

Antitrust Law Daily Wrap Up, ANTITRUST NEWS: Telephone hearings, delays seen in antitrust enforcement actions, private suits in wake of pandemic, (Mar. 20, 2020)

Antitrust Law Daily Wrap Up

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By [Stephanie K. Mann, J.D.](#) and [Thomas G. Wolfe, J.D.](#)

As a result of the national emergency, some cases using technology to avoid in-person hearings, while others seeing delays.

Amidst the national emergency arising out of the coronavirus outbreak, the FTC is attempting to move forward with its federal court and administrative actions, using telephonic conferences in lieu of in-person meetings. Meanwhile, courts around the country are extending some deadlines, rescheduling hearings, and utilizing telephonic hearings, with an impact on Department of Justice Antitrust Division enforcement and private suits.

For instance, in a federal court action against Vyera Pharmaceuticals, LLC for allegedly engaging in an elaborate anticompetitive scheme to preserve a monopoly for the drug Daraprim, the FTC and New York Attorney General were set to hold a pretrial conference today telephonically despite an initial move by the pharmaceutical company to adjourn the conference. The pharmaceutical company had contended that the conference should not take place due to the "rapidly evolving situation and the lingering uncertainty about the duration of the current disruptions," and had asked for a continuance to enable the parties and the court to assess the situation, reconvene with the benefit of better information, and to set a litigation schedule that is "realistic and achievable." In [response](#), the enforcers argued that "there is no basis" to indefinitely continue the pretrial conference. Instead, they believe that the parties would benefit from the court's guidance on the issues raised at the pretrial conference ([FTC v. Vyera Pharmaceuticals, LLC](#), March 18, 2020, Cote, D.).

Part 3 litigation. The FTC also is using telephone conferences in Part 3 litigation. In administrative action concerning the combination of [Peabody Energy, Corp. and Arch Coal, Inc.](#), the chief administrative law judge has granted a request to hold the March 26 initial scheduling conference telephonically. In another high-profile merger matter, Thomas Jefferson University and Albert Einstein Healthcare Network have [asked](#) that their March 26 scheduled conference also be handled over the phone.

Future delays might be expected in these administrative matters, however, as the Commission has already taken action to [postpone](#) an administrative hearing in the agency's challenge to body-worn camera systems manufacturer Axon Enterprise, Inc.'s May 2018 acquisition of competitor VieVu, LLC. Commencement of the hearing was pushed from May 19 to June 23 due to public health risks.

Criminal antitrust actions. Hearings in criminal antitrust cases set for this week have been pushed back due to the pandemic as well. Some of those cases were in the federal district court in Chicago. Pursuant to an [order](#) of the chief judge in that court, hearings in antitrust cases involving the heir location services and commercial flooring industries were delayed until April 6. A stay-at-home order in Illinois announced today will likely cause additional delays, and the Northern District [announced](#) the closure of the clerk's office to the public.

Private suits. The impact goes beyond federal antitrust enforcement actions. Private antitrust suits also are seeing delays. For instance, in an antitrust case against the four largest railroads for allegedly conspiring to use rail fuel surcharges to fix prices of rail freight transportation services, the parties filed a joint motion to stay the case due to the coronavirus ([CSX Transportation, Inc. v. Norfolk Southern Railway Co.](#), Case No. 2:18-cv-00530-MSD-LRL).

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Companies: Albert Einstein Healthcare Network; Arch Coal, Inc.; Axon Enterprise, Inc.; CSX Transportation, Inc.; Norfolk & Portsmouth Belt Line Railway Co.; Norfolk Southern Railway Co.; Peabody Energy Corp.; Phoenixus AG; Thomas Jefferson University; VieVu, LLC; Vyera Pharmaceuticals, LLC

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