avisant, à intervalle régulier, les propriétaires de ces aéronefs et de leur obligation de ne pas transgresser les RTA et publiciser tout contrevenant.

Ces mêmes concurrents continuent d'œuvrer sans impunité et de polluer le marché et d'autres intervenants continuent de s'ajouter à la pléthore de "transporteurs" dont les opérations débridées nous causent un tort considérable et sont au détriment de nos activités puisqu'elles nous privent de revenus potentiels.

Le "gel" indiqué par l'Office dans son document de consultation ne devrait pas aux anciens dossiers connus de l'Office.

Selon la circulaire de consultation, précise que :

> ***" Pendant le déroulement de l'examen, l'Office n'exigera pas la présentation d'une demande de licence à condition que le service offert au public satisfasse à toutes les exigences suivantes :***
>
> ***i. la personne n'exploite aucun aéronef;***
>
> ***ii. la personne affrète l'entière capacité de l'aéronef, aux fins de revente au public;***
>
> ***iii. le transporteur aérien est titulaire de la licence requise par l'Office pour exploiter le service aérien"***

Nonobstant ce qui précède, nous exhortons l'Office et sa division des enquêtes à agir avec célérité et prendre toute action correctrice.

B) Invitation à faire des commentaires

Nous aborderons maintenant le vif du sujet soit l'invitation à faire des commentaires et nous voulons féliciter l'Office pour cette initiative qui, nous l'espérons saura produire une politique évolutive, facile à contrôler, à appliquer et à gérer d'une manière qui soit imputable aux usagers.

Nous espérons que les expériences rapportées et vécues par Nolinor et Vinci sur ce marché exécutif sauront vous assister.

Nous apprécions grandement que les conditions d'exploitation changent au cours des années, que les méthodes de commercialisation évoluent, que la pratique générale s'améliore mais le tout doit rester conforme aux lois et règlements.

C) Commentaires

Dans sa circulaire de consultation, l'Office énonçait trois pistes de commentaires soit :

- ***Si les fournisseurs indirects de services aériens doivent être tenus de détenir une licence pour vendre leurs services directement au public, indépendamment. Veuillez fournir une explication claire pour justifier votre position;***

Nolinor recommande fortement que :

1. la détention d'une licence FISA soit maintenue mais qu'elle soit bien encadrée et surveillée;
2. des efforts soutenus soient faits par le personnel de l'Office pour appliquer et faire respecter les RTA en faisant des vérifications aléatoires sur une base plus fréquente que la rotation de 3 ans actuellement en place ;
3. tout autre exploitant FISA, actuel ou futur, soit tenu de demander une telle licence ;
4. la détention d'une licence FISA assujettit son détenteur à une discipline nécessaire vis-à-vis du public en lui prodiguant (i) l'existence d'un tarif avec des conditions de transport adaptées, (ii) la sécurité d'une police d'assurance suffisante pour le type de transport offert qui est généralement utilisé par des personnes dont la valeur nette est plus élevée que celle de la moyenne du public en général et du public voyageur d'avion en particulier , (iii) l'obligation de suivre la politique de prix publiés et enfin (iv) l'obligation d'affréter la capacité totale de l'avion.
5. Par ailleurs, selon notre expérience, nous croyons que les FISA ne devraient être autorisés que pour des aéronefs de la catégorie "petits avions " telle que définie aux RTA

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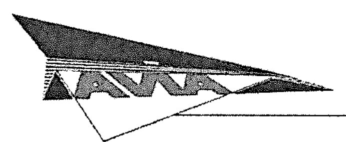

- ***Les critères dont l'Office devrait tenir compte pour établir si un fournisseur indirect de services aériens se présente comme un transporteur aérien et devrait par conséquent être tenu de détenir la licence;***

Nolinor recommande que les critères dont l'office devrait tenir compte pour établir si un fournisseur indirect de services aériens se présente comme un transporteur aérien et devrait par conséquent être tenu de détenir la licence devraient comprendre les informations suivantes à savoir:

(i) Nature des annonces publicitaires et information sur l'exploitant;

(ii) Annonces sous toutes les formes connues et incluant, sans exception, les annonces dans les médias écrits et verbaux (radios et télévisions), sur support papier et/ou électroniques, dans les médias sociaux, journaux locaux, dans n'importe quelle langue, annonces télévisées, publireportages, articles publicitaires et promotionnels;

(iii) Information précisant obligatoirement que le service offert est un service FISA;

(iv) divulgation du transporteur opérationnel ;

(v) No de licence FISA ;

(vi) la facturation doit se faire par le FISA ;

(vii) type d'avion offert et capacité (toutes les catégories) et, si un avion Moyen ou Grand était offert alors l'OTC devra :

(viii) exiger que les justificatifs financiers avec l'usage d'avions de cette catégorie soit pleinement respecté et justifié par le requérant.

- ***Les modifications réglementaires à envisager, le cas échéant, pour clarifier quelle personne exploite un service aérien et est tenue, à ce titre, de détenir une licence.***

Nolinor soumet que les RTA actuels couvrent adéquatement les FISA. Cependant, nous croyons que pour les services internationaux, le transporteur opérationnel devrait demander une dérogation à l'article 18 (c) des RTA afin d'éviter toute confusion en rapport avec le nom inscrit sur le fuselage et celui inscrit sur la licence du transporteur régulier et l'exemple de DAC est le plus évident lorsque l'on observe les photos de son avion qui apparaissent dans toutes les références que nous avons soumises.

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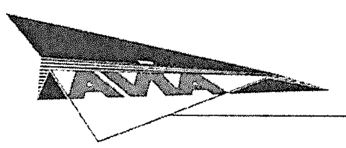


Cette situation ne s'applique pas aux services intérieurs car 18 (c) n'est pas en vigueur pour ces derniers à moins que l'examen actuel de la LTC ne vienne à modifier l'article 18 dans son ensemble.

J'espère que nos recommandations seront analysées dans le même esprit positif et constructif dans lequel nous les avons formulées et aussi que des activités disciplinaires soient prises contre les transporteurs mystères et illégaux qui pullulent à tous moments sur la scène Québecoise et canadienne.

Je demeure à votre service pour toute clarification qui serait encore nécessaire.

Bien à vous.

Richard LOOK, Agent pour Nolinor

c.c : M. Jacques Prud'Homme - Nolinor
M. Marco Prud'Homme - Vinci.

TAB 21

As a small remote northern airport, I want to register my opposition to the CTA's attempt to "regulate" one element of the domestic air transportation industry in Canada, the Indirect Air Service Provider. Our community relies heavily on air service for its well-being and business connections. At the moment we are served by one carrier with an average one way price of a ticket between Prince Rupert and Vancouver of $400. Down the road in Terrace where there are competing air carriers, the average price of a ROUND TRIP ticket is now approximately $300, although often offered below this price. We are wholly opposed to the CTA's attempt to stymie the birth of new aviation services of the Ultra-Low Cost Carrier model by imposing rules, outside of its authority, on Indirect Air Service Providers like New leaf. This new entrepreneur and its model, the latter of which was in the Minister's horizon when he deregulated the industry 30 years ago, can only benefit communities like ours who are at the mercy of the Legacy carriers, who no doubt see this new model as threat to their precious yields.

Richard Reed, Manager
Prince Rupert Airport

TAB 22

In our particular situation we (Provincial Airlines) operate a service for Innu Mikun Airlines.
Innu Mikun has a CTA (small) license restricted to being operated by Provincial Airlines.
All documentation and the aircraft contain the notice of "Operated by Provincial Airlines", so that the customer always knows who the operator is.
Innu Mikun has to meet CTA criteria to obtain a License which demonstrates a certain amount of quality control.

In general we support the present arrangement of requiring the "Seller" to possess a License.

Our only comment for improvement is that the License holder can utilize any aircraft within the Operator fleet that the Licensee is authorized to charter rather than this constant requirement to update all the registrations of every aircraft the operator provides......which really serves no useful purpose.

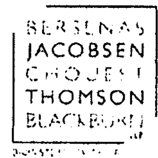
D Tim Vaillancourt
VP Operations
Provincial Airlines/ Provincial Aerospace

TAB 23

33 Yonge Street
Suite 201
Toronto, Ontario
Canada M5E 1G4
T: 416-982-3825
F: 416-982-3801
ted@nobbslaw.com

Edwin T. Nobbs, Q.C.
PROFESSIONAL CORPORATION
BARRISTER AND SOLICITOR

COUNSEL TO



January 22, 2016

VIA E-MAIL

Consultations @otc-cta.lgc.ca

Attention: Mr. John Touliopoulos
Manager, Financial Evaluation Division

RE: **SUNWING AIRLINES INC. AND SUNWING VACATIONS INC. - CANADIAN TRANSPORTATION AGENCY CONSULTATION ON THE REQUIREMENT TO HOLD A LICENCE**

Dear Sirs/Madams:

I act for Sunwing Airlines Inc. ("Sunwing Airlines") and Sunwing Vacations Inc. ("Sunwing Vacations") (collectively the "Parties") in regard to the above matter.

Pursuant to the Consultation On The Requirement To Hold A Licence dated January 11, 2016 (the "Consultation") of the Canadian Transportation Agency (the "Agency"), Sunwing Airlines and Sunwing Vacations wish to make the following comments with respect to the proposals set out in the Consultation (the "Consultation Proposals").

Introduction

1. Sunwing Airlines and Sunwing Vacations are affiliated companies as that term is defined both in the *Ontario Business Corporations Act* s.1(4) [1] and in the *Canada Business Corporations Act* s.2(2). [2]

2. The Parties are confining their comments to the relevance of the Consultation Proposals to affiliated licenced air carriers and licenced tour operators.

3. In the Agency's Consultation, the Agency invited comments on the Consultation Proposals and, in particular, on the following issues:

   - Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right.

   - What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence; and

   - What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a licence.

   Each of the above issues is addressed below, within the context of affiliated licenced air carriers and licenced tour operators.

Whether Indirect Air Service Providers should be required to hold a licence to sell services directly to the public, in their own right when such Indirect Air Service Provider is affiliated with a licenced air carrier

4. In its Consultation Proposals the Agency identified the following matters of concern, namely:

   - Tariff Protection

   - Financial Requirements

---

[1] See copy attached to this letter.
[2] See copy attached to this letter.

- Canadian Ownership Requirements

Each of these issues is addressed below.

<u>Tariff Protection</u>

5. Both the passengers who purchased seat only tickets from Sunwing Airlines and the passengers who purchased a package from Sunwing Vacations are subject to the terms, conditions and protections of the various domestic, international scheduled and international charter tariffs of Sunwing Airlines along with the applicable statutory and regulatory provisions set out both in the *Canada Transportation Act* and *Air Transportation Regulations*.

   By way of example, should a package passenger experience a flight delay, a flight cancellation or wrongful denial of boarding, that passenger has the right to file a complaint with the Agency against Sunwing Airlines and have that complaint adjudicated upon by the Agency.

6. Neither the seat only passenger of Sunwing Airlines nor the package passenger of Sunwing Vacations would obtain any additional legislative, regulatory or tariff protections if Sunwing Vacations was required to hold a licence and thus file a tariff with the Agency.

<u>Financial Requirements</u>

7. In addition to Sunwing Airlines, the carrier of Sunwing Vacations package passengers, having met the Agency financial requirements, Sunwing Vacations is licenced under all provincial Travel Industry Act legislation, namely that of the provinces of Ontario, Quebec and British Columbia and thus complies with the financial requirements of such legislation.

8. Neither the seat only passengers nor the package passengers would obtain any additional material financial protections if Sunwing Vacations was required to hold a licence.

<u>Canadian Ownership Requirements</u>

9. Sunwing Airlines complies with all Canadian ownership requirements. As an affiliated company of Sunwing Airlines, Sunwing Vacations must also, by implication, satisfy Canadian ownership requirements.

10. Neither the seat only passenger nor the package passenger would obtain any additional legislative, regulatory or Canadian ownership protections if Sunwing Vacations was required to hold a licence.

Are there other Protections

11. There are no other protections which would accrue to either seat only or package passengers which do not already accrue to such passengers.

International Commercial Air Service Operations

12. Approximately 97.9% of all passengers carried by Sunwing Airlines are transborder or international passengers.

13. Approximately 97.1% of all of the transborder and international passengers carried by Sunwing Airlines are carried on scheduled flights as opposed to charter flights.

14. As a transborder/international scheduled air carrier, Sunwing Airlines must be designated as a scheduled air carrier by the Minister of Transport for each country it serves. In order to obtain that designation, Sunwing Airlines must comply with all Transport Canada Air Policy compliance criteria along with complying with all applicable terms and conditions of each Bilateral Air Agreement between Canada and the country to which Sunwing Airlines is operating its transborder/scheduled services.

15. It is questionable as to whether Sunwing Vacations would be able to meet all of the requirements referred to in paragraph 14 above. What is not questionable, is that where there is limited access to routes between Canada and the country in question, there is no way that both Sunwing Airlines and Sunwing Vacations could be designated thus, closing the door on one or more other Canadian carriers being designated on a limited access route.

Other Jurisdictions

16. Neither the UK nor other EU countries have an indirect air carrier licencing concept.

17. While the US does have an Indirect Air Carrier Licencing Regime, there are a number of exemptions to the Regime. In addition thereto, in terms of its overall

applicability to a tour operator/air carrier relationship, there has never been a tour operator licenced as an Indirect Air Carrier. In practice, this Regime just does not apply to the air carrier/tour operator relationship, whether the tour operator is contracting with a charter carrier or a scheduled carrier.

18. None of the countries to which Sunwing Airlines operates scheduled services, other than the US as described above, have an indirect air carrier regime.

What should the Agency consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the licence.

19. Provided the air carrier and the tour operator are affiliated, as long as the tour operator indicates that it is using its affiliated air carrier, no action should be taken.

What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required as such, to hold a licence

20. Provided the air carrier and the tour operator are affiliated, as long as the tour operator indicates that it is using its affiliated air carrier, no action should be taken.

Conclusion

21. Having regard to all of the facts and submissions set out above, the Parties submit that there should not be a requirement for a tour operator to be treated as an Indirect Air Service Provider for the purposes being required to hold an air carrier licence, so long as the tour operator and the air carrier are affiliated. While no additional benefits will accrue to the public in licencing a tour operator as an air carrier affiliated with a licenced air carrier, there could clearly be unintended consequences in such an indirect air carrier licencing regime.

We want to thank you for providing us with the opportunity to submit the above comments. We would be more than pleased to elaborate upon any of the comments and/or meet with officials of the Agency to discuss this matter further.

Regards,

Yours very truly,

Edwin T. Nobbs, Q.C.

ETN/ha

"senior officer" means,

(a) the chair of the board of directors, a vice-chair of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office, and

(b) each of the five highest paid employees of a corporation, including any individual referred to in clause (a);

"series", in relation to shares, means a division of a class of shares;

"special resolution" means a resolution that is,

(a) submitted to a special meeting of the shareholders of a corporation duly called for the purpose of considering the resolution and passed, with or without amendment, at the meeting by at least two-thirds of the votes cast, or

(b) consented to in writing by each shareholder of the corporation entitled to vote at such a meeting or the shareholder's attorney authorized in writing;

"spouse" means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;

"telephonic or electronic means" means telephone calls or messages, facsimile messages, electronic mail, transmission of data or information through automated touch-tone telephone systems, transmission of data or information through computer networks, any other similar means or any other prescribed means.

"unanimous shareholder agreement" means an agreement described in subsection 108(2) or a declaration of a shareholder described in subsection 108(3);

"uncertificated security" means an uncertificated security as defined in the *Securities Transfer Act, 2006*;

"voting security" means any security other than a debt obligation of a body corporate carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

"warrant" means any certificate or other document issued by a corporation as evidence of conversion privileges or options or rights to acquire securities of the corporation.

(2) **Interpretation: subsidiary body corporate** — For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if, but only if,

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more bodies corporate each of which is controlled by that other, or

(iii) two or more bodies corporate each of which is controlled by that other; or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

(3) **Holding body corporate** — For the purposes of this Act, a body corporate shall be deemed to be another's holding body corporate if, but only if, that other is its subsidiary.

(4) **Affiliated body corporate** — For the purposes of this Act, one body corporate shall be deemed to be affiliated with another body corporate if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

(b) that the corporation is required by its articles to purchase or redeem at a specified time or on the demand of a shareholder;

("action rachetable")

"resident Canadian" means an individual who is

(a) a Canadian citizen ordinarily resident in Canada,

(b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or

(c) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship;

("résident canadien")

"security" means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation; *("valeur mobilière")*

"security interest" means an interest in or charge on property of a corporation to secure payment of a debt or performance of any other obligation of the corporation; *("sûreté")*

"send" includes deliver; *("envoyer")*

"series", in relation to shares, means a division of a class of shares; *("série")*

"special resolution" means a resolution passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution; *("résolution spéciale")*

"squeeze-out transaction" means a transaction by a corporation that is not a distributing corporation that would require an amendment to its articles and would, directly or indirectly, result in the interest of a holder of shares of a class of the corporation being terminated without the consent of the holder, and without substituting an interest of equivalent value in shares issued by the corporation, which shares have equal or greater rights and privileges than the shares of the affected class; *("opération d'éviction")*

"unanimous shareholder agreement" means an agreement described in subsection 146(1) or a declaration of a shareholder described in subsection 146(2). *("convention unanime des actionnaires")*

(2) Affiliated bodies corporate — For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

(3) Control — For the purposes of this Act, a body corporate is controlled by a person or by two or more bodies corporate if

(a) securities of the body corporate to which are attached more than fifty per cent of the votes that may be cast to elect directors of the body corporate are held, other than by

TAB 24

January 22, 2016

John Touliopoulos,
Manager, Financial Evaluation Division
Canadian Transportation Agency

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

Dear Mr. Touliopoulos,

Re: Consultation – Whether Indirect Service Providers should be required to hold a CTA licence

Thank you for providing the Travel Industry Council of Ontario ("TICO") with the opportunity to offer input on the issue as to whether Indirect Air Service Providers (*IASPs*) should be required to hold a CTA licence in order to sell their services directly to the public, in their own right.

Below are our comments.

About TICO

1. TICO is an Ontario's Travel Regulator whose mission is to promote a fair and informed marketplace where consumers can be confident in their travel purchases.

2. TICO was established in 1997 as a delegated administrative authority under the *Safety and Consumer Statutes Administration Act*, as a result of the mutual desire of the government and the travel industry to enhance professionalism, increase consumer protection and provide an effective and efficient regulatory body. The Ontario Ministry of Government and Consumer Services continues to be responsible for the Ontario *Travel Industry Act, 2002* (the TIA) and Ontario Regulation 26/05 (the Regulation) as well as general oversight of TICO.

3. TICO's mandate is to regulate the travel industry in Ontario, in the interest of traveling public. TICO has set up programs to support our mandate that aim to promote fair and ethical competition in the industry, support a Code of Ethics, maintain and enforce programs that provide for consumer compensation in specific circumstances, promote an expected level of education as a criterion for registration and encourage legislative and regulatory amendments aimed at industry professionalism and consumer confidence.

4. It is important to note that under the TIA, a person who sells advertises for sale or counsels with respect to the sale of air tickets in Ontario, must register as a travel agent or travel wholesaler under the TIA. The only exception from this rule is if the person is the supplier of the travel services being sold, i.e. airline that owns the aircraft.

5. *Travel Agent* is defined as a person, who sells, to consumers, travel services provided by another. *Travel Wholesaler* is defined as a) a person who acquires rights to travel series for the

purpose of resale to a travel agent or b) who carries on the business of dealing with travel agents or travel wholesalers for the sale of travel series provided by another person.

6. As part of the registration process and as a requirement of continuous entitlement to registration, all travel agents/wholesalers must satisfy certain criteria with respect to their financial viability, experience in the industry, education, trust account compliance and other financial and non-financial compliance (for more details, please see sections 14-15, 22, 24, 27, 31-37 of the Regulation). These requirements are part of the TIA and the Regulation and are uniformly applied and enforced by TICO.

7. In addition, consumers who purchased travel services from the registered travel agent are eligible to claim compensation from the Ontario Travel Industry Compensation Fund (the Fund) for travel services paid but not provided, as outlined by section 57 of the Regulation.

General Comments on the Approach Proposed by CTA

8. Based on our overview of the existing model, *IASPs* do not own the aircraft. *IASPs* oversee all aspects of providing an air service, except operate the aircraft. They charter the aircraft from air carriers on a wet lease (aircraft with crew) basis. They market and sell the air service on their own behalf and collect funds from consumers. Further, domestic *IASPs* are required to obtain a licence from CTA, while international *IASPs* do not.

9. It seems that the proposed approach strives to remove the existing dual licensing system, while allowing CTA discretion and flexibility to apply legislative and regulatory requirements in a purposive manner to ensure that the objectives underpinning the air licensing regime continue to be met.

10. As a consumer protection agency, TICO supports clarity and transparency in enforcement and application of the regulations, provided consumer protection mechanisms remain intact.

11. TICO understands that currently, there are no *IASPs* operating in Ontario.

12. However, if there were persons operating in Ontario, that have commercial control of the aircraft and sell, market or otherwise advertise air tickets to public, but do not in fact own the aircraft, those persons would be required to register as a travel agent and/or travel wholesaler under the TIA.

13. It is TICO's position that eliminating the requirement to obtain a CTA licence by domestic *IASPs* would certainly relieve the regulatory burden on those persons and bring clarity and uniformity to the licensing process. However, it may also remove additional layer of protection that public would otherwise enjoy because under the CTA licence, *IASPs* would have to comply with certain economic, consumer and industry protection requirements.

14. While in Ontario, *IASPs*, as registered travel agents/wholesalers, will be subject to strict financial, educational and trust compliance requirements and consumers who purchased air tickets from *IASPs* would enjoy protection of the Compensation Fund; this may not be true in other provinces and territories.

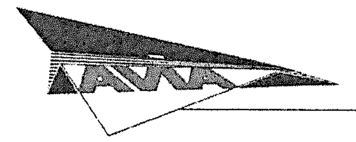
15. As such, TICO urges CTA to consider what impact removing of the economic, consumer and industry protection safeguards (currently provided under the CTA licensing regime) from the domestic *IASPs*, would have on the industry in other provinces and territories that do not have benefits of travel regulation.

Should you wish to discuss any of the above further, please do not hesitate to contact the undersigned.

Sincerely,

RICHARD SMART
REGISTRAR
TRAVEL INDUSTRY ACT, 2002

TAB 25



Avia Marketing Consultants Inc.

Montréal le 22 Janvier, 2016

N/Réf: MP – 12434-A-VNC- 9265-2866
V/D : Consultation FISA

Livraison spéciale par courriel – consultations@otc-cta.gc.ca
et john.touliopoulos@otc-cta.gc.ca

M. John TOULIOPOULOS
Gestionnaire – division de l'évaluation financière
OFFICE DES TRANSPORTS DU CANADA
OTTAWA, ON. K1A 0N9

Objet : La consultation sur l'obligation de détenir une licence.

Cher M. Touliopoulos

La présente fait suite à l'invitation de l'Office des Transports du Canada ("Office" &/ou "OTC") en rapport avec l'objet ci-dessus qui a été reçue par le soussigné et retransmise à VINCI et aussi par votre collègue de la division des enquêtes M. Jean-Michel Gagnon.

VINCI nous a mandaté pour vous soumettre des commentaires à titre de personne hautement intéressée par le sujet sous étude car elle a participé activement, au cours des trois dernières années (2013 à 2015), à plus d'un titre dans ce créneau particulier des services aériens offerts par une tierce partie et je suis heureux, de concert avec M. Marco PRUD'HOMME, Président de VINCI à vous soumettre le résultat de notre expérience et nos commentaires et suggestions pour cette ronde de consultation afin de vous aider à proposer une politique de commercialisation de services aériens atypiques qui serait observée par tout fournisseur indirect de services aériens ("FISA') et qui serait équitable, juste, transparente, vérifiable et imputable par tout impétrant.

Cette politique éventuelle devrait aussi être avalisée par Transports Canada qui doit émettre son opinion par lettre, laquelle, dans un esprit ingénieux et imaginatif, l'Office a toujours considéré cette dernière comme étant le Document d'Aviation Canadien ("DAC") stipulé par la Loi sur les Transports au Canada (L.C. 1996, ch. 10) (Cf. articles 61 (1) (a) (ii et/ou 73 (1) (a) (ii) si applicable).

A) Démarrage initial

"VNC"a fait l'acquisition d'un aéronef Lear Jet 31-A en 2012 (C-FVNC) et l'a aussitôt confié à un "exploitant aérien" (Skyservice Aviation d'Affaires ("Skyservice") qui en avait le contrôle plein et entier puisque aucune des divisions de la compagnie ne pouvait ni n'avait les autorisations appropriées pour l'exploiter commercialement. Cet aéronef fut enregistré au nom de "Skyservice", disposait de son propre certificat d'enregistrement et certificat de navigabilité et était autorisé et inscrit sur le certificat d'exploitation de "Skyservice".

C-FVNC était exploité commercialement pour **tous les publics sans aucune exclusivité vis-à-vis de "VNC".**

Toutefois, durant la période du 21-3-2013 au 6-5-2013, "VNC" reçut une demande de détails de la division des enquêtes de l'OTC à laquelle elle y répondit adéquatement, complètement et en toute transparence. Pour plus de sûreté quant à ses intentions, "VNC" demanda une licence FISA (1) qu'elle exploita jusqu'en Mai 2014, date à laquelle elle mit fin à son entente avec "Skyservice" et transféra C-FVNC vers un autre exploitant sous forme de location sans équipage (Dry Lease).

101-9970 Côte-de-Liesse Lachine (Québec) Canada H8T 1A1
Tél : (1) 514-631-2136 Cell : (1) 514-913-2136 Fax : (1) 514-636-6455 E-mail : avia@sympatico.ca
www.aviamarketing.ca

Alors que d'autres concurrents continuaient d'exploiter, sans impunité, leur service aérien non autorisé, "VNC" avait été soumise à un examen en règle qui ne révéla aucun manquement volontaire ou apparent en rapport avec les RTA.

B) Concurrence déloyale

Plusieurs concurrents déloyaux continuent d'œuvrer sans impunité et de polluer le marché et d"autres intervenants sont venus s'ajouter à la pléthore de "transporteurs" et l'Office a plusieurs dossiers en mains qui ont été délaissés en attendant le résultat de la présente consultation.

> ***" Pendant le déroulement de l'examen, l'Office n'exigera pas la présentation d'une demande de licence à condition que le service offert au public satisfasse à toutes les exigences suivantes :***
> ***i. la personne n'exploite aucun aéronef;***
> ***ii. la personne affrète l'entière capacité de l'aéronef, aux fins de revente au public;***
> ***iii. le transporteur aérien est titulaire de la licence requise par l'Office pour exploiter le service aérien"***

Nonobstant ce "gel", nous exhortons l'Office et sa division des enquêtes à agir avec célérité pour appliquer ses règlements car la justice et l'équité de traitement requièrent une telle action.

Ainsi donc, l'expérience de "VNC" sous deux scénarios différents soit :

1. Une opération commerciale via une agence de voyage et un exploitant autorisé et;
2. Une opération FISA autorisée par l'Office;

s'est conclue par la décision de demander l'annulation de la licence FISA obtenue et de continuer à œuvrer dans le domaine du voyage comme agent autorisé et licencié par l'Office de la Protection du consommateur (Québec) qui exerce une surveillance appropriée et aussi comme spécialiste en logistique afin de garantir à ses clients et au public en général que l'exploitant choisi est bien autorisé, est soumis à des obligations tarifaires et détient un niveau d'assurance tout à fait acceptable et doit se conformer aux RTA et à la LTC.

C) Invitation à faire des commentaires

Nous aborderons maintenant le vif du sujet soit l'invitation à faire des commentaires et nous voulons féliciter l'Office pour cette initiative qui, nous l'espérons saura produire une politique évolutive, facile à contrôler, à appliquer et à gérer d'une manière qui soit imputable aux usagers.

Nous espérons que les expériences vécues par "VNC", sauront vous assister.
Nous apprécions grandement que les conditions d'exploitation changent au cours des années, que les méthodes de commercialisation évoluent, que la pratique générale s'améliore mais le tout doit rester conforme aux lois et règlements.

---

(1)-Décision No.366-A-2013 en date du 17-9-2013 autorisant le service aérien FISA puis demande volontaire d'annulation de la licence FISA validée par la Décision No. 196-A-2014 en date du 22-5-2014.

D) **Commentaires**

Dans sa circulaire de consultation, l'Office énonçait trois pistes de commentaires soit :

- ***Si les fournisseurs indirects de services aériens doivent être tenus de détenir une licence pour vendre leurs services directement au public, indépendamment. Veuillez fournir une explication claire pour justifier votre position;***

"VNC" recommande fortement que :

1. la détention d'une licence FISA soit maintenue mais qu'elle soit bien encadrée et surveillée ;
2. des efforts soutenus soient faits par le personnel de l'Office pour appliquer et faire respecter les RTA en faisant des vérifications aléatoires sur une base plus fréquente que la rotation de 3 ans actuellement en place ;
3. tout autre exploitant FISA, actuel ou futur, soit tenu de demander une telle licence;
4. la détention d'une licence FISA assujettit son détenteur à une discipline nécessaire vis-à-vis du public en lui prodiguant (i) l'existence d'un tarif avec des conditions de transport adaptées, (ii) la sécurité d'une police d'assurance suffisante pour le type de transport offert qui est généralement utilisé par des personnes dont la valeur nette est plus élevée que celle de la moyenne du public en général et du public voyageur d'avion en particulier , (iii) l'obligation de suivre la politique de prix publiés et enfin (iv) l'obligation d'affréter la capacité totale de l'avion.
5. Par ailleurs, selon notre expérience, et à l'analyse de la liste des 16 transporteurs FISA actuels (2), nous croyons que les FISA ne devraient être autorisés que pour des aéronefs de la catégorie "petits avions " telle que définie aux RTA ;

(2) Transporteurs FISA actuels : **1.Air Liaison Inc. (6 licences);** 2.Air Rivac Transport D'urgence aérien et héliporté Inc. (8 licences); **3.AirMédic Inc. (5 licences)**;4.Aklak Inc. cob as Aklak Air; **5.Arctic Buying Company Inc.**; 6.Aviation Norvik Inc.**7.Capital Hawryluk Inc. cob as Conexia Aviation;** 8. Evasion Air Elite Inc. cob as Evasion Air (2 licences); **9.Innu Mikun Limited Partnership, by its General Partner, Innu Mikun Inc. cob as Innu Mikun Airlines;** 10.Integra Air International Inc.;**11.Labrador Air Safari (1984) Inc.;** 12.Nakina Outpost Camps & Air Service Ltd., North Star Air Ltd. and Cargo North Holdings caryring on a joint venture as Cargo North; **13.Nikan Hélicoptère - Logistiques et Solutions Inc.**14.Pronto Airways Limited Partnership, by its General Partner 101075247 Saskatchewan Ltd. carrying on business as Pronto Airways; **15.The Owen Sound Transportation Company, Limited;** 16.Unaalik Aviation (2004) Inc. cob as Unaalik Air

- ***Les critères dont l'Office devrait tenir compte pour établir si un fournisseur indirect de services aériens se présente comme un transporteur aérien et devrait par conséquent être tenu de détenir la licence;***

"VNC" recommande que les critères dont l'office devrait tenir compte pour établir si un fournisseur indirect de services aériens se présente comme un transporteur aérien et devrait par conséquent être tenu de détenir la licence devraient comprendre les informations suivantes à savoir:

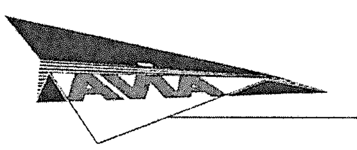
(i) Nature des annonces publicitaires et information sur l'exploitant;
(ii) Annonces sous toutes les formes connues et incluant, sans exception, les annonces dans les médias écrits et verbaux (radios et télévisions), sur support papier et/ou électroniques, dans les médias sociaux, journaux locaux, dans n'importe quelle langue, annonces télévisées, publireportages, articles publicitaires et promotionnels;
(iii) Information précisant obligatoirement que le service offert est un service FISA;
(iv) divulgation du transporteur opérationnel ;
(v) No de licence FISA et (vi) la facturation doit se faire par le FISA.

- ***Les modifications réglementaires à envisager, le cas échéant, pour clarifier quelle personne exploite un service aérien et est tenue, à ce titre, de détenir une licence.***

"VNC" soumet que les RTA actuels couvrent adéquatement les FISA. Cependant, nous croyons que pour les services internationaux, le transporteur opérationnel devrait demander une dérogation à l'article 18 (c) des RTA afin d'éviter toute confusion en rapport avec le nom inscrit sur le fuselage et celui inscrit sur la licence du transporteur régulier et l'exemple de DAC est le plus évident lorsque l'on observe les photos de son avion qui apparaissent dans toutes les références que nous avons soumises.

Cette situation ne s'applique pas aux services intérieurs car 18 (c) n'est pas en vigueur pour ces derniers à moins que l'examen actuel de la LTC ne vienne à modifier l'article 18 dans son ensemble.

J'espère que nos recommandations et suggestions seront analysées dans le même esprit positif et constructif dans lequel nous les avons formulées et aussi que des activités disciplinaires soient prises contre les transporteurs mystères qui pullulent à tous moments sur la scène Québecoise et canadienne.



Je demeure à votre service pour toute clarification qui serait encore nécessaire.

Bien à vous.

Richard LOOK, Agent pour VINCI

c.c : M. Marco Prud'Homme - Vinci.
M. Jacques Prud'Homme - Nolinor

101-9970 Côte-de-Liesse Lachine (Québec) Canada H8T 1A1
Tél : (1) 514-631-2136 Cell : (1) 514-913-2136 Fax : (1) 514-636-6455 E-mail : avia@sympatico.ca
www.aviamarketing.ca

TAB 26

Thank you for the opportunity to provide WestJet's comments on the Canadian Transportation Agency's (the "Agency") request for comments on the requirement to hold a license. Specifically, comments have been requested on whether persons who have commercial control over an air service but do not operate aircraft ("Indirect Air Service Providers"), should be required to hold a license.

The Agency has also requested comments with respect to the following questions:

- Whether Indirect Air Service Providers should be required to hold a license to sell their services directly to the public, in their own right;
- What criteria the Agency should consider in determining whether an Indirect Air Service Provider is holding itself out as an air carrier, and therefore, should be required to hold the license; and
- What regulatory amendments, if any, should be contemplated to clarify who is operating an air service and is required, as such, to hold a license.

Please accept this as WestJet's submission in this regard.

Executive Summary

WestJet submits that Indirect Air Service Providers should be required to hold a license to sell air services directly to the public, in their own right. Ultimately, WestJet wants to ensure there is a level playing field. One entity should not have advantages over another where there is an ability to avoid regulatory requirements, particularly if both entities are essentially providing the same service or holding themselves out to be providing the same service. In other words, if two entities claim they are flying passengers, as scheduled or unscheduled services, to and from points in Canada or to points outside of Canada, for a publicly available fare, and both are collecting that fare and holding themselves out as commercial airlines, then the same regulatory standards should apply to both entities. This should be done regardless of who is operating the aircraft.

From a passenger's perspective, there is no discernible difference in the fact that an Indirect Air Service Provider is selling directly to the public versus an operating carrier. As a result, both entities should be held to the same standards and consumer protection requirements. Permitting by regulation one entity to avoid certain requirements and obligations that are required by others (for the same air service) creates an inherent and immediate competitive advantage for the entity that did not incur the same costs, or be subject to the same obligations to start their service.

In the event that the Agency decides to amend the regulations, at a minimum, consideration needs to be given to:

a. foreign ownership restrictions on an Indirect Service Provider;
b. the livery of the aircraft and the manner in which the public is marketed the air service;
c. the operator of the aircraft meeting all of the licensing requirements; and
d. clarity of passenger rights as to which tariffs and rules apply to which air service.

Background: Greyhound Decision

On June 7, 1996, the CTA published its Decision No. 232-A-1996 in the matter of a complaint filed by WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. (Greyhound) and Kelowna Flightcraft Air Charter Ltd. (Kelowna).

Based primarily on the financial, operational and business relationships between Greyhound and Kelowna, Greyhound was found to be operating a domestic air service and was required to hold a domestic license. In order to obtain a domestic license, Greyhound had to establish to the satisfaction of the Agency that it was Canadian as defined in section 67 of the NTA, 1987, that it held a Canadian aviation document, and that it had prescribed liability insurance coverage or evidence of such insurability in respect of the air services to be provided under the license.

The Agency noted that Greyhound did not hold a domestic license. Accordingly, had operation of the proposed air services commenced, the Agency would have taken all actions within its jurisdiction to prevent such operation, including the issuance, if necessary, of a cease and desist order against Greyhound.

Existing License Requirements

In the event an Indirect Air Service Provider holds themselves out as an airline, then that entity is required to meet the minimum requirements in order to obtain a license from the CTA. A partial list of those requirements are listed below:

- Financial requirements apply to Canadians applying for a license to operate an air service using medium aircraft (40 to 89 seats) or large aircraft (greater than 89 seats).
- Under the financial requirements test, the applicant is required to demonstrate that it has sufficient funding in place, without taking into account any revenue from operations, to meet the costs, or in other words, the cash disbursements, associated with starting up and operating the air service for a 90-day period (stage 1).
- The applicant must then satisfy the Agency that it has either already acquired, or it can acquire, the required funds confirmed in stage 1, and that the funds are available and will remain available to finance the air service.
- The applicant is encouraged to file the required information and documentation with the Agency well in advance of the proposed air service's launch date, but not before a detailed business plan is in place, in support of the proposed air service.
- Transport Canada will generally not initiate work relating to the issuance or amendment of an Air Operator Certificate for the proposed air service until the Agency has determined that the applicant has complied with the financial requirements.
- The applicant must file a copy of its business plan in support of its licence application. The Agency will review the applicant's business plan to assess if the financial requirements proposed by the applicant are reasonable and consistent with the proposed air service. The business plan should, at a minimum, include the following information:

- A description of the type of air service that will be provided, including whether scheduled and charter type services will be offered;
- The market and the region within which the applicant intends to operate;
- The routes that will be operated and the frequency of flights;
- The type and number of aircraft that will be operated; and
- A summary of any significant agreements or partnerships that will influence how the air service will be provided and the cost to provide the air service.

A complete list of the above requirements can be found here:

https://www.otc-cta.gc.ca/eng/publication/financial-requirements-guide-air-licence-applicants#toc-tm-1

Discussion:

The Act requires that persons hold the appropriate license before they can operate a publicly available air transportation service (air service), which subjects these persons to a number of economic, consumer and industry protection safeguards, including safeguards with respect to tariffs, financial requirements, and Canadian ownership. The Agency needs to ensure that these protections are not contravened or circumvented by Indirect Air Service Providers. Depending upon the contractual relationship of an Indirect Service Provider, economic and commercial control over an entire air service operator could be held by an entity without a license. In all instances, the Agency must maintain that the intent of all other regulations and requirements are kept intact. An amendment, or permitting an exception to, compliance with these regulations could have far reaching affects and unintended consequences outside of simply the contemplation of who requires a license.

As of December 1, 2015, 16 entities that did not operate any aircraft held licenses providing them the authority to operate domestic air services. The regulations have created a failsafe to ensure that appropriate operational, insurance, and passenger protections are covered through the licensing process, including those entities that do not operate any aircraft, but hold themselves out as such. A new regime would create an inequity for the existing Indirect Air Service Providers. Further, the elimination of this failsafe would create a situation where an entity in commercial control of a carrier could make decisions without the specter of the removal of an operating license as a protection for the public.

Additionally, consumers may be left out of pocket or experience inconvenience or undue hardship because the service provider cannot continue to offer the service. The Agency needs to maintain the existing passenger protections afforded under the existing regime. If the Agency determines it is appropriate to amend the regulations, in order to continue to hold the trust of the travelling public, then the livery of the aircraft and all marketing must be transparent in showing which entity is responsible for which portion of the travelling public's contract and journey.

Conclusion

In conclusion, WestJet's position is that a license must remain a requirement for Indirect Air Service Providers. The Agency's current system protects the travelling public by requiring Indirect Air Service Providers to hold a license, and this, in turn, ensures a level playing field for Canadian air service providers.

This submission is respectfully submitted to ensure regulations are applied in a clear, consistent, and transparent manner that underpins a fair and leveled competitive environment for all air carriers, while at all times ensuring the protection of the traveling public.