

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of

Methodist Le Bonheur Healthcare
a corporation,

and

Tenet Healthcare Corporation,
a corporation.

Docket No. 9396

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Methodist Le Bonheur Healthcare ("Methodist") and Tenet Healthcare Corporation ("Tenet"), have executed an asset sale agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Pursuant to an asset sale agreement, Methodist plans to acquire certain healthcare facilities, assets, and operations, including Saint Francis Hospital – Memphis ("Saint-Francis Methodist and Saint Francis Hospital – Memphis inpatient hospital services"). The Proposed Transaction ("Proposed Transaction") involves the acquisition of Saint-Francis Methodist and Saint Francis Hospital – Memphis inpatient hospital services. The Proposed Transaction involves the acquisition of Saint-Francis Methodist and Saint Francis Hospital – Memphis inpatient hospital services. The relevant geographic market in which to assess the competitive impact of the Proposed Transaction is the Memphis Area, and includes all the GAC inpatient

hospitals in and around Memphis.

2. Only four hospital systems currently provide GAC inpatient hospital services in the Memphis Area; the Proposed Transaction would reduce that number to three and result in a single entity with control of seven out of twelve GAC inpatient hospitals in the Memphis Area.

3. Following the Proposed Transaction, Methodist would control over 50 percent of the market for GAC inpatient hospital services in the Memphis Area. Only one other major hospital system, Baptist Memorial Health Care (“Baptist”), will meaningfully compete with Respondents to provide GAC inpatient hospital services to commercial insurers in the Memphis Area. Regional One Health (“Regional One”) also operates a single GAC inpatient hospital in the Memphis Area, but it provides a more limited set of services and primarily serves a patient population that lacks commercial insurance.

4. Methodist and Saint Francis are close competitors today, directly competing with one another both for inclusion in insurers’ networks and for patients. The Proposed Transaction would immediately eliminate this direct competition, and would increase Methodist’s bargaining leverage with commercial insurers, enhancing Methodist’s ability to negotiate more favorable reimbursement terms, including reimbursement rates (prices). Commercial insurers will have to pass on at least some of those higher healthcare costs to employers and their insurance plan members in the form of increased premiums, co-pays, deductibles, and other out-of-pocket expenses. “Self-insured” employers that pay the cost of their employees’ healthcare claims directly will bear the full and immediate burden of higher reimbursement rates and other less favorable terms. In addition to competing to be in insurers’ networks by offering more favorable price and reimbursement terms to commercial insurers, Methodist and Saint Francis also compete with each other to attract patients by improving quality, expanding services offerings, and increasing access for patients in the Memphis Area. This price competition would also be lost post-transaction.

5. The Proposed Transaction will substantially lessen competition in GAC inpatient hospital services in the Memphis Area and cause significant harm to consumers. If Respondents consummate the Proposed Transaction, healthcare costs will rise, and the incentive to expand service offerings, invest in technology, improve access to care, and focus on the quality of healthcare provided in the Memphis Area will diminish.

6. Entry or significant expansion by other GAC inpatient hospitals is not likely, nor will it be timely or sufficient to offset the adverse competitive effects that will result from the Proposed Transaction.

7. Respondents have not substantiated verifiable, measurable efficiencies that would be sufficient to rebut the strong presumption of harm and other evidence of the Proposed Transaction’s likely significant anticompetitive effects.

II.

JURISDICTION

8. Respondents, and each of their relevant operating entities and subsidiaries are, 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.

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

III.

BACKGROUND

A.

Respondents

10. Respondent Methodist, the largest healthcare provider in the Memphis Area based on GAC inpatient admissions, is a ~~not~~-profit, faith-

concentration. Specifically, a transaction is presumptively unlawful if it increases the HHI by more than 200 points and results in a post-acquisition HHI above 2,500 points.

25. The Proposed Transaction would increase the HHI in this market by over 1,000 points, resulting in a post-transaction HHI of over 4,500, far exceeding the threshold over which the Proposed Transaction is presumed likely to create or enhance market power. As such, the Proposed Transaction is presumptively unlawful.

VII.

leverage. Where there are few meaningful alternatives, a hospital will have greater bargaining leverage to demand and obtain higher reimbursement rates and other more favorable reimbursement terms

31. These bargaining dynamics apply to both “broad” and “narrow” network health plan negotiations. Broad network health plans are health plans that include most or all hospitals in an area. Narrow network health plans are health plans that do not include all area hospitals and are usually marketed at lower prices than broad health plans, which include most or all hospitals. To the extent that commercial insurers are willing to create, and members are willing to purchase, narrow network health plans that limit the number of providers included in the network, hospital providers may be willing to offer lower rates or provide more favorable terms in order to be included within, rather than excluded from, the narrow network and increase overall patient volume. The availability of comparable and proximate hospitals, or a combination of hospitals, with which an insurer could create an 8ht<2than

covered by conventional pharmaceuticals. Medical Advancement Medical Management Group
Traditional Medicine and Medical Care Services and Insurance. A number of

18.

the respondents

addition, they regularly oppose each other's certificate of need
stifle competitively beneficial technology investment
to-head competition between Respondents, which at present incen

there is no guarantee such approval will be granted.

49. Even a successful entrant would be unlikely to counteract the loss of competition resulting from the Proposed Transaction, as a new provider would face significant challenges to replicate Saint Francis's competitiveness and reputation in the Memphis Area.

IX.

EFFICIENCIES

50. Respondents have not substantiated verifiable, merger-specific efficiencies that would be sufficient to rebut the strong presumption and evidence of the Proposed Transaction's likely significant anticompetitive effects.

X.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

51. The allegations of Paragraphs 1 through 50 above are incorporated by reference as though fully set forth herein

52. The Proposed Transaction constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

53. The allegations of Paragraphs 1 through 50 above are incorporated by reference as though fully set forth.

54. The Proposed Transaction, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the eighth day of May, 2021, at 10:00 a.m. Eastern is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC, 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are also notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge of, 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 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 not later

2. A prohibition against any transaction between Methodist and Tenet that combines their businesses, or any part of their businesses or operations,