



Reference: *Commissioner of Competition v. Air Canada*, 2002 Comp. Trib. 12
File no.: CT2001002
Registry document no.: 0092

IN THE MATTER of an application by the Commissioner of Competition under section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of the *Regulations Respecting Anti-Competitive Acts of Persons Operating a Domestic Service*, SOR/2000-324 made pursuant to subsection 78(2) of the *Competition Act*;

AND IN THE MATTER of certain practices of anti-competitive acts by Air Canada.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Air Canada
(respondent)

and

WestJet Airlines Ltd.
(intervenor)



Dates of hearing: 20020219 to 20020220
Member: McKeown J. (Presiding)
Date of order: 20020222
Order signed by: McKeown J.

ORDER REGARDING MOTION TO CONSTITUTE A NEW PANEL

[1] FURTHER TO the application brought by the Commissioner of Competition (the “Commissioner”) pursuant to section 79 of the Competition Act, R.S.C. 1985, c. C-34, as amended (the “Act”), for an order prohibiting Air Canada from engaging in anti-competitive practices;

[2] AND FURTHER TO the Tribunal’s decision of October 15, 2001, to adjourn sine die the preliminary proceeding in the application which deals only with the definition of avoidable costs;

[3] AND FURTHER TO the Scheduling Order For Recommencement of Hearing of Application dated October 26, 2001, by Simpson J. (the “Scheduling Order”);

[4] AND FURTHER TO the motion brought by the Commissioner for: (a) an order that the hearing before the panel in the above-noted application constituted of Madame Justice Sandra J. Simpson, Dr. Lawrence P. Schwartz and Mr. Lorne Bolton, be terminated; (b) an order that a new Tribunal panel composed of Dr. Lawrence P. Schwartz, Mr. Lorne Bolton and a judicial member of the Tribunal to be named by the Chairman, be constituted to hear this application; (c) an order that the hearing before the newly constituted panel commence on April 15, 2002, in accordance with the existing Scheduling Order, or as soon after that time that the Application can be heard; and (d) if, and only if Air Canada consents, an order reading the hearing proceedings to date into the record before the newly constituted panel;

[5] AND ON READING the memoranda of arguments filed by the parties and accompanying documents;

[6] AND ON HEARING the submissions of counsel for the Commissioner and for the respondents on Tuesday, February 19 and Wednesday, February 20, 2002;

[7] AND FOR THE REASONS to follow shortly;

THE TRIBUNAL ORDERS THAT:

[8] The Commissioner’s motion is dismissed.

[9] The hearing of the preliminary proceeding shall recommence in the fall of 2002, likely during the month of September, at a date to be determined by the Tribunal. The Tribunal registry will contact counsel for the parties and for the intervenor with respect to their availability for the hearing. Counsel may submit a proposed schedule for the matters dealt with in the Scheduling Order. In the event of disagreements with respect to scheduling, the parties may request that a pre-hearing conference be held by the Tribunal.

DATED at Ottawa, this 22nd day of February, 2002.

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

(s)W.P. McKeown

APPEARANCES:

For the applicant:

The Commissioner of Competition

Donald B. Houston
W. Michael G. Osborne

For the respondent:

Air Canada

Katherine L. Kay
Danielle K. Royal

For the intervenor:

WestJet Airlines Ltd.

Daniel J. McDonald, Q.C.