

Blog Post

DOJ Antitrust Division Grants Green Light for Pharma Companies Sharing COVID-19 Treatment Drug Production Information

July 27, 2020

The Department of Justice Antitrust Division has advised several pharmaceutical companies that they can share competitive information regarding the status of their respective efforts to develop a COVID-19 treatment without running afoul of the federal antitrust laws. Specifically, in a [letter issued on July 23](#), the Antitrust Division stated that it had no intention to challenge a proposal by a group of pharmaceutical companies to exchange information about the parties' ability to manufacture monoclonal antibodies that might be used to treat COVID-19.

The Antitrust Division's announcement is its fourth in a series of "Business Review Letters" that it has issued during the pandemic to provide the business community with guidance concerning what types of cooperation among competitors will be permitted as the country searches for ways to combat the COVID-19 virus. When announced earlier this year, the Antitrust Division pledged to review and opine on these requests promptly, and this announcement lives up to that pledge, as the requesting parties filed their request fewer than ten days prior to the Antitrust Division's announcement.

In their request, the pharmaceutical companies indicated to the Antitrust Division that they were independently developing antibody agents that might be an effective treatment for COVID-19, but

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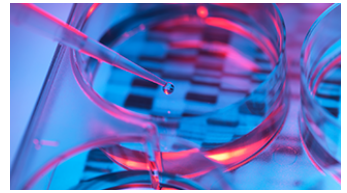
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expressed concern that if/when a successful treatment is identified, they might not be in a position to produce the volume of treatment required as quickly as necessary on their own. Accordingly, they requested that they be permitted to share information about each company's production capabilities so that they would likely be better positioned to mass produce a treatment on an expedited basis once an effective treatment is developed. To that end, the parties requested that they be permitted to exchange information regarding their respective "manufacturing facilities, raw materials, and supplies." This information typically might be considered "competitively sensitive" information, inappropriate under the antitrust laws for sharing among competitors absent a clear procompetitive justification for doing so.

In assessing the parties' request, the Antitrust Division noted that while competitor collaborations "may allow competitors to collude or tacitly coordinate on price or output in a manner that harms competition," collaborations also "may enable firms to offer goods and services that are cheaper, more valuable to consumers, brought to market faster than would otherwise be possible." In this circumstance, the Antitrust Division concluded that the proposed sharing of information was more likely to lead to the procompetitive objectives of competitor collaborations, rather than the anticompetitive ones, and approved the proposal.

Significantly, before doing so, the Antitrust Division noted that the parties have pledged to implement a number of safeguards designed to reduce the risk that the information exchange could prove to be harmful to competition. Specifically, the parties agreed to (1) limit the scope of the information exchange solely to information relating to the COVID-19 treatment product; (2) limit the duration of the information exchange to a period of 1 year; (3) continue to engage in independent decision making concerning issues relating to the development and/or investment in additional capacity; and,

perhaps most importantly, (4) not share any information “relating to costs of inputs, costs of production, or prices of the treatments” they develop. In light of these safeguards, the Antitrust Division has indicated that it has “no current intention to challenge” the parties’ proposed joint conduct.

Accordingly, the Antitrust Division appears to be supportive of competitor collaborations that present opportunities to swiftly and effectively respond to the COVID-19 pandemic so long as appropriate safeguards against anticompetitive conduct are in place.

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