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Ninth Circuit Widens Pool of Plaintiffs Able to Pursue Conspiracy Claims Under California Cartwright Act

Jeffrey May (Wolters Kluwer) · Sunday, February 17th, 2013

The Ninth Circuit on Thursday ruled that a plaintiff need not make a purchase in California to recover overcharges for price-fixed goods under the California Cartwright Act.

AT&T Corporation and other telecommunications companies that sold mobile wireless handsets containing liquid crystal display (LCD) panels could assert price fixing claims under the California Cartwright Act against manufacturers and distributors of LCD panels to recover overcharges, even though none of their purchases were made in California, the U.S. Court of Appeals in San Francisco decided. Dismissal of the California law claims on the ground that the Due Process Clause of the Fourteenth Amendment forbid the application of California law to these claims was reversed.

The plaintiffs alleged that between 1996 and 2006 they purchased “billions of dollars worth of mobile handsets containing the defendants’ LCD panels” and that the prices they paid for those handsets were artificially inflated because the defendants had orchestrated a global conspiracy to fix the prices of LCD panels.

While a number of the defendants had settled, Chunghwa Picture Tubes Ltd., Tatung Company of America, Inc., and Hannstar Display Corp. remained in the case. The defendants moved to dismiss the California law claims on Due Process grounds. The district court granted the motion to dismiss, holding that the Due Process Clause required that “in order to invoke the various state laws at issue, plaintiffs must be able to allege that ‘the occurrence or transaction giving rise to the litigation’—plaintiffs’ purchases of allegedly price-fixed goods—occurred in the various states.”

The appellate court rejected the defendants “assertion that applying California antitrust law to claims involving the purchase of price-fixed goods outside of California would violate their Due Process rights.” The location of the plaintiffs’ injury was not dispositive. All of the defendants’ conduct within California leading to the sale of price-fixed goods outside the state needed to be considered when determining whether California law could be applied without offending the defendants’ constitutional rights.

The court explained that the plaintiffs could proceed with the California Cartwright Act claims if more than a *de minimis* amount of each defendant’s alleged conspiratorial activity leading to the sale of price-fixed goods to the plaintiffs took place in California.

The defendants allegedly engaged in and implemented their conspiracy in the United States through the offices they maintained in California and entered into agreements to fix the prices of LCD panels in California. It was alleged that specific employees of particular defendants, operating from offices in California, participated in illegally obtaining and sharing their co-conspirators' pricing information.

On remand, the district court was instructed to make an individual determination with respect to each defendant as to whether the plaintiffs alleged sufficient conspiratorial conduct within California that was not "slight and casual" such that the application of California law to that defendant was "neither arbitrary nor fundamentally unfair."

The appellate court went on to say that in-state conduct that causes out-of-state injuries can be relevant to a Due Process analysis, in the antitrust context and otherwise. The application of California law also would advance the state's goal of maximizing deterrence of antitrust violations and ensuring disgorgement of ill-gotten proceeds. The perpetration of anticompetitive activities within California created state interests in applying California law to the conduct, the court reasoned.

The February 14, 2013, decision in *AT&T Mobility LLC v. AU Optronics Corp.*, No. 11-16188, will be published at 2013-1 Trade Cases ¶78,262.

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