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Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

PUBLIC

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OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

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

IN THE MATTER OF the proposed transborder joint venture between Air Canada and United Continental Holdings, Inc.;

AND IN THE MATTER OF the "Marketing Cooperation Agreement" between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the "Alliance Expansion Agreement" between Air Canada and United Air Lines, Inc.;

AND IN THE MATTER OF the "Air Canada/Continental Alliance Agreement" between Air Canada and Continental Airlines Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more Orders pursuant to sections 90.1 and 92 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-AND-

**AIR CANADA, UNITED CONTINENTAL HOLDINGS, INC., UNITED AIR LINES, INC., and
CONTINENTAL AIRLINES INC.**

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the "Commissioner") will make an application to the Competition Tribunal (the "Tribunal"), on a day and place to be determined by the Tribunal, pursuant to sections 90.1 and 92 of the *Competition Act*, R.S.C. 1985, c.C-34, as amended (the "Act") for the following Order or Orders:

- a. An order under section 92 of the Act prohibiting the Respondents from entering into the proposed transborder joint venture described below (the “Proposed Merger”);
- b. In the alternative to a., an order under section 92 of the Act prohibiting the Respondents from implementing the Proposed Merger in relation to direct passenger air transportation services operated by the Respondents on 19 routes between Canada and the U.S. (the “Transborder Overlap Routes” as listed below in paragraph 42);
- c. An order under section 90.1 of the Act prohibiting the Respondents from undertaking or implementing pricing, inventory or yield management coordination, pooling of revenues, route and schedule planning or the provision by one party to the other of more information concerning current or prospective fares or seat availability than it makes available to airlines and travel agents generally under the provisions of the Marketing Cooperation Agreement dated May 30, 1995, as amended (the “AC/United Coordination Agreement”) or the Alliance Expansion Agreement dated May 31, 1996 (the “AC/United Expanded Coordination Agreement”), or, in the alternative, prohibiting such undertaking and implementation to the extent of the 19 Transborder Overlap Routes;
- d. An order under section 90.1 of the Act prohibiting the Respondents from undertaking or implementing pricing, inventory or yield management coordination, pooling of revenues, cost sharing, route and schedule planning or the provision by one party to the other of more information concerning current or prospective fares or seat availability than it makes available to airlines and travel agents generally under the provisions of the Alliance Agreement **[REDACTED]** (the “AC/CO Alliance Agreement”) or, in the alternative, prohibiting such undertaking and implementation to the extent of the 19 Transborder Overlap Routes;
- e. Requiring the Respondents to provide the Commissioner with at least 30 days’ advance written notice of any future proposed merger, as such term is defined in section 91 of the Act, or any future proposed agreement or arrangement, among Air Canada and one or more of the other Respondents for a period of five years from the date of the order, where the proposed merger, agreement or arrangement would not otherwise be subject to notification pursuant to the Act. The Respondents shall, unless otherwise agreed by the Commissioner of Competition, supply the information described in section 16 of the

Notifiable Transaction Regulations promulgated under the Act to the Commissioner at least 30 days before completing the transaction. The Commissioner of Competition may, within 30 days of receiving the prescribed information in section 16 of the *Notifiable Transaction Regulations* with respect to any such notice, request that the Respondents supply additional information that is relevant to the Commissioner of Competition's assessment of the transaction. In the event the Commissioner issues such a request for additional information, the Respondents will supply such information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until 30 days after the Respondents have each supplied all such requested information in the form specified by the Commissioner;

- f. Requiring the Respondents to pay the costs of this proceeding; and
- g. Granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

AND TAKE FURTHER NOTICE that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

STATEMENT OF GROUNDS AND MATERIAL FACTS**I. OVERVIEW AND GROUNDS**

1. The orders sought from the Tribunal are required to restore competition in a market that significantly affects almost every Canadian. Without the relief sought herein, passengers will pay higher prices for travel to the U.S. from Canada, or to Canada from the U.S. There will also be fewer flight options for such passengers.
2. The Respondents are leading providers of direct passenger air transportation services on routes between Canada and the United States (“Transborder Routes”).
3. Air Canada is, by a significant margin, the largest commercial airline in Canada. It operates more services between Canada and the U.S. than any other airline.
4. The Respondents United Air Lines, Inc. (“United”) and Continental Airlines Inc. (“Continental”) have recently merged. Once the operations of the merged airlines have been fully integrated, United Continental Holdings, Inc. (“UCH”) will control the largest commercial airline in the U.S.
5. On October 7, 2010, immediately after effective completion of the merger between United and Continental, Air Canada and UCH announced that they had executed a memorandum of understanding (the “MOU”) to enter into the Proposed Merger.
6. **[REDACTED]**
7. Air Canada and either United or Continental currently compete with one another on 19 Transborder Overlap Routes. If the Proposed Merger is permitted to proceed, this competition will be eliminated. The merged entity will enjoy a monopoly position on 10 Transborder Overlap Routes and, on an additional 9 Transborder Overlap Routes, will face competitors who are significantly constrained by barriers to entry or expansion.
8. In such circumstances, the Proposed Merger is likely to prevent or lessen competition substantially in direct passenger air transportation services on 19 Transborder Routes and the Commissioner seeks an order under section 92 of the Act to redress that harm.

9. In addition, separate and apart from the Proposed Merger, the Respondents are party to a number of agreements (the "Alliance Agreements") that enable them to coordinate on key aspects of competition and to exercise substantial market power on Transborder Routes, and in particular on the 19 Transborder Overlap Routes.
10. The Commissioner alleges, under section 90.1 of the Act, that the Alliance Agreements are agreements between competitors that collectively and individually are likely to prevent or lessen competition substantially on Transborder Routes, and, in particular, on the 19 Transborder Overlap Routes.

II. THE PARTIES

11. The Commissioner is appointed under section 7 of the Act. She is responsible for the administration and enforcement of the Act.
12. Air Canada is a publicly-traded Canadian company. Through its directly-owned operations, and through a capacity purchase agreement with its former affiliate Jazz Aviation LP, Air Canada operates substantially more scheduled passenger air transportation services to more destinations than any other Canadian airline.
13. In particular, Air Canada operates substantially more Canada - U.S. transborder scheduled passenger capacity than any other airline. As at November 2010, Air Canada offered direct passenger air transportation services on 83 Transborder Routes.
14. Air Canada has established network "hubs" at Pearson International Airport (Toronto), Pierre Elliott Trudeau International Airport (Montreal), Calgary International Airport and Vancouver International Airport.
15. UCH is a U.S.-based holding company, formed on October 1, 2010, to complete the merger of United and Continental. United and Continental (along with their operating subsidiaries) continue to operate separately pending receipt of a single operating certificate from the U.S. Federal Aviation Administration. UCH has publicly stated that it expects to receive the certificate by the end of 2011.

16. Notwithstanding they continue to operate separately pending this certificate, United and Continental are under common ownership and, today, coordinate their operations. They are no longer operating as competitors to one another in any markets.
17. Through United and Continental and their affiliated carriers, UCH has the most comprehensive global route network of any airline in the world. It operates approximately 5,800 flights a day to more than 375 U.S. domestic, transborder and international destinations from its ten hubs at A.B. Won Pat International Airport (Guam), Chicago O'Hare International Airport (Chicago, Illinois), Denver International Airport (Denver, Colorado), George Bush Intercontinental Airport (Houston, Texas), Hopkins International Airport (Cleveland, Ohio), Los Angeles International Airport (Los Angeles, California), Newark Liberty International Airport (Newark, New Jersey), San Francisco International Airport (San Francisco, California), Washington Dulles International Airport (Washington, D.C.), and Narita International Airport (Tokyo, Japan).
18. As at November 2010, United, including its regional operations, operated direct passenger air transportation services on 35 Transborder Routes. Air Canada operates direct passenger air transportation services on 13 of these Transborder Routes.
19. As at November 2010, Continental, including its regional operations, operated direct passenger air transportation services on 12 Transborder Routes. Air Canada operates direct passenger air transportation services on 6 of these Transborder Routes.
20. Air Canada and United are founding carriers of what is now Star Alliance Services GmbH ("Star Alliance"), the world's largest airline network. Continental joined the Star Alliance in October 2009.

III. THE ALLIANCE AGREEMENTS

21. Over the last fifteen years, Air Canada has entered into a series of agreements, first with United and then Continental, pursuant to which Air Canada may coordinate with United or Continental on key aspects of competition relating to Transborder Routes. These agreements include: the 1995 AC/United Coordination Agreement; the 1996 AC/United Expanded Coordination Agreement; and the [REDACTED] AC/CO Alliance Agreement.

22. Each of these agreements creates or enhances the Respondents' ability to exercise market power on Transborder Routes and thereby prevents or lessens competition substantially.

A. The AC/United Alliance Agreements

23. The AC/United Alliance Agreements are agreements between competitors. Air Canada and United both provide direct passenger air transportation services on 13 Transborder Overlap Routes and could potentially compete with one another on many Transborder Routes.

24. In May 1995, Air Canada and United executed the AC/United Coordination Agreement **[REDACTED]**.

25. In May 1996, Air Canada and United increased their ability to coordinate under the AC/United Expanded Coordination Agreement, pursuant to which additional integration features they may, to the extent it is deemed jointly beneficial by both parties:

- Coordinate on price, inventory and yield management, route planning, sales, marketing and scheduling across their entire networks;
- Share net revenues on routes to be further agreed upon by Air Canada and United;
- Provide reciprocal access to each of their respective frequent flyer programs; and
- Enter into further agreements that may be necessary to implement the agreed upon coordination.

26. The AC/United Coordination Agreement and AC/United Expanded Coordination Agreement remain in effect **[REDACTED]**. In other words, even if the Proposed Merger is disallowed, the AC/United Alliance Agreements continue to substantially prevent or lessen competition by reason of the ability of the Respondents to integrate their businesses and act as a single competitor.

27. Since executing the AC/United Alliance Agreements, Air Canada and United have taken a number of steps to integrate their businesses, including having implemented reciprocal frequent flyer programs **[REDACTED]**.

B. The AC/CO Alliance Agreement

28. The AC/CO Alliance Agreement is an agreement between competitors. Air Canada and Continental provide overlapping direct passenger air transportation services on 6 Transborder Overlap Routes and could potentially compete with one another on many other Transborder Routes.
29. [REDACTED] Air Canada and Continental entered into the AC/CO Alliance Agreement and, [REDACTED] agreed to:
- Coordinate on price, inventory and yield management, route planning, sales, marketing and scheduling [REDACTED];
 - Share revenues and/or costs [REDACTED];
 - Provide reciprocal access to each of their respective frequent flyer programs; and
 - [REDACTED].
30. [REDACTED]. In other words, even if the Proposed Merger is disallowed, the AC/CO Alliance Agreement continues to substantially prevent or lessen competition by reason of the ability of the Respondents to integrate their businesses and act as a single competitor.
31. Since executing the AC/CO Alliance Agreement, Air Canada and Continental have implemented reciprocal frequent flyer programs [REDACTED].

IV. THE PROPOSED MERGER

32. Notwithstanding the creation and enhancement of the Respondents' market power on Transborder Routes through the Alliance Agreements, and the potential for further coordination thereunder and the exercise of market power created by agreements between competitors, and even though United and Continental have now merged, the Respondents wish to **further** enhance their ability to exercise market power by effectively merging their operations in Canada and the U.S.
33. [REDACTED], Air Canada, United and Continental executed a Memorandum of Understanding ("MOU") with respect to the Proposed Merger. [REDACTED].

34. On October 7, 2010, days after completion of the United/Continental merger, Air Canada and the newly formed UCH issued a press release announcing the Proposed Merger.
35. **[REDACTED]**
36. The Proposed Merger is a merger within the meaning of section 91 of the Act. The Proposed Merger will result in the Respondents acquiring or establishing, directly or indirectly, a significant interest in the Canadian and U.S. operations of each of the others. **[REDACTED]**.
37. If the Proposed Merger is completed, the Respondents will make decisions on all aspects of competitive behaviour on Transborder Routes and with respect to passengers connecting to and from Transborder Routes in a manner that is indistinguishable in all respects from common ownership.
38. **[REDACTED]**. This means that they will merge and structure their operations so as to remove all competition with one another on the Transborder Routes and will share the revenues resulting from their reduced competition with one another.
39. This agreement among competitors to comprehensively integrate their respective transborder operations will further enhance the Respondents' ability to exercise market power, leading to a likely substantial prevention or lessening of competition on Transborder Routes.

V. THE RELEVANT MARKET

40. The relevant market for assessing the likely effects of the Proposed Merger and each of the Alliance Agreements is direct passenger air transportation services between city pairs involving an end point in each of Canada and the U.S.
41. Indirect flights, which involve one or more connections between a particular city pair involving an end point in each of Canada and the U.S., are not a close substitute for direct passenger air transportation services on Transborder Routes.

VI. THE PROPOSED MERGER AND THE ALLIANCE AGREEMENTS ARE INDIVIDUALLY AND COLLECTIVELY LIKELY TO SUBSTANTIALLY PREVENT OR LESSEN COMPETITION ON TRANSBORDER ROUTES

42. The Respondents' operations currently overlap in the provision of direct flights on the 19 Transborder Overlap Routes listed in Table 1 below.

Table 1: Transborder Overlap Routes

Canadian End Point	U.S. End Point	Respondent Carriers	Air Canada Pre-Merger Market Share*	United/Continental Pre-Merger Market Share*	Combined Market Share
Calgary, Alberta	Houston, Texas	Air Canada and Continental	31%	69%	100%
Montreal, Quebec	Washington, D.C.	Air Canada and United	52%	48%	100%
Montreal, Quebec	Houston, Texas	Air Canada and United	100%	0%	100%
Ottawa, Ontario	Washington, D.C.	Air Canada and United	53%	47%	100%
Ottawa, Ontario	New York, New York	Air Canada and Continental	30%	70%	100%
Toronto, Ontario	Denver, Colorado	Air Canada and United	51%	49%	100%
Toronto, Ontario	Washington, D.C.	Air Canada and United	46%	54%	100%
Toronto, Ontario	Cleveland, Ohio	Air Canada and Continental	32%	68%	100%
Toronto, Ontario	Houston, Texas	Air Canada and United	44%	56%	100%
Toronto, Ontario	San Francisco, C.A.	Air Canada and United	78%	22%	100%
Vancouver, B.C.	San Francisco, C.A.	Air Canada and United	67%	32%	99%
Calgary, Alberta	San Francisco, C.A.	Air Canada and United	25%	62%	87%
Montreal, Quebec	Chicago, Illinois	Air Canada and United	34%	36%	70%
Calgary, Alberta	Chicago, Illinois	Air Canada and United	8%	79%	87%
Montreal, Quebec	New York, New York	Air Canada and Continental	47%	18%	65%
Toronto, Ontario	New York, New York	Air Canada and Continental	46%	16%	62%
Toronto, Ontario	Chicago, Illinois	Air Canada and United	29%	39%	68%
Vancouver, B.C.	Los Angeles, CA.	Air Canada and United	28%	16%	42%
Vancouver, B.C.	New York, New York	Air Canada and Continental	30%	4%	34%

*Source: Share of total passengers on each route, U.S. DOT T-100 database, January - June 2010.

43. The Alliance Agreements and the Proposed Merger remove the incentive for the Respondents to compete with one another on Transborder Routes.
44. The elimination of a competitor on Transborder Routes is likely to lead to higher prices. When Transborder Routes are served by fewer competitors, consumers face materially higher prices than when Transborder Routes are served by a greater number of competitors.
45. As further particularized below, the Alliance Agreements provide an ability for the Respondents to decrease their respective incentives to compete with one another, leading to a likely substantial prevention or lessening of competition on Transborder Routes and, in particular, a likely substantial lessening of competition on the 19 Transborder Overlap Routes.
46. The Proposed Merger further enhances the ability of the Respondents to exercise market power by providing the ability to remove all incentives for the Respondents to compete with one another, leading to a likely substantial prevention or lessening of competition on Transborder Routes and in particular, a likely substantial lessening of competition on the 19 Transborder Overlap Routes.
47. The likely substantial prevention or lessening of competition on Transborder Routes resulting from the Proposed Merger is independent from the substantial prevention or lessening of competition that is likely to result from the Alliance Agreements.

A. The AC/United Alliance Agreements Are Likely To Substantially Prevent Or Lessen Competition On Transborder Routes

48. On the 19 Transborder Overlap Routes on which the Respondents currently overlap (set out in Table 1 above), the AC/United Alliance Agreements provide the Respondents with the ability to coordinate their flight offerings to a degree that would result in a likely substantial lessening of competition.
49. The AC/United Alliance Agreements provide the framework for the Respondents to coordinate on key aspects of competition. To the extent the Respondents engage in such coordination, they remove the incentive to compete with one another on Transborder Routes.

50. Air Canada and United are the only operators of direct passenger air transportation services on 9 Transborder Overlap Routes. On the additional 4 Transborder Overlap Routes which are currently served by Air Canada and United, they face competitors who are significantly constrained by barriers to entry and expansion.

B. The AC/Continental Alliance Agreement is Likely To Substantially Prevent Or Lessen Competition On Transborder Routes

51. On the 19 Transborder Overlap Routes on which the Respondents currently overlap (set out in Table 1 above), the AC/Continental Alliance Agreement provides the Respondents with the ability to coordinate their flight offerings to a degree that would result in a likely substantial lessening of competition.
52. The AC/Continental Alliance Agreement provides the framework for the Respondents to coordinate on key aspects of competition. To the extent that the Respondents engage in such coordination, they remove incentives for the Respondents to compete with one another on Transborder Routes.
53. Air Canada and Continental are the only operators of direct passenger air transportation services on 3 Transborder Overlap Routes, and on an additional 3 Transborder Overlap Routes, they face competitors who are significantly constrained by barriers to entry or expansion.

i. Factors to be Considered Under Section 90.1 of the Act

54. Entry or expansion by rival air carriers is unlikely to occur on Transborder Routes owing to significant barriers to entry, including:
- a. Inability to gain access to sufficient volumes of passenger traffic on Transborder Routes involving a “hub” airport operated by one of the Respondents. To operate on a viable scale, a potential entrant requires an ability to attract feeder traffic at both ends of a route. The Respondents have highly developed flight networks that centralize large volumes of passenger traffic into hubs that impede or foreclose a potential competitor’s access to the volume of feeder traffic necessary to effectively compete on a Transborder Route. Each of the 19 Transborder Overlap Routes features at least one of the Respondents’ hubs on the route;

- b. Frequent flyer programs and incentives towards exclusivity in corporate customer contracts, which create significant switching costs; and
 - c. The fact that certain airports on the Transborder Routes have insufficient capacity to allow for sufficient access to take-off and landing slots, and/or may have other constraints based on the capacity of their existing facilities that increase barriers to effective entry or expansion.
55. There is no effective competition remaining on any of the 19 Transborder Overlap Routes on which the Respondents currently overlap. There is **no** competition at all remaining on 10 of these Transborder Overlap Routes, and the Respondents face competitors who are significantly constrained by barriers to entry or expansion on the 9 remaining Transborder Overlap Routes.
56. Timely and viable entry by any potential entrant sufficient to constrain the Respondents from exercising market power is unlikely to occur on the 19 Transborder Overlap Routes.
57. The Alliance Agreements are therefore likely to lessen competition substantially on each of the 19 Transborder Overlap Routes.

C. The Proposed Merger is Likely to Prevent or Lessen Competition Substantially on Transborder Routes

58. The Proposed Merger will independently remove all incentives for the Respondents to compete with one another on Transborder Routes, effectively removing a competitor on 19 Transborder Overlap Routes. In addition, as a result of the Proposed Merger, the Respondents will operate as one entity on Transborder Routes, thereby eliminating the potential for competitive entry or expansion by either of the Respondents themselves on any Transborder Routes, including the Transborder Overlap Routes.
59. The Respondents are currently the only operators of direct passenger air transportation services on 10 Transborder Overlap Routes, and on the remaining 9 Transborder Overlap Routes, the Respondents face competitors who are significantly constrained by barriers to entry or expansion.

60. The Proposed Merger will therefore lead to a likely substantial lessening of competition on each of the 19 Transborder Overlap Routes.

i. Factors to be Considered Under Section 93 of the Act

61. Entry or expansion by rival air carriers is unlikely to occur on Transborder Routes on which the Respondents currently operate owing to significant barriers to entry or expansion. The Commissioner pleads and relies on paragraphs 54 to 56 with respect to the Proposed Merger

62. The Proposed Merger is therefore likely to lessen competition substantially on each of the 19 Transborder Overlap Routes.

VII. CONCLUSION

63. The Alliance Agreements are agreements between competitors, dealing with fundamental aspects of competition between the Respondents on Transborder Routes. The Alliance Agreements have each significantly decreased the incentives for the Respondents to compete with one another, leading to a likely substantial prevention or lessening of competition on Transborder Routes, and in particular, a likely substantial lessening of competition on the 19 Transborder Overlap Routes. Such coordination, particularly if and as implemented in their totality, will lead to materially higher prices and less choice for passengers who wish to fly between the U.S. and Canada.

64. The Proposed Merger is a merger within the meaning of section 91 of the Act. Under the Proposed Merger, the Respondents intend to fully integrate transborder operations and to completely cease competing on Transborder Routes. The implementation of the Proposed Merger will therefore result in the elimination of the only competitor on 10 Transborder Overlap Routes; elimination of a competitor on 9 other Transborder Overlap Routes; and will eliminate all potential competition among the Respondents on all other Transborder Routes. This will lead to materially higher prices for passengers who wish to fly on key routes between Canada and the U.S.

VIII. RELIEF SOUGHT

65. The Commissioner therefore seeks the following orders:

- a. An order under section 92 of the Act prohibiting the Respondents from entering into the proposed transborder joint venture described above;
- b. In the alternative to a., an order under section 92 of the Act prohibiting the Respondents from implementing the Proposed Merger in relation to direct passenger air transportation services operated by the Respondents on 19 routes between Canada and the U.S;
- c. An order under section 90.1 of the Act prohibiting the Respondents from undertaking or implementing pricing, inventory or yield management coordination, pooling of revenues, route and schedule planning or the provision by one party to the other of more information concerning current or prospective fares or seat availability than it makes available to airlines and travel agents generally under the provisions of the AC/United Coordination Agreement or the AC/United Expanded Coordination Agreement, or, in the alternative, prohibiting such undertaking and implementation to the extent of the 19 Transborder Overlap Routes;
- d. An order under section 90.1 of the Act prohibiting the Respondents from undertaking or implementing pricing, inventory or yield management coordination, pooling of revenues, cost sharing, route and schedule planning or the provision by one party to the other of more information concerning current or prospective fares or seat availability than it makes available to airlines and travel agents generally under the provisions of the AC/CO Alliance Agreement or, in the alternative, prohibiting such undertaking and implementation to the extent of the 19 Transborder Overlap Routes;
- e. Requiring the Respondents to provide the Commissioner with at least 30 days' advance written notice of any future proposed merger, as such term is defined in section 91 of the Act, or any future proposed agreement or arrangement among Air Canada and one or more of the other Respondents for a period of five years from the date of the order, where the proposed merger, agreement or arrangement would not otherwise be subject to notification pursuant to the Act. The Respondents shall, unless otherwise agreed by the Commissioner of Competition, supply the information described in section 16 of the *Notifiable Transaction Regulations* promulgated under the Act to the Commissioner at least 30 days before completing the transaction. The

- Commissioner of Competition may, within 30 days of receiving the prescribed information in section 16 of the *Notifiable Transaction Regulations* with respect to any such notice, request that the Respondents supply additional information that is relevant to the Commissioner of Competition's assessment of the transaction. In the event the Commissioner issues such a request for additional information, the Respondents will supply such information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until 30 days after the Respondents have each supplied all such requested information in the form specified by the Commissioner;
- f. Requiring the Respondents to pay the costs of this proceeding; and
 - g. Granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

IX. PROCEDURAL MATTERS

- 66. The Applicant requests that this Application be heard in Ottawa in English.
- 67. The Applicant proposes that documents be filed electronically.
- 68. For the purposes of this Application, service of all documents may be effected on:

Babin Barristers LLP
65 Front Street East, Suite 101
Toronto, ON M5E 1B5

Attn: Edward J. Babin
Cynthia L. Spry
Tel: 416.637.3294
Fax: 416.637.3243

And to:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
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Counsel to the Respondents United Continental Holdings, Inc.,
United Air Lines, Inc., and Continental Airlines Inc.

DATED AT Gatineau, Quebec
this 27th day of June, 2011

“Melanie L. Aitken”

Melanie L. Aitken
Commissioner of Competition

SCHEDULE “A” – CONCISE STATEMENT OF ECONOMIC THEORY

1. The Respondents each provide direct passenger air transportation services on city pairs involving an end point in each of Canada and the U.S. The Respondents overlap in the provision of direct passenger air transportation services on 19 Transborder Overlap Routes.
2. A sufficient number of direct passenger air transportation service customers are not likely to view indirect flight alternatives – i.e., itineraries that involve one or more connections between a preferred origin and destination – as an acceptable substitute for direct flights. A hypothetical monopolist in the provision of direct passenger air transportation services on a route would profitably impose a small but significant and non-transitory increase in the price of its flights, even in the presence of indirect alternatives.
3. The Proposed Merger and the existing Alliance Agreements independently reduce the incentives for the Respondents to compete with one another on Transborder Routes to a significant degree, effectively eliminating a competitor on each of the Transborder Overlap Routes.
4. Other than the Respondents, there is no competition at all remaining on ten of these Transborder Overlap Routes, and the Respondents face competitors who are, among other things, significantly constrained by barriers to entry or expansion on the nine remaining Transborder Overlap Routes.
5. This increased level of consolidation provides sufficient scope for the Respondents to unilaterally exercise market power. As each the Proposed Merger and the Alliance Agreements independently allow the Respondents to effectively act as a single competitor, when a Respondent increases price, some of the sales that would have been lost prior to implementation of either the Proposed Merger or either of the Alliance Agreements will be diverted to the products of the other Respondents. This diversion makes increasing prices profitable when it would not have been profitable prior to such implementation.
6. It is unlikely that any sources of competition will effectively discipline an exercise of market power by the Respondents. Entry or expansion by rival carriers is unlikely to occur in a

timely and sufficient manner due to, among other things, barriers to entry that exist, principally regarding network structure, switching costs, and airport capacity constraints.

7. Based on the above, it is likely that each of the Proposed Merger and the Alliance Agreements independently provide the Respondents with an ability to exercise market power. Therefore, each of the Proposed Merger and the Alliance Agreements will likely lead to a substantial prevention or lessening of competition on Transborder Routes and in particular, a substantial lessening of competition on the 19 Transborder Overlap Routes.