

Aviation Advocacy

Introduction to Anti-Trust and Contracts

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Agenda

- Anti-Trust Issues
- The Reach of the Rules
- Impact on Contracts

Anti-Trust Issues

Anti-Trust Issues (1)

- Three main heads:
 - Misleading and Deceptive Conduct
 - A corporation cannot mislead or deceive
 - Collusion
 - Corporations cannot enter into agreements with their competitors to impact markets
 - Abuse of Market Power
 - A corporation with a substantial degree of market power cannot use that power to distort markets

Anti-Trust (2)

- Misleading and Deceptive Conduct
 - Honesty
 - Full disclosure
- Impacts both negotiations and drafting
 - Issues of ‘economy with the truth’?
 - Balance of bargaining power
 - Consumer contracts vs commercial contracts

Anti-Trust (3)

- Collusion
- Article 85 Treaty of Rome
 - It is illegal for companies to enter into agreements that restrict or distort competition
 - Price fixing
 - Market share arrangements
- Impacts both negotiations and drafting
 - Strict liability in most countries

Anti-Trust (4)

- Collusion
 - Takes many forms
 - Agreement/Signalling/'Walk in Park'
 - Regulators more interested in intent than words
 - Many airline agreements seemingly caught
 - Tariff Agreements
 - Code-shares
 - Slots
 - Passenger/Cargo Agency
 - What to do about it?
 - Implications for contract negotiations

Anti-Trust (5)

- Abuse of Market Power
 - A corporation with a substantial degree of market power cannot take advantage of that power to hinder, lessen or restrict competition in that, or any other, market
- Implications for contract negotiations?

Anti-Trust (6)

- Substantial degree of market power?
 - Situation if the case?
 - Definition
 - Market share analysis
 - Slot access?
 - Pricing power?
 - Of itself problematic?
 - Situation when not the case?

Anti-Trust (7)

- Takes advantage of that power
 - Question of definition
 - What constitutes a ‘market’ in which the advantage taken?
 - What advantage?
 - Implications for drafting

Anti-Trust (8)

- To hinder, lessen or restrict competition
 - Definition?
 - Outcome driven
 - Drafting implications?

The Reach of the Rules

Reach of the Rules

- Extra-territoriality
 - Not just the US
- Discoverability
 - What it means in court
 - What that means for airline contract staff
- Penalties

Implications

Implications

- Puts focus on
 - Intention
 - Drafting
 - Negotiations
- Cannot later deny or walk away...

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