

**CANADIAN TRANSPORTATION AGENCY**

**REGULATORY MODERNIZATION INITIATIVES  
AIR TRANSPORTATION CONSULTATION**

**SUMBISSIONS OF SUNWING AIRLINES INC.**

**Background**

1. Sunwing Airlines Inc. (“Sunwing”) currently operates a year round fleet of 19 Boeing 737-800 Aircraft.

During the late fall/winter/early spring (the “Peak Season”) Sunwing supplements its year round fleet of aircraft with up to 21 additional Boeing 737-800 Aircraft.

2. During the Peak Season, Sunwing serves:
  - 7 Canadian cities with mainly scheduled services to 3 U.S. cities; and
  - 31 Canadian cities with mainly scheduled services to 34 sun spot destinations in the Mexico, Central America and Caribbean areas.
3. Approximately 98 percent of Sunwing’s traffic is now scheduled traffic with the balance being charter traffic;

**Overall Submission**

4. Sunwing strongly supports the initiative of the Canadian Transportation Agency (the “Agency”) in seeking to modernize its Air Transportation Regulations (the “ATRs”).
5. The proposed modernization of the ATRs will improve the efficiency of the Sunwing scheduled and charter services without in any way impeding the quality of such services or adversely affecting such services being provided to the public.

6. As this initiative has been a long time coming and, it is reasonable to assume, that there will not be another opportunity to engage in an overall regulatory review for a considerable period of time, there is added importance to this Initiative.

### **Specific Submissions**

#### **Code-Sharing and Wet-Leasing**

7. In its Discussion Paper on Code-Sharing and Wet-Leasing, the Agency suggests that the treatment of these two issues be changed. In particular, the Agency is suggesting that the approval process may no longer be required for code-sharing and could be replaced with a five day notification process. On the other hand, the Agency is suggesting that an approval process be retained for wet-leasing, but that the filing time requirement be reduced from 45 days to 15 days.
8. Sunwing submits that a five day notification process should apply equally to both code-sharing and wet-leasing. The basic difference between the two subjects is the 20% cap on the number of wet-leased aircraft as compared to the number of Canadian registered aircraft, and reciprocity. Each of these issues can be easily addressed in the carrier's notification.
9. It is interesting to note that in its Discussion Paper on Charter Activities and Advance Payment Protection (the "Charter Activities Discussion Paper"), the Agency noted that the requirement for an application for a charter permit could be replaced with an advance notification only of 48 hours. (See further comment on this issue in paragraph 14 below.)
10. As indicated above, the Agency has recognized that, in a growing number of instances, notifications, as opposed to applications, are appropriate as the ATRs are modernized.

#### **Aircraft Livery**

11. Section 18(c) of the ATRs provides that *The Licencee shall not operate an international service or represent by advertisement or otherwise the Licencee as operating such a service, under a name other than that specified in the licence.*
12. Sunwing requests that the above Section be amended to read as follows:

18.(c) *The Licencee shall not operate an international service or represent by advertisement or otherwise the Licencee as operating such a service, under a name other than that specified in the licence. **Notwithstanding the above, should a carrier's aircraft livery reflect an advertisement of a name and logo other than the carrier's name and logo, the carrier shall advise each passenger that the aircraft is being operated solely by the carrier.***

Such an amendment will permit the carrier to utilize its aircraft livery for advertising purposes without misleading its passengers, while providing the carrier with additional revenues or providing the carrier with the opportunity of offering incentives to one or more of its major suppliers.

### **Charter Operations**

13. In its Charter Activities Discussion Paper, the Agency raised the question as to whether the advance payment protection (the "APP") ATR regime should be maintained.

As part of the above discussion, the Agency noted that amongst other things:

- Less than 1% of all Canadian origin international passenger travel was on flights protected by APP; and
- There are other passenger protection regimes now in place which were not there at the time the APP ATRs were enacted;

Sunwing submits that:

- The APP ATRs no longer serve the purpose for which they were originally intended while, at the same time, causing charter operators to incur additional costs; and
- The APP ATRs should be deleted.

14. In its Charter Activities Discussion Paper, the Agency discussed the continuing need for charter permits as opposed to replacing the permit application regime with a notification regime. The Agency concluded by asking whether the charter permit application regime should be replaced with a 48 hour notification regime.

Sunwing supports a 48 hour notification regime.

15. There a number of other ATR provisions which have been the subject of exemption orders over the years.

Sunwing submits that these ATR exempted provisions should be deleted.

16. In its Charter Activities Discussion Paper, the Agency raised the issue as to whether the prohibition against a charter carrier selling directly to the public should be modified or revised.

Sunwing submits that the above prohibition no longer serves any useful purpose. In its Charter Activities Discussion Paper, the Agency noted that the need for protective provisions such as advance booking, advance payment protection and minimum stay provisions *“were established in order to strictly regulate competition between international scheduled services provided by Canadian air carriers and charterers...”*. The Agency went on to note that *“In recent years, the international transportation industry has evolved to a more liberalized environment providing for a greater variety and number of services in the marketplace. This has led, in recent years, to the Agency issuing several exemptions for specific charters provisions found in the ATR (“Air Transportation Regulations”) which were initially intended to manage competition between charters and to scheduled operations “.*

Sunwing submits that the only requirement for the provision of non-scheduled international services should be that such services are provided pursuant to the charter carrier’s non-scheduled international licence and are not listed in any timetable of the carrier<sup>1</sup>/.

17. In its Charter Activities Discussion Paper, the Agency also raised the issue as to whether the charter carrier should continue to be required to sell 100% of its charter capacity, or whether that provision should be modified or revised.

For the same reasons as outlined in paragraph 16 above, Sunwing submits that the only requirement for the provision of non-scheduled international services should be that such services are provided pursuant to the charter carrier’s non-scheduled international licence and are not listed in any timetable of the carrier<sup>2</sup>/.

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<sup>1</sup> / IATA Compendium of International Civil Aviation

<sup>2</sup> / IATA Compendium of International Civil Aviation

**Timing**

18. In its notice of Air Transportation Consultation, the Agency stated that it plans to issue draft updated regulations by the end of the year, with an implementation date in 2018.

Sunwing supports the timing parameters of the Agency.

DATED this 29<sup>th</sup> day of September, 2017

**SUNWING AIRLINES INC.**

By its Solicitor

Edwin T. Nobbs, Q.C. PC