

Client Alert

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FTC Breaks New Ground By Winning Antitrust Challenge to St. Luke's Physician Practice Acquisition

On January 24, 2014, a federal judge ordered Boise, Idaho-based St. Luke's Health System to unwind its acquisition of Saltzer Medical Group. The court unsealed its findings this week, providing insight into its decision.

Just over a year ago, the FTC began its face-off against St. Luke's in a trial challenging the hospital system's acquisition of Saltzer, the Idaho region's largest independent physician practice. Industry members and antitrust practitioners have viewed this case as a test of the FTC's ability to take on mergers between hospital systems and major physician practices.

St. Luke's and Saltzer argued that their deal was an effort to integrate health care delivery and take advantage of unified electronic health records, best medical practices and tough quality control. The FTC claimed, however, that the combination gives St. Luke's control over nearly 60 percent of the adult primary care physician services market and makes employers hesitant to choose health care networks that don't include St. Luke's and Saltzer doctors. According to FTC Chairwoman Edith Ramirez, "[t]he combination of St. Luke's and Saltzer would have given the merged hospital system the market power to demand higher rates for health care services, ultimately leading to higher costs for both employers and consumers."

The US district judge agreed, finding that the integration made St. Luke's the dominant player in the area, with 80 percent of the primary care physicians in Nampa, a city approximately 20 miles west of Boise. Although possibly not the intended goal of the acquisition, the court found that this market dominance provides St. Luke's greater bargaining leverage with health plans along with the power to charge higher hospital-based rates for ancillary services, such as X-rays, that were previously billed at lower physician office-based rates. In particular, among the documents influencing the decision was an analysis by a consultant for St. Luke's indicating that office/outpatient visits could be billed at amounts about 60 percent higher if the visits were billed as hospital-based by St. Luke's rather than physician office-based by Saltzer. Other documents suggested that St. Luke's planned to fund a 30% pay raise for physicians by obtaining higher hospital-based reimbursement. These concerns led the judge to block the deal despite findings that patient care would benefit under the arrangement due to the belief that arrangements short of an actual acquisition could produce the same results.

This case is the first time that the federal courts have decided a FTC case against a physician practice acquisition, and it could have vast implications for other health care systems growing their networks of employed physicians. Transactions consolidating physician practices within hospitals and health systems have become increasingly common, particularly in the wake of the cost-saving pressures of the Affordable Care Act and reimbursement reductions by third party payers. This case makes it clear that such deals are high on the FTC's radar.

Hunton & Williams LLP provides guidance to health care providers considering mergers or other transactions involving physician practices. We have significant experience representing hospitals and insurance companies in a wide range of matters, with specific experience in health care, M&A, labor and employment, and competition law. The firm's antitrust and competition practice combines high-level

government and private litigation experience. Lawyers in the group come from both of the US antitrust enforcement agencies and include a former deputy director of the US Federal Trade Commission's Bureau of Competition, former FTC senior litigators and other officials from the FTC. The group serves companies in competition litigation, merger review, intellectual property matters, consumer protection and privacy, and criminal antitrust defense and related price-fixing litigation.

Further Information

FTC press release: <http://www.ftc.gov/news-events/press-releases/2014/01/statement-ftc-chairwoman-edith-ramirez-us-district-court-district>

Case Case-related documents: <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/03/st-lukes-health-system-ltd-and-saltzer-medical-group>

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