



Deferring to Chinese government, US Court of Appeals overturns vitamin C cartel judgment

Hogan
Lovells

September 2016

Deferring to Chinese government, US Court of Appeals overturns vitamin C cartel judgment

On 20 September 2016, the Second Circuit Court of Appeals in the United States overturned a federal district court judgment in a class action antitrust lawsuit against two Chinese companies accused of conspiring to fix the price and output of vitamin C sold into the United States. The opinion overturned a jury verdict against the Chinese companies awarding the plaintiffs approximately USD 147 million (close to RMB 1 billion) in damages. The case is noteworthy because the Court of Appeals held that the companies were compelled to fix price and output by Chinese law, and therefore their conduct was outside the antitrust jurisdiction of U.S. federal courts.

Background

The vitamin C case began a decade ago when vitamin C buyers began filing complaints alleging that Chinese vitamin C sellers had fixed prices and output. The cases were eventually consolidated in a multi-district class action in the Eastern District of New York. Defendants moved to dismiss the complaint based on the act of state doctrine, the defense of foreign sovereign compulsion, and the principle of international comity. The district court denied the motion to allow for further discovery on the issue.

Defendants subsequently moved for summary judgment on the same grounds. The district court again denied the motion, declining to give deference to the interpretation of Chinese law made by China's Ministry of Commerce (MOFCOM), which intervened as *amicus curiae* in the case. The district court found that "Chinese law did not compel Defendants' anticompetitive conduct." The case went to trial, and, in March 2013, a jury awarded plaintiffs approximately USD 147 million in damages and an injunction barring defendants from fixing the price or output of vitamin C.

Court of Appeals' opinion

Defendants Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corp. appealed the district court's judgment. In a unanimous opinion written by Judge Peter W. Hall, the three-judge Second Circuit panel at the Court of Appeals held that the district court had "abused its discretion by not abstaining, on international comity grounds, from asserting Jurisdiction." The opinion said that the district judge "erred by concluding that Chinese law did not require Defendants to violate U.S. antitrust law and further erred by not extending adequate deference to the Chinese Government's proffer of the interpretation of its own laws." The Court of Appeals ruling is binding law in the Second Circuit (New York, Vermont, and Connecticut), and potential persuasive authority in other federal courts.

The case is remarkable because the amicus brief filed by MOFCOM represents the first time an entity of the Chinese government ever has appeared *amicus curiae* before any U.S. court. The Court of Appeals held that it was bound to MOFCOM's position that Chinese law required the defendants to fix prices and output: "when a foreign government, acting through counsel or otherwise, directly participates in U.S. court proceedings by providing a sworn evidentiary proffer regarding the construction and effect of its laws and regulations, which is reasonable under the circumstances presented, a U.S. court is bound to defer to those statements ... even if that representation is inconsistent with how those laws might be interpreted under the principles of our legal system."

The Court of Appeals noted that "deference in this case is particularly important because of the unique and complex nature of the Chinese legal- and economic-regulatory system and the stark differences between the Chinese system and ours." The court held that it did not matter whether

defendants helped create the Chinese mandate or whether the Chinese mandate was enforced. “It is enough that Chinese law actually mandated such action, regardless of whether Defendants benefited from, complied with, or orchestrated the mandate.”

After finding that a true conflict existed between Chinese and U.S. law, the Court of Appeals proceeded to consider the remaining factors in the international comity test, finding that each of those factors supported abstaining from jurisdiction over plaintiffs’ claims. In considering those factors, the court noted that “the exercise of jurisdiction by the district court has already negatively affected U.S.-China relations,” reflected in communications from the Chinese government to the federal courts and U.S. Department of State.

Takeaways

International companies doing business in the United States may face conflicting obligations under U.S. law and the law of their home country. The Court of Appeals’ ruling provides international companies with a stronger basis for objecting to U.S. antitrust claims when those companies cannot simultaneously comply with U.S. antitrust law and the law of their home country. However, international companies doing business in the United States should be mindful that:

- As the Court of Appeals held, the mere existence of a conflict between U.S. antitrust law and the law of the home country is not alone sufficient to avoid federal courts. Instead, the defendant must satisfy a multi-factor balancing test reflecting international comity standards.
- In evaluating whether a “true conflict” exists between U.S. antitrust law and the law of the home country – a critical threshold element of the multi-factor test – a court may afford strong deference to the home country’s explanation of its own laws.
- Where the existence of a conflict between U.S. antitrust law and the law of the home country is not particularly clear, international companies run a greater risk of protracted antitrust litigation over many years, even if they ultimately prevail.

Contacts

Adrian Emch
Partner, Beijing
adrian.emch@hoganlovells.com

Logan Breed
Partner, Washington
logan.breed@hoganlovells.com

Justin Bernick
Counsel, Washington
justin.bernick@hoganlovells.com

Alicante
Amsterdam
Baltimore
Beijing
Brussels
Budapest
Caracas
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta
Jeddah
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Rio de Janeiro
Riyadh
Rome
San Francisco
São Paulo
Shanghai
Silicon Valley
Singapore
Sydney
Tokyo
Ulaanbaatar
Warsaw
Washington, D.C.
Zagreb

Our offices

Associated offices

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

©Hogan Lovells 2016. All rights reserved.