

FLAIR AIRLINES LTD.

**SUMMARY OF RELEVANT FACTS FOR CONSULTATION PROCESS IN
SUPPORT OF A REQUEST FOR A TEMPORARY MINISTERIAL EXEMPTION**

April 4, 2022

I. Introduction

1. Flair Airlines Ltd. (“**Flair**”) seeks a temporary ministerial exemption in order to continue to hold its licences (collectively, the "**Licences**") under the *Canada Transportation Act*, (the "**Act**") to allow Flair to continue delivering tremendous value to the Canadian public. These include air travel at affordable fares, vital air links to numerous Canadian communities, and creation of thousands of jobs, amongst other things. As set out further below, the preservation of this value is firmly within the public interest.
2. This application is necessitated by a Preliminary Determination issued by the Canadian Transportation Agency (the "**CTA**"). The CTA has given Flair until May 3, 2022, to address the issues it identified in the Preliminary Determination relating to whether Flair is “controlled in fact” by Canadians, as required by the Act, in light of the involvement of 777 Partners LLC (“**777**”), an entity based in the United States.
3. Flair is firmly of the view that it is “Canadian” within the meaning of Section 55(1) of the Act. However, given its commitment to regulatory cooperation, Flair has been collaborating with the CTA to address the CTA’s concerns. A great deal of progress has already been made. Flair expects that it will eliminate the majority of the issues raised by the CTA by May 3, 2022, but as set out further below, there are a number of practical reasons why Flair requires more time to comprehensively address the CTA’s concerns, as Canadian air travel returns to normal levels following the challenges presented by the COVID-19 pandemic.
4. Flair is confident that it will be able to implement steps to resolve the CTA's concern set forth in the Preliminary Determination in a timely manner. However, if Flair’s operations are disrupted by action of the CTA, this would severely impact Flair's ability to execute on these solutions. Preventing Flair from implementing those solutions after succeeding in providing Canadians with a reliable, efficient and cost effective air travel option and increasing routes to underserved communities in the process, would send a powerful negative message to Canada's airline industry and all of its stakeholders. Canadians would be detrimentally affected including Canadian travelers, members of previously underserved communities experiencing direct and indirect benefits of increased air

connectivity, Flair's employees and third party contractors amongst others. In other words, suspending Flair's operations would be contrary to public interest and a temporary ministerial exemption to forestall the possible consequences is appropriate. In the absence of a ministerial exemption, the CTA could effectively suspend Flair's operations. This would affect hundreds of thousands of Canadians. In other words, suspending Flair's operations would be contrary to the public interest, and a temporary ministerial exemption to forestall this possible consequence is appropriate.

II. Flair Airlines and Its Importance in Canada

5. Flair currently holds four active Licences that entitle it to offer domestic and international flights for paying passengers. Flair's business model is notable in the Canadian marketplace as it is Canada's only independent ultra-low-cost air carrier ("ULCC"). Flair's mission is to make air travel more accessible and affordable for all Canadians. In addition to low-cost services, Flair focuses on rapidly expanding its services and environmental responsibility. With time, Flair hopes to reshape the Canadian aviation market, providing Canadians with a lower-cost, more accessible, and more environmentally sustainable way to travel.
6. Flair seeks to expand the Canadian aviation industry, for the benefit of Canadians and the Canadian airline sector as a whole. The ULCC business model has been highly successful and is well-established in international markets, but has not yet evolved in Canada. The historical lack of competition in the Canadian airline industry has put Canada far behind most of the developed and developing world: Canada currently ranks 100th out of 140 countries in airfare cost competitiveness, with Canadians paying more than twice the price Americans do for comparable domestic flights.
7. In a short period of time, and notwithstanding the challenges of a global pandemic, Flair has fundamentally changed the nature of the Canadian aviation industry, making it considerably more competitive and vibrant. Throughout Flair's existence, the purported ULCC subsidiaries of the legacy airlines have constantly reacted to Flair's market entry by cutting fares (often well below cost), demonstrating the positive role Flair's presence has to competition in the industry generally.

8. Beyond low fares, Flair's innovative ULCC model has delivered additional capacity to markets that have been historically underserved, providing considerable social and economic benefits to those communities. These include Abbotsford, Kitchener-Waterloo, Charlottetown, Saint John, and Thunder Bay, with more communities to be added as Flair continues to expand its fleet. Flair was one of the first airlines to enter markets like Saint John and Charlottetown during the pandemic, as the legacy airlines retreated. More recently, Flair has begun offering service to Deer Lake in Newfoundland. The benefit of Flair entering these smaller communities is not limited to the ability for the traveling public to connect directly to these communities. Social and economic benefits will flow through to local communities through both direct and indirect employment.
9. Flair is and will remain a significant driver of employment and economic growth across Canada, with at least 50 direct jobs (*i.e.*, pilots, flight attendants and airport workers) in Canada for each aircraft in service. This will result in:
 - (a) 1,000 direct Canadian jobs created by mid-2022; and
 - (b) 2,500 direct Canadian jobs following Flair's board-approved growth plan to add 50 aircraft to its fleet by June 2025.
10. In addition to these direct jobs, it is estimated that, as a consequence of tourism multipliers, many thousands of indirect jobs will be created or sustained through increased economic activity at the airports and in the communities where Flair operates.
11. Flair further employs a large number of third-party contractors for airport tasks, such as check-in, boarding, baggage handling and aircraft marshalling. Overall, Flair's operations currently result in the indirect employment of approximately 1,200 airport staff. Flair also pays landing fees, parking fees, and other charges directly to airports, which provides the revenue needed to sustain and grow the operations of Canadian airports, particularly in the smaller communities served by Flair.
12. Flair has already executed on its innovative ULCC business model and remains in a position to do so. Flair is well managed and has an internationally experienced management team. The team combines top-level international ULCC executives with a

very strong Canadian operational management team. Operating under this innovative business model, Flair focuses on rapid expansion, testing of new routes, low-cost services, and environmental responsibility.

III. Flair's Growth During the Pandemic

13. As Flair understands the CTA's concerns, they relate to the involvement of 777 in Flair. 777 first invested in Flair in 2018 when Canada amended the Act to lower the Canadian ownership requirement in an effort to encourage non-Canadian investment to, among other things, enable the development of ULCC for the benefit of Canadian consumers. 777 provided support to Flair to enable its development into the first truly independent Canadian ULCC. This support included providing operating capital by way of debt to Flair, as well as enabling Flair to access new aircraft that, given its balance sheet and credit status, Flair would not have been able to obtain on its own.
14. The COVID-19 pandemic had devastating impacts on Flair's operations, as it did for the rest of the airline industry. Throughout the pandemic, 777 continued to provide Flair with support to ensure that Flair's business continued to create extensive and affordable air travel options for all Canadians while employing thousands of Canadians. Due to the lingering nature of the pandemic, 777 was required to provide significantly more financing than was initially contemplated or required.
15. There were no other sources of capital available to Flair to support its operations during this timeframe. Most Canadian airlines have also required financial support over the past two years, but whereas most of Flair's competitors benefited from Federal Government programs, Flair could not. Without 777's support, Flair would not have been able to extend the opportunity of air travel to the vastly underserved populations across Canada, and in particular, communities that other carriers could not, or would not, serve.
16. Flair is in the process of addressing these corporate finance arrangements. This includes seeking financing from a variety of Canadian sources that will shift the sources of Flair's capital. For practical reasons it is highly unlikely that these solutions can be comprehensively implemented by May 3, 2022. There are also additional pressures at play

in the current market that may increase the time required. The risks associated with lingering travel restrictions and record energy prices continue to make it difficult to attract capital to the Canadian airline industry. These challenges notwithstanding, Flair is confident that Canadian financing sources can be obtained in short order and steps to achieve this result are already underway.

IV. Public Interest

17. The benefits that will accrue from a short-term exemption far exceed the detrimental effects of a potential interruption in Flair's operations. Such interruption would have far-reaching and highly disruptive impacts on Flair's staff, third-party vendors, airport operators, communities experiencing increased service, the flying public, and numerous other stakeholders.
18. It is clearly within the public interest to permit Flair to maintain its Licences. The public interest factors that are relevant to Flair's request for a temporary exemption to the requirement that it be Canadian are:
 - 1) the purpose of the ministerial exemption being sought;
 - 2) economic impacts, including impacts on users of the transportation system, communities, other transportation providers, and Flair itself;
 - 3) competition and market considerations;
 - 4) environmental considerations;
 - 5) obstacles, including pricing, to the movement of traffic; and
 - 6) an absence of safety or security concerns.

Purpose

19. The sole purpose of this application is to allow Flair to continue operating in circumstances where regulatory cooperation has been demonstrated and solutions are being implemented, but practical realities require some additional time.

Economic Impacts

20. With regard to economic impacts, the course of action that will best serve the public interest is clear. A temporary ministerial exemption will allow Flair to continue offering low fares and service to historically underserved communities for all Canadians, while it works to address the remaining concerns raised by the CTA. This is clearly in the public interest. An exemption will also prevent disruptive impacts to the traveling public and other stakeholders before Flair has an opportunity to implement tangible solutions that have already been proposed – solutions which will fully address the CTA’s concerns within the duration of the exemption being sought.
21. By contrast, denying an exemption in the present circumstances would effectively amount to the closure of an airline that provides services to hundreds of thousands of Canadians and dozens of communities across Canada. Flair’s target market is price-sensitive leisure travelers. While business travel will continue on the legacy carriers, it will be those Canadians who wish to connect with friends and relatives around the country, or simply want to see their own country on a budget, who will be most directly impacted if Flair's Licences were to be compromised. Also impacted will be the local economies of dozens of smaller municipalities across Canada, which will see commercial air links significantly reduced or, in some cases, entirely eliminated.

Competition, Market Considerations, and Obstacles to Travel

22. If Flair were to be removed from the Canadian market, there would no longer be a competitive pressure on the legacy carriers to invest in their ULCC affiliates, which has so far resulted in lower fares and increased the overall capacity and geographic reach of the Canadian airline industry, to the benefit of all Canadians. The legacy carriers will, in all likelihood, simply revert back to their high-margin mainlines business.
23. Furthermore, pricing leisure travelers out of the market and reducing services to smaller communities across Canada—both of which would inevitably occur if Flair was prevented from flying—would reintroduce major obstacles to movement of traffic that have plagued

Canada for decades and have put its domestic aviation market behind much of the developed and developing world. This clearly runs against public interest.

24. It is also important to note that punishing Flair simply because it had to take on debt to deal with the fallout of the COVID-19 pandemic will have a major chilling effect on foreign investment in Canadian airlines. As discussed above, Flair's own experience confirms that foreign ownership restrictions and economic factors already make it difficult to attract investment in the Canadian airline industry. Adverse action against Flair, after it survived a global pandemic and went on to add new travel options to everyday Canadian citizens, especially in underserved communities, sends a powerful negative signal to Canadians, the aviation industry and foreign investors, thereby depriving all Canadian airlines of the ability to grow by limiting access to much-needed capital. This would defeat the entire purpose behind the 2018 amendments to the Act.

Environmental, Safety and Security Impacts

25. Flair is Canada's greenest airline, as measured by CO₂ emissions per passenger kilometer flown. This is due to the modern, highly efficient fleet of Boeing 737-8 MAX aircraft that Flair has invested in, the high seat density, and the high load factor nature of the ULCC business model. If Flair were to cease its operations, the passengers that would have been carried by Flair will, at the margin, be carried by airlines with less efficient and less dense fleets. Thus, the consequence of any suspension of Flair's operations would be an increase in greenhouse gas emissions per passenger kilometer flown.
26. Flair has an excellent safety record, and the continuation of Flair's Licenses poses no additional security or safety concerns.

V. Innovation in Transportation

27. Flair has brought major innovations to the Canadian airline industry through its ULCC business model. These innovations are most prominent in three areas of: **(i)** pricing, **(ii)** customer choice, and **(iii)** network planning.

28. With respect to pricing, the ULCC business model revolutionizes airfares by viewing short-haul leisure air travel as a commodity product. The ULCC model further adopts an innovative vision that this commodity product is best served through an extremely simple and efficient low-cost offering. To provide this low-cost offering, Flair relies on three key innovations that drive down cost per passenger mile flown:
- (a) utilizing brand-new aircraft that feature latest technologies to minimize operating cost and maximize seat density;
 - (b) efficient schedule planning to minimize turnaround times and maximize aircraft utilization; and
 - (c) efficient staff scheduling that dispenses with crew deadheading and overnighting.
29. The low costs associated with the ULCC business model allow extremely low fares to be offered to the flying public, which, in turn, stimulates air travel markets, driving an increased propensity to travel and allowing the ULCC carrier to grow. This growth, in turn, drives economies of scale, which further reduce unit costs driving fares even lower. This model has never been successfully deployed in Canada before.
30. With respect to customer choice, the ULCC model is built around the concept of "unbundling" — i.e., allowing customers to pick and choose the ancillary services they wish to purchase to accompany the transportation service. These services include traditional items such as bags, seat selection, priority boarding, but also include innovative product such as flexibility management, fare holds, various insurance products and third-party connections such as hotels and rental cars. With more than 40 percent of total revenue coming from ancillary products, the practical consequence of this innovation is that it allows Flair to offer much lower basic fares, while allowing customers to fully customize their travel experience to match their individual needs. Flair's innovative business model demands lean operations and offers Canadian travelers what they have been lacking for a long time: an unrestricted choice how to spend their money.
31. With respect to route planning, the ULCC business model is dependent on rapid expansion and constant testing of new routes for profitability. To this end, Flair employs an innovative

approach to network planning that combines advanced economic analysis with real-world testing. Flair is constantly testing new and unproven markets to confirm their economic viability, usually opening a new market with 2-3 weekly frequencies and adding further capacity if the route proves viable.

32. The constant testing of markets by Flair has two major benefits that go beyond Flair's own operations:
 - (a) it is, in effect, an unprecedented nationwide research project aimed at identifying profitable air routes across Canada, many of which might have never been considered before; the findings from this research will benefit not only Flair itself, but the entire Canadian airline industry;
 - (b) Flair's constant testing of new markets will provide air connectivity, even if temporary, to many communities across Canada that have been historically underserved.
33. With respect to the last point above, the service offered by Flair to historically underserved communities is innovative in and of itself. In particular, legacy carriers have traditionally served these communities using small turboprop aircraft flying limited routes designed to feed their mainline networks. By contrast, Flair has been serving these communities with large, 200-seat Boeing 737 MAX aircraft, providing genuine point-to-point service for the first time. By providing innovative high-capacity point-to-point services, Flair is helping to open up smaller communities across Canada to domestic tourism on a scale that was previously unseen.
34. The innovations brought by Flair to the Canadian market are not simply theoretical; they can already be witnessed in real life. Roundtrip fares from Vancouver to Toronto of less than \$200 are now commonly available, both from Flair and from other Canadian carriers as they are forced to compete. Pricing innovations such as Flair's "Free Fare February" were never seen in Canada before Flair's entry, but are a common place tactic among ULCCs globally. Finally, thanks to its constant testing of new routes, Flair already offers high-density, point-to-point services to a number of smaller communities across Canada,

including Abbotsford, Kitchener-Waterloo, Charlottetown, Deer Lake, Saint John, and Thunder Bay. A number of these destinations have been copied by other carriers, sometimes to the extent of using the same city pair, the same day of week, and the same time of day.

35. Thus, Flair has not only brought major innovations to the Canadian airline industry. Its very presence is spurring a wave of innovation by other players, to the benefit of all Canadians. If Flair were to be removed from the Canadian market, all of this innovation would come to a halt.

VI. Conclusion

36. Flair has succeeded in the midst of a global pandemic and significantly contributed to the Canadian airline industry in the process by bringing the innovative ULCC business model to Canada, providing Canadian consumers with new low-cost travel options and expanding routes to underserved communities where demand nevertheless existed. That success was made possible by foreign investment. As the pandemic subsides and Canadians gradually return to air travel, plans are in place and steps are being taken to seek additional sources of Canadian financing.
37. An exemption in those circumstances, especially where denying such exemption would deprive Canadians of the options provided by Flair, as well as the social and economic benefits that Flair provides to numerous communities, is clearly warranted and in the public interest. It would also ensure that the Canadian airline industry continues to benefit from the many innovations brought by Flair's ULCC business model, including unprecedented real-life research into profitability of different air routes across Canada.