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Jeremy R. Morris

Partner
Columbus
614.227.2370
jmorris@bricker.com

Antitrust enforcement priorities for 2018

January 19, 2018

Health care antitrust in 2017 saw governmental agencies successfully pursue a number of enforcement actions. Examining these actions provides insight and guidance as to what might happen in antitrust enforcement in 2018 and what should be considered when evaluating whether a proposed transaction might draw scrutiny.

For some time now, hospital mergers and consolidations have been the focus of antitrust scrutiny in the health care marketplace. This will likely continue in 2018 and beyond. However, 2017 also saw enforcement agencies contest a hospital system's proposed acquisition of a large physician group that provides primary care services, specialty medical services and surgical services. In that case, the Federal Trade Commission's complaint specifically alleged that the two entities involved are each other's closest competitors within the relevant four-county region of North Dakota and that if the transaction was completed, the combined physician group will have approximately 75-85 percent market share in adult primary care physician services, pediatric services, and obstetrics and gynecology services. In addition, it was alleged the combined physician group would be the only physician group offering general surgery physician services within the affected geographic area. Ultimately, the enforcement agencies were granted a preliminary injunction enjoining the proposed transaction.

This case, along with a prior enforcement action also contesting a hospital system's

attempted acquisition of a large, independent, multi-specialty physician practice demonstrates that the enforcement agencies are more than willing to evaluate potential competitive concerns related to the physician services market. Often, hospital systems are large competitors in the physician services market, and an attempt to acquire another large practice can result in antitrust concerns. Hospital systems should consider antitrust issues related to the physician services market as potential acquisitions of physician practice and further employment of practicing physicians are considered.