



DEPARTMENT OF JUSTICE
Antitrust Division

THOMAS O. BARNETT
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: <http://www.usdoj.gov/atr>

August 8, 2006

Steven John Fellman, Esq.
Galland, Kharasch, Greenberg,
Fellman & Swirsky, P.C.
1054 Thirty-First Street, N.W., Suite 200
Washington, D.C. 20007-4492

Dear Mr. Fellman:

This letter responds to your request on behalf of your client, Linen Systems for Healthcare, LLC, for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. Linen Systems for Healthcare, a joint venture of regional textile maintenance companies, proposes jointly to market textile rental and laundry services to specialized healthcare clients under the trade name MEDtegrity. You have requested a statement of the Antitrust Division's current enforcement intention with respect to this proposal.

You represent that MEDtegrity is a joint venture of ten textile maintenance companies experienced in providing specialized textile rental and laundry services to the healthcare industry.¹ MEDtegrity members currently sell their services independently to various types of healthcare outpatient centers ("HOCs"). HOCs require specialized textile and laundry services due to the medical waste associated with their businesses.

Each healthcare textile rental and laundry service for HOCs operates its business similarly. Vans filled with clean textiles are dispatched at the beginning of the day. During the day, the driver follows a route, stopping at the customers' locations to drop off clean textiles and pick up soiled ones. The driver also may solicit other prospective customers if time permits. He or she then returns to the plant at the end of the workday with the soiled textiles. The textiles are taken into the plant for cleaning, and the van is serviced and maintained overnight.

Because of the use of this van-and-route system, you assert that healthcare textile rental and laundry firms generally are limited to servicing clients within a 100 mile radius of a plant.

¹ The ten textile companies are: Admiral Linen and Uniform Service (Houston, Texas); CleanCare (Pittsburgh, Pennsylvania); Economy Linen and Towel Service (Dayton, Ohio); Faultless Linen (Kansas City, Missouri); Handcraft Uniform Rental Service (Richmond, Virginia); MedClean (Chicago, Illinois); MediCleanse (Renton, Washington); MediCo Professional Linen Service (Los Angeles, California); Sohn Linen (Lansing, Michigan); and Unitex Textile (Mt. Vernon, New York).

As a result, you contend that MEDtegrity's ten members are at a significant competitive disadvantage in competing against multiplant rivals for sales to national customers who desire to acquire their textile rental and laundry services from a single supplier. This competitive disadvantage threatens to become more significant for MEDtegrity's members because of what you perceive to be an increasing trend on the part of national customers to sole-source their services and supplies.

You contend that the ten textile maintenance company members should not be viewed as significant rivals of one another because, with one exception, the members' plants are more than 210 miles apart from each other.² You represent that this distance precludes them from competing in any significant way.

You suggest that many HOCs operate nationally, as part of a group or chain, and prefer to contract with textile rental and laundry services that can meet all their needs on a national basis. You have represented that, in recent years, several large national textile maintenance companies have captured a large and growing share of HOCs' textile and laundry business because these larger textile firms can provide services on a national basis. You assert that none of MEDtegrity's members has ever, singly or jointly, won a national supply contract and that each member has lost, or is faced with the prospect of losing, customers who demand services on a national basis. You submit that individual MEDtegrity members do not have the economic scale, including multiregional plant locations, to market their services on a national basis.

To enable themselves to compete for national account business, MEDtegrity's members propose to market their services as part of a joint venture. In each area where a national HOC's headquarters is located, a MEDtegrity member operating in the area will serve as the account manager for that facility. The account manager will meet with prospective customers' national account representatives and will have the authority to negotiate contracts on behalf of MEDtegrity. Price discussions among the members will be limited to those that are necessary to prepare the joint venture's national bids, and members will avoid exchanging any other nonpublic information.³ The members would be free to bid for national business independently and outside of the joint venture and would continue to act independently of each other in seeking business within their own localities.

The local MEDtegrity member (account manager) will report the results of any meeting with a national HOC account to the MEDtegrity Executive Committee. The Executive

² Two of the plants are 130 miles apart. One of these two plants currently services HOC clients. By contrast, the other plant does not compete for HOC business and is devoted to servicing hospitals. You represent that it would be more profitable for the second plant to continue to serve its current hospital clients than to switch to serve HOC clients.

³ While unlikely, if there is ever a situation where two members are competing for the same regional business of the national HOC account, any pricing information involving the overlapping members will be submitted to the Executive Director on a confidential basis. He will then create a nationwide pricing proposal, such that the competing members will not be able to discern each other's prices.

Committee is made up of some combination of members.⁴ In those cases where a national HOC account solicits the services of MEDtegrity members, the account manager will give a copy of the national HOC account's written proposal to each MEDtegrity member. The fact that any national HOC account declined a proposal from MEDtegrity or failed to make a counteroffer will also be disclosed to the entire MEDtegrity membership.

The local MEDtegrity member (account manager) will consult with MEDtegrity members and report whether the member is willing to perform the services under the terms and conditions offered by the national HOC account. The account manager will forward to the national HOC account a list of those MEDtegrity members that are willing to provide services in accordance with the HOC's specifications. You have represented that there will be no limitation on the rights of any MEDtegrity member to contact the national accounts directly and offer to perform the services at a price lower or higher than the price set forth in MEDtegrity's proposal to the national HOC account. You have further represented that, other than the discussions with the account manager and Executive Director described above, individual MEDtegrity members will not discuss among themselves whether they intend to accept, reject, or make a counteroffer to any particular national account's proposal. You state that, beyond training staff to meet the Occupational Safety and Health Administration's blood borne pathogens standard, there are few or no barriers to entry to the healthcare textile rental and laundry services market. Finally, we understand that there will be no limitation on the rights of any MEDtegrity member to accept or reject business from national HOC accounts.

In the same vein, each national HOC account will make its own unilateral decision whether to participate in the MEDtegrity marketing program and may convey that decision to the Executive Director. Moreover, any national HOC account that wishes to participate in the MEDtegrity marketing program will have the right to pick and choose among those MEDtegrity members with whom it will deal. There will be no requirement that a national HOC account deal with all or a minimum subset of MEDtegrity members.

Based on your representations, we conclude that the formation and operation of the MEDtegrity joint venture is not likely to produce anticompetitive effects. The proposed joint venture creates a new competitor for national HOC accounts without threatening to restrict output or harm competition among MEDtegrity members. Moreover, the rules of the joint venture will limit information exchanges among its members that might have the potential to reduce price competition that could theoretically take place outside the joint venture. If the facts you represented are accurate, the potential for competition among joint venture members outside the joint venture is limited by the lack of any significant geographic overlap, so the limitations on information exchanges appear to be prophylactic measures. Consequently, based on the information and assurances that you have provided to us, the Department of Justice, Antitrust Division, has no present intention to challenge the proposed MEDtegrity marketing program.

⁴ The Executive Director presides over the Executive Committee. The Executive Director is not a MEDtegrity member. Karl Buhl, of Karl Buhl Consulting (Tampa, Florida), will serve as the Executive Director. He is not associated with any MEDtegrity member or any of their competitors.

This letter expresses the Division's current enforcement intention and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Division reserves the right to bring an enforcement action in the future if the actual activities of MEDtegrity or its members prove to be anticompetitive in purpose or effect in any market.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

A handwritten signature in blue ink that reads "Thomas O. Barnett". The signature is fluid and cursive, with a prominent initial 'T' and 'B'.

Thomas O. Barnett
Assistant Attorney General