

When Everyone Does It, Who Asks Whether It Is Right?

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Suppose every major seller in a market begins behaving in much the same way. No one admits to fixing prices. No secret agreement is found. Each participant can say, "We are doing what everyone else does." Is that competition?

No responsible discussion should begin by accusing doctors, hospitals or insurers of corruption simply because their practices resemble one another.

Conscious Parallelism and Interdependence

Economists and antitrust lawyers use conscious parallelism for situations in which firms in a concentrated market may independently follow similar pricing or business behavior. It is associated with the interdependence theory of oligopoly pricing: each major participant knows its best move may depend upon what the few other major participants will do.

Parallel behavior alone does not prove an illegal agreement. Businesses may lawfully react to competitors, common costs, public information or government rules. Antitrust law requires evidence and careful application of the governing legal standard.

The Danger of "Normal"

A practice repeated for years can begin to look proper simply because everyone recognizes it. A hospital administrator may use the same contracting structure as neighboring systems. An insurer may adopt the same network practice as competitors. Each can believe, "This is how healthcare works."

That does not make the practice illegal. But widespread acceptance does not make a practice legal if the governing law says otherwise.

No one has to think of himself as corrupt for a harmful system to continue. Sometimes it continues because everyone assumes someone else has already decided it is proper.

Healthcare Should Not Receive a Different Legal Standard

Medicine deserves special trust, but financial organizations surrounding medicine should not receive immunity from competition laws applied elsewhere. Healthcare should be treated fairly: neither presumed guilty because prices are complicated nor excused from examination because its mission is respected.

Negotiated Prices, Steering and Market Power

Networks can reduce prices and coordinate care. They can also raise competition questions when restrictions exclude rivals or reduce meaningful patient choice. Different prices are not automatically illegal price discrimination. Steering is not automatically unlawful. Negotiation is not automatically collusion.

If regulators never ask because a practice is common, the public may never learn whether the practice

is beneficial, harmful, lawful or unlawful.

NEXT IN THE SERIES: The Money We See — and the Money We Don't.

Editor's note: This series distinguishes documented facts and established law from allegations, disputed interpretations and the author's proposed legal, tax and economic theories.

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