

Client Alert

Antitrust Practice Group

December 18, 2017

Sanford Health/Mid Dakota Clinic Healthcare Provider Merger Temporarily Blocked

On Wednesday, December 13, 2017, a federal district court issued an order preliminarily enjoining the merger of North Dakota healthcare providers, Sanford Health, Sanford Bismarck, (together “Sanford”) and Mid Dakota Clinic, P.C. (“MDC”). The order prohibits the merging parties from consummating their transaction until an administrative trial before the Federal Trade Commission (“FTC”) is complete. The administrative trial was scheduled to begin on November 28, 2017, but has been continued to January 17, 2018. The North Dakota Attorney General had also joined as a plaintiff in the complaint for a preliminary injunction.

The complaint, covered in our previous client alert [available here](#) and discussed in greater depth in our colleagues’ article in the [Antitrust Health Care Chronicle](#), alleges that Sanford and MDC are the largest providers of certain healthcare services in the Bismarck-Mandan region. The FTC claims that the merger would harm competition in several services lines and would result in a combined entity possessing a 75% market share for adult primary care physicians, and a 100% market share for general surgery physicians.

The district court’s decision follows a four-day evidentiary hearing before a magistrate judge, featuring over 1,600 exhibits and 16 testifying witnesses. Although the full findings of facts and conclusions is to be redacted and publicly-released at a later time, the court’s order noted the defendants’ focus on the presence of Blue Cross Blue Shield of North Dakota as a competitive constraint upon any impacts of the merger.

The FTC’s Acting Bureau of Competition Director Bruce Hoffman issued a public statement, describing the court’s decision as “good news for patients and their families in the Bismarck and Mandan metropolitan area” and that the government “look[s] forward to proving at trial that this merger would likely reduce competition, resulting in higher prices and lower quality of adult primary care physician services, pediatric services, obstetrics and gynecology services, and general surgery physician services in that area of North Dakota.” The parties have indicated that they intend to file an appeal to the Eighth Circuit.

The FTC has enjoyed a recent string of litigation wins in the healthcare space, including its successful appeals in Penn State Hershey Medical Center/PinnacleHealth and Advocate/NorthShore. Moreover, the current

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action is one of several merger challenges filed in 2017, including the recent case filed by the Department of Justice to block the AT&T/Time Warner merger and the FTC's action against the merger of titanium dioxide companies, Tronox/Cristal. These cases further reaffirm the continued aggressive approach to merger enforcement under the new administration.

King & Spalding's antitrust lawyers provide sophisticated, solution-oriented advice to healthcare companies on all aspects of antitrust law, from civil and criminal litigation and government investigations to antitrust counseling and government review of transactions. Please reach out to any members of our team should you have any questions.

Documents

The Federal Trade Commission's Acting Bureau of Competition's public statement is available at <https://www.ftc.gov/news-events/press-releases/2017/12/statement-federal-trade-commission-acting-bureau-competition>.

The Federal Trade Commission's administrative complaint in Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. is available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-healthsanford-bismarckmid-dakota-clinic>.

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