LEGAL UPDATES

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Fifth Circuit Denies Antitrust Immunity To Texas River Authority

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Key points:

The Fifth Circuit rejects river authority's claims of immunity on an antitrust claim brought by two private water utility companies.

In a break from other circuits, Fifth Circuit will hear interlocutory appeals on immunity.

On August 3, 2021, a three-judge panel for the Fifth Circuit Court of Appeals reviewed and affirmed a District Court decision to deny San Jacinto River Authority's (SJRA) Motion to Dismiss based on state-action antitrust immunity. *Quadvest LP et al. v. San Jacinto River Authority*, No. 20-20447-CV-4508 (5th Cir. 2021). The case was brought by two private water utility companies, Quadvest and Woodland Oaks Utility, that provide drinking water to customers in Montgomery County, Texas. The utility companies claimed that they were stuck in contracts with SJRA that artificially inflated the price of wholesale raw water.

Not authorized to monopolize

The contracts in question impose fees for the use of groundwater by large-volume users, regardless of who supplies it, and include other mechanisms to encourage users to transition to surface water. SJRA argued that a monopoly was the foreseeable result of authorizing it to supply surface water because this necessarily displaces groundwater suppliers from the market; therefore, the state had effectively authorized the anticompetitive result and that it was therefore immune under its enabling statute (*See* Tex. Gen. & Spec. Laws, ch. 426).

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However, the Court rejected SJRA's arguments that its entry into and enforcement of the contracts was authorized by its enabling statute, and that the displacement of competition in the wholesale raw water market was the foreseeable result of the legislature authorizing the SJRA. The Court reasoned "[t]o warrant state-action immunity, the alleged anticompetitive effect—the displacement of competition in the Montgomery County wholesale raw water market—must be the 'inherent, logical, or ordinary result' of the state's authorization."

In reaching its decision, the panel focused on the language of the statutes that created and enable the SJRA. The appellate court found that the law authorizing the SJRA to play a role in the water supply market in Montgomery County didn't allow it to create a monopoly. The court reasoned "[p]recedent establishes that mere authorization to participate in a market does not constitute authority to monopolize that market…." The court found that the enabling statute held no "monopolistic intent" when authorizing SJRA to participate in the market.

A (foot)note on interlocutory appeals

SJRA appealed the district court's decision to the Fifth Circuit on immunity grounds. While neither party raised the issue of whether SJRA could bring an immediate appeal of the district court's decision, the Fifth Circuit addressed this issue and acknowledged that the Fifth Circuit is the only federal circuit that allows immediate appeal of a denial of state-action immunity.

With the denial of SJRA's Motion to Dismiss upheld, the parties will return to the district court to litigate the antitrust issues raised by the utility companies.

What this means to you

Water authorities are not necessarily immune from claims of antitrust violation. Additionally, a reminder that decisions on immunity may be immediately appealed in the Fifth Circuit but not in other circuits.

Contact us

If you have questions about this update or how it might affect your business, contact Kate David, Sandy Gomez, Robert Eckels, Mike Stafford, Ben Stephens, Logan Leal or Anthony Franklyn.

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