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Transportation Antitrust Cases, 2004

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This report summarizes reported antitrust decisions in 2004 that involved transportation companies. It updates the TLA Antitrust and Unfair Practices Committee report issued in April 2004 that included antitrust related transportation decisions for 2003.

Civil Actions – Air Transportation

Hall v. American Airlines, Inc., 2004-2 Trade Cases ¶ 74,637, 2004 U.S. App. LEXIS 25432 (No. 03-2388; 4th Cir. December 9, 2004).

In this case, the U.S. Court of Appeals for the Fourth Circuit affirmed that a class action suit alleging that airlines had conspired to cease paying commissions to travel agents should be dismissed for lack of evidence. The appellants alleged that U.S. and foreign airlines conspired, over a period of years, to reduce the commissions paid on the sale of tickets from 10% to zero, in violation of section 1 of the Sherman Act (15 U.S.C. § 1). The court held that the evidence was entirely circumstantial, and that the airlines had presented overwhelming evidence that the cuts were as likely the result of competitive conduct and natural changes in the market.

Midwestern Machinery Co., Inc. v. Northwest Airlines, Inc., 392 F.3d 265, 2004-2 Trade Cases ¶ 74,631 (No. 03-1664; 8th Cir. December 7, 2004).

In this case, the U.S. Court of Appeals for the Eighth Circuit affirmed that a suit alleging that an airline merger had violated section 7 of the Clayton Act (15 U.S.C. § 18) was barred by the statute of limitations. The plaintiff alleged, in a complaint that had been filed in 1997, that the 1986 merger of Northwest Airlines and Republic Airlines resulted in a substantial lessening of competition. The court held that a four-year statute of limitations applied which ran from the date of the merger, as well as that a "continuing violations" theory was not applicable to Clayton Act claims.

Stuart A. Hallam v. Alaska Airlines, Inc., 91 P.3d 279, 2004-1 Trade Cases ¶ 74,429 (No. S-10198; Alaska May 21, 2004).

In this case, the Alaska Supreme Court held that a pro se claim that Alaska Airlines' ticketing practices violated Alaska state antitrust law were preempted by the federal Airline Deregulation Act (49 U.S.C. § 41713). Hallam alleged various disputes with Alaska Airlines, such as its assessment of a change fee for an "unrestricted" ticket, and generally alleged that Alasaka Airlines had sought to monopolize air travel in the state. The court held that all of the claims were preempted, because they all "related to a price, route, or service of an air carrier."

In re Northwest Airlines Corp., 221 F.R.D. 593, 2004-1 Trade Cases ¶ 74,398 (No. 96-74711; E.D.Mich. May 4, 2004).

In this case, the U.S. District Court for the Eastern District of Michigan held that in a class action against airlines under §§ 1 - 2 of the Sherman Act (15 U.S.C. §§ 1 - 2), separate sub-classes were necessary for travelers who originated at each hub airport. The plaintiffs alleged that consumers had been overcharged for air travel due to airline prohibitions on "hidden-city ticketing," which occurs when a consumer purchases a ticket for travel from City A to City C, changing planes at City B, but actually deplanes at City B, his true destination, and discards the remainder of the ticket. This travel pattern can be cheaper than simply buying a ticket for travel from City A to City B, but is prohibited by many airlines. The court held that sub-classes were necessary because airlines' monopoly power, and thus the savings from hidden-city ticketing, differed from airport to airport.

Civil Actions – Ground Transportation

South Coast Cab Co., Inc v. City of Anaheim, 2004 Cal. Unpub. LEXIS 11789 (Nos. G031608 & G034127; Calif. Ct. App. 4th December 27, 2004).

In this case, the California Court of Appeal, Fourth District, held that state antitrust law did not permit claims against political subdivisions and that it lacked jurisdiction over South Coast Cab's federal antitrust claims. The plaintiff alleged that the City of Anaheim had implemented a franchise system that had reduced the taxi cab permits allotted to it and effectively denied it the right to operate. The court noted that South Coast Cab's claims had been the subject of a prior appeal, but stated that the law-of-the-case doctrine did not conflict with either of its holdings.

A.I.B. Express, Inc. v. FedEx Corp., 2004-2 Trade Cases ¶ 74,621, 2004 U.S. Dist. LEXIS 22528 (No. 03-8087; S.D.N.Y. November 8, 2004)

In this case, the U.S. District Court for the Southern District of New York held that a company that facilitated the transportation of gems and jewelry had stated a claim for monopoly leveraging, but not for monopolization or attempted monopolization, under § 2 of the Sherman Act (15 U.S.C. § 2). A.I.B. alleged that FedEx had terminated its pricing agreement with A.I.B. and had attempted to convince A.I.B. customers to use FedEx's services directly. The court held that A.I.B. had failed to show that FedEx had willfully acquired monopoly power in the jewelry transportation market, or that it had directly attempted to monopolize the jewelry facilitation market. However, the court further held that A.I.B.'s claim that FedEx had leveraged its power in the former market in an indirect attempt to take over the latter market could proceed.

Cheryl Terry Enterprises, Ltd. v. City of Hartford, 854 A.2d 1066, 2004-2 Trade Cases ¶ 74,540 (No. SC 17067; Conn. August 31, 2004)

In this case, the Connecticut Supreme Court held that a transportation company could bring claims for lost profits against a municipality under Connecticut antitrust law. Cheryl Terry Enterprises, which had submitted the lowest bid for a contract to operate school buses, had sued

the City after the contract was instead awarded to another bidder. The court held that state law (General Statutes § 35-25, et. seq.) did not exempt municipalities, and even if public policy reasons existed to exempt the public bidding process, the exemption only could be established by the state legislature. The court further held that Cherryl Terry Enterprises had proven damages of $500,000 under state law with reasonably certainty.

In re Excess Value Insurance Coverage Litigation., 2004 U.S. Dist. LEXIS 14822, 2004-2 Trade Cases ¶ 74,521 (No. M-21-849; S.D.N.Y. July 30, 2004).

In this case, the U.S. District Court for the Southern District of New York approved a settlement of class action claims against United Parcel Service, Inc., which alleged that UPS had violated § 2 of the Sherman Act (15 U.S.C. § 2) and § 7 of the Clayton Act (15 U.S.C. § 18) by steering customers to purchase excess value insurance at supracompetitive rates. The settlement would provide the customer class with vouchers with a fair market value of $204 million, and would award $19.3 million in attorney's fees and expenses to the class counsel. The court held that the settlement was procedurally fair, adequate, and reasonable, and satisfied the prerequisites for the approval of a settlement.

Alpha School Bus Co., Inc. v. Southwest Transit, Inc., 2004 U.S. Dist. LEXIS 11031, 2004-1 Trade Cases ¶ 74,451 (No. 03-5009; N.D.Ill. June 17, 2004).

In this case, the U.S. District Court for the Northern District of Illinois held that a school bus contractor had failed to state a claim under § 1 of the Sherman Act (15 U.S.C. § 1) against a competitor that it asserted had pilfered information about its contract bids. Alpha School Bus alleged that Southwest Transit had used the pilfered information to underbid it. The court held that Alpha School Bus had not pled an antitrust injury, because Southwest's alleged pilfering did not involve the kind of wrongful conduct that the antitrust laws forbid, such as price fixing or bid rigging.

Duck Tours Seafari, Inc. v. City of Key West, Florida, 875 So. 2d 650, 2004-1 Trade Cases ¶ 74,333 (No. 3D02-2812; Fla. Dist. Ct. App. March 17, 2004).

In this case, the Court of Appeals of Florida, Third District, held that the City of Key West was not immune from Duck Tours' claims under Florida state antitrust law. Duck Tours alleged that ordinances enacted by the City restrained trade by effectively prohibiting Duck Tours from operating tours that competed with the two existing tour operators in the City. The court held that because the ordinances – and the monopoly they granted to the existing tour operators – had not explicitly been authorized by the state of Florida, the City was not entitled to invoke the state action immunity doctrine. The case was remanded for further proceedings.

Nicolette v. Caruso, 315 F. Supp.2d 710, 2004-2 Trade Cases ¶ 74,519 (No. 02-1368; W.D.Penn. November 4, 2003).

In this case (decided in 2003 but not published until 2004), the U.S. District Court for the Western District of Pennsylvania held that a waste hauler had failed to state a claim under § 1 of the Sherman Act (15 U.S.C. § 1) or under section 4 of the Clayton Act (15 U.S.C. § 15) against a

township that ceased to do business with it after the waste hauler ceased disposing of waste at a landfill within the municipality. The court held that the waste hauler had failed to show that the municipality had engaged in concerted action with another entity, as is required by the Sherman Act, as well as that the Local Government Antitrust Act (15 U.S.C. § 35) immunized municipalities from damages under the Clayton Act.

Civil Actions – Ocean Transportation

JLM Industries, Inc. v. Stolt-Nielsen S.A., 387 F.3d 163, 2004-2 Trade Cases ¶ 74,590 (Nos. 03-7683, 03-7913; 2d Cir. October 26, 2004).

In this case, the U.S. Court of Appeals for the Second Circuit held that claims brought in a prospective class action, which alleged price-fixing by international shippers of liquid chemical products under section 1 of the Sherman Act (15 U.S.C. § 1), were within the scope of arbitration agreements between the parties. The court held that Sherman Act claims were arbitrable insofar as the claims concerned matters covered by agreements between the parties, and further rejected the plaintiffs' argument that only vertical price-fixing claims and not the horizontal price-fixing claims that they had alleged were arbitrable. The Court also held that claims brought under sections of the Connecticut Antitrust Act (Conn. Gen. Stat. §§ 35-26 & 35-28) were arbitrable.

Sutton v. Stolt-Nielsen Transportation Group, Ltd., 2004 U.S. Dist. LEXIS 17098 (No. 04-0067; E.D.Tenn. May 27, 2004).

In this case, the U.S. District Court for the Eastern District of Tennessee held that a prospective class action, which alleged price-fixing by international shippers of liquid chemical products, should be remanded to the Circuit Court for Cocke County, Tennessee. The plaintiffs had alleged violations of only Tennessee antitrust laws, and the court held that their complaint did not implicitly plead a federal claim, nor did it plead sufficient damages to justify its removal to federal court on the ground of diversity jurisdiction.

Department of Justice

United States v. Gosselin World Wide Moving N.V., 333 F. Supp.2d 497, 2004-2 Trade Cases ¶ 74,576 (No. 03-551; E.D.Va. August 16, 2004).

In this case, the U.S. District Court for the Eastern District of Virginia granted a motion to dismiss criminal charges under section 1 of the Sherman Act (15 U.S.C. § 1). Gosselin and another defendant were alleged to have conspired to raise the rates charged to move household goods of Department of Defense personnel from Germany to the United States, and both had entered into plea agreements conditioned upon the outcome of the motion. The Court held that section 1706(a) of the Shipping Act of 1984 (46 U.S.C. App. § 1706(a)) immunized their actions from antitrust scrutiny, but also held that they were still subjection to prosecution for conspiring to defraud the United States. Both parties appealed the decision (4th Cir. No. 04-4876).

American Airlines, Inc./ATPCO Consent Decree.

On August 6, 2004, the Department of Justice announced that it had reached a settlement with American that resolved DOJ's concerns that the airline had violated a 1994 consent decree. Pursuant to U.S. v. Airline Tariff Pub. Co., 836 F. Supp. 9 (D.D.C. 1993), ATPCO, American and seven other airlines had agreed not to publish fare increases that included a first travel date in the future, which DOJ alleged were used to communicate proposed fare increases to competitors in violation of § 1 of the Sherman Act (15 U.S.C. § 1). Without admitting wrongdoing, American agreed to pay a $3 million penalty in regard to fares that the airline had published in 2002. The U.S. District Court for the District of Columbia subsequently approved the settlement agreement at 2004-2 Trade Cases ¶ 74,333 (No. 92-2854; D.D.C. September 23, 2004).

Cartwright International Van Lines, Inc.

On April 29, 2004, the Department of Justice announced that Missouri-based Cartwright International Van Lines, Inc. had agreed to plead guilty and pay a $250,000 criminal fine for conspiring to increase the rates paid by the Department of Defense for the transportation of military and civilian household goods between Germany and the United States in violation of section 1 of the Sherman Act (15 U.S.C. § 1).

Jo Tankers B.V./International Parcel Tanker Shipping Investigation.

On April 19, 2004, the Department of Justice announced that Dutch-based Jo Tankers B.V. had agreed to plead guilty and pay a $19.5 million criminal fine for participating in an international cartel to allocate customers, rig bids, and fix prices on parcel tanker (i.e., bulk liquid) freight contracts in violation of section 1 of the Sherman Act (15 U.S.C. § 1). In addition, on January 7, 2004, a former co-managing director of Jo Tankers formally was sentenced to three months in prison and a $75,000 criminal fine for his role in the conspiracy.

Federal Trade Commission

In re Kentucky Household Goods Carriers Association, Inc., 2004-1 Trade Cases ¶ 15,615 (Dkt. 9309, June 21, 2004).

In this case, an FTC Administrative Law Judge held that the Kentucky Association – a group of intrastate movers – had engaged in horizontal price-fixing in violation of § 5 of the FTC Act (15 U.S.C. § 45). The Kentucky Association had filed tariffs containing collective rates on behalf of its members. The FTC held that even if state law permitted collective ratemaking, the Kentucky Association was not protected by the state action doctrine, because the state did not actively supervise collective ratemaking activity.

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