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Transportation Antitrust Cases, 2006

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This report summarizes reported antitrust decisions in 2006 that involved transportation companies. It updates the TLA Antitrust and Unfair Practices Committee report issued in April 2006 that included antitrust related transportation decisions for 2005.

Civil Actions – Air Transportation

Commonwealth of Pennsylvania v. Susquehanna Area Regional Airport Authority, 423 F. Supp. 472, 2006-1 Trade Cases ¶ 75,263 (No. 05-1814; M.D.Pa. March 21, 2006).

In this case, Pennsylvania sought to enjoin the airport authority from acquiring a plot of land, through eminent domain, on which was located a private parking enterprise that competed with the airport's long-term parking facility. Pennsylvania alleged that the acquisition would violate §2 of the Sherman Act (15 U.S.C. § 2) and § 7 of the Clayton Act (15 U.S.C. § 18). The U.S. District Court for the Middle District of Pennsylvania denied the request, holding that the conduct was protected by the state action doctrine, and that nothing in the underlying statute – the Pennsylvania Municipal Authorities Act – was to the contrary. Pennsylvania has appealed the decision to the U.S. Court of Appeals for the Third Circuit (No. 06-2393).

In re Air Cargo Shipping Services Antitrust Litigation, 435 F. Supp. 1342, 2006-1 Trade Cases ¶ 75,308 (No. 1775; J.P.M.L. June 20, 2006).

In this case, the Judicial Panel on Multidistrict Litigation consolidated in the U.S. District Court for the Eastern District of New York 23 actions that had been filed in six federal district courts which all alleged a price fixing conspiracy by U.S. and foreign air carriers in violation of § 1 of the Sherman Act (15 U.S.C. § 1) and § 4 of the Clayton Act (15 U.S.C. § 15). The Panel stated that the Eastern District of New York was an appropriate forum because several of the defendants have a presence and conduct substantial business there, as well as because it is easily accessible and enjoyed support from many of the plaintiffs and defendants in the litigation.

County of Milwaukee v. Williams, 720 N.W.2d 177, 2006-2 Trade Cases ¶ 75,326 (Nos. 2005AP2686 and 2005AP2687; Wisc. App. June 27, 2006).

In this case, the plaintiffs alleged that a Milwaukee ordinance requiring a permit to pick up taxi passengers at General Mitchell International Airport violated Wisconsin antitrust law

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(Wis. Stat. § 133.01). The plaintiffs argued that even if traffic or safety considerations justified some regulation of competition at the airport, the permit requirement was excessively restrictive. The Wisconsin Court of Appeals held that the requirement was valid, noting that the antitrust law did not override the Wisconsin statute which specifically empowered Milwaukee to operate and regulate the airport, and which included authority to regulate ground transportation at the airport. The plaintiffs have appealed the decision to the Wisconsin Supreme Court.

Tokarz v. LOT Polish Airlines, 2006 U.S. Dist. LEXIS 72118, 2006-2 Trade Cases ¶ 75,447 (No. 96-3154; E.D.N.Y. October 3, 2006).

In this case, Tokarz alleged that LOT had violated § 1 of the Sherman Act (15 U.S.C. § 1) and New York antitrust law (N.Y. Gen Bus. Law § 340) by terminating its authority to sell LOT tickets and an ancillary commission agreement. Tokarz asserted that competing travel agencies had complained to LOT that he undercut their prices by retaining less of his commissions from LOT. The U.S. District Court for the Eastern District of New York held that Tokarz had failed to establish any antitrust claims against LOT, because the complaints had not been shown to be part of a conspiracy, and LOT's decision to terminate Tokarz had been unilateral. The plaintiff has appealed the decision to the U.S. Court of Appeals for the Second Circuit (No. 06-5574).

Civil Actions – Surface Transportation

Avalon Carriage Service, Inc. v. City of St. Augustine, Florida, 417 F. Supp.2d 1279, 2006-1 Trade Cases ¶ 75,239 (No. 04-1126; M.D.Fla. Feb. 23, 2006).

In this case, Avalon alleged that the city of St. Augustine and a competitor that had been issued 96% of the permits to operate horse drawn carriages in St. Augustine had violated § 2 of the Sherman Act (15 U.S.C. § 2) and Florida antitrust law (chapter 542.19). The U.S. District Court for the Middle District of Florida, as an initial matter, held that the claims against the city and city officials were barred by the state action doctrine, the Local Government Antitrust (15 U.S.C. § 34, et seq.) Immunity Act, and the Noerr-Pennington doctrine. However, the court also held that Avalon's federal and state antitrust law claims against its competitor could proceed to trial, because Avalon had asserted an antitrust injury and there was evidence of monopoly power.

Doron Precision Systems, Inc. v. New York City Transit Authority, 43 F. Supp.2d 173, 2006-2 Trade Cases ¶ 75,344 (No. 05-7663; S.D.N.Y. March 23, 2006).

In this case, Doron alleged that a competitor and the transit authority violated §§ 1-2 of the Sherman Act (15 U.S.C. §§ 1-2) and New York antitrust law (N.Y. Gen Bus. Law § 340) by entering into a contract for bus-driving simulators without competitive bidding, and jointly marketing the simulators to other public authorities. The U.S. District Court for the Southern District of New York held that Doron had defined an adequate marker for its claims, namely the national market for bus-driving simulators sold to public authorities. But the court held that Doron had failed to allege an antitrust injury, since the competitor's entry into the market and contract with the transit authority had harmed only Doron's profits and not the competitive marketplace. Further, the court held that even if anticompetitive, the defendants' conduct was immunized by the state action doctrine and the Noerr-Pennington doctrine.

Fulfillment Services, Inc. v. United Parcel Service, Inc., 2006 U.S. Dist. LEXIS 22913, 2006-1 Trade Cases ¶ 75,302 (No. 05-538; D.Ariz. April 19, 2006).

In this case, the plaintiff alleged that UPS had violated a provision of the Motor Carrier Act (49 U.S.C. § 13703) that provides an antitrust exemption for certain collective activities. The plaintiff alleged that UPS charged rates based upon collectively-established classifications without being a participant in the publication of those classification, as required by the statute. The U.S. District Court for the District of Arizona held that the Motor Carrier Act did not create a private cause of action, and that the statute is enforceable only by the Surface Transportation Board. However, the court noted that if UPS had violated the statute as plaintiffs asserted, either the plaintiffs or the government, or both, could bring a suit against UPS under the antitrust laws. The plaintiff has appealed the decision to the U.S. Court of Appeals for the Ninth Circuit (No. 06-15970).

Duke d/b/a Moscow Manor Apartments v. Browning-Ferris Industries of Tennessee, Inc., 2006 Tenn. App. LEXIS 355, 2006-1 Trade Cases ¶ 75,323 (Docket No. W2005-00146-COA-R3; Tenn. App. May 31, 2006).

In this case, Duke alleged that Browning-Ferris had monopolized the commercial waste hauling market in Memphis, in violation of the Tennessee Trade Practices Act (Tenn. Code. § 47-25-101, et seq.). Duke asserted that Browning-Ferris required customers to sign three-year contracts with an automatic three-year renewal term, a 60-day non-renewal notice requirement, and a liquidated damages provision for early termination. The Tennessee Court of Appeals, as an initial matter, held that the act was not applicable to service contracts. Further, the court held that Browning-Ferris lacked monopoly power, noting that its market share had declined and that multiple competitors offered commercial waste hauling services in Memphis.

In re Kentucky Household Goods Carriers Association, Inc., 2006 U.S. App. LEXIS 21864, 2006-2 Trade Cases ¶ 75,384 (No. 05-4042; 6th Cir. August 22, 2006).

In this case, the U.S. Court of Appeals for the Sixth Circuit affirmed the decision of the FTC 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 court 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 Cabinet did not actively supervise its collective ratemaking activity.

Capital City Cab Service, Inc. v. Susquehanna Area Regional Airport Authority, 2006 U.S. Dist. LEXIS 85555, 2006-2 Trade Cases ¶ 75,519 (No. 06-0671; M.D.Pa. November 27, 2006).

In this case, Capital City Cab alleged that the Airport Authority had entered into an exclusive operating agreement with another taxi service, in violation of § 1 of the Sherman Act (15 U.S.C. § 1). The U.S. District Court for the Eastern District of Pennsylvania held that the claim was not barred by the state action doctrine because the Pennsylvania Municipal Authorities Act did not authorize the Airport Authority to displace competition. However, the court further held that the claim was barred by the Local Government Antitrust Act of 1984 (15 U.S.C. § 34,

et seq.), because Capital City Cab had requested only monetary damages and not an injunction. Capital City Cab subsequently requested leave to file an amended complaint.

Civil Actions – Ocean Transportation

Stolt-Nielsen S.A. v. United States of America, 442 F.3d 177, 2006-1 Trade Cases ¶ 75,172 (No. 05-1480; 3rd Cir. March 23, 2006).

In this case, the U.S. Court of Appeals for the Third Circuit reversed a decision of the U.S. District Court for the Eastern District of Pennsylvania, which held that an amnesty agreement between the DOJ and Stolt-Nielsen prevented the DOJ from indicting Stolt-Nielsen for antitrust violations. The DOJ had argued that the amnesty agreement was invalid because Stolt-Nielsen misrepresented the date that it withdrew from the alleged conspiracy among international carriers of bulk liquids. The Third Circuit reversed the district court's decision on the ground that federal courts had only limited jurisdiction to enjoin the executive branch from filing an indictment, but the Third Circuit did not reach the validity of the agreement, and added that Stolt-Nielsen could raise the amnesty agreement as a defense if and when it was indicted.

Department of Justice

On August 10, 2006, the DOJ announced that it would not oppose a proposal by the American Trucking Associations, Inc. to develop and publicize model agreements for motor carriers and freight transportation brokers. In a business review letter, the DOJ stated that the agreements were not likely to be anticompetitive, because the model agreements do not contain any provisions specifying rates to be charged or other competitively significant terms, and the use of the agreements will be left to the determination of each company acting independently.

On September 6, 2006, the DOJ announced that a grand jury in the U.S. District Court for the Eastern District of Pennsylvania had returned an indictment against Stolt-Nielsen S.A., two of its subsidiaries, and two of its executives for participation in a conspiracy among international carriers of bulk liquids (No. 06-466). According to the DOJ, Stolt-Nielsen and two competitors had agreed not to compete for one another's customers for the transportation of bulk chemicals, edible oils, acids and other specialty liquids by compartmentalized deep sea vessels. Stolt-Nielsen had entered into an amnesty agreement, but the agreement was revoked by the DOJ, as discussed above. Stolt-Nielsen has moved the court to dismiss the indictment on the ground that the amnesty agreement was valid, and that the DOJ lacked authority to revoke the agreement.

On September 27, 2006, the DOJ announced that Ryan's World Inc. – a freight forwarder based in Virginia – had agreed to plead guilty and pay a $120,000 fine for participating in a conspiracy with other freight forwarders to fix prices for shipments of household goods of military and civilian personnel from Germany and Italy to the United States in violation of § 1 of the Sherman Act (15 U.S.C. § 1). On March 20, 2006 and February 24, 2006, DOJ announced that Executive Relocation International, Inc. of Virginia and Allied Freight Forwarding, Inc. of Illinois, respectively, had agreed to plead guilty for participating in the same conspiracy. The former paid a fine of $72,600, while the latter paid a fine of $1.043 million.

Department of Transportation

On December 19, 2006, the DOT tentatively approved an application pursuant to 49 U.S.C. §§ 41308 & 41309 to expand the scope of the antitrust immunity that the DOT previously had granted to Star alliance carriers. The DOT previously had immunized a group comprised of Austrian Airlines, BMI British Midland, Lufthansa, SAS, and United; the application sought to add Air Canada, LOT Polish Airlines, Swiss International Air Lines, and TAP Air Portugal. The DOT tentatively concluded that the expansion of immunity to include these additional air carriers would be in the public interest and would not reduce or eliminate competition. Subsequently, in 2007, DOT issued a final order approving the application.