

Date of Hearing:

November 15-19, 1993

Presiding Member:

The Honourable Mr. Justice Barry L. Strayer

Lay Members:

Dr. Frank Roseman
Mr. L. Jack Smith

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Director of Investigation and Research

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The Gemini Group Limited Partnership and The Gemini Group Automated Distribution Systems Inc.

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Covia Canada Corp. and Covia Canada Partnership Corp.

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James W. McFadzen

COMPETITION TRIBUNAL

ORDER VARYING CONSENT ORDER DATED JULY 7, 1989
S))

The Director of Investigation and Research

v.

Air Canada et al.

FURTHER TO the Consent Order dated July 7, 1989;

AND FURTHER TO the direction of the Federal Court of Appeal issued on July 30, 1993
that the Tribunal reconsider this matter on certain terms;

AND WITH reasons to follow shortly;

THE TRIBUNAL ORDERS THAT:

Definitions

1. In this order,

(a) "Partnership" shall mean The Gemini Group Limited Partnership;

(b) "General Partner" shall mean The Gemini Group Automated Distribution Systems Inc.;

(c) "Partnership Agreement" shall mean the First Restated and Amended Limited Partnership Agreement among the General Partner, Air Canada, PWA Corporation ("PWA") and Covia Canada Partnership Corp. dated as of June 30, 1989 and entered as Exhibit A-I-44 and as Exhibit A-V-108 in these proceedings;

(d) "Hosting Contract" shall mean the Gemini Hosting Contract between the Partnership, Air Canada and Canadian Airlines International Ltd. ("Canadian") dated as of June 30, 1989 and entered as Exhibit A-I-43 in these proceedings;

(e) "Pegasus cabling plant" shall mean all cabling running from the back of the computer field hardware (printers and terminals) in Canadian locations around the world, including airports, reservation offices, city ticket offices, cargo offices and administration offices, up to the concentrators connected to the network operated by the General Partner.

Effective Date of Order

2. Paragraphs 5 to 12 of this order shall come into effect on December 14, 1993, unless the parties file with the Tribunal on or before December 8, 1993 an alternate form of order

which is acceptable to all parties and which is approved and issued by the Tribunal on or before December 13, 1993.

Alternate Form of Order

3. Any alternate form of order filed by the parties pursuant to paragraph 2
 - (a) shall provide for the release of Canadian from its obligations under the Hosting Contract in any manner agreed upon by all parties; and
 - (b) shall be served on all intervenors and filed with proof of service.

4. An intervenor that wishes to comment on the proposed alternate form of order shall serve any comments on the parties and other intervenors and shall file the comments with the Tribunal on or before December 10, 1993.

Terms of Variation

5. The Consent Order dated July 7, 1989 shall be varied to require dissolution of the merger of the computer reservation system businesses of Air Canada and PWA and Canadian in the manner set out in paragraphs 6 to 12.

6. The dissolution date of the merger shall be November 5, 1994, or such other date between November 1 and November 15, 1994, as may be designated by Canadian before October 1, 1994.

7. On the dissolution date,
 - (a) the Partnership shall be dissolved;
 - (b) the "Canadian Data Base", as defined in the Hosting Contract, together with such other assets as are necessary for an orderly transfer of the hosting of Canadian, including but not limited to the Pegasus cabling plant, shall be transferred by the General Partner or the Partnership, as the case may be, to Canadian or as Canadian may direct; and
 - (c) Canadian and the Partnership shall be divested of all rights which would otherwise have arisen thereafter under the Hosting Contract with respect to the hosting of Canadian.
8. On and prior to the dissolution date, the General Partner, Air Canada and Covia Canada Partnership Corp. and Covia Canada Corp. (collectively "Covia") shall co-operate with Canadian to ensure the orderly transfer of the assets referred to in subparagraph 7(b).
9. PWA and Canadian shall pay all direct costs incurred by the General Partner, Air Canada or Covia in connection with the transfer of the assets referred to in subparagraph 7(b), within 30 days of receipt of invoices for such costs from the General Partner, Air Canada or Covia.
10. Subject to the provisions of this order, upon dissolution the Partnership shall be wound up and terminated in accordance with Article 12 of the Partnership Agreement.

11. Notwithstanding Article 15 of the Partnership Agreement, Air Canada, Covia and the General Partner or any of them shall not be prevented from commencing or continuing to carry on the business of the Partnership through a new business entity, without PWA or Canadian as a participant, either before or after the dissolution date.

12. In the event of a dispute as to the implementation of this order, any party may apply to the Tribunal for direction.

DATED at Ottawa, this 24th day of November, 1993.

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

(s) B.L. Strayer
B.L. Strayer