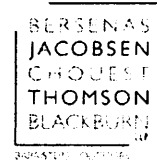


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BARRISTER AND SOLICITOR

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.

Tariff Protection

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.

Financial Requirements

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.

Canadian Ownership Requirements

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.

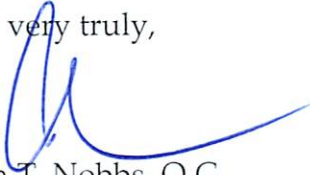
Conclusion

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,

A handwritten signature in blue ink, appearing to be 'Edwin T. Nobbs', with a long, sweeping horizontal stroke extending to the right.

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