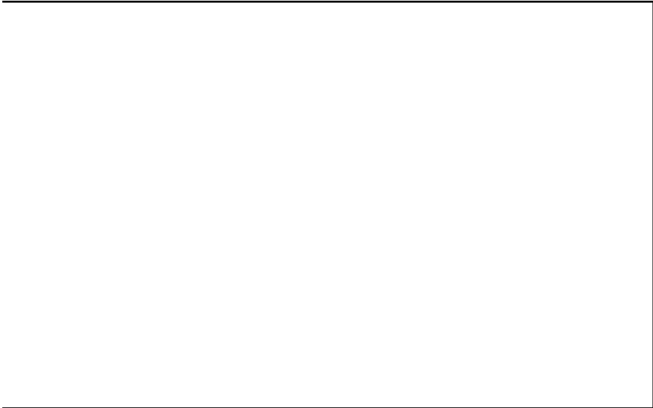


UNITED STATES OF AMERICA

181-0128



7. In addition to providing inpatient GAC hospital services Respondents also operate nationally renowned inpatient rehabilitation facilities (“IRFs”) compete agaj /TTngs

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healthcare claims directly will bear the full and immediate burden of higher reimbursement rates and other less favorable terms.

14. Jefferson and Einstein have a history of upgrading medical facilities, improving patient access, and offering more competitive reimbursement rates and terms to commercial insurers because of competition from each other that will be lost if the Transaction goes forward.

15. The Transaction will substantially lessen competition and cause significant harm to consumers. If Respondents consummate the Transaction, healthcare costs will rise, the incentive for Respondents to increase service offerings and improve the quality of healthcare will diminish.

16. Entry or expansion by other GAC hospitals or IRFs will not be likely, timely, or sufficient to offset the adverse competitive effects that likely will result from the Transaction. Potential entrants would need to devote significant time and resources to conduct studies, develop plans, acquire land or repurpose a facility and construct and open a competitive GAC hospital or IRF. Respondents' reputations, size and the breadth and depth of inpatient GAC hospital services and inpatient acute rehabilitation services provided make it unlikely that there will be entry on a sufficient scale to counteract or constrain post-Transaction price increases.

17. Respondents have not substantiated any verifiable, measurable efficiencies. Even if Respondents could identify some cognizable efficiencies resulting from the Transaction, any savings likely to be passed on to patients are far outweighed by the Transaction's potential harm and thus would not be sufficient to justify the Transaction.

II.

JURISDICTION

18. Respondents, and each of their relevant operating entities and subsidiaries and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

19. The Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III.

A.

25. Jefferson merged with Magee in 2018. Magee is located in the City of Philadelphia and is currently undergoing a renovation that will bring its hospital beds down from 96 to 82. Jefferson also operates two IRF units within larger GAC hospitals—one at TJUH named the Jefferson Acute Rehabilitation Unit and one at Abington named the Abington Acute Rehabilitation Unit. Both have 23 beds.

26. Respondent Einstein, a Pennsylvania not-for-profit corporation, operates an academic health system headquartered in North Philadelphia. Einstein operates three GAC hospitals—one in Philadelphia and two in Montgomery County—and five IRFs. Einstein also operates 15 outpatient centers. Einstein discharges over 30,000 inpatient admissions a year and employs over 8,800 people, including over 500 physicians. Like Jefferson, Einstein has a partial ownership stake in Health Partners Plans. For fiscal year 2019, Einstein generated \$1.2 billion in revenues.

27. Einstein provides inpatient GAC hospital services at two main locations. EMCP, Einstein's largest GAC hospital with 485 licensed acute care beds, is located in North Philadelphia. EMCP is a tertiary care teaching hospital and a Level 1 Trauma Center. EMCP is the largest independent academic medical center in the greater Philadelphia region and trains more than 400 residents and fellows each year in graduate medical education programs. Einstein's second GAC hospital is EMCM, a 191-bed hospital in East Norriton in central Montgomery County. Einstein also owns and operates EMCEP, a 67-bed GAC hospital in eastern Montgomery County that is located inside the larger Moss at Elkins Park IRF.

28. Einstein's Moss provides inpatient acute rehabilitation services at five IRFs in the greater Philadelphia region. Moss at Elkins Park is a freestanding IRF with 130 licensed beds. Moss also owns and operates an IRF unit at EMCP with 16 beds. Moss currently operates three 12-bed IRF units at non-Einstein hospitals. Two are at Jefferson hospitals—Jefferson Frankford Hospital and Jefferson Bucks Hospital—and one is at Doylestown Hospital.

B.

The Transaction

29. After several years of discussions between Jefferson and Einstein, Respondents entered into the Integration Agreement on September 14, 2018, whereby Jefferson would become the sole member and ultimate parent entity of Einstein. Respondents value the Transaction at \$599 million. The combined entity would operate 14 GAC hospitals, including 11 in Pennsylvania, and eight IRFs in Pennsylvania. The Transaction would make Jefferson—already the largest health system by hospital beds in the greater Philadelphia region—larger, with over 1,000 more hospital beds than the next largest health system in the greater Philadelphia region.

40. As with determining the appropriate service markets to analyze the Transaction, the appropriate geographic markets which to analyze the Transaction are the areas where a hypothetical monopolist of the hospitals located in these areas could profitably impose a SSNIP on the relevant services. Because commercial insurers would accept a SSNIP rather than market insurance plans that exclude all hospitals providing inpatient GAC hospital services in the Northern Philadelphia Area, all hospitals providing inpatient GAC hospital services in the Montgomery Area, or all IRFs providing inpatient acute rehabilitation services in the Philadelphia Area, these are relevant geographic markets in which to analyze the Transaction.

A.

Inpatient GAC Hospital Services Geographic Markets

41. The Northern Philadelphia Area is approximately the area that includes the following GAC hospitals in Philadelphia—EMCP, Jefferson Frankford Hospital, Temple University Hospital, Temple's Jeanes Hospital, Prime Healthcare's Roxborough Memorial Hospital, and Tower Health's Chestnut Hill Hospital—and in eastern Montgomery County—EMCEP (housed inside Moss at Elkins Park) and Jefferson's Abington. The Northern Philadelphia Area also includes the following specialty hospitals in Philadelphia that provide select inpatient GAC hospital services—St. Christopher's Hospital for Children, Temple's Fox Chase Cancer Center, and Cancer Treatment Centers of America's Philadelphia Comprehensive Care and Research Center. The Northern Philadelphia Area is the main area of competition between Einstein's EMCP and EMCEP and the Jefferson hospitals with which they most directly compete—Abington and Jefferson Frankford.

42. The Montgomery Area is approximately the area that includes the following GAC hospitals in Montgomery County—EMCM, Jefferson's Abington, Jefferson's Lansdale, Main Line Health's Bryn Mawr Hospital, and Prime Healthcare's Suburban Community Hospital—and just outside Montgomery County—Main Line Health's Paoli Hospital, Tower Health's Chestnut Hill Hospital, Tower Health's Phoenixville Hospital, and Prime Healthcare's Roxborough Memorial Hospital. The Montgomery Area also includes a hospital in Montgomery County that provides specialty surgical services—Physicians Care Surgical Hospital. The Montgomery Area is the main area of competition between Einstein's EMCM and the two Jefferson hospitals with which EMCM most directly competes—Abington and Lansdale. A hospital can be in more than one relevant geographic market if it competes, as Abington does, in more than one geographic area within which a hypothetical monopolist could profitably impose a SSNIP.

43. Patients who receive inpatient GAC hospital services in the Northern Philadelphia Area strongly prefer to obtain inpatient GAC hospital services close to where they live. It would be very difficult for a commercial insurer to market successfully a health plan provider network that excluded all hospitals located within the Northern Philadelphia Area. Hence, because a significant number of patients within this geographic market would not view hospitals outside of the market as practical alternatives, a hypothetical monopolist of all of the GAC hospitals within the Northern Philadelphia Area could profitably impose a SSNIP.

B.

VI.

VII.



A.

B.

63.

C.

The Transaction Would Eliminate Vital Quality and Service Competition

68. Competition drives hospitals to invest in quality initiatives, new technologies, amenities, equipment, and service offerings to differentiate themselves from competitors. Jefferson and Einstein compete with one another on these various non-price dimensions. The Transaction would eliminate this competition, which has provided GAC patients in the Northern Philadelphia and Montgomery Areas, and IRF patients in the Philadelphia Area, with higher quality care and more extensive healthcare service offerings. Jefferson and Einstein closely track each other's quality and brand recognition, and Respondents have substantially invested in improving and expanding their services and facilities to compete against one another.

69. Patients benefit from this direct competition on the quality of care and services that Respondents offer them. The Transaction will dampen the merged incentive to compete on quality of care and service offerings to the detriment of all patients who use these hospitals, including commercially insured, Medicare, Medicaid, and payor patients.

VIII.

ENTRY BARRIERS

70. Neither entry by new market participants nor expansion by current market participants would deter or counteract the Transaction's likely harm to competition in the GAC hospital services in the Northern Philadelphia or Montgomery Areas or to inpatient acute rehabilitation services in the Philadelphia Area.

71. New entry or expansion into the relevant markets would not be likely or timely enough to offset the Transaction's likely harmful competitive effects. Construction of a new hospital (including an IRF) involves high costs and significant financial risk, including the time and resources it would take to conduct studies, develop plans, acquire land or repurpose a facility, garner community support, obtain regulatory approvals, and build and open the facility. Expansion of existing hospitals and repositioning by non-hospital providers to become hospitals would encounter similar barriers, including substantial expense and time associated with planning, receiving regulatory approvals, and construction.

72. Potential entry or expansion also would be insufficient to counteract the anticompetitive effects of the Transaction. Entrants would face significant challenges in replicating the compet

IX.

EFFICIENCIES

73. Respondents have not substantiated verifiable, measurable specific efficiencies that

X.

each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference no later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Transaction challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant service and geographic markets, with the ability to offer such products and services as Jefferson and Einstein were offering and planning to offer prior to the Transaction.
2. A prohibition against any action that would result in the same or similar products and services being offered by the Respondents or their affiliates.

