

BLOGS
Antitrust

Tenth Circuit Affirms Dismissal of Illegal Tying Claim in Medical and Surgical Supply Market

In *Suture Express, Inc. v. Owens Sr Minor Distribution*, 2017 WL 971782 (10th Cir. Mar. 14, 2017), a distributor of sutures and endomechanical (together known as “suture-endo”) supplies sued two competitors in the medical and surgical supply market, alleging that their bundling packages constituted illegal tying arrangements in violation of state and federal antitrust laws. Unlike the defendants, who distributed a large selection of medical supplies from a network of regional distribution centers, Suture Express’s narrow focus on two types of easy-to-ship medical supplies distributed from a single centralized warehouse provided it with significant savings in its distribution of those products. After Suture Express steadily grew its market share, the defendants responded by selling their own suture-endo supplies in discounted bundled packages with other essential medical supplies, which in effect meant that even though customers could purchase cheaper sutureendo supplies from Suture Express, they would have to pay a penalty on other medical supplies if they did not buy the bundled packages from the defendants.

The United States Court of Appeals for the Tenth Circuit affirmed summary judgment in favor of the defendants, concluding that Suture Express had not shown that the defendants had sufficient market power or that there was an actionable antitrust injury. Suture Express argued that the defendants had sufficient market power because the tying arrangement allowed them to control prices, but the Tenth Circuit concluded that this argument did not account for other pro-competitive explanations for a customer’s willingness to buy a bundled package, such as the consolidation of purchases and having fewer distributors to deal with. Moreover, any price difference between the suture-endo supplies sold by the defendants was not necessarily evidence of market power, but was instead explained by their markedly different distribution models. As to antitrust injury, the court noted that the evidence demonstrated a decrease in markups, a consolidation of buying power, and the growth of other regional and national competitors not named as defendants—all of which suggested that the medical supply market was becoming more, not less, competitive. Because injury to Suture Express as a competitor, rather than injury to competition as a whole, did not establish antitrust injury, the Tenth Circuit affirmed summary judgment.

Related People

Maisa Frank

Partner
Washington, D.C.
202.295.2209
maisa.frank@lathropgpm.com