



CT - 88 / 1 #443

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.

B E T W E E N :

The Director of Investigation and Research

Applicant

- and -

Air Canada
Air Canada Services Inc.
PWA Corporation
Canadian Airlines International Ltd.
Pacific Western Airlines Ltd.
154793 Canada Ltd.
153333 Canada Limited Partnership
The Gemini Group Automated Distribution Systems Inc.

Respondents

- and -

Consumers' Association of Canada
American Airlines, Inc.
Wardair Canada Inc.
Attorney General of Manitoba
Alliance of Canadian Travel Associations
Bios Computing Corporation
Air Atonabee Limited

Intervenors

ORDER REGARDING CONFIDENTIALITY

Date of Pre-Hearing Conference:

March 6, 1989

Presiding Member:

The Honourable Madame Justice Barbara J. Reed

Lay Member:

Dr. Frank Roseman

Counsel for the Applicant:

Director of Investigation and Research

John F. Rook, Q.C.

Counsel for the Respondents:

(a) **Air Canada**

Marshall E. Rothstein, Q.C.

(b) **PWA Corporation
Canadian Airlines International Ltd.
(including Pacific Western Airlines Ltd., and
Canadian Pacific Air Lines, Limited)**

Jo'Anne Strekaf

(c) **Air Canada Services Inc.
154793 Canada Ltd.
153333 Canada Limited Partnership
The Gemini Group Automated Distribution Systems Inc.**

Marshall E. Rothstein, Q.C.
Jo'Anne Strekaf

Counsel for the Intervenors:

- (a) American Airlines, Inc.**
Colin L. Campbell, Q.C.
- (b) Wardair Canada Inc.**
Jeff Galway
- (c) Alliance of Canadian Travel Associations**
Douglas Crozier
- (d) Air Atonabee Limited**
Rowland J. Harrison

COMPETITION TRIBUNAL
ORDER REGARDING CONFIDENTIALITY

The Director of Investigation and Research

v.

Air Canada et al.

Part I

The applicant, the Director of Investigation and Research, in his pre-hearing conference memorandum of March 3, 1989 made a request for an order that information held by him for which he claims confidentiality and which he has provided to experts retained by him but which he had not provided to the respondents, the intervenors or their counsel, be ordered to be disclosed to counsel for the respondents and the intervenors and to their experts, subject to a protective order requiring that persons to whom the information is disclosed keep that information confidential and use it for the purposes of this application only.

An order of this general form was given orally on March 6, 1989 by the Tribunal, the specific terms of the mechanism by which confidentiality was to be ensured were left, at counsel's request, for their determination.

Draft orders have now been submitted.

The Tribunal therefore orders as follows:

1. Counsel for the respondents, Wardair Canada Inc. and American Airlines, Inc. shall exchange, on the terms set out below, the documents and related materials supplied by each of their clients to the applicant in response to the information requests sent by the applicant in September 1988.

2. The applicant and the respondents shall make available to all counsel a copy of the affidavits of expert witnesses which have been filed by them with the Tribunal provided that if there is a claim for confidentiality for all or any portion of such affidavits, access to such portions shall be restricted on the terms set out below.

3. Any document described in paragraph 1, as well as the affidavits described in paragraph 2, for which confidentiality in whole or in part is claimed, shall be marked on the cover or first page thereof and on each page that contains confidential information, with the words "SUBJECT TO PROTECTIVE ORDER". The documents shall be so marked by persons presently having custody of them and in all other cases by counsel for the applicant, respondents or intervenors, as the case may be, before disclosure to other counsel.

4. The applicant, respondents or intervenors who have claims for confidentiality with respect to the aforementioned documents, affidavits, related materials and information contained therein shall specifically identify those portions of the documents for which they assert confidentiality, i.e. those portions which they require to be kept off the public record, and shall notify the Tribunal and counsel prior to March 15, 1989 with respect to these specific portions.

5. Counsel for the intervenors shall be entitled to examine the documents and related materials which the parties previously have agreed should be kept confidential or which are the subject of a confidentiality order by the Tribunal on the terms set out below. No copies of such documents or related materials shall be made without the consent of the Director, party or intervenor who claims confidentiality for the document or related materials, except to the extent such are necessary for the purpose of preparing affidavits of expert evidence. No use of information contained therein shall be made except such as is necessary for the purpose of preparing affidavits of expert evidence. If counsel for the party or intervenor claiming confidential status for the document cannot agree with counsel for the party or intervenor seeking such information that the information is necessary for the preparation of affidavits of expert evidence, then the Tribunal will decide. If it is agreed by the Director, party or intervenor, as the case may be, that copies may be made of the aforementioned documents or related materials, then

those copies shall be marked SUBJECT TO PROTECTIVE ORDER as set out out in paragraph 3 above.

6. Counsel for the parties and intervenors who receive copies of documents, copies of related materials, or access to the information, described in paragraphs 1, 2, or 5 above, shall use such documents, related materials or information for the purposes of this application only, shall keep such documents, related materials and information confidential and shall not disclose or allow anyone access to such documents, related materials or information other than persons entitled by the terms of this order to have access.

7. Counsel who obtain access to confidential documents and related materials described in paragraphs 1, 2, or 5 above, may disclose the documents, related materials or information contained therein to their respective independent expert witnesses who shall treat and use such documents, material and information in the same manner as required of counsel in paragraph 6 above. No disclosure is to be made to employees or representatives of the respondents, intervenors or their affiliates.

8. Counsel for the parties and intervenors shall obtain from any independent expert to whom they disclose documents, related materials or information, subject to this protective order, an acknowledgment in writing by that expert that the expert has

received a copy of this order and has undertaken to be bound thereby, which acknowledgment shall be in the form attached. A copy of such undertaking shall be supplied to counsel for the party or intervenor whose confidential information was disclosed and to any other counsel requesting copies thereof.

9. Those portions of documents and related materials containing information designated as SUBJECT TO PROTECTIVE ORDER shall not form part of the public record, unless the Tribunal orders otherwise. A copy of the expert affidavits filed with the Tribunal with the confidential portions deleted shall form part of the public record.

10. Upon completion or final disposition of this application and any appeals resulting therefrom, all documents and related materials marked SUBJECT TO PROTECTIVE ORDER and all copies thereof which have been made by counsel, their independent experts, or anyone on their behalf, as well as all documents containing any information protected by this order, shall be returned to the party or intervenor who has claimed confidentiality for the documents, materials or information, or at the option of the latter, shall be destroyed.

11. The Director's application that the transcripts of the examination for discovery should not be accorded a blanket

confidential status is adjourned *sine die*. The respondents have identified more precisely the portions thereof for which they seek a confidentiality order and the Director does not at present contest that claim.

12. Nothing in this order prevents any of the parties or intervenors from agreeing that documents, related materials or information for which they have claimed confidential status need no longer be accorded such status or from agreeing that a broader access than that described in this order will be accorded. This order does not preclude, for example, the parties or intervenors, as the case may be, from agreeing that access should be given where necessary not only to counsel for the other parties or intervenors but also to their clients.

13. All of the above subject to further direction by the Tribunal.

Part II

IT WAS AGREED that the intervenor, American Airlines, Inc. could file and serve an affidavit of its expert evidence on or before Monday, March 13, 1989 and that the time limits set out in the *Competition Tribunal Rules* with respect to the time for the filing of rebuttal and reply evidence would be correspondingly modified so

that the respondents would have fourteen clear days after service of the affidavit of expert evidence on them within which to file any rebuttal expert evidence and that American Airlines, Inc. would have seven clear days of the service on it of such rebuttal evidence, if any, within which to file reply evidence.

DATED at Ottawa, this 20th day of March, 1989.

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

(s) B. Reed
B. Reed

COMPETITION TRIBUNAL

CT - 88 / 1

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CONFIDENTIALITY AGREEMENT

COMPETITION TRIBUNAL
CONFIDENTIALITY AGREEMENT

The Director of Investigation and Research

v.

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IN CONSIDERATION of being provided with information in connection with this proceeding over which claims for confidentiality have been advanced, I _____, of the City of _____, in the _____ of _____, hereby agree to maintain the confidentiality of such information. It shall not be copied or disclosed to any other person nor shall it be used by me for any purpose, other than in connection with this proceeding.

Upon completion of this proceeding, I agree that such information, and any copies of same, shall be dealt with in accordance with instructions from my counsel, or as prescribed by order of the Competition Tribunal.

I acknowledge that I am aware of the order granted by the Competition Tribunal on March 6, 1989 in this regard and agree to be bound by same.

I hereby attorn to the jurisdiction of the courts of any province in Canada to resolve any disputes arising under this Agreement.

Signed, sealed and delivered before a witness this _____ day of _____, 1989.

(Print Name)

(Witness)

(Signature)