

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

SUPERIOR COURT
«Commercial Division»

Division No.: 01-Montreal
Court No.: 500-11-058645-207
CCA No.: 0000475

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT (R.S.C. 1985, c. C-36, AS AMENDED),**

**AND IN THE MATTER OF THE PLAN OF ARRANGEMENT AND
COMPROMISE OF:**

FLIGHTHUB GROUP INC.

- and -

FLIGHTHUB SERVICE INC.

- and -

SSFP CORP.

- and -

JUSTFLY INC

- and -

JUSTFLY CORP.

- and -

11644670 CANADA INC.

Company / Debtors/ Applicants

and

MNP LTD

Monitor

SUPPLEMENT TO THE FIRST REPORT OF THE MONITOR

I. INTRODUCTION

1. This report (the "**Supplemental Report**") supplements the First Report of the Monitor (the "**First Report**"), communicated on May 15, 2020 in respect of the *Application for an Amended Initial Order* ("**Application for an Amended Order**").
2. This Supplemental Report is subject to the restrictions, qualifications, terms of reference and disclaimers contained in the First Report.
3. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the First Report or, otherwise, in the Application for an Amended Order.
4. The purpose of this Supplemental Report is: (i) to advise the Court that, on May 16, 2020, the Monitor received a letter from counsel to the Commissioner of Competition (per Paul Klippenstein, Esq., Competition Bureau Legal Services), which has requested that the Court be so advised and that a copy of said letter be remitted to the Court; and (ii) to report to the Court the actions taken and preliminary assessments made by the Monitor in respect of said letter and the issues raised therein, and to provide additional context in respect thereof, to the extent available. Copy of this letter is attached as **Appendix A**.

III. ACTIONS TAKEN BY THE MONITOR

5. In its pre-filing report, the Monitor informed the Court that the Debtors are currently involved in two regulatory investigations and one lawsuit regarding certain alleged business practices of the Company (the "**Regulatory Procedures**"), all of which are contested by the Debtors. The Regulatory Procedures have been initiated by the US Department of Transportation in November 2018, the City Attorney of San Francisco in September 2019 ("**CSF**"), and by the Canadian Competition Bureau ("**CCB**"), in January 2019, respectively.

6. Since its involvement with the Company and having been informed of the pendency of these Regulatory Procedures, the Monitor has engaged with the Company's principals, representatives, and lawyers, and has reviewed the principal documentation provided in relation thereto. The Monitor has had extensive discussions with the Company and its restructuring lawyers to inquire about various aspects of these Regulatory Procedures, including their status; the circumstances surrounding their initiation; how the Company has generally responded to and addressed them; the Company's position in respect of the allegations upon which the Regulatory Procedures are generally predicated; and how the Company foresees these affecting the restructuring efforts and the viability of their business.
7. During its review, the Monitor was able to make a preliminary independent assessment of some of the foregoing elements, as well as of the potential foreseeable impact that these may have, *inter alia*, on the Company's operations and financial situation, the restructuring prospects of the Company, the nature of the relief being sought by the Company under the CCAA, and on the opportunity (for the Monitor) of supporting the relief being sought.
8. The concerns raised by the Regulatory Procedures center around alleged misrepresentations made to customers who purchase flights on the websites of the Company. However, based on the information and documents provided and its preliminary assessment thereof, the Monitor is satisfied that the Company has been actively engaged and substantially cooperating with the CCB and CSF in order to address the issues and impugned practices. The Monitor understands that despite prior and ongoing objections by the Company in respect of the validity of the allegations made, it nevertheless adopted a cooperative approach to eliminate any equivocations regarding the legality of its practices.
9. The Monitor has not obtained independent legal counsel regarding the foregoing is still in the process of analyzing the positions taken by the CCB and CSF, as well as that of the Company. Accordingly, the Monitor is not currently positioning itself in respect of the legal basis for, or merits and risks pertaining to, these ongoing contested Regulatory Procedures.
10. The Company has provided the Monitor with copies of correspondence exchanged between the Company and the CCB, as well as between its respective lawyers. The Monitor has also received a copy of a presentation made to the CCB in respect of certain adjustments made to its website

and of various processes and procedures it has implemented to address alleged complaints. The Monitor notes that the Company has deployed substantial efforts to address the issues raised by the CCB, to ensure a free and transparent flow of information, and otherwise, to provide explanations where objections of fact or of law were raised by the Company.

11. The Company has expressed to the Monitor that it believes that it is in full compliance with the Canadian Competition Act and the requirements of the CCB. The Monitor is of the view that a successful restructuring under the CCAA will require the parties to engage in discussions to resolve any outstanding matters expeditiously and on a cost-efficient basis. The Monitor will participate in and facilitate any such discussions going forward.
12. The Monitor understands that, beyond the compliance of practices and website content per se, a substantial component of the Regulatory Procedures, as they pertain to the CCB, involves an investigation per se, which in turn may compel the Company to conduct a review of a substantial volume of documentation and information in accordance with a document review protocol established pertaining to documents in CCB's possession. The Company has expressed concerns to the Monitor about the relevance or opportunity of this review in light of the measures taken to ensure compliance, as well as concern about the prohibitive costs and monopolization of resources that would be associated with such a review, the opportunity, proportionality and relevance of which will have to be assessed by the Monitor following its examination of the matter with interested parties, especially as these relate to or impact restructuring efforts or are otherwise affected by the terms of the Initial Order or the provisions of the CCAA.
13. The Monitor has no reason to believe that the Applicants have not been acting in good faith or with the requisite diligence within the meaning of the CCAA and for the purposes of the relief they seek thereunder. To the contrary, the Monitor is satisfied that the Company is conferring the Regulatory Procedures the requisite care and attention.
14. The Monitor has deemed it appropriate to prepare the present Supplement Report in light of the CCB's demand that its letter of May 16, 2020 be filed with the Court, and, therefore, of the attendant need to provide the Court and other interested parties with the requisite context and background, as and to the extent that the Monitor is privy to same.

15. The Monitor will continue to follow the evolution of the Regulatory Procedures, to liaise with all interested parties and report to the Court, as and when appropriate.

IV. RECOMMENDATIONS AND CONCLUSIONS

16. The CCB letter of May 16, 2020 does not alter the Monitor's recommendations in respect of the Application for an Amended Order. The CCB has not directed or requested an adjournment of the Application for an Amended Order, nor has any person indicated any intention to oppose the relief sought therein.
17. The Monitor considers that the Company needs the protection sought in the Application for an Amended Order in order to provide a structured environment for the restructuring of its business, in a manner that preserves the Company's value for the benefit of all stakeholders and allows the Company an opportunity to seek restructuring alternatives so as to improve its financial posture and viability.
18. The Monitor is of the view that the Company has acted and is continuing to act in good faith and with due diligence and supports the requested stay extension and other relief sought.

All of which is respectfully submitted to this Honourable Court at Montreal, this 18th day of May 2020.

MNP LTD, in its capacity as Monitor
and not in its personal or corporate capacity



Pierre Marchand, M.Sc, CMA, CPA, CIRP, LIT
Senior Vice-President

APPENDIX A



Ministère de la Justice
Canada

Department of Justice
Canada

Bureau de la concurrence
Services juridiques

Competition Bureau Legal
Services

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BY EMAIL

May 16, 2020

MNP Limited
1155, René-Lévesque Boulevard West, 23rd Floor,
Montreal, Quebec
H3B 2K2
Attention: Pierre Marchand, Senior Vice-President (pierre.marchand@mnp.ca)

Re: In the Matter of the Plan of Arrangement and Compromise of FlightHub Group Inc. et al, Quebec Superior Court file 500-11-058645-207

We represent the Commissioner of Competition (the “Commissioner”), an officer appointed by the Governor in Council who is responsible for the administration and enforcement of the federal *Competition Act*.

We understand that FlightHub Group Inc. (“FlightHub”) has applied for the issuance of an Amended and Restated Initial Order pursuant to the *Companies’ Creditors Administration Act*, which application is scheduled to be heard on May 19, 2020.

Would you kindly bring the following to the attention of the Honourable Justice Michel A. Pinsonnault in advance of the application hearing.

As noted in the Application for the Issuance of an Initial Order, FlightHub is under investigation by the Commissioner. The Commissioner’s investigation is under

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the deceptive marketing practices provisions of the *Competition Act*, and specifically those provisions relating to false or misleading representations.

As part of the Commissioner's investigation, the Commissioner has seized a large volume of records from FlightHub's premises. The processing and determination of solicitor-client privilege claims over the records is ongoing. In the interim, the Commissioner and FlightHub have agreed to the registration on October 28, 2019 of a Temporary Consent Agreement with the Competition Tribunal ("Tribunal"), which has the same force and effect as a judgment of the Tribunal. According to the terms of the Temporary Consent Agreement, FlightHub shall not make representations on its websites that convey a materially false or misleading general impression with respect to seat selection for flights, cancellation or rebooking rights for flights, and the cost of flights. The Commissioner continues to have serious concerns about representations appearing on FlightHub's websites, and has communicated those concerns to FlightHub.

The Temporary Consent Agreement also has measures to protect financial remedies potentially available to the Commissioner once the matter is finally determined by the Tribunal. The remedies available to the Commissioner from the Tribunal on application under section 74.1 of the *Competition Act* include an order that FlightHub distribute to consumers of its products "an amount, not exceeding the total of the amounts paid" to it for the products in respect of which the reviewable conduct was engaged in. (A copy of section 74.1 of the Act is attached to this letter for reference purposes.)

To this end, pursuant to paragraph 6 of the Temporary Consent Agreement, FlightHub is not to dispose of¹ or otherwise deal with any articles² in a manner

¹ Subsection 74.111(9) of the *Competition Act* says that "dispose", "in relation to an article, including removing it from the jurisdiction of the court, depleting its value, leasing it to another person or creating any security interest in it."

² Pursuant to subsection 2(1) of the *Competition Act*, "article means real and personal property of every description, including...".

that would substantially impair the enforceability of an order made under paragraph 74.1(1)(d) of the Act.

On behalf of the Commissioner, we request that you take the above into account in issuing any subsequent order in the above-noted proceedings.

If you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours truly,

Paul Klippenstein
Counsel
Competition Bureau Legal Services

Encl. (3)

C.

Josephine Palumbo, Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate (Josephine.Palumbo@canada.ca)

Joseph Reynaud, Stikeman Elliott LLP (jreynaud@stikeman.com)

Rémi Leprévost, Stikeman Elliott LLP (rleprevost@stikeman.com)