

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Petitioner,

Case No.:

v.

**LOUISIANA CHILDREN’S MEDICAL
CENTER,**
1100 Poydras St.
New Orleans, LA 70163

and

HCA HEALTHCARE, INC.,
One Park Plaza
Nashville, TN 37203

Respondents.

**PETITIONER FEDERAL TRADE COMMISSION’S MOTION FOR ORDER
PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT AND SECTION 13(b) OF
THE FEDERAL TRADE COMMISSION ACT**

Petitioner Federal Trade Commission (“Commission”) by its designated attorneys moves this Court, pursuant to Section 7A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act, for an Order enjoining Respondents Louisiana Children’s Medical Center (“LCMC”) and HCA Healthcare, Inc. (“HCA”), from further consummating LCMC’s acquisition of three hospitals from HCA (the “Acquisition”) until an appropriate time after LCMC has substantially complied with the premerger notification requirements set forth in

Section 7A of the Clayton Act. With this motion, the Commission does not seek a ruling or relief going to the merits of whether the consummated transaction violates the antitrust laws.

An Order pursuant to Section 7A(g)(2) enjoining further consummation of the Acquisition until LCMC complies with premerger reporting requirements and observes the appropriate waiting period is necessary so that the Commission can obtain the data, documents, and testimony required to evaluate whether the Acquisition has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and—if appropriate—to relief in court.

The Respondents have already unlawfully closed the Acquisition; LCMC has begun integrating the three hospitals into its operations. LCMC has stated that it will continue such integration efforts. Unless an Order pursuant to Section 7A(g)(2) is issued, LCMC may integrate or dispose of the assets such that it will be difficult for the Commission to obtain relief after a trial on the merits, if appropriate.

This motion is supported by a statement of points and authorities filed with the motion. A proposed order is attached.

The Commission respectfully requests the opportunity to present oral argument in support of this motion.

Respectfully submitted,

Holly Vedova
Director

Rahul Rao
Deputy Director

Maribeth Petrizzi

Assistant Director

/s/ Neal J. Perlman
Neal J. Perlman
Attorney

Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

April 20, 2023

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on the below persons on April 20, 2023 via e-mail.

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Respectfully submitted,

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Respondents.

**[PROPOSED] ORDER PURSUANT TO SECTION 7A(g)(2) OF THE CLAYTON ACT
AND SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

This proceeding having come before the Court on the Federal Trade Commission’s (“Commission”) petition and motion for an order pursuant to Section 7 A(g)(2) of the Clayton Act and Section 13(b) of the Federal Trade Commission Act, and it appearing to the Court upon consideration of the petition, supporting declarations and exhibits, other materials of record and the argument of counsel:

Findings of Fact

1. The Commission is an administrative agency of the United States government with its principal offices at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The Commission is charged with enforcing the nation's antitrust laws, including administering the premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, and enforcing Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 5 of the FTC Act, 15 U.S.C. § 45, as amended, by seeking to enjoin mergers and acquisitions that may substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country, or that constitute an unfair method of competition.

2. Louisiana Children's Medical Center ("LCMC") is a non-profit corporation incorporated under the laws of Louisiana, with its principal place of business at 1100 Poydras Street, New Orleans, LA 70163. Doing business under the name "LCMC Health," LCMC operates a network of hospitals in the greater New Orleans area.

3. HCA Healthcare, Inc. ("HCA") is a for-profit corporation incorporated under the laws of Delaware, with its principal place of business located at One Park Plaza, Nashville, TN 37203. HCA operates 182 hospitals in the United States and abroad, with revenues totaling approximately \$60.2 billion in 2022.

4. On January 3, 2023, LCMC announced that it had finalized its acquisition of three hospitals in the New Orleans area (the "Acquisition"): Tulane Medical Center, Lakeview Hospital, and Lakeside Hospital (the "Acquired Hospitals").

5. Based upon available public information, on or about January 3, 2023, LCMC purchased the Acquired Hospitals from HCA for \$150 million.

6. Respondents did not submit the required premerger notification filing, including after the FTC notified them of their failure to file.

7. LCMC plans to integrate the Acquired Hospitals into its existing portfolio of hospitals. This plan includes closing one of the Acquired Hospitals and transferring its facilities to Tulane University.

Conclusions of Law

8. This is a statutory cause of action against a party that failed to file a premerger submission in this district. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to Section 7A(g)(2) of the Clayton Act, Section 13(b) of the FTC Act, and 28 U.S.C. §§ 1331, 1337, 1345.

9. Venue is proper pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b), and (c), because the cause of action arose in this district, where LCMC was required, but failed, to file a sufficient premerger filing.

10. Section 7A(a) of the HSR Act requires persons to file premerger notification reports with the Commission before acquiring, directly or indirectly, any voting securities or assets of any other person, above a certain monetary threshold adjusted annually. At the time of the Acquisition, parties to mergers or acquisitions were required to file premerger notification reports for transactions between \$101 million and \$403.9 million in voting securities or assets, provided that either party had \$202 million in annual net sales or total assets and the other party had \$20.2 million in annual net sales or total assets.

11. Section 7A(b) of the Clayton Act provides that upon filing a premerger notification report, a party wishing to complete an acquisition must delay consummating the

transaction for at least 30 days (15 days in the case of a pure cash tender offer or 11 U.S.C. § 363(b) bankruptcy) to give the Commission an opportunity to review the transaction and determine whether to investigate the transaction further. The statute refers to this 30-day delay as the “waiting period.”

12. If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the premerger notification requirement, then Section 7A(g)(2) of the Clayton Act empowers the Commission to apply to a United States district court for an order of compliance, an extension of the waiting period until there has been substantial compliance, and any other equitable relief that in the court’s discretion is necessary or appropriate. 15 U.S.C. § 18a(g)(2).

13. The value of the Acquisition was between \$101 million and \$403.9 million, and the parties to the Acquisition each have revenues or total assets of well over a billion dollars. Accordingly, the Acquisition was reportable under HSR Act.

14. No Respondent has submitted the required premerger notification filing. Respondents have therefore failed substantially to comply with the notification requirement under Section 7A(a) of the Clayton Act.

15. Unless enjoined by this Court, LCMC has indicated its intention to continue consummating the transaction and integrating the three hospitals into its network. Accordingly, an order pursuant to 7A(g)(2) and an injunction enjoining further consummation are necessary to ensure compliance with the requirements of Section 7A(a) of the Clayton Act and to give the Commission and its staff the time provided by Congress for evaluation of the Acquisition.

NOW, THEREFORE, IT IS

ORDERED THAT, Respondents shall comply with the notification requirements under Section 7A(a) of the Clayton Act, 15 U.S.C. § 18a(a)

ORDERED THAT, LCMC shall give the Commission 30 days prior written notice before acquiring any hospital or other medical facility, either directly or indirectly, in the State of Louisiana for the duration of the hold separate order, as defined below; and

ORDERED THAT, LCMC shall hold separate and maintain the business, assets, and confidentiality of the assets from the Acquisition, pursuant to the following definitions, terms and commitments:

Definitions

1. The following definitions shall apply to this Order:
 - a. “Acquisition Date” means January 3, 2023.
 - b. “Commission” means the United States Federal Trade Commission.
 - c. “Effective Date” means either (1) the Acquisition Date (for activities or functions of the Tulane Hospitals that LCMC has not changed since the Acquisition Date); or (2) the earlier of the date the Court granted the Temporary Restraining Order or the date the Court grants this Order (for activities or functions of the Tulane Hospitals that LCMC has changed since the Acquisition Date).
 - d. “Health Plan” means any Person that pays, or arranges for payment, for all or any part of any hospital services for itself or for any other Person.
 - e. “Hold Separate Period” means the period from the date this Order is granted until at least thirty days have passed since the date of the last HSR filing by a Respondent or, if the Commission timely issues requests for additional information pursuant to 15 U.S.C. § 18a(e)(1)(A) (“Second Request”), at least thirty days have passed since the last Respondent certified substantial compliance with the Second Request, and the Commission has not filed suit to challenge the Acquisition.

- f. “LCMC” shall mean LCMC Health, its domestic and foreign parents, predecessors, successors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any Person in which there is partial (25% or more) or total ownership or control between LCMC and any other Person.
- g. “Person” means any natural person, corporation, partnership, association, governmental organization, or other legal entity, including all officers, members, predecessors, assigns, divisions, affiliates, and subsidiaries.
- h. “Preexisting Business” means LCMC hospital business existing prior to the acquisition of the Tulane Hospitals.
- i. “Tulane Hospitals” means the Tulane Medical Center in New Orleans, LA, the Tulane Lakeside Hospital in Metairie, LA, and the Lakeview Regional Medical Center in Covington, LA, which were acquired by LCMC from HCA Healthcare on January 3, 2023.

Asset Maintenance

- 2. During the Hold Separate Period, LCMC shall ensure that the Tulane Hospitals are operated and maintained in the ordinary course of business consistent with the practices on the Effective Date. In addition to any other steps necessary to comply with this section, LCMC shall:
 - a. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Tulane Hospitals to minimize the risk of any loss of its competitive potential;
 - b. Maintain all clinical services available on the Effective Date and not eliminate, transfer, consolidate, or reduce clinical services, equipment, or facilities and, without limitation, maintain office space, services, and any other assets or businesses relating to the Tulane Hospitals transferred to or controlled by LCMC as of the Effective Date;
 - c. Not sell, transfer, encumber, or otherwise impair the assets used by the Tulane Hospitals and prevent the destruction, wasting, or deterioration of the Tulane Hospitals, except in the ordinary course of business, and not take any action that might create a material change in the operations of the Tulane Hospitals;
 - d. Provide the Tulane Hospitals with sufficient capital to maintain the viability, competitiveness, and marketability of the business;

- e. Preserve the existing relationships with Health Plans, suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Tulane Hospitals. In the event that a contract with the Tulane Hospitals expires during the term of this Order, the Tulane Hospitals shall offer to continue to do business on the same material terms as are in the contract for the remaining term of this Order;
- f. Permit the Tulane Hospitals to grant privileges to new physicians in the ordinary course of business and consistent with the practices and procedures in place at the Tulane Hospitals on the Effective Date; and
- g. Not modify, change, or cancel any physician privileges at the Tulane Hospitals, such that all physicians with privileges at the Tulane Hospitals on the Effective Date shall retain their privileges; *provided however*, that a Tulane Hospital may revoke privileges of any individual physician consistent with professional medical standards, and LCMC shall provide written notice to Commission staff within 24 hours of any revocation of privileges.

Hold Separate

3. During the Hold Separate Period, LCMC:

- a. Shall not further consolidate, integrate or otherwise combine the services, locations, employees, operations, or businesses of the Tulane Hospitals into or with any of LCMC's other hospitals, services, locations, employees, operations, or businesses;
- b. Shall allow the Tulane Hospitals to operate separately, apart, and independently of LCMC's other businesses and assets as configured on the Effective Date, and vest the Tulane Hospitals with all rights, powers, and authority necessary to conduct business in a manner consistent with this Order;
- c. Shall continue to keep separate those contracting activities of the Tulane Hospitals with Health Plans that are separate from the Pre-existing Business as of the Effective Date, including maintaining separate contracts for Health Plans of the Tulane Hospitals that are also customers of the Preexisting Business; and
- d. From the Effective Date, shall create firewalls to prohibit employees of the:
 - i. Preexisting Business from disclosing price and cost information, including reimbursement rates, relating to the services offered by the Preexisting Business to employees of the Tulane Hospitals;

- ii. Tulane Hospitals from disclosing price and cost information, including reimbursement rates, relating to the services offered by Tulane Hospitals to employees of the Preexisting Business; and
- iii. Preexisting Business and the Tulane Hospitals from coordinating on any pricing-related decisions for services offered by either.

Employees of the Tulane Hospitals

- 4. LCMC shall maintain a workforce of physicians, nurses, and medical support staff for the Tulane Hospitals, that is at least equivalent in size, training, specialty, and expertise, to that of the business as of the Effective Date. It is further ordered that:
 - a. LCMC shall not terminate, or cause the termination of, any contract between the Tulane Hospitals and any employee except for good cause as allowed by contract. If a contract expires during the term of this Order, LCMC shall offer to continue to do business on the same material terms as are in the contract for the Hold Separate Period;
 - b. LCMC shall provide employee benefits to employees of the Tulane Hospitals that are at least equal to those provided as of the Effective Date. These benefits shall include regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives reasonably necessary to preserve the viability, competitiveness, and marketability of the Tulane Hospitals;
 - c. For any employee of a Tulane Hospital terminated for good cause after the date this Order is granted, LCMC shall provide written notice to a duly authorized representative of the Commission within 24 hours of any termination (including the cause for such termination); and
 - d. Consistent with past practice as of the Effective Date, the Tulane Hospitals shall replace any departing or departed employee with an individual who has similar experience, specialty, and expertise.

Cooperation With the Commission

- 5. LCMC shall cooperate with any reasonable request by a duly authorized representative of the Commission for information regarding its compliance with the terms of this Order, including the following:
 - a. Thirty days after the date this Order is granted, LCMC shall submit a report describing how it will implement and is implementing the terms of this Order and shall submit subsequent reports every 30 days thereafter until this Order terminates. Each report shall:

- i. Describe how LCMC has complied and is complying with the terms of this Order;
 - ii. Provide sufficient information and documentation to enable the Commission to determine independently whether is in compliance with this Order;
 - iii. Be verified by a notarized signature or sworn statement of a person specifically authorized to perform this function on behalf of LCMC, as applicable, or self-verified in the manner set forth in 28 U.S.C. § 1746; and
 - iv. Be filed directly with the Bureau of Competition's Compliance Division at bccompliance@ftc.gov, with copies to Christine Tasso at ctasso@ftc.gov and Adam Pergament at apergament@ftc.gov.
- b. For purposes of notifying the Commission as required in this Order, LCMC shall contact Christine Tasso and Adam Pergament at the emails listed above.

Termination

6. This Order shall remain in effect until the end of the Hold Separate Period.

Entered this ___ day of April ___ 2023 at ___ a.m./p.m.

United States District Judge

Presented by:

Holly Vedova
Director

Rahul Rao
Deputy Director

Maribeth Petrizzi
Assistant Director, Compliance Division

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April 20, 2023