***Castro v. Sanofi Pasteur Inc.*: An Important Win for GPOs**

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On December 20, 2012, the U.S. District Court for the District of New Jersey issued an interim ruling in *Castro v. Sanofi Pasteur Inc.*, a case that presents the question of under what circumstances a Physician Buying Group ("PBG") may be found to have engaged in anticompetitive conduct. In agreeing to dismiss an antitrust claim against medical practices using PBGs to purchase medical supplies, the court held that it was "apparent" that PBGs create efficiencies for their members and are not, therefore, presumptively anticompetitive. The court also held that Sanofi could not show that a PBG had market power — meaning the power to control prices or exclude competition — simply by alleging that it was able to negotiate discounts with suppliers.

While this decision involved PBGs, the court's reasoning is fully applicable to Group Purchasing Organizations ("GPOs") as well. This decision should, therefore, be helpful to any GPO faced with a claim that its mere existence is anticompetitive.

Background

The plaintiffs in *Castro* are medical practices that purchase pediatric vaccines from Sanofi Pasteur Inc. ("Sanofi"), typically through contracts negotiated by PBGs. PBGs function like GPOs. They do not themselves purchase, receive, resell, or directly handle medical products or services, but instead coordinate and aggregate member purchases in order to negotiate better contract terms for their members. While GPOs generally serve groups of hospitals and clinics, PBGs generally serve family practices, pediatricians, and other independent medical practices.

Plaintiffs sued Sanofi alleging that it had forced PBGs into accepting bundled term contracts, stifling competition by Sanofi rivals and increasing vaccine prices market-wide. In response, Sanofi filed counterclaims, arguing that the PBGs were anticompetitive because they demanded discounts that depressed the price of vaccines below competitive levels.

The district court granted the plaintiffs' motion to dismiss Sanofi's counterclaims. In so ruling, it made four key holdings of importance to both PBGs and GPOs generally.

***Key Holding 1*: Rule of Reason Analysis Should Be Applied When Considering the Impact of PBGs**

When a business practice is challenged as an unreasonable restraint of trade under Section 1 of the Sherman Act, it may be analyzed under either the *per se* rule or the rule of reason. Under the *per se* rule, the agreement is conclusively presumed to unreasonably restrain trade. This rule, therefore, applies only to restraints that are anticompetitive on their face, with no competitively redeeming value. Rule of reason analysis requires a more in-depth examination of the restraint, requiring the plaintiff to prove that the alleged restraint injured competition by either creating or facilitating the exercise of market power.

Sanofi alleged that PBGs were tantamount to *per se* illegal buyer cartels, as shown by their ability to restrict sales and/or pre-set prices. The district court dismissed this claim as not supported by the allegations of the complaint. The court explained that the complaint's allegations showed only that the "more PBGs' 'total group purchasing volume increase[d,] the more opportunity [they had] to negotiate discounts.'" The court held that "[g]roups of buyers that seek price reductions by negotiation, rather than by restricting purchases or pre-setting prices or a fixed price range," cannot be condemned as *per se* unlawful restraints of trade, but must instead be reviewed under the rule of reason.

***Key Holding 2*: PBGs Provide Transactional Efficiencies to Members**

Sanofi also argued that PBGs created no efficiencies for their members, and should be treated as *per se* unlawful for that reason as well. In rejecting this argument, the court held that it was "apparent that PBGs represent an attempt among physicians to integrate transactional efficiencies, such as negotiating and transacting with vaccine suppliers."

***Key Holding 3*: Market Power Cannot Be Shown Simply by Pointing to Negotiating Success**

The court next turned to Sanofi's rule of reason claim, which it found was also unsupported by the complaint's allegations. In attempting to demonstrate market power, Sanofi alleged that the PBGs' ability to negotiate discounts with vaccine manufacturers demonstrated their market power. Rejecting this argument, the court held that a PBG's ability to negotiate discounts was not sufficient to show that it could "control" prices. Otherwise, "every individual who joins a group that negotiates lower prices in exchange for purchasing an increased volume of a particular service or product would be subject to antitrust claims[,]" and that this result "would be inconsistent with the purpose of antitrust laws."

***Key Holding 4*: Market Shares of Separate PBGs Cannot Be Added Together To Establish Market Dominance Absent an Inter-PBG Conspiracy**

To buttress its claims of market power, Sanofi argued that it should be allowed to aggregate the market shares of individual PBGs to show that they collectively exercised market power. The court rejected this argument because Sanofi had not alleged a conspiracy among the PBGs. Consistent with a growing line of decisions by other courts, the court held that absent an allegation that PBGs had acted in concert, there is no basis for aggregating their market shares in order to show market power.