Updates
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Abandoned Hospital Merger Reveals Lessons for Healthcare M&A

A proposed healthcare acquisition was abandoned following the Federal Trade Commission's (FTC or the Commission) unanimous vote to oppose the transaction. In the face of 5-0 FTC opposition, New Jersey providers RWJBarnabas Health (RWJ) and Saint Peter's Healthcare System (St. Peter's) terminated their proposed merger on June 14, 2022. The FTC's unanimous opposition to this transaction imparts important lessons for companies contemplating mergers and acquisitions (M&A) in the healthcare space.

On June 2, 2022, the FTC filed a complaint to block RWJ's acquisition of St. Peter's. RWJ is one of the largest health systems in New Jersey and owns 12 general acute care hospitals in the state. St. Peter's is an independent general acute care hospital located in Middlesex County, New Jersey. According to the parties, the merger would have created the first premier academic medical center in New Jersey. The FTC alleged that the merger would create a combined entity with approximately 50% market share of general acute care hospital services market in Middlesex and result in "less convenient alternatives for many patients and less effective substitutes for insurers[.]" According to the FTC, the acquisition would harm patients by removing the competitive incentive to improve quality of care, access, technology, services, and amenities. The parties abandoned the deal 12 days after the FTC voted to file a complaint.

Key Takeaways

- **The FTC is focused on traditional healthcare providers, not just big tech and private equity.** The Commission has already brought four hospital challenges this year, and several others across the healthcare space. FTC Bureau of Competition Director Holly Vedova stated in a press release that the FTC's unanimous vote to challenge the deal and its subsequent abandonment "should be a lesson learned to hospital systems all over the country and their counsel: The FTC will not hesitate to take action in enforcing the antitrust laws to protect healthcare consumers who are faced with unlawful hospital consolidation."
- **Do not assume the FTC will fully recognize the benefits of a potential merger.** Announcing the abandonment of the proposed RWJ/Saint Peter's transaction, RWJ's CEO reiterated his belief that the acquisition would have "transformed quality, increased access and decreased the overall cost of care for the people of this State through the creation of a premier academic medical center." However, regulators are typically not persuaded that claimed efficiencies and synergies should save a merger that appears anticompetitive. Despite RWJ's belief that the merger would result in price and quality benefits to patients, the FTC was not persuaded that the parties had "substantiated merger-specific, verifiable, and cognizable efficiencies."
- **The FTC is challenging mergers that do not involve a market's largest provider.** The Commission will not automatically bless a healthcare merger based on claims that the transaction would enable stronger competition against a market leader.
- **Conduct a careful antitrust analysis and risk calculation before pursuing transactions.** The decisions to terminate this transaction immediately after an FTC challenge suggest that the parties underestimated the odds of FTC opposition. Companies contemplating mergers should recognize that the FTC has been aggressive in challenging healthcare transactions in recent years. Therefore, it is important for healthcare providers considering mergers and acquisitions to consult experienced antitrust counsel as early as possible.

Authors

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