Federal Court of Appeal Cour d'appel fédérale

Date: 20191209

Docket: A-356-18

Citation: 2019 FCA 307

CORAM: **BOIVIN J.A.**
DE MONTIGNY J.A.
GLEASON J.A.

BETWEEN:

VIDÉOTRON LTÉE

Applicant

and

SHARED SERVICES CANADA

and

BELL CANADA

Respondents

Heard at Montréal, Quebec, on November 4, 2019.

Judgment delivered at Ottawa, Ontario, on December 9, 2019.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
GLEASON J.A.

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<u>REASONS FOR JUDGMENT</u>

BOIVIN J.A.

[1] The applicant, Vidéotron Ltée (Vidéotron), seeks judicial review of an order of the Canadian International Trade Tribunal (the CITT) dated October 5, 2018 (PR-2018-006). As part of its order, the CITT granted a motion brought by Shared Services Canada (SSC) to dismiss Vidéotron's procurement process complaint and to cease its inquiry, for lack of jurisdiction.

I. Background

[2] On May 25, 2018, Vidéotron filed a procurement process complaint with the CITT under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.) (the CITT Act). In its complaint, Vidéotron alleged that SSC had awarded, without a tendering process, one or more new contracts to Bell Canada or one of its affiliates (Bell) for telecommunications infrastructure related to the G7 Summit held in La Malbaie, Québec, on June 8-9, 2018. Vidéotron maintained that this awarding of contracts contravened chapter 5 of the *Canadian Free Trade Agreement* (the CFTA) and chapter 10 of the *North American Free Trade Agreement*. Vidéotron further maintained that it was a potential supplier for the work required, but was unable to take part in a non-existent tendering process.

[3] The CITT accepted Vidéotron's complaint for inquiry on May 29, 2018, pursuant to the requirements under subsection 30.13(1) of the CITT Act and subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, S.O.R./93-602.

[4] On June 15, 2018, SSC filed a motion under section 24 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499 (the CITT Rules) requesting that the CITT decline jurisdiction over Vidéotron's complaint and issue an order ceasing its inquiry. In its motion, SSC alleged that Vidéotron's complaint was not related to a procurement process subject to the relevant trade agreements. SSC argued that the issue at stake was one rather of contract administration, which did not come within the CITT's jurisdiction. Specifically, SSC made the point that the work at issue had been granted to Bell through previous procurement processes: one concerning local access telephone services in 2010 (LAS 2010) and another concerning government cellular services in 2017 (GCS 2017). SSC noted that each original contract it had awarded through these processes included an *ad hoc* clause under which it could request Bell to complete additional work, at an additional cost, for emergencies or for special, short-term events like the G7 Summit. SSC further pointed out that Vidéotron was not a potential supplier in these past procurement processes, that one of the contracts at issue was subject to a national security exception such that it was not subject to the relevant trade agreement provisions and, moreover, that Vidéotron's complaint was in part untimely.

[5] On June 19, 2018, Bell was granted intervener status before the CITT and in essence supported SSC's arguments.

[6] On October 5, 2018, the CITT issued its order and granted SSC's motion. Vidéotron's complaint was therefore dismissed and the CITT ceased its inquiry. In reaching its conclusion, the CITT found that it did not have jurisdiction over Videotron's complaint because, as SSC and Bell had argued, the work subject to the complaint was carried out under two previous

government contracts (LAS 2010 and GCS 2017). As such, the CITT found that "[m]atters subsequent to the award of a contract, i.e. matters of contract administration, are not within the Tribunal's jurisdiction" (CITT's decision at paras. 13, 14, 16 and 21).

[7] The CITT also found that the two *ad hoc* clauses were reasonable inclusions in the LAS 2010 and GCS 2017 original contracts and that, contrary to Vidéotron's claim, the *ad hoc* clauses did not leave essential conditions of each contract undetermined (CITT's decision at paras. 29-30, 38-39). The CITT further found that Vidéotron was not a potential supplier in the two original calls for tenders. Finally, the CITT disregarded additional grounds for dismissing the complaint raised by Bell and concluded that it did not need to decide the issue raised with respect to a national security exception.

[8] On November 5, 2018, Vidéotron filed an application for judicial review of the CITT's decision before our Court.

[9] For the reasons that follow, I would dismiss the application for judicial review with costs.

II. Relevant statutory provisions

[10] The relevant provisions for this judicial review are reproduced in the appendix.

III. Issues

[11] This appeal raises two main issues:

- Did the CITT violate any principles of natural justice or procedural fairness in rejecting Vidéotron’s complaint and ceasing its inquiry?
- Was it reasonable for the CITT to conclude that it had no jurisdiction over Vidéotron’s complaint?

IV. Analysis

A. *Standard of review*

[12] Issues of procedural fairness are to be reviewed on a correctness standard. While it may be that “no standard of review is being applied” when a court considers issues of procedural fairness because the question is “whether the procedure was fair having regard to all the circumstances,” this Court’s review is “best reflected in the correctness standard” for such issues (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2018] F.C.J. No. 382 at para. 54).

[13] With respect to the CITT's jurisdiction over Vidéotron's complaint, this issue concerns an interpretation of the CITT's enabling legislation as applied to the facts before it. As such, a reasonableness standard of review applies (*Canada (Attorney General) v. Access Information Agency Inc.*, 2018 FCA 18, 287 A.C.W.S. (3d) 750 at paras. 16-20; *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, 412 D.L.R. (4th) 103 at para. 35; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293 at para. 26).

[14] It has repeatedly been observed that the CITT is a highly specialized tribunal that is entitled to deference. Hence, the role of this Court is not to re-weigh the evidence that was before the CITT but to determine whether its decision falls within a range of possible and acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2018] 1 S.C.R. 190 at para. 47; *Essar Steel Algoma Inc. v. Jindal Steel and Power Limited*, 2017 FCA 166, 281 A.C.W.S. (3d) 762 at para. 15; *Canada (Attorney General) v. Valcom Consulting Group Inc.*, 2019 FCA 1, 302 A.C.W.S. (3d) 385 at para. 18; *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52, 303 A.C.W.S. (3d) 541 at para. 22).

B. *Did the CITT violate any principles of natural justice or procedural fairness in rejecting Vidéotron's complaint?*

[15] Vidéotron submits that the CITT violated principles of fundamental justice and procedural fairness as a result of having breached its right to a fair hearing by prematurely terminating the inquiry without due consideration of the applicable trade agreements.

[16] More particularly, Vidéotron argues that while the CITT may dismiss complaints without conducting a full inquiry, it can only do so "after it has considered the applicable trade agreements" as a matter of procedure. Vidéotron submits that the CITT failed to consider whether the *ad hoc* clauses in the LAS 2010 and GCS 2017 contracts met the requirements of the CFTA and the *Agreement on Internal Trade* (the AIT) and maintains that this omission violated its right to a fair hearing (Vidéotron's memorandum of fact and law at paras. 88, 91, 98, 113-116).

[17] Vidéotron's contention conflates a *prima facie* substantive issue with procedural fairness. The only potential issue of procedural fairness stemming from Vidéotron's contention and the CITT's ultimate decision is whether Vidéotron knew the case to be met before the CITT and had a full and fair chance to make that case. A review of the record fails to reveal any evidence that the CITT hampered Vidéotron's ability to understand the case to be met and to fully make its case. For instance, Vidéotron had multiple opportunities to articulate fulsome submissions: from the outset, in its initial complaint, then when the CITT solicited input after Bell asked for intervener status, as well as in response to SSC's motion. In addition, the CITT gave Vidéotron additional time to complete its submissions in response to the extensive and thorough ones made by SSC, which further informed Vidéotron of the case to be met. Furthermore, I see no reason why, at the motion stage, Vidéotron could not have written to the CITT to communicate its view that the file was incomplete and that SSC's motion did not comply with CITT Rule 24. Finally, Vidéotron could have asked for an oral hearing under CITT Rule 105, but chose not to do so. It follows that Vidéotron's contention of alleged violations of principles of fundamental justice or procedural fairness must fail.

C. *Was it reasonable for the CITT to conclude that it had no jurisdiction over Vidéotron's complaint?*

[18] On the basis of the evidence before it, the CITT found that Vidéotron's complaint did not concern a procurement process *per se*, but rather contract administration over which it had no jurisdiction pursuant to subsection 30.11(1) of the CITT Act. As noted earlier, in support of its finding, the CITT interpreted the *ad hoc* clauses included in the LAS 2010 and GCS 2017 contracts awarded to Bell. These *ad hoc* clauses are quite similar and given their central importance to the CITT's finding, they are reproduced in full.

[19] The *ad hoc* clause in the LAS 2010 contract reads as follows:

> **1.8 (b) Infrastructure related to Special Events, Emergencies and Special Needs**
>
> (i) From time to time, Canada may require LAS in relation to a special, short-term event. For example, in recent years LAS has been required for events such as the Olympics, the North American Leaders Summit, or the G8 conference. From time to time, there may also be emergency situations that require a sudden, short-term concentration of LAS in a particular location or locations. In the case of special, short-term events or emergencies that dramatically increase Canada's requirements for LAS in a particular location or locations, where the Contractor can demonstrate that those needs exceed the capacity of the Contractor's existing infrastructure (for example, the capacity at its Central Offices), Canada and the Contractor may negotiate terms and conditions, and related pricing, for putting in place the necessary infrastructure to support LAS. Any negotiated terms and conditions, and related pricing, will only be effective if documented in a Contract Amendment issued by the Contracting Authority.
>
> [Emphasis added]

[20] The *ad hoc* clause in the GCS 2017 contract reads as follows:

> **1.27 Infrastructure related to Special Events, Emergencies and Special Needs**
>
> 1.27.1 From time to time, Canada may require cellular services in relation to a special, short-term event. For example, in recent years, such services have been required for events such as the North American Leaders Summit, or the G8 conference. From time to time, there may also be emergency situations that require a sudden, short-term concentration of GCS in a particular location or locations (such as an event like the Olympics). In the case of special, short-term events or emergencies that dramatically increase Canada's requirements for GCS in a particular location or locations, where the Contractor can demonstrate that those needs exceed the capacity of the Contractor's existing infrastructure (for example, the number of towers in place), Canada and the Contractor may negotiate terms and conditions, and related pricing, for putting in place the necessary infrastructure or removing and/or redeploying the infrastructure to support the GCS required for the special event, short-term requirement or emergency. Any negotiated terms and conditions, and related pricing, will only be effective if documented in a Task Authorization and/or Contract Amendment issued by the Contracting Authority.
>
> [Emphasis added]

[21] In challenging the CITT's finding based on the *ad hoc* clauses, Vidéotron argues that the *ad hoc* clauses are not properly written and "lack structure". Specifically, Vidéotron submits that these clauses would have had to address "some contractual right, duty or obligation to administer" and that instead, they are too uncertain and vague about essential contractual elements, such as price, to be valid contractual provisions (Vidéotron's memorandum of fact and law at paras. 68, 71-72). On that basis, Vidéotron adds that the work performed under the *ad hoc* clauses necessarily stemmed from the negotiation of new contracts and new procurement for which the CITT has jurisdiction.

[22] Vidéotron further contends that the CITT's finding that these *ad hoc* clauses were a reasonable inclusion in the LAS 2010 and GCS 2017 contracts "undermines the purpose and

intent of all of the trade agreements" (Vidéotron's memorandum of fact and law at para. 79). Vidéotron maintains that *ad hoc* clauses, like the ones at issue, seriously undermine the purpose of ensuring fair and open access to government procurement opportunities through a transparent and efficient framework (Vidéotron's memorandum of fact and law at paras. 82-86). Vidéotron therefore argues that the CITT erred in finding that its complaint concerned matters of contract administration outside of the CITT's jurisdiction.

[23] For the reasons that follow, Vidéotron's challenge to the CITT's finding that it had no jurisdiction because the complaint concerned matters of contract administration is unpersuasive.

[24] First, and as observed by the CITT, "the calls for tenders stated that the Government of Canada's needs would fluctuate" (CITT's decision at para. 22). Thus, from the outset, it was envisaged that SSC could require that, during the life of the contracts, existing infrastructure would be improved.

[25] Second, the *ad hoc* clauses are sufficiently clear as to when they could be triggered. The *ad hoc* clauses expressly state that SSC could require from time to time additional services for special needs of an exceptional nature, short-term requirements, emergencies or special events. Such a "special event" occurred when Canada hosted the G7 Summit at La Malbaie in 2018. Indeed, the "G8 conference" (now G7) is expressly referred to in the *ad hoc* clauses as an example of such a "special event". Significantly, in the context of the G7 Summit in La Malbaie, approximately 9000 RCMP employees, 2000 members of military forces, 1000 civil servants and 1000 dignitaries from abroad were expected to be present. This sudden influx of people doubled

the population in the area and thus exceeded the capacity of Bell's existing infrastructure in the area (CITT's decision, at p. 5, footnote 19; SSC's memorandum of fact and law at paras. 9-10).

[26] Third, the *ad hoc* clauses are sufficiently clear regarding each party's obligations for special events and emergencies. As the CITT observed, the *ad hoc* clauses express the fact that SSC could not require Bell to build more infrastructure at its own cost, but that SSC would need to compensate Bell for upgrading infrastructure required for *ad hoc* needs (CITT's decision at para. 30).

[27] Fourth, it was reasonable for the CITT to conclude that SSC did not obtain new goods or services under the *ad hoc* clauses. Bell continued to supply the same services that the LAS 2010 and GCS 2017 contracts already contemplated and the additional infrastructure ultimately belonged to Bell.

[28] Further, as both SSC and Bell note, the value of the work performed under the impugned *ad hoc* clauses amounts to less than 4% of the total value of each contract. The value of the G7 Summit work was worth approximately $9.5 million under the LAS 2010 contract, which was originally valued at about $570 million, and approximately $14.6 million under the GCS 2017 contract, which was valued at about $370 million.

[29] In these circumstances, it was reasonable for the CITT to conclude that SSC did not engage in a new procurement process when it requested that Bell upgrade its services for the G7 Summit, a "special event" contemplated under the LAS 2010 and GCS 2017 contracts. In

considering the facts before the CITT, Vidéotron's contention that the *ad hoc* clauses were a means for SSC to circumvent its obligations under section 503 of the CFTA are also unfounded.

[30] Notwithstanding the above, it does not follow that all work performed under *ad hoc* clauses automatically qualifies as a matter of contract administration. For instance, if the value of work performed under an *ad hoc* clause significantly exceeded or represented a substantial portion of the value of the awarded contract, it could potentially be viewed as an attempt by the procurement entity to modify the initial contract and the terms of its mandatory requirements. In these circumstances, the complaint could fall within the CITT's jurisdiction (*Eclipsys Solutions Inc. v. Canada Border Services Agency,* [2016] C.I.T.T. No. 30, 2016 CarswellNat 971 (CITT) at paras. 37-41). However, these were not the facts before the CITT in the present case.

[31] In view of the evidentiary record, it was thus reasonable for the CITT to find that (i) the work Bell performed for the G7 Summit, an extraordinary "special event", was expressly contemplated in the LAS 2010 and GCS 2017 contracts and fell within the requirements of the original procurement; (ii) the essential conditions of the contracts were not left undetermined; (iii) the implementation of the *ad hoc* clauses did not result in the acquisition of new goods or services by SSC; (iv) SSC did not attempt to circumvent its obligations under section 503 of the CFTA; and, consequently, (v) Vidéotron's complaint did not relate to a procurement process. In the end, and as observed by the CITT, "as there was no acquisition of new goods or services, there was no government procurement and [the CITT could not] conduct an inquiry, as there [was] no "designated contract" at issue" (CITT's decision at para. 39).

[32] As noted earlier, Vidéotron also submits that the CITT erred in failing to consider a number of relevant trade agreements including the AIT and CFTA. Yet, Vidéotron failed to raise the AIT, the predecessor to the CFTA, in its arguments before the CITT. As such, Vidéotron cannot in the circumstances raise this argument for the first time in its memorandum of fact and law before this Court. Further, a review of the relevant provisions of the trade agreements referred to by Vidéotron before this Court reveals that the vast majority apply in the context of a procurement process. Since the CITT reasonably concluded that there was no procurement process at issue, most of the provisions are inapplicable and there was therefore no need for the CITT to address them in detail. The CFTA article that is most relevant to this matter is article 503, whereby procuring entities are not permitted to design procurements or modify awarded contracts in such a way as to avoid their obligations under the agreement. As mentioned above, the CITT reasonably addressed Vidéotron's argument regarding article 503 and rejected it (CITT's decision at paras. 38-39).

[33] Finally, although Vidéotron is critical of the CITT for making a finding as to its status as a potential supplier, this finding was in relation to the original LAS 2010 and GCS 2017 contracts, not in relation to the *ad hoc* clauses regarding the G7 Summit. As the relevant question would have been whether Vidéotron was a potential supplier for the alleged new projects—had the CITT not found that there was no new procurement process at issue—the CITT's analysis regarding a potential supplier does not have the relevance purported by Vidéotron. This is particularly so because Vidéotron would have been out of time to contest the original LAS 2010 and GCS 2017 contracts had it indeed been a potential supplier.

V. Conclusion

[34] For the reasons above, I would dismiss the application for judicial review with costs. As Bell did not ask for costs, I would grant costs to SSC payable by Vidéotron.

"Richard Boivin
J.A.

"I agree
Yves de Montigny J.A."

"I agree
Mary J.L. Gleason J.A."

APPENDIX

Canadian International Trade Tribunal Act, R.S.C. 1985, c. 47 (4th Supp.)

Loi sur le Tribunal canadien du commerce extérieur, L.R.C. 1985, ch. 47 (4e suppl.)

Powers, Duties and Functions

Mission et pouvoirs

Duties and functions

Mission

16 The duties and functions of the Tribunal are to

16 Le Tribunal a pour mission :

(a) conduct inquiries and report on matters referred to the Tribunal for inquiry by the Governor in Council or the Minister under this Act;

a) d'enquêter et de faire rapport sur les questions dont le saisit, en application de la présente loi, le gouverneur en conseil ou le ministre;

(a.1) conduct mid-term reviews under section 19.02 and report on the reviews;

a.1) de procéder aux examens visés à l'article 19.02 et faire rapport sur ceux-ci;

…

[…]

(b.1) receive complaints, conduct inquiries and make determinations under sections 30.1 to 30.19;

b.1) de recevoir des plaintes, procéder à des enquêtes et prendre des décisions dans le cadre des articles 30.1 à 30.19;

…

[…]

Complaints by Potential Suppliers

Plaintes des fournisseurs potentiels

Definitions

Définitions

30.1 In this section and in sections 30.11 to 30.19,

30.1 Les définitions qui suivent s'appliquent au présent article et aux articles 30.11 à 30.19.

…

[…]

designated contract means a contract for the supply of goods or services that has been or is proposed to be awarded

contrat spécifique Contrat relatif à un marché de fournitures ou services qui a été accordé par une institution fédérale — ou pourrait l'être — , et

by a government institution and that is designated or of a class of contracts designated by the regulations;

qui soit est précisé par règlement, soit fait partie d'une catégorie réglementaire.

…

[…]

potential supplier means, subject to any regulations made under paragraph 40(f.1), a bidder or prospective bidder on a designated contract.

fournisseur potentiel Sous réserve des règlements pris en vertu de l'alinéa 40f.1), tout soumissionnaire — même potentiel — d'un contrat spécifique.

…

[…]

Complaints by Potential Suppliers

Plaintes des fournisseurs potentiels

Filing of complaint

30.11 (1) Subject to the regulations, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract and request the Tribunal to conduct an inquiry into the complaint.

Dépôt des plaintes

30.11 (1) Tout fournisseur potentiel peut, sous réserve des règlements, déposer une plainte auprès du Tribunal concernant la procédure des marchés publics suivie relativement à un contrat spécifique et lui demander d'enquêter sur cette plainte.

Matters inquired into

30.14 (1) In conducting an inquiry, the Tribunal shall limit its considerations to the subject-matter of the complaint.

Objet de la plainte

30.14 (1) Dans son enquête, le Tribunal doit limiter son étude à l'objet de la plainte.

Canadian International Trade Tribunal Procurement Inquiry Regulations, S.O.R./93-602

Règlement sur les enquêtes du Tribunal canadien du commerce extérieur sur les marchés publics, D.O.R.S./93-602

Designations

Désignations

3 (1) For the purposes of the definition *designated contract* in section 30.1 of the Act, any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article 1001 of NAFTA, in Article II of the Agreement on Government Procurement, in Article K*bis*-01 of Chapter K*bis* of the CCFTA, in Article 1401 of Chapter Fourteen of the CPFTA, in Article 1401 of Chapter Fourteen of the CCOFTA, in Article 16.02 of Chapter Sixteen of the CPAFTA, in Article 17.2 of Chapter Seventeen of the CHFTA, in Article 14.3 of Chapter Fourteen of the CKFTA, in Article 19.2 of Chapter Nineteen of CETA, in Article 504 of Chapter Five of the CFTA, in Article 10.2 of Chapter Ten of CUFTA or in Article 15.2 of Chapter Fifteen of the TPP, that has been or is proposed to be awarded by a government institution, is a designated contract.

3 (1) Pour l’application de la définition de *contrat spécifique* à l’article 30.1 de la Loi, est un contrat spécifique tout contrat relatif à un marché de fournitures ou de services ou de toute combinaison de ceux-ci, accordé par une institution fédérale — ou qui pourrait l’être — et visé, individuellement ou au titre de son appartenance à une catégorie, à l’article 1001 de l’ALÉNA, à l’article II de l’Accord sur les marchés publics, à l’article K*bis*-01 du chapitre K*bis* de l’ALÉCC, à l’article 1401 du chapitre quatorze de l’ALÉCP, à l’article 1401 du chapitre quatorze de l’ALÉCCO, à l’article 16.02 du chapitre seize de l’ALÉCPA, à l’article 17.2 du chapitre dix-sept de l’ALÉCH, à l’article 14.3 du chapitre quatorze de l’ALÉCRC, à l’article 19.2 du chapitre dix-neuf de l’AÉCG, à l’article 504 du chapitre cinq de l’ALÉC, à l’article 10.2 du chapitre dix de l’ALÉCU ou à l’article 15.2 du chapitre quinze du PTP.

…

[…]

Conditions for Inquiry

7 (1) The Tribunal shall, within five working days after the day on which a complaint is filed, determine whether the following conditions are met in respect of the complaint:

(a) the complainant is a potential supplier;

(b) the complaint is in respect of a designated contract; and

(c) the information provided by the complainant, and any other

Conditions de l’enquête

7 (1) Dans les cinq jours ouvrables suivant la date du dépôt d’une plainte, le Tribunal détermine si les conditions suivantes sont remplies :

a) le plaignant est un fournisseur potentiel;

b) la plainte porte sur un contrat spécifique;

c) les renseignements fournis par le plaignant et les autres

information examined by the Tribunal in respect of the complaint, discloses a reasonable indication that the procurement has not been conducted in accordance with whichever of Chapter Ten of NAFTA, the Agreement on Government Procurement, Chapter K*bis* of the CCFTA, Chapter Fourteen of the CPFTA, Chapter Fourteen of the CCOFTA, Chapter Sixteen of the CPAFTA, Chapter Seventeen of the CHFTA, Chapter Fourteen of the CKFTA, Chapter Nineteen of CETA, Chapter Five of the CFTA, Chapter Ten of CUFTA or Chapter Fifteen of the TPP applies.

…

Dismissal of Complaints

10 (1) The Tribunal may, at any time, order the dismissal of a complaint where

(a) after taking into consideration the Act, these Regulations and, as applicable, NAFTA, the Agreement on Government Procurement, the CCFTA, the CPFTA, the CCOFTA, the CPAFTA, the CHFTA, the CKFTA, CETA, the CFTA, CUFTA or the TPP, the Tribunal determines that the complaint has no valid basis;

(b) the complaint is not in respect of a procurement by a government institution;

…

renseignements examinés par le Tribunal relativement à la plainte démontrent, dans une mesure raisonnable, que la procédure du marché public n'a pas été suivie conformément au chapitre 10 de l'ALÉNA, à l'Accord sur les marchés publics, au chapitre K*bis* de l'ALÉCC, au chapitre quatorze de l'ALÉCP, au chapitre quatorze de l'ALÉCCO, au chapitre seize de l'ALÉCPA, au chapitre dix-sept de l'ALÉCH, au chapitre quatorze de l'ALÉCRC, au chapitre dix-neuf de l'AÉCG, au chapitre cinq de l'ALÉC, au chapitre dix de l'ALÉCU ou au chapitre quinze du PTP, selon le cas.

[…]

Rejet de la plainte

10 (1) Le Tribunal peut ordonner le rejet d'une plainte pour l'un ou l'autre des motifs suivants :

a) après avoir pris en considération la Loi et le présent règlement, ainsi que l'ALÉNA, l'Accord sur les marchés publics, l'ALÉCC, l'ALÉCP, l'ALÉCCO, l'ALÉCPA, l'ALÉCH, l'ALÉCRC, l'AÉCG, l'ALÉC, l'ALÉCU ou le PTP, selon le cas, il conclut que la plainte ne s'appuie sur aucun fondement valable;

b) la plainte ne porte pas sur un marché public passé par une institution fédérale;

[…]

Determination

11 If the Tribunal conducts an inquiry into a complaint, it shall determine whether the procurement was conducted in accordance with the requirements set out in whichever of NAFTA, the Agreement on Government Procurement, the CCFTA, the CPFTA, the CCOFTA, the CPAFTA, the CHFTA, the CKFTA, CETA, the CFTA, CUFTA or the TPP applies.

Décision

11 Lorsque le Tribunal enquête sur une plainte, il décide si la procédure du marché public a été suivie conformément aux exigences de l’ALÉNA, de l’Accord sur les marchés publics, de l’ALÉCC, de l’ALÉCP, de l’ALÉCCO, de l’ALÉCPA, de l’ALÉCH, de l’ALÉCRC, de l’AÉCG, de l’ALÉC, de l’ALÉCU ou du PTP, selon le cas.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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