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Canadian Competition Tribunal Clarifies Scope for Justifying Alleged Abuses of Dominance

Author: Charles Tingley

The Canadian Competition Tribunal has dismissed an application by the Commissioner of Competition alleging that the Vancouver Airport Authority (VAA) had abused a dominant position in the market for in-flight catering services at Vancouver International Airport. The Commissioner alleged that the VAA, a not-for-profit corporation responsible for the management and operation of the Vancouver airport, had been preventing – without sufficient justification – new in-flight catering suppliers from competing at the airport, even though the VAA does not itself directly compete for the supply of in-flight catering services.

The Tribunal's recent decision, which the Commissioner did not appeal and is now final, is particularly notable for its

- clarification of the scope for dominant firms to justify their allegedly anticompetitive conduct, suggesting a greater degree of flexibility for doing so than may have been apparent from prior recent jurisprudence
- ruling that respondents in civil abuse of dominance cases cannot rely on the so-called regulated conduct defence, which has been applied by courts in some prior cases to immunize from *Competition Act* review allegedly anti-competitive conduct that is authorized or mandated by valid legislation or regulation
- clarification of aspects of the "plausible competitive interest" (PCI) screen the Tribunal will use to limit the scope of cases alleging abuse of dominance against firms that do not compete in the market they are alleged to control – especially with the recent emphasis on access to data and digital platforms in the growing digital economy, the conduct of "gatekeeper" firms that may control important aspects of how competition unfolds in a market (whether or not such firms participate directly in it) is likely to continue to be the subject of close enforcement scrutiny under the Act's abuse of dominance provisions.

Read the article.

Key Contacts: John Bodrug, Mark Katz and Charles Tingley