



Reference: *Commissioner of Competition v. Air Canada*, 2001 Comp. Trib. 011
File no.: CT2001002
Registry document no.: 018

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;

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)



Decided on the basis of the written record.
Member: McKeown J. (Chairman)
Date of order: 20010515
Order signed by: McKeown J.

ORDER REGARDING ISSUES TO BE DETERMINED AT THE HEARING

[1] ON READING the request of the applicant and the respondent that the Tribunal hear and determine certain issues first, before proceeding with the balance of the application;

[2] AND ON CONSIDERING the consent of the applicant and of the respondent;

[3] AND ON BEING SATISFIED THAT the present order should be rendered in this case;

THE TRIBUNAL ORDERS THAT:

[4] The following issues shall be heard and determined before proceeding with the balance of the application:

(a) Between the period from April 1, 2000, to the date of the application, has Air Canada operated or increased capacity at fares that do not cover the avoidable costs of providing the service, within the meaning of paragraphs 1(a) and 1(b) of the Regulations Respecting Anti-Competitive Acts of Persons Operating a Domestic Service (the "Airline Regulations"), SOR/2000-324, on the Toronto-Moncton/Moncton-Toronto route?

(b) Between the period from July 1, 2000, to the date of the application, has Air Canada operated or increased capacity at fares that do not cover the avoidable costs of providing the service, within the meaning of paragraphs 1(a) and 1(b) of the Airline Regulations, on the Halifax-Montreal/Montreal-Halifax route?

[5] THE TRIBUNAL FURTHER DECLARES THAT in determining these issues, it will consider and answer at least the following questions:

(a) What is the appropriate unit or units of capacity to examine?

(b) What categories of costs are avoidable and when do they become avoidable?

(c) What is the appropriate time period or periods to examine?

(d) What, if any, recognition should be given to "beyond contribution"?

[6] FOLLOWING ITS DETERMINATION of the issues set out above, the Tribunal will consult with the parties and set a schedule for proceeding with the balance of the application.

DATED at Ottawa the 15th day of May, 2001.

(s) W.P. McKeown

COUNSEL

For the applicant:

The Commissioner of Competition

Donald B. Houston
Suzanne Legault

For the respondent:

Air Canada

Katherine L. Kay
Eliot N. Kolers
Lawson A.W. Hunter, Q.C.

For the intervenor:

WestJet Airlines Ltd.

Daniel J. McDonald, Q.C.