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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	
KEYSTONE ORTHOPAEDIC SPECIALISTS, LLC, a professional limited liability company,	
and	**Docket No. C-4562**
ORTHOPAEDIC ASSOCIATES OF READING, LTD., a professional corporation.	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Keystone Orthopaedic Specialists, LLC ("Keystone") and Orthopaedic Associates of Reading, Ltd. ("Orthopaedic Associates"), have violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC 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, hereby issues its complaint stating its charges in that respect as follows.

NATURE OF THE CASE

1. This case challenges a consummated physician practice group merger among orthopedists in Berks County, Pennsylvania. In 2011, orthopedists affiliated with six independent physician groups merged their practices to form Keystone (the "Merger"). Those practices are Respondent Orthopaedic Associates, Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C. ("Keystone Component Practices").

2. The Merger combined 19 out of 25, or 76 percent, of the orthopedists practicing in Berks County. The Merger has substantially lessened competition for orthopedic physician services in Berks County, Pennsylvania.

3. The Merger eliminated price and non-price competition among the Keystone Component Practices and created a dominant orthopedic practice. Following the Merger, Keystone exercised unilateral market power to raise prices for orthopedic physician services. As a result, most health plans in Berks County are paying prices for orthopedic physician services that are significantly higher than prices they paid prior to the Merger.

4. Although health plans are usually the direct customers for orthopedic physician services provided to many patients, higher prices for those services are passed on to employers and other group purchasers of health insurance plans. Such costs are ultimately borne by patients in Berks County through higher premiums, co-payments, and other out-of-pocket expenditures.

5. New market entry or expansion has not been sufficient to deter, prevent, or counter the anticompetitive effects of the Merger. Nor has the Merger produced merger-specific efficiencies sufficient to offset the actual anticompetitive harm from the Merger.

JURISDICTION

6. Keystone and Orthopaedic Associates are, and at all relevant times have been, engaged in commerce or in activities affecting commerce, within the meaning of the FTC Act and the Clayton Act. The Merger constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

RESPONDENTS

7. Keystone is a professional limited liability company organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 1270 Broadcasting Road, Reading, Pennsylvania 19610. Keystone orthopedists have offices at various locations in Berks County.

8. Orthopaedic Associates is a professional corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 301 South Seventh Avenue, Suite 3220, West Reading, Pennsylvania 19611.

THE MERGER

9. On or about March 19, 2010, orthopedists from the Keystone Component Practices formed Keystone as a professional limited liability company. The Merger was consummated on or about January 1, 2011, when each orthopedist affiliated with the Keystone Component Practices entered into a Professional Services Agreement with Keystone to provide orthopedic physician services exclusively through Keystone. The Keystone Component Practices became divisions of Keystone.

10. After the Merger, the Keystone Component Practices no longer competed to provide orthopedic physician services in Berks County, and the Keystone orthopedists ceased doing business through their respective independent practices and began doing business exclusively through Keystone.

11. Three years after the Merger, in 2014, six orthopedists left Keystone and resumed doing business as Orthopaedic Associates.

COMPETITION BETWEEN PHYSICIANS

12. Competition between physicians occurs in two stages. In the first stage, providers compete for selection by health plans as in-network providers. To gain in-network status, a physician engages in negotiations with each health plan and enters into a contract. One of the critical terms that a physician and a health plan agree upon during a negotiation are the prices that the health plan will pay to the physician when the health plan's members obtain care from the physician.

13. Physicians benefit from in-network status by gaining access to the health plans' members as patients. Health plans benefit by negotiating discounted prices and being able to create commercially marketable and appealing provider networks, with geographic coverage and a scope of services sufficient to attract and satisfy a localized group of members, typically employers and their employees. The availability and number of alternative physicians is the primary source of a health plan's bargaining power to negotiate competitive prices on behalf of its members. Thus, an acquisition that reduces a health plan's choice of providers for particular healthcare services in a particular area reduces the health plan's bargaining power when negotiating with physicians, and can lead to higher prices and reduced incentive to maintain or improve quality.

14. Changes in the prices negotiated between physicians and health plans impact the health plan's members (i.e., employers and their employees). Employers generally have two alternative funding mechanisms for purchasing health insurance for their employees. Fully-insured employers and their employees pay premiums, co-pays, and deductibles in exchange for access to a health plan's provider network and for insurance against the cost of future care—that is, the health plan pays the insured-members' healthcare claims. Self-insured employers also have access to their health plan's network and negotiated prices but assume the risk for the costs of care provided to their employees. Self-insured employers must pay the entirety of their employees' health-care claims (aside from member cost-sharing, such as deductibles and co-payments) and, as a result, they immediately incur any price increases. Therefore, regardless of the funding mechanism, health plans act on behalf of employers and other health-plan members to create provider networks that offer convenience, high quality of care, and negotiated reimbursement rates. The costs to employers and health plan members are inextricably linked to the prices that health plans negotiate with each physician in their provider network.

15. In the second stage of competition, physicians compete with other in-network physicians to attract patients. Health plans typically offer multiple in-network providers with similar out-of-pocket costs, and those physicians compete primarily on non-price dimensions in this second stage to attract patients by competing on service, amenities, convenience, and quality of care.

THE RELEVANT MARKETS

16. For purposes of this Complaint, the relevant line of commerce is the provision of orthopedic physician services. Orthopedic physician services include surgery and other services provided by physicians who specialize as orthopedists to treat injuries and diseases of the musculoskeletal system.

17. The relevant geographic market in which to assess the effect of the Merger is Berks County, Pennsylvania. Health plans are unable to serve their members in Berks County without including Berks County orthopedists in their provider networks. Patients in Berks County generally do not leave the county to obtain orthopedic physician services.

MARKET STRUCTURE

18. Before the Merger, competition among orthopedists, including the Keystone Component Practices, in Berks County was robust. At that time, 25 orthopedists in 11 practices competed to serve orthopedic patients. The Merger substantially eliminated this competition by combining 19 orthopedists into one practice, leaving only six orthopedists as competitors. Following the Merger, Keystone had 76 percent of the orthopedists practicing in Berks County.

19. The Horizontal Merger Guidelines issued by the Commission and the U.S. Department of Justice measure market concentration using the Herfindahl-Hirschman Index ("HHI"). A merger or acquisition is presumed likely to create or enhance market power, and thus is presumed illegal, when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration levels exceed these thresholds by a wide margin.

20. As a result of the Merger, health plans could not create a commercially marketable and appealing provider network without Keystone. Health plans were not able to attract and satisfy Berks County patients with a network that included only the few remaining non-Keystone orthopedists.

ANTICOMPETITIVE EFFECTS

21. The effects of the Merger have been to substantially lessen competition and create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways:

a. Eliminating actual, direct, and substantial competition between the orthopedists in the Keystone Component Practices;

b. Increasing the ability of the merged entity unilaterally to raise prices for orthopedic physician services; and

c. Reducing incentives to maintain or improve service and quality in the relevant market.

22. Before the Merger, the Keystone Component Practices competed and health plans could form a network with some, but not all, of the Keystone Component Practices. After the Merger, Keystone negotiated prices with health plans on behalf of all the previously competing Keystone Component Practices, and health plans could not offer a commercially marketable and appealing provider network to serve Berks County residents without Keystone. Thus, Keystone acquired substantial market power through the Merger, which it used to raise prices to most health plans operating in Berks County, including a Medicaid managed-care plan.

ENTRY CONDITIONS

23. Attracting new orthopedists to Berks County is difficult, expensive, and time intensive. Neither entry by new firms nor expansion by the remaining practices following the Merger has been timely or sufficient to deter, prevent, or counter the anticompetitive effects from the Merger.

EFFICIENCIES

24. In the more than four years since Keystone's formation, the Merger has not produced merger-specific efficiencies sufficient to offset the actual anticompetitive harm from the Merger.

VIOLATIONS CHARGED

25. The allegations of Paragraphs 1 through 24 above are incorporated by reference as though fully set forth.

26. The Merger substantially lessened competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an agreement constituting an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of December, 2015, issues its Complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary