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ANTITRUST VIOLATIONS AND STATE LICENSING BOARDS

The recent Supreme Court decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission, 135 S. Ct. 1101 (2015), issued on February 25, 2015, is an important pronouncement on the limits of the “state action” doctrine and possible narrowing of antitrust immunity for certain standards, licensing and self-regulatory programs. An association that is conducting a program or activity in conjunction with a governmental entity is not, merely by association with that government body, immune from application of the antitrust laws.

This case involved action taken by the North Carolina Dental Board, which was largely composed of dentists, to prevent non-dentists from performing teeth whitening services. The Dental Board claimed that its actions were immune from the antitrust laws under the state-action doctrine since it was authorized by the state to regulate the dental market.

Under longstanding Supreme Court precedent, state and municipal authorities are immune from the federal antitrust lawsuits for actions taken pursuant to a clearly expressed state policy. This immunity can extend to non-state actors as well if a two-pronged requirement is met: (1) there must be a clearly articulated state policy to displace competition; and (2) there must be active supervision by the state of the policy or activity.

The Supreme Court found that even though the North Carolina Dental Board was a state designated board, it was a market participant that lacked active state supervision, which is a required element for receiving state action immunity.

If you have any questions about this case or its impact on your activity, please contact Webster, Chamberlain & Bean, LLP at 202-785-9500.

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