



September 4, 2015

Case No. 15-03972

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Dr. Gábor Lukács

SkyGreece Airlines S.A.

c/o Paliare Roland Rosenberg Rothstein LLP

Dear Sirs/Madam:

**Re: SkyGreece Airlines, S.A. (SkyGreece) – Cessation of Operations**

**BACKGROUND**

In its Decision No. LET-A-55-2015 (Show Cause), rendered on Wednesday, September 2, 2015, the Canadian Transportation Agency (Agency) arrived at a preliminary finding that SkyGreece Airlines, S.A. (SkyGreece) has contravened subsection 110(4) of the *Air Transportation Regulations*, SOR/88-58, as amended (ATR) in failing to properly apply the terms and conditions set out in its international tariff. The Show Cause gave SkyGreece until 5:00 p.m. Gatineau local time on Thursday, September 3, 2015 to show cause why the Agency should not order SkyGreece to:

- take immediate corrective measures to properly apply its international tariff for all passengers affected by schedule irregularities, including
  - Informing passengers of their options and providing them with a copy of the tariff;
  - Implementing forthwith the option chosen by passengers;
  - Establishing a 1-800 help line where passengers can be directed to a person who can accept and address their claim; and
  - Updating its Web site to fully explain the measures put in place to address the situation.
- report to the Agency, within 5 business days, on the evolution of the situation and the measures taken by SkyGreece to comply with its international tariff applicable to this situation and with the Agency's order.

The Agency reminded SkyGreece that a failure to respond to the Show Cause will result in the Agency finalizing its preliminary finding that SkyGreece did not properly apply the terms and conditions set out in its international tariff, as required by subsection 110(4) of the ATR, and issuing the order described above.

## **PRELIMINARY MATTER**

On September 3, 2015, SkyGreece Airlines filed a submission with the Agency. In its submission, SkyGreece states that it has filed a Notice of Intention to Make a Proposal (notice) pursuant to the *Bankruptcy and Insolvency Act* (BIA). Further, SkyGreece argues that, pending resolution of the restructuring proceedings, Agency proceedings are stayed pursuant to subsection 69(1) of the BIA. A copy of the notice was attached to the submission.

Subsection 69.6 of the BIA provides:

69.6 (1) In this section, “regulatory body” means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

(2) Subject to subsection (3), no stay provided by section 69 or 69.1 affects a regulatory body’s investigation in respect of an insolvent person or an action, suit or proceeding that is taken in respect of the insolvent person by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

The current proceeding is not a proceeding by a creditor; it is an “own motion” investigation on statutory compliance by a regulator. Pursuant to subsection 69.6(1) of the BIA, SkyGreece cannot invoke bankruptcy to avoid complying with a statutory obligation, unless otherwise specified in the BIA. In light of the above, the Agency finds that the filing of the notice does not have the effect of automatically staying this proceeding pursuant to subsection 69(1) of the BIA.

Therefore, the Agency will proceed to determine Dr. Lukács’s requests as formulated below.

## **REQUESTS**

On Thursday, September 3, 2015, Dr. Lukács requested that the Agency provide him forthwith with:

- (a) the Show Cause, dated Wednesday, September 2, 2015;
- (b) SkyGreece’s response to the ShowCause;
- (c) a fair opportunity to reply to SkyGreece’s response to the Show Cause;
- and
- (d) any decision and/or order made in relation to SkyGreece.

Dr. Lukács states that this request is based on his right to a fair process before the Agency and/or the open court principle.

Further, on September 4, 2015, Dr. Lukács filed a submission with the Agency with respect to SkyGreece’s September 3, 2015, submission regarding the BIA.

## ISSUES

1. Should Dr. Lukács be provided with
  - an opportunity to reply to SkyGreece's response to the Show Cause; and/or
  - certain documents he identifies?
2. Should Dr. Lukács' September 4, 2015, submission form part of the Agency record?

## ANALYSIS AND FINDINGS

The Agency is mandated by Parliament to administer, interpret and enforce the *Canada Transportation Act*, S.C., 1996, c. 10, as amended (CTA) and associated regulations, including the ATR. The Agency's legislative authority and regulatory role regarding air carriers' tariffs is an important aspect of this mandate.

In the execution of its mandate, the Agency has the authority to act independently of passenger complaints. To avoid a multitude of proceedings, and given the seriousness and urgency of the situation, the Agency, on its own motion, decided in the Show Cause to examine whether SkyGreece has failed to apply the terms and conditions of carriage set out in its applicable tariff, pursuant to section 113.1 of the ATR.

The Agency's exercise of its own motion powers does not constitute a dispute proceeding as defined in section 1 of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)* (Dispute Adjudication Rules). As such, the Dispute Adjudication Rules do not apply. Furthermore, because he is not a party to this own motion investigation, the principle of procedural fairness does not apply to Dr. Lukács in the conduct of this investigation. This investigation involves only SkyGreece, who must show cause why the Agency should not find that SkyGreece did not properly apply the terms and conditions set out in its international tariff, as required by subsection 110(4) of the ATR, and the Agency, which is responsible for determining if there was a breach of subsection 110(4) of the ATR and if so, what corrective measures should be ordered. Finally, the Agency notes that Dr. Lukács, as the applicant in Case No. 15-03912, will be afforded procedural fairness in the dispute proceeding.

In light of the above, Dr. Lukács' request for participation is dismissed. As such, Dr. Lukács is not entitled to respond and his submission dated September 4, 2015 will not be considered by the Agency and will not form part of the record for this proceeding.

The Agency's Show Cause and the Agency's ultimate decision on the Show Cause will be made available to the public. Submissions filed in this case, subject to a confidentiality request being made by SkyGreece and granted by the Agency, will also be released to the public. Dr. Lukács, therefore, may receive copies of these documents, as they become available. The Agency notes that Agency staff has already provided Dr. Lukács with a copy of the Show Cause.

Any questions or other correspondence in regard to this matter should refer to Case No. 15-03972 and be filed through the Agency's Secretariat e-mail address: secretariat@otc-cta.gc.ca.

**BY THE AGENCY:**

(signed)

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Scott Streiner  
Member