

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF certain conduct of Vancouver Airport Authority relating to the supply of in-flight catering at Vancouver International Airport;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 79 of the *Competition Act*.

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
CT-2016-015 September 29, 2016 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 2

COMMISSIONER OF COMPETITION

Applicant

– and –

VANCOUVER AIRPORT AUTHORITY

Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the Applicant, the Commissioner of Competition (the “**Commissioner**”), will make an application to the Competition Tribunal (the “**Tribunal**”), on a day and place to be determined by the Tribunal, pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “**Act**”), for:

- (a) an order pursuant to subsections 79(1) and 79(2) of the Act:
 - (i) prohibiting the Respondent, Vancouver Airport Authority (“**VAA**”), from directly or indirectly engaging in the practice of anti-competitive acts set out in the Statement of Grounds and Material Facts (“**SGMF**”), below;
 - (ii) requiring VAA to issue authorization, on non-discriminatory terms, to any firm that meets customary health, safety, security and performance requirements, so as to entitle that firm to access the airside at Vancouver International Airport (the “**Airport**”), from one or more facilities used by the firm whether located on Airport property or off Airport property, for the purposes of supplying Galley Handling (defined in paragraph 12 of the SGMF); and
 - (iii) otherwise requiring VAA to take any action, or to refrain from taking any action, as may be required to give effect to the foregoing prohibitions and requirements;
- (b) an order directing VAA to pay costs;
- (c) an order directing VAA to establish, and thereafter maintain, a corporate compliance program consistent with the Commissioner’s bulletin entitled “Corporate Compliance Programs”, as such bulletin may be revised from time-to-time; and
- (d) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further

notice, make such order or orders as it may consider just, including the orders sought in this Application.

AND TAKE FURTHER NOTICE that the Commissioner will rely on the SGMF in support of this Application and on such further or other material as counsel may advise and the Tribunal may permit.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached as Schedule "A" to the SGMF.

THE ADDRESSES FOR SERVICE ARE:

For Vancouver Airport Authority:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
Tel: 416.979.2211
Fax: 416.979.1234

Attention: Calvin S. Goldman, Q.C.
Michael Koch
Richard Annan

For Commissioner of Competition:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Tel.: 819.994.7714
Fax: 819.953.9267

Attention: Antonio Di Domenico
Jonathan Hood
Katherine Rydel
Ryan Caron

The Applicant proposes that the hearing of this matter be held in the City of Ottawa, Ontario and be heard in English. The Applicant proposes that documents be filed electronically.

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW AND GROUNDS

1. The Vancouver Airport Authority has abused its dominant market position by excluding and denying the benefits of competition to the In-flight Catering marketplace at Vancouver International Airport. It has no legitimate explanation to justify the substantial prevention or lessening of competition that has resulted in higher prices, dampened innovation and lower service quality.
2. New-entrant firms have sought, and continue to seek, to provide In-flight Catering, comprising Catering and Galley Handling (each as defined in paragraph 12, below), at the Airport. Airlines operating commercial passenger air transportation services wish to procure In-flight Catering at the Airport from these new-entrant firms, to realize substantial cost savings and other benefits. Standing as a wall between these buyers and sellers of In-flight Catering is VAA.
3. VAA substantially or completely controls the market for access to the airside at the Airport for the supply of Galley Handling. Without VAA's authorization to access the airside, firms cannot supply Galley Handling at the Airport. VAA thus also substantially or completely controls the market for the supply of Galley Handling at the Airport.
4. Despite repeated requests from new-entrant firms seeking to provide In-flight Catering at the Airport, and unlike other airport authorities in Canada, VAA unjustifiably refuses to authorize their access to the airside. VAA also requires firms providing In-flight Catering at the Airport to lease land from VAA for the operation of Catering kitchen facilities, as a condition of

authorizing access to the airside. VAA's conduct is a practice of anti-competitive acts, the purpose and effect of which is to exclude new-entrant firms from providing In-flight Catering or Galley Handling at the Airport.

5. VAA's practice with respect to airside access for the supply of Galley Handling has had, is having and is likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport. But for VAA's practice, the market for the supply of Galley Handling at the Airport would be substantially more competitive, including by way of lower prices, enhanced innovation and/or more efficient business models, and higher service quality.
6. Ultimately, what the Commissioner seeks in this case is to maintain and encourage competition, by allowing airlines and In-flight Catering firms that wish to do business with each other to do so, such that all In-flight Catering firms – both incumbents and new-entrants – are afforded an opportunity to succeed or fail on the basis of their respective ability to compete. In these circumstances, an order of the Tribunal is necessary and appropriate.

II. THE PARTIES

A. THE COMMISSIONER

7. The Applicant, the Commissioner, is an officer appointed by the Governor in Council pursuant to section 7 of the Act and is responsible for the administration and enforcement of the Act.

B. VAA

8. The Respondent, VAA, is a not-for-profit corporation continued under the *Canada Not-for-profit Corporations Act*. VAA operates the Airport pursuant to a Ground Lease entered into in 1992 with the Government of

Canada, as represented by the Minister of Transport (the “**Ground Lease**”).

9. In the fiscal year ended 31 December 2014, VAA generated consolidated revenue of \$465.6 million, and had an excess of revenue over expenses for the year of \$105.6 million. In the fiscal year ended 31 December 2015, VAA generated consolidated revenue of \$485.5 million, and had an excess of revenue over expenses of \$131.5 million.

III. VAA HAS ABUSED A DOMINANT MARKET POSITION, IN CONTRAVENTION OF SECTION 79 OF THE ACT

10. VAA has engaged in and continues to engage in an abuse of a dominant market position relating to the supply of In-flight Catering at the Airport.

A. VAA SUBSTANTIALLY OR COMPLETELY CONTROLS THE MARKET FOR AIRPORT AIRSIDE ACCESS FOR THE SUPPLY OF GALLEY HANDLING, AS WELL AS THE MARKET FOR GALLEY HANDLING AT THE AIRPORT

(i) Relevant Markets

11. Two markets are relevant for purposes of the Commissioner’s Application – the market for the supply of Galley Handling at the Airport, and the market for Airport airside access for the supply of Galley Handling.

Market for the Supply of Galley Handling at the Airport

12. **In-flight Catering** comprises two principal bundles of products and services purchased by airlines operating commercial passenger air transportation services – Catering and Galley Handling. **Catering** consists primarily of the preparation of meals for distribution, consumption or use on-board a commercial aircraft by passengers and crew, and includes buy-on-board offerings and snacks. **Galley Handling** consists primarily of the loading and unloading of Catering, commissary products (typically non-food items and non-perishable food items) and ancillary products

(such as duty-free products, linen and newspapers) on a commercial aircraft, including in relation thereto: warehousing; inventory management; assembly of meal trays and aircraft trolley carts (including bar and boutique assembly); transportation of Catering, commissary and ancillary products between aircraft and warehouse or Catering kitchen facilities; equipment cleaning; handheld point-of-sale device management; and trash removal.

13. Historically, both Catering and Galley Handling have been provided in Canada by full-service In-flight Catering firms, namely Gate Gourmet Canada Inc. ("**Gate Gourmet**"), at most airports nationally, and CLS Catering Services Ltd. ("**CLS**"), in Toronto and Vancouver. In 2009, another full-service In-flight Catering firm, Newrest Servair Holding Canada Inc., began operating in Canada, and is now present in Calgary, Montreal and Toronto.
14. The way in which In-flight Catering is provided in Canada has changed in recent years, as airlines have sought to reduce costs, including the cost of In-flight Catering. Freshly-prepared meals, once served to all passengers, are now largely reserved for those travelling in business or first class. In their place, economy class passengers are increasingly served lower-cost frozen meals, sourced in many cases on a national basis from foodservice firms.
15. With airline demand driving change in In-flight Catering service requirements, Catering and Galley Handling can be, and are, provided by separate firms. Today, a variety of firms specialize in Catering, such as by manufacturing large volumes of frozen meals, or by sourcing freshly-prepared meals from local restaurants proximate to airports. Other firms specialize in Galley Handling, such as by leveraging their existing airport infrastructure or expertise. Catering products are delivered to Galley

Handling firms or full-service In-flight Catering firms, which, as part of their suite of Galley Handling services, load the meals onto aircraft. The separate supply of Catering and Galley Handling can deliver efficiencies to service providers and savings to airline customers.

16. Airlines periodically select a provider of In-flight Catering (or Catering or Galley Handling), principally based on price and service. Airlines can, and do, obtain In-flight Catering from different service providers at different airports. At some airports, the value proposition to an airline can be enhanced by the generally lower-cost “off-airport” location of the In-flight Catering firm, on land not leased from the airport authority. Airlines may select an In-flight Catering firm not presently serving a particular airport, conditional on that firm obtaining authorization from the airport authority to provide service at the airport.
17. Airlines have the option of self-supplying all or a portion of their In-flight Catering needs. This includes so-called “double catering”, or transporting extra meals and ancillary supplies from one airport for service during a flight departing a second airport. Self-supply, including double catering, is not a feasible or preferable substitute for In-flight Catering for most airlines in Canada, including for logistical and financial reasons.
18. Galley Handling constitutes a relevant product market. The relevant sellers or suppliers in this market are Galley Handling or In-flight Catering firms, while the relevant purchasers are airlines operating commercial passenger air transportation services.
19. A sole profit-maximizing seller (*i.e.*, a hypothetical monopolist) would profitably impose and sustain a small but significant and non-transitory increase in price in the sale or supply of Galley Handling. For the vast

majority of airlines, there are no acceptable substitutes to the purchase of Galley Handling.

20. The Airport is the relevant geographic market for the sale or supply of Galley Handling. For the vast majority of airlines, there are no acceptable substitutes to the purchase of Galley Handling at the Airport.

21. One relevant market is therefore the supply of Galley Handling at the Airport.

Market for Airport Airside Access for the Supply of Galley Handling

22. Access to the airside is required to provide Galley Handling at an airport. The airside generally comprises that portion of an airport's property that lies inside the security perimeter. It includes runways and taxiways, as well as the apron, where, among other things, an aircraft is parked, Catering products and ancillary supplies, as well as baggage and cargo, are loaded and unloaded, and passengers board.

23. Airport authorities are the only entities in Canada from which a Galley Handling or In-flight Catering firm may obtain authorization to access the airside. Typically, airport authorities grant access to the airside by way of agreements or arrangements. Under the terms of these agreements or arrangements, firms generally pay a fee to the airport authority in exchange for authorization to access the airside to provide Galley Handling. The fee is commonly set as a percentage of the gross revenue generated by a firm from supplying Catering or Galley Handling at or from the airport. In-flight Catering firms usually pass on all or a part of this airport charge as a "port fee" to their airline customers.

24. Access to the airside for the supply of Galley Handling also constitutes a relevant product market. The relevant sellers or suppliers in this market

are airport authorities, while the relevant purchasers are Galley Handling or In-flight Catering firms.

25. A sole profit-maximizing seller (*i.e.*, a hypothetical monopolist) would profitably impose and sustain a small but significant and non-transitory increase in price in the sale or supply of access to the airside for the supply of Galley Handling. There are no acceptable substitutes to access to the airside for the supply of Galley Handling.
26. The Airport is the relevant geographic market for the sale or supply of access to the airside for the supply of Galley Handling. There are no acceptable substitutes to access to the airside at the Airport for the supply of Galley Handling.
27. A second relevant market is therefore access to the Airport airside for the supply of Galley Handling.

(ii) *VAA Substantially or Completely Controls the Relevant Markets*

28. VAA substantially or completely controls the market for access to the Airport airside for the supply of Galley Handling, as well as the market for the supply of Galley Handling at the Airport.

Market for Airport Airside Access for the Supply of Galley Handling

29. VAA has a substantial degree of market power in the market for access to the Airport airside for the supply of Galley Handling.
30. VAA is a monopolist in the market for access to the Airport airside for the supply of Galley Handling. VAA is the only entity from which a Galley Handling or In-flight Catering firm may obtain access to the Airport airside; there are no other sellers or suppliers of access to the Airport airside.

31. Barriers to entry and expansion in the market for access to the Airport airside for the supply of Galley Handling are absolute. No entity other than VAA may sell or supply access to the Airport airside. Entry of an alternative source of supply of access to the Airport airside simply is not possible.
32. VAA is generally able to dictate the terms upon which it sells or supplies access to the Airport airside for the supply of Galley Handling. For example, in 2010-2011, VAA was able to impose and sustain a more than 40% increase in the fee it charges firms under Airport airside access agreements to provide In-flight Catering at the Airport. Similarly, VAA is able to require firms providing In-flight Catering Services at the Airport to lease land from VAA for the operation of Catering kitchen facilities, as a condition of authorizing access to the Airport airside (as explained in greater detail at paragraph 42, below).
33. VAA's substantial degree of market power in the market for access to the Airport airside for the supply of Galley Handling is not constrained by Galley Handling or In-flight Catering firms or otherwise.

Market for the Supply of Galley Handling at the Airport

34. By virtue of its control over access to the Airport airside – a necessary input to the supply of Galley Handling – VAA also has a substantial degree of market power in the market for the supply of Galley Handling at the Airport.
35. VAA has considerable latitude to determine or influence price and non-price dimensions of competition in the market for the supply of Galley Handling at the Airport, including the terms upon which Galley Handling and In-flight Catering firms carry on business in this market. For example, VAA has the power to exclude, and has excluded, new-entrant Galley

Handling and In-flight Catering firms from supplying services at the Airport, by refusing to grant those firms access to the Airport airside.

B. VAA’S REFUSAL TO GRANT AIRSIDE ACCESS TO ADDITIONAL IN-FLIGHT CATERERS AND ITS TYING OF AIRSIDE ACCESS TO LAND LEASING IS A PRACTICE OF ANTI-COMPETITIVE ACTS

36. VAA has engaged in and is engaging in a practice of anti-competitive acts (the “**Practice**”) through: (i) its ongoing refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport; and (ii) its continued tying of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities. The purpose and effect of VAA’s Practice is an intended negative effect on competitors that is exclusionary.

(i) VAA’s Refusal to Grant Airside Access to Additional In-flight Caterers

37. Gate Gourmet and CLS are currently the only firms authorized by VAA to provide In-flight Catering at the Airport. They (or their predecessors) have operated at the Airport since at least 1992, when VAA entered into the Ground Lease with the Government of Canada. VAA has never conducted a request for proposals or similar competitive process to select one or more firms to supply Galley Handling and/or Catering at the Airport, and has no immediate plans to do so. As such, no new entry in the In-flight Catering marketplace at the Airport has occurred in more than 20 years. The businesses of Gate Gourmet and CLS at the Airport are profitable.

38. In 2014, VAA refused requests from two new-entrant firms for authorization to access the airside to provide In-flight Catering at the Airport. While these firms would be new entrants to the In-flight Catering marketplace in Vancouver, they are both well-established businesses that

provide In-flight Catering at other airports in Canada. In this regard, airport authorities in Edmonton, Calgary, Regina, Winnipeg, Ottawa, Toronto, Montreal and Halifax have granted one or more of these firms access to the airside at airports in those cities.

39. Today, VAA continues to refuse to permit anyone other than Gate Gourmet and CLS to provide In-flight Catering at the Airport. VAA does so over the objections of several airlines, which have expressed to VAA their desire to see greater In-flight Catering competition at the Airport.
40. VAA has consistently and purposely intended to exclude new-entrant firms from the market for the supply of Galley Handling at the Airport, by refusing to grant such firms access to the Airport airside. Since access to the Airport airside is required to supply Galley Handling at the Airport, it was and is reasonably foreseeable or expected that the effect of VAA's refusal to grant access to the airside to new-entrant firms for the supply of Galley Handling would be an exclusionary effect on those firms. In fact, VAA's ongoing refusal to grant airside access to new-entrant In-flight Catering firms has resulted in the total and complete exclusion of such firms from the Airport.
41. VAA's refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport has negatively impacted the businesses of excluded firms, including by way of lost contracts with airlines, reduced revenues, higher costs and delayed entry and expansion in Canada.

(ii) VAA's Tying of Airside Access to Land Leasing

42. In addition to its outright refusal to authorize new-entrant firms to access the airside to provide Galley Handling or In-flight Catering at the Airport, VAA's practice with respect to incumbent providers of In-flight Catering at

the Airport has been to tie their authorization to access the Airport airside for the supply of Galley Handling to their leasing of Airport land from VAA for the operation of Catering kitchen facilities. In other words, VAA does not permit a firm to access the Airport airside for the supply of Galley Handling if that firm does not operate a Catering kitchen located on Airport property (i.e., if the firm's kitchen were to be located on land not managed by VAA). VAA's airside access agreements with Gate Gourmet and CLS terminate if and when Gate Gourmet or CLS ceases to rent land from VAA for the operation of Catering kitchens on Airport property.

43. VAA has consistently and purposely intended to exclude new-entrant firms from the market for the supply of Galley Handling at the Airport by requiring that any firms accessing the airside to supply Galley Handling also lease Airport land for the operation of Catering kitchen facilities. It was and is reasonably foreseeable or expected that the effect of VAA's tying, of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities, would be an exclusionary effect on competitors. In-flight Catering firms are not permitted to locate their Catering kitchens on less expensive off-Airport land, and firms that may wish to provide only Galley Handling are excluded from operating at the Airport altogether.
44. VAA's tying of Airport airside access to the leasing of Airport land for the operation of Catering kitchens has negatively impacted the businesses of excluded firms, including by way of lost contracts with airlines, reduced revenues, higher costs and delayed entry and expansion in Canada.

(iii) VAA's Competitive Interest in Excluding Competition

45. VAA has a competitive interest in the market for the supply of Galley Handling at the Airport, and in insulating the incumbent In-flight Catering firms at the Airport from new sources of competition.
46. Each of Gate Gourmet and CLS rents land from VAA, pursuant to lease agreements, for the operation of Catering kitchens located on Airport property. Gate Gourmet and CLS pay VAA several million dollars per year, representing rent payments under these lease agreements, as well as fees under airside access agreements. In recent years, VAA has increased both the land lease rates and the amount of the percentage-based airside access fee it charges to Gate Gourmet and CLS.
47. VAA thus shares in the revenue generated from the supply of Galley Handling and In-flight Catering at or from the Airport, and benefits financially, through the lease and access fees, from the protection from competition it confers on the incumbent In-flight Catering firms at the Airport.

(iv) Absence of a Legitimate Business Justification

48. After deciding to exclude new-entrant firms from supplying Galley Handling at the Airport, VAA put forth a variety of factors that, it claims, justify its anti-competitive conduct. None of VAA's explanations constitute a legitimate business justification; they are not credible efficiency or pro-competitive rationales for VAA's Practice that are independent of the anti-competitive effects of its conduct, and in any event, they do not outweigh VAA's subjective intent to exclude or the reasonably foreseeable or expected exclusionary effects of the Practice.

49. Moreover, VAA's conduct with respect to airside access for the supply of In-flight Catering is opposite to its policy concerning airside access for the supply of ground handling (such as baggage handling) at the Airport. VAA places no restriction on the number of firms it permits to access the airside to supply ground handling to airlines at the Airport.
50. Firms seeking authorization from VAA to access the airside to supply In-flight Catering at the Airport are well-established businesses that provide In-flight Catering at other airports in Canada, where they have been permitted to operate by the relevant airport authority.
51. The overall character or purpose of VAA's Practice is anti-competitive.

C. VAA'S CONDUCT HAS HAD, IS HAVING AND IS LIKELY TO HAVE THE EFFECT OF PREVENTING AND/OR LESSENING COMPETITION SUBSTANTIALLY IN THE MARKET FOR GALLEY HANDLING AT THE AIRPORT

52. VAA's ongoing refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport, and its continued tying of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities, has had, is having and is likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport. But for this ongoing practice of anti-competitive acts, the market for the supply of Galley Handling at the Airport would be substantially more competitive.
53. In the absence of VAA's Practice, significant new entry into the market for the supply of Galley Handling at the Airport would likely occur. New entrants have already sought authorization to access the airside to provide In-flight Catering at the Airport, and would be likely to begin operations at the Airport in the absence of VAA's Practice.

54. VAA's conduct insulates the incumbent In-flight Catering firms at the Airport from these new sources of competition, enabling those firms to exercise a materially greater degree of market power, through materially higher prices and materially lower levels of service quality, than would otherwise prevail in the absence of VAA's practice.
55. Enhanced rivalry from new entry would result in a substantially more competitive market for the supply of Galley Handling at the Airport. The ability of airlines seeking Galley Handling or In-flight Catering at the Airport to contract with alternatives to the incumbent providers would result in materially lower prices for the supply of Galley Handling at the Airport and materially greater service and product quality. Airlines have already realized these benefits at airports in Canada where new entry has been permitted to occur.
56. New entry would also bring to the Airport the introduction of innovative and/or more efficient Galley Handling business models. For example, airlines would gain the ability to choose to procure Galley Handling at the Airport from other than a full-service In-flight Catering firm, or from an In-flight Catering firm with a lower-cost off-Airport location, delivering efficiencies to service providers and savings to airlines.
57. In sum, but for VAA's practice of anti-competitive acts, the market for the supply of Galley Handling at the Airport would be substantially more competitive, including by way of materially lower prices, materially enhanced innovation and/or materially more efficient business models, and materially higher service quality.

IV. A TRIBUNAL ORDER IS NECESSARY

58. An order of the Tribunal is necessary and appropriate in the circumstances, including for the following reasons:

- a. VAA's ongoing refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport, and its continued tying of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities, has had, is having and is likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport;
- b. an order, and more particularly, the relief sought by the Commissioner herein, is reasonable and necessary to overcome the anti-competitive effects of VAA's practice in the market for the supply of Galley Handling at the Airport and to restore or stimulate competition in the market;
- c. an order ensures an enforceable mechanism is in place to prevent VAA from engaging in the same or similar conduct likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport; and
- d. an order will indicate to the Canadian marketplace more broadly that the practices described by the Commissioner herein are anti-competitive.

V. RELIEF SOUGHT

59. The Commissioner therefore seeks an order of the Tribunal:

- a. pursuant to subsections 79(1) and 79(2) of the Act:
 - i. prohibiting VAA from directly or indirectly engaging in the practice of anti-competitive acts set out in this Application, namely: (i) VAA's ongoing refusal to grant access to the

Airport airside to new-entrant firms for the supply of Galley Handling at the Airport; and (ii) VAA's continued tying of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities;

- ii. requiring VAA to issue authorization, on non-discriminatory terms, to any firm that meets customary health, safety, security and performance requirements, so as to entitle that firm to access the airside at the Airport, from one or more facilities used by the firm whether located on Airport property or off Airport property, for the purposes of supplying Galley Handling; and
- iii. otherwise requiring VAA to take any action, or to refrain from taking any action, as may be required to give effect to the foregoing prohibitions and requirements;

- b. directing VAA to pay costs;
- c. directing VAA to establish, and thereafter maintain, a corporate compliance program consistent with the Commissioner's bulletin entitled "Corporate Compliance Programs", as such bulletin may be revised from time-to-time; and
- d. containing such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

DATED AT Gatineau, Quebec, this 29th day of September, 2016

“John Pecman”

John Pecman
Commissioner of Competition

SCHEDULE “A”

CONCISE STATEMENT OF ECONOMIC THEORY

1. Despite requests from both airlines and In-flight Catering firms, VAA refuses to grant authorization to new-entrant firms to access the Airport airside to supply Galley Handling at the Airport. VAA also ties access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities, by requiring firms providing In-flight Catering at the Airport to lease land from VAA for the operation of Catering kitchen facilities as a condition of authorizing access to the airside.
2. VAA's conduct is anti-competitive, having the purpose and effect of an intended negative effect on competitors that is exclusionary. VAA's exclusionary conduct has negatively impacted, and is likely to negatively impact, the businesses of firms that provide Galley Handling or In-flight Catering, leading to, among other things, lost contracts with airlines, reduced revenues, higher costs and delayed entry and expansion in Canada.
3. VAA's anti-competitive conduct has had, is having and is likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport.

MARKET POWER

4. The relevant product markets are: (i) access to the airside for the supply of Galley Handling; and (ii) Galley Handling. The Airport is the relevant geographic market for both product markets.

5. VAA substantially or completely controls the market for access to the Airport airside for the supply of Galley Handling, as well as the market for the supply of Galley Handling at the Airport.
6. VAA has a substantial degree of market power in the market for access to the Airport airside for the supply of Galley Handling. In fact, VAA is a monopolist in this market, being the only entity from which a Galley Handling or In-flight Catering firm may obtain access to the Airport airside. As a monopolist, VAA is generally able to dictate the terms upon which it sells or supplies access to the Airport airside for the supply of Galley Handling. Barriers to entry and expansion in the market for access to the Airport airside for the supply of Galley Handling are absolute. Entry of an alternative source of supply of access to the Airport airside simply is not possible. VAA's substantial degree of market power in the market for access to the Airport airside for the supply of Galley Handling is not constrained by Galley Handling or In-flight Catering firms or otherwise.
7. By virtue of its control over access to the Airport airside – a necessary input to the supply of Galley Handling – VAA also has a substantial degree of market power in the market for the supply of Galley Handling at the Airport. VAA has considerable latitude to determine or influence price and non-price dimensions of competition in the market for the supply of Galley Handling at the Airport, including the terms upon which Galley Handling and In-flight Catering firms carry on business in this market.

ANTI-COMPETITIVE CONDUCT

8. VAA has engaged in and is engaging in a practice of anti-competitive acts through: (i) its ongoing refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport; and (ii) its continued tying of access to the Airport airside for the supply of Galley

Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities. The purpose and effect of VAA's conduct is an intended negative effect on competitors that is exclusionary.

9. VAA has a competitive interest in the market for the supply of Galley Handling at the Airport, and in insulating the incumbent In-flight Catering firms at the Airport from new sources of competition. VAA shares in the revenue generated from the supply of Galley Handling and In-flight Catering at or from the Airport, and benefits, through lease and access fees, from the protection from competition it confers on the incumbent In-flight Catering firms at the Airport.

Substantial Lessening and/or Prevention of Competition

10. VAA's ongoing refusal to grant access to the Airport airside to new-entrant firms for the supply of Galley Handling at the Airport, and its continued tying of access to the Airport airside for the supply of Galley Handling to the leasing of Airport land from VAA for the operation of Catering kitchen facilities, has had, is having and is likely to have the effect of preventing or lessening competition substantially in the market for the supply of Galley Handling at the Airport.
11. In the absence of VAA's anti-competitive conduct, the market for the supply of Galley Handling at the Airport would be substantially more competitive. Significant new entry would likely occur, enhancing rivalry with incumbent suppliers of In-flight Catering and resulting in materially lower prices for the supply of Galley Handling at the Airport, materially enhanced innovation and/or materially more efficient business models, and materially higher service quality.