

**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 services 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**

Date: September 24, 2018  
CT-2016-015

Bianca Zamor for / pour  
REGISTRAR / REGISTRAIRE

**COMMISSIONER OF COMPETITION**

**Applicant**

– and –

**VANCOUVER AIRPORT AUTHORITY**

**Respondent**

OTTAWA, ONT.

#346

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**AGREED STATEMENT OF FACTS**

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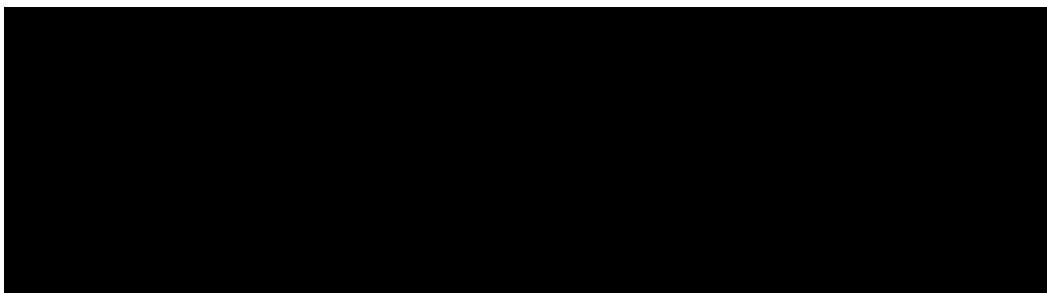
Counsel for the Vancouver Airport  
Authority

The parties agree to the following facts for the purposes of this proceeding only:

**The Commissioner of Competition agrees to the following facts:**

1. The purposes of VAA, as set out in the Certificate of Continuance, are:
  - a. to acquire all of, or an interest in the property comprising the Vancouver International Airport to undertake the management and operation of the Vancouver International Airport in a safe and efficient manner for the general benefit of the public;
  - b. to undertake the development of the lands of the Vancouver International Airport for uses compatible with air transportation;
  - c. to acquire all of, or interests in, the property, real or otherwise, of other airports, or, to acquire all of, or interests in, other corporations, as have an interest in any aspect of the development, operation and management of other airports anywhere in the world and to undertake, solely or with others, any business pertaining to airports and the activities conducted thereon, including but not limited to, construction, management, operations, passenger processing, leasing, arrangements for airlines and facilitation of government processes, particularly those related to international borders;
  - d. to generate, suggest and participate in economic development projects and undertakings which are intended to expand British Columbia's transportation facilities, or contribute to British Columbia's economy, or assist in the movement of people and goods between Canada and the rest of the world; and
  - e. to assemble information, advise on and otherwise contribute to the advancement of air transportation.
2. VAA has no shareholders.
3. The level of food and drink service offered on flights into and out of the Airport varies by airline, by route and by seat class.
4. Airlines may provide food and/or beverages to their passengers on a complimentary basis, and/or on a for-purchase basis (which, in the latter case, may be referred to as "buy-on-board").

5. Food items provided to airline passengers may be served to passengers in a cold or uncooked state, such as cheese or nuts, or in a cooked state, such as a casserole or hot entrée.
6. Airlines operating at YVR may use a method known as “double catering” (also referred to as “ferrying”, “return catering” or “round-trip catering”). “Double catering” refers to the activity whereby an airline transports extra food and/or beverages on an aircraft from one airport for use on one or more subsequent commercial flights by that aircraft departing from a second (or third, etc.) airport.
7. A copy of the Assignment Agreement is attached as Exhibit 17 to the Witness Statement of Tony Gugliotta.
8. VAA charges an airport improvement fee of \$5 per enplaned passenger per flight for in-province travel and \$20 for all other flights per enplaned passenger per flight.
9. The following airports in Canada charge an airport improvement fee and, in particular:
  - a. Calgary (YYC) charges an airport improvement fee of \$30 per enplaned passenger per flight;
  - b. Edmonton (YEG) charges an airport improvement fee of \$30 per enplaned passenger per flight;
  - c. Montreal (YUL) charges an airport improvement fee of \$30 per enplaned passenger per flight;
  - d. Winnipeg (YWG) charges an airport improvement fee of \$25 per enplaned passenger per flight;
  - e. Ottawa (YOW) charges an airport improvement fee of \$23 per enplaned passenger per flight;
10. On August 3, 2017, VAA issued a RFEOI for an inflight catering licence at the Airport.
11. VAA received [REDACTED] expressions of interest in response to the RFEOI from the following firms:



- [REDACTED]
12. On September 13, 2017, VAA issued a Request for Proposal (the “RFP”) for an inflight catering licence.
  13. VAA received responses to the RFP from [REDACTED] firms: [REDACTED].
  14. The evaluation committee at VAA [REDACTED] [REDACTED] be selected as the preferred proponent for an inflight catering licence at the Airport.
  15. [REDACTED]
  16. [REDACTED]
  17. VAA entered into an inflight catering licence agreement with dnata dated for reference [REDACTED] (the “dnata Licence”).
  18. The dnata Licence has a term of [REDACTED], which began on [REDACTED] and ends on [REDACTED].
  19. On February 19, 2018, VAA publicly announced that it had granted an inflight catering licence to dnata.
  20. [REDACTED].
  21. A copy of the CLS Lease is attached as Exhibit 12 to the Witness Statement of Craig Richmond.
  22. The term of the CLS Lease is [REDACTED].
  23. Pursuant to the CLS Lease, [REDACTED].
  24. Gate Gourmet assumed the rights and obligations under the Gate Gourmet Lease, as amended, pursuant to an Assumption and Consent to Assignment Agreement dated [REDACTED].
  25. A copy of the Assignment Agreement referred to in the preceding paragraph is attached as Exhibit 10 to the Witness Statement of Tony Gugliotta.

26. The term of the Gate Gourmet Lease is [REDACTED].
27. Pursuant to the Gate Gourmet Lease, [REDACTED]  
[REDACTED].
28. The following correspondence was sent and received at the date and/or time set out on the face of the correspondence and was sent and received by the persons set out on the face of the correspondence:
- a. Exhibits 15-19, 21-47 to the Witness Statement of Craig Richmond
  - b. Exhibits 19-35, 37, 40, 44-49 to the Witness Statement of Tony Gugliotta
  - c. Exhibits 4, 7-10, 22, 25, 27-29 to the Witness Statement of Scott Norris
  - d. Exhibits 2-10 to the Supplemental Witness Statement of Scott Norris
  - e. YVR00000007
  - f. YVR00005086
  - g. YVR00004452

**Vancouver Airport Authority agrees to the following facts:**

29. The Commissioner is an officer appointed by the Governor in Council pursuant to section 7 of the *Competition Act* (“**Act**”)<sup>1</sup> and is responsible for the administration and enforcement of the Act.
30. VAA is a not-for-profit corporation continued under the *Canada Not-for-profit Corporations Act*<sup>2</sup> pursuant to a Certificate of Continuance dated January 21, 2013, a copy of which may be found in Exhibit 5 to the Witness Statement of Craig Richmond
31. VAA’s audited consolidated financial statements indicate that it generated an excess of revenue over expenses of approximately:
  - a. \$58.0 million in the fiscal year ended 31 December 2013;
  - b. \$105.6 million in the fiscal year ended 31 December 2014;
  - c. \$131.5 million in the fiscal year ended 31 December 2015;
  - d. \$85.1 million in the fiscal year ended 31 December 2016; and,
  - e. \$88.6 million in the fiscal year ended 31 December 2017.
32. Airlines operating commercial passenger air transportation services at the Airport may purchase food (perishable and/or non-perishable) and beverages (alcoholic and/or non-alcoholic) for distribution, consumption or use on-board a commercial aircraft by passengers and/or airline crew.
33. Such airlines may provide such food and/or beverages to their passengers on a complimentary basis, and/or on a for-purchase basis (which, in the latter case, may be referred to as “buy-on-board”).
34. Such airlines may source or purchase such food and/or beverages using one or more methodologies, including but not necessarily limited to:
  - a. purchasing one or more food and/or beverage items from one or more third-party firms; and/or

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<sup>1</sup> RSC 1985, c C-32.

<sup>2</sup> SC 2009, c 23.

- b. preparing one or more food and/or beverage items in a facility owned and/or operated by the airline (and/or one or more of its affiliates).
- 35. Such food items may be served to passengers in a cold or uncooked state, such as cheese or nuts, or in a cooked state, such as a casserole or hot entrée.
- 36. dnata's "licence agreement" with VAA is dated for reference [REDACTED], and provides [REDACTED]
- 37. On 4 June 2014, a meeting occurred at VAA's offices between Mr. Stent-Torriani of Newrest and Mr. Richmond, Mr. Tony Gugliotta and Mr. Raymond Segat of VAA.

*September 24, 2018*

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