



consummated the Transaction in December 2011. The Commission filed a petition for certiorari, which the Supreme Court granted in June 2012.

In defending the challenged transaction, Respondents argued that the manner in which it was structured—whereby the Hospital Authority took title to Palmyra and then turned operational control over to PPHS—rendered it immune from the federal antitrust laws under the state action doctrine. Respondents contended that since the legislature gave hospital authorities broad general corporate powers, including the power to acquire hospitals, the challenged conduct was a foreseeable result of the law.

In February 2013, a unanimous Supreme Court ruled in favor of the Commission and reversed the dismissal of the complaint, holding that the state action doctrine did not bar the Commission from taking action.<sup>5</sup> Notably, the Court found that Respondents' interpretation of the state action doctrine was overbroad and inconsistent with the principle that state immunity is disfavored.<sup>6</sup> We thereafter determined to proceed with the administrative action that had been stayed pending the collateral federal court appeals.

In August 2013, although we still had reason to believe the transaction created an unlawful monopoly, the Commission accepted for public comment a proposed structural remedy in light of the apparent unavailability of a practical and meaningful structural remedy. In particular, we provisionally accepted the consent based on an understanding that Georgia's CON laws likely would have prevented a divestiture of hospital assets, even assuming a finding of liability following a full merits trial and appeal.

In September 2014, we withdrew our provisional acceptance of the 2013 consent agreement in response to new information received, including through public comments, suggesting that the CON laws might not bar a structural remedy. Additionally, in March 2014, North Albany Medical Center, LLC ("North Albany"), a newly formed healthcare entity,



As noted above, notwithstanding the unsatisfactory remedial outcome in this case, the Commission nevertheless achieved a significant victory in the Supreme Court with respect to state action doctrine. By ensuring that state action immunity remains true to its doctrinal foundation of protecting the deliberative policy choices of sovereign states and is applied in a manner that promotes competition and enhances consumer welfare, an important win will unquestionably benefit competition and consumers going forward.

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Before the Illinois Task Force on Health Planning Reform (Sept. 15, 2008), available at <https://www.ftc.gov/policy/policyactions/advocacyfilings/2008/09/ftcanddepartmentofjustice-written-testimony-illinois> ("The Agencies' experience and expertise has taught us that Certified laws impede the efficient performance of health care markets. . . . Together, we support the repeal of such laws, as well as steps that reduce their scope.") Fed. Trade Comm' & U.S. Dep't of Justice, IMPROVING HEALTH CARE: A DOSE OF COMPETITION Ch. 8, p. 6 (July 2004), - - - mmi.ten -