Transportation Antitrust Cases, 2018

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This report summarizes reported antitrust rulings in 2018 which involved transportation companies, and selected other antitrust developments which involved transportation companies. It updates the TLA Antitrust and Unfair Practices Committee report issued in April 2018 that included antitrust-related transportation decisions for 2017.

Civil Actions–Ground Transportation

Philadelphia Taxi Association, Inc. v. Uber Technologies, Inc.[1]

In this case, the plaintiffs–the Philadelphia Taxi Association, along with eighty individual taxicab companies–alleged that Uber's entry into the Philadelphia taxicab market was illegal and resulted in a sharp drop in the value of taxicab medallions, in violation of § 2 of the Sherman Act;[2] the plaintiffs further sought injunctive relief and treble damages under § 4 of the Clayton Act.[3] The U.S. Court of Appeals for the Third Circuit rejected the plaintiffs' claims, concluding that they had failed to plausibly allege any of the elements of their attempted monopolization claim. Separately, the court ruled that plaintiffs failed to adequately plead antitrust standing, observing that plaintiffs only alleged evidence of financial harm to themselves as competitors, rather than a negative impact on consumers or to competition in general.

Chamber of Commerce of the United States of America v. City of Seattle[4]

In this case, the plaintiffs sought to enjoin enforcement of a Seattle municipal ordinance that provided a mechanism through which for-hire drivers could collectively bargain with the companies that hire, contract with, and/or partner with them. Specifically, the plaintiffs claimed that the City violated § 1 of the Sherman Act,[5] because the ordinance sanctioned price-fixing of ride-referral service fees by private cartels of independent-contractor drivers, and that the ordinance also conflicted with, and was preempted by, federal antitrust law. After the district court dismissed the claims, the U.S. Court of Appeals for the Ninth Circuit reversed, in part, holding that the state-action immunity doctrine did not exempt the ordinance from preemption under the Sherman Act. The court found that the state had not clearly articulated and affirmatively expressed a state policy authorizing private parties to price-fix the fees that for-hire drivers pay in exchange for ride-referral services.

MacCausland v. Uber Technologies, Inc.[6]

In this case, the plaintiff–on behalf of a putative class of taxi drivers–alleged that the defendant competed unlawfully in the on-demand, ride-hail ground transportation market, by attempting to drive taxi companies out of business through its predatorily priced UberX service, in violation of § 2 of the Sherman Act[7] and state law. The court granted the defendant's motion to dismiss the plaintiffs' antitrust claims, holding that the plaintiffs failed to allege facts supporting a predatory pricing claim, failed to allege facts demonstrating defendant's intent to monopolize, and failed to show an injury to consumers in the relevant market.

Malden Transportation, Inc. v. Uber Technologies, Inc.[8]

In this case, the plaintiffs–comprised of more than 700 taxicab medallion holders –alleged that the defendant competed unlawfully in the on-demand, ride-hail ground transportation market in the greater Boston area. Specifically, the plaintiffs contended that defendant had attempted to drive taxi companies out of business through the use of its allegedly predatorily priced UberX service, in violation of both state and federal antitrust law. The U.S. District Court for the District of Massachusetts granted the defendant's motion to dismiss the antitrust claims, finding that the plaintiffs failed to allege facts supporting a predatory pricing claim, failed to allege facts demonstrating defendant's intent to monopolize, and failed to show an injury to consumers in the relevant market.

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Misganaw Alemu v. Department of For-Hire Vehicle[9]

In this case, the plaintiffs, a group of taxicab drivers, alleged that the defendants–a city regulatory agency and a competitor-owner of various taxi-related companies, conspired and attempted to monopolize the District of Columbia's taxicab market, in violation of federal antitrust law.[10] In particular, the plaintiffs claimed that the defendants collaborated to enact a new regulation designed to suppress competition and monopolize the market. The U.S. District Court for the District of Columbia granted the defendants' motions to dismiss for failure to state a claim, finding that defendants–the regulatory agency and competitor-owner–were immune from antitrust liability under the state-action doctrine and the *Noerr-Pennington* doctrine, respectively.

Saginaw County v. Stat Emergency Medical Service, Inc.[11]

In this case, the plaintiff, a municipal corporation under Michigan law, sought a declaratory judgment that an ordinance–requiring anyone seeking to provide ambulance services in the county to first obtain the approval of the County Board of Commissioners–was legal under state law and that enforcing the ordinance against defendant-ambulance company would not violate the Sherman Act, in addition to the Due Process Clause of the 14th Amendment to the U.S. Constitution. The U.S. District Court for the Eastern District of Michigan ruled that it lacked subject matter jurisdiction, finding that the plaintiff failed to show both an "actual controversy" between the parties and that its claims were ripe for adjudication. Separately, the court stated that, even if it had subject matter jurisdiction, it would dismiss the plaintiff's allegations for failure to state a claim.

Zummo v. City of Chicago[12]

In this case, the plaintiff alleged that the defendant City had violated antitrust laws, and also had denied him constitutional rights and violated various state laws, by failing to regulate ridesharing services providers (such as Uber and Lyft) in the same way as taxicabs. The defendant asked the court to stay the proceeding pending resolution of an associated administrative proceeding, or in the alternative, to dismiss the complaint for failure to state a claim. The U.S. District Court for the Northern District of Illinois held that *Younger* abstention was warranted only with respect to certain due process claims, and dismissed those claims without prejudice. But the court also dismissed the plaintiff's remaining allegations for failure to state a claim, with prejudice.

Nevada Recycling and Salvage, Ltd. v. Reno Disposal Company, Inc.[13]

In this case, the plaintiffs alleged that the defendants had conspired with a third party to obtain exclusive franchise agreements with the City of Reno, for the collection of waste and recyclable materials, in violation of the Nevada Unfair Trade Practice Act ("UTPA"). In particular, the plaintiffs alleged they lost customers, due to defendants' anticompetitive conspiracy, but acknowledged they were unable to ascertain the amount of damages, because different rates were charged to customers over time. The Supreme Court of Nevada held that the plaintiffs lacked antitrust standing, because they were unable to show that they suffered any injuries (i.e., damages) from the alleged conspiracy.

Civil Actions–Aviation

ABC Aerolineas, S.A. De C.V. v. U.S. Department of Transportation[14]

In this case, the petitioner challenged a Department of Transportation ("DOT") order that approved a Delta-Aeromexico cooperation agreement and immunized it from U.S. antitrust law–but as a condition directed the divestiture of slots at the New York ("JFK") and Mexico City ("MEX") airports. Specifically, the petitioner objected to DOT's decision to exclude it from receiving MEX slots, contending that DOT lacked the authority to allocate divested slots at a foreign airport and to impose conditions on the use of those slots. The U.S. Court of Appeals for the D.C. Circuit rejected the petitioner's contention, holding that DOT did not overstep its authority in imposing conditions on the MEX slots as part of its approval and immunization of the cooperation agreement, and that DOT had articulated a satisfactory explanation for its decision.

Prosterman v. American Airlines, Inc.[15]

In this case, the plaintiffs–air transportation passengers and travel agents–alleged the three airline defendants (United, American, and Delta) had conspired among themselves and with the Airline Tariff Publishing Company to institute a change in the rules setting how flights would be priced when combined into larger itineraries, in violation of § 1 of the Sherman Act.[16] The U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision to grant the defendants' motion to dismiss, finding that plaintiffs had merely identified "conscious parallelism" and had failed to nudge their collusion claim "across the line from conceivable to plausible."

Wortman v. Air New Zealand[17]

In this case, the plaintiffs–on behalf of a putative class of consumers–alleged that the airline defendants had colluded to fix the prices of certain passenger tickets and fuel surcharges on flights between the United States and Asia, in violation of § 1 of the Sherman Act.[18] The plaintiffs had proposed two classes focusing on purported damages caused by price-fixing activities in two specific areas: 1) fuel surcharges, and 2) special types of discounted tickets. The U.S. District Court for the Northern District of California granted the plaintiffs' motion to certify both classes, finding that the plaintiffs had satisfied all of the requirements for class certification.

Department of Justice

On February 6, 2018, the DOJ announced that four owners of school bus transportation companies had been sentenced for participating in bid rigging and fraud conspiracies related to school bus transportation contracts in Puerto Rico. For their roles in the collusive and fraudulent conduct, three of the defendants were sentenced to serve 12 months and a day in prison, and another defendant was sentenced to a term of two years' probation, the first six months to be served in home confinement, after a departure based on the defendant's medical condition. The criminal case, which was brought in the District of Puerto Rico, is captioned *United States v. Rivera-Herrera, et al.*[19]

On July 3, 2018, DOJ announced that two executives had been arrested in Miami on charges of conspiring to fix prices for international freight forwarding services. According to the criminal complaint, the executives met at several locations in Honduras and the United States, and agreed to raise prices charged to U.S. consumers, to be implemented by establishing "commissions" in port cities throughout the U.S. to coordinate and agree on the specific rates charged to customers in each port. On November 30, 2018, the two executives pleaded guilty for their roles in orchestrating the conspiracy. In addition to their guilty pleas, they agreed to pay a criminal fine and cooperate with the ongoing investigation. The criminal case, which was commenced in the Eastern District of Louisiana, but subsequently transferred to the Southern District of Florida, is captioned *United States v. Roberto Dip and Jason Handal.*[20]

Federal Trade Commission

On May 3, 2018, the FTC announced that it had approved a final order imposing conditions on a merger of Air Medical Group Holdings, Inc. and AMR Holdco, Inc., two air ambulance transport services that transfer patients between medical facilities in Hawaii. According to the FTC, the acquisition would have combined the only two providers of air ambulance transport services operating in Hawaii and was likely to lessen competition and create a monopoly in the market for inter-facility air ambulance services, in violation of federal antitrust law. Under the terms of the settlement, AMR Holdco will sell its inter-facility air ambulance transport services business and supporting assets to AIRMD, LLC, which does business as LifeTeam.

Legislation

On December 4, 2018, President Trump signed into law the Federal Maritime Commission Authorization Act of 2017 (the "Act"). The Act represents the first substantive amendments to the U.S. Shipping Act,[21] (the "Shipping Act") since 1998, and includes several of the most significant changes to the Shipping Act since 1984. Among other changes, the Act addresses antitrust issues pertaining to recent consolidation in the maritime industry and the emergence of ocean carrier alliances.

Endnotes

1 886 F.3rd 332 (3d Cir. 2018).
2 (15 U.S.C. § 2).
3 (15 U.S.C. § 15).
4 890 F.3d 769 (9th Cir. 2018).
5 (15 U.S.C. § 1).
6 312 F.Supp.3d 209 (D.Mass. 2018).
7 (15 U.S.C. § 2).
8 321 F.Supp.3d 174 (D.Mass. 2018).
9 327 F.Supp.3d 29 (D.D.C. 2018).
10 (15 U.S.C. § 2).
11 No. 17-cv-10275, 2018 WL 3631966 (E.D. Mich. July 31, 2018).
12 No. 17-cv-09006, 2018 WL 5718034 (N.D. Ill. Nov. 1, 2018).
13 423 P.3d 605 (Nev. 2018).
14 No. 17-1056, 2018 WL 3893193 (D.C. Cir. Aug. 14, 2018).
15 No. 17-15468, 2018 WL 4018147 (9th Cir. Aug. 23, 2018).
16 (15 U.S.C. § 1).
17 326 F.R.D. 549 (N.D.Cal. Aug. 8, 2018).
18 (15 U.S.C. § 1).
19 Case No. 15-361 (D.P.R.).
20 Case No. 18-20877 (S.D. Fla).
21 46 U.S.C. § 40101 et seq.