

THE 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 Air Canada pursuant to subsection 104.1(7) of the *Competition Act*

AIR CANADA

- and

Pursuant to subsection 104.1(7) of the <i>Competition Act</i>	
COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	PRODUIT
NOV 1 2000	
<i>L. Auster</i> REGISTRAR REGISTRAIRE Applicant	
OTTAWA, ONT.	3(a)

COMMISSIONER OF COMPETITION

Respondent

NOTICE OF APPLICATION

TAKE NOTICE that Air Canada will make an application to the Competition Tribunal, on a day and place to be determined by the Competition Tribunal, pursuant to subsection 104.1(7) of the *Competition Act* (the "Act") for:

- (a) if necessary, a Confidentiality Order regarding the Affidavit material filed by the Applicant;
- (b) an Order setting aside the October 12, 2000 temporary order (the "Temporary Order") made by the Commissioner of Competition (the "Commissioner") under section 104.1 of the *Act* against Air Canada;
- (c) in the alternative if the Temporary Order is not set aside, an Order varying the Temporary Order by deleting the words "or other similar fares" from the Temporary Order; and
- (d) in the alternative if the Temporary Order is not set aside and if necessary, an Order varying the Temporary Order by deleting the Toronto-Windsor and Ottawa-Windsor routes from the Temporary Order;
- (e) such further and other Orders that may be appropriate.

THE GROUNDS OF THE APPLICATION ARE:

- (a) there was no basis for the Commissioner to have made the Temporary Order;
- (b) the anti-competitive act identified by the Commissioner in the Temporary Order is not anti-competitive pursuant to the operative legislation and Regulations;
- (c) in any event, Air Canada did not engage in anti-competitive conduct;
- (d) at the time of the issuance of the Temporary Order, the Commissioner was in possession of information and material that indicated that Air Canada did not act in an anti-competitive fashion;
- (e) the Commissioner has failed to consider the required elements relating to what appears to be allegations of predatory pricing and abuse of dominance and predatory behaviour;
- (f) matching prices (which Air Canada did not in fact do) is not in any event anti-competitive;
- (g) the Commissioner does not have any basis to assert that Air Canada has priced below its avoidable costs;
- (h) the Commissioner has stated that he "needs more time" to complete his inquiry, which is not a proper basis for a Temporary Order;
- (i) the Commissioner's reliance on the alleged likely elimination of or other substantial harm to CanJet is not supported by the evidence available and is inconsistent with CanJet's public statements;
- (j) the Commissioner has failed to consider the existence and impact of other competitors to both CanJet and Air Canada;
- (k) the pre-eminent expert economist on this issue in an airline industry context has stated that the Commissioner's position that the relevant fares were anti-competitive is "totally indefensible";
- (l) the words "or similar fares" in the Temporary Order are vague and inappropriate;
- (m) the Windsor routes (included in the original Temporary Order) should not be included on the list of Restricted Routes as CanJet is no longer operating on those routes;

- (n) Subsection 104.1(7) of the *Act*;
- (o) The circumstances described in the Affidavits filed in support of this Application; and
- (p) Such other grounds as counsel may advise and as may be permitted.

THE MATERIAL RELIED UPON BY AIR CANADA INCLUDES:

- (a) The Affidavit of Lise Fournel sworn October 31, 2000, and exhibits thereto, FILED ON A SEALED CONFIDENTIAL BASIS;
- (b) The Affidavit of John M. Baker sworn October 31, 2000 and the exhibits thereto;
- (c) The Affidavit of William J. Baumol sworn November 1, 2000 and the exhibits thereto; and
- (d) Such further and other material as counsel may advise and as may be permitted.

THE ADDRESS FOR SERVICE ON THE RESPONDENT IS:

Francois B. Côté
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Competition Law
22nd Floor, Portage I
50 Victoria Street
Hull, Québec
K1A 0C9

Counsel to the Commissioner of Competition

AIR CANADA proposes that the hearing of this Application be held in Ottawa or Toronto, Ontario, and the proceedings be conducted in the English language.

For purposes of this Application, service of all documents on Air Canada can be served on:

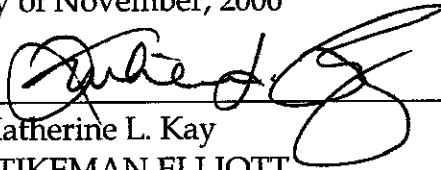
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DATED at Toronto, Ontario this 1st day of November, 2000



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Solicitors for the Applicant

AIR CANADA
Applicant

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COMMISSIONER OF COMPETITION
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CT-2000/004

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