

# ANTITRUST & TRADE PRACTICES

## *Alert*

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## **Federal Trade Commission Moves to Block Hospital Merger in Northern Virginia**

**May 13, 2008**

### **Key Points**

- The Federal Trade Commission (FTC) has instituted administrative proceedings to prevent the merger of two providers of hospital services in Northern Virginia – Inova Health System Foundation and Prince William Health System, Inc.
- The FTC alleges that the merger would reduce price and non-price competition for general, acute care inpatient hospital services in Northern Virginia.

### **Summary of the Federal Trade Commission Complaint**

On Friday, May 9, 2008, the FTC commenced administrative proceedings to block the proposed merger of Inova Health System Foundation (Inova) and Prince William Health System, Inc. (PWHS).<sup>1</sup> According to the administrative complaint approved by the FTC, Inova is the largest hospital system in Northern Virginia, operating five inpatient general, acute care hospitals with approximately 1,892 beds. Inova has grown primarily through the acquisition of other Northern Virginia hospitals, including acquisitions in 1997 and 2005. PWHS operates a single, 180-bed hospital that serves western Prince William County and the cities of Manassas and Manassas Park. In August 2006, Inova and PWHS agreed to a merger in which PWHS would be integrated into the Inova system.

In the Complaint, the FTC alleges that Inova and PWHS are direct competitors for the sale of acute care inpatient hospital services. These services are defined as “a broad cluster of basic medical and surgical diagnostic and treatment services that include an overnight stay in the hospital by the patient.” The FTC asserts that, aside from Inova and PWHS, there are four other providers of general, acute care inpatient services in Northern Virginia with a total of 760 beds. The merger of Inova and PWHS would increase Inova’s share of the hospital beds in Northern Virginia from 67 percent to 73 percent. The merger would also increase Inova’s share of inpatient revenue from commercial payors from approximately 74 percent to 78 percent.

Based on these allegations, the FTC asserts that the merger would reduce price and non-price competition and result in higher healthcare costs for consumers. Because health plans rely on the availability of

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<sup>1</sup> The Complaint and Press Release can be viewed at <http://www.ftc.gov/os/adjpro/d9326/index.shtm>

competing hospitals for bargaining leverage when negotiating rates, the consolidation of competing hospitals reduces this leverage. Specifically, the merger of Inova and PWHs will force health plans to pay higher prices for services from PWHs and will give Inova additional leverage in negotiating rates for its other hospitals. Ultimately, according to the Complaint, consumers will be forced to pay higher prices for healthcare. The FTC also claims that the merger is not necessary to achieve substantial efficiencies, improve the quality of care at PWHs or save PWHs from financial difficulties.

### What is Next?

The FTC has designated Commissioner J. Thomas Rosch as the Administrative Law Judge who will oversee the litigation. Inova and PWHs have 20 days to respond to the Complaint with an Answer or a Motion to Dismiss. The administrative hearing is currently scheduled for August 8, 2008, but could be pushed back if Commissioner Rosch determines that more time is necessary.

The FTC and the Virginia Attorney General have also requested that the U.S. District Court for the Eastern District of Virginia enjoin the merger pending the resolution of the administrative proceedings.

It is notable that the FTC's challenge to the Inova-PWHs merger comes on the heels of the agency's final resolution of its post-consummation review of the merger of three hospitals in suburban Chicago.<sup>2</sup> In that case, which was filed in February 2004, four years after the completion of the merger, the FTC concluded that the merger had led to a substantial increase in prices resulting from the merged firms' increased market power.

*Feel free to contact any of our attorneys listed below regarding these developments.*

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<sup>2</sup> Evanston Northwestern Healthcare Corporation, Docket No. 9315, Final Order (Fed. Trade Comm'n Apr. 24, 2008), available at <http://www.ftc.gov/os/adjpro/d9315/080424finalorder.pdf>