

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.**

Respondents

APPEAL BOOK

Dated: July 11, 2016

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Court File No.:

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Respondents

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in **Halifax, Nova Scotia**.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this court at Ottawa (telephone 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: June 28, 2016

Issued by: _____

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Newleaf Travel Company Inc.**

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from a decision made by the Canadian Transportation Agency [the Agency] dated March 29, 2016 and bearing Decision No. 100-A-2016 [Decision Under Appeal], in which the Agency determined that:

1. Indirect Air Service Providers [IASPs or resellers] of domestic air service are no longer required to hold licences under the *Canada Transportation Act*, S.C. 1996, c. 10 [the CTA], so long as they do not hold themselves out as an air carrier operating an air service; and
2. NewLeaf Travel Company Inc. [NewLeaf], being an IASP, is therefore not required to hold a licence.

THE APPELLANT ASKS that:

1. the Decision Under Appeal be set aside;
2. this Honourable Court make the order that should have been made by the Agency, declaring that:
 - (a) Indirect Air Service Providers (also known as “resellers”) of domestic air service are required to hold licences; and
 - (b) NewLeaf Travel Company Inc. is required to hold a licence;
3. the Appellant be awarded a moderate allowance for the time and effort he devoted to preparing and presenting his case, and reasonable out-of-pocket expenses incurred in relation to the appeal; and

4. this Honourable Court grant such further and other relief as is just.

THE GROUNDS OF APPEAL are as follows:

1. Paragraph 57(a) of the *Canada Transportation Act*, S.C. 1996, c. 10 [the *CTA*] prohibits operating an air service without a licence issued by the Agency under Part II of the *CTA*. Subsection 55(1) of the *CTA* defines “air service” as a service provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.
2. Through the licensing process and conditions set out in the *CTA*, Parliament imposed numerous economic and consumer protectionist conditions on operators of air service within Canada:
 - (a) Canadian ownership, prescribed liability insurance coverage, and prescribed financial fitness (s. 61);
 - (b) notice period for discontinuance or reduction of certain services (ss. 64-65);
 - (c) prohibition against unreasonable fares or rates on routes served by only one provider (s. 66); and
 - (d) regulatory oversight of the contractual relationship between the travelling public and the service provider (ss. 67, 67.1, and 67.2).
3. Section 58 of the *CTA* provides that a licence to operate an air service is not transferable.

4. An Indirect Air Service Provider [IASP or reseller] is a person who has commercial control over an air service and makes decisions on matters such as routes, scheduling, and pricing, but performs the transportation of passengers with aircraft and flight crew rented from another person.

Decision Under Appeal, para. 11

5. IASPs (resellers) differ from travel agents: IASPs enter into agreements to transport passengers by air in their own name, while travel agents act merely as agents for third parties.

Decision Under Appeal, para. 5

6. Since 1996 and up until recently, the Agency had consistently and reasonably held that a person with commercial control over a domestic air service “operates” it within the meaning of the *CTA*, and thus required them to hold a domestic licence. In doing so, the Agency had been following the so-called *1996 Greyhound Decision*.

7. NewLeaf is a federally incorporated company whose purpose is to offer scheduled domestic air service to the Canadian public as an IASP.

8. In August 2015, the Agency launched an inquiry into whether NewLeaf required a licence.

9. On December 23, 2015, the Agency announced that it would conduct a public consultation on the requirement for IASPs to hold a licence, and that the Agency was considering implementing the following “Approach under consideration”:

Indirect Air Service Providers would not normally be required to hold a licence to sell air services directly to the public, as long as they charter licenced air carriers to operate the flights. This would apply to the operation of domestic and international air services. As these providers would not be subject to the licensing requirements, contracts they enter into with the public would not be subject to tariff protection, nor would they be subject to the financial and Canadian ownership requirements.

[Emphasis added.]

10. On March 29, 2016, the Agency issued the Decision Under Appeal, in which it adopted the “Approach under consideration” and determined that:
 - (a) IASPs (resellers) are not required to hold a licence as long as they do not hold themselves out to the public as an air carrier operating an air service; and
 - (b) NewLeaf, being an IASP, is not required to hold a licence.

11. In practical terms, the Decision Under Appeal circumvents the will of the legislature, and exposes the public to significant risks from which Parliament intended to protect the public, including:
 - (a) underfunded service providers, who are unable to deliver the air services that consumers have paid for in advance, leaving passengers stranded;
 - (b) service providers with insufficient insurance, who are thus unable to meet their liabilities in the case of a disaster (as happened in the case of the Lac-Mégantic rail disaster); and

- (c) uncompensated losses in the case of overbooked, delayed, or cancelled flights.

12. The Agency erred in law and rendered an unreasonable decision by:

- (a) departing from its considered and consistent view on the requirement to hold a licence, without explaining why;
- (b) basing the decision on the following false premises, which are inconsistent with ss. 64-66 of the *CTA* and s. 2 of the *Air Transportation Regulations*:
 - i. “air carrier” is synonymous with the operator of the aircraft;
 - ii. “in the non-scheduled international context, the air carrier, and not the charterer, is required to hold the licence”;
 - iii. “deregulation of the aviation industry” has taken place with respect to domestic air services; and
 - iv. the distinction between scheduled and non-scheduled domestic air services has been eliminated.
- (c) interpreting the requirement to hold a licence in a manner that:
 - i. renders ss. 64, 65, and 66 of the *CTA* futile;
 - ii. ignores s. 60(1) of the *CTA*; and
 - iii. defeats the economic and consumer protectionist purposes for which the *CTA* was enacted.

13. The Agency exceeded its jurisdiction by making the Decision Under Appeal, which has the effect of relieving IASPs from the requirement of being Canadian and from holding prescribed liability insurance coverage, contrary to the explicit language of s. 80(2) of the *CTA*.

Statutes and regulations relied on

14. Sections 2, 7, 8.1, 8.2, 8.5, and 107 of the *Air Transportation Regulations*, S.O.R./88-58.
15. Sections 41, 53, 55, 57-67.2, 80, 86, and 174 of the *Canada Transportation Act*, S.C. 1996, c. 10.
16. Such further and other grounds as the Appellant may advise and the Honourable Court permits.

June 28, 2016

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Appellant



[Canadian Transportation Agency \(/eng\)](#)

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Decision No. 100-A-2016

March 29, 2016

DETERMINATION by the Canadian Transportation Agency as to whether resellers operate air services and should therefore be required to hold an air licence and whether NewLeaf Travel Company Inc. operates an air service and should therefore be required to hold an air licence.

Case Number: 15-03590

ISSUES

[1] The issues to be addressed in this Determination are whether:

1. resellers operate air services and should therefore be required to hold an air licence; and
2. NewLeaf Travel Company Inc. (NewLeaf), based on its proposed business model, will operate an air service and should therefore be required to hold an air licence.

SUMMARY OF CONCLUSIONS

[2] For the reasons set out below, the Canadian Transportation Agency (Agency) finds that:

1. Resellers do not operate air services and are not required to hold an air licence, as long as they do not hold themselves out to the public as an air carrier operating an air service.
2. NewLeaf, should it proceed with its proposed business model, would not operate an air service and would not be required to hold an air licence.

[3] These determinations reflect the most reasonable interpretation of the statutory requirements related to air licensing, based on a plain reading of their language, their entire statutory context, their statutory history, and an understanding of their underlying purposes.

[4] The determination on the first issue has broad applicability and will provide industry, air travellers, and other interested parties with clarity and predictability and, in so doing, will facilitate compliance with statutory requirements.

TERMINOLOGY

[5] Within the context of this Determination, the following terminology has been adopted:

"air carrier" means any person who operates aircraft on a domestic or international air service;

"charterer" means any person who charters an air carrier to operate non-resalable or resalable flights on its behalf and includes a tour operator that provides the charter as part of an inclusive tour package; and,

"reseller" means a person who does not operate aircraft and who purchases the seating capacity of an air carrier and subsequently resells those seats, in its own right, to the public.

THE LAW

[6] Paragraph 57(a) of the *Canada Transportation Act*, S.C., 1996, as amended (CTA) provides that no person shall "operate" an "air service" unless, in respect of that service, the person holds a licence issued under Part II of the CTA.

[7] Subsection 55(1) of the CTA defines "air service" as a service, provided by means of an aircraft, that is publicly available for the transportation of passengers or goods, or both.

[8] The word "operate" in paragraph 57(a) is not defined within the CTA.

BACKGROUND

[9] The Agency regulates the licensing of air transportation pursuant to the CTA and the *Air Transportation Regulations*, SOR/88-58, as amended (ATR (Air Transportation Regulations)). Part II of the CTA addresses air transportation matters and details the licensing requirements administered by the Agency, which apply to any person who operates an air service in Canada.

[10] The CTA requires that persons hold the appropriate licence before they can operate an air service. Licensees are subject to a number of passenger and industry protection provisions, including with respect to tariffs, financial requirements, and Canadian ownership.

[11] When the *National Transportation Act, 1987* (subsequently consolidated and revised by the CTA) was introduced, it ushered in the deregulation of the aviation industry, eliminating restrictions on market entry, routes that could be operated, pricing, and the distinction between non-scheduled and scheduled domestic air services. Deregulation resulted in a greater reliance on market forces to achieve more competitive prices and a wider range of services. Industry developed new approaches to the provision of air services, some of which did not always fit squarely into the CTA's licensing parameters. One such approach is the reseller model, whereby the reseller has commercial control over an air service and makes decisions on matters such as routes, scheduling, pricing, and aircraft to be used, while air carriers operate the aircraft on the reseller's behalf.

[12] In 1996, the CTA's licensing parameters were tested when Greyhound Lines of Canada Ltd. (Greyhound) proposed to market and sell air services, on its own behalf, while entering into a contract with Kelowna Flightcraft Air Charter Ltd. (Kelowna Flightcraft) to operate the aircraft. The Agency, in ([/eng/ruling/232-A-1996](#))Decision No. 232-A-1996 ([/eng/ruling/232-a-1996](#)) and ([/eng/ruling/292-A-1996](#))Decision No. 292-A-1996 ([/eng/ruling/292-a-1996](#)), determined that Greyhound would operate the air service and, therefore, require a licence. The Agency arrived at its determination on the basis that the person that had commercial control over the sale of the air service was required to hold the licence, irrespective of whether they operated aircraft.

[13] Greyhound and Kelowna Flightcraft petitioned the Governor in Council (GIC) to reverse the Agency's decisions. The GIC, on the recommendation of the Minister of Transport, determined that Greyhound Canada Transportation Corp., a successor corporation to Greyhound, would not be operating the air service (Order-in-Council No. P.C. 1996-849). The

GIC, however, placed a number of conditions on its decision, including that Greyhound Canada Transportation Corp. inform all prospective purchasers of the air services that Kelowna Flightcraft would be providing the air service.

[14] In 2009, the GIC again reversed an Agency determination, Confidential Decision of the Agency dated June 29, 2009, that a reseller, in that case American Medical Response of Canada Inc., would operate an air service (Order-in-Council No. P.C. 2010-1143).

[15] In 2013, the Agency issued [\(/eng/ruling/390-A-2013\)Decision No. 390-A-2013 \(/eng/ruling/390-a-2013\)](#) to inform the air industry of the criteria that it will apply in interpreting what constitutes an "air service" and, more specifically, when an air service is considered to be "publicly available." The Agency determined that an air service is one that is (i) offered and made available to the public; (ii) provided pursuant to a contract or arrangement for the transportation of passengers or goods; (iii) offered for consideration; and (iv) provided by means of an aircraft. [\(/eng/ruling/390-A-2013\)Decision No. 390-A-2013 \(/eng/ruling/390-a-2013\)](#) did not specifically address resellers.

[16] For international air services, the [ATR \(Air Transportation Regulations\)](#) require the air carrier, and not the reseller, to hold the licence. For this reason, the Agency only applied the approach developed in the Greyhound case to domestic air services, resulting in resellers having to hold a licence for the sale of domestic, but not international, air services. There are currently 14 resellers that hold licences for domestic air services.

[17] The Agency's enforcement activities have revealed, however, that there is a lack of clarity among resellers as to whether they are required to hold a licence, given that they do not operate any aircraft.

[18] In light of its experiences administering the air licensing provisions and the continued development by industry of new business models, in 2014, the Agency initiated an internal review of whether resellers are operating air services and are therefore required to hold a licence. The Agency subsequently became aware of NewLeaf's plan to market and sell air services, while not operating aircraft, and in August 2015, initiated an inquiry, pursuant to section 81 of the CTA, into whether NewLeaf would be operating an air service and therefore would be required to hold a licence. The Agency decided to complete its review of whether resellers are required to hold a licence as part of this inquiry, and also decided to hold public consultations on the matter.

CONSULTATIONS

[19] On December 21, 2015, the Agency released a consultation paper and invited information and feedback on whether resellers should be considered to operate air services pursuant to section 57 of the CTA. The paper included a description of a possible approach. The Agency received submissions from 26 interested parties and has considered all of them in arriving at its determination. The parties' comments are summarized below.

[20] Some parties commented that resellers should be required to hold a licence to ensure that the licensing requirement does not favour one business model over another; i.e., to provide a level playing field. They submitted that competing businesses holding themselves out to the public as providing the same service should be subject to the same regulatory requirements. In addition, they argued that not requiring resellers to hold a licence would create a competitive disadvantage for licensed air carriers by subjecting them to the additional regulatory requirements and limiting access to foreign capital, given that licensees must be owned and controlled by Canadians. It was also suggested that not obligating resellers to hold a licence could enable persons to structure their businesses in ways that effectively circumvent the licensing requirements.

[21] Parties also commented that resellers should be required to hold a licence when they enter into a contract of carriage with the public to ensure that equal protection is afforded to passengers, regardless of the chosen business model. One party submitted that absent the requirement for the reseller to hold a licence, the lack of a contractual relationship between the air carrier and the passenger would (i) provide no recourse to the passenger against the air carrier should the air carrier not provide the contracted service; (ii) limit the air carrier's liability to the passenger to tort law (i.e., negligence), thereby negating the applicability of the air carrier's insurance to claims by passengers against the reseller; and (iii) limit any available protection for the passenger from the tariff system.

[22] Conversely, other parties commented that resellers should not be required to hold a licence, provided they have contractual arrangements with licensed air carriers. Those parties commented that adequate measures already exist to protect passengers, through existing federal and provincial legislation, including the requirement for air carriers to hold a tariff that applies to passengers.

[23] Additionally, some parties commented that the intent of deregulation was to reduce government control over or intervention in how domestic air services are delivered. It was

argued that by requiring the licensee to hold a Canadian aviation document (CAD), Parliament's intention was for the CTA to only apply to air carriers (i.e., not resellers) and that Parliament deliberately chose not to exert its authority to license resellers. It was further suggested that not requiring resellers to hold a licence would eliminate the different licensing treatment between domestic and international operations and result in increased competition and lower airfares, with the market deciding the success of any proposed air service.

[24] On the matter of what criteria should be used to determine whether a reseller is holding itself out as an air carrier, the following criteria were proposed: commercial control, acceptance of financial risk for the sale of seats, non-disclosure of the aircraft operator, promoting oneself as an air carrier (i.e., images of aircraft with their livery), the use of business name(s) and words/phrases (such as "airlines", "aviation", or similar words) that create the impression that they are an air carrier or airline, and not clearly conveying their role as a reseller of the air carrier's capacity.

ANALYSIS AND DETERMINATIONS

Issue 1: Whether resellers operate air services and should therefore be required to hold an air licence

[25] Paragraph 57(a) of the CTA states that "no person shall operate an air service unless, in respect of that service, the person holds a licence issued under this Part." In interpreting the expression "operate an air service," the words are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, the object of the legislation, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21).

[26] Having carefully considered the wording of the CTA and the ATR (Air Transportation Regulations), the CTA's underlying public policy purposes, and the submissions received during the consultation period, the Agency finds that the most reasonable interpretation of what it means to operate an air service does not capture resellers, as long as they do not hold themselves out to the public as an air carrier operating an air service.

[27] Factors that the Agency took into account in arriving at this interpretation include the plain meaning, context, and history of the statutory language; the national transportation policy, the CTA's passenger protection and Canadian ownership goals; and the manner in which resellers hold themselves out to the public.

The plain meaning, entire context, and history of the statutory language

[28] When considering what would be the most reasonable interpretation of the domestic licensing requirements in respect of resellers, a key starting point was the simple fact that Parliament both refrained from explicitly requiring entities that do not operate aircraft to hold a licence while also developing a licensing regime where the chartered air carrier is required to hold a licence for international services.

[29] The operation of an air service, pursuant to section 57 of the CTA, is the sole criterion that dictates whether a person is required to hold a licence. The interpretation of the expression "operate an air service" should be expected to produce consistent results in establishing whether or not a person is required to hold a licence, irrespective of whether the air service is domestic or international.

[30] Section 59 of the CTA prohibits persons from selling an air service unless a person holds a licence in respect of that air service. While the language in section 57 of the CTA requires a person operating an air service to hold a licence, the language in section 59 does not require the person selling the air service to be a licensee; it only requires that a licence be held in respect of that air service. When read together, these two sections lead to the conclusion that selling an air service to the public does not equate to operating an air service.

[31] Prior to deregulation, air carriers were required to hold either a scheduled or a non-scheduled domestic or international licence to operate air services. Air carriers operating pursuant to a non-scheduled licence were limited to selling their capacity to charterers, who could then resell that capacity on a unit toll or price per seat basis to the public. Resellers were not required to hold a licence. Deregulation removed the distinction between scheduled and non-scheduled for domestic air services, thereby allowing air carriers to distribute their capacity, as they see fit, with a single domestic licence. No new legislative provisions were introduced to require resellers to hold a licence.

[32] For non-scheduled international air services, the ATR (Air Transportation Regulations)'s provisions require licensed air carriers to hold the appropriate charter permit to operate charter flights on behalf of charterers who can resell that aircraft capacity directly to the public without the charterer having to hold a licence. Indeed, pursuant to Parts III and IV of the ATR (Air Transportation Regulations), the air carrier is prohibited from selling its aircraft capacity on a price per seat basis directly to the public as well as from promoting, in any manner, the resalable charter to the public. The resalable charter can only be operated according to the

conditions of a contract entered into between air carriers and charterers that require the charterers to charter the entire passenger seating capacity of an aircraft for resale by them to the public, at a price per seat. In the non-scheduled international context, the air carrier, and not the charterer, is required to hold the licence.

[33] In summary, a plain reading of the statutory provisions, informed by their history and the benefits of consistent interpretation of phrases used for both domestic and international licensing purposes, strongly suggests that Parliament did not intend for domestic licensing requirements to apply to entities that purchase air carriers' aircraft capacity for resale by them to the public, but do not themselves operate aircraft.

National transportation policy

[34] The national transportation policy, as articulated in section 5 of the CTA, provides the overall policy framework for the CTA. The policy instruments, which include legislation, regulations, programs, and actions that flow from the policy, should reflect and reinforce its intent.

[35] The policy declares the CTA's objective to be a competitive, economic and efficient national transportation system that meets the highest practicable safety and security standards. The policy provides for regulation and strategic public intervention to be targeted to situations where desired outcomes cannot be achieved satisfactorily by competition and market forces.

[36] Allowing resellers to offer their products to consumers without having to hold a licence when their partner air carrier already holds one is consistent with section 5, inasmuch as it limits regulatory intervention and administrative burdens and is more likely than not to foster competition and choice in the market.

Passenger protection

[37] The requirement to hold a licence subjects the licensee to a number of passenger protection provisions, as identified in Agency [\(/eng/ruling/390-A-2013\)Decision No. 390-A-2013 \(/eng/ruling/390-a-2013\)](#). Principal among these is the requirement for a licensed air carrier to:

- i. have, display, and apply a clear tariff that addresses certain prescribed matters and that is

- reasonable and not unduly discriminatory;
- ii. meet the prescribed financial requirements, where applicable, before a licence can be issued, which is intended to reduce the risk that underfunded applicants enter the marketplace; and
 - iii. hold the prescribed minimum passenger and third party liability insurance coverage.

[38] In weighing the relevance of the licensing provisions' consumer protection purposes to the question of whether those provisions should be interpreted as covering resellers, it is important to note that when passengers buy tickets through a reseller that is not required to hold an air licence, they will still be covered by the terms and conditions of the tariff issued by the chartered air carrier operating the aircraft on which those passengers travel. Further, the licensed air carrier will be required to hold prescribed passenger and third party liability insurance pursuant to section 7 of the ATR (Air Transportation Regulations) and to comply with applicable financial requirements pursuant to section 8.1 of the ATR (Air Transportation Regulations). On the other hand, resellers who do not have to obtain a licence from the Agency will continue to be subject to any provincial travel protection or consumer rights legislation.

[39] Thus, not requiring resellers to obtain a licence does not equate to leaving consumers without protections. The Agency's role is to administer and enforce the CTA as promulgated by Parliament, and its interpretation of the legislation must be reasonable, even if some alternate approach might provide additional protections.

Canadian ownership requirement

[40] The CTA's ownership provisions ensure that only Canadian-owned and controlled enterprises can operate domestic air services, thereby restricting foreign access to the domestic marketplace.

[41] These provisions can still be given full effect in a context where resellers are not required to obtain a licence. Should a non-Canadian reseller enter into an arrangement whereby it owns or control in fact the licensed air carrier, that air carrier would cease to be Canadian and would no longer be eligible to hold a licence. It is also worth noting that non-Canadian charterers have legally operated in Canada for many decades, reselling licensed air carriers' aircraft capacity to the public without any government intervention.

Holding out as an air carrier operating an air service

[42] While the Agency finds that, on balance, the most reasonable interpretation of the statutory licensing provisions and their underlying objectives is that resellers are not operating air services and therefore, are not required to hold a licence, this will only be the case as long as those resellers do not hold themselves out to the public as an air carrier operating an air service. The Agency finds that if they choose to do so, resellers would be operating an air service and would be required to hold a licence, thereby ensuring that the consumer protection purposes of the legislation are not undermined.

[43] In determining whether a person is holding themselves out as an air carrier operating an air service, the Agency will consider whether the person promotes themselves as an air carrier, including providing images of aircraft with their livery and using business name(s) and words/phrases that create the impression that they are an air carrier.

[44] Lack of clear disclosure on its Web site, marketing material, and on tickets it issues of the identity of the operating air carrier would be indicative of the reseller holding itself out as an air carrier operating the air service. Web sites and marketing materials that use business names (e.g., "air", "air lines", "airlines" "airways", "aviation", "fly", "jet", or "sky") or phrases and words (e.g., "our fleet of aircraft", "our crew", "we fly") that convey that the reseller is an air carrier operating the air service would also be indicative of holding oneself out as operating an air service. In contrast, clearly identifying the air carrier that will operate the air service, that the reseller's role is limited to reselling the air carrier's capacity, and that the air carrier's tariff's terms and conditions apply to the flight would not be indicative of a person holding themselves out as an air carrier operating an air service.

[45] The Agency notes that a passive approach by the reseller that neither clarifies nor refutes any impression by the public that the reseller is an air carrier operating an air service could also be indicative of the reseller holding itself out as an air carrier operating an air service. The public should be clearly informed about whether they are contracting and dealing with the operator of the air service so that they can assess any risk and make informed decisions.

[46] Where, in the opinion of the Agency, based on all of the relevant facts, the public is led to believe that the reseller is the air carrier operating the air service, the Agency will require the reseller to hold a licence and to respect all of its requirements. The Agency, in making a determination as to whether a reseller is holding itself out to the public as an air carrier operating an air service, will apply the considerations listed above, as well as any other

relevant considerations it might identify from time to time, according to the facts of each case, and will weigh all facts together to make a determination.

Issue 2 – Whether NewLeaf will operate an air service and therefore be required to hold an air licence

[47] Having determined that resellers do not operate air services and are not required to hold a licence, as long as they do not hold themselves out to the public as an air carrier operating an air service, the Agency now turns to the question of whether NewLeaf - based on the determination above and the information before the Agency about its proposed business model - will operate an air service and would therefore be required to obtain a licence.

[48] On August 21, 2015, the Agency initiated an inquiry to determine whether NewLeaf's business proposal would constitute an air service for which a licence is required, and an Inquiry Officer was appointed to conduct that inquiry. The Inquiry Officer, in turn, sought information concerning the roles and responsibilities of NewLeaf and Flair Airlines Ltd. (Flair) in their business proposal.

[49] NewLeaf's response to the Inquiry Officer stated that it would initially operate as a "charterer" or a "tour operator" as defined in the ATR (Air Transportation Regulations). NewLeaf indicated that it would market and sell air services to the public, on its own behalf, and enter into a charter arrangement with Flair, a licensed air carrier, to operate the flights. NewLeaf further indicated that it might sell the air services as part of a packaged or bundled tour product. NewLeaf would be responsible from the check-in counter to the jet bridge door and would operate baggage handling services or contract them to a third party operating at each airport. NewLeaf would not acquire, lease, or operate any aircraft or other related airport infrastructure.

[50] NewLeaf stated that it would make it evident to the consumer that NewLeaf would be responsible for ticket sales and customer service, and that Flair would operate the air services. It was possible, however, that Flair's aircraft or other infrastructure would include some NewLeaf livery features to highlight the collaboration between the two parties.

[51] In January 2016, Canada Jetlines Ltd. and 1263343 Alberta Inc. carrying on business as EnerJet made unsolicited representations to the Agency with respect to NewLeaf. In summary, they submitted that NewLeaf had commercial control over the air service and was, therefore, operating an air service without a licence. They also argued that Newleaf was representing itself as an air carrier to the public, the media, and their customers without

holding a licence. The Agency accepted the representations as part of its inquiry into whether NewLeaf would operate an air service and provided NewLeaf with an opportunity to respond by March 11, 2016. NewLeaf did not provide a response.

[52] The Agency has reviewed all available information and finds that if the proposed business model is followed, NewLeaf would be a reseller that does not operate an air service and therefore does not need to obtain a licence. The Agency notes, however, that if NewLeaf were to hold itself out to the public as an air carrier operating an air service, it would be required to hold a licence.

[53] It is noted that during the brief period in January 2016 when NewLeaf actively promoted its services through its Web site, it included images of aircraft painted in its livery. While NewLeaf is no longer promoting its services and has since removed these images from its Web site, the use of similar images in the future would suggest that NewLeaf would be holding itself out as an air carrier operating an air service.

[54] It is also noted that while NewLeaf has referred to itself as a travel company, there is public perception that NewLeaf is an air carrier. This was evident in repeated press and news articles about NewLeaf that referred to it as an air carrier. The consumer protection purposes of the CTA make it important that the public understand whether they are dealing with a reseller or an air carrier and, where there is confusion, the reseller should take appropriate actions to correct any misperceptions.

[55] Finally, the Agency notes that Flair, as a licensee operating the air service to be resold by NewLeaf, must comply with the licensing regime, including having a tariff that respects legislative and regulatory requirements related to consumer protection.

CONCLUSION

[56] For the reasons set out above, the Agency finds that resellers do not operate air services and are not required to hold a licence as long as they do not hold themselves out to the public as air carriers operating an air service.

The Agency also finds that NewLeaf will not be considered to operate an air service and required to hold a licence, as long as it operates in a manner consistent with the business proposal summarized in this Determination and does not hold itself out to the public as an air carrier operating an air service.

Member(s)

Scott Streiner

Sam Barone

P. Paul Fitzgerald

Rulings

[Go back to Rulings \(/decisions\)](#)

Date modified:

2016-03-30



Office national des transports du Canada
National Transportation Agency of Canada

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file

APR 16 1996

File No.: M4205/K14
Docket No.: 960315

TO:
Greyhound Lines of Canada Ltd.
c/o Osler, Hoskin & Harcourt
Barristers & Solicitors
Suite 1500
50 O'Connor Street
Ottawa, Ontario
K1P 6L2

TO:
Kelowna Flightcraft Air Charter Ltd.
c/o McMillan Binch
Barristers & Solicitors
Suite 3800 - South Tower
Royal Bank Plaza
Toronto, Ontario
M5J 2J7

Attention: Mr. Michael L. Phelan

Attention: Mr. Vernon V. Kakoschke

Dear Sirs:

Re: Complaint filed by WestJet Airlines Ltd. against Kelowna Flightcraft Air Charter Ltd. and Greyhound Lines of Canada Ltd.

Pursuant to its decision of April 12, 1996, the Agency determined that, if air services commence as proposed in the confidential documents filed on April 3, 1996 by Greyhound Lines of Canada Ltd. (Greyhound) and Kelowna Flightcraft Air Charter Ltd. (Kelowna), Greyhound will be operating a publicly available domestic air service for which it will be required to hold a domestic licence. These are the Agency's reasons for this determination.

Pursuant to subsection 71(1) of the National Transportation Act, 1987 (NTA, 1987),

A person shall not operate a domestic service unless, in respect of that service, the person

- (a) holds a domestic licence;
- (b) holds a Canadian aviation document; and
- (c) has prescribed liability insurance coverage.

Subsection 71(1) of the NTA, 1987 is contained in Part II of that Act and, for the purposes of that Part, the terms "domestic licence", "domestic service" and "air service" are defined, respectively, in section 67 of the NTA, 1987, as follows:

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"domestic licence" means a licence issued under this Part that permits the licensee to operate a domestic service;

"domestic service" means an air service that is publicly available for the transportation of passengers or goods, or both, between points in Canada, from and to the same point in Canada or between Canada and a point outside Canada that is not in the territory of another country; and

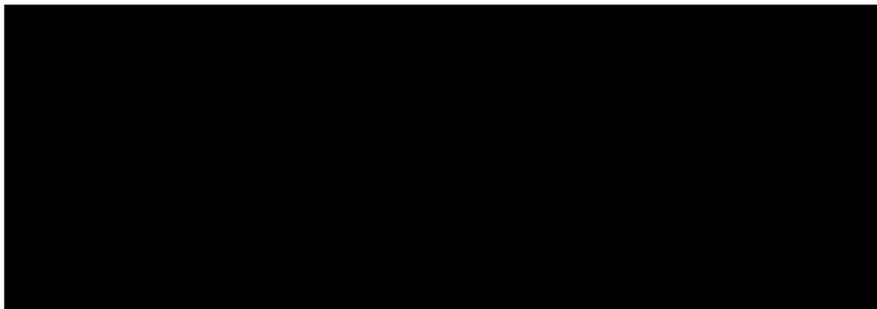
"air service" means a service provided by means of an aircraft.

The word *operate* in subsection 71(1) is not defined in either the NTA, 1987, or in other legislation. Therefore, in interpreting this phrase, the Agency has been mindful of the scheme and object of the NTA, 1987 and the intention of Parliament. The purpose of the NTA, 1987 is to regulate the economic aspects of both domestic and international air services and one important way in which it does this is by means of licensing requirements. As the economic regulator and given its specific mandate to license air services, the Agency has acquired a very broad knowledge and expertise with respect to the various types of financial, operational and business arrangements which may be entered into with respect to the operation of publicly available air services. Over time, the Agency has developed a number of factors that it considers relevant in determining whether a person is in fact operating a publicly available domestic air service and thereby is required to hold a domestic licence.

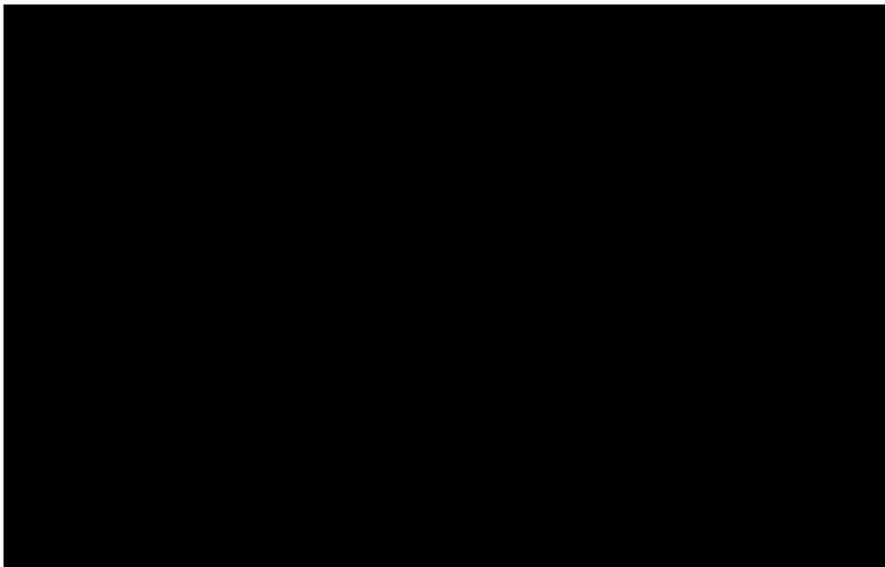
The factors that the Agency has taken into consideration, both individually and collectively, in determining whether Greyhound will be operating a publicly available domestic air service which would require it to hold a domestic licence are set out in detail below.

In response to the Agency's request of March 29, 1996 for "...all agreements, arrangements and contracts that have been or are to be entered into between Kelowna and Greyhound and their affiliates concerning proposed operations", Kelowna and Greyhound provided the Agency with the following documents, attested to by affidavit, on April 3, 1996:

1. Air Charter Agreement between Greyhound, Kelowna and Kelowna Flightcraft Ltd., dated February 6, 1996 (executed) (the Agreement);

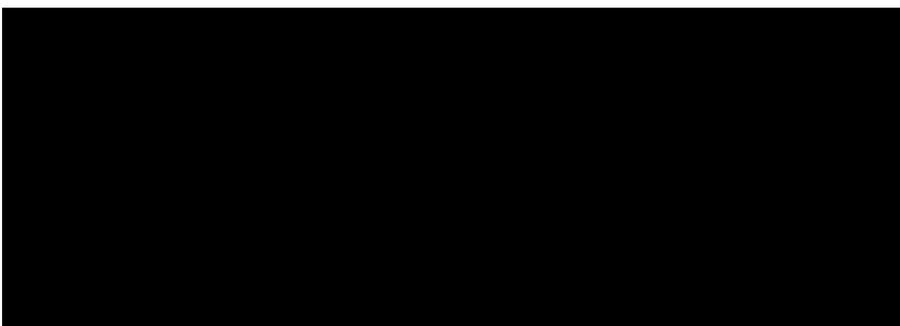


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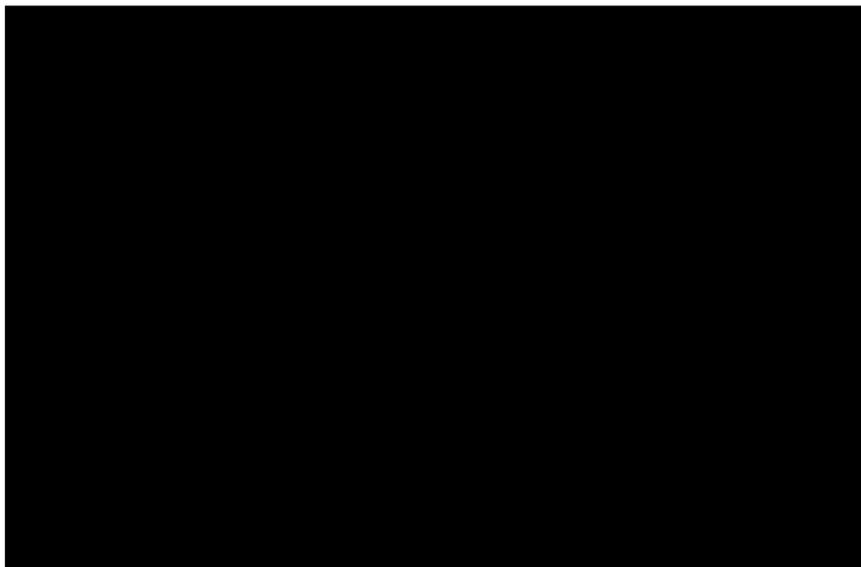


1. Risks and Benefits Associated with the Operation of the Proposed Air Services

The Agreement discloses that Greyhound will directly or indirectly assume substantially all of the risks associated with the operation of the air services. The Agreement also discloses that, [REDACTED] Greyhound will be directly or indirectly entitled to substantially all of the benefits associated with the operation of the air services. This assumption of substantially all of the risks and, entitlement to substantially all of the benefits, associated with the operation of the air services, is commensurate with the operation of air services by an air carrier.



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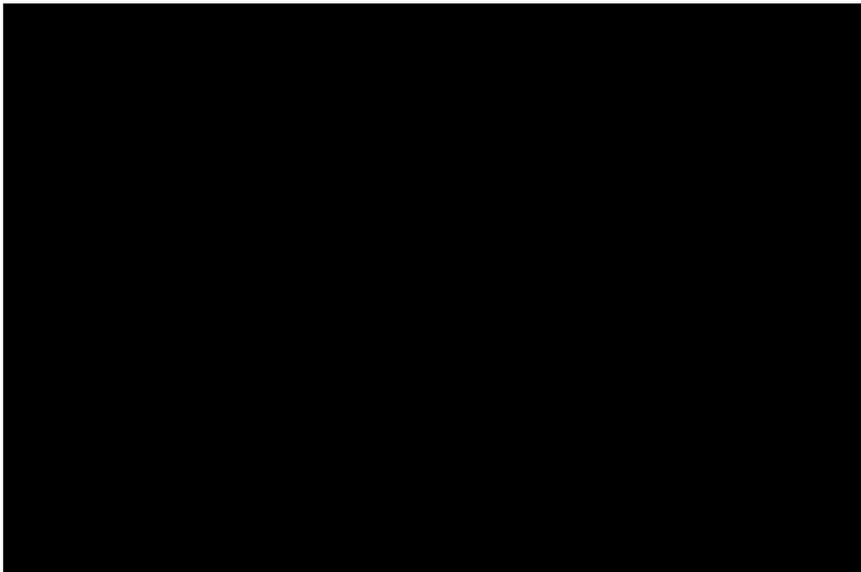


The [redacted] provisions significantly reduce Kelowna's risk, and thereby increase Greyhound's, of operating the air services and establish the profit to which Kelowna will be entitled.



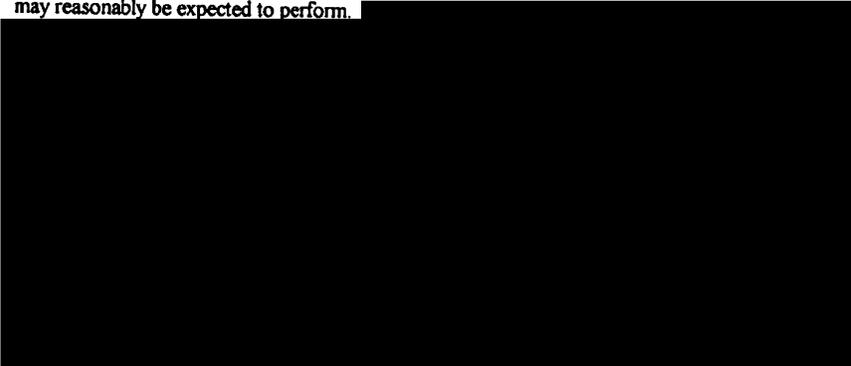
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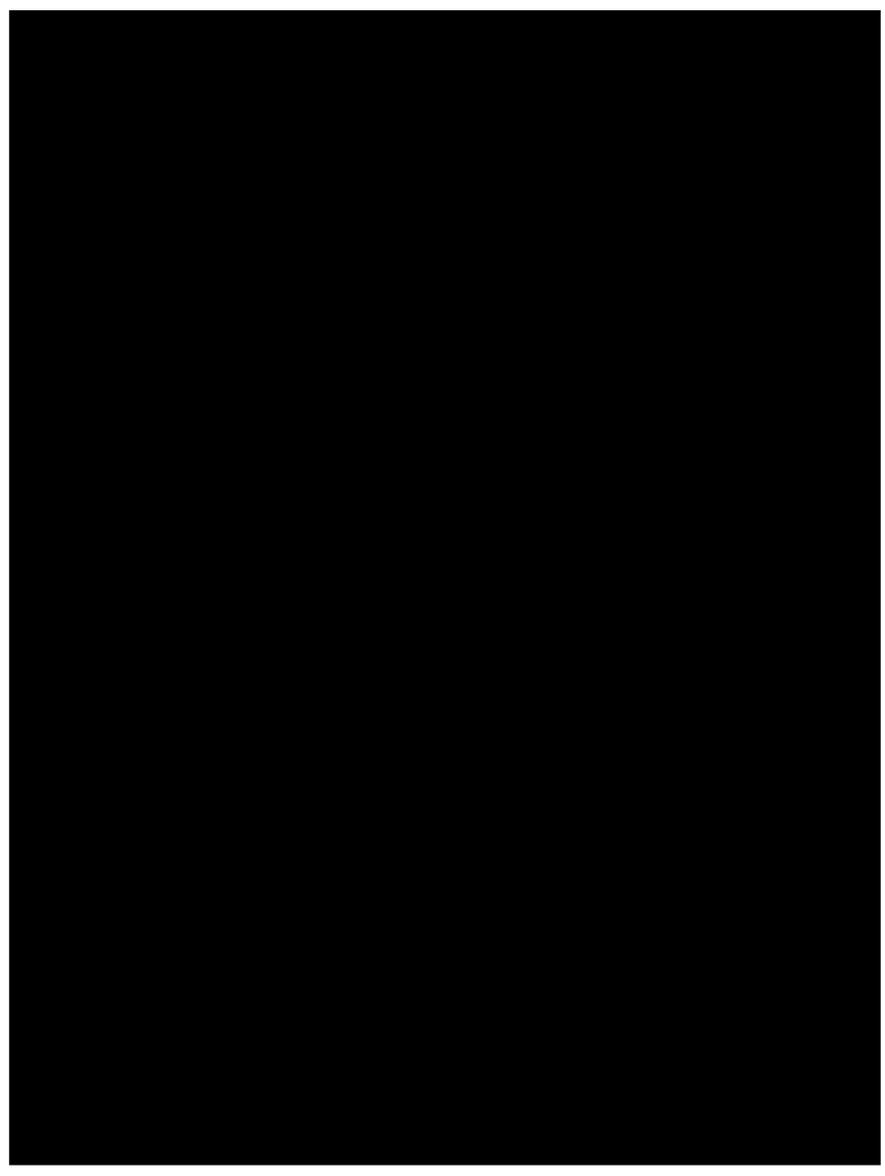


2. The Performance of Key Functions and Decision-Making Authority with respect to the Operation of the Proposed Air Services

The Agreement requires that Greyhound perform certain key airline functions and retain and exercise key decision-making authority with respect to the operation of the air services in question. Among other matters and, as described below, the Agreement requires and, in some instances, contemplates that Greyhound perform key operations and functions which an air carrier may reasonably be expected to perform.

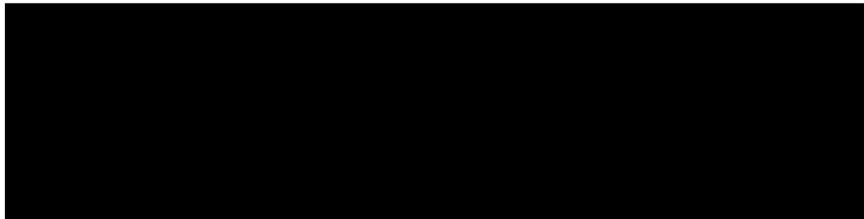


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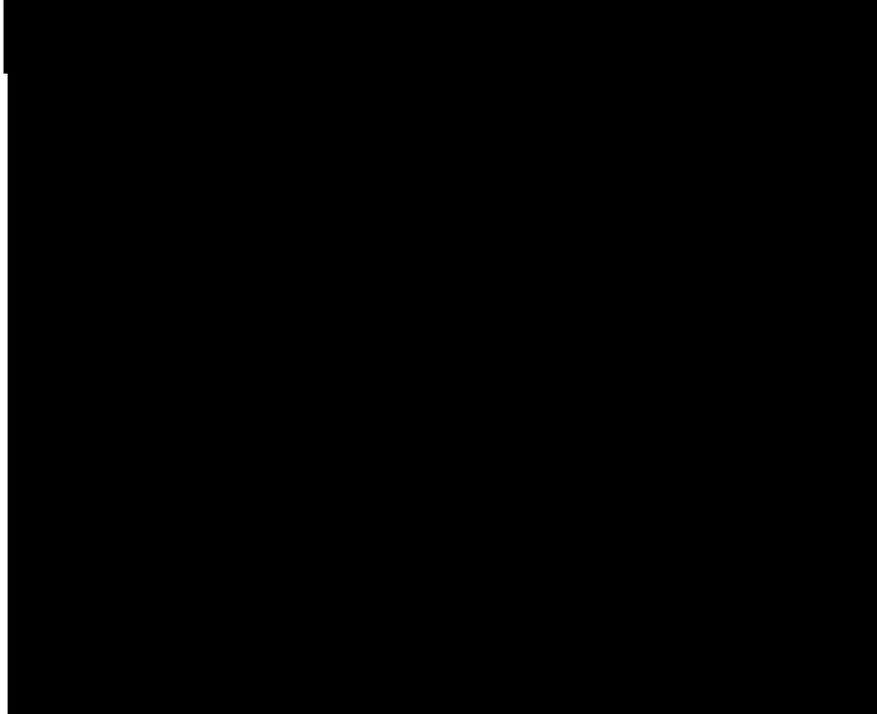
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3. Exclusivity and Non-Competition

Kelowna and Greyhound have entered into certain provisions which restrict the way in which Kelowna is to operate the proposed air services for Greyhound. These provisions also restrict Kelowna in terms of what it can do if the Agreement is terminated. These provisions are not consistent with relationships that a charter air carrier which transports passengers would normally establish.



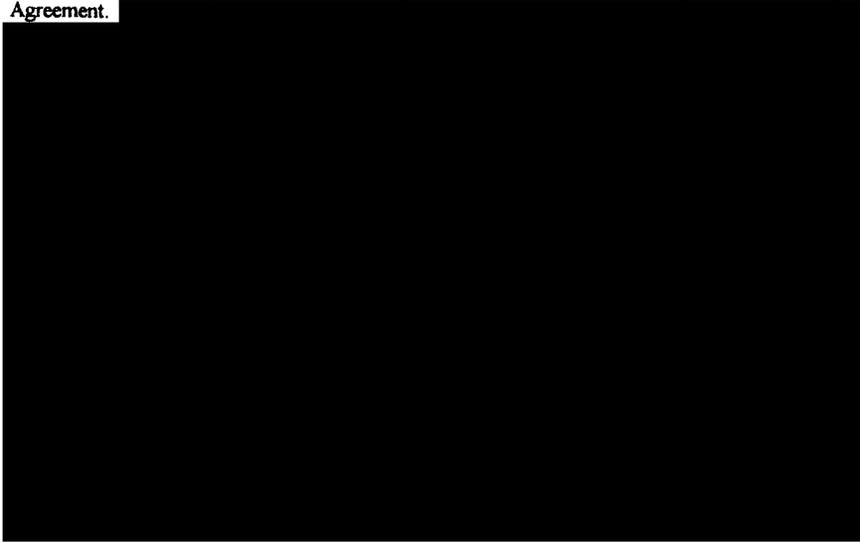
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4. Presentation to the Public as "Greyhound Air"

The Agreement requires that Kelowna operate the proposed publicly available air services under the firm name and style of "Greyhound Air" which indicates that Kelowna will be presenting itself to the public as "Greyhound Air" with respect to the air services to be operated under the Agreement.



Sincerely,

Original Signed by
Original signé par
Marie-Paule Scott, O.C./c.r.

Marie-Paule Scott, Q.C.
Secretary
National Transportation Agency
Ottawa, Ontario
K1A 0N9



[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [Decisions](#) / [Air](#) / [1996](#) / Decision No. 232-A-1996

Decision No. 232-A-1996

Decision varied by P.C. 1996-849 dated June 7, 1996.

April 19, 1996

Decision No. 232-A-1996 (/eng/ruling/232-a-1996) dated April 18, 1996 - Complaint filed by WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd.

File No. M4205/K14/6052

Docket No. 960315

An erratum to this Decision was issued - In the second paragraph below "March 16, 1996" should read "March 18, 1996".

April 18, 1996

IN THE MATTER OF a complaint filed by WestJet Airlines Ltd. against Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd.

File No. M4205/K14/6052

Docket No. 960315

WestJet Airlines Ltd. (hereinafter WestJet) filed a complaint with the National Transportation Agency on February 22, 1996. Copies of the complaint were provided to Greyhound Lines of Canada Ltd. (hereinafter Greyhound) and Kelowna Flightcraft Air Charter Ltd. (hereinafter Kelowna) for comments.

On March 11, 1996, Greyhound and Kelowna filed their answers to the complaint of WestJet. On March 15, 1996, WestJet filed its reply to the answers of Greyhound and Kelowna. Upon review of WestJet's March 15th reply, the Agency determined that it contained additional evidence. Accordingly, by letter dated March 16, 1996, Greyhound and Kelowna were provided an opportunity to comment on the new evidence; WestJet would then have the opportunity to respond to any comments received. Greyhound and Kelowna did not provide comments on this new evidence.

By letter dated February 26, 1996, WestJet provided additional comments in support of its complaint. This letter was received by the Agency on March 13, 1996 and copies were provided to Greyhound and Kelowna for comments. On March 18, 1996, Greyhound and Kelowna provided their answers to the letter dated February 26, 1996. On March 19, 1996, WestJet filed its reply.

In reviewing WestJet's reply dated March 19, 1996, the Agency determined that it contained additional evidence and accordingly, by letters dated March 21, 1996, the Agency advised the parties that Greyhound and Kelowna had a right to respond to the new evidence and that WestJet would then have an opportunity to respond to any new comments provided by Greyhound and Kelowna. The Agency also advised the parties that following receipt of all submissions related to the new evidence contained in WestJet's March 19, 1996 reply, the pleadings in respect of the complaint would be closed. On March 25, 1996, Greyhound and Kelowna provided their answers to the new evidence. On March 26, 1996, WestJet filed its reply to these answers.

By letter dated March 29, 1996, the Agency advised the parties that pleadings in respect of the complaint were closed. The Agency further advised the parties that it had concluded that insufficient information and documentation had been filed in order for the Agency to dispose of WestJet's complaint and that Kelowna and Greyhound were required to file copies with the Agency of "... all agreements, arrangements and contracts that have been or are to be entered into between Kelowna and Greyhound and their affiliates concerning proposed operations, for the Agency's review in confidence.". These documents were filed and attested to by affidavit on April 3, 1996.

POSITION OF WESTJET

WestJet submits that Greyhound is intending to circumvent the *National Transportation Act, 1987, R.S.C., 1985, c. 28 (3rd Supp.)* (hereinafter the NTA (National Transportation Agency)),

1987). WestJet states that the effective control of Greyhound Air lies in the hands of Greyhound who, WestJet submits, in turn is controlled by The Dial Corp. WestJet states that it is of the view that the commercial relationship between Kelowna and Greyhound is intended to circumvent the Canadian ownership requirements of the NTA (National Transportation Agency), 1987.

WestJet states that because Greyhound would not be permitted by the Agency to operate the airline equipment itself, Greyhound has contracted all flight operations to Kelowna. WestJet submits that Greyhound would be responsible for all routes, scheduling, planning, pricing, payload control, marketing activities, service standards and meeting the competitive challenges in the marketplace. WestJet further states that Kelowna would simply operate Greyhound Air's aircraft at a contract rate per available seat mile, without incurring any market risk.

WestJet adds that it was required to meet the strict criteria stipulated by the Agency to ensure that the ownership and control of the airline industry remains in the hands of Canadians, and finds that the arrangement between Greyhound and Kelowna is a "backdoor approach" which is highly offensive.

In its reply dated March 15, 1996, WestJet alleges that certain of Greyhound's actions prior to entering into an agreement with Kelowna indicate Greyhound's awareness that it would not be able to obtain a licence from the Agency as it would not meet Canadian ownership requirements and yet Greyhound pressed ahead and entered into an arrangement with Kelowna. WestJet states that Greyhound's current plan, as reported in the press, is to market and sell tickets for an airline service, then contract the flying to Kelowna. This, according to WestJet, is an attempt to circumvent the Canadian ownership and control requirements of the domestic licensing process. WestJet submits that an airline is considerably more than the sum of its inanimate aircraft; it is rather the sum total of the human and financial capital required to promote, market and ultimately sell seat inventory and cargo capacity on the aircraft. WestJet argues that, although Kelowna intends to physically operate the aircraft, what transforms those aircraft into an airline are the activities of Greyhound. WestJet asserts that without Greyhound, there is no Greyhound Air and maintains that the mind and control of Greyhound Air lies with Greyhound. It is submitted by WestJet that all marketing efforts, advertising, uniform selection, reservations systems, inventory management, payload control, route selection and scheduling and other key elements are clearly controlled by Greyhound.

POSITION OF GREYHOUND

Greyhound submits that the arrangement with Kelowna is a tour operator-charter carrier arrangement. Greyhound states that the allegations by WestJet concerning the control of the air service are without foundation and that the air service remains completely under the operation and control of Kelowna.

Greyhound expresses the view that there is nothing in either aviation law or policy which prevents a foreign-controlled company entering into charter contracts with Canadian air carriers.

In response to WestJet's allegations that Greyhound controls Kelowna, Greyhound asserts that both it and Kelowna have demonstrably shown that Greyhound does not control Kelowna. Greyhound further submits that it has no equity investment in Kelowna and has no representation on the board of directors nor does it have any control over the selection, retention and compensation of Kelowna's officers and executives. Additionally, Greyhound states that it is the officers, executives and employees of Kelowna that run and manage Kelowna and that will run and manage the air operations of Greyhound Air on a day-to-day basis. Greyhound maintains that the financial arrangements in connection with Greyhound Air are highly conventional and standard.

In conclusion, Greyhound states that WestJet's allegations are without foundation and cannot be substantiated.

POSITION OF KELOWNA

Kelowna submits that the charter arrangement with Greyhound does not give control of Kelowna, directly or indirectly, to Greyhound. Kelowna further submits that Greyhound will obtain no ownership interest in Kelowna, nor will it have any representatives on its board of directors or amongst its executives. In addition, Kelowna states that it will, at all times, maintain full control of and decision-making over the operation of the aircraft, and only its employees will operate the aircraft.

Kelowna also submits that the terms of the charter arrangement represent common industry practice and, while confidential, are not unlike those of the charter arrangement already in place between Kelowna and Purolator Courier Ltd.

Kelowna asserts that its sole director, Mr. Barry Lapointe, has no intention of relinquishing any control over the corporation or its operations, nor does he have any intention of circumventing Canadian transportation law or assisting anyone in doing so.

FINDINGS

The Agency has carefully examined all of the submissions and evidence filed. Further, the Agency has carefully examined the documents which Kelowna and Greyhound were required to file with the Agency pursuant to the Agency's letter of March 29, 1996. By letter decision dated April 12, 1996, the Agency determined that these documents are confidential.

The Agency has also determined that the issue to be addressed in this matter is whether Greyhound will be operating a domestic air service which would require it to hold a domestic licence.

Based primarily on the financial, operational and business relationships between Greyhound and Kelowna described in the confidential documents, the Agency determines that, if the air services commence as proposed therein, Greyhound will be operating a publicly available domestic air service. Accordingly, pursuant to subsection 71(1) of the NTA (National Transportation Agency), 1987 in order for the proposed air services to commence, Greyhound will be required to hold a domestic licence. In order to obtain a domestic licence, Greyhound would have to establish to the satisfaction of the Agency that it is Canadian as defined in section 67 of the NTA (National Transportation Agency), 1987, holds a Canadian aviation document, and has prescribed liability insurance coverage or evidence of such insurability in respect of the air services to be provided under the licence.

The Agency notes that Greyhound does not presently hold a domestic licence. Accordingly, if operation of the proposed air services commences, the Agency will take all actions within its jurisdiction to prevent such operation, including the issuance, if necessary, of a cease and desist order against Greyhound. The Agency, therefore, cautions against the commencement of the operation of the proposed air services.

In view of the foregoing and, in order to protect the travelling public, it is advisable that Greyhound immediately cease the marketing of its proposed air services, including advertising in the various media and selling tickets to the public.

Due to the confidentiality of the documents filed by Kelowna and Greyhound, as determined by the Agency in its letter decision dated April 12, 1996, detailed reasons for the Agency decision were to be provided, in confidence, to Greyhound and Kelowna which was done on April 16, 1996.

This Decision takes effect as of April 12, 1996, the date on which it was communicated by

letter.

Rulings

[Go back to Rulings \(/decisions\)](/decisions)

Date modified:

2012-04-25



Office national
des transports
du Canada

National
Transportation
Agency of Canada

CONFIDENTIAL

MAY 10 1996

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File Nos.: M4205/K14/6115
M4205/K14/6116
Docket Nos.: 960702R & 960723R

TO:
Greyhound Lines of Canada Ltd.
c/o Osler, Hoskin & Harcourt
Barristers & Solicitors
Suite 1500
50 O'Connor Street
Ottawa, Ontario
K1P 6L2

TO:
Kelowna Flightcraft Air Charter Ltd.
c/o McMillan Binch
Barristers & Solicitors
Suite 3800 - South Tower
Royal Bank Tower
Toronto, Ontario
M5J 2J7

Attention: Mr. Ronald G. Belfoi, O.C.

Attention: Mr. Vernon V. Kakoschke

Dear Sirs:

Re: Applications for review by Greyhound Lines of Canada Ltd. (Greyhound) and Kelowna Flightcraft Air Charter Ltd. (Kelowna) pursuant to section 41 of the National Transportation Act, 1987 (NTA, 1987) of National Transportation Agency (Agency) Decision No. 232-A-1996 dated April 18, 1996

Pursuant to Decision No. 292-A-1996, dated May 10, 1996, the Agency determined that it would not rescind or vary Decision No. 232-A-1996, dated April 18, 1996. The Agency's reasons for that Decision are that, notwithstanding the numerous changes made to the proposed relationship between Kelowna and Greyhound, as reflected in the confidential material filed in support of the two applications for review of Decision No. 232-A-1996, the Agency is of the opinion that the fundamental relationships between Kelowna and Greyhound, and the essence of their proposed arrangement, remain unchanged. Accordingly, the Agency continues to be of the opinion that if air services commence as proposed by Kelowna and Greyhound, Greyhound will be operating a publicly available domestic air service for which it will be required to hold a domestic licence.

The Agency's detailed reasons for its determination in Decision No. 292-A-1996 are as follows.

As stated in the confidential reasons for Decision No. 232-A-1996 (hereinafter the Confidential Reasons), the Agency has developed a number of factors that it considers relevant in determining whether a person is in fact operating a publicly available domestic air service and thereby is required to hold a domestic licence. The Agency has considered these factors, both individually and collectively, in its review of Decision No. 232-A-1996.

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The Agency has carefully examined the pleadings, along with the Confidential Submissions, the Amended Arrangement documents, which include the April 22, 1996 amended and restated Air Charter Agreement (hereinafter the amended and restated Agreement), and all other confidential information filed with the Agency (hereinafter the confidential material). The amended and restated Agreement and the other confidential material disclose that Greyhound will continue to assume, directly or indirectly, substantially all of the risks associated with the operation of the air services. The confidential material also discloses that, other than the [REDACTED] Greyhound will continue to be directly or indirectly entitled to substantially all of the benefits associated with the operation of the air services. As disclosed in the Confidential Reasons, this assumption of substantially all of the risks, and entitlement to substantially all of the benefits, associated with the operation of the proposed air services, is commensurate with the operation of air services by an air carrier.

The Agency is of the opinion that the changes made to the amended and restated Agreement will have little impact in terms of the distribution of financial risks and benefits associated with the proposed air operations. More specifically, the Agency is of the opinion that the confidential material discloses that Greyhound continues to assume significant financial risks associated with the initiation of the air services. The documents disclose that [REDACTED] Kelowna and has paid for [REDACTED]

[REDACTED] This assumption of financial risks on the part of Greyhound is significant given that Kelowna discloses that its total pre-operating expenses estimated to be incurred prior to the currently scheduled commencement date of operations is [REDACTED]

The amended and restated Agreement also stipulates that Greyhound will continue to be directly or indirectly responsible for substantially all of the aircraft operating costs and other costs relating to aircraft operations. [REDACTED]

[REDACTED]

Copie conforme
True copy



The Agency remains of the opinion that, notwithstanding the various changes made to the amended and restated Agreement, the [redacted] provisions continue to significantly reduce Kelowna's risk, and thereby increase Greyhound's, of operating the air services and establish the profit to which Kelowna will be entitled.



Finally, with respect to the distribution of financial risks and benefits associated with the proposed air operations, the Agency is of the opinion that the amended and restated Agreement continues to disclose that, other than the [redacted]

[redacted] Greyhound will continue to be directly or indirectly entitled to substantially all of the benefits associated with the operation of the air services. [redacted] may be entitled to additional benefits such as certain benefits pursuant to the [redacted]. The fact remains, however, that [redacted] Greyhound is entitled to substantially all of the remaining benefits of airline operations. [redacted]



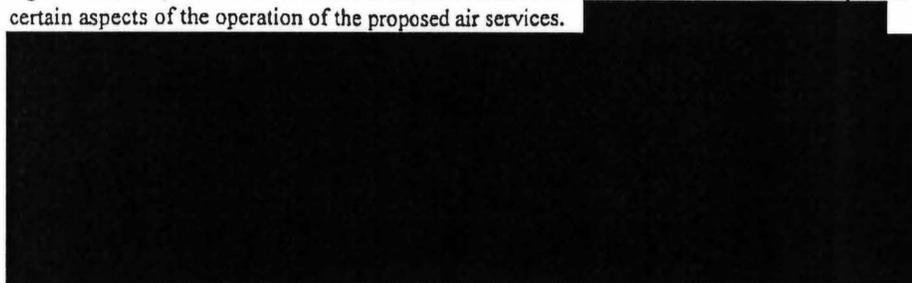
In summary, Kelowna's ability to generate profits continues to be substantially limited by the [redacted] provisions contained in the amended and restated Agreement.

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The Agency is of the further opinion that under the provisions of the amended and restated Agreement, Greyhound will continue to have substantial influence over Kelowna with respect to certain aspects of the operation of the proposed air services.



The Agency is, therefore, of the opinion that the provisions of the amended and restated Agreement continue to significantly restrict Kelowna's ability to freely negotiate and consummate additional aircraft leases and loans.



The amended and restated Agreement also discloses that, although there are no longer any specific "exclusivity" or "non-competition" provisions, certain other provisions continue to impose potential restrictions on Kelowna with respect to the use of Aircraft and Additional Aircraft.



Sincerely,



Marie-Paule Scott, Q.C.
Secretary
Ottawa, Ontario
K1A 0N9



[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [Decisions](#) / [Air](#) / [1996](#) / Decision No. 292-A-1996

Decision No. 292-A-1996

Decision rescinded by P.C. 1996-849 dated June 7, 1996.

May 10, 1996

APPLICATIONS by Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. pursuant to section 41 of the *National Transportation Act, 1987, R.S.C., 1985, c. 28 (3rd Supp.)* for a review of [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) dated April 18, 1996.

**File Nos. M4205/K14/6115
M4205/K14/6116**

**Docket Nos. 960702R
960723R**

Greyhound Lines of Canada Ltd. (hereinafter Greyhound) and Kelowna Flightcraft Air Charter Ltd. (hereinafter Kelowna) have applied for the review set out in the title. The applications were received on April 24 and 25, 1996, respectively.

In response to a complaint by WestJet Airlines Ltd. (hereinafter WestJet), the National Transportation Agency (hereinafter the Agency) determined in its [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) that, pursuant to subsection 71(1) of the *National Transportation Act, 1987* (hereinafter the NTA (National Transportation Agency), 1987), in order for air services to commence as proposed by Greyhound and Kelowna, Greyhound would be required to hold a domestic licence.

By letters dated April 25 and 26, 1996, the Agency requested WestJet to provide its comments on or before April 30, 1996 in respect of the applications for review. Following receipt of these comments, Greyhound and Kelowna were given two days to respond.

By letters dated April 30, 1996, WestJet filed its comments. By letters dated May 2, 1996, Greyhound and Kelowna filed their responses to WestJet's comments of April 30, 1996.

In addition, in its letters dated April 30, 1996, WestJet filed notices of motion requesting that it be provided with copies of the Agency's confidential reasons for its Decision No. 232-A-1996 (/eng/ruling/232-a-1996), which were communicated by letter dated April 16, 1996 to Greyhound and Kelowna (hereinafter the Confidential Reasons), the "Amended Arrangement documents" and the "Confidential Submissions" Greyhound and Kelowna filed in support of their respective applications for review. Alternatively, WestJet requested that it be provided with versions of the Confidential Reasons and the Amendment Arrangement documents with the "... sensitive commercial particulars blacked out and to the extent the context requires, a precis of any material portions which have been blacked out". The Agency ruled on these motions in its decision communicated by letter dated May 10, 1996 and determined that the documents in question should remain confidential and an abridged version would not be provided to WestJet.

GREYHOUND APPLICATION

In its application, Greyhound states that following a review of the Confidential Reasons, Kelowna and it entered into negotiations to amend and restate their air charter arrangements in order to address the concerns expressed by the Agency in the Confidential Reasons. Effective April 22, 1996, Greyhound

and Kelowna entered into an amended and restated Air Charter Agreement (hereinafter the amended and restated Agreement) which, it submits, constitutes a change in the facts or circumstances pertaining to Decision No. 232-A-1996 (/eng/ruling/232-a-1996) since it was issued. Specifically, these amendments directly affect the "financial, operational and business relationships" between Greyhound and Kelowna upon which the Agency primarily based its Decision.

Greyhound therefore requests that the Agency, pursuant to section 41 of the NTA (National Transportation Agency), 1987, review, rescind or vary the Decision in light of the amended and restated Agreement between Greyhound and Kelowna, which constitutes a change in the facts or circumstances pertaining to the previous Decision of the Agency, and find that Greyhound will not be operating a publicly available domestic air service for which it will be required to hold a domestic licence.

In addition, Greyhound advised that it would be filing with the Agency, pursuant to a claim for

confidentiality, a "black-lined" [showing changes] and an execution copy of the amended and restated Agreement under cover of a separate letter explaining the amendments to the Agreement.

KELOWNA APPLICATION

In its application dated April 25, 1996, Kelowna requests that the Agency review, rescind or vary its [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](/eng/ruling/232-a-1996) dated April 18, 1996 on the basis that new facts or circumstances have arisen pertaining to the Decision.

Kelowna therefore advised that it would provide to the Agency under separate cover and on a confidential basis, a more detailed version of its application, which includes the new confidential evidence which it wishes the Agency to consider. In Kelowna's view, this evidence would also address the concerns raised by the Agency in its Confidential Reasons.

POSITION OF WESTJET

WestJet submits that the Agency may only review, rescind or vary a previous decision made by it if there has been a change in the facts or circumstances leading to the decision and that the "change" referred to in the [NTA \(National Transportation Agency\), 1987](#) is one of substance and not form and must be material in nature. WestJet questions whether any possible amendments to Greyhound's leasing of Kelowna's air service licence, in the context of the overall arrangements between them, can constitute the required substantive, material "change" which would give the Agency jurisdiction to review, rescind or vary the Decision.

WestJet also submits that documentary amendments without substantive changes to many fundamental indicia to the operation of an airline service, such as the financing, schedule control, personnel and the like, will not be sufficient to change the fact, determined by the Agency, that Greyhound is operating an airline service in Canada. In the Greyhound/Kelowna arrangement, such indicia include, without limitation, the direct and indirect financing by Greyhound of Kelowna's aircraft acquisitions, and the necessary control of the flight schedule by Greyhound to create its "intermodal" system of transportation. In WestJet's view, the "charter" arrangement between Greyhound and Kelowna is an arrangement or enterprise reliant on Greyhound for its existence, its operation, and its namesake.

WestJet expresses concern with respect to circumvention of the ownership requirements of the [NTA \(National Transportation Agency\), 1987](#) by Greyhound and Kelowna which could result in foreign-controlled entities, including foreign air carriers, doing the same.

WestJet concludes that, while chartering aircraft in certain circumstances is permitted, chartering aircraft

for the purpose of operating a scheduled airline service is tantamount to leasing a licence - a matter which is not permitted by Canadian aviation law and policy.

REPLY OF GREYHOUND

Greyhound submits that the Agency has the jurisdiction to review, rescind or vary its own decision, if since that decision, and in the opinion of the Agency, there has been a change in the facts or circumstances pertaining to that decision. In order to meet this test, a section 41 applicant need only demonstrate to the Agency that there has been a "change" in the facts or circumstances. In Greyhound's view, Parliament did not intend to establish a "material change" test.

Greyhound asserts that the Agency's determination of the WestJet complaint in favour of WestJet was based on the "financial, operational and business relationships" between Greyhound and Kelowna. In order to address the concerns expressed by the Agency in the Confidential Reasons, Greyhound and Kelowna engaged in arm's length negotiations which resulted in changes to the financial, operational and business relationships between Greyhound and Kelowna. The Amended Arrangement documents demonstrate a change in the facts or circumstances pertaining to the Decision since it was made by the Agency. Greyhound submits that by addressing the "financial, operational and business relationships" between Greyhound and Kelowna, the Amended Arrangement documents constitute material change.

With respect to WestJet's statement that the charter arrangement between Greyhound and Kelowna is "reliant on Greyhound for its existence, its operation, and its namesake", Greyhound submits that a charter arrangement could never exist without a charterer. In addition, the particular air service being operated by Kelowna pursuant to its air charter arrangements with Greyhound could not exist without Greyhound as a participant. This, in Greyhound's view, is no different than many other charter arrangements entered into between air operators and charterers.

Greyhound states that the financing and scheduling of flights have been addressed in the Amended Arrangement documents. In fact, Kelowna has assumed significant financial risk in connection with the financing it has arranged, independently with its banker of long-standing,

in order to operate its new passenger charter air service. Furthermore, it is normal and to be expected that a charterer and the operator of an air service would have to agree to a schedule, which would be made known well in advance to passengers.

Greyhound concludes that it has no interest in operating a domestic air service. Greyhound's interest is in chartering the air service operations of Kelowna in order to market to the public an intermodal bus/air transportation service linking Greyhound's bus services with Kelowna's charter air services and that is why it has entered into the Amended Arrangement documents with Kelowna.

REPLY OF KELOWNA

Kelowna states that the Amended Arrangement documents are before the Agency and it is up to the Agency to reconsider whether this new evidence will have an effect on the Decision.

In Kelowna's view, the arrangements between Kelowna and Greyhound require that only Kelowna hold a domestic licence and Kelowna meets all Canadian ownership and control in fact requirements to maintain its licence.

Kelowna states that it has already invested significant sums in the start-up of the passenger charter air service and that this investment was done in good faith with the belief that the arrangements between

Kelowna and Greyhound would not offend the Agency or violate the NTA (National Transportation Agency), 1987.

Kelowna submits that WestJet's contention that Kelowna is leasing its licence to Greyhound is inflammatory and without a factual basis.

Kelowna concludes that the amended charter arrangements between Kelowna and Greyhound put them on the solid footing of a tour operator and a chartered air service, an arrangement that is completely within the bounds of the NTA (National Transportation Agency), 1987.

FINDINGS

The Agency has carefully examined the pleadings, along with the Confidential Submissions, the Amended Arrangement documents, which include the amended and restated Agreement, and all other confidential information filed with the Agency (hereinafter the confidential

material) and is of the opinion that there has been a change in the facts or circumstances pertaining to [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) since the Decision was issued. The Agency's opinion in this regard is based, primarily, on the numerous changes which have been effected to the Air Charter Agreement dated February 6, 1996 between Greyhound, Kelowna and Kelowna Flightcraft Ltd. as reflected in the amended and restated Agreement. The Agency has, therefore, determined that it will review [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

In the interest of efficiency and expediency, the Agency has considered the Greyhound and Kelowna applications together in this review of [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

In [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#), the Agency determined that the issue to be addressed was whether Greyhound would be operating a domestic air service, for which it would be required to hold a domestic licence, if it proceeded with its proposed arrangements with Kelowna as disclosed to the Agency. Based primarily on the financial, operational and business relationships between Greyhound and Kelowna, the Agency determined that, if the air services were to commence as proposed, Greyhound would be operating a publicly available domestic air service. Accordingly, the Agency determined in [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) that, pursuant to subsection 71(1) of the [NTA \(National Transportation Agency\)](#), 1987, in order for the proposed air services to commence, Greyhound would be required to hold a domestic licence. By confidential letter dated April 16, 1996, the Agency advised Greyhound and Kelowna of the specific, detailed reasons for this determination.

The Agency has closely examined the change in facts or circumstances pertaining to [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) in relation to the financial, operational and business relationships between Greyhound and Kelowna. The Agency notes that Greyhound and Kelowna have made numerous changes to their proposed relationship since [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#) was issued. However, after reviewing and carefully considering all of these changes, the Agency remains of the opinion that the fundamental relationships between Kelowna and Greyhound, and the essence of their proposed arrangement, have not changed. Therefore, the Agency will not rescind or vary [Decision No. 232-A-1996 \(/eng/ruling/232-a-1996\)](#).

The Agency remains of the opinion that, if operations commence, Greyhound will be operating a publicly available domestic air service for which it requires a licence. In order to

obtain a licence, Greyhound would have to establish to the satisfaction of the Agency that it is Canadian as defined in section 67 of the NTA (National Transportation Agency), 1987, holds a Canadian aviation document, and has prescribed liability insurance coverage or evidence of such insurability in respect of the air service to be provided under the licence.

Due to the confidentiality of the documents filed by Kelowna and Greyhound, as determined by the Agency in its letter decision dated May 10, 1996, a separate letter will be sent to Greyhound and

Kelowna in confidence setting out the detailed reasons for the Agency's Decision.

Rulings

[Go back to Rulings \(/decisions\)](#)

Date modified:

2012-04-19

P.C. 1996-849
June 7, 1996

Whereas, pursuant to section 64 of the *National Transportation Act, 1987*, Greyhound Lines of Canada Ltd. and Kelowna Flightcraft Air Charter Ltd. have petitioned the Governor in Council to rescind Decision No. 232-A-1996 dated April 18, 1996, and Decision No. 292-A-1996 dated May 10, 1996, of the National Transportation Agency;

Whereas Greyhound Canada Transportation Corp. is a successor corporation to Greyhound Lines of Canada Ltd.;

Whereas, pursuant to section 64 of the *National Transportation Act, 1987*, the Governor in Council may, at any time, in the discretion of the Governor in Council, either on petition of any party or person interested or of the Governor in Council's own motion, vary or rescind any decision of the National Transportation Agency;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Transport, pursuant to section 64 of the *National Transportation Act, 1987*, hereby

- (a) varies Decision No. 232-A-1996, in accordance with the schedule hereto; and
- (b) rescinds Decision No. 292-A-1996.

P.C. 1996-849

SCHEDULE

1. The second to fifth paragraphs of the Findings in Decision No. 232-A-1996 are replaced by the following:

Greyhound Canada Transportation Corp. will not be the operator of a domestic air service that requires a domestic licence only if

(a) Greyhound Canada Transportation Corp. continues to be Canadian within the meaning of subsection 67(1) of the *National Transportation Act, 1987*;

(b) Greyhound Canada Transportation Corp. complies with the provisions of the Air Charter Agreement, restated and amended as of April 22, 1996, between Greyhound Lines of Canada Ltd., Kelowna Flightcraft Air Charter Ltd. and Kelowna Flightcraft Ltd. that are applicable to Greyhound Lines of Canada Ltd.; and

(c) Greyhound Canada Transportation Corp. informs all prospective purchasers of air services that Kelowna Flightcraft Air Charter Ltd. will be providing the air service.

C.P. 1996-849
7 juin 1996

Attendu que, conformément à l'article 64 de la *Loi de 1987 sur les transports nationaux*, Greyhound Lines of Canada Ltd. et Kelowna Flightcraft Air Charter Ltd. ont présenté au gouverneur en conseil des requêtes en annulation de la décision n° 232-A-1996 du 18 avril 1996 et de la décision n° 292-A-1996 du 10 mai 1996, de l'Office national des transports;

Attendu que Greyhound Canada Transportation Corp. est une personne morale remplaçante de Greyhound Lines of Canada Ltd.;

Attendu que, en vertu de l'article 64 de la *Loi de 1987 sur les transports nationaux*, le gouverneur en conseil peut à tout moment, à son appréciation, soit à la requête d'une partie ou d'une personne intéressée, soit de sa propre initiative, modifier ou annuler les décisions de l'Office national des transports,

À ces causes, sur recommandation du ministre des Transports et en vertu de l'article 64 de la *Loi de 1987 sur les transports nationaux*, Son Excellence le Gouverneur général en conseil

- a) modifie la décision n° 232-A-1996, conformément à l'annexe ci-jointe;
- b) annule la décision n° 292-A-1996.

C.P. 1996-849

ANNEXE

1. Les paragraphes deux à cinq de la Conclusion de la décision 232-A-1996 sont remplacés par ce qui suit :

Greyhound Canada Transportation Corp. ne sera pas l'exploitant d'un service aérien intérieur qui doit être le détenteur de la licence intérieure, seulement si :

a) Greyhound Canada Transportation Corp. reste Canadien au sens du paragraphe 67(1) de la *Loi sur les transports nationaux*;

b) Greyhound Canada Transportation Corp. satisfait aux exigences contenues dans le « Air Charter Agreement » conclu entre Greyhound Lines of Canada Ltd., Kelowna Flightcraft Air Charter Ltd. et Kelowna Flightcraft Ltd. et spécifié de nouveau et modifié le 22 avril 1996, exigences qui sont applicables à Greyhound Lines of Canada Ltd.;

c) Greyhound Canada Transportation Corp. avise tous les acheteurs potentiels de services aériens que Kelowna Flightcraft Air Charter Ltd. fournira les services aériens.



[Canadian Transportation Agency \(/eng\)](#)

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Consultation on the requirement to hold a licence

The Agency is asking the aviation industry and other interested stakeholders 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 licence.

[Details of the consultation \(/eng/consultation/consultation-requirement-hold-a-licence\)](#)

Date modified:

2015-12-23



[Canadian Transportation Agency \(/eng\)](#)

[Home](#) / [Consultations](#) / Consultation on the requirement to hold a licence

Consultation on the requirement to hold a licence

The Canadian Transportation Agency (Agency) is requesting comments from the aviation industry and other interested stakeholders 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 licence.

Background

The Canadian Transportation Agency (Agency) regulates the licensing of air transportation pursuant to Part II of the [Canada Transportation Act](http://laws-lois.justice.gc.ca/eng/acts/C-10.4/index.html) (Act) and the [Air Transportation Regulations](http://laws-lois.justice.gc.ca/eng/regulations/SOR-88-58/index.html).

The Act requires that persons hold the appropriate licence 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 with respect to [tariffs](https://www.otc-cta.gc.ca/eng/tariffs), [financial requirements](https://www.otc-cta.gc.ca/eng/publication/financial-requirements-guide-air-licence-applicants), and [Canadian ownership](https://www.otc-cta.gc.ca/eng/canadian-ownership). When more than one person is involved in the delivery of the air service, it is important to determine who is operating the air service and is required, as such, to comply with the licensing requirements.

When the *National Transportation Act, 1987* (subsequently consolidated and revised by the Act) was introduced in 1987, it ushered in the deregulation of the aviation industry. At this time, the distinction between chartered and scheduled air carriers was eliminated for domestic air services. Industry subsequently developed new and innovative approaches to the delivery of air services that did not always fit into the Act's licensing parameters. One such approach is the Indirect Air Service Provider model, where persons have commercial control over an air service and make decisions on matters such as on routes, scheduling, pricing, and aircraft to be used, while charter air carriers operate flights on their behalf.

The Agency's current approach to determining which person is operating a domestic air service originated from its [1996 Greyhound Decision](https://www.otc-cta.gc.ca/eng/ruling/232-a-1996) and requires the person with commercial control to hold the licence, irrespective of whether the

person operates any aircraft. As of December 1, 2015, 16 persons that did not operate any aircraft held licences providing them the authority to operate domestic air services.

For international air services, the Regulations require the air carrier, not the charterer, to hold a licence. Consequently, under the current approach, a person who is in commercial control of an air service and does not operate aircraft must hold the licence for domestic, but not for international air services.

All licensed air carriers are required to hold a Canadian Aviation Document (CAD) (<http://www.tc.gc.ca/eng/civilaviation/publications/tp8880-chapter1-section3-5193.htm>) issued by the Minister of Transport. When a person does not operate any aircraft, they are neither required nor entitled to obtain a CAD. The Agency has issued domestic licences to Indirect Air Service Providers on the basis that the CAD requirement is met by the charter air carrier.

The Agency, after careful review and study, is considering a change in its approach to determining who is operating an air service in situations where a person has commercial control over an air service, but does not operate aircraft. It is important to note that a review of the Act (<http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html>) is underway and may recommend changes to the legislative framework. Regulatory reforms may also be contemplated.

Approach under consideration

Indirect Air Service Providers would not normally be required to hold a licence to sell air services directly to the public, as long as they charter licenced air carriers to operate the flights. This would apply to the operation of domestic and international air services. As these providers would not be subject to the licensing requirements, contracts they enter into with the public would not be subject to tariff protection, nor would they be subject to the financial and Canadian ownership requirements.

However, the Agency would preserve its discretion to apply legislative and regulatory requirements in a purposive manner to ensure that the objectives underpinning the air licensing regime continue to be met. Accordingly, should a person who does not operate aircraft hold themselves out to the public as an air carrier and not a charterer or structure their business model to circumvent the licensing requirements, the Agency could determine that they are operating the air service. Considerations in any such determination could include the manner in which they hold themselves out to the public, whether their involvement goes beyond a typical contractual charter arrangement, and the extent to which their operations are integrated into those of the air carrier.

When an air service is marketed and sold by an air carrier that has commercial control and the flights are operated by another air carrier, pursuant to a wet lease, code share, blocked space, capacity purchase agreement or other similar agreement, the Agency will continue to require the air carrier in commercial control to hold the licence for that air service, consistent with existing regulatory requirements.

Call for comments

The Agency invites interested stakeholders to submit their comments on the Agency's proposed approach, including with respect to the following questions:

- Whether Indirect Air Service Providers should be required to hold a licence to sell their services directly to the public, in their own right. Provide a clear explanation for your position;
- 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.

Participants may submit **written** comments no later than the end of the business day on January 22, 2016.

All submissions made as part of this consultation process will be considered public documents and, as such, may be posted on the Agency's website.

How to Participate

Submit your comments to consultations@otc-cta.gc.ca (<mailto:consultations@otc-cta.gc.ca>).

Contact:

John Touliopoulos - Manager, Financial Evaluation Division (<http://geds20-sage20.ssc-spc.gc.ca/en/GEDS20/?pgid=015&dn=cn%3DTouliopoulos%5C%2C%20John%2C%20ou%3DRACD-DARC%2C%20ou%3DIRDB-DGRDI%2C%20ou%3DCTA-OTC%2C%20o%3DGC%2C%20c%3DCA>)

Telephone:

819-953-8960

Email:

john.touliopoulos@otc-cta.gc.ca

Latest Milestones

Title	Date
Deadline for submissions	January 22, 2016

Date modified:

2015-12-21

Effective February 12, 2016 to May 1, 2016 unless otherwise stated

All flights are non-stop

Frequency: Monday = M , Tuesday = Tu, Wednesday = W, Thursday = Th, Friday = F, Saturday = S, Sunday = Su

DEPARTURE CITY: ABBOTSFORD (YXX)				
Flight #	Depart	Arrival City	Arrive	Frequency
500	7:00	Regina (YQR)	9:09	M,S (eff Mar 14)
104	7:00	Winnipeg (YWG)	11:38	F,Su (eff Mar 14)
150	14:45	Winnipeg (YWG)	19:23	W (ends Mar 13)
550	12:30	Saskatoon (YXE)	15:22	M,F (eff Mar 14)

DEPARTURE CITY: KELOWNA (YLW)				
Flight #	Depart	Arrival City	Arrive	Frequency
100	8:00	Winnipeg (YWG)	12:23	W
102	8:00	Winnipeg (YWG)	12:23	S
200	8:00	Regina (YQR)	11:42 (Feb 12- Mar 12) 10:42 (Mar 13)	Su (ends Mar 13)
202	7:00	Saskatoon (YXE)	10:36 (Feb 12- Mar 12) 9:36 (Mar 13)	M,F
156	20:35	Hamilton (YHM)	3:40	Su

DEPARTURE CITY: SASKATOON (YXE)				
Flight #	Depart	Arrival City	Arrive	Frequency
501	11:40 (Feb 12- Mar 12) 10:40 (Mar 13)	Abbotsford (YXX)	11:42	M,F
400	11:30 (Feb 12- Mar 12) 10:30 (Mar 13)	Hamilton (YHM)	15:34	M,F
251	17:10 (Feb 12- Mar 12) 16:10 (Mar 13)	Kelowna (YLW)	16:58	M,F

DEPARTURE CITY: REGINA (YQR)				
Flight #	Depart	Arrival City	Arrive	Frequency
402	10:05 (Feb 12- Mar 12) 9:05 (Mar 13)	Hamilton (YHM)	13:57	Th
253	12:25 (Feb 12- Mar 12) 11:25 (Mar 13)	Kelowna (YLW)	12:23	Su (ends Mar 13)
551	15:50	Abbotsford (YXX)	16:53	M,S (eff Mar 14)

DEPARTURE CITY: WINNIPEG (YWG)				
Flight #	Depart	Arrival City	Arrive	Frequency
161	13:10	Abbotsford (YXX)	14:05	W (ends Mar 13)
159	16:10	Abbotsford (YXX)	17:05	F,Su (eff Mar 14)
152	13:05	Hamilton (YHM)	16:22	W
154	20:40	Hamilton (YHM)	23:57	S
153	13:05	Kelowna (YLW)	13:49	S
151	16:25	Kelowna (YLW)	17:09	Th

DEPARTURE CITY: HAMILTON (YHM)				
Flight #	Depart	Arrival City	Arrive	Frequency
401	8:00	Saskatoon (YXE)	10:39 (Feb 12- Mar 12) 9:39 (Mar 13)	M,F
450	16:15	Halifax (YHZ)	19:24	M,F
157	18:00	Kelowna (YLW)	19:54	Su
101	10:30	Winnipeg (YWG)	12:29	W
155	18:00	Winnipeg (YWG)	19:59	S
403	7:00	Regina (YQR)	9:25 (Feb 12- Mar 12) 8:25 (Mar 13)	Th

Introductory Fares

DEPARTURE CITY: HALIFAX (YHZ)				
Flight #	Depart	Arrival City	Arrive	Frequency
451	20:05	Hamilton (YHM)	21:41	M,F

Kelowna	Saskatoon	\$ 89
Kelowna	Regina	\$ 89
Abbotsford	Saskatoon	\$ 89
Abbotsford	Regina	\$ 89
Kelowna	Winnipeg	\$ 99
Winnipeg	Hamilton	\$ 99
Hamilton	Halifax	\$ 99
Hamilton	Regina	\$ 119
Hamilton	Saskatoon	\$ 119
Abbotsford	Winnipeg	\$ 119
Hamilton	Kelowna	\$ 149

One way fares each way inclusive of all taxes and fees



February 5, 2016

Case No. 15-03590

BY E-MAIL: jim.young@newleafcorp.ca

NewLeaf Travel Company Inc.
128 - 2000 Wellington Ave.
Winnipeg, Manitoba
R3H 1C2

Attention: Jim Young, Chief Executive Officer

Dear Mr. Young:

Re: Inquiry into whether NewLeaf Travel Company Inc. is proposing to operate an air service

By confidential decision dated August 21, 2015 (Decision), the Canadian Transportation Agency (Agency) initiated an inquiry, pursuant to section 81 of the *Canada Transportation Act*, S.C. 1996, c. 10, as amended (CTA) into whether NewLeaf Travel Company Inc. (NewLeaf) is proposing to operate an air service and, therefore, required to hold a licence pursuant to section 57 of the CTA (Inquiry).

Mandate of the Inquiry Officer

The Agency appointed Ghislain Blanchard, Director General, Industry Regulation and Determinations Branch (the Inquiry Officer), to conduct the Inquiry and report his findings to the Agency. The Inquiry Officer's mandate was set out in terms of reference attached to the Decision.

On September 23, 2015, the Inquiry Officer presented a Preliminary Report to the Panel which summarized NewLeaf's confidential responses to the Inquiry Officer and explains the approach NewLeaf will employ to offer the air services to the public. The Preliminary Report states that any conclusion on whether NewLeaf is required to hold a licence is subject to the Panel's consideration of the appropriate criteria to be used in such cases and the application of those criteria to the facts surrounding NewLeaf's proposed operations.

On December 21, 2015, the Agency launched consultations on the broader issue of whether companies that bulk purchase all seats on planes and then resell those seats to the public, but do not operate any aircraft, should be required to hold a licence.

The Inquiry Officer’s mandate effectively concluded with the launch of these consultations. By this decision, the Agency formally confirms there is no longer a role for the Inquiry Officer to play under the Inquiry and confirms the conclusion of his mandate. While the Agency continues the Inquiry and will make a determination in due course, it will do so without the Inquiry Officer.

Submissions from external parties

A number of submissions were filed as part of the above-noted consultation process and have been posted on the Agency’s internet site.

In addition, two unsolicited submissions from Enerjet and Jetlines were received by an Agency designated enforcement officer, in which the companies express their views about the Agency’s licensing requirement as it applies to NewLeaf’s proposed operation.

Whether NewLeaf should hold a licence for the service it is proposing to operate is a regulatory matter that is currently being addressed through the Inquiry and is not subject to the Agency’s Dispute Adjudication Rules contained in the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104. As such, while Enerjet and Jetlines indicated that their submissions are “complaints”, the Agency is of the view that they are most appropriately treated as information that may have some relevance to the Inquiry. The Agency has not, however, determined the weight that it will give to these submissions, nor has it granted any further rights to either Enerjet or Jetlines to participate in the Agency’s Inquiry.

Enerjet’s submission is enclosed with this decision. As Jetlines’ submission is marked confidential, NewLeaf must have any individuals who will have access to Jetlines’ submission sign and provide the Agency with the enclosed undertaking of confidentiality before the Agency can disclose it.

NewLeaf has until February 19, 2016 to provide any comments on these submissions as well as any other information or documentation that it wishes the Agency to consider before making a determination on the Inquiry.

BY THE AGENCY:

(signed)

Scott Streiner
Member

(signed)

Sam Barone
Member

Encl.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160609

Docket: 16-A-17

Ottawa, Ontario, June 9, 2016

CORAM: GAUTHIER J.A.
WEBB J.A.
GLEASON J.A.

BETWEEN:

GÁBOR LUKÁCS

Appellant

and

CANADIAN TRANSPORTATION AGENCY
AND NEWLEAF TRAVEL COMPANY INC.

Respondents

ORDER

The appellant is granted leave under section 41 of the *Canadian Transportation Act*, S.C. 1996, c. 10 to appeal the decision made by the Canadian Transportation Agency, dated March 29, 2016 and bearing Decision No. 100-A-2016 [the Decision].

This appeal shall be expedited provided the appellant files his Notice of Appeal within thirty (30) days of the date of this Order. If the application for judicial review in Federal Court of Appeal File No. A-39-16 is not rendered moot by this Order and if this appeal is expedited, then

this appeal shall be heard immediately following the judicial review application in Federal Court of Appeal File No. A-39-16.

Costs of this motion for leave shall be in the cause.

"Johanne Gauthier"

J.A.

Court File No.: A-242-16

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.**

Respondents

AGREEMENT AS TO CONTENTS OF THE APPEAL BOOK (RULE 343(1))

PURSUANT to Rule 343(1) of the *Federal Courts Rules*, the parties agree that the documents, exhibits, and transcripts to be included in the appeal book are as follows:

1. Notice of Appeal;
2. Decision No. 100-A-2016 of the Canadian Transportation Agency, dated March 29, 2016 [Decision Under Appeal];
3. Confidential Decision of the National Transportation Agency, dated April 16, 1996 [Greyhound Decision] (redacted version, on public record in File No. A-39-16);
4. Decision No. 232-A-1996 of the National Transportation Agency, dated April 18, 1996;
5. Confidential Decision of the National Transportation Agency, dated May 10, 1996 (redacted version, on public record in File No. A-39-16);

6. Decision No. 292-A-1996 of the National Transportation Agency, dated May 10, 1996;
7. Order in Council, P.C. 1996-849, dated June 7, 1996;
8. "Consultation on the requirement to hold a licence," Canadian Transportation Agency, December 23, 2015;
9. Winter 2016 Schedule of NewLeaf, being attachment no. 2 to the January 2016 representations of Canada JetLines Ltd. (referenced at para. 51 of the Decision Under Appeal);
10. Letter Decision No. LET-A-3-2016 of the Canadian Transportation Agency, dated February 5, 2016;
11. Order of the Federal Court of Appeal granting Leave to Appeal, dated June 9, 2016;
12. Agreement as to the Contents of the Appeal Book (Rule 343(1)); and
13. Certificate of Completeness (Form 344).

July __, 2016

ALLAN MATTE
Counsel for the Respondent,
Canadian Transportation Agency

July ___, 2016

BRIAN J. MERONEK, Q.C.
Counsel for the Respondent,
Newleaf Travel Company Inc.

July ___, 2016

DR. GÁBOR LUKÁCS
Appellant

Court File No.: A-242-16

FEDERAL COURT OF APPEAL

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

– and –

**CANADIAN TRANSPORTATION AGENCY and
NEWLEAF TRAVEL COMPANY INC.**

Respondents

CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

I, Dr. Gábor Lukács, the appellant, certify that the contents of the appeal book in this appeal are complete and legible.

July 11, 2016

DR. GÁBOR LUKÁCS

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Appellant