

Halifax, NS

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July 12, 2016

VIA EMAIL

Jim Scott, President & CEO
Canada Jetlines Ltd.
Richmond, BC

Dear Mr. Scott:

**Re: Application by Canada Jetlines Ltd. to the Minister of Transport for an exemption pursuant to s. 62(1) of the CTA
Position statement**

We welcome your request that we provide our position on the application of Canada Jetlines Ltd. [Jetlines] to the Minister of Transport for an exemption allowing it to accept foreign investment that would result in up to 49% foreign ownership in the company.

We recognize the need for lower airfares for Canadians, and support all genuine start-up airlines provided that they meet the following criteria:

- (a) operate within the confines of the law;
- (b) protect the rights and safety of the passengers; and
- (c) foster competition and bring lower airfares to Canadians.

Our concerns and legal challenge before the Federal Court of Appeal relate to (a) and (b) in the context of Indirect Air Service Providers (resellers), and NewLeaf Travel Company in particular.

After a careful review, we find that no such concerns exist with respect to Jetlines' application. We have come to this conclusion for the following reasons.

(a) Legality

As a general rule, a domestic air service provider must be controlled in fact by Canadians, and 75% of the voting interests owned and controlled by Canadians.¹

Subsection 62(1) of the *Canada Transportation Act* confers broad discretion upon the Minister of Transport to exempt Jetlines from this requirement on such terms and conditions as the Minister finds fit.

Thus, the Minister has the necessary powers to grant the sought exemption, and Jetlines' request is within the confines of the law.

(b) Protection of the rights of passengers

Start-up airlines must meet certain financial fitness requirements, including having sufficient capitalization for operating for 90 days without any revenue.²

The purpose of these requirements is to protect the travelling public from underfunded service providers, who do not have the financial ability to deliver the services that they sell to the public.

From the perspective of the interests of passengers, the source of the investment has no bearing on the level of protection that fulfillment of this requirement offers, provided that the investment cannot be withdrawn or redeemed for a period of at least one year.³

Conclusion

Based on the foregoing, we see nothing untoward in Jetlines' request, and have no intention of challenging the legality of the exemption sought, should it be granted by the Minister.

Sincerely yours,

Dr. Gábor Lukács

¹ *Canada Transportation Act*, subparagraph 61(a)(i).

² *Canada Transportation Act*, subparagraph 61(a)(iv); *Air Transportation Regulations*, s. 8.1

³ *Air Transportation Regulations*, paragraphs 8.1(2)(v) and 8.1(2)(vi).