



## **DEPARTMENT OF JUSTICE APPROVES UNUSUAL JOINT VENTURE**

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Several months ago, we were retained by a group of regional health care laundry service companies, which were seeking an opportunity to bid on contracts to provide services for national chains of healthcare out patient clinics. The national chains of healthcare out patient clinics issued requests for proposals to laundry service providers, which were able to service multiple locations throughout the United States and provide single source billing. Each of our clients believed that it could provide quality service at a competitive price. However, as long as the national buyers wanted to enter into national contracts, our clients did not have an opportunity to compete.

Our clients wanted to get together and submit a joint bid on the national contracts. They were concerned that if they had pricing discussions and agreed on a bid price, they might be charged with price fixing, a criminal violation of the antitrust laws. Price fixing is a felony and persons found guilty of price fixing face a jail sentence of up to 10 years, plus fines and possible treble damage litigation.

Since each of the individual companies involved were not direct competitors, we decided to recommend that the companies form a joint venture. A consultant was hired to manage the joint venture and a business plan was developed so that the members of the joint venture

could cooperate in designing a unified way of servicing national accounts. Under the business plan, the members of the joint venture would of necessity, have to exchange price information and a process would have to be established whereby they could negotiate prices on a collective basis with national customers. Since the joint venture contemplated an exchange of current pricing information among horizontal "non competitors" and also required an agreement on pricing to be offered to customers, it was decided that we should ask the Department of Justice for a Business Review Letter in order to provide a level of protection for the members of the joint venture.

The Antitrust Division of the Department of Justice has a Business Review program pursuant to which the Antitrust Division will analyze a proposed course of conduct and then advise you whether the Department of Justice would challenge the conduct as an antitrust violation. The Business Review procedure is available only to proposed courses of conduct not to existing practices. In our application for a Business Review Letter, we emphasized that the agreement involved was among companies that were not direct competitors and therefore the joint venture would be pro-competitive in that it would create a new competitor for the national account market. In a letter dated August 8,

2006 Assistant Attorney General Thomas O. Barnett wrote to the undersigned and stated:

Based on your representations, we conclude that the formation and operation of the MEDtegrity joint venture is not likely to produce anticompetitive affects. The proposed joint venture creates a new competitor for national HOC accounts without threatening to restrict output or harm competition among MEDtegrity members.

As our economy continues to consolidate, more and more buyers are looking for sellers who can offer single

sourcing on a national basis. The MEDtegrity joint venture model offers an opportunity for regional companies to form a joint venture and serve a national market that individually the members would be unable to serve. The members of the joint venture can agree on a single pricing formula for customers and develop a collective bid without incurring significant antitrust risk. The Department of Justice Business Review Letter is available on the Antitrust Division website, [www.usdoj.gov/atr](http://www.usdoj.gov/atr). (See letter dated August 8, 2006 from Assistant Attorney General Thomas O. Barnett to Steven John Fellman re: "Linen Systems For Healthcare, LLC.")