

UPDATE: Federal Trade Commission vs. Phoebe Putney Health System

April 8, 2015

FTC Statement:

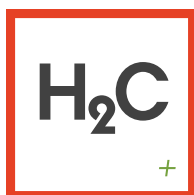
The Federal Trade Commission has entered into a settlement with Phoebe Putney Health System, Inc., the Hospital Authority of Albany-Dougherty County, and HCA Inc. resolving the Commission's charge that the Hospital Authority's acquisition of Palmyra Park Hospital, Inc. from HCA Inc. – which created an effective hospital monopoly in the Albany, Georgia area – was anticompetitive. This consent agreement follows a significant Supreme Court victory in 2013 that reaffirmed the narrow scope of state action immunity and allowed the Commission to challenge this transaction. Due to the unavailability of structural relief, the consent does not require a divestiture.

"While we continue to have reason to believe that Phoebe Putney's acquisition of Palmyra violated Section 7 of the Clayton Act and Section 5 of the FTC Act, any relief attempting to restore the competition lost as a result of the merger is precluded by Georgia's strict CON [Certificate of Need] requirements," the Commission wrote in a statement <https://www.ftc.gov/system/files/documents/public_statements/634181/150331phoebeputneycommstmt.pdf>. Although a divestiture was available when the Commission filed this case, an Eleventh Circuit decision allowing the parties to consummate the transaction gave rise to the circumstances that the Commission ultimately determined precluded a divestiture here.

Under the consent agreement with the FTC <<https://www.ftc.gov/system/files/documents/cases/150331phoebeputneyagree.pdf>>, Phoebe Putney and the Hospital Authority must notify the FTC in advance of acquiring any part of a hospital or a controlling interest in other healthcare providers in the Albany, Georgia area for the next 10 years, and will be prohibited from objecting to regulatory applications made by potential new hospital providers in the same area for up to five years.

The settlement announced today is similar to the one proposed in 2013. Like the earlier settlement, it: requires Phoebe Putney and the Hospital Authority to give the FTC prior notice before acquiring any part of a hospital or a controlling interest in other healthcare providers in the Albany, Georgia area; prohibits the Hospital Authority and Phoebe Putney from opposing a Certificate of Need application for a general acute-care hospital in the Albany area; contains a stipulation that the effect of the transaction may be substantially to lessen competition within the relevant service and geographic markets alleged in the complaint.

The Commission vote to make the consent order final was 3-0-2, with Commissioners Joshua D. Wright and Terrell McSweeney not participating.



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November 2013

PALMYRA PARK HOSPITAL ACQUISITION

On December 21, 2010 the Hospital Authority of Albany-Dougherty County (the "Authority") acquired Palmyra Hospital from HCA for approximately \$198 million in cash, converting Palmyra from an investor-owned hospital to a community-based, nonprofit facility. The Authority also owns Phoebe Putney Memorial Hospital subject to a long-term lease to Phoebe Putney Health System ("Phoebe"). Palmyra and Phoebe are the only hospitals in Albany, Georgia.

On April 20, 2011, The Federal Trade Commission joined with Georgia's attorney general to challenge the acquisition of Palmyra as anticompetitive. Phoebe asserted the Authority's immunity from Federal anti-trust laws based on its status as a governmental entity of the State of Georgia.

On June 27, 2011 the U.S. District Court for the Middle District of Georgia dismissed the FTC complaint and denied its motion for a preliminary injunction blocking the deal. On December 9, 2011 the US Court of Appeals affirmed the judgment of the District Court. On March 23, 2012, the FTC requested that the Solicitor General file a petition for certiorari with the U.S. Supreme Court, which subsequently agreed to hear the case.

On November 26, 2012 Phoebe and the FTC presented their arguments to the U.S. Supreme Court. The Court ruled on February 13, 2013 that state-action immunity from anti-trust law did not apply due to the lack of specificity in the legislation. As a result, the parties returned to settlement talks and on August 22, 2013 a settlement was reached.

FTC SETTLEMENT OVERVIEW

The Authority retains ownership of Palmyra Park Hospital, which is now called Phoebe North campus. Phoebe and the Authority will not acquire, without prior notification to the FTC, a General Acute Care Hospital, an inpatient or outpatient clinic or facility or a physician group practice of five or more physicians within a six-county region (Dougherty, Terrell, Lee, Worth, Baker and Mitchell) for the next 10 years. Phoebe and the Authority will not file any objections with the Georgia Department of Community Health to the issuance of a Certificate of Need (CON) for a new general acute care hospital in the

same six-county region for the next 5 years.

Phoebe Putney also agreed to provide annual reports of its compliance with these provisions, for the next 10 years.

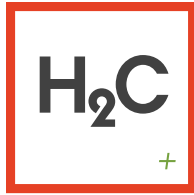
"Unless the Georgia General Assembly changes the hospital authorities law so that their hospitals would be eligible for government immunity from antitrust violations, such FTC enforcement actions are much more likely to be successful."

– Healthcare Antitrust Attorney, Atlanta

The FTC made no findings that Phoebe or the Authority committed any violation of the antitrust laws. Instead, solely to achieve a compromise with the FTC, and for purposes of these proceedings only, Phoebe and the Authority have stipulated that the acquisition of Palmyra might substantially lessen competition within the service and geographic markets alleged by the FTC. The settlement expressly reserves the rights of Phoebe and the Authority to contest that allegation in any other proceeding.

IMPLICATIONS FOR FUTURE FTC SETTLEMENTS

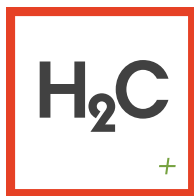
- The FTC believes that if they had obtained a preliminary injunction, Phoebe would never have had the opportunity to close the transaction – it would have been blocked from doing so pending the administrative merits trial.



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- A Federal Trade Commission attorney stated that it plans to use the Phoebe case as an "Exhibit A" to block anti-competitive hospital mergers in the future
- Both hospitals were grandfathered in when the State adopted its CON laws in the mid-1970s, however a divestiture of either hospital from the Hospital Authority to a proposed buyer would trigger the need for CON approval from the Georgia Department of Community Health ("DCH") and that approval would be very unlikely



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With offices in Atlanta, Chicago, New York and San Diego, the professionals at Hamd Hanlon Camp LLC are committed to providing superior strategic and financial advice as a trusted advisor to the healthcare community. For additional information or if you have questions related to this report, please contact William B. Hanlon III at bhanlon@h2c.com or 858 242 4800. For more information about our firm, please visit our website at h2c.com. If you would like to find out how H2C’s strategic advisory services can benefit your organization, please contact us at any of the following locations:

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