UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Director
Bureau of Competition

Statement of Bureau of Competition Director Richard Feinstein on the FTC's Closure of Its Investigation of Consummated Hospital Merger in Temple, Texas

On December 23, 2009, the Commission voted to close its investigation of Scott & White Healthcare's merger with King's Daughters Hospital in Temple, Texas. In a non-reportable transaction, Scott & White merged with King's Daughters on April 1, 2009. Commission staff, in conjunction with staff of the Antitrust Division of the Texas Attorney General's Office, conducted an exhaustive investigation of the likely competitive effects of the merger.

Prior to the merger with Scott & White, King's Daughters operated as a general acute care hospital for over a century. Although King's Daughters had experienced financial deterioration at the time of the transaction, it was still an important provider of hospital services and the merger eliminated the only independent competitor to Scott & White in Bell County, Texas. Further, Scott & White planned to turn King's Daughters into a freestanding children's hospital rather than continuing to serve the Temple community as a general acute care hospital. After a thorough examination, Commission staff had serious concerns that the merger may have been anticompetitive in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and informed Scott & White that it was recommending that litigation be initiated to unwind the transaction.

Commission staff recognized that the financial condition of King's Daughters was a significant issue in the investigation and it appeared that the poor, and deteriorating, financial condition of King's Daughters likely would have caused the hospital to close at some point in the future if it was not acquired by another hospital or health system. Thus, a central issue in the investigation was whether an alternative purchaser existed at the time of King's Daughters' merger with Scott & White that might have acquired King's Daughters and maintained it as a general acute care hospital in direct competition with Scott & White.

The evidence suggested that another hospital system, the Seton Family of Hospitals, was seriously interested in acquiring King's Daughters but that its opportunity to complete due diligence and potentially acquire the hospital was unnecessarily cut short by the agreement between King's Daughters and Scott & White. Thus, Commission staff was concerned that an interested alternative purchaser had been deprived of the opportunity to acquire King's Daughters and maintain competition for general acute care services in the marketplace.

In order to ensure that all other competitive options were explored, it was agreed in writing that Scott & White would offer to sell King's Daughters to Seton on specific terms relating to the continued operation of King's Daughters as a general acute care hospital**.** This agreement had the notable advantage of providing Seton with an opportunity to step into the shoes of Scott & White by acquiring King's Daughters without the further delay inherent in litigation. This was particularly important because even with a hold separate agreement in place, King's Daughters had continued to deteriorate since the merger, and any further delay almost certainly would have resulted in King's Daughters' further financial decline and made it less attractive as an acquisition target to Seton (or any other potential acquirer).

Nevertheless, as has been publicly reported, Seton ultimately determined not to acquire King's Daughters and indicated that its decision was based, in part, on the financial and other deterioration of King's Daughters, including the loss of key personnel, that has occurred over the past eight months since the merger.

This investigation was unusual, as a single issue – *did King's Daughters qualify for the failing firm defense?* – was likely dispositive as to whether the merger violated Section 7 of the Clayton Act. To answer that question, the Commission needed to determine whether there was a viable alternative purchaser for King's Daughters. *See* Merger Guidelines § 5.1. In these circumstances, offering Seton an opportunity to acquire King's Daughters provided an efficient means to determine (as much as possible given the passage of time) the answer to that question without the inherent delay of litigation and possible appeals. The fact that King's Daughters was deteriorating – both before and after the Scott & White merger – necessitated quick action to maintain a realistic opportunity for another purchaser to acquire King's Daughters. This agreement provided that opportunity.

The resolution of this investigation reflects the Commission's commitment to aggressive enforcement of the antitrust laws in order to maintain competition between hospitals in local communities across the United States. The unusual circumstances in this case called for an unusual and creative approach. We are satisfied that the agreement was fairly implemented, and we will continue to consider a wide range of approaches to protect competition going forward.