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SENT ELECTRONICALLY

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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” than 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
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