



Office of the Secretary

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

[Commenter Name]
[Commenter City, State, Zip]

Re: *Your Therapy Source, LLC, et al., FTC File No. 171 0134*

Dear Commenter:

Thank you for your comment regarding the proposed consent order in the *Your Therapy Source, LLC* matter. The Commission received about 100 public comments during the public comment period, including your comment, expressing a variety of viewpoints on the proposed consent order. The Commission has reviewed all the comments in connection with its decision whether to give final approval to the Decision and Order. This letter responds to the concerns regarding the proposed consent order that were submitted to the Commission.

The Commission has long recognized that all workers are entitled to competitive wages for their services and the Commission will continue to enforce the antitrust laws against any companies or individuals who agree not to compete for workers, or anticompetitively attempt to drive down workers' wages. When an order is necessary to remedy anticompetitive conduct, the Commission's policy is to obtain remedies available under the law that are reasonably related to the facts in a particular case and that are designed to remedy the harm to competition. The Commission has carefully considered all available remedies under the law that are commensurate with the conduct in this matter.

Monopsony Power

Commenters raised concerns about monopsony power in labor markets. The Commission takes this issue seriously and will enforce the antitrust laws where employers with significant market power engage in unlawful conduct or mergers that harm competition in labor markets. Therapists in the Dallas/Fort Worth area typically contract with multiple therapist staffing companies and choose among them based on pay rate, volume of patient referrals, and location of patients. Respondents were the owners of two small therapist staffing companies in an area with many other staffing companies. In this case, there was no evidence that credibly suggested the existence of monopsony power. Nonetheless, we determined that an enforcement action was necessary to remedy an unlawful horizontal agreement to restrict wages for therapists and invitations to collude with other companies.

Commenters also suggested that the Commission "should examine whether the exercise of monopsony power by health insurers against the therapist staffing companies motivated" them to lower therapist rates through a price-fixing agreement. The therapist staffing companies primarily treat Medicare beneficiaries and Medicare sets the reimbursement rates for therapist services paid to home health agencies. We also did not see any facts suggesting that the home

health agencies that contract with the therapist staffing companies to treat home health agency patients exercised monopsony power. The home health agency may have lowered its payments to the staffing companies in response to Medicare's apparent decision to lower its reimbursement to the home health agency for therapist services.

Monetary Penalties

Commenters also recommended imposing 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 for an administrative complaint and consent order. Once a respondent is under order, the Commission may seek civil penalties for violations of the order. To monitor compliance, the Decision and Order in this case 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 alleged in the Complaint, Respondents in this case entered into a per se illegal agreement to lower 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 adequate support for the Commission to seek equitable monetary remedies. That is, the staff's investigation did not yield evidence that any reductions in pay rates were the result of unlawful conduct. Noteworthy here is the fact that the FTC staff launched an investigation very quickly after learning of Mr. Jindal's invitation to collude on pay rates, 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.

Private Lawsuits and Notice to Therapists

Commenters recommended that an order should enable the therapists to bring private lawsuits by providing notice to the therapists about the Commission's action. Nothing in the Decision and Order prevents therapists from bringing a lawsuit and they are free to pursue private litigation should they choose to do so. However, because the facts found in 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. Based on the facts and our prior experience, we do not believe a notice requirement to individual therapists is appropriate here.

Admission of Liability

Commenters asked why respondents are not required to admit 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. We do not believe requiring respondents to admit liability is appropriate or necessary in this case to obtain effective relief. Requiring admissions of liability could result in fewer settlements and more litigation surrounding otherwise effective remedies. Litigating cases expends significant resources that could be put to use for other enforcement efforts. When deciding whether to settle a case, we have to consider whether the outcome of a protracted litigation will provide material benefits beyond the remedy obtained through a negotiated settlement. If an admission of liability is intended to facilitate private litigation, an admission is not likely to provide any remedial purpose because the evidence did not show that any wages were reduced as a result of the unlawful agreement.

Criminal Prosecution

Commenters raised the possibility of potential criminal prosecution. Because the Commission does not have legal authority to bring criminal enforcement actions, the Commission routinely refers matters to the Department of Justice for potential criminal prosecution. The Department of Justice decides whether to bring a criminal case. No inference should be made from the Commission action here that we referred or did not refer the matter to the Department of Justice.

Order Expiration Date

One commenter questioned why the order is only in effect for 20 years. Under long-standing Commission policy, competition administrative orders expire after 20 years. Should respondents engage in similar conduct after the Decision and Order expires, we are still able to bring an action against respondents for conduct that violates the antitrust laws.

In light of these considerations, among others, the Commission has determined that the public interest would be served best by issuing the Decision and Order without modification. The Commission believes the Decision and Order provides meaningful relief and sends a strong message that the Commission will enforce the antitrust laws in this area. We believe the Decision and Order is the most efficient use of our limited resources without the need for further settlement negotiations or litigation. A copy of the final Decision and Order is enclosed for your information. Relevant materials are also available from the Commission's website at <https://www.ftc.gov/enforcement/cases-proceedings/171-0134/your-therapy-source-neeraj-jindal-sheri-yarbray>.

It helps the Commission's analysis to hear from a variety of sources regarding its work on antitrust and consumer protection issues, and we appreciate your interest in this matter.

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By direction of the Commission, Commissioner Chopra dissenting and Commissioner Wilson not participating.

April Tabor
Acting Secretary of the Commission

Enclosure