

Tennessee COPA Public Hearing Testimony

July 18, 2017

Good Evening. I'm Alexis Gilman, Assistant Director for the Mergers IV Division at the Federal Trade Commission. I appreciate the opportunity to appear before you today. My remarks are those of FTC staff. They do not necessarily represent the views of the Commission or any individual Commissioner, although the Commission has authorized me to appear tonight.

As we have previously testified, local consumers benefit from the close competition between the applicants—Mountain States and Wellmont—in the form of lower prices, higher quality, and greater access to care. If allowed to merge, the combined hospital system would have a dominant market share of inpatient services and significant market share in several outpatient and physician-specialty service lines. The loss of competition that would result from the merger is likely to have significant negative effects on hospital prices, quality of care, and the availability of services. The applicants have submitted additional information, but still have not shown that the purported benefits of the merger will offset these harms.

In particular, the applicants recently submitted three reports to the Department of Health. We carefully reviewed those reports, in consultation with a leading independent healthcare expert. None of the reports provides additional evidence or analysis that changes our evaluation of the merger, and we remain concerned that the merger will cause significant harm to consumers in the region.

Earlier today, FTC staff submitted a written public comment discussing our concerns with these three reports. Tonight, I will highlight a few of these concerns. Notably absent from the Compass Lexecon economist's report is an empirical analysis of current competition between the parties or the harm likely to result from the merger. This report also fails to consider the benefits and efficiencies the applicants likely would achieve on their own or through other means. Therefore, it likely overstates the claimed benefits of the proposed merger. The Compass report also fails to provide evidentiary support for many of its claims. And we believe it misstates some of the facts, including the claim that the applicants' incentives best align with those of health plans. In fact, the public evidence shows that health plans oppose the merger. Similarly, the applicants' other two reports do not account for the benefits of competition between the applicants and overstate the merger's incremental benefits.

Additionally, we note that the parties have not—at least publicly—offered any additional or improved commitments. Thus, the flaws and gaps in the applicants' commitments that we identified in our last public comment remain.

Finally, I want to reiterate that it will be difficult, if not impossible, to pry apart a merger involving so many hospitals once the applicants consolidate or eliminate service lines, facilities, and jobs. Therefore, antitrust enforcement may not provide a good remedy if the COPA is approved but the Department later determines that the disadvantages outweigh the benefits. For these reasons, we respectfully submit that the Department and the Attorney General should deny the COPA.

Thank you again for your consideration.