



**ADR INSTITUTE OF CANADA, INC.
INSTITUT D'ARBITRAGE ET DE MÉDIATION DU CANADA, INC.**

**SEPTEMBER 23 AND 24, 2010/LES 23 ET 24 SEPTEMBRE 2010
THE FAIRMONT PALLISER
CALGARY, ALBERTA**

**USING FINANCIAL EXPERTS TO BEST ADVANTAGE
UTILISER LES EXPERTS FINANCIERS
À VOTRE AVANTAGE**

RICHARD M. WISE, FCA, CA • IFA/EJC, FCBV/FEEE, FASA

WISE, BLACKMAN LLP/SENCRL

**Business Valuators • Évaluateurs d'entreprise
Montréal**



EXAMPLE: ARBITRATOR-APPOINTED EXPERT
COMMISSIONER OF COMPETITION and AIR CANADA
(2000)

- **Issue:** Fair Market Value of Canadian Regional Airlines (1998) Ltd.
- **Arbitrator:** Charles A. Hunnicut, Washington attorney and former U.S. Assistant Secretary of Transportation for Aviation and International Affairs
- **Parties' Experts:** BMO Nesbitt Burns
Deloitte & Touche
- **Arbitrator-Appointed Expert:** Richard M. Wise



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EXTRACTS FROM ARBITRATOR'S RULING
COMMISSIONER OF COMPETITION and AIR CANADA
(JULY 11, 2000)

" ... All of the experts relied upon by the parties in this arbitration are well qualified and I would not presume to weigh their outcomes on the basis of their qualifications. However, I have given careful consideration to the approaches taken by the experts and have given weight to their valuations on the basis of the approach and on the contents of their analyses and their cross examination. The expertise of [the Arbitrator-appointed expert] in my review of the complete record in this arbitration was invaluable and on questions of professional valuation methodologies have found myself in every instance in complete agreement with [his] position."



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COMMISSIONER OF COMPETITION AND AIR CANADA
"FAIR MARKET VALUE" OF
CANADIAN REGIONAL AIRLINES (1998) LTD.
ARBITRATOR'S LETTER RULING

Based on the submissions filed ... on the oral presentations made, the documents presented at that hearing, the documents submitted by [counsel] and on the advice of [the Arbitrator-appointed expert] ... I make the following ruling on the issue of the Fair Market Value of Canadian Regional Airlines

...



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COMMISSIONER OF COMPETITION AND AIR CANADA
"FAIR MARKET VALUE" OF
CANADIAN REGIONAL AIRLINES (1998) LTD.
ARBITRATOR'S LETTER RULING (CONT'D)

1. The established, traditional language utilized for the definition of "Fair Market Value" in Canada will be used.

" ... the highest price (expressed in money or money's worth) obtainable in an open and unrestricted market between knowledgeable and willing parties dealing at arm's length who are not only fully informed but also not under any compulsion to transact".



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COMMISSIONER OF COMPETITION AND AIR CANADA
"FAIR MARKET VALUE" OF
CANADIAN REGIONAL AIRLINES (1998) LTD.
ARBITRATOR'S LETTER RULING (CONT'D)

2. Fair Market Value will be determined in a notional market using an objective standard.
3. The definition of Fair Market Value cannot have specific sellers and buyers attached to the notion of willing seller and willing buyer.



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"FAIR MARKET VALUE" OF
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ARBITRATOR'S LETTER RULING (CONT'D)

4. Definition of Fair Market Value cannot include Value to Owner.
5. Valuation Date for purposes of this determination of Fair Market Value is



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COMMISSIONER OF COMPETITION AND AIR CANADA
**"FAIR MARKET VALUE" OF
CANADIAN REGIONAL AIRLINES (1998) LTD.**

ARBITRATOR'S LETTER RULING (CONT'D)

6. The "notional market" ... must include potential utilization of Canadian Regional Airlines in a network system.
7. The market must [include] all potential purchasers having the will and resources to buy.
8. Hindsight inadmissible.



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**ADVISORY FINANCIAL EXPERT CAN
ASSIST COUNSEL OR ARBITRATOR**

1. Identifying technical financial issues relating to particular subject matter
2. Explaining technical financial terms and significance of each
3. Identifying and explaining technical financial issues from opponent's point of view
4. Advising as to key areas of discrepancy



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ADVISORY FINANCIAL EXPERT CAN ASSIST COUNSEL OR ARBITRATOR

(CONT'D)

Example

Interpretation of disputed accounting- or valuation-related clauses in shareholders' agreements:

- Triggering events
- Buy/sell provisions
- Price-adjustment clause
- Earn-out clause
- Non-competition covenants
- Option agreements ("puts" and "calls")
- Rights of first refusal



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ADVISORY FINANCIAL EXPERT CAN ASSIST COUNSEL OR ARBITRATOR

(CONT'D)

5. Identifying, for production, documents and records thought to exist
6. Analyzing documents, records and facts, including summaries
7. Assessing financial, valuation or damages issues and contentions
8. Categorizing and indexing of documents



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ADVISORY FINANCIAL EXPERT CAN ASSIST COUNSEL OR ARBITRATOR

(CONT'D)

9. Preparing for pre-hearing and settlement conferences and negotiations
10. Proving business facts
11. Reviewing/critiquing opposing expert's report
12. Conducting informative site visit and management interview, if appropriate



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ADVISORY FINANCIAL EXPERT CAN ASSIST COUNSEL OR ARBITRATOR

(CONT'D)

13. Preparing Expert's Report
14. Presenting *viva voce* evidence to Arbitration Panel
15. Assisting counsel by formulating questions for cross-examination of opposing expert
16. Providing rebuttal testimony
17. Reviewing post-hearing briefs concerning financial, valuation or damages issues



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USE OF FINANCIAL EXPERT EVIDENCE

Expert can prepare graphics, charts and other visual aids whenever considered appropriate to assist arbitrator. "A picture is worth a thousand words!"



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