HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED. Yes

23/9/16
DATE

SIGNATURE

23/9/16

Case no. 52406/2016

In the matter between:

AIR FRANCE-KLM S.A.	**First Applicant**
SOCIÉTÉ AIR FRANCE	**Second Applicant**
and	
SAA TECHNICAL SOC LTD	**First Respondent**
JM AVIATION SOUTH AFRICA (PTY) LTD	**Second Respondent**
AAR SUPPLY CHAIN INCORPORATED	**Third Respondent**
LUFTHANSA TECHNIK AG	**Fourth Respondent**
ISRAEL AEROSPACE INDUSTRIES LTD	**Fifth Respondent**
GLOBAL AIRTECH	**Sixth Respondent**

JUDGMENT

RABIE, J

1. This is an application for an urgent interim interdict precluding the implementation of a decision of the first respondent to award a tender for aircraft components support to the joint venture between the second and third respondents. The interdict is sought in Part A of the notice of motion and is intended to operate pending the finalisation of the applicants' review of the first respondent's decision sought in Part B of the notice of motion.

2. The first applicant is Air France-KLM SA and the second applicant is Société Air France. I shall refer to the applicants in the singular as "Air France". The first respondent is SAA Technical SOC Limited and I shall refer to it as "SAAT". The second and third respondents are respectively JM Aviation South Africa Pty Ltd and AAR Supply Chain Incorporated to whom I shall refer jointly as "JA". The 4th to the seventh respondents shall be referred to as such or by their names.

3. This court has to decide Part A of the application which was argued before me on behalf of Air France, SAAT and JA. Due to the urgency of the matter I shall not refer in this judgement to all the arguments presented and submissions made but confine myself to certain of the salient features which led me to my ultimate decision.

4. Pursuant to a tender process Air France was appointed on 26 June 2008 to provide SAAT with aircraft component services for the maintenance and repair of

various types of aircraft. This contractual arrangement between Air France and SAAT was extended to 30 September 2016. For purposes of procuring similar services for the period after 30 September 2016 SAAT sought fresh proposals in the market in terms of a Request for Bids ("RFB") which sets out the basis upon which the bids would be evaluated. Air France, JA (as a joint venture) as well as the 4th to 7th respondents submitted bids on 19 January 2016 as required by the RFB.

5. On 18 February 2016 SAAT addressed an email to the bidders specifying the precise ATA Chapter Coverage Required from the Bidders. The Email also requested the bidders to revisit their bids to check whether any adjustments would be necessary to their pricing and bid structure to ensure adequate coverage. They were requested to submit their best and final offer ("BAFO"). On 15 April 2016 SAAT again addressed an email to the bidders who had passed the first stage of tender evaluation requesting amongst other things, a further BAFO from each bidder. The final date for such submissions was 22 April 2016.

6. On 17 May 2016 Air France was notified by SAAT's head of procurement that its bid had been unsuccessful. JA's bid had been accepted by the Board of SAAT.

7. Not being satisfied with the result, Air France requested reasons for the decision not to award the tender to Air France. Air France was inter alia informed that Air France was not the highest scoring bidder. Further reasons were requested and supplied by SAAT. SAAT also submitted reasons in terms of Rule 53 (1) (b) of the Rules of Court for awarding the bid to JA.

8. It is common cause that the bids were evaluated by the Cross Functional Sourcing Team ("CFST") of SAAT. The allocation of preference points was based solely on the price submitted. The CFST computed the bids received in terms of the Preferential Procurement Policy Framework Act, 5 of 2000. The result of the final bid was that Lufthansa was ranked first as it had submitted the lowest total price namely US $ 69 311 049.93 over a five-year period; JA was ranked second having submitted the second lowest total price namely US $ 82 476 062, 02 over a five-year period; and Air France was ranked third having submitted a total price of US $ 88 596 000, 82 over a five-year period. It is not necessary to refer to the other bidders.

9. Despite the lowest bid by Lufthansa the CFST was of the view that there were objective criteria for not awarding the tender to Lufthansa. The Board of SAAT also accepted this view and no more needs to be said about same for present purposes.

10. The CFST were also of the view that the tender should not be awarded to JA despite submitting the second lowest price and based the view on two grounds. Firstly, the CFST regarded the pricing of this bid as being too low in respect of the "access pool" which is a pool of components from which replacements can be procured while SAAT's own components are being repaired. Secondly, the CFST was concerned that by decreasing its bid with approximately $30 000 000,00 after the second request for a BAFO, JA was "low-balling" in order to obtain the tender but with the intention either to charge SAAT for additional ancillary services or to increase prices significantly during negotiations for the conclusion of the final contract.

11. CFST also relied on so-called "ostensible benefits" for concluding a contract with Air France. For all the above reasons CFST as well as the Acting CEO of SAAT recommended that the tender should be awarded to Air France over Lufthansa and JA. The Board of SAAT, however, deliberated on the issue and decided to award the contract to JA.

12. It was submitted on behalf of Air France that the decision by the Board is reviewable for the following reasons: first, the BAFO requests were irregular and unlawful; second, there was a material discrepancy between the price apparently contained in the JA bid and the contract price; third, the impugned decision was irrational and unreasonable; fourth, relevant considerations were not considered and irrelevant considerations were; fifth, the requirements of the RFB were vague and uncertain; and sixth, there is a reasonable apprehension that SAAT was biased.

13. It was further submitted on behalf of Air France that it had shown a reasonable apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; that the balance of convenience favours the granting of interim relief; and that there is no adequate alternative remedy available but to seek the interdict. SAAT as well as JA opposed the application in respect of each of the aforesaid grounds. I shall briefly refer to each of these grounds and the principles involved. My conclusions and findings below are of course only applicable to this application and should not be taken as binding on the court which hears the main review in terms of Part B of the notice of motion.

14. The requirements that need to be satisfied in a matter such as the present are as follows. First, there must be a prima facie right, although open to some doubt, on

the part of the applicant; second, there must be a well-grounded apprehension of irreparable harm if interim relief is not granted and final relief is ultimately granted; third, the balance of convenience must favour the granting of interim relief; and fourth, there must be no other ordinary remedy that is available to give adequate redress to the applicant. Where there are factual disputes, the facts set out by the applicant must be taken together with any facts as set out by the respondent which applicant cannot dispute and the court must consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief. The facts set up in contradiction by the respondent then fall to be considered. An applicant upon whose case serious doubt is thrown cannot succeed in obtaining temporary relief. If a well grounded apprehension of irreparable harm is established, in the absence of an adequate ordinary remedy, the court is vested with a discretion which will usually resolve into a consideration of prospects of success and the balance of convenience. The stronger the prospect of success, the less need for such balance to favour the applicant. Conversely, the weaker the prospects of success, the greater the need for the balance of convenience to favour the applicant See Gidani v Minister of Trade and Industry and others [2014] ZAGPPHC 960 at paragraph 12 and 13.

15. When an applicant seeks to interdict the implementation of an administrative decision it must, however, do more than indicate that it has a prima facie right to review the decision in question or that it has prospects of success in relation to such a review. It is only in the clearest of cases or where there are exceptional circumstances, that courts will interfere with the exercise of a statutory power - as in this case, being the exercise of public procurement powers by the Board.

16. In the matter of National Treasury and others v Opposition to Urban Tolling Alliance and others 2012 (6) SA 223 (CC) the Constitutional Court found as follows in paragraph [26] : "A court must also be alive to and carefully consider whether the temporary restraining order would unduly trespass upon the sole terrain of other branches of government even before the final determination of the review grounds. A court must be astute not to stop dead the exercise of executive or legislative power before the exercise has been successfully and finally impugned on review. This approach accords well with the comity the courts owe other branches of government, provided they act lawfully."

17. And in paragraph [44]: "The common law annotations to the Setlogelo test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for the relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the executive and the legislative branches of government unless the intrusion is mandated by the Constitution itself."

18. And in paragraph [46]: "... Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought."

19. And in paragraph [47]: "The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into

the exclusive terrain of another branch of government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of the separation of powers harm."

20. And in paragraph [65]: "When it evaluates where the balance of convenience rests, a court must recognise that it is invited to restrain the exercise of statutory power within the exclusive terrain of the executive or legislative branches of government. It must assess carefully how and to what extent it's interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers. While a court has the power to grant a restraining order of that kind, it does not readily do so, except when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases."

21. And in paragraph [66]: "A court must carefully consider whether the grant of the temporary restraining order pending a review will cut across or prevent the proper exercise of a power or duty that the law has vested in the authority to be interdicted. Thus courts are obliged to recognise and assess the impact of temporary restraining orders when dealing with those matters pertaining to the best application, operation and dissemination of public resources. What this means is that the court is obliged to ask itself not whether an interim interdict against an authorised state functionary is competent but rather whether it is constitutionally appropriate to grant the interdict."

22. Consequently, having regard to the above, I should caution myself in granting the required interim relief unless I am satisfied that Air France has made out a compelling case and even then I should only do so if I regard same as a clear case.

23. A contract such as the one in issue relates to billions of Rand which not only affects the South African Airways and other Airways, but also the public. Price is accordingly of crucial importance and the aim of SAAT was to cut its operational costs to competitive levels from the inception of the new contract. With this aim in mind the RFB broke with the past and required bidders to submit bids covering "chapters" of the referencing system developed by the Air Transport Authority ("ATA"). This, inter alia, would prevent or limit the contractor's ability to add items not covered by the contract. For this purpose SAAT also required bidders to submit their best possible prices and reserved its right to negotiate with shortlisted bidders during the normal course of the procurement process, as and when required.

24. I have mentioned above that on 10 February 2016 SAAT approached the bidders per email. It clarified certain aspects to all bidders including that the chapter coverage under the ATA referencing system is required. In the communication of 15 April 2015 certain information was required and confirmation was asked in respect of certain aspects of the tender. In both instances bidders were invited to submit their best and final offers. In both instances Air France, JA and the other bidders responded and, inter alia, submitted new best and final offers. In both instances Air France and JA submitted reduced prices. After the final offers were

submitted, Air France ranked third, being US $ 6 119 938, 80 more expensive then JA.

25. Before referring to the grounds of the review and more particularly to the extent that same were referred to in argument before this court, it is necessary to address Air France's attack on the reasons filed by SAAT in terms of Rule 53 (1) (b) with respect to the decision taken by the Board of SAAT in awarding the tender to JA. Air France submits that this court should find that the reasons are instead to be found in the email of 20 May 2016, the letter of 7 June 2016 and an extract from minutes of the Board's meeting of 9 May 2016.

26. I do not agree with this submission. The correspondence and minutes referred to do not purport to provide a complete and exhaustive account of the reasons for the Board's decision. Mr Zwane, SAAT's CEO and a member of its Board explained in his affidavit that the reasons for the Board's decision are contained in the reasons filed in terms of Rule 53. These reasons explain the Board's reasoning which underpinned the extract of the minute of the meeting at which the Board resolved to award the tender to JA. There is no basis to go behind the affidavit of Mr Zwane. The correspondence and minute referred to clearly did not intend to be comprehensive and exhaustive as far as the reasons for the Board's decision is concerned. There is furthermore nothing in the correspondence and the minute which contradicts what is stated in the reasons in terms of Rule 53. It is furthermore clear from the reasons in terms of Rule 53 that the recommendations of the CFST and the Acting CEO were properly considered in respect of all relevant issues. It inter alia explained the Board's view that there were no risks of unsustainability or problematic "low-balling" associated with JA's

bid. It also considered JA's commercial profile and SAAT's ability to contract with JA in such a manner that JA would be held to the prices contained in its bid. The Board was consequently satisfied for the reasons stated by it that JA would provide the services and components required by SAAT at its tender price without subjecting SAAT to any unacceptable risks. The Board further explained why it was of the view that there were no compelling objective criteria which justified the award of the tender to Air France and why it disagreed with the CFST and the Acting CEO in this regard.

27. In support of its submission that it has a prima facie right which should be protected, Air France submitted, firstly, that the requests for subsequent best and final offers were irregular and unlawful. It was inter alia submitted that the request for bids is part of the legally binding and enforceable framework within which tenders must be submitted, evaluated and awarded and that there was no room for departure from these provisions. It was submitted that where an organ of state does depart from these provisions, the basis for such departure must be reasonable and justifiable and the process of change must be procedurally fair. It was submitted that in the present instance the RFB did not make provision for more than one BAFO and the bidders could therefore not be requested to submit more than one.

28. I do not agree with these submissions. All the bidders received the same notifications and requests which included a request to consider submitting a fresh BAFO. An organ of state procuring goods or services under section 217 of the Constitution and the provisions of the PPPFA, which require the organ of state to procure such goods or services cost effectively, can in my view not be precluded,

ceteris paribus, from requesting bidders, openly and fairly, to submit improved pricing during a tender process unless the tender documentation expressly provides for this. This is especially so if bidders are requested to submit improved pricing following the clarification of tender requirements or when some time had passed between the submission of bids to the ultimate adjudication of the tender. The BAFO process followed by SAAT did not introduce new criteria into the bid process but merely sought to ensure that the bidders understood what the requirements were and furthermore sought to ensure that SAAT obtained the most competitive prices possible. It is true that after the second request JA submitted a much reduced price but the reasons for that have, in my view, adequately been explained by JA. Most importantly, the Board has also explained its reasons for not regarding the reduction of price as out of the ordinary in the prevailing circumstances.

29. Furthermore, as stated above, by calling for further BAFO's SAAT did not change the tender evaluation criteria and each bidder was given an open, fair and equal opportunity on identical terms. Thus, the additional explanations and requests contained in the relevant emails, and the invitations to submit a fresh BAFO, did not prejudice any of the bidders. In fact, all the bidders, including Air France, made use of the opportunities to submit a more competitive tender. The difficulty for Air France simply arose from the fact that JA decreased its tender substantially with the result that it submitted a cheaper pricing then Air France. This result cannot be blamed on an unlawful or improper or unfair process. In so far as there may have been a deviation from the procedures mentioned in the tender documents, such deviation was reasonable and justifiable. All the bidders

with treated on an equal footing and the process remained fair, equitable, transparent, competitive and cost-effective.

30. Air France also submitted that its price is lower than JA's true contract price, according to the contract that was later concluded between SAAT and JA, and that this has the result that Air France should have been awarded the tender. This ground of review was mentioned for the first time in Air France's replying affidavit and for that reason it should in my view not be entertained. However, SAAT and JA filed supplementary affidavit's which confirmed that JA's bid rates in its bid are identical to those contained in the contract which was subsequently concluded with SAAT. It has been adequately explained in the affidavits why it may appear that the prices in the contract are higher than those contained in JA's bid while it is in reality not the case.

31. Air France also contended that the Board's decision to award the tender to JA was irrational or unreasonable and that the review court will in due course set it aside on one or both of these grounds.

32. The Constitutional Court has held in Democratic Alliance v President of the RSA and others 2013 (1) SA 273 (CC) at paragraph 42 that the rationality standard, "by its very nature ... prescribes the lowest possible threshold" for review. In South African National Roads Agency Ltd v Toll Collect Consortium 2013 (6) SA 356 (SCA) in paragraph [27] the court held as follows:

" [27] The invitation to rescore the Consortium's tender for quality must be declined. Once again it must be stressed that this is not the function of a court. The task of evaluating and awarding these tenders rested in the hands of

SANRAL, not the court, and its decision must be respected, provided it was arrived at in accordance with the constitutional requirements applicable to public procurement as set out in s 217 of the Constitution, any applicable legislation and the terms of the tender. The court could only interfere if the process were infected with illegality. The court will not hesitate to interfere with the award of a tender where there is impropriety or corruption. However, where the complaints merely go to the result of the evaluation of the tender a court will be reluctant to intervene and substitute its judgment for that of the evaluator. It may not interfere merely because the tender could have been clearer or more explicit. Nor will it interfere because it disagrees with the assessment of the evaluator as to the relative importance of different factors and the weight to be attached to them. The court is only concerned with the legality of the tender process and not with its outcome."

33. A review based on the reasonableness can only succeed if the decision is one that a reasonable decision maker could not reach. See Bato Star Fishing v Minister of Environmental Affairs and Tourism and others 2004 (4) SA 490 (CC) at paragraph 44.

34. Both the issues of irrationality and the reasonableness mainly related to Air France's complaint that the Board did not sufficiently interrogate the price reduction of JM's bid following the second BAFO request and the risks that it was "low-balling" to win the tender. These issues were, in my view, adequately addressed in the reasons in terms of Rule 53 and the statements in the answering affidavits. JA's pricing for the provision of the required services was well within the acceptable market band for the provision of such services and in fact fell between that offered by Lufthansa and Air France. Furthermore, future

price increases was something which the Board thought could be avoided by the introduction of the ATA Chapter coverage system which provides less scope for bidders to profit from providing out of contract components and services, and furthermore by proper and robust bargaining of the final contract. The Board thus formed the view that JA's price reduction did not pose an operational or financial risk to SAAT and that the bid was commercially sustainable. Having regard to these circumstances I am of the view that this court cannot substitute its view for that of the Board of SAAT, even if it held a different view. On the submissions made to this court and the evidence presented I can in any event not come to a different view.

35. In my view there is also merit in the reasons submitted by the Board for not accepting the considerations offered by the CFST and the Acting CEO for accepting Air France' is bid and regarding same as not being objective criteria. In my view the Board assessed the benefits and the risks associated with all the bids and made an informed decision which is not open to the challenge of being irrational or unreasonable. For the same reasons I cannot conclude that the Board considered irrelevant considerations and failed to consider relevant considerations. As mentioned, the Board, inter alia, considered the substantial price reduction by JA and came to the conclusion that the bid should be accepted for the reasons stated. It is settled law that an ultimate decision maker may not adopt the role of a rubberstamp to the decision of others and must itself consider the information regarding the decision, including recommendations from lower bodies, but it is not bound to follow those recommendations. In my view it cannot be said that the Board did not apply its mind properly and fully to all the relevant

issues and that, with reference to its reasons, came to a conclusion which is for any reason a reviewable.

36. Air France further contended that the tender would in due course be set aside on the basis that the requirements of the RFB were vague and uncertain, so much so that the Board's decision was rendered procedurally unfair. This issue was not heavily relied upon during the hearing before this court and the detailed contents of the RFB were not analysed. Consequently it is not necessary to say anything more about this issue except to add that Air France took part in the tender process right to the end without any suggestion from its part that the tender process or the requirements of the RFB were vague and uncertain.

37. Air France also contended that the review court will ultimately set aside the tender on the basis that there is a reasonable suspicion that the Board was biased in favour of JA. This contention seems to rely, firstly, on the fact that a memorandum of understanding was previously concluded by SAAT and JA which creates, so it was submitted, a reasonable suspicion of bias in favour of JA, and, secondly, that the Board's alleged failure to interrogate JA's reduction in price after the second BAFO request, was suspicious. In my view Air France has failed to demonstrate actual or perceived bias on the part of the Board. After the expiry of the first contract period SAAT awarded a short-term tender to Air France and this would, by the same reasoning, rather show bias in favour of Air France. As far as the second submission is concerned, I have already indicated that in my view the bidding process was reasonable and fair to all concerned. In all the circumstances I am of the view that no reasonable person would suspect the

Board of bias either by allowing all bidders to submit revised bids or by not penalising JA for submitting a significantly more competitive bid, or at all.

38. In respect of the issue of irreparable harm Air France, inter alia, contended that if interim relief is not granted it would suffer immediate commercial loss, incur unnecessary costs and also be denied effective relief when Part B of the notice of motion is adjudicated.

39. As far as the issues of immediate commercial loss and unnecessary costs are concerned it appears that both these issues are based on the premise that Air France has a right to continue under the current contract past 30 September 2016 and/or the right to be awarded the tender. Air France has no such right. It's contract comes to an end on 30 September 2016 and it has no right to continue under the current contract past this date. Even if the interim relief of Part A were to be granted, Air France would still not have any such right. It would also not have such right even if the final relief in terms of Part B were to be granted. Air France has not applied for substitution relief and it would be for SAAT to reconsider the matter probably by way of a fresh tender process, and not for the court to substitute Air France for JA as the successful bidder.

40. I am also not convinced by the argument that Air France would suffer unnecessary costs in relation to removing its staff and resources that are currently in place to service the existing contract with SAAT. It is of course correct that Air France would incur costs to remove its operations when the contract comes to an end on 30 September 2016 but such costs would not be unnecessary for the reason that France has no right to the contract being awarded to it. A service provider in a fixed term contract knows that the contract

may not be extended or renewed and that it would incur costs as a result of the termination of the contract.

41. If the interim relief were to be refused and the final review were to be successful and Air France were to be awarded the subsequent tender, the costs of removing its staff and resources would have been unnecessary in the greater scheme of things but such costs cannot, in my view, be regarded as an unnecessary waste of costs for purposes of obtaining interim relief in circumstances such as the present.

42. Regarding the submissions that Air France would suffer the harm of being denied effective relief if successful with the main review, I disagree with such submissions. The tender relates to the provision of services under a services contract and is not of the type where the horse would have bolted by the time the review is adjudicated and it would thus be impractical to set aside the impugned decision. In my view there is no reason to presume that the court would not set aside the decision if the ultimate review succeeds. I agree with the submissions on behalf of SAAT and JA that there is no reasonable apprehension that, should the interdict fail but the review succeed, Air France would be denied effective relief.

43. Regarding the issue of balance of convenience Air France submitted that the harm it would suffer if the interim interdict is not granted, outweighs the harm that SAAT and JA would suffer if the interim interdict is granted. In considering this issue I have considered all the relevant factors referred to by the parties. I have thus also considered the effect on the public purse.

44. First and foremost it seems clear that if the interim interdict is granted Air France would continue with an extremely lucrative contract which appears to be much more lucrative than the one it had tendered for. By the same token SAAT would have to pay at much higher rates than it would otherwise pay to JA under the contract concluded pursuant to the tender. That would be the case whether SAAT continues under the existing contract with Air France or whether it procures services from another party in the interim.

45. Air France also suggested that implementation of the tender could result in aircraft being grounded and that reliability issues may arise and that the safety of passengers may be jeopardised. These allegations were rather vague and unsubstantiated and in my view SAAT has more than adequately explained that there is no reason to doubt the services that JA would render under the contract. Reference was also made to the ability and worldwide reputation of the third respondent in regard to the provision of aviation services, including the services that are relevant to this tender.

46. Having regard to the aforesaid as well as the obvious impact of the vast amounts on SAAT and the public purse which would be lost if the interim relief is granted, which SAAT calculated at more than R 15 200 000,00 per month, as opposed to the almost negligible loss to Air France, I am of the view that the balance of convenience does not favour the granting of interim relief.

47. It was contended by Air France that it has no adequate alternative remedy but the interim relief prayed for. I do not agree with this contention as the relief claimed in Part B constitutes such alternative remedy especially in light of the balance of convenience that heavily favours SAAT and JA.

48. In the result Air France has in my view not satisfied the requirements for interim relief. The prima facie right on which Air France relies has not been shown to exist or at least to be strong. The other requirements for interim relief are also weak, if they exist at all, as indicated above, with the balance of convenience being overwhelmingly in favour of SAAT and JA. Consequently, and considering that the relief is aimed at interdicting an administrative decision, Air France has failed to show that it is entitled to the interim interdict prayed for.

49. In light of the findings arrived at by me it is not necessary to discuss the issue of urgency.

50. In regard to costs it was inter alia submitted by Air France that in the event of Part A of the application being refused, no adverse order as to costs should be made since it pursued the litigation in good faith to vindicate its constitutional rights. It was submitted in the alternative that I should either reserve costs order costs to be costs in the application under Part B of the notice of motion.

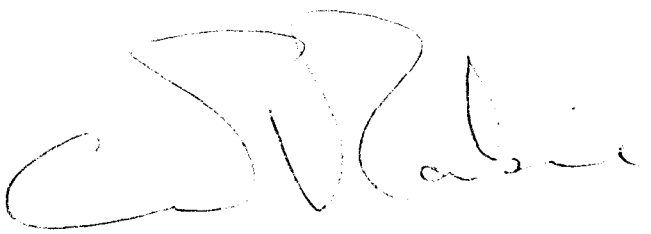
51. I agree with the submission on behalf of SAAT and JA that there is no self-standing constitutional dimention to this case and that it is manifestly about Air France's own commercial interests. The application is one under PAJA and the constitutional claims of Air France added nothing to the grounds of review under PAJA.

52. I am furthermore of the view that this application under Part A stood sufficiently on its own legs for purposes of adjudicating the costs relating thereto and also that the court hearing Part B would not be in a better position than this court to adjudicate the issue of costs relating to Part A. In my view there is no reason

why costs should not follow the event and I agree with the submissions that the order of costs should include the costs of two counsel.

53. In the result the following order is made:

1. The application in Part A of the Notice of Motion is dismissed with costs which costs shall include the costs of two counsel.



C.P. RABIE

JUDGE OF THE HIGH COURT

23 September 2016