BLOGS
Antitrust

Federal Court Dismisses Price Discrimination and Unlawful Tying Claims Against Franchisor

A franchisor of window replacement companies and its exclusive approved supplier of windows have successfully avoided claims that the windows sold to franchisees were sold at a discriminatory price under the Robinson-Patman Act and unlawfully tied to the franchisor's services under the Sherman Act. *Bendfeldt v. Window World, Inc.*, 2017 WL 4274191 (W.D.N.C. Sept. 26, 2017). The plaintiffs entered into a series of license agreements with Window World, Inc. ("WWI") in the 2000s. Although the plaintiffs were at first required to purchase windows and related materials from a small number of approved suppliers, by the end of the decade, WWI eventually announced that all franchisees would have to buy products from one exclusive supplier of windows. The plaintiffs brought suit under a variety of legal theories when they found out that the franchisor received significant kickbacks from its exclusive supplier.

The North Carolina federal court dismissed the plaintiffs' Robinson-Patman Act claim, focusing mostly on the plaintiffs' failure to sufficiently identify any competitor outside the franchise system that received a better price. Because a price discrimination claim requires a favored and disfavored customer that are in actual competition for "the same dollar," the plaintiffs did not plead a plausible claim by only alleging generally that other customers purchased windows from the supplier at lower prices somewhere "in the Midwest" or "throughout the United States." Next, the court dismissed the plaintiffs' allegation that, by naming an exclusive supplier, the franchisor had unlawfully tied the supplier's windows to the franchisor's license and business methods, thereby locking them into having to purchase windows at an unfair price. The court noted that the case law on tying arrangements in franchise relationships is "overwhelming" on this issue and that where the alleged market power flows from a contractual obligation in the franchise agreement, rather than the actual dominance of a product or service market, those claims are routinely dismissed. Because the plaintiffs were well aware of the fact that the franchisor had the contractual authority to limit their choice of window suppliers before they entered into a franchise, there was no unlawful tying and the claim was dismissed.

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