

2018 Comp. Trib. 5
Competition Tribunal

The Commissioner of Competition v. Vancouver Airport Authority

2018 CarswellNat 1146, 2018 Comp. Trib. 5

**IN THE MATTER OF an application by the Commissioner
of Competition for one or more orders pursuant to section
79 of the Competition Act, RSC 1985, c C-34 as amended**

IN THE MATTER OF a case management conference held on March 8, 2018 to
discuss the proposed schedules and related submissions filed by the parties regarding
the additional discovery and disclosure steps to be completed prior to the hearing

The Commissioner of Competition (Applicant) and Vancouver Airport Authority (Respondent)

Denis Gascon Chair

Judgment: March 21, 2018

Docket: CT-2016-015

Counsel: Jonathan Hood, Katherine Rydel, Ryan Caron, Antonio Di Domenico, for Applicant, Commissioner of
Competition

Calvin S. Goldman, Q.C., Michael Koch, Julie Rosenthal, Ryan Cookson, Rebecca Olscher, Richard Annan, for
Respondent, Vancouver Airport Authority

Subject: Corporate and Commercial

Related Abridgment Classifications

Commercial law

VI Trade and commerce

VI.5 Competition and combines legislation

VI.5.h Practice and procedure

VI.5.h.iv Orders

Headnote

Commercial law --- Trade and commerce — Competition and combines legislation — Practice and procedure — Orders

Table of Authorities

Statutes considered:

Competition Act, R.S.C. 1985, c. C-34

s. 79 — considered

Competition Tribunal Act, R.S.C. 1985, c. 19 (2nd Supp.)

s. 9(2) — considered

Denis Gascon Chair:

1 *FURTHER TO* the application filed by the applicant, the Commissioner of Competition ("*Commissioner*"), against
the respondent, Vancouver Airport Authority ("*VAA*"), pursuant to section 79 of the *Competition Act*, RSC, c C-34, as
amended ("*Application*");

2 *AND FURTHER TO* the Tribunal's decision, dated April 24, 2017, dismissing VAA's motion challenging the
Commissioner's claims of public interest privilege as a class privilege;

3 *AND FURTHER TO* the decision of the Federal Court of Appeal ("*FCA*"), dated January 24, 2018, setting aside the Tribunal's Order dated April 24, 2017, and remitting the matter back to the Tribunal for redetermination;

4 *AND FURTHER TO* a case management conference held on February 14, 2018 to discuss the re-scheduling of the hearing of the Application, in light of the *FCA* decision;

5 *AND FURTHER TO* the Tribunal's Order Amending the Hearing Dates, dated February 15, 2018, ordering the hearing to commence on October 2, 2018 and setting out the dates for the remainder of the hearing;

6 *AND FURTHER TO* the Tribunal's Direction, dated February 15, 2018, directing the parties to submit their proposed timetables regarding the additional discovery and pre-hearing disclosure steps to be completed prior to the re-scheduled hearing;

7 *AND FURTHER TO* the parties' proposed schedules and related submissions filed on March 2 and 7, 2018;

8 *AND FURTHER TO* a case management conference held on March 8, 2018;

9 *AND FURTHER TO* the parties' additional submissions filed on March 16, 2018 in response to the draft scheduling order prepared by the Tribunal;

10 *AND FURTHER TO* the parties' submissions that VAA's original motion challenging the Commissioner's claims of public interest privilege on a class basis no longer needs to be reconsidered and redetermined by the Tribunal given that: 1) the Commissioner has now waived his claims of public interest privilege over all documents and information, save for five (5) documents over which he maintains a claim of public interest privilege on a case-by-case basis, and 2) VAA has indicated that it is not challenging these five (5) claims of public interest privilege on a case-by-case basis;

11 *AND WHEREAS* the Tribunal has examined the proposed scheduling orders and submissions and is satisfied that the following revised scheduling order addresses the issues raised in the *FCA* decision and respects the principles found in subsection 9(2) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd supp), and in particular the considerations of procedural fairness;

THE TRIBUNAL ORDERS THAT:

12 The schedule for the additional discovery and pre-hearing disclosure steps shall now be as follows:

March 29, 2018	Parties to serve supplementary affidavits of documents for documents obtained between the last supplementary affidavits of documents and February 28, 2018
April 9, 2018	Last day to file any motions arising from the supplementary affidavits of documents, supplementary production of documents, the Commissioner's Consolidated Amended Affidavit of Documents and/or confidentiality designations of productions made by the Commissioner in November and December 2017
Week of April 30, 2018	Hearing of motions arising from the supplementary affidavits of documents and/or supplementary production of documents, for a maximum of two days
By May 23, 2018	Discovery of the Commissioner's representative, for a maximum of two days, such discovery to be limited to all documents and information in respect of which the Commissioner had previously asserted a claim of public interest privilege on a class basis and to documents produced by the Commissioner in his supplementary affidavit of documents served on March 29, 2018, on the understanding that VAA shall not cover ground already covered in its previous examinations for discovery
By June 1, 2018	Discovery of VAA's representative, for a maximum of one day, such discovery to be limited to documents produced by VAA in its supplementary affidavit of documents served on March 29, 2018 and to documents regarding VAA's

	decision granting authorization to dnata for the provision of inflight catering produced by VAA in its supplemental affidavit of documents served on January 17, 2018, which affidavit includes documents delivered on December 22, 2017. Discovery shall not extend to other documents previously produced by VAA, nor with respect to the witness statements and expert reports served by VAA on January 12, 2018
June 6, 2018	Deadline for fulfilling answers to undertakings from further discovery
June 12, 2018	Last day to file any motions arising from examinations for discovery, answers to undertakings or refusals
By June 18, 2018	Hearing of motions arising from examinations for discovery, answers to undertakings or refusals
July 4, 2018	Commissioner to serve and file supplementary documents relied upon, supplementary witness statements and supplementary expert reports, if any, such supplementary materials to be limited to events occurring, or matters arising from information or documents obtained from VAA on or after November 15, 2017
July 4, 2018	Commissioner to serve supplementary list of documents proposed to be admitted without further proof, if any, such supplementary materials to be limited to documents that came into the Commissioner's possession on or after November 15, 2017
By July 20, 2018	Hearing of motions for further examination for discovery following waivers of privilege
August 1, 2018	VAA to serve and file supplementary documents relied upon, supplementary witness statements and supplementary expert reports, if any, such supplementary materials to be limited to: <ul style="list-style-type: none"> • responding to any matters contained in the Commissioner's supplementary witness statements and supplementary expert reports; and • events occurring, or matters arising from information or documents obtained from the Commissioner on or after January 12, 2018
August 15, 2018	Commissioner to serve and file reply witness statements and reply expert reports, if any
August 16-31, 2018	Mediation, if both parties agree
August 31, 2018	Last day to serve any requests for admission
August 31, 2018	Last day to serve any agreed statements of facts
September 10, 2018	Pre-trial case management conference
September 10, 2018	Last day to file any motions for summary disposition and/or any motions related to the evidence
September 14, 2018	Parties to serve supplementary affidavits of documents for documents obtained between March 1, 2018 and July 31, 2018
September 20, 2018	Deadline to provide the Tribunal with the Agreed Books of Documents and initial Books of Authorities
September 20, 2018	Deadline for responding to any requests for admissions
September 24, 2018	Hearing of motions for summary disposition and/or motions related to the evidence

12 The hearing of the Application shall commence at 9:30 a.m. on Tuesday, October 2, 2018, in the hearing room of the Tribunal located at 600-90 Sparks Street, Ottawa, and the schedule for the hearing shall be as follows:

October 2-5, 2018	First week of hearing (4 days in Ottawa)
October 9-10, 2018	Second week of hearing (2 days in Ottawa)
October 15-17, 2018	Third week of hearing (up to 3 days in Ottawa)
October 30-November 2, 2018	Fourth week of hearing (4 days in Vancouver)
November 13-15, 2018	Oral argument (3 days in Ottawa).

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