

Federal Merger Enforcement Timeline

4-28-17: *2nd Circuit affirms District Court Decision to Block Anthem-Cigna Merger*

On April 28, 2017, a divided panel of the Second Circuit Court of Appeals affirmed the US District Court's decision that sided with the Department of Justice (DOJ), which argued that the proposed merger violated Section 7 of the Clayton Antitrust Act. Anthem Inc. announced on May 12, 2017 that it would no longer seek to acquire Cigna Corporation.

2-08-17: *District Court Blocks Anthem-Cigna Merger*

On February 8, 2017, the United States District Court for the District of Columbia blocked the proposed merger between Anthem and Cigna. The order focused on how the merger would harm competition in the market for insurance sold to national accounts (employers with 5,000 or more employees) in fourteen states. Anthem has filed notice of its intent to appeal the decision.

1-23-17: *District Court Blocks Aetna-Humana Merger*

On January 23, 2017, the United States District Court for the District of Columbia blocked the \$37 billion merger between insurance companies Aetna and Humana. The [decision](#) concluded that the merger would likely substantially lessen competition, and that the insurers' proffered efficiencies would not offset the anticompetitive effects of the merger.

10-31-16: *7th Circuit grants FTC injunction, halting merger of Chicago area hospitals*

On October 31, 2016, the FTC [won its appeal](#) to put the proposed merger of Advocate Health Care and NorthShore

University HealthSystem on hold. The Seventh Circuit decision granted a preliminary injunction, halting the merger of the Chicago area health systems. The appellate court found that “the district court’s geographic market finding here was clearly erroneous.” The decision concluded that the FTC has properly defined the geographic market, and demonstrated a likelihood of success on the merits of its antitrust challenge to the merger.

09-27-16: *FTC wins preliminary injunction blocking merger of two Pennsylvania hospital systems in the Third Circuit*

On September 27, 2016, the FTC [won its appeal](#) to block the merger of the two largest hospital systems in the Harrisburg, Pennsylvania, area. In a 3-0 decision, the Third Circuit granted a preliminary injunction, concluding that the FTC had demonstrated the merger would likely be anti-competitive. The decision pauses the merger of Penn State Hershey Medical Center and Pinnacle Health System, pending the Commission’s administrative challenge to the deal.

07-06-16: *FTC Votes to Drop West Virginia Merger Challenge in Light of State Law*

On July 6, 2016, the FTC voted to abandon its challenge to the merger of Cabell Huntington and St. Mary’s hospitals in light of state legislation there that exempted the deal from federal antitrust scrutiny.

06-22-16: *West Virginia Healthcare Authority Approves Merger FTC Tried to Block*

On June 22, 2016, the West Virginia Healthcare Authority [approved](#) the merger of Cabell Huntington and St. Mary’s hospitals, a deal the FTC had tried to block last November. The WV state legislature’s SB 597, which gave the Attorney General and Health Care Authority Jurisdiction over cooperative agreements like the one at issue here and provided for an exemption from federal antitrust scrutiny, went into

effect in March 2016. This decision raises the issue of whether state action immunity insulates WV from federal merger enforcement authority. We await the FTC's response.

06-14-16: *FTC Loses Bid for Preliminary Injunction in Chicago Hospital Merger Case*

A federal judge in Chicago declined to grant the FTC's request for a preliminary injunction to temporarily stop a merger between Downers Grove, Ill.-based Advocate Health Care and Evanston, Ill.-based NorthShore University HealthSystem. The decision was the second loss in a row for the FTC, which was also denied a preliminary injunction in a Pennsylvania hospital merger case last month, after years of successful merger challenges.

05-09-2016: *FTC Loses Bid for Preliminary Injunction in Pennsylvania Hospital Merger Case*

On May 9, 2016 a federal district judge in Pennsylvania denied the FTC's motion for preliminary injunction, which would pause the merger of Penn State Hershey Medical Center and Pinnacle Health System, pending the Commission's administrative challenge to the deal. The court [ruled](#) that the FTC had not made a sufficient showing that the deal would harm competition. The FTC, despite the loss, plans to go forward with its challenge to the merger.

12-18-2015: *Pennsylvania Orthopedists Agree to Settle with FTC Over AntiCompetitive Merger*

On December 18, 2015, Keystone Orthopaedic Specialists, LLC, an orthopedic practice formed through a combination of six independent orthopedic practices, agreed to settle charges that the merger substantially reduced competition for orthopedic services in Berks County, Pennsylvania. Under the terms of the settlement, contained in this administrative [order](#), Keystone and another practice, Orthopaedic Associates are required to obtain prior approval

from the Commission before acquiring any interests in each other, before acquiring another orthopedic practice in Berks County, and before hiring or offering membership to an orthopedist who has provided services in Berks County in the past year. According to the FTC, the settlement is designed to maintain competition in the relevant market by preserving Orthopaedic Associates' separation, and allowing health plans to avail themselves of current market conditions by renegotiating existing Keystone contracts. The FTC's full case summary and more documents can be found [here](#).

12-18-2015: *FTC Seeks to Block Chicago-area Hospital Merger*

The Federal Trade Commission [announced](#) it had authorized action to block the proposed merger of Advocate Health Care Network and NorthShore University HealthSystem, two leading providers of general acute care inpatient hospital services in the North Shore area of Chicago. The FTC issued an administrative complaint alleging that the proposed merger will create the largest hospital system in the North Shore area.

12-08-2015: *FTC and Penn AG Challenge Hospital Merger*

The FTC [announced](#) it had authorized an action, filed jointly with Pennsylvania's AG to block Penn State Hershey Medical Center's proposed merger with PinnacleHealth System, alleging that the combination of the two health care providers would substantially reduce competition in the area surrounding Harrisburg, Pennsylvania, and lead to reduced quality and higher health care costs for the area's employers and residents.

11-06-2015: *FTC Files to Block Hospital Merger in West Virginia*

On November 6, 2015, the FTC's [press release](#) announced it had authorized action to block Cabell Huntington Hospital's proposed acquisition of St. Mary's Medical Center – two

hospitals located three miles apart in Huntington, West Virginia. The FTC issued an administrative complaint alleging that the combination would create a dominant firm with a near monopoly over general acute care inpatient hospital services and outpatient surgical services in the adjacent counties of Cabell, Wayne, and Lincoln, West Virginia and Lawrence County, Ohio likely leading to higher prices and lower quality of care than would be the case without the acquisition.

09-18-2015: *DOJ Issues Second Request in proposed Humana-Aetna deal*

On September 18, 2015, DOJ issued a second request for additional information from Aetna and Humana in connection with the companies' proposed \$37 billion deal. According to the [Wall Street Journal](#), the companies still expect the deal to close in the second half of 2016.

06-29-2015: *FTC Cautions Minnesota that Transparency Legislation Could Harm Competition*

On June 29, 2015, the Federal Trade Commission (FTC) responded to a request from two Minnesota state legislators to analyze the competitive impact of recent amendments to the Minnesota Government Data Practices Act (MGDPA). The amendments may require health plans contracting with the state to make information normally deemed competitively sensitive available to the public. The FTC expressed concern that this change would harm consumers by increasing the potential for collusion and decreasing the use of selective contracting. Read the FTC's [Press Release](#) and [Blog Post](#).

05-04-2015: *U.S. Supreme Court denies cert in Promedica v. FTC*

On May 4, 2015, the Supreme Court denied certiorari in Promedica's appeal of the Sixth Circuit's ruling that its 2010 merger violated federal antitrust laws. In light of the decision, Promedica will submit a divestiture plan to the FTC shortly regarding the acquired St. Luke's (not to be confused

with St. Luke's in Idaho, the defendant in another recent FTC merger case). The dispute over the 2010 deal lasted nearly five years.

04-24-2015: *FTC Informs NY of its Concerns Over COPA laws*

On April 24, 2015, the FTC announced that it had sent a letter to the state of New York, expressing its concerns that the state's [certificate of public advantage](#) (COPA) laws, which purport to bestow antitrust immunity on certain healthcare collaborations, were unnecessary because federal antitrust enforcement already considers whether consolidation benefits consumers. The FTC further explained that it was concerned that the COPA laws would be used to immunize transactions with anticompetitive effects, and that this would result in higher health care prices for consumers.

2015-04-01: *FTC Delays Advocate, Northshore Merger in Chicago to Review Deal Further*

The FTC, on April 1, 2015, informed Advocate Health Care and NorthShore University HealthSystem it would need more time to review the entities' proposed merger, without providing an exact timeline. The proposed consolidation would create a 16-hospital system known as Advocate NorthShore Health Partners. Those entities reported \$6.8 billion in combined revenue in 2013.

2015-03-31: *FTC and Phoebe Putney Reach Consent Agreement in Administrative Case*

On March 31, 2015, the FTC announced that it had reached a consent agreement with Phoebe Putney Health System, the Hospital Authority of Albany-Dougherty County and HCA concerning the Hospital Authority's acquisition of a hospital from HCA, a deal the FTC deemed anticompetitive. The post-Supreme Court settlement reached is similar to the one proposed in 2013 and: (1) requires Phoebe Putney and the Hospital Authority to give the FTC prior notice before

acquiring any part of a hospital or a controlling interest in other healthcare providers in the Albany, Georgia area; (2) prohibits the Hospital Authority and Phoebe Putney from opposing a Certificate of Need application for a general acute-care hospital in the Albany area; and (3) contains a stipulation that the effect of the transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the complaint.

02-25-2015: *U.S. Supreme Court Upholds FTC Decision Against NC Dental*

On February 25, 2015, the U.S. Supreme Court ruled that efforts by the North Carolina Board of Dental Examiners to prevent dental hygienists from engaging in the practice of teeth whitening are not immune from antitrust attack under the “state action” doctrine. See the opinion and all pleadings from the entire litigation [here](#).

02-10-2015: *FTC wins Ninth Circuit appeal in St. Luke’s*

On February 10, 2015, the Ninth Circuit upheld the Idaho federal district court’s block of St. Luke’s proposed acquisition of another provider in Nampa. The [opinion](#) is available here. Also see our [blog post](#) for background on the case and details on the appellate ruling.

11-19-2014: *Ninth Circuit hears oral arguments in FTC v St. Luke’s appeal*

On November 19, 2014, a three-judge Ninth Circuit panel in Portland heard arguments in the appeal of *Saint Alphonsus Medical Center, et al v. St. Luke’s Health System, LTD, et al*. The district court enjoined the merger earlier this year, and the provider appealed. Watch the [video](#) of the hearing.

10-31-2014: *FTC Requires Divestiture as a Condition of Florida Surgery Center Holding’s Acquisition of Competitor Symbion*

The Federal Trade Commission [announced](#) will require Surgery Center Holdings, Inc., known as Surgery Partners, and Symbion Holdings Corporation to divest Symbion's ownership interest in an ambulatory surgery center in Orange City, Florida, as part of a [settlement resolving charges that Surgery Partners' \\$792 million purchase](#) of Symbion would be anticompetitive. The FTC characterized its action as part of the Commission's ongoing effort to protect American consumers from higher healthcare costs.

09-05-2014: *FTC Withdraws Acceptance of GA Hospital Consent Agreement, Returns Case to Litigation*

On September 5, 2014, the FTC [announced](#) that it had decided to withdraw its acceptance of the consent agreement it previously reached with Phoebe Putney Health System, Inc of Palmyra, GA, and to return the case to administrative litigation. The parties had settled the merger challenge in August 2013 following litigation that reached the Supreme Court earlier that year. The Court had reversed the Eleventh Circuit, ruling that the [state action doctrine](#) did not immunize the deal from federal antitrust scrutiny.

04-22-2014: *Sixth Circuit Affirms FTC's Block of Ohio merger of Promedica and St. Luke's*

The Sixth Circuit [affirmed](#) the FTC administrative order requiring ProMedica Health System of Toledo, OH, to divest acquired hospital St. Luke's. The FTC originally challenged the August 2010 merger in January 2011 on the basis that the transaction would adversely affect competition, in violation of the Clayton Act. ProMedica has stated that it will appeal the case to the U.S. Supreme Court. Find the FTC case summary and administrative case documents [here](#).

01-24-2014: *FTC Blocks St. Luke's-Saltzer Deal in Idaho*

On January 24, 2014, the FTC [announced](#) that a federal district court in Idaho ruled that St. Luke's Health System's

acquisition of Saltzer Medical Group violated Section 7 of the Clayton Act and the Idaho Competition Act, and ordered St. Luke's to fully divest itself of Saltzer's physicians and assets. In March 2013, the FTC and the Idaho Attorney general had filed a joint complaint challenging the merger between Idaho's largest health system and the state's largest independent, multi-specialty physician practice as anticompetitive, in that it would create a dominant single provider of adult primary care physicians in the Nampa, Idaho area, with almost 60 percent market share. The Ninth Circuit will hear arguments in the appeal on November 19. See the Source's [case summary](#) and [Blog post](#) for more information!

01-22-2014: *FTC Requires Divestitures in Community Health Acquisition in AL, SC*

In January 2014, the Federal Trade Commission and Community Health Systems, Inc. agreed to a settlement in connection with that provider's proposed \$7.6 billion acquisition of rival health system Health Management Associates, Inc. The FTC [announced](#) that the settlement requires Community Health Systems, one of the nation's largest hospital operators, to divest hospitals and related assets, including outpatient facilities, in Alabama and South Carolina as a condition of the acquisition.

11-18-2013: *FTC Drops Hospital Merger Investigation in CA*

The Federal Trade Commission officially [closed](#) its non-public investigation into the acquisition of non-profit hospital Emmanuel Medical Center of Turlock, California, by for-profit giant Tenet Healthcare. The acquisition also obtained approval by state authorities.

02-19-2013: *US Supreme Court Rules [State Action Doctrine](#) Does not Apply in GA Hospital Merger Case*

After a merger challenge by the FTC that went all the way to the U.S. Supreme Court, the Hospital Authority of Albany-

Dougherty County and Phoebe Putney Health System [agreed to settle](#). In April 2011, the FTC challenged the acquisition as having anticompetitive effects and alleging that Phoebe had structured the deal to improperly take advantage of the [state action doctrine](#). On June 27, 2011 the district court dismissed the FTC's complaint, ruling that Phoebe Putney was immune from [antitrust](#) liability under the [state action doctrine](#). The Eleventh Circuit [affirmed](#). The Supreme Court [reversed](#), ruling that the state of Georgia has not clearly articulated a policy that allows hospital authorities to make acquisitions that substantially lessen competition, after which the parties settled. Find the FTC case summary and related documents [here](#).

12-04-2012: *FTC Settles Merger Challenge by Requiring Nevada Provider to Axe Non-Competes with Physicians*

Renown Health settled with the FTC on charges resulting from its acquisition of multiple cardiology practices in Reno, NV. The FTC [announced](#) that, under the settlement order, Renown Health, the largest provider of acute care hospital services in northern Nevada, would release its cardiologist employees from non-compete contract clauses, allowing up to 10 of them to join competing cardiology practices in the Reno area. These changes to the contractual terms between the provider and physicians allowed Renown to avoid divestitures as a competitive solution. Find the FTC case summary and related documents [here](#).

11-16-2012: *FTC Challenges Reading Health Merger in PA; Parties Abandon Deal*

The FTC issued an administrative complaint against Reading Health System's proposed acquisition of Surgical Institute of Reading L.P., alleging that the combination of the two health care providers would substantially reduce competition in the area surrounding Reading, Pennsylvania. Concurrently, the FTC and Pennsylvania Attorney General jointly sought a preliminary injunction in federal district court to stop the deal pending

a full administrative trial. The parties subsequently abandoned the transaction, on December 7, 2012, the FTC formally dismissed its case. Find the FTC case summary and related documents [here](#).

04-10-2012: *DOJ Closes Investigation into Insurer-Provider Affiliation*

The Department of Justice's [Antitrust](#) Division [announced](#) that it was closing its investigation into the affiliation agreement between insurer Highmark and provider West Penn Allegheny health system. DOJ said it determined that the vertical combination of Highmark and West Penn Allegheny would not negatively affect horizontal competition in the relevant market. For more context on the interplay among West Penn Allegheny, Highmark, and University of Pittsburgh Medical Center, see the 2010 Third Circuit [opinion](#) on West Penn's case against Highmark and UPMC, alleging that the insurer and another provider had conspired to put West Penn out of business through anticompetitive conduct.

11-18-2011: *IL Hospital OSF Abandons Efforts to Acquire Rockford Health Amid FTC Suit*

The FTC filed an administrative complaint challenging OSF Healthcare System's proposed acquisition of Rockford Health System. The complaint charged that the proposed acquisition would substantially reduce competition among hospitals and primary care physicians in Rockford, Illinois and result in significant harm to local business and patients. The FTC simultaneously filed a complaint in federal district court seeking an order to enjoin the transaction temporarily to preserve competition for Rockford area residents pending the FTC's administrative proceeding and any subsequent appeals. The Commission later dismissed the complaint on April 13, 2012 after OSF abandoned the transaction. Find the FTC case summary and related documents [here](#).

06-17-2008: *FTC Drops Challenge to Northern VA Hospital Merger After Parties Abandon Deal*

On May 8, 2008, the FTC and Virginia Attorney General's Office filed a motion for a temporary restraining order and preliminary injunction to block the acquisition of Prince William Hospital by Inova Health System pending the outcome of an administrative trial on the merits. According to the proposed deal, the merger would have put Inova in control of 73% of the licensed beds in Northern Virginia, which the FTC argued would result in significantly higher prices and reduced non-price competition. Shortly after a preliminary district court hearing, the parties announced they had abandoned the transaction, and the FTC dismissed its complaint. Find the FTC's case summary and related documents [here](#).

08-02-2007: *FTC Orders Divestitures and Conditions in Chicago Area Hospital Merger*

In 2004, four years after its consummation, the FTC challenged the 2000 acquisition of Highland Park Hospital by Evanston Northwestern Healthcare Corporation, claiming that shortly after merging, ENH instituted price increases for all three hospitals that were significantly higher than price increases for other comparable hospitals, forcing payers to accept the increases or lose the three hospitals from their networks. The FTC won the administrative case, and its [order](#) required the following remedies to restore competition: Evanston Northwestern had to establish separate independent contract negotiating teams that will allow managed care organizations to negotiate separately for the competing hospitals, and Evanston Northwestern would have to give prior notification for ten years to the Commission for any future hospital acquisition in that market. Find the FTC case summary and related documents [here](#). A plaintiff class was recently [certified](#) in the related private suit in federal court in Illinois, 13 years after the original transaction.

07-22-1999: *8th Circuit Reverses of District Court's Preliminary Injunction of Missouri Hospital Merger*

On April 16, 1998, the FTC and Missouri Attorney General's office challenged the acquisition of Doctors Regional Medical Center in Poplar Bluff, Missouri, by Tenet Healthcare Corp, as creating a virtual monopoly for acute care inpatient services. The district court granted a preliminary injunction, ruling that the FTC was likely to succeed on the ultimate issue of whether the merger would have the effect of substantially lessening competition. The Eighth Circuit reversed, finding that the FTC had failed to prove its geographic market, and therefore could not show that the merged parties would possess market power, and the FTC dismissed its administrative complaint. 186 F.3d 1045 (8th. Cir. 1999). Read the FTC case summary and find pleadings [here](#).

09-26-1997: *Sixth Circuit Affirms Dismissal of FTC Challenge to Michigan Hospital Merger*

In January 1996, the FTC filed a preliminary injunction to block the combination of the two largest acute care hospitals in Grand Rapids, Michigan, Butterworth Hospital and Blodgett Memorial Medical Center. The district court judge denied the request, ruling that although the FTC had demonstrated that the merged party would have substantial market power in the relevant markets, it had failed to show that the merged non-profit entity would exercise its market power to harm consumers, and the Six Circuit affirmed. 121 F. 3d 708 (6th Cir. 1997). Find the FTC case summary and related documents [here](#).

07-29-1997: *FTC Settles with Tenet Healthcare, Requires Divestitures*

The FTC settled charges that the acquisition of OrNda Healthcorp by Tenet Healthcare Corp. would substantially lessen competition for general acute care services in the San

Luis Obispo, California area. The consent order required Tenet to divest some merger assets, and to notify the FTC of certain actions for a period of ten years. Find the FTC case summary and related documents [here](#).

06-28-1996: *FTC Closes Montana Hospital Merger Investigation Due to State Regulation*

The FTC [closed](#) its investigation into the merger of Columbus Hospital and Montana Deaconess Medical Center in light of regulatory involvement by the state of Montana. The Montana legislature had enacted a statute providing that a [certificate of public advantage](#) issued by the Montana State Department of Justice signaled the state's intent to substitute state regulation for competition in certain instances. The [certificate of public advantage](#) placed certain conditions on the deal, including comprehensive price controls, conditions relating to the quality of hospital care, and conditions concerning the hospitals' dealings with health plans, physicians, competitors, and ancillary service providers.

07-03-1995: *FTC Accepts Consent Order to Oversee Prospective Deals Hospitals in Michigan*

On November 9, 1994, the FTC sought a preliminary injunction to block the combination of the only two general acute care hospitals in Port Huron, Michigan, non-profit Port Huron Hospital and non-profit Mercy hospital-Port Huron. Soon after the FTC filed its challenge, the parties elected to call off their proposed merger and settle with the FTC. On July 3, 1995, the Commission [announced](#) that it had accepted a consent order, which for three years required prior Commission approval before the parties carried out any renewed attempt to merge their operations, and for ten years required prior notice to the Commission of any significant combination of their hospitals with each other or with hospitals belonging to third parties.

02-22-1995: *Court Denies FTC's Bid to Enjoin Hospital Merger in Missouri*

In 1995, the FTC attempted to block the merger of Freeman Hospital and Oak Hill Hospital in Joplin, Missouri on the grounds that the merger would violate federal [antitrust](#) laws by substantially reducing competition, resulting in higher prices or reduces services in the market for inpatient acute-care hospital services in Joplin and nearby areas of Missouri and Kansas. The federal district court denied the FTC's request for preliminary injunction to stop the merger, and the Eighth Circuit [affirmed](#), and the FTC dropped its administrative challenge. Read the FTC press release [here](#).

12-09-1992: *FTC Judge Dismisses FTC Challenge to Adventist Merger in Ukiah, CA*

In late 19