UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, and STATE OF OHIO Plaintiffs, v. OHIOHEALTH CORPORATION, Defendant.	Case No. 2:26-cv-00207 Judge Algenon L. Marbley Magistrate Judge S. Courter M. Shimeall

COMPETITIVE IMPACT STATEMENT

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 20, 2026, the United States and the State of Ohio (together "Plaintiffs") filed a civil antitrust complaint against OhioHealth Corporation ("OhioHealth") (*See* ECF No. 1) ("Complaint"). The Complaint alleges that OhioHealth imposes anticompetitive contract restrictions on health insurers, which effectively deprive Columbus-area consumers of the choice of lower-cost health plan options and reduce competition among hospitals. As the Complaint alleges, OhioHealth's contracts with health insurers (also called payors) contain provisions that (1) require health insurers to include OhioHealth in all networks for all commercial insurance products at the most favored level of benefits in each network, and (2) limit health insurers from

providing truthful information to their members about more cost-effective treatment options, with the effect of protecting OhioHealth against price competition for healthcare services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

On June 16, 2026, Plaintiffs filed a proposed Final Judgment[1] and Order[2] ("Stipulation and Order"), wherein OhioHealth agreed to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, OhioHealth will remove restrictions on steering and transparency (*i.e.*, sharing information with members about more cost-effective options) from its contracts with payors, will not seek to reinstitute such restrictions, and will refrain from penalizing insurers for engaging in steering and transparency initiatives.

Plaintiffs and OhioHealth have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

[1] Proposed Final Judgment, *United States et al. v. OhioHealth Corporation,* Case No. 2:26-cv-00207, ECF 29-2 (S.D. Ohio June 16, 2026).
[2] Stipulation and Order, *United States et al. v. OhioHealth Corporation,* Case No. 2:26-cv-00207, ECF 30 (S.D. Ohio June 16, 2026).

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. OhioHealth

OhioHealth is an Ohio not-for-profit healthcare services corporation, with its principal place of business in Columbus, Ohio. OhioHealth owns or manages sixteen (16) hospitals and outpatient facilities, physician groups, and other healthcare services throughout Ohio.

OhioHealth is one of the most significant health systems in and around central Ohio. OhioHealth uses its market power—built upon the scale, breadth, configuration of its providers, large size, and many locations—to extract restrictive contract provisions and high prices from payors. OhioHealth's "reimbursement rates" are significantly higher than those of its competitors. Payors must have OhioHealth as a participant in at least some of their provider networks to have viable health insurance products to offer to consumers and employers. However, OhioHealth requires that payors include OhioHealth in all networks for all commercial insurance products, regardless of how OhioHealth's prices compare to those of its competitors, and requires that OhioHealth be featured at the most favored level of benefits in each network.

B. Relevant Market

The Complaint alleges that OhioHealth has market power in a relevant market for the sale of inpatient general acute care ("GAC") hospital services to commercial payors and their members. Although the contractual restrictions imposed by OhioHealth affect both inpatient services and OhioHealth's other healthcare services, the sale of inpatient GAC hospital services to commercial payors and their members is a relevant product market in which to assess the market power that OhioHealth wields and the competitive effects of OhioHealth's contractual restrictions. Inpatient GAC hospital services consist of a broad group of medical and surgical diagnostic and treatment services that include a patient's overnight stay in the hospital. Although

individual inpatient GAC hospital services are not substitutes for each other (*e.g.*, obstetrics is not a substitute for cardiac services), payors typically contract for the various individual inpatient GAC hospital services as a bundle, the services are sold under similar competitive conditions, and OhioHealth's contractual restrictions have an adverse impact on competition for the sale of all inpatient GAC hospital services. Therefore, inpatient GAC hospital services can be aggregated.

The Complaint alleges that the area comprising Franklin and Delaware counties in Ohio is a relevant geographic market. OhioHealth, in the ordinary course of its business, defines and identifies Franklin and Delaware counties as "Central Columbus," a distinct region for the delivery of healthcare services. Patients in Central Columbus prefer to receive inpatient GAC hospital services at hospitals that are close to their homes. Because of this, a payor without any in-network hospitals located in Central Columbus would not be competitive selling commercial health plans in Central Columbus.

The area not larger than the Columbus Metropolitan Statistical Area ("MSA"), as defined by the U.S. Office of Management and Budget, is also a relevant geographic market in which market power in the sale of inpatient GAC hospital services can be exercised. This market includes the Ohio counties of Delaware, Fairfield, Franklin, Hocking, Licking, Madison, Morrow, Perry, Pickaway, and Union. Patients in the Columbus MSA prefer to receive inpatient GAC hospital services at hospitals that are close to their homes. Because of this, a payor without any in-network hospitals located in the Columbus MSA would not be competitive selling commercial health plans in the Columbus MSA.

C. The Anticompetitive Effects of OhioHealth's Contract Provisions

OhioHealth's contract provisions effectively prevent health insurers from offering consumers and employers the opportunity to pay less for healthcare from less expensive hospitals and providers. The restrictions that OhioHealth demands from health insurers inhibit competition among hospitals because OhioHealth's contract restrictions limit the opportunity of hospitals with lower prices to gain more volume. This means that hospitals lack an incentive to further reduce prices in order to gain volume, interfering with the basic price-setting mechanism. Additionally, because the restrictions deter OhioHealth's competitors from competing by reducing prices, they protect OhioHealth from pressure to reduce its own prices. In turn, this inhibited price competition raises the cost of health insurance and results in patients and employers paying more for essential healthcare.

Health insurers design budget-conscious plans to give patients and employers the opportunity to save money by choosing among differently priced options for their healthcare. Health insurers in markets with robust provider competition generally offer a spectrum of plans: from broad network plans that allow consumers to access virtually all providers in their area for a cost premium, to lower-cost plans that either have a more limited panel of lower-cost providers or offer patients lower out-of-pocket costs when they select care at less-expensive providers. These budget-conscious plans can take a variety of forms, including narrow network plans, tiered network plans, and plans with features including centers of excellence, site of service steering, reference-based pricing, and active transparency.

- **Narrow network plans** offer employers and individuals the ability to reduce the cost of their health insurance. Narrow networks include a relatively limited set of cost-effective providers. When a payor creates a narrow network, it gives providers an

incentive to offer competitive prices to participate in the plan in exchange for the added patient volume that being included in the new network creates. Payors recruit cost-effective providers to participate in narrow networks precisely because they are willing to provide services at lower prices. Payors are sometimes also able to secure further discounts from providers competing for the incremental flow of patients that may result from being included in a narrow network. Narrow network plans can charge lower premiums to employers and patients than broad network plans because payors are not paying as much to providers. Some employers will offer employees a choice between narrow and broad network plans, allowing the employee to pay the additional cost for the broad network plan if the employee values the additional provider options.

- **Tiered network plans** use broad networks but reward members with lower out-of-pocket expenses if they choose cost-effective providers within the network when they seek care. For example, a plan may charge members different co-insurance payments for different hospitals. Payors may assign a lower co-insurance payment to lower-cost hospitals to give members an incentive to use hospitals that offer better value. Members of tiered network plans can choose to secure healthcare from the lower-priced favored tier of providers or to pay more for care from the more expensive tier of providers.
- **Centers of excellence** give patients with broad network plans an incentive to seek specific healthcare services from designated groups of providers that offer better value within a broad network. When creating a center of excellence, payors identify specific high-quality, cost-effective programs—such as orthopedic surgery or

oncology programs—at specific providers and encourage their members to choose care at those facilities by reducing or waiving the fees that the patient must pay. Members can then choose whether to seek care from the "center of excellence" providers that its plan has designated or to seek care from costlier providers at a higher price.

- **Site of service steering** is a plan feature that saves money by incentivizing patients to have procedures done in a lower-cost site of service—such as an ambulatory surgery center—instead of a higher cost site of service, such as a hospital.
- **Reference-based pricing** is a fixed reimbursement rate for a procedure (often tied to some reference point like a market average price). The member has the option to seek care from any in-network provider, but the member will bear the additional costs associated with care that is obtained from a provider that charges more than this price.
- **Active transparency** refers to payor outreach to members to share pricing information that informs the member's choice of healthcare provider. For example, a payor may call a patient who has scheduled a magnetic resonance imaging ("MRI") procedure at a hospital and explain that the patient could save money by rescheduling the procedure at an outpatient facility where the payor has negotiated a better rate for the procedure. The patient can then choose where to get the MRI with the benefit of additional information about the cost to the patient.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint. The terms described below are designed to ensure that OhioHealth ends its anticompetitive conduct and prevent OhioHealth from engaging in the same or similar

conduct in the future.

OhioHealth has market power in inpatient GAC hospital services and uses it to restrict steering across the broad range of healthcare services that OhioHealth provides throughout Ohio. The proposed Final Judgment therefore applies to this broad range of healthcare services. In addition to inpatient GAC services, the proposed Final Judgment covers outpatient services, professional services rendered by physicians, and ancillary services, defined by the proposed Final Judgment as "Healthcare Services."

The proposed Final Judgment also applies to a broad range of commercial benefit plans. This includes health plans underwritten by an insurer, self-funded benefit plans, or Medicare Part C plans. The term "Benefit Plan" does not include workers' compensation programs, Medicare (except Medicare Part C plans), Medicaid, or uninsured discount plans.

A. Prohibited Conduct

The proposed Final Judgment seeks to restore competition by prohibiting OhioHealth from engaging in anticompetitive conduct. There are four main provisions that the proposed Final Judgment includes to restore competition: (1) Paragraph IV.A stops OhioHealth from enforcing the current contract provisions at issue in this suit; (2) Paragraph IV.B prevents OhioHealth from enforcing similar or new contract provisions that would restrict steering, steered plans, or transparency; (3) Paragraph IV.C prohibits OhioHealth from penalizing or retaliating against payors who engage (or are planning to engage) in steering, offer steered plans, or provide transparency to their members; and (4) Paragraph IV.D prevents OhioHealth from requiring that it be included in the most-preferred tier of any benefit plan offered by payors.

1. Voiding the anticompetitive contract provisions (Paragraph IV.A)

The proposed Final Judgment voids any and all language in OhioHealth's contracts with

payors that prohibits, deters, prevents, or penalizes steering, steered plans, or transparency. The proposed Final Judgment voids contractual provisions, like the examples listed in Exhibit A to the proposed Final Judgment, that expressly prevent steering.[3]

In addition, the proposed Final Judgment eliminates provisions in OhioHealth's contracts with payors that limit transparency or outreach to patients by providers that seek to provide information so patients can make informed choices about where to seek healthcare.

2. Preventing new contract provisions that prevent or limit steering, steered plans, or transparency (Paragraph IV.B)

The proposed Final Judgment also prevents OhioHealth from seeking or obtaining similar or new contract provisions that would prohibit, prevent, or penalize steering through steered plans or transparency. The purpose of this provision is to ensure OhioHealth does not reinstate restrictions on steering and transparency.

Paragraph IV.B of the proposed Final Judgment identifies two types of contractual provisions that, among others, would prohibit, prevent, or penalize steering through steered plans and would thus violate the terms of the proposed Final Judgment. First, OhioHealth may not require prior approval of new benefit plans offered by payors. Second, OhioHealth may not demand to be included in the most-preferred tier of benefit plans, although like other healthcare providers OhioHealth may seek to participate in the most-preferred tier of a benefit plan.

3. Penalizing or threatening to penalize payors for steering, offering steered plans, or transparency (Paragraph IV.C)

The proposed Final Judgment's prohibition of steering restrictions also reaches beyond the provisions being voided to include any contract provision that penalizes steering, steered plans, and transparency. "Penalize" is a term in the proposed Final Judgment, defined more

[3] The examples are provided for illustrative purposes only and do not reflect the only types of contract clauses that prohibit, prevent, restrict, or penalize steering.

broadly than "prohibit" or "prevent," that includes anything that would have the actual or likely effect of restraining, discouraging, or reducing steering, steered plans, or transparency. In determining if OhioHealth is penalizing payors for steering, offering steered plans, or transparency, factors that may be considered include the facts and circumstances relating to the contract provision or action and its economic impact.

4. Requiring OhioHealth's inclusion in the most-preferred tier of any benefit plan (Paragraph IV.D)

Paragraph IV.D of the proposed Final Judgment prohibits OhioHealth from obtaining any contract provision that prohibits, deters, prevents, or penalizes steering, steered plans, or transparency, including by requiring that OhioHealth be included in the most-preferred tier of any benefit plan as a condition of OhioHealth participating in the payor's network. However, the proposed Final Judgment does not limit OhioHealth from contracting to participate in the most-preferred tier of a benefit plan under the same terms and conditions as any other provider, provided that if OhioHealth then declines to participate in the most-preferred tier of that benefit plan, it must participate in that plan on terms and conditions that are substantially the same as any terms and conditions of any then-existing broad-network Benefit Plan (*e.g.*, PPO plan) in which OhioHealth participates with that payor.

B. Permitted Conduct

Section V of the proposed Final Judgment sets forth the conduct that OhioHealth may undertake without violating the terms of the proposed Final Judgment. Paragraph V.A makes clear that nothing in the proposed Final Judgment prohibits OhioHealth from exercising any of its contractual rights provided it does not engage in conduct that would violate the terms of the proposed Final Judgement.

If OhioHealth is the most prominently featured provider in a narrow-network plan,

Paragraph V.B of the proposed Final Judgment allows OhioHealth to restrict an insurer from steering away from OhioHealth in that plan. Such restrictions may help narrow networks be more effective, and this provision allows OhioHealth to participate in plans that steer towards it.

Paragraph V.C makes clear that OhioHealth can communicate with a payor's members about issues that may be important to patients when choosing a provider or site of service, provided it does not engage in any of the prohibited conduct set forth in the proposed Final Judgment.

Paragraph V.D also makes clear that the proposed Final Judgment does not prohibit OhioHealth from seeking certain safeguards regarding the payor's dissemination of the prices OhioHealth has negotiated with insurers. OhioHealth may review information to be disseminated, provided that review does not create material delay. A payor may communicate an individual consumer's or member's actual or estimated out-of-pocket expense for services and may communicate information made public under applicable law. However, OhioHealth may seek contractual provisions prohibiting the payor from disseminating OhioHealth's negotiated prices to OhioHealth's competitors, other insurers, or the general public, except as such dissemination is required under applicable laws. OhioHealth may also seek contractual provisions with an insurer requiring the insurer to obtain a covenant from any third party receiving OhioHealth's negotiated prices that such third party will not disclose that information to OhioHealth's competitors, another insurer, the general public, or another third party lacking a reasonable need to know such information. OhioHealth may also seek all appropriate remedies in the event that dissemination of such information occurs.

C. Compliance Terms

Pursuant to Section VI of the proposed Final Judgment, within fifteen (15) business days

of the entry of the Final Judgment, OhioHealth must notify any relevant payor in writing that the Final Judgment has been entered (enclosing a copy) and that it prohibits OhioHealth from entering into or enforcing any contract provision that would prohibit, prevent, or penalize steering, steered plans, or transparency, or taking any other action that violates the proposed Final Judgment.

While the Final Judgment is in effect, OhioHealth must notify, in writing, any relevant payors not previously notified pursuant to Paragraph VI.A that the Final Judgment has been entered (enclosing a copy) and that it prohibits OhioHealth from entering into or enforcing any contract provision that would prohibit, prevent, or penalize steering, steered plans, or transparency, or taking any other action that violates the Final Judgment, within five (5) business days of the exchange of written terms or a draft agreement between such relevant payor and OhioHealth about OhioHealth's participation in that payor's benefit plan or provider network.

Pursuant to Paragraph VI.C of the proposed Final Judgment, for five (5) years from the entry of the proposed Final Judgment, OhioHealth must provide a written report on the final business day of each calendar quarter to the monitor and each Plaintiff identifying each payor with which Defendant (1) agreed to new or amended contract terms, (2) declined to participate in any Tiered Network, and (3) contracted for the right to participate in the most-preferred tier of a Benefit Plan that is described in Paragraph IV.D of the Final Judgment.

In addition, OhioHealth must deliver to the United States and the State of Ohio an affidavit, signed by Defendant's General Counsel within forty-five (45) calendar days of entry of the Stipulation and Order and every forty-five (45) calendar days thereafter until the actions required by the proposed Final Judgment in Paragraphs VI.A, IX.A.1 and IX.A.3 have been completed. The affidavit must describe in reasonable detail the fact and manner of Defendant's

compliance with the proposed Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

D. Appointment of a Monitor

Paragraph VIII of the proposed Final Judgment provides that upon application of the United States, which OhioHealth may not oppose, the Court will appoint a monitor selected by the United States in its sole discretion, after consultation with the State of Ohio, and approved by the Court. The monitor will have the power and authority to investigate and report on OhioHealth's compliance with the terms of the Final Judgment and the Stipulation and Order entered by the Court, including compliance with Sections IV, VI, and IX of the proposed Final Judgment. The monitor will not have any responsibility or obligation for the operation of Defendant's businesses. The monitor will serve at OhioHealth's expense, on such terms and conditions as the United States approves, and OhioHealth must assist the monitor in fulfilling his or her obligations. The monitor will provide periodic reports to the United States and the State of Ohio and will serve for five (5) years.

The monitor will have the authority to take such steps as, in the judgment of the monitor and the United States, may be necessary to accomplish the monitor's responsibilities. The monitor may seek information from OhioHealth's personnel, including in-house counsel, compliance personnel, and internal auditors. Paragraph VIII.C requires OhioHealth to establish a policy that is communicated annually to all employees that employees may disclose any information to the monitor without reprisal for such disclosure. Additionally, OhioHealth must not retaliate against any employee or third party for disclosing information to the monitor.

Paragraph VIII.D prevents OhioHealth from objecting to actions taken by the monitor in fulfillment of his or her responsibilities under any Order of the Court on any ground other than

malfeasance by the monitor. Disagreements between the monitor and OhioHealth related to the scope of the monitor's responsibilities do not constitute malfeasance. Objections by OhioHealth must be conveyed in writing to the United States, the State of Ohio, and the monitor within twenty (20) calendar days of the monitor's action that gives rise to Defendant's objection, or the objection is waived.

Paragraph VIII.F permits the monitor to hire, at OhioHealth's cost and expense, any agents and consultants, including attorneys, and accountants, that are reasonably necessary in the monitor's judgment to assist with his or her duties. These agents or consultants will be directed by and solely accountable to the monitor and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States, in its sole discretion. Within three (3) business days of hiring any agents or consultants, the monitor must provide written notice of the hiring and the rate of compensation to OhioHealth and the United States. Further, pursuant to Paragraph VIII.G, compensation of the monitor and agents or consultants retained by the monitor must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities and pursuant to Paragraph VIII.H, the monitor must account for all costs and expenses incurred. OhioHealth's failure to promptly pay the monitor's accounted-for costs and expenses, including for agents and consultants, will constitute a violation of the Final Judgment and may result in sanctions ordered by the Court. As described in Paragraph VIII.I, OhioHealth can make a timely objection in writing to the United States to any part of the monitor's accounted-for costs and expenses. OhioHealth must establish an escrow account into which Defendant must pay the disputed costs and expenses until the dispute is resolved.

Paragraph VIII.J requires OhioHealth to use best efforts to cooperate fully with the monitor and to assist the monitor in monitoring OhioHealth's compliance with its obligations under the Final Judgment and the Stipulation and Order, including with Sections IV, VI, and IX. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, OhioHealth must provide the monitor, and agents or consultants retained by the monitor, with full and complete access to all personnel (current and former), agents, consultants, books, records, and facilities. OhioHealth may not take any action to interfere with or to impede accomplishment of the monitor's responsibilities.

E. Other Provisions

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XII.A provides that if at any time during the five-year period following entry of this Final Judgment, the United States determines in its sole discretion that the Final Judgment has failed to fully redress the violations alleged in the Complaint, then the United States may re-open this proceeding to seek additional relief. Such additional relief may be ordered by this Court upon a finding by a preponderance of the evidence that there is a reasonable probability that the proposed Final Judgment did not fully redress the violations alleged in the Complaint.

Paragraph XII.B provides that the United States and the State of Ohio retain and reserve all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendant has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States or the State of Ohio regarding an alleged violation of the Final Judgment, the United States or the State of Ohio may establish the violation and the appropriateness of any remedy by a preponderance of the evidence

and that Defendant has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XII.C provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore the competition the United States and the State of Ohio allege was harmed by the challenged conduct. Defendant agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XII.D provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XII.D provides that, in any successful effort by the United States or the State of Ohio to enforce the Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant must reimburse the United States or the State of Ohio for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XII.E states that the United States may file an action against Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered

until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIII of the proposed Final Judgment provides that the Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to Defendant and the State of Ohio and upon motion to the Court that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

Plaintiffs and OhioHealth have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United

States and the State of Ohio have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or within 60 days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the *Federal Register* unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Jill C. Maguire
Acting Chief, Healthcare & Consumer Products Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 4100 Washington, DC 20530
ATR.Public-Comments-Tunney-Act-MB@usdoj.gov

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against OhioHealth. The United States could have continued the litigation and brought the case to trial. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the sale of inpatient GAC hospital services to commercial payors and their members in Ohio. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

Under the Clayton Act and APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the

defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement

is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); quoting *United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990) (emphasis in original) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981), in turn quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final

Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co*., 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained:

"[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

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Respectfully submitted,

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