

Antitrust Law Blog

Posted at 6:20 PM on May 13, 2009 by Sheppard Mullin

Sherman Act Claims Against Credit Reporting Agency Equifax Tossed Out of Court for Lack of Antitrust Injury

On April 2, 2009, the Sixth Circuit affirmed the lower court's 12(b)(6) dismissal of an antitrust complaint against national credit reporting agency, Equifax, for lack of antitrust injury. *CBC Companies, Inc. v. Equifax, Inc.*, --- F.3d ----, 2009 WL 860225 (6th Cir. Apr. 2, 2009).

Plaintiffs, CBC Companies and CBC Innovis (collectively "CBC"), purchase consumer credit reports from all three national credit reporting agencies and resell them in a consolidated "tri-merged report." CBC and other resellers also sell copies of tri-merged reports, or "reissues," which are a more inexpensive alternative to repurchased credit reports from the credit reporting agencies. CBC's suit was prompted by Equifax's new policy requiring resellers to pay a fee for each reissue. CBC alleged that by requiring resellers to pay a fee each time they sold a reissue -- despite not purchasing any new data from Equifax -- Equifax was unlawfully using its monopoly power in the market for selling credit reports (the "Mortgage Reseller Market") to monopolize and attempt to monopolize the downstream market for selling consumer credit information to mortgage lenders (the "Mortgage Lender Market"). CBC alleged that Equifax restrained competition in the relevant market by "imposing and threatening to impose financial penalties on Resellers that sell Reissues, and by diminishing and threatening to diminish the competitive advantage Reissues enjoy over [tri-merger] reports." The Sixth Circuit rejected this argument, concluding that CBC lacked antitrust injury for several reasons.

First, the Court found that CBC's complaint contained nothing more than conclusory allegations. Relying on *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Sixth Circuit held that CBC failed to allege any key facts -- such as specific increases in costs for its reissues or any lost market sales as a result of Equifax's new policy -- to substantiate its generalized allegations of injury. *Id.* at **2-3.

Second, the Sixth Circuit determined that the facts set forth in CBC's complaint suggested that CBC's fundamental dispute with Equifax were the price terms that CBC had to agree to in order to continue purchasing credit reports from Equifax. Notwithstanding CBC's arguments that Equifax controlled a necessary input, "even where a business carries a significant portion of the market share, antitrust law is not a negotiating tool for a plaintiff seeking better contract terms. *See Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko LLP*, 540 U.S. 398, 408 (2004); *Arthur S. Langenderfer, Inc. v. S.E. Johnson Co.*, 917 F.2d 1413, 1428 (6th Cir. 1990)[.]" *Id.* at

*3.

Finally, to the extent CBC alleged impact on the Mortgage Lender Market, the Court held, they were more likely the result of federal regulations requiring lenders in the residential-mortgage-loan industry to purchase credit data from the three national consumer reporting agencies, rather than any anticompetitive conduct on the part of Equifax. "No cognizable antitrust injury exists where the alleged injury is a byproduct of the regulatory scheme or federal law rather than of the defendant's business practices." *Id.* (internal citations and quotations omitted).

Authored by:

[Helen Cho Eckert](#)

(213) 617-4286

HEckert@sheppardmullin.com