

FTC v. St. Luke's Appeal: Video & Analysis

Last month, 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*. Watch the [video](#) of the hearing.

The Ninth Circuit

In the arguments, counsel for the appellants focused on the benefits that the acquisition, which was stayed pending appeal, would bring to the community. Jack Beirig of Sidley Austin, who argued the case for St. Luke's, opened by claiming that the district court had not considered the deals' potential benefits, and assertion contested by the panel, who said the benefits had been considered, but perhaps not given as much weight as St. Luke's would have preferred. Beirig said of the deal: "if left intact, the affiliation would improve patient outcomes, it would promote the movement toward integrated value-based healthcare that the court itself characterized as a consensus solution to the cost and quality concerns about healthcare delivery." Beirig also seemed to want to reargue the geographic market definition settled on by the district court, and the panel seemed reluctant to overrule the lower court's factual findings, or even to agree with the appellants' presentation of them.

Counsel for appellee St. Alphonsus Medical Center, David A. Ettinger of Honigman Miller Schwartz and Cohn, reportedly argued that such benefits could be achieved outside of an acquisition. Finally, in a post-hearing interview, the Idaho Attorney General's office stressed the importance of competition and the laws enacted to protect it.

The Background

The case began in March 2013, when the St. Alphonsus and Treasury Valley Hospital, filed a complaint in federal district court seeking to block St. Luke's Health System, Ltd.'s acquisition of Idaho's largest independent, multi-specialty physician practice group, Saltzer Medical Group P.A. Thereafter, the Federal Trade Commission and the State of Idaho joined the case as plaintiffs. The joint complaint argued that the combination of St. Luke's and Saltzer would give the new provider the market power to demand higher rates for health care services provided by primary care physicians in Nampa, Idaho and surrounding areas, ultimately leading to higher costs for health care consumers.

The district court [ruled](#) in the FTC et al.'s favor, holding that the acquisition 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. The court explained: "Although possibly not the intended goal of the Acquisition, it appears highly likely that health care costs will rise as the combined entity obtains a dominant market position that will enable it to (1) negotiate higher reimbursement rates from health insurance plans that will be passed on to the consumer, and (2) raise rates for ancillary services (like x-rays) to the higher hospital-billing rates." The district court, in *dicta*, also expressed concerns about rising health care costs more generally: "For years, health care costs have exceeded the inflation rate. Americans spend more on health care than the next 10 biggest spenders combined – a list that includes Japan, Germany, France and the U.K. – yet we lag behind many of them on quality and patient outcomes."

The defendants appealed the case to the Ninth Circuit. In their [brief](#), the providers advanced legal arguments regarding the court's holding the transaction unlawful including that the lower court erred in its (1) geographic market determination|(2) finding market power in the product

market|(3) disregard of pro-competitive effects|and (4) abused its discretion by ordering divestiture.

In addition, the providers made policy arguments to the effect that the vertical integration was, in fact, intended “to improve the quality of healthcare and to move to a value-based rather than volume-based system of payment for services—in accord with federal policy as reflected in the Affordable Care Act.” Indeed, defendants argued that contrary to the district court’s findings, the merging parties “sought to promote the Triple Aim—better health, better care, and lower cost—by working together to provide integrated, value-based healthcare instead of the fragmented, fee-for-service care that is common in this country.”

A number of *amicus* briefs were filed for both sides in the appeal, including [one](#) by our friends at [Catalyst for Payment Reform](#) that encouraged the Court to affirm the district court’s ruling because of the unavoidable connection between consolidation and rising healthcare prices, and [another](#) by 16 state attorneys general, arguing the same and putting forth healthcare costs as a matter of grave concern for the states.

According to *Modern Healthcare*’s [account](#) of the hearing, counsel for the appellants focused on the benefits that the acquisition, which was stayed pending appeal, would bring to the community. Jack Beirig of Sidley Austin who argued the case for St. Luke’s, said: “Specifically, if left intact, the affiliation would improve patient outcomes, it would promote the movement toward integrated value-based healthcare that the court itself characterized as a consensus solution to the cost and quality concerns about healthcare delivery,” ... “We are not aware of a single case of a transaction that held that so many consumer benefits were held unlawful.” *Modern Healthcare* reports that Beirig went further to claim that the district court had not considered the deals’ potential benefits, and was corrected by the panel, who said the benefits had been considered, but perhaps not given as much weight as St. Luke’s

would have preferred.

Counsel for appellee St. Alphonsus Medical Center, David A. Ettinger of Honigman Miller Schwartz and Cohn, reportedly argued that such benefits could be achieved outside of an acquisition. Finally, in a post-hearing interview, the Idaho Attorney General's office stressed the importance of competition and the laws enacted to protect it.

It's not known when the Ninth Circuit panel will rule. This case is one is a tough call and a perfect illustration of the conflict between the FTC's attempts to curtail the rise in healthcare prices caused by consolidation and the ACA's push towards cost-and-quality-improving vertical integration. As the briefs before the Court suggest, this case will be a landmark decision in reconciling those two policy aims.