

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-042345-120

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

AVEOS FLEET PERFORMANCE INC./AVEOS
PERFORMANCE AÉRONAUTIQUE

- and -

AERO TECHNICAL US, INC.

Debtors/Respondents

- and -

FTI CONSULTING CANADA INC.

Monitor

- and -

AIR CANADA

Petitioner

PETITIONER'S *DE BENE ESSE* MOTION FOR AN ORDER
LIFTING THE STAY OF PROCEEDINGS
TO CONFIRM THE TERMINATION OF CERTAIN CONTRACTS
(Sections 11, 11.02 and ff. and 34 of the *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE JUSTICE MARK SHRAGER, J.S.C., OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL
DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. PREAMBLE

1. On March 19, 2012, this Court issued an order (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") in respect of Aveos Fleet Performance Inc. ("Aveos") and Aero Technical US, Inc. (collectively with Aveos, the "Debtors"), as appears from the Court record.

2. Pursuant to the Initial Order, FTI Consulting Canada Inc. (the "**Monitor**") was appointed monitor of the Debtors, and a stay of proceedings (the "**Stay of Proceedings**") was granted in favour of the Debtors until and including April 5, 2012, as appears from paragraph 11 of the Initial Order.
3. On March 20, 2012, this Court issued an order appointing Mr. Jonathan Solursh (the "**CRO**") as chief restructuring officer of the Debtors, as appears from the Court record.
4. On March 29, 2012, the stay of proceedings was extended until and including May 4, 2012.
5. On April 20, 2012, following the filing of Aveos' *Motion for Approval of a Divestiture Process* (the "**DP Motion**"), the Court issued an *Order Approving the Divestiture Process* by which it approved a proposed procedure for the divestiture of Aveos' assets (the "**DP**") and with which Air Canada is ready, willing and able to cooperate and work collaboratively with potential maintenance and repair ("**MRO**") providers having globally competitive cost structures, as well as with the CRO, the Quebec Government and other stakeholders towards viable, cost-competitive long-term arrangements that support the Canadian aviation industry.
6. Air Canada is Canada's largest licensed air carrier which provides, *inter alia*, domestic and international passenger and cargo air transportation services. In order to carry out its air transportation business, Air Canada owns or leases aircraft and additional associated parts, including aircraft engines, auxiliary power units ("**APUs**"), components, expendable parts, and other equipment (collectively, the "**Air Canada Assets**").
7. Until it abruptly ceased its operations, Aveos was the main MRO service-provider for the Air Canada Assets. Since the beginning of 2011, Air Canada undertook 135 airframe checks and Aveos performed 123, or 91%, of them. In addition, Aveos performed 52 of 56, or 93%, of engine checks performed for Air Canada over that time frame.
8. Maintenance work in connection with the Air Canada assets was provided by Aveos along with ancillary and other related services in six areas which are critical to the operations of Air Canada:
 - Airframe maintenance;
 - Engine maintenance;
 - APU maintenance;
 - Components maintenance;
 - Ancillary services; and
 - Training services;

(collectively, the "**Aveos Services**").

9. The Aveos Services were performed by Aveos at its Montreal (YUL), Toronto (YYZ), Winnipeg (YWG) and Vancouver (YVR) facilities.
10. Since the abrupt shutdown of Aveos' operations, Air Canada has incurred and continues to incur substantial damages resulting from Aveos ceasing to perform its obligations and its *de facto* repudiation of all the agreements which govern the provision of the Aveos Services.
11. Air Canada therefore seeks an order lifting the stay of proceedings, if need be, to allow Air Canada to confirm the termination of the *General Terms Agreement for Technical Services* (the "GTA") dated October 1, 2006, communicated herewith, under confidential seal, as **Exhibit P-1**, in accordance with the terms thereof, as well as the following services agreements under which the Aveos Services were provided:
 - *Airframe Heavy Maintenance Services Agreement*, dated October 1, 2006 (the "**Airframe Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-2**;
 - *Engine Maintenance Services Agreement*, dated October 1, 2006 (the "**Engine Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-3**;
 - *APU Maintenance Services Agreement*, dated October 1, 2006 (the "**APU Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-4**;
 - *Component Maintenance Services Agreement*, dated October 1, 2006 (the "**Component Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-5**;
 - *Ancillary Services Agreement*, dated October 1, 2006 (the "**Ancillary Services Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-6**;
 - *Training Services Agreement*, dated January 1, 2011 (the "**Training Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-7**;
 - *Services Agreement for Aircraft Paint Services*, dated October 1, 2006 (the "**Paint Services Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-8**; and
 - *Services Agreement for Outsourcing Services*, dated October 1, 2006, (the "**Outsourcing Services Agreement**"), communicated herewith, under confidential seal, as **Exhibit P-9**;

(collectively, the "Services Agreements").

II. AIR CANADA'S RIGHT TO TERMINATE THE GTA AND THE SERVICES AGREEMENTS

i. Context

12. Under the following Services Agreements, Aveos was an exclusive provider of Aveos Services to Air Canada:
- Airframe Agreement, Exhibit P-2: Aveos was the exclusive provider of airframe maintenance services (s. 1.7) on certain aircraft types covered by such exclusivity in said agreement (s. 1.4);
 - Engine Agreement, Exhibit P-3: Aveos was the exclusive provider of engine maintenance services (s. 1.7) on certain engine types covered by such exclusivity in said agreement (s. 1.4);
 - APU Agreement, Exhibit P-4: Aveos was the exclusive provider of APU maintenance services (s. 1.7) on certain APU types covered by such exclusivity in said agreement (s. 1.4);
- (collectively, the "Exclusive Agreements").
13. Under the following Services Agreements, Aveos was a non-exclusive service-provider of Air Canada:
- Ancillary Services Agreement, Exhibit P-6: Aveos was a non-exclusive service provider of Air Canada (s. 1.5);
 - Paint Services Agreement, Exhibit P-8: Aveos was a non-exclusive service provider of Air Canada (s. 1.7);
 - Outsourcing Services Agreement, Exhibit P-9: Aveos was a non-exclusive service provider of Air Canada (s. 1.7);
- (collectively, the "Non-Exclusive Agreements").
14. Under the Component Agreement, Exhibit P-5 (s. 1.6 and 2) and the Training Services Agreement, Exhibit P-7 (s. 1.6), Aveos was an exclusive service-provider of Air Canada for a certain portion of the services and a non-exclusive service-provider for the other portion of the services to be rendered under those agreements.
15. The performance of the Aveos Services is subject to the terms of the GTA.
16. Prior to filing for court protection under the CCAA, on March 18, 2012, Aveos publically announced the complete shutdown of its airframe division and permanently terminated its employees in said division.
17. As a result, Aveos became, at least since March 18, 2012 and has since remained,

unable to provide services with respect to airframe maintenance under the GTA and the Airframe Agreement.

18. On March 19, 2012, Aveos advised substantially all its other employees not to return to work.
19. In addition, on March 20, 2012, Aveos publicly announced the complete shutdown of all of its operations and the permanent termination of substantially all its remaining employees.
20. As such, Aveos became, at least since March 19, 2012, and has since remained, unable to provide any of the Aveos Services as regards all other Air Canada Assets under all other Service Agreements.
21. Air Canada is entitled, and has elected to terminate the GTA and all related Services Agreements.

ii. **Termination of the Exclusive Agreements**

22. Section 1.5.2 of the GTA provides that in the event Aveos is unable, for any reason whatsoever, to provide Aveos Services in accordance with the terms of the Exclusive Agreements or the GTA for a period of or projected to be more than thirty (30) consecutive days, Air Canada may immediately terminate the affected Exclusive Agreements.
23. Since at least March 19, 2012, i.e. for over thirty (30) consecutive days as of the date of the present Motion, Aveos has fundamentally and continuously breached and *de facto* repudiated the GTA and the Exclusive Agreements. With no work force, Aveos is incapable of providing the Aveos Services.
24. Air Canada has had the right, at least as of April 20, 2012, to immediately terminate the affected Exclusive Agreements and hereby requests this Court to confirm that said Exclusive Agreements are terminated.

iii. **Termination of the Non-Exclusive Agreements**

25. Section 25.1 of the GTA provides that Air Canada can terminate any Services Agreement if Aveos materially breaches any of its obligations under said Services Agreement and fails to cure the breach within thirty (30) day of receiving a notice to cure from Air Canada.
26. Since at least March 19, 2012, Aveos has failed or is unable to provide any of the Aveos Services in accordance with the terms of the Non-Exclusive Agreements and has thus fundamentally and continuously breached and *de facto* repudiated its obligations under said agreements.
27. It is clear from the above, from the termination of Aveos' employees as well as from the terms of the DP, that even if Air Canada was to send the required notice

under section 25.1 of the GTA, Aveos would be unable to cure its breaches under the Non-Exclusive Agreements.

28. Therefore, Air Canada seeks the Court's permission to send a notice to immediately terminate the Non-Exclusive Agreements, as it has become obvious that no breach will be cured by Aveos within thirty (30) days.
29. Alternatively, Air Canada seeks the Court's permission to send a notice to cure under section 25.1 of the GTA regarding the Non-Exclusive Agreements and terminate said agreements upon Aveos failing to cure within thirty (30) days.

iv. Termination of the Component Agreement and the Training Agreement

30. As it relates to the services to be provided on an exclusive basis by Aveos to Air Canada under the Component Agreement and the Training Agreement, Air Canada has had the right, at least as of April 20, 2012, to immediately terminate these agreements, for the same reasons as detailed under section *Termination of the Exclusive Agreements* hereinabove, and hereby requests this Court to confirm that said Component Agreement and the Training Agreement are terminated.
31. As it relates to the services to be provided on a non-exclusive basis by Aveos to Air Canada under the Component Agreement and the Training Agreement, Air Canada seeks the Court's permission to send a notice to immediately terminate these agreements, as it has become obvious that no breach will be cured by Aveos within thirty (30) days, or, alternatively, to send a notice to cure under section 25.1 of the GTA regarding these agreements and terminate said agreements upon Aveos failing to cure within thirty (30) days.

v. Termination of the GTA

32. As per the above, Air Canada respectfully submits that all the Services Agreements are or should immediately be terminated.
33. The GTA serves no purpose in and of itself, other than providing general terms and conditions which apply to all Services Agreements.
34. Aveos' shutdown and ceasing to perform its obligations under the GTA and the Services Agreements since the institution of the CCAA proceedings amounts to a *de facto* repudiation of these agreements.
35. Therefore, Air Canada seeks the Court's permission to send a notice to Aveos to terminate the GTA, effective as of the date of termination of all Services Agreements.

III. GROUNDS FOR THIS MOTION

i. Hardship to Air Canada Ensuing from the Current Situation

36. Air Canada is well-founded in requesting this Court to lift the Stay of Proceedings to allow Air Canada to confirm the termination of the GTA and all related Services Agreements and send the required notices to Aveos in this regard.
37. Aircraft are complex and heavily-regulated equipment. Air Canada's aircraft must be serviced and tested on a regular basis. Engines need to be repaired in order for spare engines to be available. Components need to be serviced in time to replace other components that Air Canada could be required to remove. Spare parts must be made available on short notice and inventories must be replenished in a timely fashion. All of these tasks must be finely coordinated and are required to support Air Canada's daily flight operations.
38. The sudden shutdown of Aveos' operations, including the termination of substantially all of its employees, triggered the complete interruption of the performance of the Aveos Services, which adversely affects Air Canada's carefully planned and coordinated maintenance and flight schedules.
39. As a result of Aveos' shutdown and inability to perform, Air Canada implemented a contingency plan to source, on a short term basis, maintenance and related services and supplies from third parties at significant incremental cost.
40. It is to be noted that there are only a limited number of qualified and certified MRO providers, in Canada and globally, who can support Air Canada's requirements.
41. There are operational risks, being mitigated by intense and constant management focus, arising from Air Canada not being able to secure stable access to maintenance services; it is thus vital that Air Canada be in a position to secure stable and longer term access to a wide range of maintenance and related services and supplies in order to support its significant and diverse fleet of aircraft, engines, components and related parts and equipment and for its maintenance operations to return to a more operationally steady and coordinated state.
42. Also, short term supply and service agreements are necessarily more costly than long term, more stable, arrangements Air Canada may negotiate, and any delay in Air Canada securing suitable arrangements continues to add to the damages suffered by Air Canada as a result of Aveos' abrupt shutdown.
43. In other words, the hardship to Air Canada includes its inability, as long as the termination of the GTA and the Services Agreements is not confirmed, to:

- (a) Secure guaranteed timely slots to undertake required maintenance and repair with the limited amount of other qualified and certified MRO providers;
- (b) Secure proper planning for its fleet operations since it is currently at the mercy of market availability, on a short term basis; and
- (c) Secure competitive pricing with other MRO providers,

all of which cause and will continue to cause severe operational planning difficulties and financial prejudice, including as a result of not being able to enter into stable more efficient and economical service agreements with other MRO providers rather than being at the mercy of residual, insufficient, untimely, and more expensive time slots.

44. The objective sought herein is to permit Air Canada to assert its rights following the *de facto* repudiation, by Aveos, of its obligations under the GTA and Services Agreements, and to prevent additional hardship to Air Canada and substantial incremental damages which would increase Air Canada's claim and could potentially affect the recovery by Aveos' creditors.

ii. **No Impact on the Divestiture Process**

45. As stated in paragraph 5 above, Air Canada is ready, willing and able to cooperate with the DP and to work with potential acquirors of the various Aveos businesses who are MRO providers having globally competitive cost structures, with preference given to those that have or will establish some portion of their operations in Montreal, Winnipeg, Vancouver and Toronto and employ the skills of Canadian aviation technicians.
46. It is submitted that Air Canada's termination of the GTA and the Services Agreements will not have any adverse impact on the outcome of Aveos' DP and, in fact, facilitates the DP by simplifying the process and clarifying the assets of the businesses being acquired.
47. Indeed, it appears from the DP Motion, as well as from the testimony of the CRO at the hearing on the DP Motion, that the divestiture contemplated is for parts of, but not the entire business of Aveos as a whole, while the GTA and the Services Agreements may not be assigned without Air Canada's consent except if the GTA and all the Services Agreements are assigned together in relation to all business units to the same acquiror, and the assignee is bound by all their terms and conditions.
48. Also, the fact that the GTA and the Services Agreements can no longer effectively remain in effect under their original terms, without Air Canada's active involvement and consent, is made amply clear by the statement in Schedule F of the DP that Aveos "*encouraged ... Air Canada ... to work ... to negotiate a suitable commercial relationship ...*".

49. In any event, an effective assignment of the GTA and the Services Agreements without Air Canada's consent, whether contractually or under section 11.3 of the CCAA, cannot be contemplated since:
- (i) contractually, any assignment without Air Canada's consent must be to one and the same acquirer for the GTA and all Services Agreements, which, Air Canada is informed, is not feasible;
 - (ii) in the context of a forced assignment under section 11.3 CCAA, given the operational and financial interrelatedness of the GTA and various Services Agreements, their complexity and the breadth of obligations ascribed to Aveos under these contracts, as well as the unwritten course of dealing between the parties, anything short of a complete assignment of all Services Agreements to a single purchaser would amount to an unlawful modification of the contractual scheme between Air Canada and Aveos; and
 - (iii) as the DP contemplates, the assignment of contracts is not "*possible due to irreparable breach*" (s. 3.1), due to the inability to perform the Aveos Services for now more than thirty (30) days, and the expected failure to perform for at least an additional two months.

IV. CONCLUSIONS

50. The orders sought herein are fair and reasonable and in the interest of the Debtor and its stakeholders.
51. The filing of the GTA and Services Agreements, Exhibits P-1 to P-9, is requested under seal in light of the fact that these agreements (a) have always been treated as confidential between the parties and (b) contain sensitive commercial information (including pricing and service terms).
52. The present motion is well founded in fact and in law.


WHEREFORE, MAY THIS COURT:

- [1] **GRANT** the Petitioner's *De Bene Esse Motion for an Order Lifting the Stay of Proceedings to Confirm the Termination of Certain Contracts* (the "**Motion**").
- [2] **DECLARE** that the notices given of the present motion are proper and sufficient.
- [3] **DECLARE** that unless otherwise defined, all capitalized terms referred to in this Order shall have the meaning attributed to them in the Motion and in the Initial Order issued by this Court on March 19, 2012, as amended.

- [4] **DECLARE** that the GTA and Services Agreements filed in support of the Motion (Exhibits P-1 to P-9) shall be kept confidential and under seal in the Court Record.
- [5] **ORDER** that the Stay of Proceedings shall be lifted for the sole purpose of allowing Air Canada to:
- (i) advise Aveos of the termination of (a) the Exclusive Agreements and (b) the Component Agreement and the Training Agreement for the services to be provided on an exclusive basis by Aveos, effective as of April 20, 2012;
 - (ii) send a notice to Aveos to terminate (a) the Non-Exclusive Agreements and (b) the Component Agreement and the Training Agreement for the services to be provided on a non-exclusive basis by Aveos, effective immediately **OR ALTERNATIVELY**, send a notice to cure to Aveos, specifying that these agreements shall immediately be terminated should Aveos fail to cure within thirty (30) days;
 - (iii) send a notice to Aveos to terminate the GTA, effective as of the date of termination of all Services Agreements.
- [6] **RESERVE** the rights of the parties to apply to this Court in order to seek further directions in connection with this Order.
- [7] **ORDER** the provisional execution of the present order to be rendered notwithstanding appeal and without the necessity of furnishing any security.

WITHOUT COSTS, save and except in the event of contestation.

MONTRÉAL, May 2, 2012


STIKEMAN ELLIOTT LLP
(Me Louis P. Bélanger)
(Me Nathalie Mercier-Filteau)
(Me Joseph Reynaud)
Attorneys for the Petitioner Air Canada

AFFIDAVIT

I, the undersigned, Salvatore Ciotti, having my principal place of business at 7373 Côte-Vertu West, Dorval, Québec, solemnly declare the following:


1. I am Senior Director Corporate Real Estate and Corporate Development at Air Canada.
2. All the facts alleged in the Petitioner's *De Bene Esse Motion for an Order Lifting the Stay of Proceedings to Confirm the Termination of Certain Contracts* are true.

AND I HAVE SIGNED:

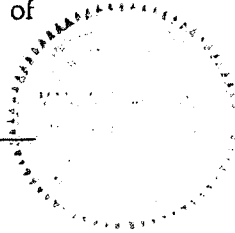


SALVATORE CIOTTI

Solemnly declared before me in
Montreal, Quebec, on the 2nd day of
May, 2012



Commissioner of Oaths



NOTICE OF PRESENTATION

To: Service List

TAKE NOTICE that the Petitioner's *De Bene Esse Motion for an Order Lifting the Stay of Proceedings to Confirm the Termination of Certain Contracts* will be presented before the Honourable Mark Shrager, J.S.C., or one of the Honorable Judges of the Superior Court, sitting in the District of Montréal, at the Montréal Court House, 1 Notre-Dame Street West, Montréal, Québec, on a date and at a time to be determined by the Court and communicated to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, May 2, 2012

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

(Me Louis P. Bélanger)

(Me Nathalie Mercier-Filteau)

(Me Joseph Reynaud)

Attorneys for the Petitioner, Air Canada

SUPERIOR COURT

N° : 500-11-042345-120

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF :

AVEOS FLEET PERFORMANCE INC./AVEOS
PERFORMANCE AÉRONAUTIQUE

-and-

AERO TECHNICAL US, INC.

Debtors / Respondents

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

AIR CANADA

Petitioner

BS0350

O/Ref.: 021070-1933

DE BENE ESSE MOTION FOR AN ORDER LIFTING
THE STAY OF PROCEEDINGS TO CONFIRM THE
TERMINATION OF CERTAIN CONTRACTS

COPY

Me Joseph Reynaud
jreynaud@stikeman.com

Tel. : (514) 397-3019
Fax : (514) 397-3616

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors
1155 René-Lévesque Blvd. West,
40th Floor

Montréal, Canada H3B 3V2