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Health Care Alert: Sixth Circuit Decision Highlights Importance of Antitrust Considerations in Health Care Consolidation Planning

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Capping one of the most significant periods of antitrust enforcement in the history of the health care industry, today the Sixth Circuit delivered its opinion in *ProMedica Health System, Inc. vs. Federal Trade Commission* (No. 12-3583), denying ProMedica's petition for review of the Federal Trade Commission's (FTC) prior order, directing the divestiture of ProMedica's acquisition of St. Luke's Hospital in Toledo, Ohio.

ProMedica finalized its acquisition of St. Luke's on August 31, 2010, subject to the terms of a Hold Separate Agreement with the FTC, which allowed ProMedica to close the transaction, but prohibited ProMedica from terminating St. Luke's existing contracts with managed care organizations and eliminating or transferring St. Luke's clinical service lines. It also prohibited ProMedica from terminating St. Luke's employees without cause.

In January 2011, the FTC filed an administrative complaint against ProMedica, asserting the St. Luke's acquisition violated § 7 of the Clayton Act. Finding that the merger would increase ProMedica's pricing and bargaining power in an already compressed market without creating any procompetitive efficiencies to offset these anticompetitive effects, and further determining that no substantive or compelling efficiencies were created by the merger, the administrative law judge (ALJ) ordered ProMedica to divest St. Luke's.

In the subsequent administrative appeal, the FTC affirmed the ALJ's order that ProMedica divest St. Luke's. The Sixth Circuit concurred with both the ALJ and the FTC, holding that "[t]he Commission's analysis of this merger was comprehensive, carefully reasoned, and supported by substantial evidence in the record."

Coupled with the recent decision in *Federal Trade Commission v. St. Luke's Health System, Ltd, and Saltzer Medical Group* (No. 1:13-CV-00116-BLW), which ordered the complete divestiture of an Idaho hospital's acquisition of a large physician group following a similar challenge by the FTC, today's decision reinforces the FTC's continuing

focus on the health care industry and highlights the crucial importance of antitrust considerations and analysis in the evolving health care marketplace.

On Tuesday, May 20, Vorys will host a [webinar](#) to discuss the Sixth Circuit's ProMedica decision in more detail, and to provide a broader perspective on the current antitrust enforcement trends in health care and the implications of those trends for providers, payors, and patients.