

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of an Temporary Consent Agreement pursuant to section 74.12 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) of the *Competition Act*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**FLIGHTHUB GROUP INC. / GROUPE FLIGHTHUB INC.,
formerly 7513283 CANADA INC.**

Respondent

TEMPORARY CONSENT AGREEMENT

WHEREAS the Commissioner is responsible for the administration and enforcement of the *Competition Act* (the "Act");

AND WHEREAS the Respondent FlightHub Group Inc. / Groupe FlightHub Inc. ("FlightHub Group") is a Canadian corporation that was formed through the amalgamation of two prior federal corporations, namely 7513283 Canada Inc. (doing business as Momentum Travel Group, Momentum and Momentum Ventures) and 11365649 Canada Inc.;

AND WHEREAS the Respondent and its predecessor companies and its subsidiaries (collectively "the Respondent") has operated and continues to operate an online travel agency business selling Flights and Flight-Related Services through the Websites;

AND WHEREAS the Respondent markets to price-sensitive consumers looking for inexpensive Flights;

AND WHEREAS the Respondent's Websites are focused on, *inter alia*, selling Flights and Flight-Related Services, such as seat selection and extended cancellation rights;

AND WHEREAS the Respondent has made and is making representations to the public to promote the supply of Flights and Flight-Related Services and to promote its business interests more generally;

AND WHEREAS the Commissioner's representatives have reviewed thousands of consumer complaints about the marketing practices of the Respondent;

AND WHEREAS it appears to the Commissioner that the Respondent has made and is making materially false or misleading representations to the public on the Websites, that result in consumers being charged hidden fees for Flight-Related Services, and the Respondent has generated millions of dollars in revenue from these fees;

AND WHEREAS in particular, it appears to the Commissioner that the Respondent has made and is making false or misleading representations to the public that result in consumers being charged hidden fees for seat selection on Flights;

AND WHEREAS in particular, it appears to the Commissioner that the Respondent made and is making false or misleading representations to the public that result in consumers being charged hidden fees for cancellation and rebooking rights for Flights;

AND WHEREAS it appears to the Commissioner that the Respondent has made and is making false or misleading representations to the public that convey the general impression that the cancellation and/or rebooking rights offered by the Respondent provide consumers with extended cancellation rights that give them the flexibility to cancel and rebook their Flights at their convenience;

AND WHEREAS it appears to the Commissioner that the Respondent has made and is making false or misleading representations to the public that convey the general impression that consumers who make a seat selection in advance will have their particular seat or seat type secured for them for their Flight with the airline, when in fact the Respondent does not secure consumers' seat preferences with airlines notwithstanding charging consumers a fee for seat selection;

AND WHEREAS it appears to the Commissioner that the Respondent has made and is making representations to the public that convey the false or misleading general impression that consumers can purchase Flights at a particular price, when the Respondent at times increases the cost of Flights after consumers have selected their Flights;

AND WHEREAS it appears to the Commissioner that statements on the Websites, including disclaimers and fine print in the terms and conditions directly contradict the representations, and do not alter or cure the general impression conveyed by the false or misleading representations, especially having regard to the layout of the Websites;

AND WHEREAS it appears to the Commissioner that, through the above referenced conduct, the Respondent has engaged and is engaging in conduct reviewable pursuant to paragraph 74.01 (1)(a) of the Act;

AND WHEREAS the Respondent is cooperating with the Commissioner's investigation and has advised the Commissioner that it has voluntarily applied and continues to apply changes to its Websites and platforms with a view to addressing the Commissioner's concerns;

AND WHEREAS the Commissioner's inquiry into the Respondent's conduct is ongoing;

AND WHEREAS it appears to the Commissioner that the Respondent's reviewable conduct is causing serious harm, and that such harm is likely to ensue unless a temporary order under subsection 74.11(1) of the Act is issued or this Agreement is registered, and that the harm occasioned to consumers and competition outweighs any harm to the Respondent and therefore that the balance of convenience favours the seeking and issuance of a temporary order under subsection 74.11(1) of the Act or the registration of this Agreement to ensure that the conduct ceases while he completes his inquiry;

AND WHEREAS the Parties are satisfied that this matter can be resolved collaboratively on a temporary basis with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, and subject to paragraph 10 of this Agreement, the Respondent acknowledges the Commissioner's conclusions and agrees that they provide a basis for this Temporary Consent Agreement being put in place until this matter is finally resolved by way of agreement or order of the Competition Tribunal, but nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, wrongdoing, submissions, legal argument or conclusions nor shall it derogate from any rights or defences of the Respondent including any defences available under the Act;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that the registration of this Agreement does not preclude the Commissioner from filing an application for any other

order under Part VII.1 of the Act at any time, including but not limited to, an application pursuant to section 74.1 of the Act;

NOW THEREFORE, in order to resolve the Commissioner's concerns on a temporary basis until this matter is finally determined, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - a. **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34;
 - b. **"Additional Fees"** means any optional charges, surcharges, fees, or other amounts that are charged by the Respondent in addition to the Advertised Price that consumers pay to purchase Flights and Flight-Related Services. Additional Fees include, but are not limited to, fees identified by the Respondent as "Seatmap Assignment Fee", "Seating Assignment Fee", "Modification Fee" and "Cancellation Fee";
 - c. **"Affiliate"** means an affiliated entity within the meaning of subsection 2(2) of the Act;
 - d. **"Agreement"** means this Temporary Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
 - e. **"Commissioner"** means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
 - f. **"Execution Date"** means the date on which the Agreement has been signed by both Parties;
 - g. **"Flight"** means a product that gives consumers the right to travel by aircraft;
 - h. **"FlightHub Group"** means FlightHub Group Inc. / Groupe FlightHub Inc. incorporated pursuant to the *Canada Business Incorporations Act*, its directors, officers, employees, agents, representatives, successors and assigns, and all predecessors, joint ventures, subsidiaries, divisions and Affiliates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
 - i. **"Flight-Related Service"** refers to any product or service that is offered as part of a Flight purchase, not including the Flight itself, including, but not limited to, seat selection, cancellation rights and insurance;
 - j. **"Interpretation Act"**, means the *Interpretation Act*, R.S.C. 1985, c. I-21;

- k. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means any one of them;
- l. **“Respondent”** means FlightHub Group;
- m. **“Tribunal”** means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.), as amended; and
- n. **“Websites”** means websites accessible through the domain names flighthub.com and justfly.com and any other website owned, controlled or operated by the Respondent and used for the purposes of supplying Flights and Flight-Related Services to the public. For greater certainty, Websites shall include websites accessed via desktop computers and via mobile devices such as phones and tablets, and mobile applications.

II. **COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT**

- 2. Within 20 days of the Execution Date, the Respondent shall comply with Part VII.1 of the Act.
- 3. Within 20 days of the Execution Date, the Respondent shall not make any representation to the public that conveys a materially false or misleading general impression with respect to seat selection for Flights. Without limiting the generality of the foregoing, the Respondent shall not make any false or misleading representation to the public that conveys the literal meaning or general impression:
 - a. that consumers can select a specific seat, seating preference, or avoid making a seat selection, without paying any Additional Fee; or
 - b. that consumers who select a specific seat or seat preference will have their seat or seat preference secured with the airline by the Respondent.
- 4. Within 20 days of the Execution Date, the Respondent shall not make any representation to the public that conveys a materially false or misleading general impression with respect to consumers' cancellation or rebooking rights for Flights. Without limiting the generality of the foregoing, the Respondent shall not make any false or misleading representation to the public that conveys the literal meaning or general impression:
 - a. that consumers can obtain cancellation and/or rebooking rights without paying any Additional Fees to obtain these rights; or

- b. that the cancellation and/or rebooking rights offered by the Respondent provide consumers with extended cancellation rights that give them the flexibility to cancel and rebook their Flights at their convenience.
5. Within 20 days of the Execution Date, the Respondent shall not make any representation to the public that conveys a materially false or misleading general impression with respect to the cost of Flights. Without limiting the generality of the foregoing, the Respondent shall not make any false or misleading representation to the public that conveys the literal meaning or general impression that a consumer can purchase a Flight at the price represented, taxes and fees included, where the consumer is subsequently charged a higher price.

III. DISPOSAL OF ARTICLES

6. The Respondent shall not dispose of or otherwise deal with articles within the meaning of subsections 74.111(9) and 2(1) of the Act that are within the jurisdiction in a manner that would substantially impair the enforceability of an order made under paragraph 74.1(1)(d) of the Act.

IV. GENERAL

7. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

(a) Commissioner of Competition

Competition Bureau
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Attention: Senior Deputy Commissioner of Competition, Cartels and
Deceptive Marketing Practices Branch

Facsimile: (819) 956-2836

With a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

(b) The Respondent:

FlightHub Group Inc/Groupe FlightHub Inc
3333 Côte-Vertu Boulevard, Suite 600,
Montréal, QC, H4R 2N1.

With a copy to:

Huy Do/Antonio Di Domenico
Fasken Martineau DuMoulin LLP
333 Bay Street, Suite 2400, Toronto, Ontario M5H 2T6
Facsimile: (416) 364 7813

8. This Agreement shall be binding upon the Respondent until the Commissioner's inquiry is resolved by a final consent agreement or decision of the Tribunal, or such further time period as agreed to by the Parties.
9. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
10. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act where circumstances that led to the making of this Agreement have changed. Subject to this paragraph, the Respondent will not, for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, contest the basis for this Temporary Consent Agreement or that circumstances appear to the Commissioner as stated herein.
11. The Respondent shall not make any public statements that contradict the terms of this Agreement.
12. The Respondent attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding relating to this Agreement for variation or rescission.
13. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
14. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

15. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
16. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.

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The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at Montreal, this 24th day of October 2019.

for: FlightHub Group

"Original signed by Nicholas Hart"

Nicholas Hart
Director

I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec this 25th day of October, 2019.

"Original signed by Matthew Boswell"

Matthew Boswell
Commissioner of Competition