DAVIES dwpv.com

DECEMBER 4, 2019

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

This information and comments herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations the reader should seek professional advice.