

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.