

Kluwer Competition Law Blog

FTC Challenges Wage-Fixing Conspiracy Between Texas Staffing Companies

J. Bruce McDonald, Michael A. Gleason, Thomas D. York (Jones Day) · Thursday, August 16th, 2018

The Federal Trade Commission (FTC) and two Dallas therapist staffing companies have settled charges that they conspired to fix the wages of contract therapists in violation of the federal antitrust laws. This is the FTC's first enforcement action under its [joint guidelines](#) with the Department of Justice (DOJ) on hiring and compensation issued in 2016. This matter exemplifies the increasing antitrust enforcement in employment contexts, including challenges to wage fixing and no-poach agreements.

The staffing companies provide contract therapists to home health agencies, which in turn pay the staffing companies a "bill rate" for therapists. After the staffing companies learned that home health agencies planned to lower therapists' bill rates, executives at the competing staffing agencies agreed via text message to lower each companies' therapist compensation. They also invited other competitors to lower their respective compensation rates.

Working with the Texas Attorney General, the FTC alleged that the executives violated the antitrust laws by conspiring to fix wages, inviting competitors to join the wage-fixing conspiracy, and by exchanging competitively-sensitive wage information. Several aspects of this action are notable:

- **Growing antitrust scrutiny in employment.** FTC, DOJ, and state attorneys general have pursued a number of employment-related investigations and enforcement actions in recent months. DOJ officials have threatened to prosecute wage fixing and no-poach agreements criminally and at least one FTC commissioner supports restitution payments.
- **Exchanging compensation-related information can run afoul of antitrust laws.** Companies should not share current or future wage information with competitors, including other companies that are employer-side "competitors" in labor markets.
- **Small size or scope no defense.** FTC demonstrated once again that it will challenge anticompetitive agreements regardless of the parties' size or potential damages.

The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the law firm with which they are associated.

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

Kluwer Competition Law

The **2021 Future Ready Lawyer** survey showed that 78% of the law firms realise the impact of transformational technologies. Kluwer Competition Law is a superior functionality with a wealth of exclusive content. The tool enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

Kluwer Competition Law
Provides dynamically updated and actively edited merger control information to competition lawyers.

Emphasis on Innovation

78%

SURVEY REPORT
The 2021 Wolters Kluwer **Future Ready Lawyer**
Moving Beyond the Pandemic *Insights*

Kluwer **Competition Law**

Wolters Kluwer

This entry was posted on Thursday, August 16th, 2018 at 10:00 am and is filed under [Enforcement, United States of America](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.