

CLIENT ALERT

Second Circuit Applies International Comity Principles to Overturn Antitrust Jury Verdict in Chinese Vitamins Case

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Yesterday, September 20th, the Second Circuit Court of Appeals vacated a \$147 million antitrust class action judgment against two Chinese companies, Hebei Welcome Pharmaceutical Co. Ltd. and its holding company North China Pharmaceutical Group Corp., on international comity grounds. The court, in a unanimous decision, held that Chinese law compelled the two Chinese pharmaceutical companies to fix the prices of vitamin C.

The case—*In re: Vitamin C Antitrust Litigation*—originated in 2005, when consumers who had purchased vitamin C accused Chinese manufacturers and their affiliates of participating in an illegal cartel to fix prices and limit supply for exports. In March 2013, a federal jury in New York awarded the plaintiffs \$54.1 million, finding that the Chinese companies had met with their competitors and coordinated pricing in China's vitamin C industry between December 2001 and June 2006. The District Court judge then trebled the damages.

In vacating the \$147 million judgment and remanding the case with instructions to dismiss the plaintiffs' complaint with prejudice, the Second Circuit reversed the district court's denial of the defendants' motion to dismiss, finding that the Chinese defendants could not simultaneously comply with Chinese law and U.S. antitrust laws. In the court's opinion:

"Defendants were required by Chinese law to set prices and reduce quantities of vitamin C sold abroad and doing so posed a true conflict between China's regulatory scheme and U.S. antitrust laws such that this conflict in defendants' legal obligations . . . mandates dismissal of plaintiffs' suit on international comity grounds."

The Chinese government had gone so far as to file a formal statement in the district court (a "historic act," according to the Second Circuit) asserting that Chinese law had required the defendants to set prices and reduce quantities of vitamin C sold abroad. While the district court was not persuaded by this evidence, the Second Circuit found that "[w]hen . . . we receive from a foreign government an official statement explicating its own laws and regulations, we are bound to extend that explication the deference long accorded such proffers received from foreign governments."

In addressing "how a federal court should respond when a foreign government, through its official agencies, appears before that court and represents that it has compelled an action that resulted in the violation of U.S. antitrust laws," the Second Circuit attempted to balance the interests of those harmed in the U.S. with a foreign

country's interest in regulating economic behavior within its borders. The multi-factor "comity balancing test" applied by the court has ten factors, the most important of which requires that there be a "**true conflict**" between the two nation's laws, such that compliance with the laws of both countries would be impossible.

The Chinese government's explanation that its laws required that the defendants fix the prices and exports of vitamin C was given great deference by the court. In fact, the opinion makes note that the court "ha[d] yet to identify a case where a foreign sovereign appeared before a U.S. tribunal and the U.S. tribunal adopted a reading of that sovereign's laws contrary to that sovereign's interpretation of them." Ultimately, the Second Circuit found that "because the Chinese Government filed a formal statement . . . asserting that Chinese law required Defendants to set prices and reduce quantities of vitamin C sold abroad . . . international comity required the district court to abstain from exercising jurisdiction in this case."

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