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Transportation Antitrust Cases, 2005

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This report summarizes reported antitrust decisions in 2005 that involved transportation companies. It updates the TLA Antitrust and Unfair Practices Committee report issued in April 2005 that included antitrust related transportation decisions for 2004.

Civil Actions – Air Transportation

Spirit Airlines, Inc. v. Northwest Airlines Corp., 429 F.3d 190, 2005-2 Trade Cases ¶ 103,278, (No. 03-1521; 6th Cir. November 9, 2005).

In this case, the U.S. Court of Appeals for the Sixth Circuit reversed the holding of the U.S. District Court for the Eastern District of Michigan that a class action should not be certified against Northwest in an case alleging violations of Sherman Act § 2 (15 U.S.C. § 2). Spirit argued that Northwest had engaged in predatory pricing in the Detroit-Boston and Detroit-Philadelphia markets. The trial court held that the relevant markets were not limited to leisure passengers, and that in the overall markets Northwest's revenues exceed its costs, but the Sixth Circuit concluded that Spirit should have an opportunity to argue that a distinct market existed for leisure passengers, and that as a result Northwest's revenues did not exceed its costs.

Rodney v. Northwest Airlines Corp., 146 Fed. Appx. 783, 2005-2 Trade Cases ¶ 74,940 (No. 04-5752; 6th Cir. August 22, 2005).

In this case, the U.S. Court of Appeals for the Sixth Circuit affirmed the holding of the U.S. District Court for the Western District of Tennessee that a class action should not be certified against Northwest in an case alleging violations of Sherman Act § 2 (15 U.S.C. § 2) and Clayton Act §§ 4 & 16 (15 U.S.C. §§ 15 & 26). Rodney argued that Northwest has attempted to monopolize air travel on 74 routes from Detroit, Memphis, and Minneapolis St. Paul, and argued that a class should be certified because common issues predominated over individual issues. But the court held that the definition of the relevant markets for the 74 routes would require the analysis of the alternatives available for each individual route, as well as mini-trials on issues including antitrust injury and damages, and therefore that a class should not be certified.

United Airlines, Inc. v. U.S. Bank N.A., 406 F.3d 918, 2005-1 Trade Cases ¶ 74,775 (No. 05-1871; 7th Cir. May 6, 2005).

In this case, the U.S. Court of Appeals for the Seventh Circuit held that United Airlines was not entitled to an injunction pursuant to Sherman Act § 1 (15 U.S.C. § 1) that prevented its aircraft lessors from repossessing their aircraft. United argued that the lessors had violated the Sherman Act by coordinating their efforts to deal with United, but the court concluded that this

claim not only was incorrect but bordered on the frivolous. The court noted that antitrust laws do not forbid creditors from coordinating their positions in bankruptcy, and further noted that 11 U.S.C. § 1110 specifically governs the repossession of aircraft in bankruptcy proceedings.

In re Jet 1 Center, Inc. v. City of Naples Airport Authority, 322 B.R. 182, 2005-1 Trade Cases ¶ 74,727 (No. 03-26514; M.D.Fla.Bankr. February 15, 2005).

In this case, the U.S. Bankruptcy Court for the Middle District of Florida held that the state action doctrine prevented a jet fuel vendor from asserting monopolization claims under the Sherman Act §§ 1 & 2 (15 U.S.C. §§ 1 & 2), Clayton Act § 16 (15 U.S.C. § 26), and Florida Antitrust Act (Fla. Stat. § 542.18) against an airport authority. Jet 1 Center argued that it had been prevented from conducting fueling operations at the airport by the airport authority, but the court concluded that the state action doctrine was not merely an affirmative defense but operated as an absolute bar of Jet 1 Center's claims under both federal and state antitrust law.

Scott Aviation, Inc. v. DuPage Airport Authority, 2005 U.S. Dist. LEXIS 9582, 2005-1 Trade Cases ¶ 74,809 (No. 04-3048; N.D.Ill. January 24, 2005).

In this case, the U.S. District Court for the Northern District of Illinois held that the state action doctrine did not prevent a fixed-base operator from asserting monopolization claims under Sherman Act § 2 (15 U.S.C. § 2). DuPage Airport argued that it had complied with federal and state regulations and additionally that Scott Aviation's claims were barred because the FAA had considered similar issues in an administrative proceeding. However, the court held that there was no clear state or federal policy that authorized the airport to monopolize the sale of fuel, nor did the FAA proceedings address the same issues as Scott Aviation's antitrust claims.

Civil Actions – Surface Transportation

Flying J, Inc. v. CFJ Properties, 405 F.3d 821 (No. 03-4262; 10th Cir. April 13, 2005).

In this case, the U.S. Court of Appeals for the Tenth Circuit reversed the holding of the U.S. District Court for the District of Utah that CFJ had breached an agreement to settle a claim by Flying J that CFJ had monopolized markets related to the truck stop industry. Flying J had argued that CFJ had violated Sherman Act §§1-7 (15 U.S.C. §§ 1-7) by securing approximately 90% of the market for the processing of trucking company fuel card transactions; to settle the claim, CFJ agreed to pay Flying J $49 million and grant Flying J licenses to use its proprietary system. The court held that by not capturing supplemental data (which is used by trucking companies to monitor the activities of their fleet) from certain Flying J transactions, CFJ had not breached an unambiguous term of the settlement agreement.

Civil Actions – Ocean Transportation

United States v. Gosselin World Wide Moving N.V., 411 F.3d 502, 2005-1 Trade Cases ¶ 74,829 (Nos. 04-4752, 04-4876, 04-4877; 4th Cir. June 14, 2005).

In this case, the U.S. Court of Appeals for the Fourth Circuit reversed the holding of the U.S. District Court for the Eastern District of Virginia that the Shipping Act of 1984 (46 U.S.C. App. § 1706(a)) immunized the two defendants from criminal prosecution 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 the household goods of Department of Defense personnel from Germany to the United States. The Court held that the Shipping Act of 1984 is to be interpreted narrowly and only exempted from antitrust scrutiny conduct that involved solely a foreign inland segment or tariffs filed with the Federal Maritime Commission, and the defendants were alleged to have attempted to fix prices for the entire through transportation market by means other than tariffs. The defendants have filed a petition for a Supreme Court writ of certiorari (No. 05-677).

Stolt-Nielsen S.A. v.United States of America, 352 F. Supp.2d 553, 2005-1 Trade Cases ¶ 74,669 (No. 04-537; E.D.Penn. January 14, 2005).

In this case, the U.S. District Court for the Eastern District of Pennsylvania held that an amnesty agreement between the DOJ and Stolt-Nielsen was enforceable and prevented the DOJ from prosecuting the Stolt-Nielsen for antitrust violations. The DOJ argued that Stolt-Nielsen in the amnesty agreement had misrepresented the date that it withdrew from the alleged conspiracy among international carriers of bulk liquids, but the court concluded that the requirements of the agreement were ambiguous and that they would be construed against the government. The DOJ has appealed the decision to the U.S. Court of Appeals for the Third Circuit (No. 05-1480).

Federal Trade Commission

In re Kentucky Household Goods Carriers Association, Inc., 2005-1 Trade Cases ¶ 74,833 (Dkt. 9309, June 21, 2005).

In this case, the FTC affirmed the decision of an FTC Administrative Law Judge that the Kentucky Household Goods Carrier 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 Association had filed tariffs containing collective rates for intrastate household goods moves on behalf of its members. The FTC held that even if state law permitted collective ratemaking, the Association's conduct was not protected by the state action doctrine, because the Kentucky Transportation Commission did not actively supervise its collective ratemaking activity. The Association has appealed the decision to the U.S. Court of Appeals for the Sixth Circuit (No. 05-4042).

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