



Ninth Circuit Upholds Antitrust Ruling in Merger of Healthcare Providers

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On February 10, 2015, the United States Court of Appeals for the Ninth Circuit upheld an Idaho district court's determination that the merger of two healthcare providers violated Section 7 of the Clayton Act. The panel affirmed the district court's finding that the proposed merger would have anticompetitive effects and upheld the full divestiture ordered by the lower court. The three-judge panel also rejected the acquiring party's argument that the merger would lead to efficiencies that would have improved patient outcomes and its argument that a "conduct remedy" was more appropriate than divestiture.

The case involved the acquisition of the assets of the Saltzer Medical Group, the largest independent multi-specialty physician group in Idaho, which had 34 physicians in Nampa, Idaho, by St. Luke's Health Systems, Ltd., a not-for-profit health care system that operated an emergency clinic in Nampa. The combined entity would have had 80% of the primary care physicians in Nampa, a city of 85,000 people. The Federal Trade Commission ("FTC"), the State of Idaho, and two private hospitals filed suit, seeking to enjoin the merger under Section 7 of the Clayton Act. The FTC contended that the merger would cause anticompetitive effects in the Nampa, Idaho adult primary care physician services market. After a nineteen-day bench trial, the district court determined that the "combined entity obtains a dominant market position" that ran a risk of "higher reimbursement rates . . . that will be passed on to the consumer." The district court judge entered a permanent injunction that mandated that St. Luke's fully divest itself of Saltzer's physicians and assets.

After St. Luke's appealed the injunction, the Ninth Circuit upheld the district court's decision on almost all points. The Ninth Circuit emphasized that the efficiencies St. Luke's hoped to achieve as a result of the acquisition were insufficient to justify the anticompetitive effects, particularly given the overwhelming market share the combined entity could leverage to increase adult primary care physician services reimbursement rates – an HHI of 6,217, with an increase of 1,607.¹ Moreover, the Ninth Circuit emphasized that the district court's remedy – unwinding the acquisition – was appropriate under the circumstances. The decision emphasizes the increased scrutiny applied to concentrated markets by the FTC and the possible consequences for not considering the possible antitrust consequences of an acquisition.

The case was *St. Alphonsus Med. Ctr. – Nampa, Inc. v. St. Luke's Health Sys.*, No. 14-35173, ___ F.3d ___, 2015 U.S. App. Lexis 2098 (9th Cir., Feb. 10, 2015). The district court decision on appeal may be found at *St. Alphonsus Med. Ctr. – Nampa, Inc. v. St. Luke's Health Sys.*, No. 1:12-cv-00560-BLW, 2014 U.S. Dist. LEXIS 9264 (D. Id., Jan. 24, 2014).

This action was somewhat unusual because it constituted an effort by the FTC and the State of Idaho to unwind a merger that had already taken place. The original acquisition had been approved by the district court.

¹ The Herfindahl-Hirschman Index, or "HHI," is a measure of market share designed to give proper weight to larger market shares, and provides that a "concentrated market" has an HHI of over 2500 and that a merger that increases the acquiring party's HHI more than 200 points is presumed to be likely to enhance market power.

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