

# SUNNY DAYS AHEAD – THE WESTJET-SUNWING MERGER IS CLEARED FOR TAKEOFF

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On March 10, 2023, the Government of Canada, on the recommendation of Transport Minister Omar Alghabra, announced the [approval](#) of WestJet's merger with Sunwing pursuant to the *Canada Transportation Act*.<sup>[1]</sup> The approval comes just over a year after the parties [announced](#) they had reached a definitive agreement whereby WestJet agreed to acquire Sunwing's airline and vacations businesses.

Minister Alghabra's endorsement and the Government's approval was preceded by a year-long regulatory investigation into whether the merger of two of Canada's four largest airlines and integrated tour operators should be allowed to proceed. In a [report](#) published by the Competition Bureau on October 25, 2022, the Bureau raised concerns that the merger would be likely to substantially lessen or prevent competition on 31 routes between Canada and Mexico or the Caribbean, including the creation of a monopoly on 16 of these routes.

Notwithstanding the Commissioner's report, the Minister recommended an approval of the merger subject to WestJet adhering to specific terms and conditions. These requirements include:

- Extending Sunwing vacation package offerings to five new Canadian cities;
- Maintaining capacity on routes most affected by the merger;
- Increasing regional connectivity;
- Improving baggage handling for better passenger experience;
- Maintaining a vacations business head office in the Toronto area and a regional office in the Montreal area for a minimum of five years;
- Increasing net employment by 20% over 3 years in the Toronto office;
- Ensuring better passenger experience by investing in IT technology solutions to improve Sunwing's communications;
- Supplying airfare data on vacation packages for monitoring of post-acquisition price trends; and
- Gradually ending Sunwing's seasonal leasing practice to protect Canadian jobs.

Unlike most merger reviews in Canada, under the *Canada Transportation Act*, the Commissioner does not have the authority to directly challenge an airline merger. Instead, the Commissioner's assessment feeds into the larger public interest assessment conducted by the Minister of Transport and Transport Canada. Minister Alghabra's recommendation is based on a consideration of public interest benefits.

Prior to today's approval, the most recent airline merger [to be approved](#) under the *Canada Transportation Act* was Air Canada's proposed acquisition of Air Transat in 2021. Due to [objections](#) related to competition from the European Commission's Directorate General, that merger never closed. Unlike that deal, WestJet's merger with Sunwing is not subject to review by non-Canadian regulators. WestJet and Sunwing can now close their transaction.

The present deal also differs from the regulatory landscape of the United States, where JetBlue's \$3.8 billion purchase of Spirit Airlines requires securing the approval of both the antitrust authorities and the US Department of Transportation. On March 7, 2023, the U.S. Department of Justice, the US antitrust authority that was responsible for reviewing that transaction, filed a federal court lawsuit [challenging](#) the proposed merger, alleging the transaction would harm consumers through higher fares, reduced capacity and reduced service. The U.S. Department of Transportation announced it would [deny](#) a request by the airlines to operate as a merged entity before the transaction closes while continuing to investigate the public interest impacts of the merger.

Notably, the WestJet-Sunwing approval comes with a promise of additional changes on the horizon for Canadian air travellers. In addition to announcing the approval of the WestJet-Sunwing merger, Transport Canada's press release signaled that the Government of Canada is working on "significant reforms" to the [Air Passenger Protection Regulations](#). The stated goal of these proposed changes, which have not yet been announced, will be to position Canada as a global leader in air passenger protections.

Please reach to McMillan's [Competition group](#) for questions regarding merger reviews in Canada, and please reach out to McMillan's [Aviation group](#) for your aviation-specific advisory needs.

[1] McMillan LLP acted as regulatory counsel to Sunwing for this transaction.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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