

FTC Files Suit to Block Sale of North Carolina Hospitals to Novant

On January 25th, 2024, the Federal Trade Commission (FTC) announced that it had authorized a suit to block Novant Health's proposed acquisition of two hospitals owned by Community Health Systems (CHS) in North Carolina. Nearly a year ago, in February of 2023, Novant Health and Community Health Systems (CHS) signed an Asset Purchase Agreement for Novant to pay \$320 million to acquire two North Carolina hospitals from CHS.

Novant is currently one of the largest hospital systems in the southeastern United States, and already owns a local hospital that serves more patients than any other local hospital. CHS is a for profit healthcare system operating over 70 hospitals and many other care sites in 15 states, but has reportedly been experiencing [financial difficulties](#) in recent years.

According to the FTC's [administrative complaint](#), the deal would give Novant close to 65% of the local inpatient general acute care services market, which "would likely increase annual healthcare costs by several million dollars", according to the FTC's [press release](#). The complaint asserts many claims that are typical of horizontal mergers between hospitals in the same geographic market. Specifically, the FTC alleges that because there are few alternatives for inpatient care in the area, the merger will result in millions of dollars in increased healthcare costs by eliminating the price competition that currently exists between CHS and Novant. The FTC [also states](#) that the merger would reduce Novant's incentive to compete to attract patients by improving its facilities, service offerings,

and quality of care and would likely lead to worse outcomes for nurses and doctors, and “life or death consequences for patients.”

A transaction that significantly increases concentration in a highly concentrated market is presumptively illegal under Guideline 1 of the [2023 Merger Guidelines](#) that were issued by the FTC and DOJ in December 2023. In the complaint, the FTC alleges that this transaction would increase the Herfindahl-Hirschman Index (HHI, a measure of market concentration calculated by summing the squares of the individual firm’s market shares) would increase by more than 1000 points, leading to a post-acquisition HHI significantly above 3500. The 2023 Merge Guidelines include a [structural presumption](#) of illegality of a market HHI greater than 1800 and a change in HHI of more than 100 from a transaction. While the presumption of illegality can be rebutted or disproved, if the FTC’s market definitions are accurate, this transaction would greatly exceed those thresholds and would likely harm competition in the area. According to the FTC, the complaint will be filed in the U.S. District Court for the Western District of North Carolina to halt the transaction pending an administrative proceeding.