



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

November 2, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley:

Thank you for your letter calling for continued vigilance in detecting and stopping anticompetitive abuses and unlawful consolidation in health care markets. In particular, I appreciate receiving your request that the Commission challenge any anticompetitive tactics of dominant hospital systems, including any contracting terms with third-party payors of the sort that are the subject of current antitrust litigation brought by the Department of Justice.¹

Vigorous antitrust enforcement is critical to safeguarding competitive markets and protecting consumers. Congress has empowered the Commission to prevent mergers, acquisitions, and certain other conduct that may substantially lessen competition or tend to create a monopoly, in violation of the Clayton Act.² Although I cannot comment on nonpublic investigations or evaluations, I assure you that protecting consumers from anticompetitive mergers in the health care sector remains a top priority for the Commission.³ For example, the Commission is currently litigating its complaint alleging that the proposed merger of Sanford Health and Mid Dakota Clinic would likely reduce competition and result in higher prices and lower quality for a number of types of physician services in the Bismarck-Mandan region of

¹ *United States and the State of North Carolina v. Charlotte-Mecklenburg Hosp. Auth. d/b/a Carolinas HealthCare System*, No. 3:16-cv-00311 (W.D.N.C., filed June 9, 2016), <https://www.justice.gov/atr/case/us-and-state-north-carolina-v-charlotte-mecklenburg-hospital-authority-dba-carolinas>. Three other cases of this type, challenging terms utilized by Sutter Health in its contracts with payors, are currently in litigation as well. *State of California v. Sutter Health*, CGC-18-565398 (Cal. Supr., filed March 29, 2018), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-sues-sutter-health-anti-competitive-practices-increase>; *Sidibe v. Sutter Health*, No. 3:12cv4854 (N.D. Cal., filed Sept. 17, 2012), <https://www.docketbird.com/court-cases/Sidibe-v-Sutter-Health/cand-3:2012-cv-04854>; *UFCW & Employers Benefit Trust v. Sutter Health*, No. CGC14538451 (Cal. Supr., filed Apr. 7, 2014), <https://cases.justia.com/california/court-of-appeal/2015-a143399.pdf?ts=1445992501>.

² 15 U.S.C. §§ 12 *et seq.*

³ For summaries of the FTC's health care antitrust actions, see Overview of FTC Antitrust Actions in Health Care Services and Products (Aug. 2018), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/overview_health_care_august_2018.pdf; Overview of FTC Actions in Pharmaceutical Products and Distribution (Aug. 2018), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/overview_pharma_august_2018.pdf.

North Dakota.⁴ In addition, in other recent matters, the Commission won preliminary injunctions against two proposed hospital system mergers based on showings of potential cost increases and declines in quality and innovation for patients in the northern suburbs of Chicago, Illinois and Harrisburg, Pennsylvania; the parties to each transaction subsequently abandoned their merger proposal.⁵

Although the FTC has limited statutory authority over conduct by non-profit entities, including most hospital systems, I assure you that the Commission will pursue any conduct that stifles competition in violation of any of the statutes that we enforce. Congress has directed the Commission to act in the interest of consumers to prevent unfair methods of competition that violate Section 5 of the Federal Trade Commission Act,⁶ such as collusion to increase prices or restrict output, as well as exclusionary or predatory practices that harm competition and consumers.

Thank you again for raising this topic. The Commission very much remains on the beat to protect health care competition and consumers, and we appreciate your ongoing vigilance. If you or your staff have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Joseph J. Simons
Chairman

⁴ The agency recently won a preliminary injunction in federal district court in this matter; the companies have appealed that order to the Eighth Circuit Court of Appeals. Fed. Trade Comm'n, Press Release, *Statement by Federal Trade Commission Acting Bureau of Competition Director Bruce Hoffman on the Court Ruling Granting a Preliminary Injunction in the Sanford Health/Mid Dakota Clinic Matter* (Dec. 2017), <https://www.ftc.gov/news-events/press-releases/2017/12/statement-federal-trade-commission-acting-bureau-competition>.

⁵ Fed. Trade Comm'n, Press Release, *After Two Chicago-area Hospital Systems Abandon Proposed Merger, FTC Dismisses Case from Administrative Trial Process* (Mar. 2017), <https://www.ftc.gov/news-events/press-releases/2017/03/after-two-chicago-area-hospital-systems-abandon-proposed-merger>; Fed. Trade Comm'n, Press Release, *Statement from FTC's Bureau of Competition Director Debbie Feinstein on Decision by Penn State Hershey Medical Center and PinnacleHealth System to Abandon Their Proposed Merger* (Oct. 2016), <https://www.ftc.gov/news-events/press-releases/2016/10/statement-ftcs-bureau-competition-director-debbie-feinstein>.

⁶ 15 U.S.C. § 45.