

## CANADIAN TRANSPORTATION AGENCY

### In the Matter of Applications by Sunwing Airlines Inc. with Respect to Air Passenger Protection Regulations Relating to the Payment of Passenger Compensation and the Requirement of Providing Passengers with Travel on Third Party Carriers

#### Introduction

1. Pursuant to Section 80(1) of the *Canada Transportation Act*; S.C., 1996, c.10, as amended (the “Act”), in its Determination No. A-2020-42 (the “Determination 42”), the Canadian Transportation Agency (the “Agency”) noted that in paragraph 10:

***“In the extraordinary context of this pandemic, reasonable expectations regarding air travel have changed, taking into account government travel bans, restrictions, and advisories; public health practices; and impacts on travel demand and air carrier operations.”*** (emphasis added)

2. Consequently, in paragraph 11 of its Determination 42, the Agency found that:

***“... in the context of the significant declines in passenger volumes and disruptions to air carrier operations caused by the COVID-19 pandemic, temporary exemptions to the APPR should be made to provide air carriers with increased flexibility to adjust flight schedules without facing prohibitive costs.”*** (emphasis added)

Indeed, in paragraph 12 of its Determination 42 the Agency found that:

***“Specifically, the Agency finds it undesirable, in the current extraordinary circumstances, that carriers be obligated to provide compensation for inconvenience to passengers who were informed of a flight delay or a flight cancellation more than 72 hours before their original scheduled departure or to passengers who were delayed at destination by less than six hours. The Agency further finds it undesirable that carriers be required to offer alternative travel arrangements that include flights on other air carriers with which they have no commercial agreement.”*** (emphasis added)

3. Subsequently, in its Determination No. A-2020-47 (Determination 47) the Agency extended its April 30, 2020 date to June 30, 2020.

### Sunwing Airlines Applications

4. In its Determination No. A-2020-122 the Agency referred to Determination 42 and Determination 47 and seemed to feel that matters were improving in the Canadian aviation industry.

In fact, matters have worsened materially since the date of Determination 122 dated June 29, 2020 and are now even more dire than those of March 13, the date of Determination 42. In particular:

- there have been further extensions of the Canadian travel ban to the United States until late November ;
- a second wave of the COVID-19 pandemic has now arrived with further waves being forecasted;

On October 14, Westjet announced both the termination of a major part of its scheduled services to Atlantic Canada along with substantial reductions in service to the balance of Atlantic Canada. This was followed by Westjet cancelling approximately 90% of its international scheduled flights for the month of November;

- Porter Airlines has announced a further extension of its restart of services; and
- Sunwing Airlines restart of services is now currently on hold. The last scheduled flight of Sunwing was on March 23.

5. As a result of the events outlined in paragraph 4 above, clearly, the continued enforcement of the APPR provision referred to in Determination 42 are both **undesirable** and of equal importance, **impractical**.

6. Sunwing Airlines hereby applies pursuant to the provisions of Subsection 80(1)(c) of the *Canada Transportation Act*, that the Agency:

- Extend the period of time of Determination 122 from October 28, 2020 to March 31, 2021;

- Exempt all Canadian air carriers from complying with the compensation provisions of the APPR with respect to any compensation claims arising out of schedule flight changes during the period October 28, 2020 through March 31, 2021; and
- Exempt all Canadian air carriers from being required to offer alternative travel arrangements that include flights on other air carriers with which they have no commercial agreement;

### **Conclusions**

7. As noted in Determination 42, as referred to in paragraphs 1 and 2 above:
- Reasonable expectations regarding air travel have changed; and
  - In the context of the significant declines in passenger volumes and disruptions to air carriers operations caused by the COVID – 19 pandemic, temporary exemptions to the APPR should be made to provide air carriers with increased flexibility to adjust flight schedules without facing prohibitive costs.

The issue of the change of reasonable expectations of air travel has been further illustrated by the official position of Global Affairs Canada that Canadians should avoid unnecessary travel outside of Canada until further notice;

8. It is imperative that a successful restart of its schedule services can only be achieved with maximum flexibility during its restart period.

Sunwing Airlines is not seeking a long term exemption from the APPR. It is, however, seeking a reasonable period of time during its restart in order to allow the maximization of the selling window in order to remove the fear of financial penalties.

Sunwing Airlines estimates that during its restart it will be fortunate to operate with “break even” financial results.

9. There are both short term and long term benefits which will accrue to the travelling public by granting the Sunwing Airlines Applications.

In the short term, a broader spectrum of scheduled air services will be made available to the travelling public which, would not otherwise be available to the

same extent. In the longer term, these expanded scheduled air services will not only continue to be made available to the travelling public, but also, such expanded scheduled air services, will once again, be subject to the APPR provisions.

DATED at Toronto, this 21<sup>st</sup> day of October, 2020.

SUNWING AIRLINES INC.

By its solicitor

Edwin T. Nobbs, Q.C.

Professional Corporation

181 University Avenue

Suite 2200

Toronto, ON, M5H 3M7

A handwritten signature in black ink, consisting of a stylized, cursive 'E' followed by a horizontal line that tapers to the right.

Per: \_\_\_\_\_

Edwin T. Nobbs, Q.C.