The Department of Justice alleges two hospitals unlawfully agreed to restrict marketing in each other's primary area

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The United States Department of Justice (DOJ) recently brought suit against Charleston Area Medical Center (CAMC) and St. Mary's Medical Center (St. Mary's) in the United States District Court for the Southern District of West Virginia. In its suit, the DOJ alleged that the two hospitals unlawfully agreed to allocate marketing territories, which could constitute a per se violation of Section 1 of the Sherman Act.

Along with the complaint, a proposed settlement agreement was also filed with the court simultaneously. If approved by the court, the settlement would not only prohibit CAMC and St. Mary's from allocating marketing territories, but it would also prohibit the hospitals from communicating with one another concerning their marketing activities and require that each facility implement antitrust compliance measures designed to prevent future anticompetitive conduct.

The DOJ's complaint alleged that CAMC agreed not to place print or outdoor advertisements in Cabell County, West Virginia, where St. Mary's is located; and likewise, St. Mary's agreed not to place print or outdoor advertisements in Kanawha County, West Virginia, where CAMC is located. The DOJ alleged that the two hospitals restricted competition by allocating marketing territories since 2012. Such anticompetitive agreements are troubling as they limit competition between the hospitals in a way that has the potential to deprive patients of information needed to make healthcare decisions, in addition to depriving the practitioners working for each facility with the opportunity to advertise their services. Hospitals must recognize that any agreement that has the potential to disrupt competition in the marketplace can be a violation of the antitrust laws, regardless of whether the antitrust enforcement agency can demonstrate a particular consumer was harmed. In other words, the act of entering into such an agreement is the violation, as opposed to the harm caused by the anticompetitive conduct.

Another important take away from the DOJ's allegations is related to the informal nature of the agreement between the two hospitals in this case. "Handshake agreements," "informal agreements," "gentlemen's agreements," and other types of informal understandings are clearly sufficient to support a violation under Section 1 of the Sherman Act. Accordingly, all entities, including hospitals, must be very careful when engaging in discussions with a competitor. It is advisable to seek the assistance of counsel any time an "understanding" between two competitors is even being considered.

Authors