

**BRITISH COLUMBIA SECURITIES COMMISSION**

*Securities Act*, RSBC 1996, c. 418

Citation: Re Morabito, 2023 BCSECCOM 424

Date: 20230830

**Global Crossing Airlines Group Inc. (formerly known as Canada Jetlines Ltd.)  
and Mark Morabito**

<b>Panel</b>	Judith Downes	Commissioner
	James Kershaw	Commissioner
	Marion Shaw	Commissioner

**Submissions completed** August 23, 2023

**Ruling dated** August 30, 2023

**Counsel**

James Torrance Deborah Flood	For the Executive Director
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Sean K. Boyle Jenna Green	For Global Crossing Airlines Group Inc.
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Robert J.C. Deane Paige Burnham	For Mark Morabito
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**Ruling and Reasons for Ruling**

**I. Introduction**

- [1] On October 7, 2021, the executive director issued a Notice of Hearing, 2021 BCSECCOM 397, containing allegations under the *Securities Act*, RSBC 1996, c. 418 against Mark Morabito (Morabito) and Global Crossing Airlines Inc., formerly known as Canada Jetlines Ltd. and now known as Global Crossing Airlines Group Inc. (Global).
- [2] In a Hearing Notice dated April 6, 2023 (2023 BCSECCOM 164), the Commission set the dates for the liability hearing relating to these allegations for June 23 and 27 and September 6 and 8, 2023.
- [3] On February 15, 2023 and March 2, 2023 respectively, the respondents applied to the Commission for an order that the proceedings arising from the Notice of Hearing be permanently stayed against them for abuse of process (Stay Applications).
- [4] As part of the proceedings related to the Stay Applications, the panel heard the executive director's liability case relating to the allegations in the Notice of Hearing on June 23 and 27, 2023 but determined that the respondents would not be required to present their cases unless and until the panel dismissed the Stay Applications.

- [5] On August 11, 2023, prior to the issuance of the panel’s ruling on the Stay Applications, counsel for Morabito wrote to the Commission hearing office:
- (a) to advise that if his client’s Stay Application was dismissed, Morabito intended to seek leave to appeal the decision on a question of law; and
  - (b) to “...propose that the continuation of the liability hearing and the associated deadlines be adjourned until the later of the Panel’s granting of the relief sought or, should the applications be dismissed, the final disposition of any appeals arising from that disposition.”
- [6] On the same day, the executive director advised the hearing office that he opposed Morabito’s request, and Global advised the hearing office that it adopted and supported the position taken in the letter from counsel for Morabito.
- [7] On August 16, 2023, the panel chair advised the parties that the panel would treat the August 11, 2023 letter from counsel for Morabito and the adoption of the position within that letter by Global as adjournment applications by the respondents (August 2023 Adjournment Applications). The panel chair also, among other things, directed the parties to maintain their availability for the September 6 and 8, 2023 hearing dates unless and until the panel issued any further directions and to advise the Commission hearing office of their availability to attend hearing dates on October 16-18, 20, 23, 24 and November 6, 7, 22-24, 29, 30 and December 1, 2023 by 4:00PM on Wednesday, August 23, 2023.
- [8] On August 17, 2023, the panel issued its ruling and reasons, *Re Morabito*, 2023 BCSECCOM 405 (Stay Ruling), dismissing the Stay Applications.
- [9] This is the decision of the panel on the August 2023 Adjournment Applications.

## **II. The procedural history**

### ***Background generally***

- [10] This proceeding has a lengthy history. For the purposes of this Ruling we focus primarily on those parts of the history that directly engage the scheduling and adjournment of dates for the liability hearing.
- [11] There have been other steps in this proceeding that have informed the hearing dates, including applications by the respondents for disclosure by the executive director and for an order allowing cross-examination of a Commission investigator who had sworn two affidavits on which the executive director relied in responding to the disclosure applications.
- [12] The panel issued a number of rulings on these applications as follows:
- a) 2022 BCSECCOM 335;
  - b) 2022 BCSECCOM 433;
  - c) 2022 BCSECCOM 440;
  - d) 2023 BCSECCOM 83;

- e) 2023 BCSECCOM 150; and
- f) 2023 BCSECCOM 226.

***Previous adjournments to hearing dates***

- [13] On November 21, 2021, the Commission set hearing dates for September 6, 7, 8 and 9, 2022.
- [14] The Commission held a hearing management meeting on July 11, 2022. At that meeting, the panel chair scheduled the hearing of the respondents' disclosure applications for September 6, 2022.
- [15] At the same time, and due to the proximity of the then-scheduled hearing dates, the panel chair instructed the hearing office to canvass the parties' availability for tentative new hearing dates.
- [16] On August 4, 2022, the Commission re-scheduled the hearing dates for September 6, 2022 and April 11, 12, 13 and 14, 2023, by consent (2022 BCSECCOM 339).
- [17] On February 15, 2023 and March 2, 2023 respectively, Morabito and Global brought the Stay Applications.
- [18] On March 3, 2023, the Commission held a hearing management meeting at which the panel chair:
  - (a) set dates for submissions on the Stay Applications;
  - (b) scheduled additional hearing dates for the continuation of the liability hearing, if required, for August 21, 22 and 23, 2023 subject to the respondents confirming the availability of their witnesses; and
  - (c) set dates, in the event that the liability hearing continued after determination of the Stay Applications, for respondents to deliver expert reports, will say statements and reliance lists in advance of the reserved August 2023 hearing dates.
- [19] On March 7, 2023, and after the parties advised that the reserved August 2023 dates would not work but that dates in September 2023 would, the Commission scheduled additional hearing dates for September 5, 6 and 8, 2023 (2023 BCSECCOM 115).
- [20] On March 31, 2023, Morabito requested an adjournment to the April 2023 hearing dates and cited outstanding matters related to production of documents by the executive director as well as a desire "...to reflect and take advice on the documents produced (and to pursue avenues of investigation they reveal) before being required to cross-examine the witness tendered by the Executive Director."
- [21] On April 3, 2023, the panel advised the parties that it was treating Morabito's March 31, 2023 request as an adjournment application, and the panel chair set out a schedule for delivery of written materials on that application.

- [22] Global supported Morabito’s adjournment application and the executive director advised that although he was prepared to proceed on April 11, 2023, “...the prudent course may be to secure new dates.”
- [23] On April 6, 2023, the panel granted Morabito’s adjournment application and directed that the parties discuss mutually agreeable dates among themselves for two hearing days to hear the executive director’s case.
- [24] On April 6, 2023, and as set out in 2023 BCSECCOM 164, the Commission:
- (a) adjourned the hearing dates scheduled in April 2023, by consent;
  - (b) cancelled the September 5, 2023 hearing date;
  - (c) set new additional hearing dates on June 23 and 27, 2023; and
  - (d) confirmed that the hearing would proceed on June 23 and 27 and September 6 and 8, 2023.
- [25] As part of the proceeding relating to the Stay Applications, on June 23 and 27, 2023, the executive director presented his case and the respondents cross-examined the executive director’s witness.
- [26] Written submissions relating to the Stay Applications were completed on July 17, 2023.
- [27] September 6 and 8, 2023 remained the dates set for the respondents to present their cases in the event the panel dismissed the Stay Applications. The panel did so on August 17, 2023 in the Stay Ruling.
- [28] On August 21, 2023 and August 22, 2023 respectively, Morabito and Global filed Notices of Appeal with the Court of Appeal, seeking leave to appeal the Stay Ruling.
- [29] The respondents now seek an adjournment of the September 2023 hearing dates before the Commission. In reply submissions filed in the August 2023 Adjournment Applications:
- (a) Global stated that this proceeding “ought to be adjourned generally” pending the determination of Global’s appeal of the Stay Ruling; and
  - (b) Morabito maintained his request “...that the continuation of the liability hearing and the associated deadlines be adjourned until the final disposition of the appeals filed by the respondents in the exercise of their statutory rights, which is the only orderly and lawful manner of proceeding in the circumstances.”

### **III. The Commission's procedures**

- [30] As set out in section 1.2 of British Columbia Policy 15-601 – *Hearings* (Hearings Policy), the Commission holds administrative hearings which are less formal than the courts, and the Commission's goal is to conduct its proceedings fairly, flexibly and efficiently.
- [31] Section 2.1 of the Hearings Policy states that the Commission is the master of its own procedures and can do what is required to ensure a proceeding is fair, flexible and efficient.
- [32] Among the tools the Commission uses to accomplish its goals are hearing management meetings, addressed in section 3.1 of the Hearings Policy, interlocutory orders, and directions given to the parties by the panel or panel chair. In this proceeding, the Commission has held four hearing management meetings, and the panel and the panel chair have issued a number of directions to the parties.
- [33] The panel is concerned that the parties have not always complied with the directions and orders they have been given, in some cases in a timely way and in others, at all. In most instances, the failure to comply was minor and did not cause any meaningful negative impact to the progress of the hearing overall.
- [34] With respect to the August 2023 Adjournment Applications, we note Morabito failed to comply with the directions given by the panel chair on August 16, 2023 by failing to advise the hearing office of his availability to attend hearing dates on October 16-18, 20, 23, 24 and November 6, 7, 22-24, 29, 30 and December 1, 2023.

### **IV. Analysis**

#### ***Hearings Policy and considerations for a hearing panel***

- [35] Adjournment is addressed specifically within the Hearings Policy. Section 3.4 of that policy reads, in part:
- (c) Adjournment Applications – The Commission expects parties to meet scheduled hearing dates. If a party applies for an adjournment, the Commission considers the circumstances, the timing of the application in relation to any hearing date, the fairness to all parties and the public interest in having matters heard and decided efficiently and promptly. The Commission will generally only grant adjournments if a panel is satisfied based on the evidence filed by the applicant that there are compelling circumstances. Where an adjournment application is based on a party's health, the Commission usually requires sufficient evidence from a medical professional.
- [36] The Commission has made it clear that adjournments are not available simply by request: *Re Patrick Aaron Dunn*, 2021 BCSECCOM 476 at paragraph 22.
- [37] Rather, and as set out in detail in the excerpt from the Hearings Policy above, the Commission considers various factors including the fairness to all parties and the public interest in having matters heard and decided promptly.
- [38] Parties to a proceeding can make a panel's decision-making process more or less difficult depending on the material they provide for a panel's consideration. In this case, in large part, all

parties provided detailed and helpful submissions on the August 2023 Adjournment Applications.

- [39] Both Global and the executive director provided dates in response to the panel chair's direction. The executive director is available to attend a hearing on 11 of the 14 potential hearing dates set out by the panel chair, and Global is available on five of those dates. The only proposed hearing dates that overlap between those two parties are October 16, 17 and 18, 2023.
- [40] However, Morabito's failure to comply with the panel chair's direction to provide available dates means that the panel is left without important information to consider in deciding the August 2023 Adjournment Applications.

***The positions of the parties***

- [41] The primary point of disagreement between the executive director and the respondents is the length of any adjournment to the September 2023 hearing dates.
- [42] In his submissions, the executive director characterizes the respondents' position as seeking an "indefinite adjournment" of the conclusion of the liability hearing pending their applications to the Court of Appeal.
- [43] Both Morabito and Global reject this characterization. Global describes the characterization of an indefinite adjournment as inaccurate and unfair and asserts that "[it] is simply seeking to have its day in court without being prejudiced by the continuation of the liability hearing pending the determination of the appeal. Global ought not be forced to incur the time and expense of proceeding with a hearing that ought to have been permanently stayed."
- [44] Morabito denies that he is seeking an indefinite adjournment and submits that he seeks an adjournment only until the final disposition of any appeals arising from the Stay Ruling. Morabito submits that now that the jurisdiction of the Court of Appeal has been engaged by the respondents' filing of their Notices of Appeal, "...it would be manifestly wrong for the Panel to seek to continue this proceeding before the Court of Appeal has considered, in the exercise of its supervisory jurisdiction, whether it is lawful to do so."
- [45] Morabito also submits that he has exercised his statutory right to seek redress in the Court of Appeal and that this panel "...should not actively take steps to prejudice that statutory right, or render it nugatory, as the Executive Director seeks."
- [46] The executive director submits that it is not wrong for this panel to conclude the liability hearing prior to the outcome of any appeals. "Indeed," writes the executive director, "investor confidence in the integrity of the capital markets and the Commission's ability to protect the public diminishes if the conclusion of the merits hearing is deferred. It is in the public interest for the Commission to maintain its tribunal function, including the timely resolution of proceedings."
- [47] Ultimately, the executive director consents to a short adjournment to the September 2023 hearing dates if the respondents require additional time to prepare and suggests that any adjournment should be measured in a short number of weeks, not months.

*Fairness, flexibility and efficiency*

- [48] In making our decision, we are mindful of the goal of the Commission to conduct its proceedings fairly, flexibly and efficiently.
- [49] Morabito submitted that this panel should “stay its hand” while the Court of Appeal considers whether this proceeding should continue. Morabito cited several cases in support of his position that “...when the legality of that very proceeding is at issue on appeal, the Court of Appeal has commonly stayed administrative hearings to allow the appellate process to unfold.”
- [50] We appreciate that the Court of Appeal has, in some circumstances, granted temporary stays of administrative proceedings pending the resolution of appellate proceedings. However, we do not agree with Morabito that an adjournment of the hearing until the final disposition of the appeals filed by the respondents is the only “lawful” way to proceed.
- [51] While the recent filing by the respondents of Notices of Appeal will be a consideration in the panel’s decision on the August 2023 Adjournment Applications, as an administrative tribunal with a public interest mandate, the panel’s ruling will be based on a careful weighing of all of the factors set out in section 3.4(c) of the Hearings Policy and the Commission’s goal of conducting its proceedings fairly, flexibly and efficiently.
- [52] In our view, this panel has the jurisdiction to decide whether to adjourn the proceedings:
- (a) generally;
  - (b) pending the resolution of other matters, including appeals;
  - (c) to other fixed dates; or
  - (d) not at all.
- [53] We are mindful of the quickly-approaching hearing dates and the fact that the respondents have very recently filed Notices of Appeal. In our view, the proper balancing of the considerations of fairness, flexibility and efficiency in these circumstances does call for an adjournment. We do not believe that it is in the public interest to adjourn these proceedings generally, nor even pending what Morabito submitted is a definitive event, what he defines as “...the final disposition of any appeals arising from the [Stay] Ruling.”
- [54] Just because there is a “definitive event” (appeals from the Stay Ruling) does not mean that the event will be resolved quickly. Morabito referenced “any appeals” in his submissions, which could suggest proceedings beyond those commenced by the recent Notices of Appeal in our Court of Appeal. The proceedings of any appeals could take a very long time.
- [55] In our view, it is not in the public interest, at this stage, to risk a further significant delay to the proceedings before the Commission. This has been a lengthy matter already. As Morabito notes in his reply submissions on the August 2023 Adjournment Applications, his proceeding before the Commission “...has been ongoing now for five years...” The public interest is best served by resolving this application so that the liability hearing can move forward in the near term.

- [56] In making the order we do below, we recognize that appeal proceedings have been commenced and we stress that it is open to the parties to seek directions from this panel (or to bring further application as they see fit) if the public interest requires any further adjournment to the liability hearing.
- [57] In addition to the dates provided to the parties by the panel chair and set out at paragraph 7 above, the panel can be available for the conclusion of the liability hearing on December 19, 20 and 21, 2023.
- [58] Therefore, the dates the panel is available are: October 16-18, 20, 23, 24, November 6, 7, 22-24, 29, 30 and December 1, and 19-21, 2023 (Available Dates).

## **V. Conclusion**

- [59] At this stage, we have concluded that the public interest will best be served by an adjournment to fixed dates. In the absence of information from Morabito, we do not at this point fix the specific dates for the continuation of the hearing. We do, however, require that the continuation of the liability hearing commence no later than December 19, 2023.
- [60] Considering it to be in the public interest, we order that the August 2023 Adjournment Applications are granted on these terms:
- (a) no later than September 5, 2023, all parties will advise the hearing office which of the Available Dates they are able to attend for the continuation of the liability hearing, and
  - (b) in the absence of agreement among the parties to schedule two additional hearing dates, the Commission will schedule two additional hearing dates, to commence no later than December 19, 2023.

August 30, 2023

## **For the Commission**

Judith Downes  
Commissioner

James Kershaw  
Commissioner

Marion Shaw  
Commissioner