AntitrustConnect Blog

Combination of Idaho's Largest Health System and Largest Physician Practice Must Be Unwound

Jeffrey May (Wolters Kluwer) · Monday, January 27th, 2014

Within the span of about two weeks, each of the federal antitrust agencies has been handed a major win in their merger enforcement efforts.

Last Friday, it was the Federal Trade Commission's turn. The U.S. district court in Boise ordered St. Luke's Health System, Ltd.—the largest health care system in Idaho—to divest Saltzer Medical Group—the state's largest independent, multi-specialty physician practice—after concluding that St. Luke's 2012 acquisition of Saltzer violated Section 7 of the Clayton Act and the Idaho Competition Act. In that matter, the FTC and the State of Idaho joined a challenge initiated by private plaintiffs.

On January 8, the federal district court in San Francisco ruled in a Department of Justice action that Bazaarvoice Inc.'s consummated acquisition of PowerReviews Inc. (see earlier Antitrust Connect posting). Both trials were held around the same time last Fall.

With little elaboration, the federal district court in Boise held that the acquisition by St. Luke's of Saltzer would have to be undone.

"Although possibly not the intended goal of the Acquisition, it appears highly likely that health care costs will rise as the combined entity obtains a dominant market position that will enable it to (1) negotiate higher reimbursement rates from health insurance plans that will be passed on to the consumer, and (2) raise rates for ancillary services (like x-rays) to the higher hospital-billing rates," the court concluded.

The decision hints at the tension between an integrated health system and a competitive health system.

The court suggested that the anticompetitive effects might not have been the intended goal of the acquisition. Rather, the acquisition was intended to improve patient outcomes, and it would have had that effect if left intact, in the court's view.

"St. Luke's is to be applauded for its efforts to improve the delivery of health care in the Treasure Valley," the court said. "But there are other ways to achieve the same effect that do not run afoul of the antitrust laws and do not run such a risk of increased costs."

The decision was based on the reasons set forth in a separately-filed Findings of Fact and

Conclusions of Law, according to the court. However, this filing was sealed to allow counsel to file any objections. The objections are due by January 27. After the court reviews the objections, it will determine whether any redactions are needed before the decision is filed in an unsealed form. The dispute over redactions will not change the result in the case, the court noted.

St. Luke's is an Idaho not-for-profit health system that operates six hospitals, including a 399-bed hospital in Boise, and more than 100 outpatient centers and clinics throughout central and southwest Idaho and eastern Oregon. Saltzer was Idaho's largest independent, multi-specialty physician practice group with 44 physicians.

Boise-based hospital operator Saint Alphonsus Health System, Inc. and Treasure Valley Hospital (TVH)—a nine-bed physician-owned, short–term care, non-emergency hospital in Boise—filed a lawsuit in 2012 to block the proposed combination of St. Luke's and Saltzer. After a motion for a preliminary injunction filed by the complaining hospital operators was denied, the merger was consummated. A few months later, the FTC and Idaho Attorney General filed a complaint, challenging the deal. The trial began in September 2013 and went forward, despite the partial shutdown of the federal government in October. Testimony concluded on October 21.

Companies in the health care industry and elsewhere contemplating mergers and acqusitions should proceed with caution in light of the recent decisions.

"Entities considering physician practice mergers and acquisitions will need to carefully consider the antitrust implications of their transactions in the future," said David A. Ettinger of Honigman Miller Schwartz and Cohn LLP, who represented Saint Alphonsus. "This is likely to apply in particular to primary care physicians, to whom patients are particularly loyal, and who often serve patients in very localized areas. As a result, acquisitions of primary care physician groups creating large shares in even local areas may raise significant antitrust concerns."

FTC Chairwoman's Reaction

FTC Chairwoman Edith Ramirez called the ruling "an important victory." She added that "keeping health care costs low and quality high by ensuring vigorous competition between providers is, and will continue to be, a top Commission priority."

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