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BLOGS
Antitrust

First Circuit Holds That Franchisee's Antitrust Counterclaim Was Properly Dismissed on Summary Judgment

In Shell's suit against a former franchisee under the Petroleum Marketing Practices Act, the First Circuit held that the franchisee's price discrimination antitrust counterclaim was properly dismissed on summary judgment because the franchisee failed to show that it was competing with favored retailers of Shell Oil. *The Shell Oil Company (Puerto Rico) Ltd. v. Los Frailes Serv. Station, Inc.*, 605 F.3d 10 (1st Cir. 2010). The franchisee claimed that Shell was violating Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act, as well as Puerto Rican antitrust law, by engaging in "secondary line violations" through the Competitive Adjustment Program (CAP) Shell implemented in 2001, which included different prices in different areas. Secondary line violations are actions "directed at injuring competition among the discriminating seller's customers."

One of the basic requirements of competitive injury is a showing of "actual competition" between the disfavored retailer (the franchisee in this case) and the retailers benefiting from a lower price. The First Circuit held that the franchisee presented no evidence that it was actually in competition with the retailers that it said were the beneficiaries of the CAP. It argued that under Puerto Rican law the entire island constituted a single price zone and, therefore, the other retailers were presumptively each other's competitors. The court held that the Puerto Rican law was irrelevant because it was implemented after the commencement of the lawsuit and after the CAP was discontinued. Furthermore, the defendant's deposition testimony showing that there were three other Shell stations within two miles of the defendant did not establish that those stations were "presumptively in competition" with the defendant's Shell station. Accordingly, the First Circuit held that the defendant's antitrust counterclaim was properly dismissed on summary judgment.