

HCA Healthcare and Mission Health Face Wave of Lawsuits for Anticompetitive Contracting

Anticompetitive contracting practices have been under antitrust enforcement scrutiny from both state regulators and private parties in recent years. In California, hospital giant Sutter Health faced several high-profile lawsuits for its alleged anticompetitive contracts. While the state case led by the California attorney general settled earlier this year, the federal class action is on its way to the 9th Circuit appeal. HCA Healthcare, a large health system in North Carolina, appear to be the next health system under litigation fire for similar practices. Three separate actions have been filed by plaintiffs that range from private consumers to the municipalities and counties of North Carolina, all of which allege that the hospital giant used its market power to demand anticompetitive contract terms from health plans and raise prices. In this post, we detail and break down the actions and provide a guide on this next wave of litigation to follow in private antitrust enforcement.

Davis v. HCA & Mission Health (filed 8/10/21)

In the [first lawsuit](#), filed in August 2021, a group of patients residing in the Asheville area sued HCA Healthcare and Mission Health in North Carolina state court. The class action alleges anticompetitive practices in violation of the North Carolina Constitution and antitrust and consumer protection laws. Notably, the lawsuit follows HCA's 2019 acquisition of Mission Health in North Carolina. The plaintiffs claim that Tennessee-based HCA used market power garnered from the cross-market merger to demand anticompetitive terms in contracts with insurers, including tying, all-or-nothing, anti-steering, and gag clauses, driving up prices and insurance premiums.

The sequence of events leading to the lawsuit against HCA and Mission Health appear remarkably similar to those giving rise to Sutter Health's antitrust suits. In

Sutter's case, the California attorney general unsuccessfully attempted to block the merger of Sutter's Alta Bates Medical Center with Summit Medical Center. Shortly after the merger in 2000, the health system began imposing all-or-nothing systemwide contracts on health plans and a retrospective [FTC case study](#) showed that prices increased as much as 72% post-merger. As Sutter continued leveraging its market power through anticompetitive practices, private lawsuits suing Sutter for anticompetitive contract terms and inflated prices sprouted, culminating in the federal class action [Sidibe v. Sutter Health](#) in 2012 and state court action [UEBT v. Sutter Health](#) in 2014 (later joined by California AG).

In HCA's case, its acquisition of Mission Health in 2019 was approved with conditions by the North Carolina AG. However, none of the conditions imposed were competitive impact conditions. Additionally, the complaint highlights the market power of Mission Health, alleging that Mission Health used similar anticompetitive tactics prior to the acquisition but was shielded from antitrust enforcement by a state-administered certificate of public advantage (COPA). While the COPA ended in 2016 after the state legislature repealed the law, plaintiffs allege that further consolidation with HCA allowed Mission Health to become the most expensive hospital system in North Carolina for many procedures. The [complaint](#) specifically alleges that "HCA holds an approximate 90% market share in the market for inpatient GAC hospital care in Buncombe County, the most populous county in Western North Carolina, and in nearby Madison County. Because insurers and consumers in the region have no choice but to use HCA, HCA has free rein to dictate the prices it charges insurers and consumers while at the same time undermining quality to cut costs."

Last month, the case was moved from Buncombe County Superior Court and a hearing was held in front of Special Superior Court Judge for Complex Business Case Mark Davis. Plaintiffs in the case seek damages and an injunction to prevent future anticompetitive activity. North Carolina Attorney General Josh Stein also filed a brief in support of the plaintiffs. According to the judge, a ruling in the case is expected in the coming weeks.

In re Mission Health Antitrust Litigation (consolidated)

In addition to the class action by private plaintiffs in state court, two municipalities and two counties in North Carolina have also joined in the litigation with separate actions against HCA and Mission Health in federal court. Given the similarity in the facts, allegations, and parties to the lawsuits, the actions have been consolidated in North Carolina district court since their initial filings in the summer. The plaintiffs in the now consolidated case are:

1. City of Brevard (filed 6/3/22)
2. Buncombe County and City of Asheville (filed 7/27/22)
3. Madison County (joined 7/25/22)

The original complaints—filed by [City of Brevard](#) and [Buncombe County/City of Asheville](#) in June and July, respectively—closely mirror each other and similarly allege antitrust violations under Sections 1 and 2 of the Sherman Antitrust Act. As in *Davis*, these lawsuits allege that HCA’s acquisition of Mission Health in 2019 gave the combined entities increased market power and leverage with control of more than 85% of general acute care (GAC) market in the Asheville region, where Mission Health’s flagship hospital is located. While *Davis*, filed in Buncombe County Superior Court, specifically alleges the merger allowed HCA to use its monopoly power to inflate prices in Asheville, these cases also allege similar violations in the seven surrounding counties, claiming that market shares of HCA and Mission Health reach 86.6% in Buncombe County, 90% in Madison County, and over 70% in the surrounding counties. Consequently, plaintiffs allege that the combined market power of HCA with Mission Health, which had allegedly employed existing anticompetitive scheme since 1995 pursuant to a state-issued COPA, allowed the health systems to force insurers to enter contracts that include all-or-nothing, anti-tiering and anti-steering, and gag clauses. Furthermore, the complaints allege that HCA refused to comply with the new federal hospital transparency rule that requires disclosure of the prices it charges for GAC and outpatient services, which would reveal its prices to be the highest in North Carolina. The complaints request damages and injunctions against such anticompetitive practices.

After Madison County’s Board of Commissioners voted to join the litigation in July, a motion to consolidate the two actions was granted in August, with the [City of](#)

[Brevard docket](#) as the leading case. Proceeding under the new name *In re Mission Health Antitrust Litigation* in the Western District Court of North Carolina, the [consolidated complaint](#) on behalf of the two counties and two municipalities in the case was filed on August 19 and the defendants filed separate motions to dismiss on September 9.

With an imminent court ruling in *Davis* and the now consolidated action in federal court, antitrust experts are closely watching this new anticompetitive contracting enforcement saga with great interest. Not only does HCA bear many similarities to Sutter Health in California in terms of its anticompetitive contracting practices, the litigation in North Carolina also highlights several other antitrust issues including COPA and the impact of cross-market consolidation. The Federal Trade Commission (FTC) recently released a [policy perspective](#) warning against state COPA laws, noting specifically the case study of Mission Health in North Carolina. Additionally, [cross-market merger](#) has been under study by researchers including the Source and Petris Center team, regarding its effects on system power and resulting anticompetitive pricing effect. For more on these topics, see key issue pages on The Source and stay tuned for the latest developments on [The Source Blog](#).