

Who's Blocking Me? Competition Law Issues With Healthcare Information Blocking

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

3 MIN READ

February 21, 2025, 1:18 PM

By: Jeny M. Maier, Carol Xianxiao Liu, Tasneem U. Chowdhury, Leandra Ipiña

This week on the American Bar Association's *Our Curious Amalgam* podcast, co-hosts Jeny Maier, Managing Partner at Axinn, Veltrop & Harkrider, and Matt Tabas, Antitrust & Competition Partner at Arnold & Porter, are joined by guest speaker David B. Schwartz, partner in Bryan Cave Leighton Paisner's Antitrust & Competition Practice Group, to discuss competition law issues in healthcare related to so-called "information blocking." You can listen to the podcast [here](#). Below we highlight some of the key points of discussion.

Our healthcare system today relies on the exchange of electronic health information ("EHI"), which has been facilitated by the 21st Century Cures Act (the "Cures Act"). For the first time since its passing in 2016, a lawsuit involving two healthcare data firms alleges violations of the Cures Act.

Congress passed the 2016 Cures Act to promote medical research, drug development, and the digitization of EHI. The Cures Act envisioned digital health records as the norm, taxpayers to benefit from the convenience of EHI, and the use of EHI to unlock innovations in health technology to improve healthcare. The Cures Act prohibited information blocking—acts by healthcare providers or healthcare technology firms to interfere with, prevent, or discourage the access, exchange, and use of EHI.

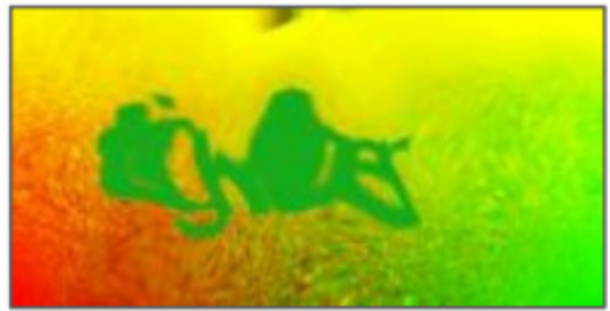
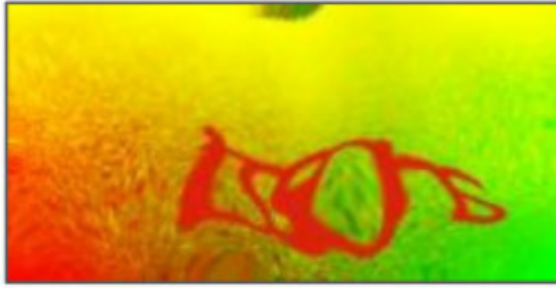
The information-blocking ban in the Cures Act is rooted in competition-law principles and designed to address Congress's potential concerns about an alleged "refusal to deal" in this context. Congress was concerned that a firm in this space might hinder a rival's ability to compete by refusing to sell or provide access to EHI as an important input or service. The agency charged by Congress with implementing and enforcing the rules under the Cures Act — the Department of Health and Human Services ("HHS") — worked closely with the Federal Trade Commission to delineate the parameters of the regulatory regime under the Act. This collaboration built on the FTC's close study of these and other healthcare issues in a 2014 public workshop, as well as significant work done by the Office of the National Coordinator for Health Information Technology and HHS in drafting a 2015 report to Congress on information blocking — both of which were important drivers of the Cures Act. For example, reflecting these competition-law roots, if the holder of EHI has IP rights that protect the EHI, the Cures Act requires the EHI holder to license the IP on fair and non-discriminatory terms. This requirement is broadly similar to the "FRAND" obligation under antitrust law, where the holder of a standard-essential patent is required in certain circumstances to license the patent on **fair, reasonable, and non-discriminatory** terms.

Despite the Cures Act's enactment in 2016, there had not been any agency enforcement or private litigation on the information-blocking ban until January 2024, when Real Time Medical Systems ("Real Time") filed a complaint against PointClickCare Technologies ("PCC"), the first case of its kind alleging a violation of the Cures Act.¹

Real Time is a healthcare data analytics company that analyzes electronic healthcare records ("EHRs") to detect troublesome health patterns that may be overlooked by caregivers. PCC is a records storage platform used to access the underlying EHR. Real Time alleges that PCC engaged in information blocking by denying Real Time access to EHI and implementing CAPTCHA walls that are unsolvable (i.e., illegible letters that you have to type out on a login page). Real Time alleges that PCC denied Real Time access because PCC has a software product that directly competes with Real Time. The U.S. District Court for the District of Maryland granted Real Time's motion for a preliminary injunction, and the case is currently on interlocutory appeal before the Fourth Circuit.²

The podcast is a great introduction to these issues and raises many interesting questions going forward: How will the Fourth Circuit rule on the interlocutory appeal? And where will the *Real Time v. PCC* case go from there? What lies ahead for public and private enforcement of the Cures Act rules on information blocking? And more generally, how will HHS policy on information blocking change under the Trump administration?

(And in case you are curious, here are some CAPTCHA walls at the center of the *Real Time v. PCC* case. What do you think?)



¹Complaint & Demand for Jury Trial, *Real Time Med. Sys., Inc. v. PointClickCare Tech., Inc.*, No. 8:24-cv-00313-PX (D. Md. Jan. 9, 2024), ECF No. 6.

²See *Real Time Med. Sys., Inc. v. PointClickCare Tech., Inc.*, No. 8:24-cv-00313-PX, 2024 WL 3569493 (D. Md. July 29, 2024), *appeal docketed*, No. 24-1773 (4th Cir. Nov. 1, 2024).

Related People

Jeny M. Maier
Carol Xianxiao Liu
Tasneem U. Chowdhury
Leandra Ipiña

Related Services

Antitrust

To subscribe to our publications, [click here](#).

News & Insights

- ABA 73rd Annual Section of Antitrust Law Spring Meeting
SPEAKING ENGAGEMENT ANTITRUST
- CompLaw Nordic 2025
SPONSORSHIP ANTITRUST
- GCR Live Cartels: 2025
SPEAKING ENGAGEMENT ANTITRUST
- American Bar Association 2025 Asia-Pacific Conference
SPEAKING ENGAGEMENT ANTITRUST
- Consumer Brands CPG Legal Forum 2025
SPEAKING ENGAGEMENT ANTITRUST
- 2025 Why Antitrust: Everything You Need to Know About a Career in Antitrust Law
SPEAKING ENGAGEMENT ANTITRUST
- Competition Law Developments in Germany: Three Things We Are Watching
AXINN VIEWPOINTS ANTITRUST
- Noerr Competition Day 2025
SPEAKING ENGAGEMENT ANTITRUST
- Daniel Oakes, Tiffany Rider, and Lindsey Strang Aberg Win “Law360 Distinguished Legal Writing Award”
AWARDS & RECOGNITIONS ANTITRUST
- NBA Commercial Law Section 38th Annual Corporate Counsel Conference
SPONSORSHIP ANTITRUST

