

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TRACY SPRADLIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:24-cv-01299-JPH-MKK
	)	
ELANCO ANIMAL HEALTH, INC.,	)	
	)	
Defendant.	)	

ORDER GRANTING IN PART DEFENDANT'S MOTION TO DISMISS

Elanco Animal Health, Inc. produces name-brand topical tick-and-flea medications, which it sells to retailers and distributors, including pet specialty retailers. Plaintiff Tracy Spradlin brought this putative class action alleging that Elanco violated federal and state antitrust laws by entering into agreements with pet specialty retailers that prevented them from selling generic versions of those medications. Elanco has filed a motion to dismiss. Dkt. [28]. For the reasons below, that motion is **GRANTED in part and DENIED in part**.

**I.
Facts and Background**

Because Defendants have moved for dismissal under Rule 12(b)(1) and 12(b)(6), the Court accepts and recites "the well-pleaded facts in the complaint as true." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011); *see Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588–89 (7th Cir. 2014).

Elanco produces squeeze-on, topical flea and tick prevention products for dogs and cats, which it sells under the name brands Advantage II and K9

Advantix II (the "Advantix Products"). Dkt. 1 at 1 ¶ 1, 5 ¶ 26. These Advantix Products utilize imidacloprid as the main active ingredient. *Id.*

Elanco sells the Advantix Products to retailers and distributors, including the largest pet specialty retailers in the United States—PetSmart, LLC; Petco Animal Supplies Store, Inc.; Chewy, Inc.; PetMed Express, Inc.; and Petsense, LLC (collectively, the "Pet Retailers"). *Id.* at 2 ¶¶ 4–5. The Pet Retailers then sell the Advantix Products to consumers. *Id.* The Pet Retailers "hold themselves out as unique in the pet products industry," as they offer expertise to customers and higher levels of customer service than traditional "multi-outlet" retailers. *Id.* at 5 ¶ 27.

Elanco and the Pet Retailers entered "no generics" deals where Elanco offered to increase the Pet Retailers' profits if they refused to carry generic imidacloprid topicals.¹ *Id.* at 2 ¶ 7. In doing so, Elanco prevented the entry of generic imidacloprid topicals into the Pet Retailer sales channel. *Id.* at 7 ¶ 36.

Elanco also revised its purchase agreements with Pet Retailers to cut prices for a large bundle of Elanco products, including its popular non-imidacloprid flea collar, "on the explicit condition that the retailers refuse to carry generic Imidacloprid topicals that competed with Elanco's higher-priced Advantix Products." *Id.* at 16, 25–26 ¶¶ 91, 129. These purchase agreements included loyalty discount provisions, "some of which require exclusivity,

¹ Elanco acquired Bayer Healthcare LLC's animal health division, including the Advantix Products, in August 2020. Dkt. 1 at 4 ¶ 20. For simplicity, the Order uses "Elanco" to refer to Bayer and Elanco's collective actions with respect to the Advantix Products.

exclusive advertising, and carrying the Advantix Products," while others "prohibit 'compare to' advertising and making offers 'triggering a switch from Elanco's brands.'" *Id.* at 16 ¶ 93. "[N]early every" purchase agreement states that each retailer and distributor receives the same base price for Elanco's products, and that discounts are offered on an "equivalent basis." *Id.* at 17 ¶ 96. These terms "assured" each Pet Retailer that the other Pet Retailers will be entering the same no-generics agreement with Elanco. *Id.* at 17 ¶ 97.

Plaintiff Tracy Spradlin is a Kansas resident who purchased Advantix products at a Missouri PetSmart in 2021 and a Kansas Petco in 2023. *Id.* at 4 ¶ 18. In Counts I and II of her complaint, Ms. Spradlin alleges that Elanco violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1–2. *Id.* at 42–44 ¶¶ 192–207. In Count III, she alleges that Elanco violated the state antitrust laws of the Indirect Purchaser States.² *Id.* at 44–50 ¶¶ 208–213. She brings this suit on behalf of a putative nationwide class and, in the alternative, a state class. *Id.* at 38–39 ¶¶ 181–82. She seeks damages and injunctive relief. *Id.* at 50–51.

Elanco filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) and (b)(6). Dkt. 28.

² This includes Arizona, California, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. *Id.* at 45–50 ¶ 212.

II. Motion to Dismiss Standard

Defendants may move under Federal Rule of Civil Procedure 12(b)(1) to dismiss claims for lack of subject-matter jurisdiction and under Federal Rule of Civil Procedure 12(b)(6) to dismiss claims for "failure to state a claim upon which relief can be granted." When faced with a 12(b)(1) motion, the plaintiff "bears the burden of establishing that the jurisdictional requirements have been met." *Burwell*, 770 F.3d at 588–89. To survive a Rule 12(b)(6) motion to dismiss, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A facially plausible claim is one that allows "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In other words, a complaint "must allege enough details about the subject-matter of the case to present a story that holds together," *Bilek v. Fed. Ins. Co.*, 8 F.4th 581, 586 (7th Cir. 2021), "but it need not supply the specifics required at the summary judgment stage." *Graham v. Bd. of Educ.*, 8 F.4th 625, 627 (7th Cir. 2021).

Under both 12(b)(1) and 12(b)(6), the Court will "accept the well-pleaded facts in the complaint as true," but will not defer to "legal conclusions and conclusory allegations merely reciting the elements of the claim." *McCauley*, 671 F.3d at 616; *see Burwell*, 770 F.3d at 588–89.

III. Analysis

Elanco challenges whether Ms. Spradlin (1) has Article III standing to sue under any state antitrust law except Kansas's; (2) has plausibly alleged a conspiracy allowing her to seek damages under the Sherman Act; and (3) has plausibly stated claims under Sections 1 and 2 of the Sherman Act and certain state antitrust laws.

A. Article III standing

Ms. Spradlin alleges state-law antitrust claims under the laws of 30 "Indirect Purchaser States." Dkt. 1 at 44–50. Elanco moves to dismiss 29 of those claims under Rule 12(b)(1), arguing that Ms. Spradlin lacks Article III standing to sue on behalf of putative class members for jurisdictions where she has not suffered an injury. Dkt. 29 at 14–16. Elanco therefore contends that Ms. Spradlin has standing to sue under only Kansas's state antitrust law, since she has alleged that she paid higher prices for a purchase there. *Id.* Ms. Spradlin responds that in this context, the Court should not conduct a full Article III standing analysis at this time but instead defer evaluating whether she can adequately represent class members under other states' antitrust laws until the class certification phase of this case. Dkt. 40 at 33.

When standing and class certification intersect, the Supreme Court has issued a "directive to consider issues of class certification prior to issues of standing." *Payton v. County of Kane*, 308 F.3d 673, 680 (7th Cir. 2002) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)). That makes sense, under the "long-standing rule that, once a class is properly certified, statutory and Article

III standing requirements must be assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs." *Id.* Put differently, "[t]he certification of a class changes the standing aspects of a suit, because a properly certified class has a legal status separate from and independent of the interest asserted by the named plaintiff." *Id.* For that reason, "the use of the class-action device creates a narrow lane for deferring a ruling on standing." *Slowinski v. BlueTriton Brands, Inc.*, 744 F. Supp. 3d 867, 878 (N.D. Ill. 2024).

In support of her argument, Ms. Spradlin cites the Seventh Circuit's opinion in *Payton*. The facts here are not exactly like those in *Payton*—this case involves 30 different states' laws, while *Payton* involved only one state statute. 308 F.3d at 682. But the prevailing view among district courts in this circuit is to apply *Payton* in this situation, deferring consideration of Article III standing. *See Slowinski*, 744 F. Supp. 3d at 878–80 (collecting recent cases deferring standing, including when class members would have claims "arising under the laws of other states"). Under this approach, standing may be deferred when a named plaintiff has alleged "an injury in fact by alleging that they paid inflated prices, which can be fairly traced to Defendants' [antitrust violations], and which can be redressed by a favorable judicial decision." *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 810 (N.D. Ill. 2017).

Here, Ms. Spradlin alleges that Elanco's alleged anticompetitive conduct caused her "to pay an inflated amount for Elanco's K9 Advantix II and Advantage II products." Dkt. 1 at 1. That's enough at this stage for the class-

related questions about Article III standing to be deferred. *Payton*, 308 F.3d at 680; *Slowinski*, 744 F. Supp. 3d at 880.³

B. Conspiracy allegations for Sherman Act damages

Ms. Spradlin alleges that "Elanco illegally fixed and stabilized the retail prices of the Advantix Products and prevented entry of true generic Imidacloprid topicals into the relevant market," resulting in "less competition, higher prices, and fewer choices for consumers." Dkt. 1 at 7 ¶¶ 36–37. In Count I, Ms. Spradlin alleges that Elanco engaged in a conspiracy to unreasonably restrain trade in violation of Section 1 of the Sherman Act. *Id.* at 42. In Count II, Ms. Spradlin alleges that Elanco illegally monopolized the imidacloprid topical market through its exclusive dealing arrangements with the Pet Retailers. *Id.* at 43–44.

These Sherman Act claims are based on allegations that class members purchased Elanco's branded imidacloprid topicals from Pet Retailers, not from Elanco itself. Dkt. 1 at 42–44. Generally, however, "only those buyers who purchased products directly from the antitrust violator have a claim against that party" for damages. *Marion Healthcare, LLC v. Becton Dickinson & Co.*, 952 F.3d 832, 836 (7th Cir. 2020) (discussing *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)). "Indirect purchasers"—those who buy from middlemen—cannot

³ *Slowinski* also addresses the view that this issue "does not implicate Article III standing or jurisdiction at all," but is a substantive Rule 23 question. 744 F. Supp. 3d at 880; see *Morrison v. YTB Intern., Inc.*, 649 F.3d 533, 536 (7th Cir. 2011). The Court does not address that issue now because the parties have briefed this issue as involving standing and because the result—deferral—is the same either way.

seek damages under the Sherman Act but "must take their lumps and hope that the market will eventually sort everything out." *Id.*

Because of this rule, Ms. Spradlin seeks to proceed under an exception that applies "when a monopolist enters into a conspiracy with its distributors." *Id.* This is called a "hub-and-spokes" conspiracy—a central coordinating party (perhaps a producer or manufacturer) is the "hub," and the participants (perhaps distributors or retailers) form a rim attached by "spokes." *Id.* at 842. When indirect purchasers buy from one of the "spokes" in such a conspiracy, they are treated as direct purchasers who may pursue damages "because they dealt directly with the conspiracy." *Id.* at 839; *see Paper Sys. Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 631 (7th Cir. 2002) ("[T]he first buyer from a conspirator is the right party to sue."). Individual conspiracies along separate spokes is not enough for a hub-and-spokes conspiracy—instead, "each participant" must "coordinate[] or otherwise carr[y] out its duties as part of the broader group." *Marion*, 952 F.3d at 842. In other words, there must be a conspiracy "rim" connecting all "spoke" participants. *Id.*

Applied here, this "rim" requirement means that Ms. Spradlin must plausibly allege that the Pet Retailers "coordinated not only with [Elanco], but also with each other." *Id.* ("If the plaintiffs do not adequately allege this type of coordination, they have made, at best, an allegation of a number of different conspiracies, not of a single conspiracy."). This "rim" conspiracy can, "in certain circumstances . . . be inferred for the purpose of an antitrust

conspiracy, even in the absence of an express agreement." *Id.* (citing *Toys "R" Us, Inc. v. F.T.C.*, 221 F.3d 928 (7th Cir. 2000)).

Elanco argues that Ms. Spradlin has not adequately alleged the required "rim" of a conspiracy among Pet Retailers because Elanco "negotiated its contracts separately with each retailer," leaving, at most, parallel conduct. Dkt. 29 at 11-13. Ms. Spradlin responds that she has plausibly alleged a conspiracy among the Pet Retailers by pleading that they acted against their own economic interest and were each assured by Elanco that the other Pet Retailers would enter the same no-generics agreement. Dkt. 40 at 15-18.

Ms. Spradlin's allegations are similar to those in *Marion*, where the Seventh Circuit held that plaintiffs had not adequately alleged a "rim" conspiracy among distributors. 952 F.3d at 842-43. There, the plaintiffs alleged that a medical-device manufacturer (the alleged "hub") manipulated contracts with distributors (the alleged "spokes") to include "hidden commitments" to pay those distributors for selling more of the manufacturer's products." *Id.* at 837. The plaintiffs, however, "made no argument that the distributors played any role in setting the anticompetitive pricing or that there was any *quid pro quo* according to which [the manufacturer] compensated them for participating in the alleged antitrust conspiracy." *Id.* at 843. The plaintiffs therefore did not allege "that the distributors engaged in parallel conduct, much less that they coordinated their actions to engage in illegal activity." *Id.* at 842.

Ms. Spradlin's allegations go beyond the allegations in *Marion* because she has pleaded allegations allowing an inference of parallel conduct. Elanco pitched the Pet Retailers on why refusing to sell generic imidacloprid topicals was in the self-interest of each Pet Retailer. See dkt. 1 at 11–12 ¶¶ 61–68. And each Pet Retailer agreed with Elanco to such a "no generics" deal. *Id.* at 2 ¶ 7, 17 ¶¶ 96–99. Each Pet Retailer must have known that the others entered a similar agreement with Elanco because "nearly every" one of Elanco's Purchase Agreements said that each retailer and distributor receives the same base price for Elanco's products, and discounts are offered on an "equivalent basis." *Id.* So, Ms. Spradlin's allegations come closer to pleading a "hub-and-spokes" conspiracy than the allegations in *Marion*.

Still, Ms. Spradlin's allegations of parallel behavior are insufficient, since even "conscious" or "interdependent" parallelism "is not in itself unlawful." *Twombly*, 550 U.S. at 557 ("Without more, parallel conduct does not suggest conspiracy" so parallel-conduct allegations "must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action."). Instead, "'parallel plus' behavior" must be alleged to plausibly plead a conspiracy through circumstantial evidence.⁴ *In re Text Messaging Antitrust Litig.*, 630 F.3d 622, 628 (7th Cir. 2010); accord *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d at 789–93.

⁴ Ms. Spradlin does not attempt to plead direct evidence of a "rim" conspiracy among Pet Retailers. See dkt. 1 at 42–43; dkt. 40 at 15.

Ms. Spradlin argues that she has pleaded "'parallel plus' behavior" by alleging that the Pet Retailers' agreements with Elanco would "contravene [their] own interests had they acted independently," so they "would not have undertaken the common action without reasonable assurances all competitors would agree to the vertical agreement." Dkt. 40 at 15. But the complaint's allegations do not plausibly plead that the Pet Retailers' giving up sales of generic imidacloprid was against their self-interest in this situation. Ms. Spradlin admits that each Pet Retailer received loyalty discounts from Elanco's Purchase Agreements on a "large bundle of Elanco products." Dkt. 1 at 16–17 ¶¶ 91, 96. Even more—she alleges that those discounts could be millions of dollars more than a Pet Retailer could make in margin selling a generic imidacloprid product. *Id.* at 14 ¶ 77. So, at best, Ms. Spradlin has alleged "a common reaction" from the Pet Retailers that recognizes "their shared economic interests"—but that "is not in itself unlawful." *Twombly*, 550 U.S. at 553–54; *cf. Toys "R" Us*, 221 F.3d at 936 (It can be a "legitimate vertical transaction" for a manufacturer and retailer to enter "exclusive dealing arrangements" to seek to maximize profits.).

Indeed, the Seventh Circuit has recognized that matching prices "can be consistent with rational self-interest" because "[e]ach firm in a tight oligopoly might think it will reap greater profits if it imitates, rather than undermines, its peers." *Keel Prods. LLC v. Georgia-Pacific LLC*, 910 F.3d 927, 935–36 (7th Cir. 2018). "And it might reach that conclusion without any conscious coordination with its competitors," so "it is not a violation of antitrust law for a firm to raise

its price, counting on its competitors to do likewise (but without any communication with them on the subject)." *Id.* Other circuits have agreed with this conclusion. See *In re Nexium Antitrust Litig.*, 842 F.3d 34, 56 (1st Cir. 2016) (holding that there was no "rim" to the alleged conspiracy "because self-interest could explain equally well why each" company might make the parallel decision); *United States v. Apple, Inc.*, 791 F.3d 290, 315 (2d Cir. 2015); *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1195 (9th Cir. 2015). Ms. Spradlin therefore has not plausibly pleaded action against self-interest as "parallel plus" behavior supporting a "rim" conspiracy among Pet Retailers.

Ms. Spradlin's cited cases do not show otherwise. In *Toys "R" Us*, the Seventh Circuit affirmed the FTC's determination that Toys "R" Us entered a hub-and-spokes conspiracy with major toy manufacturers. 221 F.3d at 930. But in *Toys "R" Us*, the manufacturers in a horizontal conspiracy communicated with each other, removed themselves from "a profitable sales outlet," and agreed to Toys "R" Us's anticompetitive demands on the "condition" that they "could be sure [their] competitors were doing the same thing." *Id.* at 935–36 ("These manufacturers were in effect being asked by [Toys "R" Us] to reduce their output (especially of the popular toys), and as is classically true in such cartels, they were willing to do so only if [Toys "R" Us] could protect them against cheaters."). Nothing like that has been plausibly alleged here. See *Marion*, 952 F.3d at 852 (affirming dismissal because facts like those in *Toys "R" Us* were "not alleged").

The out-of-circuit cases Ms. Spradlin cites similarly do not help her. In *United States v. Apple*, each "rim" publisher defendant was offered a contract "that would be attractive only if the publishers acted collectively"—otherwise they "stood to make *less* money per sale." 791 F.3d at 316–17. And *In re Disposable Contact Lens Antitrust* allowed a claim to proceed on an inferred "rim" conspiracy in "the unique construct of the contact lens industry, where [eye care professionals] both prescribe and sell a specific contact lens and brand to consumers." 215 F. Supp. 3d 1272, 1297 (M.D. Fla. 2016). As discussed above, Ms. Spradlin's allegations show substantial benefits for each Pet Retailer from Elanco's Purchase Agreements, rather than a market situation where one could benefit only if all agreed.⁵ See *dk. 1* at 14, 16–17 ¶¶ 77, 91, 96; *accord Iqbal*, 556 U.S. at 678 ("Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'"); *In re FICO Antitrust Litig.*, No. 1:20-cv-2114, 2023 WL 6388247 at *8 (N.D. Ill. Sept. 28, 2023).

In sum, Ms. Spradlin's "allegations, whether taken alone or together, do not suffice to describe a hub-and-spokes conspiracy" among the Pet Retailers. *Marion*, 952 F.3d at 843; *accord Vital Pharm., Inc. v. Berlin Packaging LLC*, 632 F. Supp. 3d 780, 785–86 (N.D. Ill. 2022). She is therefore an indirect

⁵ In her brief, Ms. Spradlin says that she has alleged that "termination or exit by any member of the Conspiracy would have negative economic consequences for all," *dk. 40* at 9, but the allegation she cites does not support that statement, *dk. 1* at 18 ¶ 100, and she develops no argument on this point and does not explain why it would not be merely consciously parallel conduct, *see dk. 40* at 14–18.

purchaser barred by *Illinois Brick* from seeking damages on her Sherman Act antitrust claims. *Marion*, 952 F.3d at 843.

C. State antitrust law claims

Because Ms. Spradlin cannot pursue claims as a direct purchaser, the Court turns to her claims brought under state statutes that allow suits by indirect purchasers. Dkt. 40 at 21; dkt. 1 at 44-50.⁶ Kansas's statute, for example, allows suits by "any person who may be damaged or injured" by an illegal restraint of trade "regardless of whether such injured person dealt directly or indirectly with the defendant." K.S.A. § 50-161(b). The parties agree that the state laws under which Ms. Spradlin sues are otherwise construed in harmony with federal antitrust law, so the Court relies on federal cases under the Sherman Act in analyzing her state-law indirect-purchaser claims. Dkt. 44 at 35–36.

These claims allege that Elanco's agreements with the Pet Retailers were unreasonable restraints on trade because they involved coercive conduct to maintain monopoly power in "the relevant antitrust market." Dkt. 1 at 44–45. The parties dispute whether Ms. Spradlin has plausibly alleged a relevant market.

⁶ Because Ms. Spradlin turns to the state indirect purchaser statutes once her damages claims are dismissed, the Court infers that she is not pursuing Sherman Act claims under the rule of reason for solely injunctive relief, and therefore does not address whether that relief would be available. *See* dkt. 40 at 21 (arguing that if "there was never a horizontal conspiracy" then her "claims would be brought under the relevant states' indirect purchaser statutes"); *In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d at 813–14.

1. Relevant market definition

Ms. Spradlin's indirect-purchaser claims allege vertical restraints—exclusive-dealing agreements between Elanco and the Pet Retailers—and whether those restraints are undue or unreasonable "calls for . . . 'rule of reason analysis.'" *Fourquarean v. Nat'l Collegiate Athletic Ass'n*, 143 F.4th 859, 866 (7th Cir. 2025); *Leegin Creative Leather Prods. v. PSKS, Inc.*, 551 U.S. 877, 882 (2007) ("[V]ertical price restraints are to be judged by the rule of reason."). At this pleading stage, the rule of reason analysis requires Ms. Spradlin to "identify a relevant product and geographic market in which [Elanco] ha[d] or [was] likely to obtain monopoly power." *Sharif Pharm., Inc. v. Prime Therapeutics, LLC*, 950 F.3d 911, 916 (7th Cir. 2020); *In re Dealer Mgmt. Sys. Antitrust Litig.*, 313 F. Supp. 3d 931, 956–57 (N.D. Ill. 2018) (St. Eve, J.). "[C]ourts hesitate to grant motions to dismiss for failure to plead a relevant market because market definition is a deeply fact-intensive inquiry." *Fourquarean*, 143 F.4th at 870 (citing *Todd v. Exxon Corp.*, 275 F.3d 191 (2d Cir. 2001); *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038 (9th Cir. 2008)).

Elanco argues that Ms. Spradlin's indirect-purchaser claims must be dismissed because her alleged antitrust market, which is limited to topical imidacloprid products sold by the Pet Retailers, is too narrow. Dkt. 29 at 20. Ms. Spradlin responds that she has plausibly pleaded an antitrust market because the Pet Retailers "have carved out the distinct market and channel of distribution" in their industry. Dkt. 40 at 27–28.

"The relevant market is defined as the area of effective competition, which is typically the arena in which significant substitution in consumption or production occurs." *Fourquarean*, 143 F.4th 859 at 870. And, within a "broad market, well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes." *In re Harley-Davidson Aftermarket Parts Antitrust Litig.*, --- F.4th ----, 2025 WL 2374859 at *8 (7th Cir. Aug. 15, 2025). Many factors must be considered in defining an antitrust market or submarket, "including such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." *Id.*

In short, the relevant-market analysis is "pragmatic and factual," *Sharif Pharm.*, 950 F.3d 911, and all that is required at the pleadings stage is "a short and plain statement of the claim showing an entitlement to relief," *MCM Partners, Inc. v. Andrews-Bartlett & Assocs., Inc.*, 62 F.3d 967, 976–77 (7th Cir. 1995) (reversing dismissal because there is no "heightened pleading standard in antitrust cases" it was "not inconceivable" that the plaintiff could prove its alleged relevant market). Here, Ms. Spradlin has pleaded a market definition requiring a depth of factual analysis that is not available at the pleadings stage.

To start, Elanco's position that Ms. Spradlin's alleged "relevant market must be a *product* market" does not justify dismissal. *See* dkt. 29 at 20–21. Contrary to that argument, Ms. Spradlin's alleged antitrust market starts with a product—topical imidacloprid products. Dkt. 1 at 3. While Ms. Spradlin

narrows that market to only topical imidacloprid products sold by the Pet Retailers, *id.*, the Seventh Circuit has not foreclosed such a non-product-based submarket within a product market. *See Fourquarean*, 143 F.4th at 869–70 (defining a market as "comprised of . . . employers" and explaining that market definition is context-dependent and "deeply fact-intensive"). And in the *F.T.C. v. Whole Foods Market, Inc.* case that Ms. Spradlin relies on, the court defined a submarket of "premium, natural, and organic supermarkets" based on "a core group of particularly dedicated, distinct customers, paying distinct prices." 548 F.3d 1028, 1038–39 (D.C. Cir. 2008); *accord F.T.C. v. Staples*, 970 F. Supp. 1066 (D.D.C. 1997); *In re Pool Products Distribution Market Antitrust Litigation*, 940 F. Supp. 2d 367, 379–80 (E.D. La. 2013) (denying motion to dismiss a distributor-based market definition because plaintiffs alleged "practical industry indicia" supporting it).

Similarly, Elanco's argument that the market "fails to include all products that are reasonably interchangeable" with topical imidacloprid products is for a later stage of the case. *See* dkt. 29 at 21–23. "A 'relevant market' under the Sherman Act is comprised of the 'commodities reasonably interchangeable by consumers for the same purpose.'" *Sharif Pharm.*, 950 F.3d at 916. So Ms. Spradlin's market definition must account for interchangeability and correspond to the "commercial realities of the industry." *Id.* at 916–917. Here, her allegations plead differentiation by the type of product or mechanism of action used to control fleas and ticks. *See* dkt. 1 at 20–27. She therefore has pleaded more than "minor differences in features or

quality" in defining the market. See dkt. 29 at 23 (relying on *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962)). And while topical imidacloprid and topical fipronil products have similarities, Ms. Spradlin has pleaded that the industry and consumers consider them differently. Dkt. 1 at 22–29; see *Sharif*, 950 F.3d at 916–18 (explaining that, under Supreme Court precedent, consumer use determines interchangeability); *Pit Row, Inc. v. Costco Wholesale Corp.*, 101 F.4th 493, 505 (7th Cir. 2024). That is enough for now.

While Elanco may be able to show on a more developed evidentiary record that Ms. Spradlin's identified market—topical imidacloprid products sold by the Pet Retailers—is too narrow, it is sufficient at the pleading stage of this case. See *Todd*, 275 F.3d at 198 ("In antitrust cases in particular, the Supreme Court has stated that dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly.").

Ms. Spradlin's state-law claims therefore are not subject to dismissal for failing to plead a relevant antitrust market.

2. State-specific statutory requirements

Elanco argues that the Illinois Antitrust Act prohibits indirect purchasers from bringing antitrust class actions; the Maryland Antitrust Act bars indirect purchases from seeking damages; and the Hawaii and Massachusetts statutes impose pre-filing requirements. Dkt. 40 at 31–32. Ms. Spradlin responds that none of those provisions warrant dismissal. Dkt. 45 at 35–36.

The Illinois Antitrust Act prohibits class actions "in any court of this State" for indirect purchasers. 740 ILCS 10/7(2). The most recent courts to

address this question have held that this provision does not prohibit class actions brought under the statute in federal court. *City of Rockford v. Mallinckrodt ARD, Inc.*, 360 F. Supp. 730, 763–64 (N.D. Ill. 2019) (applying *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010)); *Hatchett v. Henry Schein, Inc.*, No. 3:19-cv-83-NJR, 2020 WL 733834 at *3–4 (S.D. Ill. Feb. 13, 2020). Elanco makes no argument in support of dismissal except that prior district court cases had reached the opposite result. Dkt. 45 at 16–17. Because *City of Rockford* and *Hatchett* provide the more substantive and thorough analysis of Supreme Court precedent, Elanco's motion to dismiss claims under the Illinois statute is denied.

The Maryland Antitrust Act also does not prohibit a claim for damages since its 2017 amendment. Md. Code Ann., Com. Law § 11-209(b)(2)(ii) (amendment recognized in *In re Seroquel XR Antitrust Litig.*, No. 20-1076-CFC, 2022 WL 2438934 at *19 (D. Del. July 5, 2022)).

Finally, compliance with the pre-filing requirements in the Hawaii and Massachusetts statutes does not need to be pleaded in a complaint. *In re Generic Pharms. Pricing*, 368 F. Supp. 3d 814, 834–35 (E.D. Pa. 2019) (describing the split of authority on the issue and concluding that notice is "not a pleading requirement"); *accord Edgar v. Teva Pharm. Indus., Ltd.*, No. 22-2501-DDC-TJJ, 2024 WL 1282436 at 33–34 (D. Kan. Mar. 26, 2024). Here too, the most recent district court decisions provide the more substantive and thorough analysis of governing precedent.

* * *

Ms. Spradlin's state-law indirect-purchaser claims therefore may proceed past the pleadings stage. *See Fourquarean*, 143 F.4th at 870.⁷

**IV.
Conclusion**

Elanco's motion to dismiss is **GRANTED in part and DENIED in part**.

Dkt. [28].

SO ORDERED.

Date: 10/7/2025


James Patrick Hanlon
United States District Judge
Southern District of Indiana

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⁷ Elanco also argues that Bayer's conduct before its purchase by Elanco cannot support Ms. Spradlin's claims. Dkt. 29 at 18, 25. Ms. Spradlin responds that Elanco entered and perpetuated the conspiracy that Bayer started, so Bayer's actions may be charged to Elanco. Dkt. 40 at 18–19 (relying on *Havoco of Am., Ltd. v. Shell Oil Co.*, 626 F.2d 549, 554 (7th Cir. 1980)). Elanco does not respond to that argument except to argue that Ms. Spradlin has not plausibly alleged a hub-and-spokes conspiracy. Dkt. 45 at 7. Because Ms. Spradlin has alleged vertical agreements instead of only a hub-and-spokes conspiracy, dkt. 1 at 3, her "allegations are sufficient" at this stage, *Havoco*, 626 F.2d at 554.