

Blog Post

DOJ Antitrust Division Approves COVID-related Competitor Collaboration Under Expedited Procedures

April 7, 2020

The Department of Justice Antitrust Division (the Antitrust Division) has granted its approval to a plan by a group of medical supply manufacturers to collaborate in response to the COVID-19 pandemic. In a business review letter issued on April 4, the Antitrust Division stated that McKesson Corp., Cardinal Health, Owens & Minor, Medline Industries and Henry Schein Inc. could work together to speed up the manufacture and distribution of COVID-19 supplies. The business review is the Antitrust Division's first since announcing a new procedure in March to provide expedited guidance on COVID-19 related requests.

The parties' request was submitted on March 30th and described their plan for coordination. Their collaboration would increase their production of personal protective equipment (PPE) and would ensure delivery on an expedited basis of PPE to the parts of the country with the greatest need. Indicating that the parties' activities are being taken in response to calls to action by FEMA, HHS and the White House, the Antitrust Division noted that the parties' conduct was consistent with the antitrust laws, which typically permit action that is (1) compelled by an agreement with a federal agency or a clearly defined federal government policy and (2) subject to supervision by a federal agency. In addition, the Antitrust Division noted that even if the

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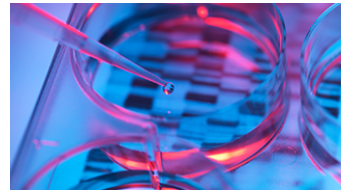
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proposal did not fully satisfy the above-described standard, the conduct was nevertheless likely to offer unique benefits justifying its approval, and specifically noted that the parties' activities would be undertaken under the supervision of FEMA.



Finally, in approving the request, the Antitrust Division noted that the proposed coordination would be “limited in scope and duration,” was “necessary to address COVID-19 related scarcity,” and that it “will not extend beyond what is required to facilitate the availability of needed supplies.” In addition, the Antitrust Division noted that the requesting parties were “not using the collaboration to increase prices, reduce output, reduce quality or otherwise engage in COVID-19 profiteering.”

A copy of the Antitrust Division's approval letter can be found [here](#).

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