Labour Arbitrators And Canada's Competition Act: Jurisdictional Clarification

Disputes involving labour relations matters and those involving alleged anti-competitive conduct are generally deferent to specialized arbitrators or tribunals. A recent Ontario Superior Court of Justice (Divisional Court) decision clarifies the approach to cases where competition law issues arise within the context of the labour dispute.

In *Metropolitan Apartment Builders Assn. v Labourers' International Union of North America*, 2014 ONSC 5775, three builders associations unsuccessfully sought to judicially review the decision of a labour relations interest arbitrator. The associations consist of construction companies bound by collective agreements with the respondent union. When these parties were unable to reach renewal collective agreements, an interest arbitrator was appointed to settle the terms of those renewal agreements.

During the interest arbitration the applicant building associations sought to argue that certain collective agreement provisions violated Canada's federal *Competition Act*, R.S.C. 1985, c. C-34, (the "Act") and should thus not be included in the collective agreements. Specific provisions which were challenged included the subcontracting and cross-over clauses and certain related Letters of Understanding. The sections of the Act which these collective agreement provisions were alleged to have violated include s. 45 (criminal conspiracies, agreements or arrangements between competitors), s. 77 (exclusive dealing, tied selling and market restriction), s. 79 (abuse of dominance), and s. 90.1 (civil agreements or arrangements between competitors that prevent or lessen competition substantially).

The interest arbitrator concluded that he had jurisdiction to interpret and apply these provisions of the Act, to the extent that they were relevant to the

issues before him. However, he exercised what he considered to be his discretion *not* to determine the competition law issues. The arbitrator purported to do so because "the essential nature of the dispute" engaged competition law issues – and, in particular, complicated questions of market definition and competitive effects – and not labour relations. As a result, he concluded that the dispute was better determined by the Competition Tribunal or the courts as opposed to a labour arbitrator. The building associations sought judicial review of this decision.

Their application for judicial review was dismissed by the Divisional Court. It held that the arbitrator's decision to defer dealing with the competition law issues met the applicable "reasonableness" standard on judicial review, as:

1. Only the Competition Tribunal has the jurisdiction, and the economic expertise, to determine questions arising under sections 77, 79 and 90.1 of the Act;
2. The question raised under section 45 of the Act, dealing with criminal conspiracies between competitors, "would have ramifications beyond the parties to the arbitration";
3. It was reasonable to expect the applicants to employ the procedures under the Act (including the Competition Tribunal's processes) to seek a determination before a body which could rule on all relevant issues; and
4. The labour relations reality was that the interest arbitrator had been appointed to determine the terms of the renewal collective agreements on an expedited basis, and it would be unfair to delay that process.

Key Take-Aways

This decision arose in unique circumstances but does provide helpful guidance for other disputes. In particular, when technical competition law arguments under the Act are raised, the working assumption should be that separate Competition Tribunal or court proceedings may be required for issues arising under Parts VIII (civil reviewable practices) or VI (competition offences) of the Act, respectively. This is essentially an exception to the general rule that labour arbitrators have exclusive jurisdiction over collective agreement matters.