

e-Competitions

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The US District Court for the Southern District of Florida receives an antitrust claim against bitcoin companies concerning alleged coordination in order to restrain trade (*United American Corp / Bitmain*)

ANTICOMPETITIVE PRACTICES, FINANCIAL SERVICES, PRIVATE ENFORCEMENT, COORDINATED EFFECTS, UNITED STATES OF AMERICA, INTERNET, ONLINE PLATFORMS, BIG TECH

US District Court for the Southern District of Florida, United American Corp / Bitmain, Case 1:18 cv 25106-KMW, 6 December 2018

Kristian Soltes | Constantine Cannon (New York)

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The First Blockchain Antitrust Case. Or Is It?*

Legal professionals paying close attention to the still nascent world of blockchains and cryptocurrencies are following what is considered to be the first antitrust case involving cryptocurrencies. For enthusiasts, *United American Corp. v. Bitmain, Inc.* involves the self-described inventor of bitcoin on one side, the operator of bitcoin.com on the other side, the world's largest mining pools, and the Bitcoin Cash blockchain over whose future these recognizable blockchain pioneers wrestle. The case, awaiting a Florida federal district Judge Kathleen Williams's ruling on the motions to dismiss, presents a truly fascinating fact pattern but perhaps a less compelling antitrust argument.

The Hash War

The relevant facts stem from a disagreement over the rules governing the Bitcoin Cash cryptocurrency (BCH), which were to be decided by vote at a November 2018 scheduled update. On one side of the disagreement was a faction known as Bitcoin Cash ABC, consisting of key bitcoin players like Roger Ver, an early bitcoin entrepreneur and CEO of bitcoin.com; Kraken, a prominent U.S.-based cryptocurrency exchange; Bitmain, a manufacturer of bitcoin mining chips and operator of the largest mining pools in the world; and others. This group strongly believed that the Bitcoin Cash blockchain should consist of larger blocks which in theory would make it cheaper to process transactions, a step for scaling blockchain networks to handle a growing number of everyday transactions.

On the other side of the disagreement was the Bitcoin Cash SV faction, consisting of United American Corp., a company that develops deployable technology and services for efficiently mining Bitcoin Cash. Joining it was billionaire Calvin Ayre and self-proclaimed bitcoin inventor Craig Wright, who was recently *awarded registration*

rights ↗ for the bitcoin code and authorship of the bitcoin whitepaper under the pseudonym Satoshi Nakamoto. This group believed that the blocks on the blockchain should remain consistent, which in theory would permit more independent mining and a more decentralized blockchain network.

The decision on which rules to implement is determined by greatest hashing power, or the energy expended to mine a cryptocurrency. So in this case, if a greater share of mining power is on the Bitcoin Cash ABC fork, that fork becomes the de facto cryptocurrency. That is exactly what happened, as Bitcoin Cash ABC easily won the hash war, declared itself the legitimate Bitcoin Cash (BCH) blockchain, and implemented checkpoints to prevent rolling back the update (a discussion of these checkpoints, also called “deep reorganization preventions,” are beyond the scope of this article, but *contact Constantine Cannon* ↗ for more information on what these are and how, if at all, they may raise antitrust concerns).

One unfortunate result of the hash war was that the combined value of Bitcoin Cash ABC and Bitcoin Cash SV plummeted (at least in the near term, since values have recovered). Accordingly, United American Corp., whose profits were linked to the value of Bitcoin Cash and whose mining services were geared for Bitcoin Cash SV, filed suit. Among other claims, it alleged that the Bitcoin Cash ABC faction conspired and agreed to vote a specific way using their dominant hashing power, thereby centralizing what was supposed to be a decentralized cryptocurrency, all allegedly in violation of the Sherman Act.

What’s the Antitrust Argument?

Despite the complexity of this case and of the cryptocurrency industry generally, the antitrust allegations in this case are quite simple. In short, the question is whether the defendants in this case, the Bitcoin Cash ABC faction, conspired and agreed among themselves to restrain trade and, if so, whether the plaintiff suffered a so-called “antitrust injury.” Defendants argue in their motions to dismiss that United American Corp. has provided no evidence to infer an agreement between the Bitcoin Cash ABC players, who all independently pursued their own economic interests. Moreover, even if the court could infer such an agreement, defendants argue, what was the restraint of trade or harm to competition? Both Bitcoin Cash ABC and Bitcoin Cash SV continued to exist and be traded, and any drop in their values (which have since recovered) cannot be directly attributed to defendants’ actions.

Although, in our view, the antitrust claims appear to be quite weak, it is possible that the court may allow plaintiffs to take some discovery, especially given the opacity of the bitcoin network. Assuming that discovery could reveal communications among defendants and other third parties agreeing to hijack bitcoin cash (which seems possible), plaintiff will likely need to contend with myriad privacy and jurisdictional issues, as discovery will necessarily involve multiple countries. And even if plaintiff can prove the existence of a conspiracy, United American Corp. will have difficulty proving both that it was directly injured by the conspiracy and that its injuries were caused by conduct the antitrust laws are intended to remedy. Based on the pleadings, proving an “antitrust injury,” i.e. injury flowing from harm to competition, in particular appears challenging.

Welcoming Definition for the Industry

Whatever happens, this case will likely prove consequential for the cryptocurrency industry, even if the case is ultimately dismissed for failure to state a claim or on summary judgment, as the court will necessarily have to reconcile statutory language and intent born over 100 years ago during the industrial revolution to an industry that has thus far defied easy categorization in existing legal frameworks.

That possibility is ultimately what makes legal cryptocurrency aficionados salivate, for any judicial direction will help provide advice to clients on how blockchain-based endeavors will be treated under the antitrust laws. For example, should this case be treated akin to a run-of-the-mill shareholder proxy war, where an activist investor can easily bulk up on shares and agree with other shareholders to vote a certain way and take control of a company's governance without running afoul of laws, much less antitrust laws? Or will the case be compared to bid rigging, which is what United American Corp. argues in its opposition to the motions to dismiss? Moreover, in the wake of a U.S. District Court's recent ruling in *FTC v. Qualcomm Inc.*, could a court find that defendants had an anticompetitive intent in increasing hashing power and losing money in the short term only to recoup it in the longer term after removing the competition? Or, given the Supreme Court's clarification of the Illinois Brick doctrine in its recent holding in *Apple, Inc. v. Pepper*, will there be an opportunity for the court to provide guidance on who is a "direct purchaser" in blockchain contexts? Thus far, however, the parties have not, in their pleadings and briefings, explored the many unique and challenging arguments the case would appear to present.

There are many more questions than answers at this point, but to the extent that the court provides guidance, that guidance will reverberate throughout the cryptocurrency industry and through any industry that is exploring blockchain-based solutions (which are sprouting ever more frequently). If we get guidance from the court, we will be sure to report it here and explain what it means for all the stakeholders (hint: you will probably be affected without even knowing it). Stay tuned.

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