Health Care Antitrust Week-In-Review
October 28 – November 3, 2014

3rd Circuit Grants FTC’s Request To Join Lamictal Oral Arguments; Teva Submits Letter to 3rd Circuit
On Friday, October 31, 2014, the Third Circuit agreed to allow the Federal Trade Commission to participate in oral arguments on behalf of a class of direct purchasers in a case over whether the U.S. Supreme Court’s recent pay-for-delay ruling in Actavis applies to no-authorized-generic settlements amid a class action case over GlaxoSmithKline PLC’s Lamictal. Earlier in the week, on October 28, defendant Teva Pharmaceutical Industries Ltd. submitted a letter to the Third Circuit urging the Court not to revive the suit, arguing that dismissals in other antitrust cases support the notion that the Actavis ruling was limited to cash deals.

- The case is Louisiana Wholesale Drug Co. Inc. v. SmithKline Beecham Corp., No. 14-1243 (3d Cir.)

FTC Requires Divestiture as a Condition of Surgery Center Holding’s Acquisition of Competitor Symbion
On Friday, October 31, 2014, the Federal Trade Commission announced that it will require Surgery Center Holdings, Inc., known as Surgery Partners, and Symbion Holdings Corporation to divest Symbion’s ownership interest in an ambulatory surgery center in Orange City, Florida, as part of a settlement resolving charges that Surgery Partners’ $792 million purchase of Symbion would be anticompetitive. According to the FTC’s complaint, the merger as originally proposed likely would have eliminated substantial competition to provide outpatient surgical services in the Orange City/Deltona area, enabling the combined firm to increase rates for outpatient surgical services sold and provided to commercial health plans and commercially insured patients.

- FTC Press Release

Judge Dismisses Lipitor Antitrust Claims
On Thursday, October 30, 2014, a New Jersey federal judge dismissed antitrust claims brought by indirect purchasers of Lipitor in multidistrict litigation, ruling the plaintiffs’ suit, like a previously dismissed direct-purchaser suit, failed to state a claim. The plaintiffs alleged that Pfizer Inc. and Ranbaxy Laboratories Ltd. entered into an anticompetitive pay-for-delay settlement. However, U.S. District Judge Peter G. Sheridan found that the settlement did not violate antitrust laws because the claims that the settlement stifled competition in the
pharmaceutical industry did not reasonably estimate the cash value of the settlement and thus was not plausible.

- The case is *In re: Lipitor Antitrust Litigation*, No. 3:12-cv-02389 (D.N.J.)

**FTC Stays Phoebe Putney Divestiture Case**

On Thursday, October 30, 2014, the Federal Trade Commission issued an order granting Phoebe Putney Health Systems, Inc.’s unopposed motion for a stay of the administrative case while Georgia state officials issue a final decision on whether the divestiture of Palmyra Park Hospital, Inc. would have to undergo a full certificate of need review. A certificate of need from a state regulator is often required before proposed acquisitions, expansions, or creations of hospitals can move forward. The certificate of need review ensures that hospitals in the state meet the needs of the population.

- FTC Order

**Judge Grants Summary Judgment in Favor of GSK and Apexus in Drug Discount Antitrust Suit**

On Wednesday, October 29, 2014, U.S. District Judge James C. Mahan granted the defendants’ motions for summary judgment, rejecting plaintiff The Vaccine Center LLC’s argument that defendant Southern Nevada Health District (“SNHD”) bought reduced-price vaccines intended for low-income patients but resold them to the general population in violation of the Robinson-Patman Act. The plaintiff argued that SNHD did not qualify for the own-use exemption to the Robinson-Patman Act because it gave vaccines to walk-in customers who were not already patients and contracted with local employers to vaccinate their workers. Judge Mahan, however, found SNHD was tasked by law to maintain public health in Southern Nevada and that preventing some diseases requires widespread vaccination. Because SNHD’s sale of vaccines furthers its institutional purpose, the court held that the conduct at issue was covered by the own-use exemption.

- The case is *The Vaccine Center LLC v. GlaxoSmithKline LLC et al.*, No. 2:12-cv-01849 (D. Nev.)

**Judge Dismisses Antitrust Suit Against Ohio Hospital Group**

On Monday, October 20, an Ohio federal judge granted defendants’ motion for summary judgment, ending a small Dayton hospital’s claims that larger rival Premier Health Partners had tried to stifle competition by keeping the hospital from getting access to key physician referrals and insurance networks. U.S. District Judge Timothy S. Black ruled that Dayton could not show that Premier’s network actually amounted to individual competitors capable of conspiring under the Sherman Act. The judge did not unseal the ruling until October 27 because of concerns about confidential information.

- The case is *Medical Center at Elizabeth Place LLC v. Midamerica Health Systems Corp. et al.*, No. 3:12-cv-00026 (S.D. Ohio)

*Health Care and Pharmaceuticals Committee’s Health Care Antitrust Week-In-Review is compiled by Robin van der Meulen, Meghan Iorianni, Elisa Kantor, and Tina Papagiannopoulos.*
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