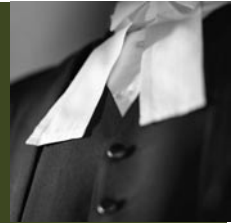


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Private applicants flock to Tribunal

Competition Tribunal deals with private applications involving hockey, chickens and airlines

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What do hockey, chickens, and airlines have in common? They have all been the subject of recent private applications in the Competition Tribunal.

On April 11, the Tribunal refused leave to John Annable to bring a private application attacking multi-game ticket packages for Senators hockey games. Then, on May 12, it granted leave to Nadeau Ferme Agricole to bring a refusal to deal case against three New Brunswick chicken suppliers. Finally, on May 20, an association of travel agents applied for leave to bring an application to force the International Air Transport Association (IATA) to resume supplying paper tickets to travel agents.

Multi-game hockey ticket packages

Mr Annable was upset by the Ottawa Senators' practice of selling multi-game ticket packages. So he applied to the Tribunal for leave to commence a private application alleging tied selling.

Unfortunately, he provided no evidence to suggest that this alleged practice of tied selling had any impact on his business, or even to show that the elements of the *Competition Act's* tied selling provision were met, apart from a bare allegation of tied selling.

The Tribunal not only dismissed his application, but held that it was "presented with such disregard for the provisions of the Act that it constitutes an abuse of the Tribunal's process". Nevertheless, Mr Annable got off lightly, being ordered to pay only \$300 in costs.

Hockey fans take note: the Tribunal is not the appropriate forum for expressing discontent with your team's ticket sales practices, management or performance. Best stick to call-in radio shows.

A fox in the hen-house?

Nadeau Ferme Agricole Limitée has been granted leave to bring an application under the *Competition Act's* refusal to deal provisions against three chicken suppliers, each of whom cut off Nadeau's supply.

Nadeau operates New Brunswick's only chicken processing plant, in St-François de Madawaska. This is Nadeau's only business. The three suppliers taken together control almost 75% of New Brunswick's chicken production.

Chicken production in Canada is controlled by a complicated federal-provincial supply management system that restricts chicken production to quota holders. Most New Brunswick chicken producers have consolidated their quota into three main producer groups, Westco, Dynaco, and Acadia. Westco owns 25% of Acadia and Dynaco may also own part of Acadia. These three groups control nearly 75% of New Brunswick's chicken production. Most of the directors of New Brunswick's chicken marketing board are affiliated with either Westco or Dynaco.

In January, 2007, Westco told Nadeau it wanted to buy the St-François plant and that it wanted a price increase. Nadeau decided not to sell the plant, but began paying higher prices for chicken. Then, in August 2007, Westco and Nadeau's primary competitor in Quebec and the eastern provinces, Olymel, presented Nadeau with an ultimatum:

either sell the St-François plant to Westco and Olymel, or Westco and Dynaco would stop supplying Nadeau with chicken.

Nadeau entered into negotiations, but these failed. Nadeau alleges that Westco insisted that the valuation of the plant must take into account the fact that the three chicken producer groups control most of its supply, leading to a valuation of only 25% of what Nadeau believed the plant was worth.

In early 2008, all three producer groups delivered notices to Nadeau that they intended to cut Nadeau off. This will decrease Nadeau's supply by 48%, throw 340 people out of work, and threaten the viability of the plant, Nadeau says.

Justice Blanchard held that Nadeau met the test for granting leave. In particular, there was evidence that Nadeau would be directly and substantially affected by losing 48% of its supply and that the Tribunal could make an order under the *Competition Act's* refusal to deal provision.

Blanchard J. rejected the respondents' contention that the business of Nadeau's parent company, Maple Lodge Holdings Corporation, should be taken into account, noting that it is the applicant, Nadeau's, business that is relevant. Blanchard J. also rejected Dynaco and Acadian's contention that the volumes they supply are too small to have much effect, noting that there was evidence of ties between them and Westco that lead him to consider the collective impact of the refusals by all respondents.

Paperless air travel?

The world's airlines, through their trade association, the International Air Transport Association (IATA), have been moving toward using electronic tickets for air travel for some time. As of June 2008, IATA no longer allows travel agencies to issue paper tickets. However, airlines can continue to issue paper tickets.

Canadian Standard Travel Agent Registry (CSTAR), a travel agency trade association, is seeking leave from the Tribunal to bring a private application in a representative capacity, to force IATA to allow travel agents to continue to issue paper tickets. CSTAR alleges that paper tickets remain necessary in some cases. This, CSTAR says, puts travel agents at a competitive disadvantage relative to airlines since airlines can still issue paper tickets. CSTAR also points out that airlines want consumers to buy their tickets directly from them, rather than from travel agents.

The Tribunal has turned down CSTAR's motion for an interim injunction. The Tribunal has yet to rule on whether CSTAR can commence a private application, and whether it can do so as a representative of travel agents.



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