

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 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.

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

Intervenors

CONFIDENTIALITY (PROTECTIVE) ORDER

Dates of Hearing:

January 6 and 7, 1993

Presiding Member:

The Honourable Mr. Justice Barry L. Strayer

Counsel for the Applicant:

Director of Investigation and Research

Donald B. Houston
Jean G. Bertrand

Counsel for the Respondents:

Air Canada

J. William Rowley, Q.C.

Canadian Airlines International Ltd. and PWA Corporation

Robert W. Thompson
Jo'Anne Strekaf
Richard Low

The Gemini Group Automated Distribution Systems Inc.

Michael L. Phelan
Peter Glossop

Covia Canada Corp. and Covia Canada Partnership Corp.

Robert M. Nelson
William L. Vanveen
Todd J. Burke

Counsel for the Intervenors:

Consumers' Association of Canada

Not represented

American Airlines, Inc.

Colin L. Campbell, Q.C.

Attorney General of Manitoba

Roland E. Savoie

Alliance of Canadian Travel Associations

Douglas Crozier

IBM Canada Ltd.

Not represented

VIA Rail Canada Inc.

Not represented

Unisys Canada Inc.

Not represented

Council of Canadian Airlines Employees

Bruce M. Graham

COMPETITION TRIBUNAL
CONFIDENTIALITY (PROTECTIVE) ORDER

The Director of Investigation and Research

v.

Air Canada et al.

WHEREAS the prompt and orderly resolution of this application requires that the discovery process proceed as expeditiously as possible;

AND WHEREAS many of the documents involved in the discovery process contain commercially sensitive information which merits protection;

UPON HEARING the submissions of counsel for the parties;

THE TRIBUNAL ORDERS THAT:

Designation of Confidential Documents

1. A party shall designate a document as confidential by stamping the cover or first page of the document and every page which contains confidential information with the words "CONFIDENTIAL: LEVEL A" or "CONFIDENTIAL: LEVEL B", where "LEVEL A" or "LEVEL B" refers to the permitted level of disclosure of the document pursuant to paragraph 5.

2. Only a document or a portion of a document which contains commercially sensitive information shall be designated as confidential.

Permitted Disclosure

3. No designated confidential document shall be disclosed except in accordance with the terms of this order or with the prior written consent of the party that originally designated the document as confidential.

4. Documents which are not designated as confidential¹ may be disclosed to the parties, counsel for the parties and independent experts retained by the parties. These documents are subject to the implied undertaking referred to in paragraph 7.

5. Subject to paragraph 6, designated confidential documents may be disclosed in the following manner:

¹ During oral argument on January 6 and 7, 1993, these documents were referred to by counsel as "Level 1" or "Level 2" documents.

(a) LEVEL A confidential documents may be disclosed to counsel for the parties, independent experts retained by the parties, employees of the Bureau of Competition Policy involved in this matter and two named individuals on behalf of each other party;

(b) LEVEL B confidential documents may be disclosed to counsel for the parties, independent experts retained by the parties and employees of the Bureau of Competition Policy involved in this matter.²

6. Every person, except counsel and employees of the Bureau of Competition Policy, who is permitted by this order to examine designated confidential documents shall first execute a confidentiality agreement in the form attached as Appendix A.

Implied Undertaking Regarding Discovery

7. For greater certainty, counsel, parties, experts and employees of the Bureau of Competition Policy who obtain access to documents and information in the course of discovery in this application are subject to an implied undertaking to use the documents and information for the purposes of this application only.

Public Record

8. Documents which are not designated as confidential shall form part of the public record when introduced into evidence at the hearing, unless the Tribunal

² Level A and Level B confidential documents are those referred to by counsel during oral argument on January 6 and 7, 1993 as, respectively, "Level 3" and "Level 4".

orders otherwise. Level A and Level B confidential documents shall not form part of the public record in the application, unless the Tribunal orders otherwise.

9.(1) Subject to subparagraph (2), at the hearing of this application counsel for the intervenors may be present during the discussion of documents not forming part of the public record, unless the Tribunal orders otherwise.

(2) Counsel for the intervenors shall undertake on the record and are so obliged not to disclose any confidential information obtained during the hearing to any person, including their clients, and not to use the information for any purpose other than in connection with the application.

Return of Designated Confidential Documents

10. Upon final disposition of this application and any appeals, all designated confidential documents and any copies shall be returned to counsel for the party that originally designated the document as confidential, unless counsel for that party indicates in writing that the documents may be disposed of in some other manner.

Responsibility

11. Counsel for the parties are responsible for controlling the duplication of, access to and distribution of copies of documents in accordance with this order. In particular, counsel shall maintain all copies within their possession or control or ensure that the copies are in the possession of those persons entitled to disclosure of documents under paragraphs 4 and 5 of this order.

Disputes over Designation

12. On the motion of a party, the Tribunal may order that a designated confidential document is not entitled to the level of protection indicated by the designation.

Withdrawal of Designation

13. Paragraph 4 of this order shall apply to designated confidential documents with respect to which the party who originally designated the document as confidential has withdrawn the designation in writing, effective as of the date of the withdrawal.

Modification of Order

14. This order is subject to further direction of the Tribunal.

DATED at Ottawa, this 8th day of January, 1993.

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

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

APPENDIX A

COMPETITION TRIBUNAL
CONFIDENTIALITY AGREEMENT

The Director of Investigation and Research

v.

Air Canada et al.

IN CONSIDERATION of being provided with documents in connection with this application over which claims of confidentiality have been advanced, I _____, of the City of _____ in the _____ of _____, agree to maintain the confidentiality of the documents. I shall not copy the documents or disclose their contents to any other person and I shall not use the information contained in the documents for any purpose other than in connection with this application.

Upon completion of my involvement in this proceeding, I agree to return any confidential documents to counsel from whom I obtained the documents.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 1993.

(Witness Signature)

(Signature)

(Witness Name)

(Print Name)