



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

**STATEMENT OF THE FEDERAL TRADE COMMISSION CONCERNING THE
COMMISSION'S CONSENT ORDER**

In re Your Therapy Source, LLC, Neeraj Jindal, and Sheri Yarbray
Commission File No. 171-0134
October 31, 2019

Three years ago, the Federal Trade Commission and the Department of Justice's Antitrust Division jointly issued guidance for human resource ("HR") professionals and others who are involved in hiring and compensation decisions. We created that guidance to educate and inform HR professionals and others involved in hiring and compensation decisions about how the antitrust laws apply in the context of employment. Just as it was true then, it is still true now that the Commission is committed to ensuring that workers receive the benefits of a competitive market for their services. As the 2016 guidance explains:

Free and open markets are the foundation of a vibrant economy. Just as competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation, competition among employers helps actual and potential employees through higher wages, better benefits, or other terms of employment. Consumers can also gain from competition among employers because a more competitive workforce may create more or better goods and services.¹

The outcome in this case affirms that commitment.

The Commission has voted to finalize the consent order, and send responses to commenters in the matter of Your Therapy Source, LLC ("Your Therapy Source"), Neeraj Jindal, and Sheri Yarbray.² As alleged in the complaint,³ Your Therapy Source, LLC ("Your Therapy Source"), a provider of therapist staffing services to home health agencies in Texas, Sheri Yarbray as the owner of Your Therapy Source, and Neeraj Jindal as the owner of Integrity Home Therapy entered into an agreement to lower wages to their contracted therapists and invited four other competitors to collude on these rates. The Commission alleged that their agreement was per se illegal and harmed competition.

¹ U.S. Dep't of Justice & Federal Trade Commission, *Antitrust Guidance for Human Resource Professionals* at 2 (Oct. 20, 2016), https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf.

² This statement reflects the views of Chairman Simons and Commissioners Phillips and Slaughter.

³ See Compl., *In re Your Therapy Source et al.* (July 31, 2018), https://www.ftc.gov/system/files/documents/cases/1710134_your_therapy_source_complaint_7-31-18.pdf.

The Commission appreciates the level of public interest that it has received in this matter.⁴ It reaffirms the importance of our efforts to pursue wage-fixing cases. Issues raised by the public comments are addressed below.

Monopsony Power

The Commission takes very seriously the potential for monopsony power among employers to affect workers' wages and mobility. Monopsony power requires a showing that employers (or an employer) have significant market power in the market for labor, giving them the ability to set wages below competitive levels. In this case, there was no evidence that credibly suggested the existence of monopsony power. At the time of our investigation, respondents were small business owners of two therapist staffing companies, and operated in the Dallas/Fort Worth area where there are many other therapist staffing companies that did not participate in the agreement.

Monetary Penalties

The law gives the Commission the authority to issue an order requiring a respondent to stop engaging in anticompetitive conduct, but the law does not provide the Commission with the authority to impose punitive civil penalties in antitrust conduct cases like this one. After a respondent is under order, the Commission may seek civil penalties for violations of the order. To monitor compliance, the Decision and Order requires respondents to submit written compliance reports and permits the Commission to access respondents' records and to conduct interviews with them. Should respondents violate the Decision and Order, the Commission will consider all appropriate penalties and other steps to enforce the Decision and Order.

The Commission may and does seek equitable monetary remedies — including disgorgement and restitution — to compensate victims for losses resulting from unlawful conduct. As detailed in the Complaint, Respondents in this case entered into a per se illegal agreement to fix wages. The facts showed that this per se illegal agreement harmed the competitive process because, by its nature, it involved competitors agreeing to substitute their collective decisions for the normal workings of the marketplace. However, the evidence in this case did not provide support for seeking equitable monetary remedies. That is, our investigation did not yield evidence that any reductions in pay rates were the result of the unlawful conduct. Noteworthy here is the fact that the FTC staff launched an investigation very quickly after learning of Integrity's owner's invitation to collude, which may explain the lack of such evidence. We will continue to investigate this type of behavior and will not hesitate to seek equitable monetary remedies in cases where such remedies are appropriate.

Notice

Based on the facts, we do not believe an order should include a requirement to provide notice of the Commission's action to the individual therapists here. Because the facts found in

⁴ See Public Comments, Fed. Trade Comm'n, *In re Your Therapy Source et al.*, <https://www.ftc.gov/policy/public-comments/2018/08/initiative-769>.

the investigation did not indicate that any therapists' wages were reduced as a result of the illegal agreement, individual notice would not be likely to facilitate recovery in private civil litigation. However, the Commission will take steps to ensure that this order and the facts of this case are disseminated as widely as possible in order to educate staffing firms, home healthcare workers, and small businesses about the illegality of wage fixing and to emphasize that the FTC will be a vigilant cop on the beat.

Admissions of Liability

When the circumstances of a given case merit doing so, the Commission will consider seeking admissions of fact or law. In this case, we did not obtain such an admission. As the Washington Center for Equitable Growth and the American Antitrust Institute noted in their public comments, requiring admissions of liability could result in fewer settlements and more litigation surrounding otherwise effective remedies, which would result in the enforcement of fewer matters due to resource constraints.⁵ The Washington Center for Equitable Growth believes that the Commission should seek admissions of liability when they are “necessary to prevent recidivism or deter others from engaging in similar behavior,”⁶ yet the American Antitrust Institute notes that “[f]oregoing admission of key facts or liability seems like a comparatively small price to pay for the gain in scarce agency time and resources.”⁷ The amount of resources required to litigate a case cannot be overstated. When deciding whether to settle a case, we have to seriously consider whether the outcome of a protracted litigation will provide material benefits beyond the remedy obtained through a negotiated settlement.

Criminal Referrals

The Commission does not have criminal jurisdiction. Instead, where an investigation uncovers facts that could give rise to criminal liability, the Commission routinely refers matters to the Department of Justice and state law enforcement agencies for potential criminal prosecution. Once we make a referral, the other agency makes the ultimate determination as to whether or not to proceed. No inference can or should be made as to whether we referred this matter for criminal prosecution based on the Commission's action in this case.

Conclusion

After careful consideration of each comment, we have concluded not to modify the order. The remedy that we have accepted is carefully tailored to match the facts and circumstances of this case. The remedy prohibits the parties from colluding with competitors on wages paid to their employees or independent contractors, and bars them from entering into agreements to lower, fix, maintain, or stabilize the therapists' or other independent contractors' wages. The

⁵ See Michael Kades & Raksha Koppam, Washington Center for Equitable Growth, Pub. Cmt. No. 00104, *In re Your Therapy Source et al.* at 1 (Aug. 30, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/08/00104-155424.pdf; American Antitrust Institute, Pub. Cmt. No. 00106, *In re Your Therapy Source et al.* at 1 (Aug. 30, 2019), https://www.ftc.gov/system/files/documents/public_comments/2018/08/00106-155423.pdf.

⁶ Cmt. of Washington Center for Equitable Growth at 2.

⁷ Cmt. of American Antitrust Institute at 14.

remedy also bars the parties from inviting competitors to enter into such agreements or exchanging information with competitors related to compensation of employees and independent contractors.

The Commission vigorously enforces the antitrust laws with respect to large and small companies alike. Going forward, we will continue to aggressively investigate any instances in which companies collude or attempt to collude to fix wages. Likewise, we will continue to seek relief commensurate with the facts and circumstances of each case, including, where appropriate, disgorgement, notice, and admissions.