

Ninth Circuit Affirms Dismissal of Antitrust Complaint Against PetIQ

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Winston & Strawn secured a win this week for clients PetIQ and VIP Petcare when the Ninth Circuit unanimously affirmed the dismissal of an antitrust complaint challenging PetIQ's acquisition of VIP Petcare.

In January 2018, PetIQ, a pet health and wellness manufacturer and distributor, acquired VIP Petcare, a nationwide operator of veterinary clinics. Winston's corporate and antitrust groups assisted with the transaction. Two competing distributors of pet health products filed suit in the Northern District of California asserting multiple antitrust claims against the merger based on two different theories of monopolization and one of price discrimination. Winston challenged the complaint, arguing Plaintiffs failed to properly define a relevant market or market power and failed to meet the plausibility requirements needed for the allegations.

After a lengthy hearing, the court dismissed Plaintiffs' complaint but gave them a chance to amend. Before amending, Plaintiffs filed a motion for expedited discovery for PetIQ and VIP Petcare's pre-merger filing with the Federal Trade Commission—which Winston vehemently opposed and the court denied—and then filed their amended complaint. Winston again filed a motion to dismiss, arguing against Plaintiffs' new theories and even more implausible relevant market definition and market power allegations. Judge Chesney took the motion under submission on the papers and dismissed the complaint in full with prejudice in April 2019. The ruling was featured in Law360 and other antitrust publications.

Plaintiffs appealed the dismissal and denial of expedited discovery to the Ninth Circuit. The parties briefed the matter in the summer and fall of 2019 and oral argument was held via videoconference on June 9, 2020 before Ninth Circuit Judges Eric Miller and Danielle Hunsaker, and District of Minnesota Judge Patrick J. Schiltz sitting by designation. The panel expressed skepticism regarding the relevant market definition and market power allegations and took the matter under submission.

On June 29, 2020, the Ninth Circuit affirmed Judge Chesney's dismissal with prejudice and denial of expedited discovery. With respect to the Amended Complaint, the panel opined that Plaintiffs did not plausibly allege market power because the allegations on market share did not correspond to the relevant market alleged, and the remaining allegations were either "too conclusory or speculative to support a plausible claim." With respect to expedited discovery, the panel opined that Judge Chesney did not abuse her discretion in denying expedited

discovery because there was not a clear showing that denial of the requested discovery resulted in actual and substantial prejudice to the plaintiff.

San Francisco Associate Jeanifer Parsigian argued for PetIQ and VIP Petcare before the Ninth Circuit. San Francisco Associate Dana Cook-Milligan provided invaluable support and assistance.

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