

Antitrust Law Blog

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[eBay Auction Sellers' Bid For Class Certification Rejected](#)

On March 4, 2010, Judge Jeremy Fogel of the United States District Court for the Northern District of California granted summary judgment in favor of eBay in a putative antitrust class action lawsuit brought by online auction sellers in 2007. *See In re eBay Seller Antitrust Litigation*, No. 07-1882 N.D. Cal., No. C 07-01882 JF (RS) (2008), Order Granting Defendant's Motion For Summary Judgment And Denying As Moot Plaintiffs' Motion For Class Certification (Dkt. # 577), available at 2010 WL 760433 ("*eBay*"). As explained below, the court held that plaintiffs' allegations fail because plaintiff and its expert failed to proffer any evidence that eBay's alleged anticompetitive acts caused plaintiffs any injury compensable under the antitrust laws.

Background

As [previously reported](#) in this blog, the plaintiffs in *eBay* sought to represent a class of all eBay auction sellers and a subclass of all eBay auction sellers who accept the PayPal method of online payment. Plaintiffs challenged as anticompetitive, among other things, eBay's controls over its payment methods, including its acquisition of the PayPal, and eBay's agreements with AOL, Yahoo, and Google, which purportedly eliminated competition. Plaintiffs claimed that eBay's actions violated Sections 1 and 2 of the Sherman Act and Sections 16720 and 17200 of the California Business & Professional Code, asserting claims for abuse of monopoly power and attempted monopoly maintenance for online auctions and the market for person-to-person online payment systems; tying; unlawful trust, combination, or conspiracy in restraint of trade and commerce; and unfair business practices. On March 4, 2008, Judge Fogel denied eBay's motion to dismiss the lawsuit, except as to the tying claims, which were dismissed. After extensive discovery over a period of more than two-and-a-half years, the court decided plaintiffs' motion for class certification and Defendant's motion for summary judgment.

The Court Grants eBay's Summary Judgment Motion Because Plaintiffs Failed to Put Forth Any Evidence of Antitrust Injury

eBay moved for summary judgment on the grounds that: (1) plaintiffs improperly defined the relevant market; (2) eBay does not have monopoly power in a properly defined market; and (3) plaintiffs failed to demonstrate causal antitrust injury. The court determined that plaintiffs' circumstantial evidence was at least sufficient to create a triable issue of fact as to the relevant

market and eBay's alleged monopoly power. The court then addressed the issue of whether plaintiffs could establish causal antitrust injury.

Plaintiffs alleged that they suffered antitrust injury through eBay's charging of "supracompetitive" fees for its online auction platform, and that the alleged overcharge was the proper measure of damages. While eBay disputed that measure of damages, the court determined that it was not necessary to determine the appropriate measure of damages because plaintiffs failed to raise a triable issue of fact as to whether they were injured by eBay's alleged anticompetitive acts in any event.

Specifically, plaintiffs' proffered evidence of causal antitrust injury consisted of two models that its expert offered in support of their motion for class certification, a "dominant-firm model entry deterrence with network externalities model" and a "reduced-form treatment effects regression model." The court concluded that neither of those models was sufficient to overcome summary judgment because, while plaintiffs in *seeking class certification* "are not required to present completed damages models at the class certification stage, but merely [to] present a plausible methodology by which they will demonstrate impact on a common basis to the class," when it comes to *defeating summary judgment*, plaintiffs must point to admissible evidence that would permit a reasonable jury to find that they have suffered injury that was caused by eBay's alleged anticompetitive acts. *eBay*, 2010 WL 760433, at * 11.

Analyzing the expert's first method, the court concluded that while the expert "describes how his first model might work in theory, plaintiffs make no attempt . . . to show that the model actually works *in practice* in this case" to permit a reasonable jury to conclude that plaintiffs have been injured as a result of eBay's alleged anticompetitive acts. *eBay*, 2010 WL 760433, at * 12. Regarding the expert's second method, the court determined that while the general methodology was sound, "the model cannot—nor is it designed to—determine whether that [alleged price] increase resulted from an increase in fees or the imposition of supracompetitive fees" and "[w]hile such a hypothetical analysis might be sufficient to meet the 'plausible methodology' standard required for class certification, it is too indefinite and speculative to enable Plaintiffs to survive summary judgment." *eBay*, 2010 WL 760433, at * 14.

In sum, the court concluded that "[d]espite the voluminous briefing permitted in connection with both of the instant motions—which includes hundreds of pages of supporting documents—Plaintiffs have not drawn the Court's attention to any actual proof of antitrust injury caused by eBay's alleged anticompetitive acts—on an individual or a classwide level." *Id.* Based on the foregoing, the court dismissed plaintiffs' claims for monopolization and attempted monopolization of the online auction market and the person-to-person online payment market.

The court dismissed plaintiffs' state law claims based on the same analysis, as they were predicated on violations of the federal antitrust laws. Finally, because the court granted eBay's summary judgment motion, plaintiffs' motion for class certification was denied as moot.

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