

APPENDIX 1.1  
(referred to in paragraphs 1.1 and 2.1)

**The reference and background**

1. On 2 May 2000 the DTI sent the following reference to the CC:

Whereas it appears to the Secretary of State that it is or may be the case that a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 (“the Act”), has been created in that:

(a) enterprises carried on by or under the control of Air Canada (one at least of which was carried on in the United Kingdom) have within the four months preceding this reference ceased to be distinct from enterprises carried on by or under the control of Canadian Airlines Corporation; and

(b) the value of the assets taken over exceeds £70 million;

Now therefore the Secretary of State, in exercise of his powers under sections 64 and 69(2) of the Act, hereby refers to the Competition Commission (“the Commission”) for investigation and report within a period ending on 3 August 2000 the following questions:

(i) whether a merger situation qualifying for investigation has been created as a result of the matter described in paragraph (a) above; and

(ii) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.

In relation to the question in paragraph (i) above, the Commission shall exclude from consideration one of paragraphs (a) and (b) of section 64(1) of the Act if they find the other satisfied.

2 May 2000

*(signed)* ANN EGGINGTON  
*An Official of the Department  
of Trade and Industry*

2. On 27 June 2000 the DTI sent the following amendment to the terms of reference:

Whereas on 2 May 2000 the Secretary of State referred to the Competition Commission the merger between Air Canada and Canadian Airlines Corporation (“the reference”);

And whereas it now appears to the Secretary of State that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 (“the Act”) in that enterprises carried on by or under the control of Air Canada will cease to be distinct from enterprises carried on by or under the control of Canadian Airlines Corporation;

Now therefore the Secretary of State, in exercise of the powers conferred on him by section 71 of the Act hereby varies the reference as follows:

In the second paragraph of the reference for “64 and 69(2)” is inserted “64, 75 and 69(2)” and after paragraph (ii) is inserted:

(iii) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation, as defined in section 64(8) of the Act in that enterprises carried on by or under the control of Air Canada will cease to be distinct from enterprises carried on by or under the control of Canadian Airlines Corporation;

(iv) if events so require, whether the actual results of those arrangements are the creation of such a situation; and

(v) if so whether the creation of the situation referred to in paragraph (iii) may be expected to operate or (if events so require) operates against the public interest.

And in the final paragraph for “the question in paragraph (i) above” is inserted “the question in paragraphs (i), (iii) and (iv) above”.

27 June 2000

(signed) ANN EGGINGTON  
An Official of the Department  
of Trade and Industry

3. The composition of the Group of members responsible for the present investigation and report is indicated in the list of members in the preface. At the beginning of the inquiry Professor Newbery was appointed to the Group. He ceased to be a member of the Group on 25 May 2000.

4. Notices inviting interested parties to submit evidence to the CC were placed in *The Times*, *Flight International* and *Travel Trade Gazette*.

5. Written and oral evidence was provided by Air Canada, Canadian Airlines and other airlines, regulatory bodies, trade associations and other interested parties.

6. In June 2000, on the basis of this information we gathered, we sent an Issues Letter to Air Canada, and published a statement of issues, reproduced in Appendix 2.1.

7. Some of the evidence submitted to us during the course of the inquiry was of a commercial nature and our report contains only such information as we consider necessary for a proper understanding of our conclusions.

8. We should like to thank all those who assisted in our inquiry, particularly Air Canada and Canadian Airlines.