

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580

Petitioner,

v.

LOUISIANA CHILDREN'S MEDICAL  
CENTER,  
1100 Poydras St.  
New Orleans, LA 70163

and

HCA HEALTHCARE, INC.,  
One Park Plaza  
Nashville, TN 37203 ne Park Plaza





would seriously undermine the Commission's ability to seek an adequate remedy to any harm caused by the transaction.

### Jurisdiction and Venue

This Court has jurisdiction over the Respondents and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18(a), Section 13(b) of the FTC Act, 15. U.S.C. § 53(b), and 28 U.S.C. §§ 1331, 1337, 1345. Venue is proper pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22d and 28 U.S.C. § 1391(b) and (c), because the cause of action arose in this district, where Respondents failed to file the required notification of their transaction.

### The Parties

1.

greater New Orleans area. According to a ProPublica database, LCMC had revenues over \$2.2 billion and \$3.7 billion in assets in 2021. Petrizzi Decl. ¶ 12, Ex. 3.

3. HCA is a for-profit corporation incorporated under the laws of Delaware, with its principal place of business located at One Park Plaza, Nashville, TN 37203. HCA operates 182 hospitals in the United States and abroad, with revenues totaling approximately \$60.2 billion in 2022. Petrizzi Decl. ¶ 12, Ex. 4.

### The Cause of Action

4. On January 3, 2023, LCMC announced that it had finalized its acquisition of three hospitals in the New Orleans area (the “Acquired Hospitals”): Tulane Medical Center, Lakeview Hospital, and Lakeside Hospital (the “Acquired Hospitals”). Petrizzi Decl. ¶ 1.

5. Based upon available public information, on or about January 3, 2023, LCMC purchased the Acquired Hospitals from HCA for \$150 million. Petrizzi Decl. ¶ 6, Ex. 1.

6. Section 7A(a) of the HSR Act requires persons to file premerger notification reports with the Commission before acquiring, directly or indirectly, any voting securities or assets of any other person, above a certain monetary threshold adjusted annually. In 2022 and early 2023, parties to mergers or acquisitions had to file premerger notification reports of transactions of between \$10 million and \$403.9 million in voting securities or assets, provided that the parties met the “size of person” test. That test was satisfied in January 2023, given that one party had \$202 million in annual sales or total assets and the other party had \$20.2 million in annual net sales or total assets.

7. Section 7A(b) of the HSR Act provides that upon filing a premerger notification report, a party wishing to complete an acquisition must delay consummating the transaction for at least 30 days (15 days in the case of a pure cash tender offer or 11 U.S.C. § 363(b) bankruptcy) to give the Commission an opportunity to review the transaction and determine whether to investigate the transaction further. The statute refers to this 30-day delay as the “waiting period.”

8. If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the premerger notification requirement, then Section 7A(g)(2) of the Clayton Act empowers the Commission to seek from a United States district court an order of compliance, an extension of the waiting period until there has been substantial compliance, and any other equitable relief that in the court’s discretion is necessary or appropriate. 15 U.S.C. § 18a(g)(2).

#### Respondents’ Failure to Comply

9. Upon information and belief, the HSR Act required LCMC and HCA to report the Acquisition by submitting the premerger notification filing to the FTC. The \$150 million value of the Acquisition exceeded the minimum threshold for reportability. The size of person test was met because, to the best of the FTC’s knowledge, LCMC or HCA had more than \$202 million in annual net sales or total assets and the other party had \$20.2 million in annual net sales or total assets. Based on a ProPublica database, it appears that LCMC had over \$2.2 billion in revenue and \$3.7 billion in assets in 2021. Pezzi Decl. ¶ 12, Ex. 3. In 2022, HCA

reported revenues of over \$60.2 billion in 2022. <sup>21</sup> Decl. ¶ 12, Ex. 4. LCMC and HCA have never claimed that the parties or the Acquisition fell below the requisite thresholds for an HSR Act premerger notification filing.

10. Because the Acquisition was reported under the HSR Act, LCMC and HCA were prohibited from consummating the Acquisition until at least 30 days after the submission of the required premerger notification filings.

11. To date, no Respondents submitted the required premerger notification filing. Respondents have therefore failed substantially to comply with the notification requirement under Section 7(a) of the Clayton Act.

12. Despite the applicable reporting law, 15 C.F.R. § 803.58 (m)(1)(i) (requiring

the hospitals are combined, that services are consolidated or terminated, may cause additional harm to consumers of those hospitals; consequently, the Commission urgently requests relief in this matter. Further investigation is needed to determine whether the Acquisition violates the antitrust laws.

14. The Respondents have not resolved the Commission's concerns and have refused to take any corrective steps. When Commission staff asked counsel for LCMC whether it will submit the required filings under HSR and whether LCMC will agree to hold the Acquired Hospitals separate to allow the Commission to complete its investigation, counsel for LCMC indicated that they would not. Pezzi Decl. ¶ 13-30, Exs. 6-12.

15. Counsel for LCMC and HCA told Commission staff that the notification and waiting period requirements under the HSR Act do not apply because the Attorney General of Louisiana allegedly approved a Certificate of Public Advantage ("COPA") for the Acquisition under Louisiana state law. The granting of a COPA is not among the statutory exemptions under Section 7A(c) of the HSR Act, 15 U.S.C. 18a(c), nor has it been recognized by any court as a basis to excuse noncompliance with the notification and waiting period requirements under the Act. Additionally, neither the FTC nor the DOJ has issued any interpretation or policy that a COPA exempts a party from filing under the HSR Act. After the Respondents file their required filings, the Commission will investigate and seek from the Respondents information needed for the Commission to determine, along with the potential competition issues, the parameters of the PCO and whether it shields the Acquisition from



liability under Section 7 of the Clayton Act.

16. Based upon public documents, it appears that LCMC already has begun integrating the Acquired Hospitals with LCMC operations and other assets. In a press release issued by LCMC on January 2023, announcing the consummation of the Acquisition, LCMC's CEO stated their plans "to integrate our operations." Petrizzi Decl. ¶ 14, Ex. 5. LCMC's website now lists the three Acquired Hospitals among its "nine hospital locations." Petrizzi Decl. ¶ 14, Ex. 2. Based on public reports, it appears the services offered at Tulane Medical Center will be transferred to other LCMC hospitals and the facility

