

Competition Tribunal



Tribunal de la Concurrence

Reference: *Canadian Standard Travel Agent Registry v. International Air Transport Association.*, 2008 Comp. Trib. 14  
File No.: CT-2008-006  
Registry Document No.: 0047

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

AND IN THE MATTER of an Application by 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*;

B E T W E E N:

**Canadian Standard Travel Agent Registry**  
**doing business as CSTAR**  
(applicant)

and

**International Air Transport Association**  
**doing business as IATA**  
(respondent)



Decided on the basis of the written record  
Presiding Judicial Member: Simpson J. (Chairperson)  
Date of Reasons and Order: June 17, 2008  
Reasons and Order signed by: Madam Justice Sandra J. Simpson

**REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR  
LEAVE UNDER SECTIONS 103.1 AND 75 OF THE COMPETITION ACT**

## **I. INTRODUCTION**

[1] The Canadian Standard Travel Agent Registry doing business as CSTAR (the “Applicant”) applied to the Competition Tribunal (the “Tribunal”), pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”), for leave to bring an application under section 75 of the Act. The Applicant also seeks leave to bring an application for designation by the Tribunal as a representative of 146 IATA-accredited travel agencies.

[2] Pursuant to subsection 103.1(1) of the Act, the Tribunal has relied on the affidavit of Bruce Bishins, sworn May 20, 2008, President of CSTAR (the “Bishins Affidavit”), and the written representations of the Applicant, in deciding this application for leave. The Tribunal has decided to render its decision prior to receiving the written representations of the Respondent.

## **II. THE PARTIES**

[3] The Applicant is a Society organized in 1998 under the *Society Act*, R.S.B.C. 1996, c.433 of the Province of British Columbia and carries on business throughout Canada, with management offices located in Toronto, Ontario. The business of the Applicant is a non-profit trade association representing travel agencies across Canada, the majority of which are accredited by the International Air Trade Association doing business as IATA (the “Respondent”).

[4] The Respondent is incorporated pursuant to the laws of Canada and was at all material times an international trade association representing approximately 240 airlines.

## **III THE APPLICANT’S POSITION**

[5] The Applicant alleges in its Notice of Application that the Respondent’s implementation of an international initiative moving towards exclusive E-ticketing by eliminating neutral paper airline tickets (the “Alleged Practice”) is a refusal to deal pursuant to section 75 of the Act. The Applicant submits that paper tickets are essential to the business of IATA-accredited travel agencies in Canada, and that without paper tickets, travel agencies would not be able to otherwise sell or service a wide variety of air transportation.

## **IV DISCUSSION**

[6] Subsection 103.1(7) of the Act sets out the test for leave on an application under section 75 of the Act. It reads:

**103.1(7)** The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

**103.1(7)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.

[my emphasis]

[7] The test to be followed on an application for leave was first applied in *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41. The Tribunal held that the “appropriate standard under subsection 103.1(7) of the Act is whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.” The test was subsequently adopted by the Federal Court of Appeal in *Symbol Technologies Canada ULC. v. Barcode Systems Inc.*, 2004 FCA 339.

[8] In considering a leave application, all the elements of the reviewable trade practice of refusal to deal set out in section 75(1) of the Act must be addressed. See *Barcode*, above, at paragraph 18.

[9] The Bishins Affidavit includes no evidence that the Applicant is “directly and substantially affected in the applicant's business” by the Alleged Practice. Rather, the Bishins Affidavit provides evidence regarding the possible effect of the Alleged Practice on non parties i.e. IATA-accredited travel agencies.

[10] Given the fact that the Applicant has not satisfied the first part of the test, it is not necessary to address the elements of refusal to deal.

[11] I should note that this decision was made before a motion by the Applicant to file further affidavit material was heard. However, I reviewed the proposed new evidence and it did not show that the Applicant's business has been substantially affected by the Alleged Practice.

## V. CONCLUSION

[12] Since the Applicant is not directly and substantially affected in its business by the Alleged Practice, I am dismissing the application for leave without prejudice to a further application dealing with the same issues by a party that is directly and substantially affected by the Alleged Practice. If leave were given, it would then be open to that party to seek representative status.

**FOR THESE REASONS, THE TRIBUNAL ORDERS THAT**

[13] The application for leave is hereby dismissed. The issue of costs is reserved. If they are not settled by agreement before the end of June 2008, a conference call can be arranged to hear submissions.

DATED at Ottawa, this 17<sup>th</sup> day of June 2008.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Sandra J. Simpson

**COUNSEL:**

For the applicant

Canadian Standard Travel Agent Registry doing business as CSTAR

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For the respondent

International Air Transport Association doing business as IATA

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