In an administrative complaint filed on September 17, 2003, the Federal Trade Commission (FTC) alleged that North Texas Specialty Physicians (NTSP) of Fort Worth violated federal antitrust law by negotiating agreements among its participating physicians on price and other terms, refusing to deal with payors except on collectively agreed-upon terms, and refusing to submit payor offers to participating physicians unless the terms complied with NTSP’s minimum fee standards. In a 97-page decision dated November 15, 2004,\(^1\) and announced to the press on November 16, 2004,\(^2\) an Administrative Law Judge ruled in favor of the FTC, holding that the “The government proved its case . . .” and that, “the appropriate remedy [is] an order to cease and desist.”

The administrative decision is important not only because it outlines the type of physician group behavior that the FTC believes constitutes horizontal price fixing in violation of Section 5 of the FTC Act, but also because it involves the first fully adjudicated price-fixing complaint brought by the FTC against a provider network joint venture.

Organized in 1995, NTSP is a nonprofit corporation funded through fees paid by participating physicians. NTSP has approximately 600 physician members, including approximately 130 primary-care physicians. Physician members may participate in NTSP-payor contracts by granting NTSP the authority to arrange for the physician’s services to be provided to consumers covered by the payors.


According to the FTC, the NTSP would poll its participating physicians to determine the minimum fee they would accept for medical services provided under an NTSP-payor agreement. Once it collected the information, NTSP allegedly calculated the averages of the minimum acceptable fees and then confirmed with its participating physicians the minimum fees that NTSP collectively would entertain when negotiating a contract with a payor. In its complaint, the FTC argued that the exchange of prospective price information among otherwise competing physicians reduced price competition and enabled the participating physicians to achieve supra-competitive prices.

The FTC also alleged that: (1) NTSP began some contract discussions with payors by identifying its physicians’ fee minimums and stating that it would not enter into an agreement unless the payor agreed to satisfy the fee minimums; (2) when payors proposed agreements to NTSP that did not satisfy the fee minimums, NTSP would require the payors to resubmit their proposals or would actively bargain to obtain the desired fees; (3) NTSP discouraged negotiations directly between its participating physicians and payors; and (4) none of NTSP’s negotiating practices significantly increased efficiency because the physicians were not integrated in ways that could increase the quality or reduce the cost of health care in the Fort Worth area. Based on these allegations, the FTC argued that price and other forms of competition among the participating physicians were unreasonably restrained, prices for physician services were increased, and health plans, employers, and individual consumers were deprived of the benefits of robust competition among physicians.

The Administrative Law Judge agreed with the FTC’s argument:

The government proved its case. As explained in detail in the findings of fact and analysis below, the evidence establishes that physicians
participating in NTSP, who are otherwise competitors of each other, communicated to NTSP the minimum prices that they were willing to accept for physician services and that NTSP used this information to negotiate higher rates and more favorable terms for non-risk contracts than those initially offered by various health insurance plans. Through the use of price information collected from its physician members to leverage increased offers or better terms from health insurance payors, NTSP has engaged in a combination, contract, or conspiracy that has unreasonably restrained trade. Accordingly, [the FTC] has demonstrated a violation of Section 5 of the FTC Act. The appropriate remedy is an order to cease and desist [from collective price fixing in its negotiation of non-risk contracts].

The ALJ also noted that, “to the extent that there are any existing, current non-risk contracts between NTSP, negotiated on behalf of its member physicians, and any health care payor, [NTSP] must take actions . . . to allow termination of any such existing contracts.”

Since 2000, the FTC has entered into more than twenty consent decrees resolving price-fixing allegations against provider networks. However, NTSP is the first provider network that made the FTC prove its case in court.

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3 *Id.* at 1-2.
4 *Id.*