

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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| In the Matter of | |) | |
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| TENET HEALTHCARE CORPORATION, | |) | Docket No. C-3743 |
| a corporation. | |) | |
| _____ | |) | |

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent, Tenet Healthcare Corporation ("Tenet"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Tenet will acquire the stock of OrNda HealthCorp ("OrNda"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), stating its charges as follows:

DEFINITIONS

PARAGRAPH ONE: For purposes of this Complaint the following definitions shall apply:

(a) "Acute care hospital" means a health facility, licensed as a hospital, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, and may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

(b) "Acute care inpatient hospital services" means 24-hour inpatient health care, and related medical or surgical diagnostic

and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

THE PARTIES

PARAGRAPH TWO: Tenet is a corporation organized, existing, and doing business under and by virtue of the laws of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California 93105. Tenet owns and operates, among other things, over seventy-five acute care hospitals throughout the United States. Included among those hospitals are Sierra Vista Regional Medical Center ("Sierra Vista"), a 195-bed acute care hospital in the city of San Luis Obispo, California, and Twin Cities Community Hospital, an 84-bed acute care hospital in Templeton, California, about twenty-two miles north of the city of San Luis Obispo. In fiscal year 1996, Tenet had total sales of approximately \$5.6 billion, and its two hospitals in San Luis Obispo County, California had total sales of about \$83 million.

PARAGRAPH THREE: OrNda is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 3401 West End Avenue, Nashville, Tennessee 37203. OrNda owns and operates over fifty acute care hospitals throughout the United States. Included among those hospitals is French Hospital Medical Center ("French Hospital"), a 147-bed acute care hospital in the city of San Luis Obispo, California. In fiscal year 1996, OrNda had total sales of about \$1.8 billion, and French Hospital had total sales of about \$47 million.

JURISDICTION

PARAGRAPH FOUR: Tenet and OrNda, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12. The businesses of Tenet and OrNda, at all times relevant herein, have been and are now in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE PROPOSED ACQUISITION

PARAGRAPH FIVE: On or about October 16, 1996, Tenet and OrNda entered into an agreement whereby Tenet will acquire 100 percent of the voting stock of OrNda, and OrNda stockholders will receive Tenet voting stock in exchange. Tenet will also assume OrNda debt. The total value of the transaction is about \$3.1 billion.

NATURE OF TRADE AND COMMERCE

PARAGRAPH SIX: The relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

PARAGRAPH SEVEN: The relevant section of the country in which to analyze the proposed acquisition is San Luis Obispo County, California ("San Luis Obispo County"), and/or any narrower area contained therein.

MARKET STRUCTURE

PARAGRAPH EIGHT: Tenet currently owns two of the five acute care hospitals in San Luis Obispo County, including Sierra Vista, the largest acute care hospital in the county. Tenet's acquisition of OrNda would add the largest of its competitors, French Hospital, to its holdings in San Luis Obispo County. Sierra Vista and French each provide a broader range of acute care inpatient hospital services than any of the other three acute care hospitals in San Luis Obispo County, and are each other's principal and most direct competitor. The other providers of acute care inpatient hospital services in San Luis Obispo County are Arroyo Grande Community Hospital, a 79-bed hospital in Arroyo Grande, about thirteen miles south of the city of San Luis Obispo, and San Luis Obispo General Hospital, a 64-bed hospital located in the city of San Luis Obispo and operated by the San Luis Obispo County government. The long-term competitive prospects of San Luis Obispo General Hospital are clouded by its need for expensive capital improvements to, among other things, meet stringent new state earthquake safety requirements.

PARAGRAPH NINE: The relevant market is highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by market share. The proposed acquisition would significantly increase concentration in this market. It would increase Tenet's market share by at least 17%, to at least 71%. The HHI would increase at least 2000 points, to a post-acquisition level over 5000.

ENTRY CONDITIONS

PARAGRAPH TEN: It is unlikely that entry into the relevant market would prevent, or remedy in a timely manner, any anticompetitive effects from the proposed acquisition. Entry is difficult, and likely to take more than two years, due to among

other things the time required to obtain necessary government permits, including state architectural review, and to complete construction of an acute care hospital.

COMPETITION

PARAGRAPH ELEVEN: Tenet and OrNda are actual and potential competitors in the relevant market.

EFFECTS

PARAGRAPH TWELVE: The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

- (a) it would eliminate actual and potential competition between Tenet and OrNda;
- (b) it would significantly increase the already high level of concentration;
- (c) it would eliminate OrNda as a substantial, independent and competitive provider;
- (d) it may permit Tenet to unilaterally raise prices;
- (e) it may result in less favorable prices and other terms for health plans that contract with providers of acute care hospital services;
- (f) it may increase the possibility of collusion or interdependent coordination by the remaining providers of acute care inpatient hospital services;
- (g) it may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service; and
- (h) it may deny the San Luis Obispo County government the ability to purchase on competitive terms the acute care inpatient hospital services it must provide to certain indigent County residents, as a potentially less costly alternative to providing such services to those residents at its own hospital.

VIOLATIONS CHARGED

PARAGRAPH THIRTEEN: The acquisition agreement described in PARAGRAPH FIVE above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FOURTEEN: The acquisition described in PARAGRAPH FIVE, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of May, 1997, issues its complaint against Tenet Healthcare Corporation.

By the Commission

Donald S. Clark
Secretary

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