

Healthcare Power Play:

Antitrust Enforcement in the Obama Administration

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Panelists

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Antitrust News

- Updated Merger Guidelines
 - Updated sections on hypothetical monopolist test, concentration levels that invite government scrutiny, coordinated effects and entry discussions
 - New sections on powerful buyers, mergers between competing buyers, and partial acquisitions
- Case Filings
 - Antitrust cases filed by the government declined 6% in 2009, but the current number of cases remains higher than during any year from 2004 through 2007*
 - Private antitrust case filings declined sharply in 2009, and are at the lowest level since 2004*

*http://www.econgroup.com/peg_news_view.asp?newid=40

Recent FTC Enforcement Actions

- Provider Mergers
 - *In re Carilion Clinic* (July 24, 2009)
- Advisory Opinion Letters
 - *TriState Health Partners, Inc.* (April 13, 2009)
- Provider Network Joint Venture Settlements
 - *In re Independent Physician Associates Medical Group, Inc., d/b/a/ AllCare IPA* (Dec. 24, 2008)
 - *In re Boulder Valley Individual Practice Association* (Dec. 24, 2008)
 - *In re Alta Bates Medical Group, Inc.* (June 4, 2009)
 - *In re M. Catherine Higgins* (Feb. 5, 2010)
 - *In re Roaring Fork Valley Physicians I.P.A., Inc.* (Feb. 3, 2010)

Recent DOJ and State (AG) Enforcement Actions

- Health Plan Mergers
 - *Blue Cross Blue Shield of MI/Physicians Health Plan of Mid-Michigan* (March 8, 2010)
 - *Highmark/IBC* (Jan. 2009)
- Health Plan Conduct
 - *In re Anthem* (ongoing) (CT AG has disclosed ongoing investigation into Anthem's use of Most Favored Nations clauses.)

Private Litigation

- *Franco v. Memorial Hermann Healthcare Sys.*, Case No. 2006-79945 (Tex. Dist. 2010)
 - Jury rejects antitrust claims filed by physician investors in a competing hospital.
- *West Penn Allegheny Health Sys. v. UPMC*, Case No. 2009-00480 (W.D. Pa. 2009)
 - Antitrust claims against UPMC and Highmark dismissed under *Twombly* for failure to allege antitrust injury.
- *St. Francis Med'l Ctr. v. C.R. Bard Inc.*, Case No. 2007-0031 (E.D. Mo. 2009)
 - Motion for summary judgment granted in class action challenging Bard's exclusive dealing arrangements and claiming that non-GPO participants were forced to pay higher rates, where plaintiffs failed to properly define the relevant product market or provide evidence of adverse competitive effects.
- *Atlanta Bread Co. Int'l, Inc. v. Lupton-Smith*, Case No. S08G1815 (Ga. 2009)
 - Non-compete in franchise agreement was unreasonable and unenforceable because it contained no territorial limitation.
- *Villare v. Beebe Med'l Ctr Inc.*, Case No. 2008-00950 (D.Del 2009)
 - Sherman Act claims dismissed for failure to plead any effect on interstate commerce.