

COMPETITION TRIBUNAL  
TRIBUNAL DE LA CONCURRENCE

**FILED / PRODUIT**

May 30, 2008

CT- 2008-006

Chantal Fortin for / pour  
REGISTRAR / REGISTRARE

File No.: CT- 2008-006  
Registry Document No.:

OTTAWA, ONT.

# 0030

**COMPETITION TRIBUNAL**

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

**IN THE MATTER OF** an application by the Canadian Standard Travel Agent Registry, doing business as CSTAR, for an order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*;

**AND IN THE MATTER OF** an application by the Canadian Standard Travel Agent Registry, doing business as CSTAR for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

**CANADIAN STANDARD TRAVEL AGENT REGISTRY  
doing business as CSTAR**

Applicant

AND

**INTERNATIONAL AIR TRANSPORT ASSOCIATION  
doing business as IATA**

Respondent

**NOTICE OF MOTION**

**TAKE NOTICE THAT:**

1. The Applicant, the Canadian Standard Travel Agent Registry, doing business as CSTAR, will make an application on May 30, 2008 at 2:30pm to the Competition Tribunal (the "**Tribunal**") to bring an application for:

- (a) an interim order directing the Respondent, International Air Transport Association (hereinafter referred to as "IATA"), to supply tickets (ticket stock) and facilitate complete ticketing services, including, without limitation, provisioning of, access to, processing of, and settlement of paper tickets wherever required, on usual trade terms, and to further direct the Respondent to assure that all third parties, including, but not limited to, Global Distribution Systems (GDS) and local processing providers are able to facilitate IATA's continuation of paper ticketing functionality;
- (b) an order requiring IATA to notify forthwith IATA Operations in Miami, FL, USA, (care of Mr. Humberto Rivero and Ms. Diana Larranaga), with copy to BSP Canada Montreal (care of Mr. Sanjay Soowambers), headquarters for BSP Canada functionality, that a stay has been granted of IATA's plan to eliminate paper tickets in Canada effective June 1, 2008 ("the Plan"); and that nothing should be done to inhibit paper ticket issuance in BSP Canada;
- (c) an order requiring that IATA notify forthwith the four GDSs operating in Canada, namely, Amadeus, Sabre, and Travelport (Galileo and Worldspan) that a stay has been granted of the Plan, and that nothing should be done to inhibit paper ticket issuance in BSP Canada;
- (d) an order requiring that IATA notify forthwith BSP-participating airlines that a stay has been granted of the Plan;

- (e) an order abridging the time for service of this application under Rule 34(1) of the *Competition Tribunal Rules*; and
- (f) If necessary, an order granting temporary leave to bring the s.75 application for the purpose of seeking an injunction under s.104, subject to review by the Tribunal within a reasonable period.

### **GROUND FOR MOTION**

2. The Applicant has made an application for leave under s.103.1 of the *Competition Act* to bring an application under s.75 of the Act. The Applicant has also sought interim relief assuming that leave is granted to bring the application. The Tribunal in a direction dated May 30, 2008 has asked the Applicant to set out the specific relief sought and the grounds in the event that leave is not granted.

3. The Competition Tribunal Act grants jurisdiction to the Tribunal over all applications made under Part VII.1 or VIII of the *Competition Act* and "any related matters".

4. Apart from section 104 and the ability of the Tribunal to issue interim orders, the Applicant submits that the Tribunal has authority under the *Competition Tribunal Act* over "any related matter" to deal with any matter related to the subject matter of Part VIII of the Act. All of s.75, s. 103.1 and s.104 – the sections engaged by this motion – are within Part VIII of the Act. The Tribunal therefore has jurisdiction to deal with emergency injunctive relief on the matters in this application. It can also, in our submission, grant temporary leave to an application for the purpose of seeking an injunction under s.104, subject to review by the Tribunal within a reasonable period.

5. This motion addresses the relief sought and grounds in the event that a permanent leave is not granted; the Tribunal has jurisdiction to grant a temporary leave. However, the Applicant also submits that there is no barrier to this Tribunal granting permanent leave to commence the s.75 application. The following grounds apply equally to granting a temporary leave and a permanent leave.

6. The overall conduct of the Competition Tribunal in granting leave and granting interim orders is governed by section 9(2) of the *Competition Tribunal Act*, which states that "All proceedings before the Tribunal shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit."

7. Section 103.1 provides that any person may apply to the Tribunal for leave to make an application under s.75. The application must be served on the Commissioner and the Commissioner shall certify to the Tribunal whether or not the matter in respect of which leave is sought is the subject of an inquiry. This has happened and the application is not the subject of an inquiry.

8. The *Act* requires the Tribunal to notify a person affected by the leave application as to whether the Tribunal can hear the application and a person affected "may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2)." The Tribunal may set the time within which, and the conditions, subject to which the application under s.75 must be made. (s.103.1(8)).

9. In the present case, the Applicant has been notified of the leave application and has taken the opportunity to file written submissions and affidavit material on the issue of whether interim relief should be granted and its effect on the Applicant. It has apparently sought to reserve its right to file further material on the question of whether leave should be granted.

10. The purpose of the notice requirement and 15 day window to make submissions is to give affected persons time to prepare their response. However, in this case the respondent has clearly had time to prepare their case, and is simply delaying the filing of material on the request for leave. In these circumstances, the Tribunal should exercise its discretion to grant leave to commence the application.

11. Under s.104, the Tribunal may issue such interim order as it considers appropriate having regard to the principles ordinarily considered by superior courts when granting interlocutory or interim relief. This application may be made by the Commissioner or a person who has made an application under s.75.

12. Subsection 104(2) states that an interim order under subsection (1) shall be on such terms and shall have effect for such period of time as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

13. The intention of Parliament was clear to allow person affected – other than the Commissioner – to make application for injunctive relief and interim orders. It is trite law that a statute must be interpreted in accordance with the purposes of the *Act*. It would be illogical to interpret the right of a respondent to make submissions “within 15 days of notice of an application” in a manner which would defeat the very purpose of allowing injunctive relief. Injunctive relief is by its nature urgent and not susceptible to the usual time requirements for notice.

14. Here, the Applicant has had ample notice, and has effectively made submissions. The Tribunal in order to preserve the intent of s.104 allowing injunctive applications but also allowing for review of interim orders could grant the interim relief for a specified duration – i.e. 10 days – in order that the parties make further submissions within that time period on the broader questions in the application and the need for continued injunctive relief.

15. Section 104(2) contemplates interim orders “on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.” Further, Competition Tribunal Rule 2 does allow for dispensing with normal time periods and allows the tribunal directions on how an urgent matter should proceed. This specific relief (under Rule 2) was also sought in its Notice of Application filed on May 29, 2008.

**AND TAKE NOTICE THAT:**

16. The person against whom the orders are sought is the Respondent, IATA. The address of IATA is:

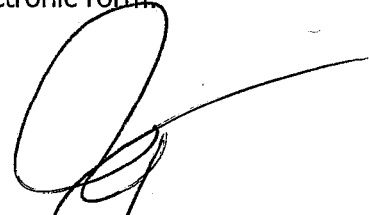
International Air Transport Association  
800 Place Victoria  
Montreal, Quebec  
H4Z 1M1

17. CSTAR will rely on the Affidavit of Bruce Bishins duly sworn before a lawyer of the Province of Ontario on May 20, 2008 and on the affidavit of Bruce Bishins sworn before a lawyer of the Province of Ontario on May 30, 2008.

18. The Applicant requests that this application proceed in English.

19. The Applicant requests that documents be filed in electronic form.

**DATED** at Toronto, Ontario, this 30th day of May, 2008.



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Counsel for the Applicant

**TO:**

**The Registrar**  
**Competition Tribunal**  
The Thomas D'Arcy McGee Building  
90 Sparks Street, Suite 600  
Ottawa, Ontario  
K1P 5B4  
Tel: 613-954-0857  
Fax: 613-952-1123

**AND TO:**

**Sheridan Scott**  
**Commissioner of Competition**  
50 Victoria Street  
Gatineau, Québec  
K1A 0C9  
Tel: 819-997-3301  
Fax: 819-997-0324

**AND TO:**

**International Air Transport Association**

800 Place Victoria

Montréal, Québec

H4Z 1M1

Tel : 514-874-0202

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