Courts Rule on Financial Services Antitrust Suits

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Although courthouse activity has slowed over the past month due to COVID-19 social distancing efforts, federal courts continue to conduct business, even if remotely. Many judges have utilized this time to finalize decisions on pending motions. Over the past two weeks, four notable decisions addressing defendants' motions to dismiss have been issued in financial services industry antitrust litigations, three from the U.S. District Court for the Southern District of New York and one from the United States Court of Appeals for Second Circuit. These decisions cover reoccurring issues such as standing, personal jurisdiction and the sufficiency of pleadings alleging violations of the Sherman Act. The major takeaways from each decision are summarized below.

In re SSA Bonds Antitrust Litigation (SDNY)

On March 25, 2020, Judge Edgardo Ramos dismissed with prejudice a putative class action alleging a conspiracy among several major banks and their international affiliates to restrain trade in U.S. dollar-denominated supranational, sub-sovereign and agency bonds in violation of Section 1 of the Sherman Act. Judge Ramos granted the defendants' motion to dismiss for failure to state a claim, holding that the plaintiffs failed to (1) establish antitrust standing and (2) plausibly allege a conspiracy among the "domestic defendants."

The court held that the plaintiffs lacked antitrust standing because, despite guidance in its opinion dismissing the plaintiffs' prior complaint, they still "fatally" failed to identify a single transaction between the named plaintiffs and any of the defendants that could lead to a plausible inference of antitrust injury. With respect to the plausibility of the alleged conspiracy, the court focused on the plaintiffs' "improper group pleading," agreeing with the defendants that the plaintiffs "continue to make undifferentiated allegations against all defendants and tie together corporate affiliates without justification." The court explained that "[w]here an antitrust complaint names multiple defendants, plaintiffs must 'make allegations that plausibly suggest that each defendant participated in the alleged conspiracy.'" The plaintiffs, however, made "nearly identical conclusory allegations … against all of the [domestic defendants]." In the absence of specific allegations as to each defendant, the court concluded that the plaintiffs failed to plausibly allege a conspiracy and dismissed the case with prejudice.

Judge Ramos previously granted the foreign defendants' motion to dismiss for lack of personal jurisdiction on October 4, 2019.

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In re Platinum and Palladium Antitrust Litigation (SDNY)

On March 29, 2020, Judge Gregory Woods denied two foreign defendants' motions to dismiss for lack of personal jurisdiction, but granted the defendants' joint motion to dismiss for failure to state a claim in a case alleging a conspiracy among defendant financial institutions and metals companies to artificially suppress the worldwide benchmark prices of platinum and palladium.

The court denied the foreign defendants' motion to dismiss for lack of personal jurisdiction after concluding that the plaintiffs plausibly alleged that the foreign defendants were subject to conspiracy jurisdiction. In light of its prior decision holding that the alleged conspiracy — and the foreign defendants' alleged participation in that conspiracy — was plausible, the court held that the plaintiffs needed only to plausibly allege that a co-conspirator committed "overt acts in furtherance of the conspiracy" in the United States in order to establish conspiracy jurisdiction. The court credited and found sufficient the plaintiffs' allegations that traders employed by the foreign defendants' domestic affiliates provided non-public client order information directly to the foreign defendants, while those foreign defendants participated in the private conference calls that set global benchmark prices for platinum and palladium. According to the court, it was "plausible to infer" that the foreign defendants "used the information provided by U.S.-based traders to decide on the price" at which they wanted the benchmark to settle.

The court ultimately dismissed the claims against all defendants after concluding that the plaintiffs failed to establish antitrust standing. The court held that the plaintiffs were not "efficient enforcers" because they failed to allege that they transacted directly with the defendants and because they failed to allege that the defendants dominated the market for platinum and palladium derivatives.

The court divided the plaintiffs into two groups, one "over-the-counter" (OTC) plaintiff and three "exchange" plaintiffs. The OTC plaintiff alleged that it sold platinum or palladium to private parties that did not include the defendants, while the exchange plaintiffs alleged that they traded platinum or palladium futures contracts on a centralized exchange with no identifiable counterparties other than the exchange itself (the New York Mercantile Exchange, or NYMEX). In dismissing the OTC plaintiff's claims, the court observed that allowing parties who did not transact directly with the defendants to recover would lead to "causal attenuation and complex damages apportionment," and that concerns of disproportionate damages are particularly relevant in benchmark manipulation cases where "the benchmark is calculated based on a small slice of market activity or information submitted by a small number of market participants."

As to the exchange plaintiffs, the court focused its antitrust standing analysis on "the extent of defendants' control of the market for the product traded on the exchange" because these plaintiffs' counterparties were not readily ascertainable. The court reasoned that a market domination test "may be thought to serve as a proxy for whether a plaintiff transacted directly with a defendant." The court found that the plaintiffs had not adequately pleaded that the defendants dominated the NYMEX market for platinum and palladium derivatives because the allegations suggested that defendants' combined share of that market was "at most 45%," and therefore the exchange plaintiffs were not efficient enforcers.

The court granted the plaintiffs leave to amend their complaint but warned that they "should not expect any additional opportunities" to do so.

In re ICE LIBOR Antitrust Litigation

On March 26, 2020, Judge George B. Daniels dismissed a putative class action lawsuit alleging that the defendant banks conspired to depress Intercontinental Exchange London Interbank Offered Rates (ICE LIBOR). These rates, used in certain short-term financing, are set through daily submissions from a panel of financial institutions.

With respect to the plaintiffs' allegations of collusive activity, Judge Daniels found that the "[p]laintiffs point to no evidence, nor do they offer anything beyond conclusory statements and accusations, to support their claim that [d]efendants ever colluded, or let alone discussed" their daily submissions pertaining to ICE LIBOR rates. Judge Daniels noted that the plaintiffs outlined "meetings that [d]efendants attended, which afforded them, as [p]laintiffs describe, an 'opportunity to conspire,'" but held that the plaintiffs' argument was based "wholly in speculation and wishful thinking as to what defendants *might* have done."

Judge Daniels also held that the plaintiffs "fail to assert any evidence of parallel conduct among [d]efendants to demonstrate that on any particular day, they acted in conjunction to lower the [ICE LIBOR] rate." In any event, the court concluded that similarity of submissions, without more, is insufficient to support an inference of conspiracy.

Finally, Judge Daniels concluded that the plaintiffs failed to adequately allege any "plus factors" from which the court could infer a conspiracy among the defendants. With respect to motive to conspire, Judge Daniels explained that the plaintiffs' assertions "defie[d] logic" because "each of the defendant banks both makes and receives payments based on the ICE LIBOR rates, and therefore, would stand to be injured in the same manner that it would stand to benefit" from the alleged rate manipulation. Judge Daniels also rejected the plaintiffs' attempt to rely on statistical analyses to allege manipulation of the ICE LIBOR rates, concluding that the plaintiffs failed to proffer any empirical evidence or academic sources to support a purported relationships between ICE LIBOR and other financial metrics. Finally, Judge Daniels found unavailing plaintiffs' argument that the defendants "alleged prior conduct serves as a 'blueprint' for recidivism," because even in conjunction with the plaintiffs' other allegations it "does not lead to the reasonable conclusion that Defendants actually engaged in a conspiracy."

For these reasons, Judge Daniels granted the defendants' motion to dismiss for failure to state a claim, though not with prejudice. Because his ruling on this joint dismissal motion disposed of the plaintiffs' claims in their entirety, Judge Daniels declined to address other motions filed by subsets of defendants seeking dismissal for lack of subject matter jurisdiction, improper venue and inadequate service. However, in a lengthy footnote, the court did find "on alternative grounds, that Plaintiffs have failed to sufficiently allege that the Foreign Defendants are subject to personal jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2)." The court reasoned that the foreign defendants were incorporated and had their principal place of business outside the United States, and the plaintiffs offered no non-conclusory allegations that the foreign defendants engaged in any misconduct in the United States. Judge Daniels also noted that the plaintiffs' conclusory allegations on this issue were contradicted by the evidence submitted by foreign defendants in the form of sworn declarations.

Sonterra Capital Master Fund v. UBS AG

On April 1, 2020, the Second Circuit reversed a district court's dismissal of a putative class action alleging manipulation of the Euroyen TIBOR (the Tokyo Interbank Offered Rate) and Yen-denominated LIBOR (the London Interbank Offered Rate for the Japanese Yen) benchmarks by several major financial institutions. The plaintiffs alleged that they traded three types of derivative products — Yen foreign exchange (FX) forwards, interest rate swaps and interest rate swaptions — that were purportedly priced at artificial levels due to the defendants' alleged conspiracy to manipulate the two benchmark rates. In 2017, the district court granted the defendants' motions to dismiss, reasoning that the plaintiffs had failed to allege a concrete injury relating to the trading of any of these three derivative products.

The Second Circuit disagreed. Judge Michael H. Park, writing for the panel, concluded that it was sufficient — at least at the pleadings stage — for the plaintiffs to allege that they "entered into derivatives transactions at prices that were artificial' due to Defendants' price fixing" and "identif[y] trades in which they had to pay 'higher price[s]' as a result of Defendants' market manipulation." In doing so, the Second Circuit overruled the district court's conclusion that the plaintiffs had to failed to adequately allege that "the Yen LIBOR rate is definitively used to price Yen FX forwards," reasoning that "at the motion to dismiss stage, Plaintiffs need not prove the allegations in their complaint 'definitively.'" Instead, the Second Circuit found that it was adequate for the plaintiffs to have "provide[d] detailed supporting allegations, including an explanation of the role Yen Libor plays in the generic pricing formula."

Conclusion

These four decisions involve only a few of the numerous financial services antitrust cases currently pending in the Southern District of New York and Second Circuit. Several cases have fully briefed motions awaiting decision. Assuming the social distancing guidelines continue in place and courts are operating on modified schedules, we expect to see decisions on some of these outstanding motions in the coming weeks.

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