

THE COMPETITION TRIBUNAL

CT - 88/1

IN THE MATTER OF an application by the Director of Investigation and Research under subsection 64(1) of the *Competition Act*, R.S.C. 1970, c. C-23, as amended;

AND IN THE MATTER OF a Limited Partnership formed to combine the operations of the Reservec and Pegasus computer reservation systems;

AND IN THE MATTER OF The Gemini Group Automated Distribution Systems Inc.;

AND IN THE MATTER OF an application by the Director of Investigation and Research under section 106 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, to vary the Consent Order of the Tribunal dated July 7, 1989;

AND IN THE MATTER OF an application by PWA Corporation and Canadian Airlines International Ltd. under section 106(b) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, to vary the Order Varying Consent Order dated July 7, 1989 of the Competition Tribunal issued on November 24, 1993.

B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

AIR CANADA
PWA CORPORATION
CANADIAN AIRLINES INTERNATIONAL LTD.
THE GEMINI GROUP LIMITED PARTNERSHIP
THE GEMINI GROUP AUTOMATED DISTRIBUTION SYSTEMS INC.
COVIA CANADA CORP.
COVIA CANADA PARTNERSHIP CORP.

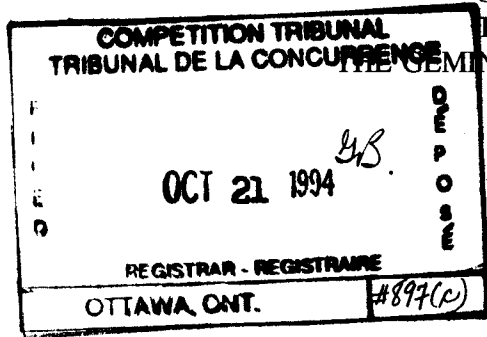
Respondents

- and -

CONSUMERS' ASSOCIATION OF CANADA
AMERICAN AIRLINES, INC.
ATTORNEY GENERAL OF MANITOBA
ALLIANCE OF CANADIAN TRAVEL ASSOCIATIONS
BIOS COMPUTING CORPORATION
IBM CANADA LTD.
VIA RAIL CANADA INC.
UNISYS CANADA INC.
COUNCIL OF CANADIAN AIRLINES EMPLOYEES
ATTORNEY GENERAL OF ALBERTA

Intervenors

A F F I D A V I T



I, KENNETH JOHN FREDEEN, Solicitor, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am a solicitor with Canadian Airlines International Ltd. ("Canadian Airlines") and as such have personal knowledge of the matters hereinafter deposed to, except where same are otherwise stated to be based upon information and belief, in which case I verily believe the same to be true.

2. Effective March 9, 1994, PWA Corporation ("PWA") and effective March 18, 1994 Covia Canada Corp. and Covia Canada Partnership Corp. (collectively "Covia") transferred their interests in The Gemini Group Limited Partnership to subsidiaries wholly owned by Air Canada and in The Gemini Group Automated Distributions Systems Inc. to Air Canada. The Gemini Group Partnership and The Gemini Group Automated Distribution Systems Inc. are hereinafter collectively referred to as "Gemini".

3. Effective March 18, 1994, PWA, Canadian Airlines, Gemini, Air Canada, 157710 Canada Inc., 157956 Canada Inc. and 166771 Canada Inc. executed a Settlement and Cooperation Agreement which provides, in part, for:

- (a) The detailed arrangements for the continued hosting of Canadian Airlines by Gemini and the orderly transfer of Canadian Airlines' hosting from Gemini to Sabre;
- (b) Subject to the consent of PWA and Canadian, two successor entities to Gemini being established, one of which would operate a computer reservation services business and the other of which would be involved, *inter alia*, in providing hosting to Canadian Airlines and the transfer of Canadian Airlines' hosting to Sabre;

- (c) The requirement that a successor entity enter into an agreement with PWA and Canadian Airlines to unconditionally and irrevocably be fully and directly responsible and liable for the performance of Gemini's obligations under the Settlement and Cooperation Agreement and to observe the terms of the Competition Tribunal's November 24, 1993 Order;
- (d) A guarantee by Air Canada to PWA and Canadian Airlines of the performance by Gemini and any successor entity to Gemini of Gemini's obligations under the Settlement and Cooperation Agreement; and
- (e) A consent order varying the Competition Tribunal's November 24, 1993 Order pursuant to paragraph 10.3 which states:

AC and Gemini agree to cooperate, support and provide written consent to an application to the Competition Tribunal for a Consent Order varying the Competition Tribunal Order for the purpose of causing AC to be directly responsible for completion of the Transition on a basis equal to the current responsibility of Gemini but without deleting or lessening the current responsibility of Gemini. In the event that PWA fails to obtain such Order, AC shall have no further obligation under this Section 10.3.


4. I have been advised by Air Canada's counsel and verily believe that effective June 30, 1994, Gemini's computer reservations services operations were transferred to Galileo Canada Distribution Systems Inc. ("Galileo Canada"). PWA and Canadian Airlines consented to the transaction pursuant to the Settlement and Cooperation Agreement and executed with Galileo Canada a successor entity agreement which provided, *inter alia*, that Galileo Canada agreed to be bound by and to observe the CRS Rules annexed to the 1989 Gemini Consent Order ("CRS Rules") for so long as Sabre continues to be bound by and to observe the CRS Rules and until such time as the CRS Rules are superseded by computer reservations services rules of general application in Canada.

5. I have been advised by Air Canada's counsel and verily believe that effective July 29, 1994, Gemini's information services operations (which include the provision of hosting to Canadian Airlines) were transferred to a partnership directly and indirectly owned by Air Canada which partnership was sold to IBM Canada Ltd. and a wholly owned subsidiary of IBM Canada Ltd. and renamed Advantis Canada. PWA and Canadian Airlines consented to the transaction pursuant to the Settlement and Cooperation Agreement and executed with Advantis Canada a successor entity agreement which provided, *inter alia*, that Advantis Canada agreed to unconditionally and irrevocably be fully and directly responsible and liable for the performance of Gemini's obligations under the Settlement and Cooperation Agreement and to observe the terms of the Competition Tribunal's November 24, 1993 Order.

6. I make this Affidavit in support of an application by PWA Corporation and Canadian Airlines International Ltd. to the Competition Tribunal for a consent order varying the Order Varying Consent Order dated July 7, 1989 of the Competition Tribunal issued on November 24, 1993.

SWORN before me at the City of)
Calgary, in the Province of Alberta,)
this 22 day of ~~August~~, 1994.)
 September 13)

A Notary Public in and)
for the Province of)
Alberta)



Kenneth John Fredeen

BARBARA J. SNOWDON
Barrister & Solicitor