

Accountable Care Organizations (ACOs) and Antitrust Are Aligned and Compatible, Says Commissioner Brill

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FTC Commissioner Julie Brill addressed attendees at the 2013 National Summit on Provider Market Power on June 11. The focus of her remarks were on the intersection of antitrust, the **Affordable Care Act (ACA)** and Accountable Care Organizations (ACOs). She first touched on the ACA. Noting the empirical evidence shows that high concentration among health care providers has harmful competitive effects, she was optimistic that the exchanges that will be established as a result of the ACA will offer consumers a range of competing, affordable health care products and will encourage greater competition in local insurance markets.

Turning to ACOs and antitrust, she stated that the FTC is starting to hear providers contend that the ACO program is a justification for their (alleged) anticompetitive activity. Providers complain that the government is "talking out of both sides of their mouth" with **Centers for Medicare & Medicaid Services (CMS)** encouraging coordination via the ACO program and the antitrust agencies challenging coordination. Commissioner Brill disagreed stating that "the goals of the ACA and antitrust enforcement are aligned and compatible." She noted the extensive cooperation between CMS and the antitrust agencies. She explained that the ACA requires coordination of care but that it "neither requires nor encourages to merger or otherwise consolidate," but like any collaboration short of a merger, they must do so in a way that does not violate antitrust laws. Commissioner Brill also stated that ACOs are flourishing and only two provider groups have thus far sought antitrust guidance as permitted under the ACO Policy Statement from the agencies before forming the ACOs.

Finally, Commissioner Brill emphasized that the FTC will continue to investigate provider collaborations or mergers where there may be competitive harm. She made a point to clarify that the FTC evaluates all assertions of efficiencies and quality improvements but that parties must provide "good documentary evidence" to support these assertions.

Commissioner Brill's speech is consistent with the posture and approach the agencies have been taking with regard to provider consolidations in the relatively new landscape being built by the ACA and formation of ACOs. There is not yet enough data to see exactly how the ACA will affect providers from an antitrust perspective. But providers can be certain that the agencies will continue to look closely at any consolidation or collaboration that may violate the antitrust laws, regardless of

whether the activity was taken to try to comply with the ACA.

The full speech can be found [here](#).

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