

Alerts & Publications

eBay Wins Summary Judgment In Section Two Class Action

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After nearly three years of litigation, on March 4, 2010, Judge Jeremy Fogel of the U.S. District Court for the Northern District of California granted Defendant eBay's motion for summary judgment and dismissed a putative class action brought by eBay sellers alleging that the company monopolized the online auction market and charged supracompetitive prices. A team from O'Melveny & Myers successfully represented eBay in this lawsuit brought pursuant to Section 2 of the Sherman Antitrust Act.

At the heart of this lawsuit, filed in April 2007, was Plaintiffs' allegation that eBay's acquisition of PayPal allowed eBay to charge higher fees than they otherwise would have been able to charge. The case eventually turned on Plaintiffs' ability to actually come forward with proof of the injury that they claimed to have suffered.

Proof of injury became a central issue litigated in both Plaintiffs' Motion to Certify a Class and eBay's Motion for Summary Judgment. Plaintiffs' class certification motion, filed two and a half years into the case, disclaimed having to prove that they suffered injury, arguing instead that they simply needed to come forward with a plausible methodology capable of proving injury. eBay's opposition to the class certification motion challenged the quantum of proof necessary to establish class-wide injury; as did eBay's motion for summary judgment, which challenged, among other things, Plaintiffs' ability to prove causal antitrust injury. With both sets of briefing engaged in a debate regarding proof of injury, Plaintiffs, in their opposition to eBay's Motion for Summary Judgment, relied upon the arguments and supporting expert report that they put forward in their class certification papers. In granting eBay's Motion for Summary Judgment, the court observed that the case raised the novel issue of how to measure antitrust injury in a two-sided market. Plaintiffs argued that they should be allowed to prove that eBay's fees were "too high." eBay, on the other hand, argued that harm to the plaintiffs could only be found if their profits on the sale of items using its website had been suppressed. The court chose not to resolve the novel issue, simply assuming that Plaintiffs had put forward the right measure of injury.

Even making that assumption, the court found that Plaintiffs had failed to raise a triable issue of fact. Plaintiffs' expert, relied upon in both their class certification motion and their opposition to eBay's summary judgment motion, offered two different models to measure antitrust damages, but both models contained fatal flaws. Judge Fogel rejected the first model, a dominant-firm model entry deterrence with network externalities, because Plaintiffs' expert failed to show that the model actually worked in practice and was supported by data. The court rejected the second model, a reduced-form treatment effects regression model, as being too "indefinite and speculative" and relying on circular logic. Because Plaintiffs relied on models that were unsupported by sufficient data, the court granted summary judgment in favor of eBay and dismissed the Plaintiffs' motion for class certification as moot.

The court was willing to test the Plaintiffs' proof and look beyond mathematical models to determine whether the alleged anticompetitive behavior made the Plaintiffs worse off. Ultimately, the ruling shows that methodology without proof is insufficient to support an antitrust action and that defendants can seize the initiative, even in consumer class actions, by putting plaintiffs to their proof.