

Class Certification Granted in International Cartel Antitrust Litigation in Which China Itself Has Intervened To Support the Claimed Price-Fixing

January 30, 2012 by [Louis M. Solomon](#)

We have previously posted on this interesting example of international litigation ([here](#)). The case is captioned *In re Vitamin C Antitrust Litigation*, 05-CV-0453 (E.D.N.Y), and is pending in the United States District Court for the Eastern District of New York. In the most recent decision, the court granted motions for class certification ([Vit C class action decision](#)).

Earlier in the litigation, the Court rejected a defense by the defendants that “that they were compelled by the Chinese government to fix prices”. Indeed, the defendants’ motion was supported by an amicus brief filed by the Chinese government explaining the Chinese government’s regulation of vitamin C. The District Court found: “According to the Ministry, defendants’ actions were compelled by the Chinese government”. It did not matter according to the District Court.

In the current decision, the Court performed the “rigorous analysis” required by the controlling cases in assessing a motion for class certification. Ultimately the Court found that both damages-remedy and an injunction-remedy classes were appropriate. The decision does exhibit a District Court’s sophistication in the ways of class action litigation, stating for example: “Either defendants are naive for making this argument, or, more likely, they hope that I am naive enough to accept it” (rejecting the argument that class certification should be denied because the “lawsuit is driven by lawyers who perceive financial rewards”). The Court also had no difficulty, on the basis of Second Circuit authority (*Cordes & Co. Fin. Services, Inc. v A.G. Edwards & Sons, Inc.*, 502 F.3d 91 (2d Cir. 2007)), that “there are no particular dangers inherent in the practice of transferring class membership that do not arise in the context of claim assignment generally”.

For international practice purposes, however, the most significant aspect of the decision is what it did not contain. No special solicitude was apparent with respect to the non-U.S., Chinese defendants or the fact that the Chinese sovereign was opposed to the case proceeding. Nor did the Court find any insuperable obstacle in granting class certification against non-U.S. defendants for claims alleging violations of U.S. antitrust laws. The Court found the one of the proposed class representatives was not adequate but that the other two were.

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