

Pharma Distributors Trade Association Sued for Conspiracy to Exclude Competition for its Track and Trace Software

Monday, October 30, 2017

On October 23, 2017, a company that developed software to track and trace pharmaceuticals filed a complaint against a pharmaceutical distributors trade association that currently dominates the market for such software, alleging a conspiracy to lock up long-term contracts with customers and exclude competition in violation of the Sherman Act and the Virginia Antitrust Act. *Tracelink, Inc. v. Healthcare Distribution Alliance*, Case No. 1:17-cv-01197-AJT-IDD (E.D. Va. Oct. 23, 2017).

The Complaint revolves around TraceLink’s provision of “track and trace” software called Life Sciences Cloud, which TraceLink asserts allows life sciences companies to more-easily comply with the Drug Supply Chain Security Act (“DSCA”) as well as worldwide regulatory compliance standards. TraceLink alleges that the Healthcare Distribution Alliance (“HDA”), a trade association, coerced or persuaded its members to use its own competitor product as part of an anticompetitive scheme to monopolize the market for track and trace technology.

Some of the salient factual allegations include:

- HDA, in coordination with its controlling members, solicited an RFP for the creation of a data repository and exchange product known as “Origin”;
- In solicitation of the RFP, HDA excluded TraceLink from the bidding process;
- TraceLink had previously presented a confidential plan to develop a product similar to Origin at least twice to several members of the HDA prior to the RFP process. TraceLink’s product was eventually developed as Life Sciences Cloud;
- The Origin product developed by HDA is based on a “closed proprietary platform that excludes market competition”;
- HDA urged its wholesaler distributor members to mandate that their business partners use only the Origin product;
- HDA includes a non-compete clause in its contracts to supply Origin, preventing customers from taking data inputted into Origin and moving it to other platforms, such as Life Sciences Cloud, thereby forcing customers to incur “substantial opportunity costs” in switching products;
- HDA has raised costs for customers that would have otherwise been willing to use rival track and trace technology supplied by competitors;



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- HDA, with its controlling members and other trade association members, maintain a market share of greater than 80%.

The relevant product markets identified by TraceLink for their antitrust claims include (1) The DSCSA track-and-trace compliance solutions product market; and (2) The life sciences wholesale distribution product market – these markets are identified geographically as within the United States.

TraceLink seeks \$30 million in damages.

Trade associations are generally viewed as procompetitive or competitively neutral when their activities are undertaken with adequate antitrust safeguards. However, forming a trade association does not shield joint activities among competitors from antitrust scrutiny. Dealings among competitors that violate the antitrust laws will still be illegal even if done through a trade association. Taken as true, the allegations in TraceLink’s complaint suggest that HDA went beyond its stated and legitimate purpose, and instead created a product that is foreclosing competition in violation of the antitrust laws.

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