

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**U.S. FEDERAL TRADE COMMISSION**

**Petitioner,**

**V.**

**PROMEDICA HEALTH SYSTEM,  
INC., et al.**

### Respondents.

**Civil Action No. 10-mc-0586 (RMC)**

## ORDER

Respondents ProMedica Health System, Inc., Paramount Health Care, and St. Luke’s Hospital, all of the Toledo, Ohio metropolitan area, seek to consummate the merger of St. Luke’s Hospital into ProMedica’s hospital system. The Federal Trade Commission fears an anti-competitive effect and has issued subpoenas *duces tecum* and civil investigative demands (“CIDs”) to the Respondents. When responses to its demands were slow or non-existent, the FTC sought to enforce its subpoenas and CIDs in this Court in the District of Columbia under Section 9 of the FTC Act, 15 U.S.C. § 49. Respondents argue that this Court lacks subject-matter jurisdiction over this enforcement action pursuant to *NLRB v. Cooper Tire & Rubber Co.*, 438 F.3d 1198 (D.C. Cir. 2006), as the subject matter of the FTC’s investigation lies in Ohio.

At a hearing on the FTC’s Emergency Petition for an Order Enforcing Subpoena Duces Tecum and Civil Investigation Demands Issued in a Merger Investigation, [Dkt. # 1], held on October 8, 2010, the Court heard argument from the parties and indicated its intent to issue the requested order. At the hearing, FTC argued that *Cooper Tire* supports the Court’s jurisdiction as

the D.C. Circuit recognized that where, among other factors, an agency investigation is “nationwide,” the proper judicial district for an enforcement action may be the District of Columbia. *See Cooper Tire*, 438 F.3d at 1202–03. The Court agreed with the FTC and based its ruling on its representations that the investigation involved the collection of data from commercial health plans “in Connecticut, Indiana, Kentucky, Michigan, Minnesota, and New York.” Pet’r’s Reply in Support of Emergency Pet. [Dkt. # 8], Supplemental Decl. of Jeanne Liu [Ex. A] ¶ 6. Based on the scope of the investigation, the Court determined that it spanned several states and was quasi-national and, thus, not cabined by the analysis in *Cooper Tire*. The Court did not issue the order, however, because Respondents sought leave to file a reply — which the Court will deem a surreply — which they did on October 11, 2010 (the Columbus Day holiday), and which the Court has now reviewed.

The Court has reconsidered its decision announced at the hearing and now concludes that it lacks jurisdiction to enforce the FTC’s subpoenas and CIDs.<sup>1</sup> The Court must apply a two-part test to determine “the location of an investigative inquiry for purposes of district court jurisdiction to enforce agency subpoenas: ‘(1) whether [the location bears] a sufficiently reasonable relation to the subject matter of the investigation . . . , and (2) whether the agency’s choice of this [location for enforcement] . . . exceeds the bound of reasonableness.’” *Cooper Tire*, 438 F.3d at 1201 (quoting *FEC v. Comm. to Elect Lyndon La Rouche*, 613 F.2d 849, 856–57 (D.C. Cir. 1979)). Mirroring the NLRB’s unsuccessful arguments in *Cooper Tire*, *see id.* at 1202, the FTC first argued at the hearing that its inquiry is being carried on within the District of Columbia as the FTC has spearheaded the

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<sup>1</sup> As Petitioner moved the Court to exert supplemental jurisdiction over the CID enforcement action, *see* Pet’r’s Emergency Pet. [Dkt. # 1], Mem. in Support of Emergency Pet. [Ex. 2] 3, the Court lacks jurisdiction over the CID enforcement action since it lacks jurisdiction over the subpoena enforcement action.

investigation from its headquarters in D.C., it issued the subpoenas and CIDs from D.C., the compulsory process was returnable to D.C., and testimony was taken in D.C. While this Court's exercise of jurisdiction would no doubt convenience the FTC, *Cooper Tire* clearly underscored that the critical question in determining whether a court has jurisdiction is the relationship between the jurisdiction and the subject-matter of the investigation. *See id.* The subject-matter of this investigation is undeniably in Ohio, not within the District of Columbia. It cannot be said that the FTC can avoid the import of *Cooper Tire* "in any health care-related inquiry" just because the agency seeks information from various states. Pet'r's Reply in Support of Emergency Pet. [Dkt. # 8], Supplemental Declaration of Jeanne Liu [Ex. A] ¶ 6. In this case, the three entities involved are all in the Toledo, Ohio, area.<sup>2</sup> The subject matter of the investigation concerns these three Respondents and not any entity elsewhere. This differs starkly from the nationwide investigation in *La Rouche*, which focused on the potential improprieties of a national political party, engaged in a national election, with a record of donations from twenty states. *See Cooper Tire*, 438 F.3d at 1202–03. The Court is, of course, bound by *Cooper Tire*, which the Court finds applies to these facts.

As the Court lacks jurisdiction, the Court declines to order compliance with the FTC's subpoenas *duces tecum* and CIDs. Inasmuch as the parties might have anticipated an order enforcing the subpoenas and CIDs, the Court has hastened to issue this order declining to do so.

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<sup>2</sup> Petitioner acknowledges, at a minimum, that any anti-competitive effects would be felt primarily, if not exclusively, in the Toledo, Ohio area. *See* Pet'r's Emergency Pet. [Dkt. # 1], Mem. in Support of Emergency Pet. [Ex. 2] 2 ("This case involves the consolidation of two general acute-care hospital systems in the Toledo area. . . The transaction may substantially lessen competition in the market for general acute-care inpatient hospital services and other medical services, such as obstetrics. The [FTC] is conducting an investigation to determine whether the transaction violates the antitrust laws and would result in higher rates for health plans, as well as increased insurance premiums and greater out-of-pocket expenses for consumers in the Toledo area.").

Accordingly, it is hereby

**ORDERED** that Petitioner's Emergency Petition for an Order Enforcing Subpoena Duces Tecum and Civil Investigation Demands Issued in a Merger Investigation [Dkt. # 1] is **DENIED** for lack of jurisdiction; accordingly, this case is now closed.

This is a final appealable Order. *See* Fed. R. App. P. 4(a).

**SO ORDERED.**

Date: October 12, 2010

/s/  
ROSEMARY M. COLLYER  
United States District Judge