

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 Canadian Transportation 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 can 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. They would not risk their future existence by entering into agreements that could jeopardize their financial future.

Other Considerations

NewLeaf, with its current indigenous government 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.