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Optimum's shot across the bow: An antitrust challenge to cooperation agreements

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Seeking to protect their investments in the face of increased liability management exercises, lenders began signing "cooperation agreements," which required the lenders to cooperate when negotiating to restructure existing debt or provide new debt to their shared borrower. These cooperation agreements protect lenders from "creditor-on-creditor violence" — when one lender (or a subset of lenders) renegotiates with a borrower to the benefit of the negotiating lender and the detriment of the others.

Optimum alleges that because the Cooperative controls approximately 88% of the entire leveraged finance market and 99% of Optimum's outstanding debt, the Cooperation Agreement has made it incredibly difficult for Optimum to restructure its debt.

In November 2025, Optimum Communications, Inc. (f/k/a Altice) and CSC Holdings, LLC (together, Optimum) filed a federal antitrust lawsuit against its lenders — Apollo, Ares, GoldenTree, Loomis, Oaktree, and PGIM (collectively, the Cooperative) — challenging their cooperation agreement as an unlawful cartel.

In the complaint,1 Optimum alleges two antitrust theories: (i) the Cooperation Agreement constituted a group boycott of Optimum because the Cooperative members agreed not to individually work with Optimum to restructure debt absent supermajority approval from the Cooperative, and (ii) the Cooperation Agreement constituted an unlawful price-fixing scheme by requiring the Cooperative's steering committee to negotiate with Optimum exclusively, rather than allow Optimum to negotiate individual discounts with individual lenders.

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While the case remains in its infancy, the first important checkpoint arrives next month when defendants are expected to file their motion to dismiss. As briefing and potentially discovery begin, practitioners and market participants should watch out for several key issues.

Determining the relevant market

The first step in an antitrust case is to define the relevant product market in which the challenged conduct occurred to understand the effects of the conduct. When assessing the relevant product market, courts often look to see whether there are other substitute products that are "reasonably interchangeable" with the products or services offered by the defendant(s).

Here, the complaint alleges that the relevant product is leveraged debt and that there are two relevant markets: (i) the broader leveraged finance market, and (ii) the market for Optimum's outstanding debt, which Optimum considers a sub-market. While Optimum includes several allegations explaining why the leveraged finance market is sufficiently unique, defendants may argue that Optimum's proposed product markets are too narrow for failing to include other lenders or sources of credit to which Optimum can turn.

Evaluating the scope of the cooperation agreement

Similarly, the scope and breadth of the Cooperation Agreement will be a salient issue. Under the "ancillary restraints" doctrine, competitors party to a joint venture, partnership, or cooperative agreement generally may restrict the members' behavior in ways that are ancillary to the overall purpose of the cooperative. By contrast, if the members restrict how they behave in ways untethered to cooperative's central purpose, then those restrictions may be impermissible "naked" restraints.

Here, the court will likely examine how sufficiently connected the Cooperation Agreement's restrictions are to the Cooperative's lending function. For example, the court may examine whether the Cooperation Agreement restricts how the defendants behave beyond their relationship with Optimum and with other borrowers or in other transactions.

Similarly, the court may address Optimum's claim that cooperation agreements are problematic in principle because defendants have used them to operate an unlawful cartel across the leveraged finance market. Thus, it will be critical to see whether discovery reveals cross-lender communications that reflect a broader agreement or intent to use cooperation agreements systematically across the market.

Balancing the anticompetitive effects and procompetitive benefits

Lastly, it will be important to watch how the parties and the court discuss the *effects* of cooperation agreements. Antitrust liability traditionally turns on whether the challenged conduct is harmful or beneficial *on balance*. Certain conduct (e.g., price fixing, market allocation, and some group boycotts) is treated as *per se* unlawful. Other conduct is subject to "rule of reason" analysis, with courts weighing the conduct's anticompetitive effects against its procompetitive benefits.

Here, Optimum has alleged **per se** antitrust violations, characterizing the Cooperation Agreement as a price-fixing scheme and a group boycott. Moreover, it has alleged specific anticompetitive effects, including that the Cooperation Agreement has caused Optimum to suffer reduced access to capital, elevated its financing costs, and increased its likelihood of bankruptcy due to the inability to renegotiate its debt.

Conversely, defendants will argue that cooperation agreements have significant procompetitive benefits. For one, they will likely claim that cooperation agreements increase output in the credit markets because they help lenders to protect their investments and thus make lenders more willing to lend.

Similarly, defendants may argue that these cooperation agreements are necessary to efficiently facilitate joint lending arrangements, which in turn lowers the cost of credit for all borrowers by spreading credit risk. Lastly, defendants may argue that the reduced availability and higher cost of credit will harm economic growth and innovation as well.

Conclusion and takeaways

In sum, this action could mark a turning point in how borrowers and lenders operate in the leveraged finance space. Moreover, it could embolden other similarly situated borrowers to consider antitrust challenges to such agreements. As the case proceeds, lenders should ensure that their cooperation agreements and practices minimize undue antitrust risk in the following ways.

- **Explain the Cooperation Agreement's Procompetitive Purpose**: Lenders should describe the procompetitive purpose of these agreements, including that they reduce transaction costs, facilitate lower-cost joint lending arrangements, and prevent costly and burdensome piecemeal litigation triggered by liability management exercises.
- **Describe the Restrictions' Ancillary Purpose**: Relatedly, lenders should employ restrictions that are sufficiently connected to the agreement's stated procompetitive purpose. Critically, the agreements should not control how members behave outside of the specific credit facility at issue. Further, lenders can consider minimizing risk by establishing frameworks that guide how the lenders operate, rather than dictating specific terms or price levels to the members.
- **Establish Information-Sharing Protocols and Practices**: Lenders should ensure that they are only sharing information relevant to the specific joint lending arrangement and are properly routing any sensitive information through clean teams when needed.

Notes:

[1] *Optimum Communications Inc. v. Apollo Capital Management LP*, No. 25-cv-9785, *complaint filed*, 2025 WL 3755260 (S.D.N.Y. Nov. 25, 2025).

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