

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

Docket No. 9366

In the Matter of)
)
)
Cabell Huntington Hospital, Inc.)
a corporation;)
)
Pallottine Health Services, Inc.)
a corporation;)
)
and)
)
St. Mary's Medical Center, Inc.)
a corporation.)

**COMPLAINT COUNSEL’S MEMORANDUM REGARDING LEGAL AND FACTUAL
SUPPORT FOR PROCEEDING WITH A HEARING IN THIS MATTER**

The Court asked the parties for legal or factual support for holding a hearing to block a merger that cannot be consummated at the time the administrative hearing is to begin. The Court raised this question because Respondents cannot close on the transaction prior to obtaining the approval both of the West Virginia Health Care Authority (“WVHCA”) and of the Vatican and, at present, Respondents have not obtained the approval of either institution.

There are three reasons that a hearing should be held even if a merger is not possible at this time. First, there have been no new developments since the Commission issued the Complaint and scheduled the hearing for April 5, 2016. Second, Count I of the Complaint challenges the agreement between Cabell and St. Mary’s as illegal, and the Court can proceed with a hearing on the legality of the agreement even if the merger closing (which is the subject of

Count II of the Complaint) is not imminent. Third, the Commission has gone forward with proceedings challenging the legality of transactions even when the parties have not obtained all the necessary approvals.

1. *There Have Been No New Developments Since the Commission Issued the Complaint.*

When it issued the Complaint, the Commission contemplated the possibility that an administrative hearing might start before the Respondents had obtained the necessary approvals. The Commission clearly understood that the approvals of both the WVHCA and the Vatican were prerequisites to closing, and that Respondents had not yet obtained those approvals. *See* Complaint ¶¶ 25, 26. The Commission also understood that the hearing before the WVHCA had been continued “for an indefinite period,” and that Vatican approval would take an “additional six to eight weeks” after the WVHCA issued any decision approving the transaction. *Id.* Based on this information, the Commission set a firm hearing date for April 5, 2016, notwithstanding the possibility that approval of the WVHCA and the Vatican might not be obtained before that date.

2. *Count I, Which Challenges the Legality of the Respondents’ Agreement, Is Ready for Trial, Even if Respondents Have Not Obtained Other Necessary Approvals.*

Second, the Commission’s complaint explicitly challenges the legality of the agreement between Cabell and St. Mary’s—the “Definitive Agreement”—as well as the acquisition itself. Count I of the Complaint alleges that, “[t]he *Definitive Agreement* constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.” Complaint ¶ 108 (italics added). Thus, the Court can proceed with a hearing on the legality of the Definitive Agreement, even if Respondents have not yet obtained the various approvals that they must obtain prior to closing.

3. *The Commission Regularly Proceeds with Enforcement Actions Even When Closing Is Not Imminent.*

Third, the Commission has considered the legality of transactions in other instances in which the parties had not yet obtained other approvals that were necessary for closing. For example, in its investigation of the proposed merger between casino operators Pinnacle Entertainment and Ameristar Casinos, the FTC filed an administrative complaint, and ultimately obtained a consent order and divestitures, before the companies received the necessary approvals for the merger from the Louisiana Gaming Control Board and the Missouri Gaming Commission.¹ Similarly, in *FTC v. Equitable Resources, Inc.*, the Commission issued a complaint to block natural gas distributor Equitable's proposed acquisition of competitor Dominion Peoples, even though the acquisition had not yet been approved by the Pennsylvania Utilities Commission.²

¹ See *In the Matter of Pinnacle Entertainment, Inc. and Ameristar Casinos, Inc.*, Docket No. 9355, Decision and Order, Dec. 4, 2013 (*at* <https://www.ftc.gov/sites/default/files/documents/cases/131219pinnacle.do.pdf>).

² Press Release, Federal Trade Commission, FTC Sues to Block Acquisition of The Peoples Natural Gas Company from Dominion Resources, Mar. 15, 2007 (*at* <https://www.ftc.gov/news-events/press-releases/2007/03/ftc-sues-block-acquisition-peoples-natural-gas-company-dominion>).

Conclusion

For the foregoing reasons, Complaint Counsel respectfully suggests there are no reasons to delay the hearing now scheduled to begin on April 5, 2016.

Dated: March 9, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
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Dated: March 9, 2016

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On behalf of Complaint Counsel

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 9, 2016

By: s/ Jeanine Balbach