



Case & Project Experience

NERA Economists' Role in *FTC v. Laboratory Corporation of America, et al.*

Overview

LabCorp's acquisition of Westcliff Medical Laboratories in 2010 was the first transaction in which the Federal Trade Commission (FTC) went to court seeking a temporary restraining order and preliminary injunction since the 2010 Horizontal Merger Guidelines were issued. After a hearing in United States District Court for the Central District of California, the Honorable Andrew J. Guilford denied the FTC's request for a preliminary injunction and the Court of Appeals denied the FTC's request for a temporary stay. The FTC then dismissed its appeal and complaint and closed its investigation.

Background

At the time of the transaction, LabCorp and Westcliff were clinical laboratories that provided laboratory testing services to physicians and physician groups. Both companies had laboratory facilities and patient service centers in Southern California. Both labs also had contracts with physician groups, including independent practice associations (IPAs) in Southern California. Westcliff, however, was in the midst of bankruptcy proceedings. In May 2010, LabCorp entered into an asset purchase agreement to purchase substantially all of Westcliff's assets.

The FTC focused on the potential for the transaction to raise the prices paid by physician groups and IPAs in Southern California. In Southern California, many physician groups and IPAs care for patients who have health insurance coverage through a health maintenance organization (HMO). HMOs typically pay physician groups for the health services that they provide to their members (i.e., insured lives) on a fixed payment basis called a capitation payment (e.g., per member per month). In turn, many, but not all, physician groups contract directly with laboratory providers for

laboratory services on a fixed payment basis. The FTC alleged that there was a separate market for laboratory testing services sold to physician groups and IPAs in Southern California on a capitated basis, and that the transaction would reduce the number of significant competitors from three to two, with the result being higher prices and inferior service.

NERA's Role

NERA was retained to analyze a broad range of issues, including the relevant market definition, market shares and concentration, the potential for the transaction to harm competition, the prospect that entry would assure competitive pricing, and the likely efficiencies and cost savings of the transaction. NERA Senior Vice Presidents Dr. Lawrence Wu and Dr. Thomas McCarthy submitted a declaration on behalf of LabCorp, and Dr. Wu provided deposition testimony on these issues.

The Decision

Judge Guilford heard oral arguments on the matter. In February 2011, he issued an order denying the FTC's request for a preliminary injunction. In his decision, Judge Guilford cited Dr. Wu's testimony and the declaration filed by Dr. Wu and Dr. McCarthy extensively. They found that there were many labs that provided clinical lab services to physician groups in Southern California on a capitated basis. They also used econometric methods to analyze Westcliff's recent entry into capitated contracting and found that LabCorp did not respond by bidding more aggressively or lowering its prices. In addition, they found that the transaction would produce efficiencies from both cost and supply savings. These facts were central to Dr. Wu's and Dr. McCarthy's conclusion that the transaction would not harm competition.

Experts Involved

Dr. Lawrence Wu

Dr. Wu's expertise is in the economics of antitrust and intellectual property. He has testified in US district courts and in a variety of regulatory proceedings. Prior to joining NERA, he was a staff economist in the Bureau of Economics of the Federal Trade Commission (FTC). In the area of antitrust, Dr. Wu has evaluated the competitive effects of numerous mergers and acquisitions, including proposed and consummated transactions. He also has been retained as an economic expert to testify on issues related to antitrust class certification, liability, and damages. He has testified on issues related to price fixing, as well as market definition and market power in antitrust litigations involving allegations of exclusive contracting, price discrimination, and anticompetitive exclusionary conduct. Dr. Wu has analyzed these and other competitive issues in a variety of retail, manufacturing, and service industries, but he is particularly well known for his work in the area of health care, which includes health insurance, hospital services, physician services, and a variety of medical devices and technologies. Dr. Wu is the editor of two books on the economics of antitrust.

Dr. Thomas McCarthy

Dr. McCarthy directs NERA's Health Care Practice, which specializes in the economic analysis of regulatory, public policy, and litigation matters in health care markets. He has analyzed the competitive effects of many health care industry mergers, including evaluating the horizontal and vertical issues created by mergers of hospitals, hospital systems, health insurers, physician groups, physician practice management companies, imaging and other medical device manufacturers, and home health care companies. Dr. McCarthy has been involved in numerous health care antitrust liability and damages cases, and has also worked on antitrust damages or class certification in a variety of other industries, including soft drinks, agriculture, candy, ice cream, auto parts, oil, video distribution, and newspapers. Dr. McCarthy has testified as an economic expert in federal and state court, as well as before arbitration panels, state insurance agencies, and the International Trade Commission.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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