SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-042345-120

DATE: August 24, 2012

PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

IN THE MATTER OF THE PROPOSED PLAN OF COMPROMISE AND ARRANGEMENT OF:

AVEOS FLEET PERFORMANCE INC./
AVEOS PERFORMANCE AÉRONAUTIQUE INC.
and
AERO TECHNICAL US, INC.
Debtors/Petitioners
and
FTI CONSULTING CANADA INC.
Monitor
and
MTU Aero Engines GMBH
and
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
Contesting Parties
and
LUFTHANSA TECHNIK AG
and
AIR CANADA
and
CRÉDIT SUISSE AG, CAYMAN ISLAND BRANCH, as Fondé de Pouvoir
and
AVEOS HOLDING COMPANY, as Fondé de Pouvoir
and
BREOF/BELMONT BAN L.P.
and
THE ATTORNEY GENERAL OF CANADA
and
AON HEWITT, as Administrator of the Aveos Fleet Performance Inc. pension plans
and
QUEBEC REVENUE AGENCY
and

JG 2270

CANADA REVENUE AGENCY
and
REGISTRAR OF THE PERSONAL AND MOVABLE REAL RIGHTS REGISTER OF QUEBEC
Mis-en-cause

JUDGMENT
(on the Assignment of the Air Canada Contract)

---

1. INTRODUCTION

[1] The Court is seized with a "Motion for an Order Authorizing the Assignment [to Lufthansa] of the Air Canada Contract and for a Vesting Order" (the "**Aveos Motion**"), presented by the Debtor Aveos Fleet Performance Inc. ("**Aveos**"), pursuant to Section 36 of the *Companies' Creditors Arrangement Act* (the "**CCAA**")[1].

[2] The Court is also seized with a "Motion to Approve the Assignment to MTU of the Air Canada Contract and other Assets and for the Issuance of a Vesting Order" (the "**MTU Motion**"), presented by the Contesting Party MTU Aero Engines GmbH ("**MTU**").

[3] All capitalized terms, not otherwise defined herein, shall have the meaning ascribed to them in the Aveos Motion.

2. CONTEXT

[4] On April 20, 2012, Justice Mark Schrager, j.s.c., issued an order[2] (the "**DPO**") approving a divestiture process (the "**Divestiture Process**") to be followed by Aveos for the sale of some of its assets. As of today, the Divestiture Process was successfully implemented in 12 different transactions.

[5] On May 30, 2012, Aveos and the Mise-en-cause Air Canada entered into an Engine Maintenance Services Agreement for Air Canada's CFM56-5A and CFM56-5B aircraft engines (the "**Air Canada Contract**")[3], with the express intent and purpose of having same assigned by Aveos to a designated assignee acceptable to Air Canada, on or prior to August 15, 2012. Since then, this delay has been extended to August 24, 2012, at 7:00 pm, as confirmed by Air Canada's counsel during the hearing on August 23, 2012.

---

[1] R.S.C. 1985, c. C-36.
[2] Exhibit P-4.
[3] Exhibit P-5.

[6] Aveos, with the help of its chief restructuring officer, Mr Jonathan Solursh (the "**CRO**"), and the Monitor, followed the procedure provided in the Divestiture Process to find qualified bidders for the assignment of the Air Canada Contract.

[7] Two qualified bidders were retained by Aveos, namely MTU and the Mise-en-cause Lufthansa Technik AG ("**Lufthansa**") and, at the end of the bidding process, Lufthansa's bid was accepted by Aveos, hence the Aveos Motion.

[8] Both, Lufthansa and MTU are assignees acceptable to Air Canada pursuant to the Air Canada Contract.

[9] The Mise-en-cause Credit Suisse AG ("**Credit Suisse**"), as fondé de pouvoir for secured creditors, intervenes to support the Aveos Motion and to remind all Aveos' stakeholders that it holds first ranking rights on the Air Canada Contract and on the proceeds of sale thereof.

[10] MTU contests the granting of the Aveos Motion on the basis that the implementation of the Divestiture Process was deprived of the needed transparency, integrity and efficacy, and was unfair toward MTU.

[11] Therefore, by the MTU Motion, MTU requests the Court to dismiss the Aveos Motion and to authorize the assignment of the Air Canada Contract to it, subject to the terms of its final bid tabled with Aveos on August 7, 2012 (the "**MTU Bid**")[4], as amended on August 9 and 14, 2012.

[12] The Contesting Party International Association of Machinists and Aerospace Workers (the "**Union**"), which represents approximately 2 500 former employees of Aveos across Canada, contests the Aveos Motion and supports the MTU Motion, specially on the basis that it would preserve more jobs in Canada.

[13] Lufthansa supports the Aveos Motion and contests the MTU Motion.

3. TIME IS OF THE ESSENCE

[14] As mentioned above, the Air Canada Contract provides expressly that its assignment has to take place on or prior to August 24, 2012, at 7:00 pm. If it is not assigned by that time, the Air Canada Contract "shall irrevocably terminate"[5].

[15] This means that by the end of the day today, the Air Canada Contract will be worth nothing for Aveos and all its stakeholders.

[16] This is a crucial element for this Judgment. Time is of the essence for all interested parties, including this Court.

---

[4] Exhibit MTU-20.
[5] Exhibit P-6, page 3, middle paragr.

[17] In those circumstances, this judgment will be limited to the most essential elements of the debate, so as to avoid a contestation only on principles.

4. COURT AUTHORIZED DIVESTITURE PROCESS

[18] One other crucial element for this Judgment is that, as mentioned above, the Divestiture Process followed by Aveos for the assignment of the Air Canada Contract has already been approved and authorized by this Court pursuant to the DPO, with no objection or contestation whatsoever from any person.

[19] Furthermore, any bidder was requested to represent and warrant that it "has reviewed and accepted in full the terms and conditions of the Divestiture Process [under the DPO]", as did MTU on June 6, 2012[6] and on August 7, 2012[7], when it tabled the MTU Bid.

[20] Therefore, the Divestiture Process, including all its steps and phases, its appropriateness and efficiency, cannot be challenged at this point in time. The Divestiture Process of the Air Canada Contract is governed by a final judgment[8], namely the DPO.

[21] As the Court mentioned to the parties, the Divestiture Process provided under the DPO is quite unique, specially in light of the following two articles :

> "**4. PHASE 2: NEGOTIATION OF BIDS**
>
> 4.1 Aveos will negotiate with the Phase 2 Qualified Bidders to finalize the terms of their Bids. This process may involve discussions between each Phase 2 Qualified Bidder and customers, the IAMAW, regulatory authorities and other interested parties. Eight calendar days is the time period allocated for such discussions. Two additional days will be set aside for face to face negotiations between Aveos and Phase 2 Qualified Bidders, pursuant to a final private and confidential closed auction to negotiate, finalize and select the Accepted Bids.
>
> 4.2 Upon a final Phase 2 Qualified Bid being executed by a Bidder on terms acceptable to Aveos, Aveos may accept such Bid subject to (i) approval by the Monitor and (ii) Court authorization and the issuance of a Vesting Order and such Phase 2 Qualified Bid shall constitute an Accepted bid."
>
> (The Court underlines)

[22] The crux of the debate between Aveos and MTU boils down to the interpretation and implementation of these two articles.

---

[6] Exhibit MTU-9, art. 7.1(d)(iii).
[7] Exhibit MTU-20, art. 7.1(d)(iii).
[8] Exhibit P-4.

[23] Essentially, when a bidder becomes a "Phase 2 Qualified Bidder", he has eight calendar days (this delay was extended to 60 days in the present instance) to discuss with third parties, in order to cleanse any conditions or pending matters related to his bid, so as to table an unconditional bid for the final phase, namely the private auction provided in the last sentence of article 4.1 of the Divestiture Process (the "**Private Auction**").

[24] Moreover, there is an ultimate phase further to the Private Auction, namely the acceptance, by Aveos, of such unconditional winning bid, with terms acceptable to Aveos, and signed by the winning bidder, as provided in article 4.2 of the Divestiture Process.

[25] This means that Aveos may even decide to refuse such unconditional and signed winning bid resulting from the Private Auction, and acceptable to Aveos.

[26] The Divestiture Process says what it says. In fact, it was structured so as to maximize Aveos' chances of getting as much value as possible for its assets and, for that purpose, it provides for applicable "informal" and "*de bene esse*" rules or, put differently, it does not provide for "formal" rules.

[27] As the Court pointed out during the hearing, it is a kind of "extreme sport", and the choice is "you play the game" or "you don't play the game". But if you decide to bid, you know the process and applicable rules, and you accept them, together with the ensuing risks and consequences.

[28] But, having said that, the Divestiture Process still needs to be implemented transparently, fairly and with integrity. MTU argues that it has not been toward it, hence the MTU Motion.

5. MTU'S CONTESTATION

[29] Essentially, MTU alleges, *inter alia*, that :

a. it was induced by the CRO to submit its best offer ("please put your best foot forward in the bidding"[9]) by August 7, 2012 (the "**Alleged Deadline**");

b. there has never been any mention of a subsequent Private Auction after the Alleged Dead Line; on the contrary, MTU was induced by the CRO to believe that the bidding process will be final by the Alleged Deadline, subject to Aveos' acceptance of the winning bid;

c. according to MTU, the MTU Bid tabled by the Alleged Deadline, which was conditional to purchasing also tooling equipment (the "**Tooling**"), was

---

[9] Exhibits MTU-15, MTU-16, MTU-17, MTU-18 and MTU-19.

higher than the bid tabled by Lufthansa on that same day (the "**Lufthansa Bid**");

d. at a breakfast held on August 8, 2012, the CRO asked MTU if there was any way to extract more value from the MTU Bid; later that day, the CRO amounted the expected increase at between 500 000 $ and 550 000 $. MTU was astonished by such a request;

e. MTU always understood that the tabled bids were only subject to Aveos' review and analysis, to be followed by Aveos' decision with respect to the winning bidder and which would be provided by no later than August 10, 2012;

f. In fact, Aveos has accepted Lufthansa as winning bidder further to the latter increasing the amount of the Lufthansa Bid twice on August 9, 2012, namely after the Alleged Deadline;

g. Aveos changed the rules of the game in the course of the Divestiture Process, and it was impossible for MTU to obtain necessary board approval in order to increase the MTU Bid. Nevertheless, on August 9, 2012, MTU increased the MTU Bid by 200 000 $, but to be applied on the Tooling;

h. therefore, these irregularities in the Divestiture Process pursuant to the DPO have jeopardized the integrity and efficacy thereof, and introduced unfairness in the process.

6. UNION'S CONTESTATION

[30] The Union supports the MTU Motion and believes that, if the MTU Bid is approved by the Court, it will preserve between 100 and 150 jobs in Canada.

[31] The Union stresses on the fact that the former employees are also creditors of Aveos, and are key commercial stakeholders of Aveos.

[32] The Union submits that when balancing the various factors outlined in Section 36 of the CCAA, the Court should take into account, *inter alia*, maintaining jobs in the Canadian community.

7. AVEOS' and CRO'S POSITION

[33] Aveos and the CRO submit that they have strictly applied the Divestiture Process provided under the DPO, including holding the Private Auction.

[34] In fact, the Alleged Deadline was the starting point of the Private Auction, and its communication with MTU on August 9, 2012, resulted in an increase of the MTU Bid, albeit MTU was surprised by this last phase.

[35] In any event, MTU had already decided that it will not increase the portion of the MTU Bid applicable to the Air Canada Contract[10], it was rather betting on the apparent added value in preserving some highly-qualified jobs, but with no firm commitment in that regard.

[36] MTU was only prepared to slightly increase the MTU Bid on the Tooling, which was unacceptable to Aveos, as the Tooling had already been sold to a liquidator, namely Maynards Industries Ltd.

[37] This condition was a real problem for Aveos, as the MTU Bid could not, in any event, be accepted as such. It had to be withdrawn by the Alleged Deadline, but it was not.

[38] In such circumstances, Aveos and the CRO had to discount the negative impact of such condition when they analyzed and compared the MTU Bid to the Lufthansa Bid, thereby reducing the assessed value of the MTU Bid for the Air Canada Contract. The Lufthansa Bid was then slightly higher than the MTU Bid[11].

[39] On the other hand, Aveos and the CRO point out that Lufthansa abided by the rules of the Divestiture Process, and participated in the Private Auction.

[40] Indeed, Lufthansa doubled the amount of the Lufthansa Bid in the morning of August 9, 2012, and increased it by an additional 50% of the original amount, late afternoon, on August 9, 2012.[12]

[41] Face with such substantial increases, Aveos had no choice but to accept the increased Lufthansa Bid, compared to a much lower and conditional MTU Bid.

[42] It is only on August 14, 2012, namely the day the Aveos Motion was initially scheduled to proceed before Justice Jean-Yves Lalonde, j.s.c., for court authorization of the increased Lufthansa Bid, that MTU finally waived its condition relating to the purchase of the Tooling.

[43] Aveos and the CRO submit that if MTU misunderstood the Divestiture Process or made the wrong assumptions, it cannot blame anyone but itself. Indeed, MTU retained Canadian counsel only on August 9, 2012, but, on June 6 and August 7, 2012, it

---

[10] Exhibit P-7.

[11] A bid analysis was provided by Aveos to the Court (the "**Bid Analysis**"), but kept "under seal", as the dollar amount of Lufthansa Bid is very sensitive, and confidential.

[12] Bid Analysis.

warranted and represented, in the MTU Bid, that it "has reviewed and accepted in full the terms and conditions of the Divestiture Process"[13].

[44] To accept MTU's position would be to disregard the rules of the Divestiture Process, and would be totally unfair to Lufthansa.

8. LUFTHANSA POSITION

[45] Lufthansa understood very well the bidding process provided under the Divestiture Process, and it abided by it.

[46] Lufthansa insists, it should not be the victim of MTU's wrong assumptions, and MTU's misinterpretation and misunderstanding of the Divestiture Process, otherwise it would be unfair to Lufthansa.

9. MONITOR'S POSITION

[47] The Monitor, in addition to the points raised by Aveos and the CRO, confirms[14] that the whole bidding process was reasonable and conducted in accordance with the rules provided in the Divestiture Process, and was fair and transparent. He strongly supports the Aveos Motion.

10. ISSUE

[48] The only issue is whether or not the bidding process provided under the Divestiture Process pursuant to the DPO was implemented with transparency, integrity and efficacy, and was fair toward MTU.

11. LAW

[49] Section 36(3) of the CCAA lists some of the factors that the Court considers before authorizing a sale of assets. They are :

> «a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> b. whether the monitor approved the process leading to the proposed sale or disposition;
>
> c. whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors that a sale or disposition under a bankruptcy;
>
> d. the extent to which the creditors were consulted;

---

[13] Exhibits MTU-9 and MTU-20, art. 7.1(d)(iii).

[14] Monitor's Thirteenth Report, dated August 13, 2012.

e. the effects of the proposed sale or disposition on the creditors and other interested parties; and

f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.»

[50] As a reminder and for the purposes hereof, the Court refers to the following principles developed by the case law on this topic :

a. «44 I agree with the submission of counsel on behalf of the Applicant that the list of factors set out in s. 36(3) largely overlaps with the criteria established in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) [*Soundair*]. *Soundair* summarized the factors the court should consider when assessing whether to approve a transaction to sell assets:

(a) whether the court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.»[15]

b. «29 It is now well established in insolvency law in Canada that once a process has been put in place by Court Order for the sale of assets of a failing business, that process should be honoured, excepting extraordinary circumstances.»[16]

c. «40 The parties have agreed to go through the bidding process. Once the bidding process is started, then there is no coming back. Or if there is coming back, it is because the process is vitiated by an illegality or non-compliance of proper procedures and not because a bidder has decided to credit bid in accordance with the bidding procedures previously adopted by the Court.»[17]

d. «[73] Le rôle et l'opinion du Contrôleur et l'approbation du processus proposé par la Débitrice ne peut non plus être écarté à la légère. En l'absence d'une démonstration claire et non-équivoque d'une mauvaise interprétation des faits de sa part, le Tribunal doit faire preuve de grande

---

[15] Re Terrace Bay Pulp Inc., 2012 CarswellONT 9470 (OSCJ Commercial List).
[16] Re Grant Forest Products Inc., 2010 ONSC 1846 (OSCJ-Commercial List).
[17] Re White Birch Paper Holding Co.. 2010 QCCS 4915 (leave to appeal refused 2010 QCCA 1950).

prudence avant de mettre son opinion et ses conclusions de côté et d'y substituer sa propre décision.»[18]

e. «70 That being so, it is not for this Court to second-guess the commercial and business judgment properly exercised by the Petitioners and the Monitor.

71 A court will not lightly interfere with the exercise of this commercial and business judgment in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient. This is certainly not a case where it should.»[19]

f. «59 The balance of interests clearly favours approval. The Monitor supports and recommends the approval sought. The recommendation of the Monitor, a court-appointed officer experienced in the insolvency field, carries great weight with the Court in any approval process. Absent some compelling, exceptional factor to the contrary, a Court should accept an applicant's proposed sale process where it is recommended by the Monitor and supported by the Stakeholders[FN6].»[20]

12. DISCUSSION

[51] Essentially, MTU is asking the Court to confirm that the Divestiture Process provided under the DPO was amended further to the CRO requesting MTU "*to put your best foot forward in the bidding*" by August 7, 2012, thereby eliminating any subsequent bidding phase, namely the Private Auction or, put differently, that August 7, 2012 was the closure of the Private Auction.

[52] The Court is satisfied, after almost two days of hearing, that the Divestiture Process has not been amended and has been followed in accordance with its term and conditions.

[53] The evidence adduced does not support the alleged unfairness in the implementation of the Divestiture Process. MTU has not been treated unfairly.

[54] In a nutshell, the Court retains the following from its judiciary review of the "global picture" in this matter :

a. The Divestiture Process was duly approved and authorized by the DPO.

b. On June 6 and August 7, 2012, MTU represented and warranted that it "has reviewed and accepted in full the terms and conditions of the Divestiture Process".

---

[18] White Birch Paper Holding Company (Arrangements relatif à) 2011 QCCS 7304.
[19] Re AbitibiBowater Inc. et al., 2010 QCCS 1742.
[20] Re AbitibiBowater Inc. et al., 2009 QCCS 6460.

c. The Divestiture Process provides for an informal Private Auction once the "Phase 2 Qualified Bids" have cleansed their respective bids, in order to obtain unconditional bids.

d. At the beginning of the Private Auction, namely on August 7, 2012, the MTU Bid was still conditional to its purchase of the Tooling. That condition was withdrawn only on August 14, 2012, namely after the closure of the Private Auction.

e. Between August 8 and 10, 2012, MTU was not prevented from increasing or improving its MTU Bid. On the contrary, it was allowed every possible chance to increase the MTU Bid and, in fact, MTU increased it by 200 000 $.

f. During that same period, Lufthansa increased the Lufthansa Bid by 2½ times the original amount thereof, which is significantly higher than what is allocated under the MTU Bid for the Air Canada Contract.

g. Credit Suisse has prior ranking rights on the Air Canada Contract, and on the proceeds of sale thereof. It is an important player in the Divestiture Process and it supports the Aveos Motion.

h. Lufthansa followed and abided by the rules of the Divestiture Process, and it should not be penalized by MTU's misunderstanding thereof.

i. If, as suggested by MTU, the Divestiture Process was implicitly amended by the CRO through conversations and exchanges of letters and emails, MTU should then have raised questions, specially when it was asked to "please put your best foot forward in the bidding".

j. MTU cannot draw such conclusion from its personal interpretation of the facts and circumstances. The terms of the Divestiture Process prevail.

k. MTU's argument to the effect that, if it had known that there would be a Private Auction beginning on August 7, 2012, it would have obtained the necessary internal board's authorization and would not have tabled its best offer on August 7, 2012, as requested by the CRO, is untenable.

l. In a negotiation mode, you are always asked to give your best offer. In a certain way, it only confirms that MTU was not prepared to offer more for the Air Canada Contract, hence its denial of the Private Auction phase.

m. Furthermore, even if, only for discussion purposes, the Alleged Deadline was the closure of the Private Auction, the Lufthansa Bid is still slightly higher than the MTU Bid.

n. MTU cannot ask that the potential job opportunities be considered as adding value to the MTU Bid. Unfortunately, at that point in time, only firm commitments count, not "wishes".

o. The Monitor[21] and the CRO[22] confirm the transparency, integrity, efficacy and fairness of the implementation of the Divestiture Process, including toward MTU, and they support the Aveos Motion

p. Last but not least, if the Air Canada Contract is not assigned by 7:00 pm today, it will irrevocably terminate and be worth nothing for Aveos and its stakeholders.

13. CONCLUSION

[55] The Court is of the opinion that the Divestiture Process, authorized pursuant to the DPO and followed for the assignment of the Air Canada Contract, was implemented with transparency, integrity and efficacy, and that the whole process was fair toward MTU. The opposite decision would, inevitably, be unfair toward Lufthansa.

[56] Therefore, the Aveos Motion will be granted, and the MTU Motion will be dismissed, both without costs, considering the urgency and complexity of the matter, and the number of parties involved.

FOR THESE REASONS, THE COURT :

[57] **DISMISSES** MTU Aero Engines GmbH'S "Motion to Approve the Assignment to MTU of the Air Canada Contract and other Assets and for the Issuance of a Vesting Order" (MTU Motion);

[58] **GRANTS** the Debtors/Petitioners' "Motion for an Order Authorizing the Assignment of a Contract by the Petitioners and for a Vesting Order (Air Canada Contract)" (Aveos Motion) (the **"Motion"**);

[59] **DECLARES** sufficient and valid the service and notice of the Motion on all persons and **DISPENSES** with any further requirements for service or notice thereof;

[60] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order, as amended and restated, or, otherwise, in the Motion;

---

[21] Monitor's Thirteenth Report, dated August 13, 2012.

[22] Addendum to the CRO's Sixth Report, dated August 13, 2012.

[61] **AUTHORIZES** Aveos Fleet Performance Inc./Aveos Performance Aéronautique Inc. (hereinafter "**Aveos**") to enter into and give effect to the asset purchase agreement, being **Exhibit P-1** to the Motion, (the " **LHT Agreement**") between Aveos and Lufthansa Technik AG (together with any designated affiliate, the "**Purchaser**");

[62] **AUTHORIZES** and **RATIFIES** the LHT Agreement and the transaction contemplated therein (the "**Transaction**"), and **ORDERS** that Exhibit P-1 be sealed and that a redacted copy removing financial or confidential information therefrom be filed in the Court record and made available to the Service List;

[63] **AUTHORIZES** the assignment of the Engine Maintenance Services Agreement between Aveos and Air Canada dated May 30, 2012 (the "**Air Canada Contract**") to LHT;

[64] **AUTHORIZES** Aveos to perform its obligations under the LHT Agreement and the Transaction;

[65] **AUTHORIZES** Aveos to:

a) take any and all actions necessary to proceed with the LHT Agreement and the Transaction, including, without limitation, to execute and deliver any documents and assurances governing or giving effect to the LHT Agreement and the Transaction as Aveos, in its discretion, may deem to be reasonably necessary or advisable to conclude the LHT Agreement and the Transaction, including the execution of such deeds, contracts, or documents as may be contemplated in the LHT Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

b) take any and all steps, as are, in the opinion of Aveos, necessary or incidental to the performance of its obligations pursuant to the LHT Agreement and the Transaction;

[66] **ORDERS** and **DECLARES** that, upon the delivery of a Monitor's certificate, to the Purchaser, substantially in the form attached as **Schedule A** hereto (the "**Monitor's Certificate**"), all of Aveos' right, title, benefit and interest in and to the Air Canada Contract, shall vest absolutely and exclusively in the Purchaser, free and clear of and from any and all rights, titles, interests, security interests (whether contractual, statutory, or otherwise), hypothecs (legal or contractual), prior claims, mortgages, pledges, trusts, deeds of trust or deemed trusts (whether contractual, statutory or otherwise), liens (statutory or otherwise), executions, levies, charges or other financial or monetary claims, options, rights of first offer or first refusal, real property licences, encumbrances, obligations, conditional sale arrangements, adverse claims, priorities, options, judgments, writs of seizure and sale, leasing agreements or other similar restrictions of any kind, whether attached, perfected, registered or filed and whether secured,

unsecured, legal, possessory or otherwise, remedies from facts which exist as at or before the Closing of the Transaction (as defined in the LHT Agreement), whether known or unknown, or any and all other rights of use, disputes and debts of all persons or entities of any kind whatsoever and howsoever arising, each of which and collectively being herein referred to as the "**Claims**," including, without limiting the generality of the foregoing:

a) any encumbrance or charge created by the Initial Order, as amended, or by any other order of this Court in these proceedings;

b) all charges, security interests or claims, inasmuch as they relate to property of Aveos, evidenced by registration at or with the Quebec Personal and Movable Real Rights Registry (Québec) ("**RDPRM**"), the Quebec Land Registry, any provincial personal property registry system including without limitation, registrations pursuant to the Personal Property Security Act (Ontario), the Personal Property Security Act (Manitoba) and the Personal Property Security Act (British Columbia), the Canadian Intellectual Property Office or any other personal property registry system, or pursuant to the Bank Act (Canada), the Trademarks Act (Canada) or any other legislation;

[67] **ORDERS** and **DECLARES**, for greater certainty, that all hypothecs, encumbrances and Claims affecting or relating to the Air Canada Contract, upon delivery of the Monitor's Certificate, be and are expunged and discharged as against the Air Canada Contract;

[68] **ORDERS** that, upon receipt of a copy of the signed Monitor's Certificate having been delivered to the Purchaser, Aveos is authorized to receive payment of the Purchase Price from the Purchaser;

[69] **DECLARES** that notwithstanding

a) the pendency of these proceedings;

b) any application for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") in respect of Aveos and any bankruptcy order issued pursuant to any such applications; and

c) any assignment in bankruptcy or any receivership;

the LHT Agreement and Transaction shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of Aveos and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, or fraudulent conveyance, transfer for under value or other reviewable transaction under the CCAA, the BIA, Articles 1631 et seq. of

the *Civil Code of Québec*, S.Q. 1991, c. 164 ("**C.C.Q.**") or any other applicable federal or provincial legislation;

[70] **ORDERS** and **DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after execution and delivery thereof;

[71] **DECLARES** that the present Order constitutes the only authorization required by Aveos to proceed with the LHT Agreement and the Transaction and, for greater certainty, **DECLARES** that the parties involved in the LHT Agreement are exempted from requiring or obtaining any authorization that may be required from any person or authority whatsoever;

[72] **DECLARES** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Air Canada Contract shall stand in place and stead of the Air Canada Contract and that, from and after the delivery of the Monitor's Certificate, all Claims shall attach to the proceeds from the sale of the Air Canada Contract with the same priority as they had with respect to the Air Canada Contract immediately prior to the sale, as if the Air Canada Contract had not been sold;

[73] **ORDERS** that neither the Purchaser nor any affiliate thereof shall assume or be deemed to assume any liabilities or obligations whatsoever of any of Aveos or the mis en causes (other than as expressly assumed under the terms of the LHT Agreement or the Transaction or of the present Order);

[74] **ORDERS** that the LHT Agreement being Exhibit P-1 to the Motion, and any related or ancillary agreements shall not be repudiated, disclaimed or otherwise compromised in these proceedings;

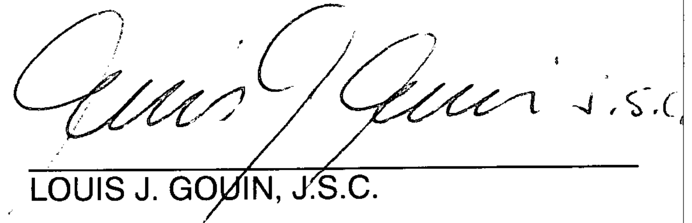
[75] **ORDERS** that all persons shall cooperate fully with Aveos and the mis en cause, the Purchaser and their respective affiliates and the Monitor and do all such things that are necessary or desirable for the purposes of giving effect to and in furtherance of the present Order, the LHT Agreement and the Transaction;

[76] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the present Order;

[77] **ORDERS** that the present Order shall have full force and effect in all provinces and territories in Canada;

[78] **ORDERS** the provisional execution of the present Order, notwithstanding any appeal and without the necessity of furnishing any security;

[79] **THE WHOLE WITHOUT COSTS.**



LOUIS J. GOUIN, J.S.C.

Mes Roger Simard and Ari Sorek
Fraser Milner Casgrain LLP
Attorneys for Debtors/Petitioners

Me Sylvain Rigaud
Norton Rose Canada LLP
Attorneys for Monitor

Mes François Gagnon and Vanessa Jodoin
Borden Ladner Gervais LLP
Attorneys for MTU Aero Engines GmbH

Me Gerry Apostolatos
Langlois Kronström Desjardins LLP
and Me Hugh O'Reilly
Attorneys for International Association of Machinists and Aerospace Workers

Mes Luc Béliveau and Luc Morin
Fasken Martineau
Attorneys for Lufthansa Technik AG

Me Louise-Hélène Sénécal
Attorneys for Air Canada

Me Bernard Boucher
Blakes, Cassels & Graydon LLP
Attorneys for Credit Suisse AG, et al

Dates of hearing: August 22 and 23, 2012

SCHEDULE A
Superior Court of Quebec 500-11-042345-120
Monitor's Certificate
(Pursuant to the Order rendered by the Hon. Louis J. Gouin, j.s.c., on August 24, 2012)

Pursuant to an Order of the Honourable Mark Schrager, j.s.c. of the Superior Court of Quebec (the "**Court**") dated March 19, 2012, as amended and restated by further Orders issued on March 30, 2012, April 5, 2012 and May 4, 2012 (collectively, the "**Initial Order**"), FTI Consulting Canada Inc. was appointed monitor (the "**Monitor**") of Aveos Fleet Performance Inc./Aveos Performance Aéronautique Inc. ("**Aveos**") and of Aero Technical US, Inc. (together with Aveos, the "**Petitioners**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "**CCAA**"). Pursuant to the Initial Order and from further Orders issued by the Court, the Petitioners benefit from a stay of proceedings granted thereby pursuant to the CCAA.

Pursuant to an Order of the Court dated August 24, 2012 (the "**Authorization of Sale and Vesting Order**") the Court, *inter alia*, authorized and approved the transaction and conveyance and the assignment of the Air Canada Contract by and between the Petitioners on the one hand, and Lufthansa Technik AG, on the other hand (together with any designated affiliate, the "**Purchaser**"), and provided for, among other things, the vesting in the Purchaser of all of the Petitioners' rights, title and interest in and to the Air Canada Contract, free and clear of any and all Claims, encumbrances, charges, liens and hypothecs, the whole in accordance with the *Authorization of Sale and Vesting Order*, which vesting is to be effective with respect to the Purchased Assets and Air Canada Contract upon delivery by the Monitor to the Purchaser of this certificate;

Unless otherwise indicated herein, capitalized terms have the meaning ascribed to them in the *Authorization of Sale and Vesting Order*;

THE MONITOR HEREBY CERTIFIES that:

1. It has received written confirmation from the Petitioners that the closing of the LHT Transaction has occurred; and

2. The LHT Transaction has been completed to the satisfaction of the Monitor.

MADE AT MONTRÉAL, THIS ● DAY OF ●, 2012.