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Hospital Wins First Round Against Largest Rival in Antitrust Suit Alleging Illegal Exclusive Dealing Agreements with Insurers

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The waves of change affecting health care providers include reimbursement and funding developments, the impact of the Affordable Care Act, technological and medical advances, provider network design transformations imposed by payors — and antitrust. The Federal Trade Commission's ("FTC") and Department of Justice's increased focus on enforcement in health care markets is well documented. What is sometimes forgotten is that the antitrust laws also allow private causes of action brought by competitors, payors, or customers. It will likely be a historical footnote that the FTC's seminal *St. Luke's* case began as private litigation brought by a rival hospital before the FTC or the Idaho Attorney General ever showed up.

Another example of this dynamic is playing out in Peoria, Illinois. There, a small regional hospital's antitrust suit alleging illegal exclusive dealing and attempted monopolization against its largest competitor will move forward following a district court's denial of the defendant hospital's motion for judgment on the pleadings. *Methodist Health Svcs. Corp. v. OFS Healthcare System, d/b/a Saint Francis Med. Ctr.*, No. 1:13-cv-01054 (C.D. Ill. Mar. 25, 2015). The complaint alleges that defendant is a "must have" for health insurers, and that defendant leverages that status to prevent health insurers from contracting with the plaintiff and other competing hospitals.

In 2013, Methodist Health Services Corporation ("Methodist") filed a $300 million antitrust suit accusing its largest rival, Saint Francis Medical Center ("Saint Francis"), of using exclusionary contracting tactics to effectively prohibit health insurers from doing business with competing hospitals. Saint Francis, a 616-bed hospital that is part of the OSF Healthcare System, is the largest hospital in the Peoria, Illinois region, and the only provider of certain essential medical services in Peoria, Tazewell, and Woodford Counties (the alleged relevant geographic market). Methodist, a smaller health care delivery system, includes a 329-bed acute care hospital in Peoria. In addition to Saint Francis and Methodist, there are four other hospitals in the relevant geographic area.

Methodist's suit claims Saint Francis engaged in exclusive dealing in violation of Section 1 of the Sherman Act, monopolization and attempted monopolization in violation of Section 2 of the Sherman Act, and similar state law violations. Methodist asserts that Saint Francis, as the largest hospital in the region and the only local provider of certain essential medical services, is a "must have" hospital for health insurers. Methodist also alleges that Saint Francis uses its size and "must have" status to obtain exclusive dealing commitments from health insurers, by threatening to withdraw from an insurer's plan and/or impose substantial pricing penalties if an insurer includes a competing hospital in its network. Methodist further alleges that these practices effectively foreclose it and other competing hospitals from more than 60 percent of the commercial health insurance market in the relevant geographic area. Methodist's suit seeks to enjoin Saint Francis's exclusionary conduct, as well as treble damages.

District Court's Decision

Saint Francis filed a motion for judgment on the pleadings, arguing that the complaint failed to plead, and cannot adequately plead, plausible relevant product markets or substantial foreclosure in those markets. Applying the same legal standard as for a motion to dismiss — finding for defendant only if it appears beyond a doubt that plaintiff cannot prove any facts that would support its claim for relief — the court ruled for Methodist, permitting the suit to proceed.

Relevant Product Market

Methodist defines the relevant product markets as (1) the sale of inpatient hospital services to commercial health insurers, and (2) the sale of outpatient surgical services to commercial health insurers. Saint Francis argued that the alleged relevant product markets are impermissibly narrow because they improperly and arbitrarily exclude government payors. Saint Francis cited precedent that defined relevant product markets based on all potential buyers of inpatient or outpatient services — i.e., commercial and government payors. *See Little Rock Cardiology Clinic PA v. Baptist Health*, 591 F.3d 591 (8th Cir. 2009); *see also Marion Healthcare LLC v. Southern Illinois Healthcare*, No. 12-CV-00871, 2013 WL 4510168 (S.D. Ill. Aug. 26, 2013).

In opposing Saint Francis' motion, Methodist argued that *Little Rock* and *Marion* are at odds with Supreme Court precedent that requires product markets to be defined by reasonable interchangeability of use, and that allow for submarkets. *See Brown Shoe Co. v. United States*, 370 U.S. 294 (1962); *see also United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956). In this case, the court acknowledged that typically in cases where a plaintiff seller complains that a competitor's exclusionary conduct foreclosed it from selling opportunities, that all buyers to whom the defendant's rivals might sell are reasonably interchangeable under *Brown Shoe*. Nonetheless, the court agreed with Methodist that under certain circumstances a subgroup of buyers — and thus a submarket — is appropriate. Significant here was the fact that Methodist alleges, and Saint Francis admits, that access to commercially insured patients is critical to a hospital's long-term sustainability in light of the comparatively low prices paid by government payors. The court therefore found that the sale of inpatient hospital and outpatient surgical services to commercial health insurers is not interchangeable with the sale of those same services to government payors.

Foreclosure

The court briefly addressed Saint Francis's argument that Methodist failed to plead substantial foreclosure in the relevant market as a result of the exclusive dealing, because Methodist only alleges foreclosure of a subset of patients — 60% — covered by commercial health insurers. The court concluded that this argument was inappropriate at this stage of litigation because it ignores factual allegations in the complaint from which the court can reasonably infer that Methodist will be able to establish the extent to which it is foreclosed from the self-funded portion of the commercial insurance market.

This case has the potential to create important precedent and guidance regarding the use of exclusive contracts, particularly when employed by parties with market power. Beyond private litigants, the potential competitive harm from exclusive dealing has been and continues to be scrutinized by the federal antitrust enforcers. If it plays in Peoria…

If you have any questions about this topic, please contact the author(s) or your principal Mintz Levin attorney.

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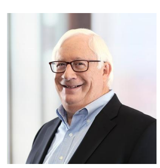

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