LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

5 Antitrust Lessons On Bundled Discounts After Medtronic

By **Robin Adelstein, Alex Cummings and Dewey Gonsoulin** (August 7, 2026, 4:10 PM EDT)

Although bundled discounts are a common and often procompetitive commercial practice, they have in recent years come under heightened antitrust scrutiny. On July 6, the U.S. District Court for the Central District of California upheld a jury's $381.7 million verdict, before trebling, against Medtronic Inc.


Robin Adelstein

The jury in Applied Medical Resources Corp. v. Medtronic Inc. had returned the verdict on Feb. 5, finding that Medtronic's bundled pricing programs violated federal antitrust law. The Central District of California's summary judgment and post-trial decisions together offer important clarity regarding the legal framework governing such claims.

The Legal Framework for Evaluating Bundled Discounts


Alex Cummings

Courts have adopted two distinct approaches to evaluating bundled discount claims under Section 2 of the Sherman Act. The first approach, articulated by the U.S. Court of Appeals for the Third Circuit in the 2003 LePage's Inc. v. 3M decision, is noncost based.[1]

Under LePage's, a bundled discount offered by a monopolist can be anticompetitive regardless of whether it is priced above cost, if it "may foreclose portions of the market to a potential competitor who does not manufacture an equally diverse group of products and who therefore cannot make a comparable offer."[2]


Dewey Gonsoulin

Accordingly, liability under LePage's turns not on whether the bundle is priced below cost, but on whether a defendant's multiproduct bundle forecloses less-diversified competitors from the market.

The U.S. Court of Appeals for the Ninth Circuit rejected that approach in the 2008 decision in Cascade Health Solutions v. PeaceHealth, adopting instead the cost-based discount attribution test.[3]

Under this test, a bundled discount is "exclusionary ... [if] after allocating the discount given by the defendant on the entire bundle of products to the competitive product or products, the defendant sold the competitive product or products below its average variable cost of producing them."[4] Thus, above-cost bundles are not automatically anticompetitive.

Below are five key takeaways from the Medtronic court's recent decision.

1. Above-cost pricing remains protected under PeaceHealth.

In jurisdictions following Ninth Circuit's PeaceHealth decision, above-cost bundled discounts remain protected from antitrust scrutiny.[5] Companies should not assume, however, that antitrust protection will attach without first applying the discount attribution test to their bundles.

In Medtronic, the plaintiff's expert found that from 17% to 47% of the products at issue flowed through bundles that fail the discount attribution test.[6]

Medtronic had previously moved for an interlocutory appeal on the issue of whether a "plaintiff may proceed to trial by showing that only a small fraction — here, at most 17% — of sales is 'below-cost.'"

However, the court declined to certify that question, because creating a bright-line rule "would deviate from the Circuit's preference in PeaceHealth to 'allow plaintiffs to challenge bundled discounts if those plaintiffs can prove a defendant's bundled discounts would have excluded an equally efficient competitor.'"[7]

Thus, above-cost pricing remains safe. But companies should not take that protection for granted. Even having a modest percentage of bundles fail the discount attribution test may result in antitrust liability.

2. Monopoly power over each product in a bundle is not required for antitrust liability.

One of the most significant questions clarified by Medtronic is whether a plaintiff must prove that the defendant held monopoly power over each product included in the bundle. The court rejected this requirement in its posttrial ruling.[8]

The court held that imposing a monopoly or significant market power requirement across all bundled products is "without support in Ninth Circuit case law."[9]

While the court acknowledged that a defendant's exclusive capacity to create the bundles at issue is a relevant consideration and one appropriately left for the jury, it cautioned against elevating that inquiry into "an actual legal element of monopoly power to prove an exclusionary bundled contracting claim."[10]

The practical takeaway from this is significant: Companies with broad product portfolios and monopoly power in certain products should not assume they are insulated from liability simply because they lack monopoly power across every product in the bundle.

3. Proof of substantial foreclosure is not a requirement for a bundled discount to be exclusionary.

The Medtronic court also weighed in on another closely contested issue: whether the analysis of discount attribution test "must show substantial foreclosure of competitors."[11]

In its Aug. 15, 2025, summary judgment ruling, the court held it did not, clarifying that a bundled discount is exclusionary under PeaceHealth if the bundle fails the discount attribution test.[12]

Medtronic sought to revisit the issue by moving for interlocutory appeal, but the court declined to certify the question in a Nov. 14, 2025, ruling.[13]

The absence of a substantial foreclosure requirement has meaningful consequences. In evaluating the evidentiary hurdles required to prove a Section 2 claim under a bundled discount theory, a plaintiff need only show the bundle fails the discount attribution test — a notably lower bar than what is required under a de facto exclusive dealing theory, where substantial foreclosure remains an essential element of proof.

4. The legal landscape is not uniform and the circuit split remains unresolved.

Companies that operate nationally should remember that the legal framework governing bundled discount claims is not uniform. The Ninth Circuit's cost-based discount attribution test has been followed by courts in other jurisdictions,[14] but the Third Circuit's noncost based approach in LePage's remains controlling law in that circuit.[15]

The practical consequence of this divergence is that the same bundled discount may be lawful in one jurisdiction yet expose a company to antitrust liability in another. Companies with a national footprint should account for these differences when structuring their bundled pricing programs.

5. Bundled discounts in the healthcare sector continue to attract the attention of antitrust enforcers and private litigants.

Bundled discounts, particularly in the healthcare sector, continue to draw scrutiny from antitrust enforcers and private litigants, and Medtronic is just the most recent example. The Federal Trade Commission's interest has been evident on multiple fronts.

In its July 3, 2023, amicus brief in Medtronic, the FTC signaled that the issues presented "have broad implications for antitrust enforcement in the health care sector and beyond,"[16] making clear it was closely monitoring the competitive effects of bundled discounts by healthcare companies.

That same year, on May 18, 2023, the FTC acted on those concerns when it, along with six state attorneys general, sued in the U.S. District Court for the Northern District of Illinois to block Amgen's acquisition of Horizon Therapeutics.

The complaint alleged, in part, that Amgen's negotiating strategies included "cross-market bundles or bundled rebates,"[17] and that the acquisition would give Amgen the "ability and incentive to sustain and entrench the monopolies of Horizon's drugs" through similar tactics.[18]

The FTC's concerns regarding the deal were resolved pursuant to a final consent **order** later that year, prohibiting Amgen from bundling its products with Horizon's.[19]

Private litigants have also increased enforcement efforts as evidenced by both Medtronic and also in the May 15, 2025, decision in Regeneron Pharmaceuticals Inc. v. Amgen Inc., where a U.S. District Court for the District of Delaware jury awarded over $135.6 million in compensatory damages, before trebling, on claims that Amgen illegally bundled its products.[20]

Conclusion

The Medtronic case offers practitioners a clearer road map for navigating bundled discount claims under Section 2 of the Sherman Act, and the practical implications are substantial. As the decision confirms, a bundled discount claim does not require proof of monopoly power over every product in the bundle,

does not require a showing of substantial market foreclosure and can succeed even where only a fraction of the defendant's contracts fail the discount attribution test.

At the same time, companies operating throughout the United States must remain mindful that the legal framework is not uniform — that is, the same bundled pricing program may be lawful in one jurisdiction and actionable in another.

Taken together, these principles significantly expand the circumstances under which bundled discount programs may give rise to antitrust liability, and the enforcement environment makes that risk all the more acute.

The FTC has signaled sustained interest in bundled pricing programs, and private litigants have demonstrated a willingness to pursue — and have won — substantial jury verdicts. Perhaps it's only a matter of time before the state antitrust enforcers become more active on this issue, particularly in light of their recent success pursuing Section 2 antitrust claims against Live Nation.

Although the Medtronic case ultimately may be reviewed by the Ninth Circuit on appeal, companies should not wait for further judicial guidance before acting. Now is the time for companies to conduct a thorough review of their bundled pricing programs — assessing both cost and noncost dimensions — to ensure compliance with antitrust law and minimize litigation risk.

Robin Adelstein is global head of antitrust and competition at Norton Rose Fulbright.

Alex Cummings is a partner at the firm.

Dewey Gonsoulin is an associate at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] LePage's Inc. v. 3M, 324 F.3d 141 (3d Cir. 2003) (en banc).

[2] Id. at 155.

[3] Cascade Health Solutions v. PeaceHealth, 515 F.3d 883 (9th Cir. 2008).

[4] Id. at 910.

[5] See, e.g., Collins Inkjet Corp. v. Eastman Kodak Co., 781 F.3d 264, 273 (6th Cir. 2015) ("The Ninth Circuit's analysis in Cascade Health is more compelling than that of the Third Circuit in LePage's Inc. v. 3M, 324 F.3d 141, 154-57 (3d Cir. 2003) (en banc)."); see also Inline Packaging, LLC v. Graphic Packaging International LLC, 351 F. Supp. 3d 1187, 1207-1208 (D. Minn. 2018) (applying PeaceHealth and stating that "[t]he discount attribution standard has been recognized by multiple courts as the appropriate test to apply to bundling claims"); cf Inline Packaging LLC v. Graphic Packaging Int'l, LLC, 962 F.3d 1015, 1029-30 (8th Cir. 2020) (noting that "[t]he district court endorsed and applied the Ninth Circuit's approach, the discount-attribution test[,]" but finding it "unnecessary to adopt either approach at this time.").

[6] Order on Medtronic's Renewed Motion for Judgment as a Matter of Law at 16, Applied Medical Resources Corporation v. Medtronic Inc., No. 8:23-cv-00268-WLH-DFM (C.D. Cal. Jul. 6, 2026) Dkt. No. 423 ("RJMOL Order").

[7] Order on Medtronic's Motion to Certify Order for Interlocutory Appeal at 2-4, Applied Medical Resources Corporation v. Medtronic Inc., No. 8:23-cv-00268-WLH-DFM (C.D. Cal. Nov. 14, 2025) Dkt. No. 278 ("Interlocutory Appeal Order").

[8] RJMOL Order, supra, note 6, at 10; see also Redacted Order on Medtronic's Motion for Summary Judgment at 7, Applied Medical Resources Corporation v. Medtronic Inc., No. 8:23-cv-00268-WLH-DFM (C.D. Cal. Aug. 15, 2025) Dkt. No. 255 ("MSJ Order").

[9] RJMOL Order, supra, note 6, at 10.

[10] Id. at 11.

[11] MSJ Order, supra, note 8, at 4-5.

[12] Id. at 6.

[13] Interlocutory Appeal Order, supra, note 7, at 4-5.

[14] Supra, note 5.

[15] The FTC has applied the PeaceHealth test for bundled discounts, see Intel Corp., 150 F.T.C. 420, 2010 WL 9549985, at *29 (Oct. 29, 2010) (Decision and Order), but expressly reserved its right to pursue claims against any alleged monopolist under any legal standard, including "(by way of example) the standard articulated by the en banc decision in the Third Circuit's LePage's case." Intel Corp., Analysis of Proposed Consent Order to Aid Public Comment 75 Fed. Reg. 48338-02, 48343, 2010 WL 3115919 (Aug. 10, 2010). The FTC subsequently pursued claims of exclusionary bundling of rebates invoking the LePage's standard. FTC v. Church & Dwight Co., 665 F.3d 1312, 1316 (D.C. Cir. 2011).

[16] Amicus Brief on Behalf of the Federal Trade Commission at 1, Applied Medical Resources Corporation v. Medtronic Inc., No. 8:23-cv-00268-WLH-DFM (C.D. Cal. Jul. 23, 2023), Dkt. No. 27-1.

[17] Redacted Complaint at ¶ 4, Federal Trade Commission v. Amgen Inc. and Horizon Therapeutics PLC, 1:23-cv-03053 (N.D. Ill. May 13, 2023), Dkt. No. 20.

[18] Id. at ¶ 6.

[19] In the Matter of Amgen Inc. and Horizon Therapeutics PLC, 2023 WL 8779325, at *4 (2023) (Decision and Order).

[20] The total award, including punitive damages, is $406.8 million. See Jury Verdict at 6, Regeneron Pharmaceuticals, Inc. v. Amgen Inc., No. 1:22-cv-00697-JLH (D. Del. May 15, 2025), Dkt. No. 497; see also Foretek, Jared. "Regeneron Gets $407M After Antitrust Win Over Amgen." Law360 (June 3, 2025 at 8:53 PM EDT), https://www.law360.com/articles/2348588/regeneron-gets-407m-after-antitrust-win-over-amgen.