



Alerts

Antitrust Update: Court Rules Against Hospital's Acquisition

January 29, 2014

Health Law Alert

The Federal Trade Commission (FTC), joined by the State of Idaho and aided by competitor hospitals which were private plaintiffs, secured a U.S. District Court order requiring St. Luke's Health System in Boise, Idaho, to divest itself of the Saltzer Medical Group, a multispecialty group with 41 physicians, including 16 primary care physicians, located in Nampa, Idaho. Judge B. Lynn Winmill ruled on January 24, 2014, that allowing the combined entity to remain intact was highly likely to allow it to (1) negotiate higher reimbursement rates from health insurance plans, which would be passed on to consumers, and (2) raise rates for ancillary services provided by physicians, e.g., x-rays, to the higher hospital billing rates.

Judge Winmill complimented St. Luke's for its goal of improving patient outcomes (which he said the acquisition would have achieved) and its foresight in recognizing that health care must move toward integration with primary care physicians supervising a coordinated approach to patient care. However, despite St. Luke's laudable motives, the Court found that the combined entity had a dominant share — 80% — of the primary care physician market in Nampa, a city about 20 miles west of Boise, and that the anti-competitive threat outweighed the positive aspects of the merger. Without identifying any ways, the Court said that there "are other ways to achieve" the laudable goals which "do not run afoul of the antitrust laws." The Court's opinion is short and is to be supplemented with Findings of Fact and Conclusions of Law that the Court will make public after allowing the parties to try to convince the Court to redact confidential information. St. Luke's has announced its intention to appeal.

The decision is notable because:

1. It is the first decision to adopt the FTC's analysis in a vertical hospital/physician practice transaction rather than in a horizontal transaction between hospitals or physician practices.
2. The transaction was challenged after it was completed because the value of the transaction was below the level that requires advance reporting under the Hart-Scott-Rodino Act (\$70.9 million for this transaction and \$75.9 million as of February 27, 2014). The challenge emphasizes that the government can, and will, (a) investigate smaller transactions that are not reportable and (b) ask that transactions be unwound.
3. Although the Court found that the positive aspects of the transaction were outweighed, the decision reinforces the importance of fostering improved

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quality, greater efficiency and cost savings in any acquisition to show that it will be pro-competitive.

This decision highlights the need to engage experienced antitrust counsel in structuring M&A transactions.

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