

Antitrust Challenge to PetIQ Acquisition Has Bark But No Bite

AUGUST 3, 2018

Winston secured a significant win for clients PetIQ and VIP Petcare on August 3, 2018 when the Northern District of California granted our motion to dismiss a complaint that sought to enjoin the merger of the two companies.

In January 2018, PetIQ, a manufacturer and nationwide distributor of pet health and wellness products, acquired VIP Petcare, an owner and operator of thousands of veterinary clinics across the country. Winston's Corporate and Antitrust Practices assisted with the transaction. Plaintiffs, consisting of two competing wholesale distributors of pet health products, filed a suit in California asserting multiple antitrust claims, including a challenge to the acquisition under Section 7 of the Clayton Act, a claim of price discrimination under the Robinson-Patman Act, and a claim of monopolization in violation of Section 2 of the Sherman Act. Winston challenged the complaint on a number grounds, arguing that it failed to properly define a relevant market, that plaintiffs alleged inconsistent facts that called into question whether they suffered any antitrust injury, and that the conclusory allegations failed to meet the plausibility requirements under the Supreme Court's requirements in *Twombly*. Finally, Winston challenged plaintiffs' request for divestiture as an inappropriate remedy. At the motion to dismiss hearing, the court questioned plaintiffs' counsel on their relevant market definition, finding that it was both too broad and too narrow to be viable. The court also agreed with Winston that the complaint contained conclusory statements and was devoid of the facts and statistics necessary to survive our motion to dismiss. Plaintiffs have been granted a chance to amend their complaint; however, the court cautioned that plaintiffs needed to fix numerous aspects and questioned whether they could ever plead a claim that was viable.

Former Chicago Partner argued the motion to dismiss on behalf of PetIQ and VIP Petcare, together with invaluable support and assistance from San Francisco Associates Jeanifer Parsigian and Dana Cook-Milligan.

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