



## FTC files antitrust challenge to hospital system's acquisition of primary care physician group practice

April 11, 2013

The Federal Trade Commission (FTC) and the State of Idaho have filed suit in federal court seeking divestiture of the acquisition of Saltzer Medical Group, P.A. by St. Luke's Health System, Ltd. The suit claims that the acquisition of Saltzer, which is the largest primary care physician practice group in the area, is an anti-competitive acquisition because it allegedly gives St. Luke's a 60 percent market share for adult primary care physician (PCP) services sold to commercial health plans in the relevant geographic area (the Nampa, Idaho, area).

The FTC/State of Idaho Complaint (Complaint) alleges that the acquisition is likely to lead to higher health care costs and loss of valuable non-price competition, such as the incentive to provide higher quality health care services. The Complaint further alleges that St. Luke's has steadily built a formidable health care system that includes a large number of formerly competing physicians. In the last two years alone, the Complaint alleges that St. Luke's has acquired more than 16 previously independent physician groups across the alleged relevant geographic market in Idaho.

The FTC claims that St. Luke's has progressively increased its bargaining leverage and its ability to extract higher rates in its negotiations with health plans due to its increased market share. According to the Complaint, those health plans have thus far, prior to the Saltzer acquisition, been able to resist some of St. Luke's rate demands.

The Complaint contends that until the Saltzer acquisition, those health plans still had a credible "outside option," that is, the ability to form a network of physicians that did not necessarily include St. Luke's physicians but included physicians from Saltzer and a competing hospital, St. Alphonsus. That option gave health plans a credible threat that would allow them to walk away from the negotiating table if St. Luke's demanded rates that were too high. The Saltzer acquisition, according to the FTC, eliminates that option as a credible threat to St. Luke's demands for higher rates and creates a single dominant provider of adult PCP services in the Nampa area.

With a combined entity that commands a nearly 60 percent share of the PCP market, any network that does not include St. Luke's/Saltzer becomes far less attractive for local employers whose employees live in the Nampa area. The FTC points out that the next largest providers of these services in the Nampa area will be a small fraction of the size of the St. Luke's/Saltzer entity. This will result in St. Luke's having even greater bargaining leverage.

The Complaint asserts that St. Luke's recognized that having a dominant share in adult PCP services is critical to both increasing volume and extracting the highest possible payments for other components of its health system. These other components include physician specialties, surgeries and ancillary services such as X-rays and laboratory tests. The FTC points to St. Luke's own documents that allegedly show that St. Luke's reaps the benefits of its physician acquisitions, in part, by relying on those physicians to shift patients to St. Luke's facilities. According to the Complaint, these facilities almost invariably charge substantially higher fees, often more than double those of independent facilities, even when the patient is receiving the same service in the same location before the patient's PCP was acquired by St. Luke's.

The FTC also alleges that it is unlikely new competitors will enter into the PCP market within a reasonable time period after the

acquisition, as new entrants would require extended ramp-up periods to become competitively significant. The Complaint further cites an abundance of non-competition clauses in physician employment contracts as a barrier to entry by physicians leaving St. Luke's employment.

Apparently, during the FTC investigation and prior to the FTC and the State of Idaho filing their suit, St. Luke's argued that the acquisition of Saltzer will create cost efficiencies and increase the quality of care. In the Complaint, the FTC again points to St. Luke's own documents to counter this argument and references a quote from one of St. Luke's board members who stated in an email, "Let's be realistic. Employing physicians is not achieving better cost, it's achieving better profit."

Specific past events were also cited as evidence that St. Luke's will exploit its market advantage, including allegations that St. Luke's currently charges as much as 160 percent more for nasal septum repair, 124 percent more for a basis metabolic panel and 274 percent more to repair a superficial wound; that St. Luke's previously used a similar strategy whereby they purchased physician practices and ultimately raised rates in another region in Idaho; and that St. Luke's has been aggressive in its growth strategy, as St. Luke's has purchased more than 70 physician groups since 2004.

The FTC and the State of Idaho are asking the court to rule that St. Luke's acquisition of Saltzer violates Section 7 of the Clayton Act and the Idaho Competition Act; to order divestiture and any other further action needed to establish competition that would have existed but for the acquisition of Saltzer; and to permanently enjoin St. Luke's from acquiring or maintaining any legal or beneficial interest in Saltzer.

The takeaways from the filing of this Complaint are:

- Prior to any future acquisition by a health care system or group in which the acquisition may significantly increase the acquiring entity's market share in any specific service area or provide a significant increase in bargaining leverage, there should be a pre-acquisition analysis and assessment of the impact of the proposed acquisition upon the specific market place. This should be done (1) to alert the acquiring entity of the potential impact of its increased market share and increased bargaining leverage and (2) to provide, if the acquisition goes forward, better prepared responses to any inquiries by federal or state antitrust enforcement agencies.
- Throughout this Complaint (and often in other similar challenges by the antitrust enforcement agencies), the acquiring entity's own documents are used to attempt to show anticompetitive intent and expectations. Sometimes such documents are written without much focus and merely represent one person's perception or misconception of the possible acquisition. Therefore, the individuals who may create documents relating to the potential acquisition need to be educated as to the purpose and intent of the acquisition so that all written documents are carefully drafted and accurate, as anything put in writing may end up in an antitrust complaint.

# Authors

---

Copyright © 2023 Bricker & Eckler LLP. All rights reserved.