

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

N°: 500-11-042345-120

SUPERIOR COURT
Commercial Division

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36)

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

AVEOS FLEET PERFORMANCE INC./
AVEOS PERFORMANCE AÉRONAUTIQUE
INC.

and
AÉRO TECHNICAL US, INC.

Insolvent Debtors / Petitioners
/ Respondents

and

FTI CONSULTING CANADA INC.

Monitor

et als.

REGISTRAR OF THE PERSONAL AND
MOVABLE REAL RIGHTS REGISTER OF
QUEBEC

and
AIR CANADA

and
LUFTHANSA TECHNIK AG

Mis en causes

and

MTU AERO ENGINES GMBH

Respondent / Petitioner

**MTU AERO ENGINES GmbH'S AMENDED CONTESTATION
AND MOTION TO APPROVE THE ASSIGNMENT TO MTU
OF THE AIR CANADA CONTRACT AND OTHER ASSETS
AND FOR ISSUANCE OF A VESTING ORDER**

(Related to Proceeding #44)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, MTU AERO ENGINES GmbH RESPECTFULLY SUBMITS THE FOLLOWING:

I. SCOPE AND PURPOSE

1. Respondent / Petitioner, MTU Aero Engines GmbH (hereinafter "**MTU**"), hereby seeks the dismissal of Petitioners' *Motion for an Order Authorizing the Assignment of a Contract by the Petitioners and for a Vesting Order (Air Canada Contract)* (hereinafter the "**Petitioners' Motion**") through which Petitioners seek to assign the Air Canada Contract (as hereinafter defined) to Lufthansa Technik AG (hereinafter "**Lufthansa**"). Moreover, MTU seeks the authorization for Petitioners to assign the Air Canada Contract (as hereinafter described) to MTU and the issuance of the appropriate Vesting Order;
2. MTU's contention is that there are grave irregularities in the bid process and bid selection by the Petitioners under the direction of the CRO, M. Jonathan Solursh (hereinafter "**Solursh**" or the "**CRO**"), such that the integrity and efficacy of the bid process have been severely compromised and as a result, the criterion of fairness is not met;
3. More particularly, MTU contends that: (i) at the bid deadline set by the CRO, namely August 7th, 2012, MTU's bid was the highest and best offer; (ii) it was misled by the CRO with respect to the bid deadlines; (iii) the Lufthansa bid, which the Petitioners now seek to have approved by this Honourable Court, was submitted two (2) days after the bid deadline, in an amount much higher than Lufthansa's initial bid; and (iv) the bid deadline was never postponed or at the very least, MTU was not advised of such postponement;

II. PREVIOUS RELATIONSHIP BETWEEN MTU AND AVEOS

4. MTU is one of the leaders in the aeronautic engine repair and maintenance industry, the whole as appears from a copy of MTU's corporate promotional material communicated herewith as **Exhibit MTU-1**;
5. During the course of 2011 and 2012, MTU had demonstrated a serious interest in acquiring a portion of the assets of Aveos Fleet Performance Inc. (hereinafter "**Aveos**") and to cooperate with Aveos on Maintenance Repair and Overhaul ("**MRO**") work;
6. In this respect, on October 14th, 2011, MTU and Aveos executed a Memorandum of Understanding, which was subsequently amended, the whole as appears from the said Memorandum of Understanding and Amendment communicated herewith *en liasse* as **Exhibit MTU-2**;

7. Moreover, on January 17th, 2012, MTU and Aveos executed a Confidentiality Agreement with respect to a possible transaction for the sale of Aveos' engine service maintenance business, the whole as appears from a copy of the said Confidentiality Agreement communicated herewith as **Exhibit MTU-3**;
8. As a result of MTU's due diligence, on or about March 8th, 2012, MTU delivered to John Kolshak, then president and CEO of Aveos, a non-binding indication of interest with respect to the acquisition of Aveos' engine shop assets, the whole as appears from a copy of an email dated March 8th, 2012, and a letter signed by Dr. Stefan Weingartner and Juergen Kuhn, MTU's Vice-President Business Development MRO (hereinafter "**Kuhn**") communicated herewith *en liasse* and under seal of confidentiality as **Exhibit MTU-4**;
9. Unfortunately, on March 19th, 2012, Aveos abruptly sought protection under the *Companies Creditors Arrangement Act* (hereinafter the "**CCAA**"), the whole as appears from the Court record herein, thereby bringing an end to the negotiations between Aveos and MTU;
10. Moreover, immediately upon obtaining the issuance of an Initial Order from this Honourable Court, Aveos proceeded to terminate all of its staff and employees and ceased its operations as a whole, including MRO services to its clients;
11. As a result, Aveos stopped operating as a going concern, thereby tremendously diminishing the value of its assets;

III. THE AIR CANADA CONTRACT

12. Following the issuance of the Initial Order by this Honourable Court, as a result of proceedings filed by Air Canada in the present matter and of negotiations between Air Canada and the Petitioners, Air Canada and Aveos executed the following agreements as of May 30th, 2012:
 - a) an Engine Maintenance Services Agreement (hereinafter the "**EMS Agreement**") and;
 - b) a General Terms Agreement (hereinafter the "**GT Agreement**" and, together with the EMS Agreement, the "**Air Canada Contract**"),

the whole as appears from copies of the EMS Agreement and the GT Agreement communicated herewith *en liasse* under seal of confidentiality, as **Exhibit MTU-5**;

IV. DIVESTITURE PROCESS

13. On or about April 30th, 2012, the Honourable Mark Schragger of this Court rendered an *Order Approving the Divestiture Process*, the whole as appears from the Court record herein;
14. It is to be noted that the Air Canada Contract is not an asset described in Schedule A of the Divestiture process (hereinafter the "**DP**");
15. The DP approved by the Court calls for two (2) phases;
16. In Phase 1, potential bidders were required to deliver to the CRO the Participation Documents (as such term is defined in the DP). However, on May 15th, 2012, Mr. Irfan Rajabali (hereinafter "**Rajabali**"), an associate of Solursh, wrote to MTU's representative Marko Niffka (hereinafter "**Niffka**") stipulating that in light of the prior relationship with MTU, the CRO did not require the Participation Documents to be submitted by MTU, the whole as appears from an email dated May 15th, 2012, communicated herewith as **Exhibit MTU-6**;
17. Phase 1 of the DP then calls upon each bidder to submit a Phase 1 Qualified Bid (as such term is defined in the DP) prior to the Phase 1 Bid Deadline (as such term is also defined in the DP);
18. Upon submission of the Participation Documents, prospective bidders were given access to a virtual data room, which included numerous documents with respect to the affairs of Aveos, as well as bid documentation and, in particular, a draft purchase agreement, the whole as appears from a copy of the said draft purchase agreement printed by Niffka from the virtual data room on May 24th, 2012 and communicated herewith as **Exhibit MTU-7**;
19. The Phase 1 Bid Deadline was set by the CRO to June 6th, 2012 for all asset groupings except the Component Maintenance Center, the whole as appears from a copy of a Phase 1 Bid Deadline Amendment published on the Monitor's website and communicated herewith as **Exhibit MTU-8**;
20. On June 6th, 2012, namely on the Phase 1 Bid Deadline (as defined in the DP), MTU submitted a Phase 1 Qualified Bid (as defined in the DP) in the amount of \$2,328,000, with respect to certain tooling and equipment only, the whole as appears from copies of an email from Niffka to Solursh dated June 6th 2012 at 4:23 pm Munich time (10:23 am Montreal time), a letter addressed by MTU to the CRO dated June 6th, 2012, a confirmation of wire transfer also dated June 6th, 2012 and a purchase agreement (undated) communicated herewith *en liasse* as **Exhibit MTU-9**;
21. As appears from MTU's letter (Exhibit MTU-9), MTU did not have sufficient time to evaluate Aveos' business and to obtain necessary board approval in order to submit a bid for the Air Canada Contract. Dr. Stefan Weingartner of MTU states as follows:

“As the official Divestiture Process draws to a close, I would like to explain that, as Juergen mentioned, it was not possible for us to adequately evaluate Aveos’ business prior to our next scheduled board meeting. We have to follow our strict internal approval process, especially in the light of the fact that we are preparing to offer support for all Air Canada’s CFM56 fleet. At this point, we will therefore submit a bid for specific assets only, to be followed by a complete bid by June 15th, as discussed between you and Juergen.

We are also firmly committed to continuing our analysis of establishing an engine maintenance facility in Montreal. Having operated successfully in Vancouver for many years, we are confident that Montreal will soon become our second focus in Canada.”

22. As appears from the said letter, the CRO had already been advised of MTU’s strict internal approval processes;
23. Subsequent to the submission of MTU’s initial bid (Exhibit MTU-9), Aveos and the CRO selected MTU as a “Phase 2 Qualified Bidder” as provided in the DP;
- 23.1 Therefore, upon selection by Aveos for Phase 2 pursuant to sections 1.4.5 and 3.1 of the DP, MTU’s Phase 1 Qualified Bid automatically became a Phase 2 Qualified Bid, without the necessity of submitting any new documentation;
24. As had already been agreed between Solursh and Kuhn, on June 15th, 2012, MTU submitted a revised Phase 1 bid in the aggregate amount of \$4,328,000, which included the sum of \$2,000,000 for the Air Canada Contract, the whole as appears from an email from Niffka to Solursh dated June 15th 2012 at 3:53 pm Munich time (9:53 am Montreal time), a letter addressed by MTU to the CRO dated June 15th, 2012, a confirmation of wire transfer also dated June 15th, 2012 and a purchase agreement dated June 15th, 2012 communicated herewith *en liasse* as **Exhibit MTU-10**;

V. SUBMISSION OF A BID PURSUANT TO PHASE 2 OF THE DP

25. Thereafter, MTU was advised that it was required to submit a [...] bid pursuant to Phase 2 of the DP with the CRO on or before Friday July 13th, 2012 and that as such, the delay set out in sections 4.3 and 9.6 of the Asset Purchase Agreement (Exhibit MTU-7), namely the delays for refund of the Deposit and for the expiry of the offer, would expire on July 23rd, 2012;
26. As such, on July 6th, 2012, Rajabali wrote to Niffka to provide a revised draft of the EMC Asset Purchase Agreement, the whole as appears from a copy of said email communicated herewith as **Exhibit MTU-11**;
27. As appears from the Asset Purchase Agreement forming part of Exhibit MTU-11, the delays under sections 4.3a) and 9.6a) were indeed set for July 23rd, 2012;

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28. On or about July 13th, 2012, the parties discussed a postponement of the [...] bid deadline from July 13th, 2012 to a later date, to be determined by Aveos under the direction of the CRO;
 29. By email dated July 13th, 2012, Rajabali confirmed to Kuhn MTU's acceptance of the postponement of the bid deadline, the whole as appears from a copy of said email communicated herewith as **Exhibit MTU-12**;
 30. However, as the postponement of the bid deadline was communicated to MTU on the day the deadline was to expire, MTU had, in the preceding weeks, been preparing its revised bid and made arrangements to wire transfer its deposit under their revised bid, which wire transfer was indeed made to the account of Fraser Milner Casgrain on July 13th, 2012, the whole as appears from a wire transfer confirmation communicated herewith as **Exhibit MTU-13**. The deposit under the revised offer was therefore made prior to the bid deadline being extended;
 31. As a result of the postponement of the bid deadline, MTU's revised bid, which had received board approval and had been executed by MTU, was never submitted to the CRO. MTU decided not to submit its revised bid considering the extension of the bid deadline, in order to allow it to continue to better assess the opportunity of purchasing assets of Aveos. A copy of such bid is communicated herewith as **Exhibit MTU-14**;
 32. The revised bid provided, *inter alia*, a purchase price of \$2,000,000 for the rights arising under the Air Canada Contract and \$1,200,000 for the CFM56/5A tooling and test equipment;

VI. THE AIR CANADA CONTRACT BID DEADLINE WAS SET FOR AUGUST 7, 2012

33. On July 18th, 2012, Solursh wrote to Kuhn, with a copy to the Monitor's representative, Mrs. Toni Vanderlaan, indicating that the revised bid date for the amended offers with respect to the Air Canada Contract would be August 7th, 2012 (hereinafter the "**Air Canada Contract Bid Deadline**"), the whole as appears from a copy of the said email communicated herewith as **Exhibit MTU-15**;
34. Similarly, on July 19th, 2012, Rajabali sent an email to Niffka to ensure that MTU was aware of the Engine Contract Bid Deadline with respect to bids for the Air Canada Contract. Rajabali clearly and unequivocally sets the Air Canada Contract Bid Deadline to August 7th, 2012 as follows:

*"I just wanted to touch base with you to ensure you are aware of the revised engine contract timeline submission. **The bids are going to be due August 7th** and we plan to be in court by August 15th to approve and vest the contract to the successful party."*

[our emphasis]

the whole as appears from a copy of said email, communicated herewith as **Exhibit MTU-16**;

35. On August 1st, 2012, Solursh wrote to Dr. Stefan Weingartner of MTU and confirmed the August 7th, 2012 date as the Air Canada Contract Bid Deadline, the whole as appears from a copy of the said email communicated herewith as **Exhibit MTU-17**. He states as follows:

*"[...] but the new timing as (sic) us **getting the bids late next week (August 7th)** and once we accept going to Court on the 14th of August for approval. Please put your best foot forward in the bidding – we have three parties looking at the contract. Personally, I like the MTU storey (sic) and would like to see your team succeed."*

[our emphasis]

36. Moreover, on Friday August 3rd, 2012, Rajabali wrote an email to Kuhn and Niffka providing the "*blackline of the final MTU asset purchase agreement which should be used when submitting your bid on Tuesday*", namely on August 7th, 2012, the whole as appears from a copy of the said email, communicated herewith as **Exhibit MTU-18**;
37. Finally, on August 7th, 2012, Rajabali wrote to Niffka confirming that MTU's bid was expected to be submitted the very same day, the whole as appears from a copy of said email, communicated herewith as **Exhibit MTU-19**;
38. On August 7th, 2012, at approximately 11:00 am Montreal Time, Niffka hand delivered MTU's final revised bid in the aggregate amount of \$7,120,000, which included the sum of \$5,200,000 for the Air Canada Contract and related equipment (hereinafter the "**MTU Final Bid**"), the whole as appears from a letter addressed by MTU to the CRO dated August 7th, 2012, a confirmation of wire transfer also dated August 7th, 2012 and a purchase agreement dated August 7th, 2012 (hereinafter the "**MTU Agreement**"), communicated herewith *en liasse* as **Exhibit MTU-20** to Mr. Carl Burger, a representative of Aveos, who immediately handed same to Mr. Jeff Gollob, a representative of the CRO;
39. Moreover, a few minutes later, Niffka forwarded the MTU Final Bid (Exhibit MTU-20) by email to Solursh, the whole as appears from two (2) emails from Niffka to Solursh dated August 7th 2012 at 5:29 pm Munich time (11:29 am Montreal time) communicated herewith *en liasse* as **Exhibit MTU-21**;
40. At such time, MTU understood, in accordance with the representations made by the CRO, that Aveos, under the direction of the CRO, and Aveos' secured creditors would review all bids received for the Air Canada Contract and would provide Aveos' decision with respect to the selection of the winning bid by no later than Friday August 10th, 2012;

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41. In the context of the sale of other assets of Aveos, on August 8th, 2012, the CRO signed the *Sixth Report of the Chief Restructuring Officer to the Court*, the whole as appears from a copy of said report communicated herewith as **Exhibit MTU-22**, wherein Solursh advises the Court and all stakeholders as follows, at paragraph 19:

*"At the time of finalizing this report, the CRO continues to work with interested parties with respect to the Air Canada Engine Contract (the "Air Canada Contract"). **Bids were to be received by August 7th, 2012** and the CRO anticipates reporting to the Court on this matter via an addendum to this 6th report prior to August 14th, 2012"*

[our emphasis]

42. The CRO's 6th Report (Exhibit MTU-22) clearly validates and supports MTU's understanding that the Air Canada Contract Bid Deadline expired on August 7th, 2012 and not later;
43. However, the CRO contradicts his previous statement made in the *Sixth Report of the Chief Restructuring Officer to the Court* (Exhibit MTU-22) in the *Addendum to the Sixth Report of the Chief Restructuring Officer to the Court* filed in support of Petitioners' Motion as Exhibit P-2, which is dated August 13th, 2012, wherein he states at paragraph 13 that :

"Aveos previously announced [...] that the bid deadline for the Air Canada Contract would be extended to August 10th, 2012 [...]"

44. Moreover, the CRO contradicts himself within the *Addendum to the Sixth Report of the Chief Restructuring Officer to the Court* in respect of the Air Canada Contract Bid Deadline when he states, at paragraph 14, that :

*"Overall, there were four parties who had express interest in the Air Canada Contract. However, **only two bids were received on August 7th, 2012.** [...]"*

[our emphasis]

45. At no time whatsoever did Solursh, Rajabali, or any other representatives of the CRO or of Aveos advise Kuhn, Niffka or any other representatives of MTU, verbally or in writing, of a change in the Air Canada Contract Bid Deadline;
46. The first time MTU heard of an alleged change in the Air Canada Contract Bid Deadline from Tuesday August 7th, 2012 to Friday August 10th, 2012 at 5:00 pm Montreal time, was when representations were made by Aveos' counsel during the August 14th, 2012 hearing before the Honourable Justice Lalonde of this Court;

VII. DISCUSSIONS REGARDING A LEASE FOR THE TEST CELL FACILITY

47. Following the submission of the MTU Final Bid, on August 9th, 2012, MTU began discussions with the CRO regarding a lease agreement for the premises located at 7171 Côte-Vertu West (hereinafter the "**Test Cell Facility**") in the event that :
(i) MTU was the winning bidder with respect to the Air Canada Contract; and
(ii) entered into an Asset Purchase Agreement with Aveos in this respect;
48. Indeed, in the event the MTU Final Bid was successful, the leasing of the Test Cell Facility from Aveos would have allowed MTU to realize substantial costs savings and improve efficiencies, as well as accelerate ramp up of the Montreal operations;
49. In this respect, Aveos and/or the CRO prepared a draft letter of intent (hereinafter the "**Test Cell Facility LOI**"), the whole as appears from an email from Solursh to Kuhn dated August 9th, 2012 communicated herewith as **Exhibit MTU-23**;
50. The parties continued to negotiate the terms of the Test Cell Facility LOI on August 9th, 2012, the whole as appears from an exchange of emails dated August 9th, 2012 communicated herewith *en liasse* as **Exhibit MTU-24**;
51. The Test Cell Facility LOI was conditional upon MTU succeeding in its bid for the Air Canada Contract, and discussions in its respect ended on August 9th, 2012, as it appears that on or about August 10th, 2012, Aveos, under the direction of the CRO, selected the Lufthansa August 9th, 2012 Bid over the MTU Final Bid;

VIII. EVENTS OF AUGUST 7, 2012 UP TO AUGUST 10, 2012

52. MTU was advised by the CRO that Lufthansa also submitted a bid for the purchase of the rights under the Air Canada Contract prior to the expiry of the Air Canada Contract Bid Deadline, (hereinafter the "**Previous Lufthansa Bid**"). MTU and its undersigned counsel had never seen the Previous Lufthansa Bid as it was not disclosed by Petitioners;
- 52.1 The DP makes no reference to a "Phase 2 Bid Deadline". However, the MTU Final Bid (Exhibit MTU-20) and the Previous Lufthansa Bid were indeed submitted on or before August 7, 2012. Therefore, such bids, received on or before August 7, 2012 could not be anything but bids submitted in the context of the "Closed auction" referred to in section 4.1 of the DP, since the DP does not provide for the submission of bids at any other time in Phase 2;
53. On August 7th, 2012, at 10:23 pm Montreal time (4:23 am Munich Time), Rajabali requested Niffka to meet for breakfast on the next morning with him and Solursh, the whole as appears from an email dated August 8th, 2012 (August 7th 2012, Montreal Time) and an "*Outlook*" invitation communicated herewith *en liasse* as **Exhibit MTU-25**;

54. Niffka considered this request unusual, however, in light of the importance of this matter, decided to accept the invitation;
55. Niffka, Solursh and Rajabali were present at the breakfast meeting held at 6:30 am Montreal time, Wednesday August 8th, 2012. Niffka was asked whether he wanted to make a presentation of the MTU Final Bid (Exhibit MTU-20). He responded that he thought it was not necessary or useful to go through the lengthy document, but indicated that he was prepared to answer any questions the CRO's representatives might have;
56. The CRO had questions about various ancillary issues, including, *inter alia*, whether MTU had yet appointed legal representation in Canada and Niffka's possible move to Canada in the event MTU was successful with its bid;
57. Moreover, Solursh asked Niffka whether "there was any way to extract more value from your bid?". Niffka was surprised that this question would come after the Air Canada Contract Bid Deadline had expired and responded that the MTU Final Bid was the best and final offer MTU would present, since, MTU had put its best foot forward, as had been requested by the CRO in Exhibit MTU-17;
58. Solursh confirmed that MTU would receive an answer by the end of the week and appeared positive with respect to a favorable outcome for MTU. Indeed, at this point, the CRO's representatives had taken cognizance of the MTU Final Bid and presumably, of the Previous Lufthansa Bid and had been able to assess their relative strengths;
59. Later during the day, Solursh called Kuhn and told him point blank "*if you give me \$500,000 to \$550,000 more, we'll make the deal today*";
60. Kuhn was astonished by this turn of events considering that MTU had followed diligently and to the letter the instructions and delays provided by the CRO with respect to the bid process. Kuhn advised Solursh that:
 - a) MTU had put considerable efforts and expended substantial resources to submit the MTU Final Bid (Exhibit MTU-20) to the CRO and that same was MTU's best and final bid and had received board approval accordingly;
 - b) he had not anticipated that the Petitioners' bid process, under the direction of the CRO, would be akin to a "Bazaar" and, had he known, MTU would not have put its best foot forward when submitting the MTU Final Bid;
 - c) he was getting a nasty taste from the entire process, which had appeared transparent, professional and fair up to that moment;
61. Solursh's request cast serious doubts in Kuhn's mind regarding the integrity of the bid process initiated by the Petitioners, under the direction of the CRO. These doubts would be confirmed over the next 48 hours;

62. On August 9th, 2012 at 8:03 am Montreal time (2:03 pm Munich time), Solursh emailed Kuhn, laconically stating "Call me", the whole as appears from an exchange of emails dated August 9th, 2012, communicated herewith as **Exhibit MTU-26**;
63. Five (5) minutes later, at 8:08 am Montreal time (2:08 pm Munich time), Kuhn wrote back to Solursh mentioning that he would call back as soon as he could, as appears from Exhibit MTU-23. Note that the question asked by Kuhn with regard to language changes referred to the Test Cell Facility LOI as discussed previously in paragraphs 47 to 51 hereof;
64. At 8:25 am Montreal time (2:25 pm Munich time), Solursh wrote to Kuhn stating :
- "I still need to talk – we have had an unexpected overnight change with another bidder. Call me."*
- [our emphasis]
- the whole as appears from Exhibit MTU-26;
65. In retrospect, it is obvious that such "unexpected overnight change" was the submission by Lufthansa of the Lufthansa August 9th 2012 Bid (Exhibit P-1), after the Air Canada Contract Bid Deadline;
66. Kuhn and Solursh had a telephone conversation at approximately 9:00 am Montreal time (3:00 pm Munich time) on Wednesday August 9th, 2012 during which Solursh appeared agitated and rude. He indicated to Kuhn that he believed MTU was not putting its best foot forward and advised that another bidder had increased its bid and that MTU needed to do the same or else it would lose the Air Canada Contract;
67. Kuhn responded that he was quite concerned at this point that MTU was negotiating against itself and that, in any event, MTU had put its best foot forward, had obtained board approval to do so and that it was no longer possible to return to the board, the members of which would not have understood how it was possible that MTU needed to increase its bid after the expiry of the Air Canada Contract Bid Deadline;
68. Indeed, the CRO was well aware of MTU's internal approval process, which had prevented MTU from submitting a bid for the Air Canada Contract in time for the June 6th, 2012 Phase 1 Bid Deadline, as more fully alleged in paragraph 21 hereof;
69. At approximately 10:30 am Montreal time on August 9th, 2012, Solursh called back Kuhn stating that a representative of the Monitor was also on the line, although Kuhn is unable to confirm this, as no one identified themselves accordingly. Solursh apologized for his previous outburst and reiterated that MTU needed to increase its bid or face rejection thereof and award of the Air Canada Contract to a competitor, namely Lufthansa;

70. MTU was therefore placed by the CRO in a situation where it was essentially told that if it did not increase its bid now, although the Air Canada Contract Bid Deadline had come and gone, it would not succeed in its bid to acquire the rights under the Air Canada Contract;
71. Faced with this highly irregular and unexpected request and the stated consequences of not responding to such request, Kuhn advised Solursh that he would speak with his counterparts in charge of MTU's Vancouver operations to attempt a last ditch effort to increase MTU's bid, but that he doubted very much he would be successful given the corporate governance constraints in place;
72. In the evening of August 9th, 2012, in a desperate attempt to salvage the situation, Kuhn telephoned Solursh and advised that MTU could not increase its bid but that he might be able to reallocate \$200,000 of the MTU Final Bid towards the Air Canada Contract by withdrawing its bid for the equipment listed in Parcel D, as same is more fully described in Schedule 4.6 of the August 7th, 2012 MTU Agreement (forming part of Exhibit MTU-20);
73. Solursh, without providing a delay in which MTU could have submitted a revised offer, simply indicated to Kuhn that his suggestion would most likely not be enough and that he would get back to him;
74. Ultimately, it is only on Friday August 10th, 2012 at approximately 4:30 pm Montreal time, namely before the alleged revised bid deadline, that Solursh telephoned Kuhn to advise that the Lufthansa August 9th, 2012 Bid had officially been selected as the winning bid;
75. It is important to note that the IAMAW was advised of the selection of the Lufthansa August 9th, 2012 Bid at approximately 1:30 pm Montreal time on Friday August 10th, 2012;
76. Petitioners' Motion seeking approval of the Lufthansa August 9th, 2012 Bid was served upon the service list at 5:05 pm Montreal time on August 10th, 2012, namely five (5) minutes after the alleged extended bid deadline;
77. The foregoing facts clearly demonstrate that there never was any extension of the Air Canada Contract Bid Deadline to August 10th, 2012 at 5:00 pm Montreal time;

IX. ON THE AIR CANADA CONTRACT BID DEADLINE, MTU'S OFFER WAS THE BEST AND HIGHEST

78. Sometime on August 9th, 2012, namely two (2) days after the expiry of the Air Canada Contract Bid Deadline, Lufthansa submitted a revised bid, the amount of which is unknown to MTU and to the stakeholders of Aveos' restructuring, which bid was filed as Exhibit P-1 in support of the Petitioners' Motion. Although MTU's undersigned counsel has requested an unredacted copy of Exhibit P-1, Aveos

counsel has flatly refuse such request, thereby demonstrating Petitioners lack of transparency and cooperation in this process;

79. MTU respectfully submits that the Lufthansa August 9th, 2012 Bid was late, as it was submitted after the Air Canada Contract Bid Deadline, and suggests that in light of the CRO's discussions with MTU, it is possible that Lufthansa knew, on August 8th or 9th, that the Previous Lufthansa Bid was lower then the MTU Final Bid;
80. Based on the information found at section 3.2 of the Lufthansa August 9th, 2012 Bid (Exhibit P-1), it appears that the Previous Lufthansa Bid, which had been submitted by Lufthansa on or prior to the Air Canada Contract Bid Deadline, was in the amount of \$3,000,000, since the deposit which had been remitted to Fraser Milner Casgrain prior to the Lufthansa August 9th, 2012 Bid was in the amount of \$450,000, representing 15% of the offered purchase price;
81. In light of the foregoing, MTU believes that on the Air Canada Contract Bid Deadline, the bids received by the Petitioners were the following:
- Lufthansa : \$3,000,000 for the rights under the Air Canada Contract; and
 - MTU : \$5,200,000 for the rights under the Air Canada Contract and related tooling;
82. It is to be noted that at all times relevant, MTU had allocated \$1,200,000 to the purchase of the Air Canada Contract related tooling, as appears from Exhibits MTU-9 and MTU-10 and it was only as a result of the CRO's request and changes made to the draft Purchase Agreement by the CRO that the purchase price for the rights under the Air Canada Contract and the purchase price for the related tooling were amalgamated in the MTU Final Bid;
83. At all times relevant to the MTU Final Bid, MTU allocated a purchase price of \$4,000,000 to the Air Canada Contract, the whole as appears from a copy of a Circular Resolution by the Board of Management of MTU dated July 13th, 2012, communicated herewith as **Exhibit MTU-27**;

X. **CONCLUSION: THE GRAVE IRREGULARITIES IN THE BID PROCESS HAVE JEOPARDIZED THE INTEGRITY AND EFFICACY THEREOF AND INTRODUCED UNFAIRNESS IN THE PROCESS**

84. In light of the foregoing, MTU's contention is that, on the Air Canada Contract Bid Deadline, the MTU Final Bid was the highest and best offer, irrespective of the inclusion or exclusion of the related tooling, and that the rights under the Air Canada Contract should therefore have been awarded by Aveos to MTU;

85. It is now obvious that being in possession of the Previous Lufthansa Bid and of the MTU Final Bid, the Petitioners, under the direction of the CRO, proceeded to use each of the bids against the other in an unfair and irregular attempt to raise the stakes, which process had not been disclosed to MTU or approved by this Honourable Court;

86. The CRO's comments in this respect, contained in its *Addendum to the Sixth Report of the Chief Restructuring Officer to the Court* (Exhibit P-2), at paragraph 14, are as follows :

"[...] The CRO negotiated terms and conditions and asked both bidders to ensure they had "put their best foot forwards" on price and financial considerations, which resulted in an improvement in terms and pricing for both bids. Following those discussions, both bidders indicated that their last bid submitted was their final bid such that no extension of time would result in any change in these bids."

87. These statements are misleading and unclear and can lead to two (2) separate and distinct interpretations of the facts, namely:

a) either the "negotiations" held by the CRO took place before the Air Canada Contract Bid Deadline, in which case:

(i) the statement that *"[...] both bidders indicated that their last bid submitted was their final bid such that no extension of time would result in any change in these bids"* is false, since it is unequivocal that the Lufthansa August 9th, 2012 Bid was received by the CRO after the Air Canada Contract Bid Deadline; and

(ii) therefore Petitioners, under the direction of the CRO, should have refused to receive or entertain the Lufthansa August 9th, 2012 Bid;

b) or, these "negotiations" took place after the Air Canada Contract Bid Deadline, in which case:

(i) the CRO's statement to the effect that these negotiations: *"[...] resulted in an improvement in terms and pricing for both bids"* is false, considering that MTU never increased its bid after the Air Canada Contract Bid Deadline; and

(ii) the Petitioners actions, under the direction of the CRO, are improper and jeopardized the integrity and efficacy of the bid process;

88. The Monitor, in its 13th Report to the Court, at paragraphs 9 and 13 eliminates this ambiguity by stating unequivocally that such negotiations took place after the Air Canada Contract Bid Deadline, as follows:

"9. On August 7, 2012, the Company received two offers in respect of the Air Canada Contract, one from MTU Aero Engines («MTU» and the

«MTU Offer») and one from LHT (the «LHT Offer»), both parties having been previously identified as suitable suppliers by Air Canada;

13. Negotiations with both parties ensued over the course of the following 3 days, which resulted in each party amending its initial offer, increasing its offer price and eliminating certain deal conditions”

89. The Monitor’s statement that both bidders’ offers were increased is however incorrect;
90. Therefore, by accepting the Lufthansa August 9th, 2012 Bid, the Petitioners, under the direction of the CRO, have deprived the bid process of its integrity and efficacy and have conducted themselves in an unfair manner towards the bidders, and more particularly MTU;
91. Consequently, MTU hereby respectfully submits that in order to maintain the fairness, integrity and efficacy of the bid process, this Honourable Court should refuse to approve the proposed transaction in favor of Lufthansa and should authorize the sale of the rights under the Air Canada Contract to MTU pursuant to the MTU Final Bid (Exhibit MTU-20) and issue the Vesting Order communicated herewith **Exhibit MTU-28**;

XI VESTING ORDER

92. It is a condition of closing in the MTU Agreement that the Court render an order vesting all of the right, title and interest of Aveos in and to the Purchased Assets, as defined in sections 1.1(t), 2 and Schedule 2 of the MTU Agreement (hereinafter the “**Purchased Assets**”);
93. The MTU Agreement contemplates the assignment and assumption of the Purchased Assets free and clear of all hypothecs, liens, charges and encumbrances pursuant to a Vesting Order to be issued by this Honourable Court.
94. Therefore, MTU respectfully seeks the issuance, by this Honourable Court, of an order vesting the Purchased Assets in MTU, free and clear of such charges and encumbrances;
95. The present Contestation and Motion to Approve the Assignment to MTU of the Air Canada Contract and Other Assets and for the Issuance of a Vesting Order is well founded in fact and in law;
96. The Petitioner’s Motion for an Order Authorizing the Assignment of a Contract by the Petitioners and for a Vesting Order (Air Canada Contract) is ill-founded in fact and in law;

WHEREFORE, MAY IT PLEASE THE COURT TO:

-
- [1] **GRANT** the present Contestation and Motion to Approve the Assignment to MTU of the Air Canada Contract and Other Assets and for the Issuance of a Vesting Order;
 - [2] **DECLARE** that MTU AERO Engines GmbH's bid dated August 7th, 2012, Exhibit MTU-20, is the highest and best offer for the Air Canada Contract;
 - [3] **ISSUE** the Vesting Order in the form of the draft Vesting Order provided as Exhibit MTU-28;
 - [4] **DISMISS** Petitioners' Motion for an Order Authorizing the Assignment of a Contract by the Petitioners and for a Vesting Order (Air Canada Contract);
 - [5] **THE WHOLE** with costs;

| Montreal, August 20, 2012


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SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL
N° : 500-11-042345-120

IN THE MATTER OF PROPOSED PLAN COMPROMISE
AND ARRANGEMENT OF :
AVEOS FLEET PERFORMANCE INC./
AVEOS PERFORMANCE AÉRONAUTIQUE INC.
And
AERO TECHNICAL US, INC.

Insolvent Debtors / Petitioners /
Respondents

And
FTI CONSULTING CANADA INC.

And als.
Monitor

REGISTRAR OF THE PERSONAL AND MOVABLE REAL
RIGHTS REGISTER OF QUEBEC

and
AIR CANADA

and
LUFTHANSA TECHNIK AG

and
Mis en causes

MTU AERO ENGINES GMBH

Respondent / Petitioner

**MTU'S AERO ENGINES GMBH'S AMENDED
CONTESTATION AND MOTION TO APPROVE THE
ASSIGNMENT TO MTU OF THE AIR CANADA
CONTRACT AND OTHER ASSETS AND FOR THE
ISSUANCE OF A VESTING ORDER**

ORIGINAL

BLG

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