

June 19, 2013

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Attention: Ms. Sylvie Giroux, Analyst

Dear Madam Secretary:

**Re: The Nawrots v. Sunwing Airlines**  
**File No.: M 4120-3/13-01696 / Our reference: 0575-Nawrot**  
**Complaint concerning denied boarding and/or failure to provide transportation**  
**and/or delay on or around August 10, 2012**  
**Sunwing Airlines' motion for an extension dated June 19, 2013**

Please accept the following submissions in relation to the above-noted matter as an answer to Sunwing Airlines' motion for an extension dated June 19, 2013.

**BACKGROUND**

On June 14, 2013, the Agency directed the parties as follows:

- Sunwing is given the opportunity to file comments, by no later than June 19, 2013 at 17:00, respecting the relevance of Agency Decision 227-C-A-2013 to the present matter; and
- the Nawrot family is given until June 21, 2013 at 17:00 to file a reply to Sunwing's answer of April 22, 2013, regarding Issue 3, and to the submission that may be filed by Sunwing by June 19, 2013. This submission will represent the Nawrot family's final reply and will conclude pleadings.

On June 19, 2013, shortly before the expiry of the deadline the Agency provided to Sunwing Airlines to file its comments, Sunwing Airlines brought a motion seeking an extension of thirty (30) days to “fully assess” Decision No. 227-C-A-2013 of the Agency, and to propose appropriate amendments to its International Tariff Rule 20.

## **THE NAWROT FAMILY'S SUBMISSIONS**

### **I. A 30-day extension is excessive and unreasonable**

Section 29(1) of the *Canada Transportation Act* envisages the Agency reaching a final decision in proceedings before it within 120 days. The extension sought by Sunwing Airlines is equal to one quarter (25%) of the time Parliament provided for completing all pleadings and for the Agency to reach a final decision.

There may be exceptional circumstances that warrant such a long extension; however, in the present case, Sunwing Airlines failed to provide any explanation as to why such a long extension is necessary, and why proposing new amendments to Rule 20 cannot be accomplished within a few days.

Thus, although the Nawrots do not oppose granting Sunwing Airlines *some* extension to allow it to propose new amendments to its International Tariff Rule 20, they submit that the 30-day extension sought by Sunwing Airlines is both excessive and unreasonable.

Sunwing Airlines has been aware of the substance of the complaint since March 21, 2013, that is, for nearly three months. The Agency granted Sunwing Airlines an extension until April 22, 2013 to file its answer with respect to its denied boarding compensation policy, and so it has already been given 30 days to familiarize itself with the legal requirements and the jurisprudence governing reasonableness of tariff provisions. Decision No. 227-C-A-2013 simply confirms these legal principles.

In its June 14, 2013 directions to the parties, the Agency provided Sunwing Airlines with 5 days to comment on Decision No. 227-C-A-2013 of the Agency. In particular, Sunwing Airlines has been aware of the decision in question since June 14, 2013.

The Nawrots submit that a 14-day extension from June 14, 2013, that is, an extension until June 28, 2013, will provide Sunwing Airlines with more than sufficient time to propose adequate amendments to its Rule 20.

### **II. Prejudice caused by bifurcation**

The Nawrots submit that the four issues raised in their complaint are intertwined, and as such, it would be prejudicial to their case if the Agency bifurcated the proceeding and issued a final decision in part of their complaint without ruling on the entire complaint.

Furthermore, issuing two final decisions in the Nawrots' complaint also risks the possibility of two separate leave to appeal and appeal proceedings, which would double the costs incurred by the Nawrots.

Thus, the Nawrots submit that it would be prejudicial to them to bifurcate the present proceeding into two separate proceedings and/or final decisions, as Sunwing Airlines proposes.

### **III. Prejudice caused by delay**

In the present case, the Nawrots incurred substantial out-of-pocket expenses nearly a year ago for which they have not yet been compensated. Thus, delaying the determination of their claim for out-of-pocket expenses is prejudicial to them.

It is also worth noting that maintaining Sunwing Airlines' Existing Rule 20, which Sunwing Airlines has implicitly admitted to be unreasonable, does harm the travelling public at large. The longer it remains unchanged, the more harm is caused.

### **RELIEF SOUGHT**

For the aforementioned reasons, the Nawrots are asking the Agency:

- A. to direct Sunwing Airlines to file its new proposed amendments to Rule 20 by June 28, 2013;
- B. to allow the Nawrots to file their reply to Sunwing Airlines' answer of April 22, 2013 and the new proposed amendments to Rule 20 of Sunwing Airlines (which will be filed by June 28, 2013) by July 5, 2013.

All of which is most respectfully submitted.

Louis Béliveau

Cc: Mr. Ray Nawrot  
Mr. Clay Hunter, counsel for Sunwing Airlines