

the investigation did not indicate that any therapists' wages were reduced as a result of the illegal agreement, individual notice would not be likely to facilitate recovery in private civil litigation. However, the Commission will take steps to ensure that this order and the facts of this case are disseminated as widely as possible in order to educate staffing firms, home healthcare workers, and small businesses about the illegality of wage fixing and to emphasize that the FTC will be a vigilant cop on the beat.

Admissions of Liability

When the circumstances of a given case merit doing so, the Commission will consider seeking admissions of fact or law. In this case, we did not obtain such an admission. As the Washington Center for Equitable Growth and the American Antitrust Institute noted in their public comments, requiring admissions of liability could result in fewer settlements and more litigation surrounding otherwise effective remedies, which would result in the enforcement of fewer matters due to resource constraints.⁵ The Washington Center for Equitable Growth believes that the Commission should seek admissions of liability when they are “necessary to prevent recidivism or deter others from engaging in similar behavior,”⁶ yet the American Antitrust Institute notes that “[f]oregoing admission of key facts or liability seems like a comparatively small price to pay for the gain in scarce agency time and resources.”⁷ The amount of resources required to litigate a case cannot be overstated. When deciding whether to settle a case, we have to seriously consider whether the outcome of a protracted litigation will provide material benefits beyond the remedy obtained through a negotiated settlement.

Criminal Referrals

The Commission does not have criminal jurisdiction. Instead, where an investigation uncovers facts that could give rise to criminal liability, the Commission routinely refers matters to the Department of Justice and state law enforcement agencies for potential criminal prosecution. Once we make a referral, the other agency makes the ultimate determination as to whether or not to proceed. No inference can or should be made as to whether we referred this matter for criminal prosecution based on the Commission's action in this case.

Conclusion

After careful consideration of each comment, we have concluded not to modify the order. The remedy that we have accepted is carefully tailored to match the facts and circumstances of this case. The remedy prohibits the parties from colluding with competitors on wages paid to their employees or independent contractors, and bars them from entering into agreements to lower, fix, maintain, or stabilize the therapists' or other independent contractors' wages. The

⁵ See Michael Kades & Raksha Koppam, Washington Center for Equitable Growth, Pub. Cmt. No. 00104, *In re Your Therapy Source et al.* at 1 (Aug. 30, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/08/00104-155424.pdf; American Antitrust Institute, Pub. Cmt. No. 00106, *In re Your Therapy Source et al.* at 1 (Aug. 30, 2019), https://www.ftc.gov/system/files/documents/public_comments/2018/08/00106-155423.pdf.

⁶ Cmt. of Washington Center for Equitable Growth at 2.

⁷ Cmt. of American Antitrust Institute at 14.

remedy also bars the parties from inviting competitors to enter into such agreements or exchanging information with competitors related to compensation of employees and independent contractors.

The Commission vigorously enforces the antitrust laws with respect to large and small companies alike. Going forward, we will continue to aggressively investigate any instances in which companies collude or attempt to collude to fix wages. Likewise, we will continue to seek relief commensurate with the facts and circumstances of each case, including, where appropriate, disgorgement, notice, and admissions.