IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

ROBERTO VÁZQUEZ-RAMOS ET AL., Plaintiffs, v. TRIPLE-S SALUD, INC. ET AL., Defendants.	CIV. NO.: 19-1527 (SCC)

OPINION AND ORDER

Before us are Defendant Triple-S Salud, Inc. ("Triple-S"), MSO of Puerto Rico, LLC ("MSO") and Dr. Héctor Rodríguez Blázquez, Urologics, LLC and Urologist, LLC's (collectively, the "Urologics Defendants") Motions to Dismiss Plaintiffs' antitrust claims against them under the Sherman Act, as well as certain state law claims. *See* Docket Nos. 57, 58 and 60. On September 21, 2020, this Court issued an order informing the parties that, because it would be considering documents outside of the pleadings in ruling on MSO and the Urologics Defendants' Motions to Dismiss, those motions would be converted to motions for summary judgment under Rule 56. S*ee* Docket No. 86. A hearing was held on November 16, 2020 at which all parties had the opportunity to elaborate on the arguments in their motions. After considering the arguments

made in the motions and at the hearing, we find that it is not necessary to consider the documents submitted in addition to the pleadings, and therefore this opinion treats MSO and the Urologics Defendants' motions as Motions to Dismiss and not motions for summary judgment. For the following reasons, all of Defendants' Motions to Dismiss are GRANTED.

I. Factual Background

This antitrust matter involves the complex system made up of health insurance companies, healthcare providers and state and federal healthcare schemes that govern the healthcare options for the people of Puerto Rico. We therefore take a moment to briefly describe this healthcare system to provide context to Plaintiffs' allegations. In 1993, the Puerto Rican government created the Puerto Rico Government Health Plan ("GHP"), branded as the "*Mi Salud*"[1] healthcare plan. Under said program, Puerto Rico was divided into eight different regions, with a single private health insurer assigned to each region by the Puerto Rico Health Insurance Administration ("ASES," by its Spanish name). Defendant Triple-S was assigned by ASES to the Western Region of Puerto Rico, where the Urologist Plaintiffs practice.

Another player in this system is the Medicare Advantage Program, which provides insurance benefits under the

[1] The *Mi Salud* program has since been amended and, as of November 2018, is referred to as the *Vital* program. Under *Vital*, Puerto Rico is no longer divided into regions with one private insurer per region.

Medicare Act to qualified beneficiaries. In Puerto Rico, Medicare Advantage is administered with the *"Medicare y Mucho Más"* ("MMM") and "Preferred Medical Card" ("PMC") programs. Defendant MSO is a provider that retains and contracts with MMM's physicians to administer Medicare Advantage benefits throughout Puerto Rico.

Plaintiffs Dr. Roberto Vázquez-Ramos, Dr. Javier E. Colón-Irizarry, Dr. Luis Manuel Muñiz-Colón and Dr. Juan Colón-Rivera are licensed physicians and board-certified urologists with offices in Western Puerto Rico. *See* Docket No. 45, pgs. 2-3. Defendant Dr. Héctor Rodríguez Blázquez is also a licensed physician and board-certified urologist, as well as the owner of both Defendant Urologics, LLC and Urologist, LLC. *See id* at pg. 4.

Plaintiffs allege that, up until the summer of 2015, they were under contract with Triple-S to provide medical urology services in the Western Region of Puerto Rico. *See id.* at pg. 8. They also allege that, as of the end of May of 2015, they were under contract with MSO to serve as MMM/PMC providers of urology services in the Western Region of Puerto Rico. *See id.* However, according to Plaintiffs, Triple-S and Dr. Rodríguez "began conversations aimed at having the latter become the sole and exclusive provider of urology services for *Mi Salud* patients in Western Puerto Rico." *Id* at pgs. 8-9. Plaintiffs allege that MSO engaged in similar conversations with Dr. Rodríguez regarding MMM/PMC patients. *See id.* at

pg. 9 The objective of these discussions, in Plaintiffs' view, "was to create a monopoly of the provision of urology services to the substantial *Mi Salud* and MMM/PMC medical population in Western Puerto Rico." *Id.* at pg. 9. As part of this alleged monopolistic scheme, Triple-S and MSO did not renew their contracts with Plaintiffs in 2015 and granted the Urologics Defendants regional exclusivity as Triple-S and MSO's urology providers in the West. See *id.* at pgs. 10-11. Plaintiffs claim that such action also eliminated any competition between urologists within the *Mi Salud* population in violation of antitrust law.

Moreover, Plaintiffs aver that the Urologics Defendants never had the capability to be the exclusive urology providers for *Mi Salud* patients in Western Puerto Rico, resulting in inferior medical service to that population. *See id.* at pgs. 10-11. They also allege that Defendants "monopolistic behavior" has resulted in substantial economic losses for Plaintiffs. *See id.* at pg. 14.

Plaintiffs claim that Defendants' alleged actions amount to a refusal to deal with the intent of limiting competition in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2., and its Puerto Rico counterpart, 10 P.R. Laws Ann. § 268. Specifically, they allege that Defendants engaged in exclusive dealing and conspiracy resulting in the constraint of trade in violation of Section 1 of the Sherman Act. Plaintiffs also allege that Defendants Triple-S and MSO possess monopoly power

in the provision of urology services to *Mi Salud* patients and MMM Medicare Advantage patients, respectively, in Puerto Rico and awarded such power to the Urologics Defendants in violation of Section 2 of the Sherman Act. Finally, Plaintiffs allege unspecified violations of Article 1802 of the Puerto Rico Civil Code, 31 P.R. Laws Ann. § 5141, sounding in tort. They seek injunctive relief "in the form of an order requiring Triple-S and MSO to break the monopoly created in favor of" the Urologics Defendants, as well as monetary damages. *Id*. at pg. 17.

II. Analysis

A. *The Rule 12(b)(6) Standard*

Defendants seek to dismiss Plaintiffs' claims pursuant to Fed. R. Civ. P. 12(b)(6)[2] for failure "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The First Circuit has devised a two-step analysis for considering a Rule 12(b)(6) motion to dismiss under the context-based "plausibility" standard established by the Supreme Court. *See Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 12 (1st Cir. 2011) (discussing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). First, the court must "isolate and ignore statements in the complaint that simply

[2] Defendant MSO also seeks to dismiss under Fed. R. Civ. P. 12(b)(1). Because dismissal under these two rules takes into consideration "the same basic principles," we need only articulate those principles once, under the well-established Rule 12(b)(6) standard. *Lyman v. Baker*, 954 F.3d 351, 359-60 (1st Cir. 2020).

offer legal labels and conclusions or merely rehash cause-of-action elements." *Schatz c. Republican State Leadership Comm.*, 669 F.3d 50, 55 (1st Cir. 2012). While a complaint need not give detailed factual allegations, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678-79.

Second, the court must then "take the complaint's well-[pleaded] (*i.e.*, non-conclusory, non-speculative) facts as true, drawing all reasonable inferences in the pleader's favor, and see if they plausibly narrate a claim for relief." *Schatz*, 669 F.3d at 55. Plausible means something more than merely possible, an assessment the court makes by drawing on its judicial experience and common sense. *Id*. (citing *Iqbal*, 556 U.S. at 678-79). To survive a Rule 12(b)(6) motion, a plaintiff must allege more than a mere "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. However, the Supreme Court has clarified that it does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

B. *Sherman Act*

1. Standing

Section 4 of the Clayton Act provides a private cause of action for violations of the Sherman Act. *See* 15 U.S.C. § 15. In order to assert such a cause of action, a plaintiff must first have standing. All Defendants argue that Plaintiffs lack standing to bring antitrust claims before this Court because

they have not properly alleged an antitrust injury. An antitrust injury is defined as "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977) (rejecting the argument that any economic injury, such as lost profits, stemming from a merger unlawful under the Clayton Act is actionable). Thus, a plaintiff claiming antitrust injury must demonstrate not only that he was injured as a result of defendant's actions and that such actions constituted an antitrust violation, "but also that their injury is the type of injury the antitrust violation would cause to *competition*." *Sterling Merchandising, Inc. v. Nestle, S.A.*, 656 F.3d 112, 121 (1st Cir. 2011) (emphasis in original) ("A competitor may suffer injury even when there is no injury to competition or to consumers and so lack standing."); *see also Town of Concord, Mass. v. Boston Edison Co.*, 915 F.2d 17, 21 (1st Cir. 1990) ("[A] practice is not 'anticompetitive simply because it harms competitors . . . . Rather, a practice is 'anticompetitive' only if it harms the competitive process.")

A proper plaintiff for the purpose of alleging antitrust injury is generally "a customer who obtains services in the threatened market or a competitor who seeks to serve that market." *SAS of P.R., Inc. v. P.R. Tel. Co.*, 48 F.3d 39, 44 (1st Cir. 1995). Thus, a necessary first step in analyzing whether a plaintiff has standing is determining the relevant market.

Plaintiffs argue that the relevant markets here are the Medicare Advantage insurance market in Western Puerto Rico (as to MSO) and the *Mi Salud* insurance market in the Western Region of Puerto Rico (as to Triple-S). Defendants assert that such a definition is too narrow and that because Plaintiffs have failed to plead the relevant market, they lack standing to bring their antitrust claims. However, we find that at this preliminary stage, Plaintiffs have plausibly defined the relevant market as the Medicare Advantage and *Mi Salud* networks in Western Puerto Rico. Without the discovery phase completed, it is too much to ask Plaintiffs to provide statistical data to explain why their definition of relevant market is more accurate, as Defendants seem to require. *See Morales-Villalobos v. Garcia-Llorens*, 316 F.3d 51, ("There is no mechanical rule [for defining the relevant market] . . . and while there are arguments for a larger market, the matter cannot be resolved on the face of the complaint.").

However, even viewing the relevant markets as defined by Plaintiffs, we fail to see any allegations of antitrust injury suffered by them. First, and most fundamentally, Plaintiffs are neither competitors of MSO or Triple-S nor customers of the services at issue, which are the presumptively proper plaintiffs in an antitrust case. *See Serpa Corp. v. McWane, Inc.*, 199 F.3d 6, 10 (1st Cir. 1999). Moreover, regarding the Medicare Advantage market, Plaintiffs do not deny that there were many other MMM providers in addition to MSO

available in Western Puerto Rico. Thus, the anticompetitive concerns alleged here - that patients only had one insurance option and therefore only one possible urologist to choose from due to the exclusive deal at issue - are not present in that market. Therefore, there was no antitrust injury as to MSO.

As to the *Mi Salud* market, Triple-S was the only option in the Western Region of Puerto Rico. Therefore, as Plaintiffs allege, *Mi Salud* beneficiaries in that market only had one choice of insurer and therefore only one choice of urologist, which Plaintiffs allege was an inferior choice and that therefore the exclusivity deal resulted in poorer services in the relevant market for those patients. However, as Defendants argued at the hearing, while this type of injury is one that antitrust law contemplates, the proper plaintiffs to bring an action for such violations would be the patients who are allegedly receiving inferior services, *i.e.*, the customers, not the individual doctors who lost out on business when their services were no longer desirable to MSO and Triple-S. *See id.*

2. Section 1

Even assuming Plaintiffs had alleged an antitrust injury sufficient to establish standing, their claims fail on the merits under both Sections 1 and 2 of the Sherman Act. Section 1 makes illegal any "contract, combination . . . or conspiracy, in restraint of trade." 15 U.S.C. § 1. A plaintiff may establish such an illegal agreement by showing a "*per se*" violation of Section 1, "that is, that the challenged conduct falls within a small set

of acts regarded by courts as sufficiently dangerous, and so clearly without redeeming value, that they are condemned out of hand – that is without a showing of wrongful purpose, power or effect." *Eastern Food Services, Inc. v. Pontifical Catholic Univ. Services Ass'n, Inc.*, 357 F.3d 1, 4 (1st Cir. 2004) (citing *U.S. v. Socony-Vacuum Oil Co.*, 2310 U.S. 150 (1940)). Purely vertical agreements (*i.e.*, agreements between actors at different levels of the market), like the one here, do not fall into such a category. *See American Steel erectors v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 815 F.3d 43, 64 (1st Cir. 2016) ("[P]recedent limits the *per se* rule in the boycott context to cases involving horizontal agreements among direct competitors." (quoting *NYNEX v. Discon, Inc.*, 525 U.S. 128, 135 (1998))); *U.S. Healthcare, Inc. v. Healthsource, Inc.*, 986 F.2d 589, 594 (1st Cir. 1993) ("There are multiple reasons why the law permits (or, more accurately, does not condemn per se) vertical exclusivity; it is enough to say here that the incentives for and effects of such arrangements are usually more benign than a horizontal arrangement among competitors that none of them will supply a company that deals with one of their competitors").

Vertical exclusivity agreements are analyzed under the "rule of reason." *See Tampa Elec. Co. v. Nasville Coal*, 365 U.S. 320, 327 (1961). Under this rule, a plaintiff must show that the anti-competitive effects of the alleged agreement outweigh

any legitimate economic benefits, "a demanding and fact-intensive process." *Eastern Foods*, 357 F.3d at 5. Moreover, Section 1 does not make illegal all unreasonable restraints on trade, but "only restraints effected by a contract, combination or conspiracy." *Twombly*, 550 U.S. at 553 (quoting *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 775 (1984)). The key question in evaluating whether such a conspiracy exists is "whether the challenged anticompetitive conduct 'stem[s] from [an] independent decision or from an agreement, tacit or express.'" *Id.* (quoting *Theatre Enters., Inc. v. Paramount Film Distrib. Corp.*, 346 U.S. 537, 540 (1954)). Relevant here, "joint or concerted action must be sufficiently alleged since '[a] manufacturer . . . generally has a right to deal, or refuse to deal with whomever it likes, as long as it does so independently.'" *Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 720 F.3d 33, 43 (2013) (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984)).

We first clarify that Plaintiffs' economic losses do not constitute "an unreasonable restraint on trade." *See Brunswick*, 429 U.S. at 488-89. However, we have already determined that Plaintiffs have alleged an anticompetitive effect, meaning an unreasonable restraint on trade, in the *Mi Salud* market in Western Puerto Rico resulting from Triple-S' exclusive deal with the Urologics Defendants, albeit an effect

that did not injure the Plaintiffs: poorer services to customers in that market. [3]

However, not all unreasonable restraints on trade are violations of Section 1; there must also be sufficient allegations of a conspiracy, not simply independent action. Here, Plaintiffs do not allege any kind of conspiracy between Triple-S and its competitors, but merely an independent decision to deal exclusively with one urology provider, a decision that does not violate antitrust law. *See Evergreen*, 915 F.2d at 21-22. In fact, Plaintiffs do not even allege parallel conduct, much less a "meeting of the minds," with the aim of restraining trade. *See Twombly*, 550 U.S. at 557. Thus, Plaintiffs fail to allege a violation of Section 1 by Triple-S and Defendant urologist. As to MSO, because there are several other buyers in the Medicare Advantage market in Western Puerto Rico that provide urology services, Plaintiffs have failed to allege any anticompetitive effects in that market, nor any illegal behavior that may have brought about such effect. Therefore, Plaintiffs allegations as to MSO and the Urologics Defendants are also insufficient under Section 1 of the Sherman Act.

3. Section 2

Section 2 makes it illegal to "monopolize or attempt to monopolize . . . any part of the trade or commerce" among

[3] Despite this allegation by Plaintiffs, at the hearing, the Urologics Defendants even argued that such agreements lower fees are therefore, beneficial, not harmful, to the patients using the urology services.

several states. *Díaz Aviation Corp. v. Airport Aviation Servs., Inc.*, 716 F.3d 256, 265 (1st Cir. 2013) (quoting 15 U.S.C. § 2). To establish a violation of Section 2, a plaintiff must demonstrate "(1) that the defendant possesses 'monopoly power in the relevant market,' and (2) that the defendant has acquired or maintained that power by improper means." *Town of Concord, Mass. v. Boston Edison Co.*, 815 F.2d 17, 21 (1st Cir. 1990) (citing *U.S. v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)). A defendant may acquire or maintain monopoly power through "exclusionary conduct," defined as "conduct . . . that reasonably appears capable of making significant contribution to creating or maintaining monopoly power." *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 230 (1st Cir. 1983).

Here, the kind of "exclusionary conduct" alleged by Plaintiffs is not the kind contemplated by the Sherman Act as an illegal attempt to maintain or acquire monopoly power. While we can accept the allegations in the Amended Complaint that Triple-S had a monopoly power over the *Mi Salud* network in the Western Puerto Rico,[4] given that it was the sole insurance company assigned to the area by the government of Puerto Rico, Plaintiffs fail to allege how

[4] We have already clarified that, as to MSO, there were several other buyers in the Medicare Advantage market and without further allegations as to MSO's share of that market, we cannot say that Plaintiffs have sufficiently established MSO's monopoly power, a threshold requirement under Section 2.

contracting exclusively with the Urologics Defendants created or maintained that monopoly power. Whether Triple-S dealt with many urologist providers or just one, that role as the sole *Mi Salud* insurance company would not have changed. It is therefore illogical to say that dealing exclusively with the Urologics Defendants was designed to increase Triple-S' monopoly power. Merely alleging that Triple-S entered into conversations with the Urologics Defendants with the aim of creating monopoly power, without more, does not pass even the laxest of 12(b)(6) scrutiny. *See Iqbal*, 556 U.S. at 678-79 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Therefore, because Plaintiffs have failed to allege a cause of action under either Section 1 or Section 2 of the Sherman Act as to any of the Defendants, and, more importantly, lack standing to bring those claims in the first place, all claims under that statute are dismissed.

C. *Pendent State Law Claims*

Having dismissed all of Plaintiffs' federal law claims, all that remains are the pendent Puerto Rico state law claims, to wit: violations of the Constitution of Puerto Rico and Article 1802 of the Puerto Rico Civil Code. Docket No 29, pg. 2. Dismissal of the anchoring federal law claims does not automatically deprive the district court of jurisdiction over the pendent state-law claims. *See Lawless v. Steward Health*

Care System, LLC., 894 F.3d 9, 19 (1st Cir. 2018). However, in general, "the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state-law claims." *Rodríguez v. Doral Mortg. Corp*., 57 F.3d 1168, 1177 (1st Cir. 1995) (citing *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966)). After dismissing the federal-law claims, the district court, in considering whether to exercise supplemental jurisdiction over the state-law claims, should consider a balance of factors: "judicial economy, convenience, fairness, and comity." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (noting that the weighing of these factors often will counsel in favor of declining jurisdiction over any remaining state-law claims). With these factors in mind, and because the antitrust state-law claims essentially mirror the federal-law claims, which were dismissed on the merits, we decline to extend discretionary supplemental jurisdiction over Plaintiffs' claims under the Puerto Rico Antitrust Act, which are dismissed without prejudice.

Regarding Plaintiffs' tort claims, such claims seem to be merely tacked on to the antitrust claims as a means of covering all of Plaintiffs' bases. In the Amended Complaint, Plaintiffs merely allege that "the same actions incurred in by the defendants in violation of federal and local antitrust legislation also constitute a tort under Puerto Rico law."

Docket No. 45, pg. 19. Without more, such empty allegations hardly amount to a claim at all, and we therefore also decline to exercise supplemental jurisdiction in this context and dismiss Plaintiffs' tort claim without prejudice.

III. Conclusion

Having carefully examined the arguments raised by the parties, Defendants' Motions to Dismiss are granted.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 15th day of December, 2020.

S/ SILVIA CARREÑO-COLL
UNITED STATES DISTRICT COURT JUDGE