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FTC Check-Up on Health Care Trends Reveals New Competitive Wrinkles

Highlights from the FTC Workshop "Examining Health Care Competition"

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The Federal Trade Commission (FTC or Commission) recently hosted a workshop exploring trends and innovation in the health care industry that may affect competition, marking at least 10 years since the antitrust agencies formally examined competition issues in the industry.[1] Commissioner Ramirez's opening remarks reaffirmed the Commission's longstanding commitment to promoting health care competition as integral to improving quality, lowering costs, and expanding access. While the FTC is primarily a law enforcement agency, it also has important research, policy, and advocacy functions, and occasionally hosts workshops such as these to educate itself and industry stakeholders. The workshop was designed to enrich the Commission's knowledge through input from and dialogue with industry experts as it formulates its position on these issues. The two-day workshop examined three broad themes and their impact on competition: (1) the interplay of quality measures and price transparency; (2) professional regulation of health care providers; and (3) innovation and advancements in health care delivery and technology.

Measuring and Assessing Quality of Health Care, Price Transparency of Health Care Services, and Interplay between Quality and Price Transparency

The FTC workshop's sessions on quality and price transparency widely praised the progress made by government reporting structures and singular health systems over the past decade in developing and maintaining quality measures and price transparency, but also demonstrated that significant obstacles remain both in data collection and in connecting these process measures with patient outcomes and physician quality. One of the critical questions was how these quality measures can effectively be used by the antitrust agencies in evaluating mergers, acquisitions, or clinical integration.

Recent developments are focused on three primary goals: (1) increasing price transparency, (2) transitioning to outcome-based measures as opposed to process measures for quality, and (3) the best way to translate electronic, data-driven measures. But the panelists noted that these measures are still imperfect because they include biases, are inconsistent across measures, and often have a weak correlation to patient outcomes. These problems render some of the more pervasive quality measures limited in their applicability. The panelists noted several critical challenges to developing more effective quality measures: (1) measuring the performance of individual physicians and medical groups, (2) adjusting quality measures for patient-specific risk, (3) accurately measuring quality against value, and (4) time lag between an organizational change, such as a merger, and any change in quality.

The panelists noted the problem of evaluating the antitrust implications of mergers and acquisitions based on the static and imperfect nature of these measures. The time lag between an organizational change and a quality change means that it is possible that quality actually decreases for the first 12 to 24 months before gains are

realized. Though this data is critical for the antitrust agencies to use as a proxy for efficiency gains, the time frame may not be sufficient for the agencies and it may lead to the rejection of efficiency-enhancing deals.

Several panelists noted that a key challenge is making data accessible and understandable for consumers. One panelist quoted a study revealing substantial incongruity between the availability of price transparency tools and their use — 98% of health plans offer a price transparency tool, but only 2% of consumers use these tools. In large part, the panelists believed this was due to the fact that consumers do not have meaningful information to compare cost with quality or value. In addition to failures to provide meaningful information to consumers, some panelists also noted that price transparency can lead to higher prices. High-priced hospitals are unaffected because they negotiate on the strength of their brand and perceived quality. Once those prices are revealed, low-priced hospitals seek prices on par with the higher-priced hospitals. Absent meaningful quality information, there is significant potential for adverse price effects. Despite these concerns, the panelists largely agreed that the procompetitive effects of transparency could outweigh the anticompetitive effects by devising a delivery mechanism short of full disclosure.

The panelists addressed the impact of market concentration on the use of price transparency measures, agreeing that high-quality organizations should not be punished for their "good work." Two panelists noted that many organizations with the greatest power do not have substantial market share; their power and "must have" status emanate from their brand. Another noted that perhaps a different policy approach rather than antitrust should be taken to address higher prices in such a framework.

Professional Regulation of Health Care Providers

Several of the FTC's recent activities reflect its interest in opening health care markets to a broader range of providers by slowing the proliferation of professional regulations that restrict market entry. The first panel addressed this issue with a discussion on the implication of professional regulations — such as registration, certification, licensure, and scope of practice — on competition.

The panelists highlighted aspects of the current regulatory scheme that make the health care industry particularly susceptible to competitive harm. While the government creates barriers to entry in the form of licensure and scope of practice requirements (all of which may vary by state, profession, and specialty), it relies on private entities (typically national organizations such as professional associations) to develop, set, and administer the qualifying standards, which can create the risk of self-interested anticompetitive behavior from the bodies developing those standards.

Issues related specifically to scope of practice restrictions on the types of services a particular medical profession can provide were also of particular interest to the panelists. While physicians practice under general undifferentiated medical (GUM) licenses, non-physician providers are limited by scope of practice laws. Several panelists suggested that this adversely affects access to and quality of care, as physicians are able to immediately implement new health care developments, but other providers who may have the training and ability to do so must nonetheless wait on legislative amendments to their scope of practice before providing the newly developed services.

The panelists were also interested in the great variation in regulations between states. They discussed an initiative to create an Interstate Compact that would allow physicians licensed in participating states to practice across state borders, addressing concerns related to entry barriers resulting from the existence of separate state licensing requirements.

Innovations in Health Care Delivery and Advancements in Health Care Technology

The growth of technology has spurred the creation and adoption of new health care models, including retail clinics, urgent care facilities, and remote medical delivery such as telemedicine. Proponents believe that these delivery models allow greater scale and lower cost by reducing in-person visits and providing better preventative care and increased access to the significant number of patients without primary care physicians (PCP). Technology often creates industry-changing efficiencies but may come at a potentially significant anticompetitive cost — balancing these competing interests is critical to encouraging efficiency-enhancing growth without restricting competition.

The great promise behind health care delivery innovations is the ability to improve access to underserved patients, improve quality, and decrease costs. But critics fear that (1) the underserved do not have or have limited Internet access, which these innovations do not address, (2) convenience will actually increase total costs despite lower per-service costs as it leads to overuse, (3) telehealth undermines the PCP relationship by discouraging preventative care and disrupting chronic illness treatment, and (4) the quality is inferior.

Retail clinics have experienced explosive growth in recent years due to offering services at convenient hours and locations, providing care at lower costs, and connecting patients to primary care physicians. Critics, however, dispute the purported benefits of retail clinics, noting that these clinics could suffer from overuse that diminishes any potential cost benefits, disjointed care that disrupts the patient-PCP relationship, and low-quality care.

Recent advances in health care technology, particularly involving electronic health care records, can also have potential competitive implications. Though applauding and highlighting the recent progress in health information technology (HIT) and health information exchanges (HIE), some panelists stressed that interoperability concerns may counteract many of the significant benefits of such technology. According to the panelists, these proprietary and closed systems have a deleterious impact on competition, costs, and patient care quality.

Conclusion

The recent attention that competition in the health care industry has received is reminiscent of the agencies' work in the early 2000s, when the FTC and U.S. Department of Justice Antitrust Division held extensive joint hearings and released a 2004 report providing their recommendations for antitrust enforcement in the health care industry.

The recent regulatory environment, including federal and state efforts in health care reform, has spurred the antitrust agencies to study trends in hospital consolidation and physician group acquisition. The FTC has stated that competition in health care is a high priority because vigorous competition promotes increased quality and lower costs. The agency plans to continue to understand the competitive effects of innovations such as retail clinics and telehealth. It also recognizes the importance of promoting coordination of care in the industry by supporting and fostering the "Triple Aim" of reducing costs, increasing quality, and expanding access.

The FTC workshop may result in further study or reports from the agencies issuing guidelines on antitrust considerations in the health care industry. In any event, it is clear that the agencies will continue to examine these issues and focus their enforcement efforts in the health care industry.

The FTC is accepting written comments on these issues through April 30, 2014.

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Endnotes

[1] For the complete list of moderators, panelists, and participants, see the FTC's description and agenda: http://www.ftc.gov/news-events/events-calendar/2014/03/examining-health-care-competition.

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