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August 31, 2015

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

Re: Dr. Gábor Lukács v. SkyGreece Airlines
Emergency application for an Order to reprotect and protect stranded passengers
Case No.: 15-03912
Reply to the letter of Mr. Starnino, dated August 31, 2015

Please accept the following submissions as a reply to the letter of Mr. Starnino, dated August 31, 2015, concerning the request to expedite the process.

I. Preliminary matter: Mr. Starnino does not represent SkyGreece Airlines

Mr. Starnino can act for SkyGreece Airlines only after he has been duly retained; however, neither he nor his firm have been retained by SkyGreece Airlines at the time of making his submissions to the Agency:

Our firm is in the process of being retained as Canadian counsel for SkyGreece Airlines S.A.

[Emphasis added.]

Thus, Mr. Starnino does not represent SkyGreece Airlines at this time, and his letter of August 31, 2015 is not a submission on behalf of the airline, but rather a mere "Position Statement" pursuant to Rule 23.

Mr. Starnino, who is a trained lawyer, is surely aware that as a general rule, it is improper for counsel to engage in *ex parte* communications with a decision-maker or a tribunal. Indeed, Rule 8 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, SOR/2014-104 (“*Dispute Rules*”) provides that:

8. Copy to parties

A person that files a document must, on the same day, send a copy of the document to each party or, if a party is represented, to the party’s representative, except if the document is

- (1) a confidential version of a document in respect of which a request for confidentiality is filed under section 31;
- (2) an application; or
- (3) a position statement.

[Emphasis added.]

The failure of Mr. Starnino to provide the Applicant with a copy of his submissions on the same day, within the meaning of Rule 11 of the *Dispute Rules*, provides further support to the finding that his letter is a mere “Position Statement” pursuant to Rule 23, and not submissions on behalf of SkyGreece Airlines.

Therefore, SkyGreece Airlines failed to make any submissions in response to the request for an expedited process, and hence the request should be granted pursuant to Decision No. LET-C-A-53-2015 on the basis of lack of response by the airline.

II. Reply to the substance of Mr. Starnino’s letter

The issue to be decided on this request is whether the process should be expedited.

1. There is nothing in Mr. Starnino’s letter to establish that SkyGreece Airlines would suffer any prejudice by granting the request for expedited process.
2. Throughout his letter, Mr. Starnino euphemistically refers to SkyGreece Airlines’ shareholders and/or creditors as “stakeholders.”

While the interests of SkyGreece Airlines’ shareholders and/or creditors could possibly be relevant in insolvency and bankruptcy proceedings (which appear to be Mr. Starnino’s main expertise), these are extraneous considerations in an application before the Agency seeking corrective measures pursuant to s. 113.1(a) of the *ATR*, whose sole purpose is to protect the travelling public’s interests against a carrier that ignores its obligations under the tariff.

3. SkyGreece Airlines' obligation to comply with its International Tariff Rule 85 is statutory (s. 110(4) of the *ATR*), and does not depend on "consulting with stakeholders" as suggested by Mr. Starnino; nor does it depend on Greece's broader economic crisis. These are irrelevant considerations in the narrow context of directing SkyGreece Airlines, pursuant to s. 113.1 of the *ATR*, to take corrective measures.
4. The present Application is very simple: SkyGreece Airlines has blatantly violated the rights of stranded passengers, who continue to suffer as a result of SkyGreece Airlines' unlawful conduct. The Application seeks to put an end to this unacceptable state of affairs, and to guarantee that there are funds left to satisfy anticipated claims of passengers who incurred significant expenses as a result of SkyGreece Airlines' unlawful conduct.

The written questions and request for production served on SkyGreece Airlines are also extremely simple, mostly seeking admissions and information about SkyGreece Airlines' murky corporate structure (Q1-Q13), about the number of stranded passengers (Q14-Q18), and basic information about SkyGreece Airlines' assets. All of these can easily be provided within 24 hours, and SkyGreece Airlines did not explain why it would face any difficulty in answering such simple questions.

5. No "standing" is required for asking the Agency to order a carrier to take corrective measures pursuant to s. 113.1 of the *ATR*, which the Agency can anyway do and has done on its own motion on a number of occasions (see, for example, Decision No. 232-A-2003; affirmed in *Northwest Airlines Inc. v. Canadian Transportation Agency*, 2004 FCA 238; see also *Krygier v. several carriers*, Decision No. LET-C-A-104-2014).
6. Mr. Starnino's position that "there is no compelling argument in favour of an expedited process" is vexatious and/or scandalous and/or flies in the face of the obvious and undisputed facts, of which the Agency can take judicial notice:
 - (a) more than a thousand passengers have been stranded so far as a result of SkyGreece Airlines' cessation of operations;
 - (b) the number of stranded passengers will continue to grow daily until the Agency orders SkyGreece Airlines to provide alternative transportation to passengers booked on cancelled flights, as required by SkyGreece Airlines' International Tariff Rule 85; and
 - (c) ensuring that stranded passengers can return to their homes is of paramount urgency.
7. The purpose of the present request is to ensure that the Agency is able to issue a decision before SkyGreece Airlines takes steps that render the Application moot in part or in its entirety. Whether any of the sought remedies should be granted is a question about the merits of the application, and not about its urgency.

SkyGreece Airlines' murky corporate structure and lack of transparency lend support to the concern that SkyGreece Airlines may dispose of its assets, and thus preempt the ability of passengers to enforce their rights under the *Montreal Convention*, s. 113.1(b) of the *ATR*, and the contract of carriage.

Contrary to Mr. Starnino's view, SkyGreece Airlines' conduct toward its stranded passengers demonstrates that SkyGreece Airlines is not committed to fulfilling its obligations and the airline is blatantly disregarding the law. Thus, there is no reason to believe that SkyGreece Airlines would act differently in the future without the Agency's urgent intervention.

Therefore, while the travelling public will obviously suffer significant and/or irreparable harm if the process is not expedited, there is nothing before the Agency to suggest that SkyGreece Airlines would suffer any prejudice, financial or otherwise, if the request for expedited process is granted.

Hence, it is submitted that the Agency should grant the request for expedited process.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Richard Look, s. 84 agent for SkyGreece Airlines
Mr. Massimo (Max) Starnino