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St. Cloud Medical Group/CentraCare Health, File No. 1610096 – Consent Agreement

**Before the  
Federal Trade Commission  
Washington, D.C. 20554**

In the Matter of CentraCare Health )  
 ) File No. 1610096

**COMMENTS OF THE OFFICE OF THE  
MINNESOTA ATTORNEY GENERAL**

**INTRODUCTION**

The Office of the Minnesota Attorney General (“OAG”) submits the following Comments in response to the Federal Trade Commission (“FTC”)’s October 14, 2016 Notice of Comment Period in File No. 1610096. The FTC issued this notice following its acceptance of an Agreement Containing Consent Orders (“Consent Agreement”) with St. Cloud Medical Group, P.A. (“SCMG”) and CentraCare Health (“CCH”).

The OAG began investigating CCH’s acquisition of SCMG in January, 2016 when it received an anonymous tip regarding the pending transaction. Neither CCH nor SCMG had previously notified regulators of this transaction. The OAG quickly learned that the acquisition would combine the two largest primary care service providers in St. Cloud into one dominant health care system with over 80 percent market share of primary care physician services in Central Minnesota. The OAG notified the FTC of the transaction, of which it was not previously aware. The OAG invited the FTC to partner with the OAG in reviewing the matter because of the FTC’s recent interest and actions in the health care market and because it was apparent that the acquisition posed significant concerns relating to health care competition in Central Minnesota. Between March 10, 2016, and September 2016, the OAG and FTC together

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conducted over 80 interviews or depositions of witnesses and reviewed more than 500,000 documents.

The FTC should withdraw from the Consent Agreement and seek to enjoin the merger. The Consent Agreement leaves Central Minnesota with a health care monopoly. The combination of SCMG and CCH will substantially reduce competition, and increase health care costs for residents in Central Minnesota. SCMG has presented insufficient evidence to satisfy the rigorous demands of the “failing firm” defense. Moreover, the FTC’s conclusion that SCMG meets the “failing firm” standard creates a significant barrier to any future enforcement action concerning that monopoly.

### **I. The Transaction Substantially Lessens Competition For Physician Services in Central Minnesota.**

Section 7 of the Clayton Act prohibits all acquisitions when “the effect of such acquisition may be to substantially lessen competition, or to tend to create a monopoly.” 15 U.S.C. § 18. Mergers should “not be permitted to create, enhance, or entrench market power or to facilitate its exercise.” 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines § 1 (“Merger Guidelines”). Indeed, in areas like St. Cloud, where market concentration is already great, the importance of preventing even “slight increases” in concentration is correspondingly great. *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 365 n.42 (1963).

CCH and SCMG are the two largest health care providers in St. Cloud, Minnesota. They compete to sell physician services to health insurers and their members. Health insurers rely on competition between CCH and SCMG to drive down reimbursement rates, which allows them to pass cost-savings on to consumers through lower premiums, co-pays, and deductibles.

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Competition between CCH and SCMG also incentivizes the parties to provide high-quality care to St. Cloud area patients.

CCH's acquisition of SCMG, by combining the two largest providers, substantially reduces competition in the St. Cloud area for three relevant physician services: (1) adult primary care; (2) pediatric primary care; and (3) obstetrics/gynecology ("OB/GYN"). St. Cloud area residents expect to receive these services close to home. Health plans must include in their provider networks access to adult primary care physicians, pediatricians, and OB/GYNs located in the St. Cloud area in order to offer competitive products to their members. Patients in these markets are not willing to travel significant distances, such as to the Twin Cities, for routine care. Alternative care models, like retail clinics and telemedicine, only offer a limited scope of services and are not functionally interchangeable with in-person care.

Courts and the FTC use the Herfindahl-Hirschman Index ("HHI") to objectively measure changes in market concentration to determine a merger's presumptive legality. A transaction is presumed anticompetitive when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points. Merger Guidelines § 5. In this case, the pre-merger HHIs for each market already exceed 2,500. Post-merger, those values increase by well over 200 points.<sup>1</sup> This transaction results in a highly concentrated market that is presumptively unlawful under the FTC's Merger Guidelines.

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<sup>1</sup> Using one method to calculate HHI market concentration for adult primary care services, the pre-merger HHI figure is 5,329 and post-merger, the HHI increases 1,485 points to 6,814. Additionally, there is no evidence of countervailing factors sufficient to justify the presumptively anticompetitive transaction. There is no evidence to suggest that enough physicians will enter the market to counteract the effects of the transaction, nor is there credible evidence that the transaction will result in any cost-savings or efficiencies.

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### II. By Substantially Reducing Competition, The Transaction Will Cause Competitive Harm To Central Minnesota Residents.

This transaction is certain to enhance CCH's market power and damage competition for adult primary care, pediatric primary care, and OB/GYN physician services. It combines the two largest providers of physician services in the St. Cloud area, already a highly concentrated health care market and gives CCH a virtual monopoly on those services. The only significant competitor that will remain following the transaction, HealthPartners' Central Minnesota Clinic ("CMC"), is not a viable option for many commercial health plans because it is affiliated with a competing health plan. The transaction results in market shares that **exceed 80 percent** in the three relevant product markets, significantly greater than many recent acquisitions that the FTC has challenged. See Complaint at ¶ 29, *In the Matter of Advocate Health Care Network, Advocate Health and Hospitals Corporation and NorthShore University HealthSystem*, No. 141-0231 (FTC Dec 17, 2015) (alleging **55 percent market share** for general acute care inpatient services); Complaint at ¶ 26, *In the Matter of The Penn State Hershey Medical Center and PinnacleHealth System*, No. 141-0191 (FTC Dec. 7, 2015) (alleging an "**overwhelming**" **64 percent market share** for general acute care services); Complaint at ¶ 40, *In the Matter of Cabell Huntington Hospital, Inc., Pallottine Health Services, Inc., and St. Mary's Medical Cent., Inc.*, No. 141-0218 (FTC Nov. 5, 2015) (alleging **75.4 percent market share** for general acute care inpatient hospital services); Complaint at ¶ 33, *Federal Trade Commission, et. al v. St. Luke's Health System, et. al.*, No. 13-cv-116-BLW (D. Idaho Mar. 12. 2013) (alleging **nearly 60 percent share** of the adult primary care market share); Complaint at ¶ 21, *In the Matter of ProMedica Health System, Inc.*, No. 1010167 (FTC Jan. 6, 2011) (alleging market share of **nearly 60 percent for** general acute-care inpatient hospital services and **exceeding 80 percent in obstetrical services**); Complaint at ¶ 44, *Federal Trade Commission v. OSF Health care*

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*System, et. al.*, No. 11-cv-50344 (N.D. Ill. Nov. 18, 2011) (alleging **64 percent market share** for general acute care services). CCH will be the unchallenged, dominant provider of health care in St. Cloud. Commercial health plans will not be able to operate in Central Minnesota without including CCH's physician services in their networks.

Prior to the merger, the cost of health care in the St. Cloud area was 15.2 percent higher than the national average and significantly higher than many other Minnesota cities, including St. Paul, Minneapolis, and Mankato. Press Release, St. Cloud Chamber of Commerce, Area Cost of Living Index for Annual Report of 2015 (Jan. 21, 2016).<sup>2</sup> The loss of SCMG, a low-cost provider, and the subsequent increase in CCH's market power, will only exacerbate this trend. This transaction will increase the cost and reduce the quality of health care for Minnesota consumers. [REDACTED]

[REDACTED] <sup>3</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>2</sup> Available at <http://www.stcloudareachamber.com/Community/COSTNEWS-Average-Annual-Report-2015>.

<sup>3</sup> The OAG requests, pursuant to FTC Rule 4.9(c), 16 C.F.R. 4.9(c), that the FTC give confidential treatment to all information that is in red text. Those portions of the comments reference information that FTC Rule 4.10(a)(2) and Minnesota Statutes section 13.37, subdivision 2 classify as trade secret or confidential commercial information, as well as contain information collected during the OAG's on-going civil investigation, which Minnesota Statutes section 13.39, subdivision 2 classifies as protected nonpublic data. The red text also references information provided to the FTC by declarants who requested that their identity, their company's identity, and the contents of their declarations be kept confidential and exempt from public disclosure. Confidential treatment of that information is therefore appropriate under Section 6(f) of the FTC Act, 15 U.S.C. 46(f).

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Indeed, CCH has [REDACTED]

[REDACTED]

[REDACTED] The State of Minnesota's health plan tiers its primary care clinics into four different cost levels and incentivizes its members to seek low-cost care by providing members lower co-pays and deductibles when they use a low-cost clinic. The State is also required to offer its members access to at least one primary care clinic that is both tiered in one of the two lowest cost levels and located within 30 miles of where those members work. If no low-cost clinic exists within that 30-mile boundary, the State must reduce a high-cost provider to a lower cost level and subsidize the difference in cost of care. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Central Minnesota residents are already feeling the anticompetitive effects of this merger. As Dr. Michael Murphy noted in his October 23, 2016 comment, CCH has already told the only orthopedic group in St. Cloud that it will restrict that group's ability to access patients that CCH physicians treat and that CCH will also limit that group's ability to utilize an independent free-standing surgical center instead of CCH's facilities.<sup>4</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>5</sup> Competition from SCMG before

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<sup>4</sup> Available at <https://www.ftc.gov/policy/public-comments/2016/10/23/comment-00003>.

<sup>5</sup> [REDACTED]

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the merger prevented CCH from engaging in this conduct. Now that the merger is complete, those stakeholders have little choice but to acquiesce to CCH's demands.

### **III. The Consent Agreement Does Not Rectify The Anticompetitive Effects of the Transaction.**

The only remedy that the FTC proposes to protect against the harm to an already concentrated market is a Consent Agreement that allows up to 14 physicians to join a competing practice in the St. Cloud area by temporarily suspending their non-compete agreements. In essence, the FTC proposes to remedy a presumptively anticompetitive transaction by temporarily removing an anticompetitive contract provision from a limited number of physician contracts. For a number of reasons, this is not an effective means to mitigate the transaction's anticompetitive consequences.

First, the Consent Agreement provides only a *potential* avenue for physicians to leave CCH and join a competitor. It does not require any physicians to leave, and it is uncertain whether any physicians will actually cut ties with their colleagues, terminate their employment with CCH, and commit to practicing at a St. Cloud competitor for the following two years. CCH has already begun making considerable efforts to retain as many physicians as possible, including making clear its desire that all SCMG physicians stay with their health system. *See* Christopher Snowbeck, *FTC Clears Medical Group Merger in St. Cloud*, STAR TRIBUNE, Oct. 6, 2016.<sup>6</sup> CCH's incentive to retain physicians will likely outweigh any incentive a SCMG physician might have to leave CCH.

Second, CMC is the next-largest remaining competitor. But even in the unlikely event that the maximum 14 physicians would leave CCH and join CMC, it would do little to preserve

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<sup>6</sup> Available at <http://www.startribune.com/ftc-clears-medical-group-merger-in-st-cloud/396227371/>.

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competition, given the area's current market structure. CCH is presently much larger than the second-largest provider, SCMG, which is itself much larger than the third-largest provider, CMC. The combination of CCH and SCMG will result in one dominant practice. Moving 14 SCMG physicians to CMC will not suddenly transform CMC into an adequate competitive counterweight to CCH, particularly when the remaining 26 SCMG physicians will join CCH.<sup>7</sup> A post-transaction market in which three competitors become two and in which the largest competitor becomes even stronger is simply not competitive.

Third, the financial incentives offered to departing physicians will not result in an entity that could serve as a competitive counterweight to CCH. Under the Agreement, the first five physicians who leave CCH and either (1) create a new medical practice or (2) join an already existing practice that has five or fewer physicians will be awarded a \$100,000 departure payment. From a competition perspective, these caveats make the \$100,000 incentive worthless. A physician wanting to take advantage of the departure payment would either have to start a new practice or join one of the following St. Cloud-area groups: (1) Sartell Pediatrics, (2) Christopher Wenner M.D., P.A., or (3) Williams Integracare. Sartell Pediatrics is composed of one doctor who limits his practice to pediatric services. Dr. Christopher Wenner is also a solo practitioner. Williams Integracare is a group that focuses primarily on chiropractic and physical therapy services and has only one primary-care physician on staff. These groups are so small that

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<sup>7</sup> CMC would not be an adequate competitor. The Consent Agreement allows a market where two major providers remain: (1) CCH, a provider so large that it accounts for more than 80% of the market and (2) CMC, a clinic associated with a major health plan, HealthPartners. CMC's affiliation with HealthPartners makes it a less attractive option for other commercial health plans, which prefer not to rely on negotiations with a competitor to meet their network requirements. Even if CMC were a viable option, CCH's market share following implementation of the Consent Agreement will be too large for health plans to ignore. Even with that agreement, this acquisition represents a de facto merger-to-monopoly for Central Minnesota residents.

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commercial health plans do not even track them for patient attribution purposes. In contrast, CCH already has 102 primary-care physicians, 28 pediatricians, and 25 OB/GYNs and will grow only larger following the merger.

In fact, the departure bonuses do more to preserve CCH's market share than promote competition. Under the terms of the Agreement, the only St. Cloud area practice to which the departure bonus will not apply is CMC, the only group large enough to serve as any sort of meaningful competitor to CCH. The other groups discussed above are so small that commercial health plans cannot use those groups to form adequate adult primary care, pediatric primary care, or OB/GYN networks. Even a new group formed by five former SCMG physicians would do little against CCH's considerable market power. If anything, the departure bonuses incentivize former SCMG physicians to join a variety of smaller providers, rather than moving to the one provider that could potentially compete with CCH.

#### **IV. The FTC's Acceptance of SCMG As a "Failing Firm" Substantially Expands the Use Of That Defense.**

Despite the overwhelming evidence that the transaction will cause substantial competitive harm to the St. Cloud area, the FTC has accepted the Consent Agreement because it has concluded that SCMG is a "financially failing physician practice group." That is not the case. SCMG is not "failing." Its physician shareholders are simply unhappy with the profits they have earned in recent years. It has refused to negotiate in good faith with those that could increase its revenues. It has refused to take any meaningful action to reduce its expenses. It should not benefit from the protection of the failing firm defense.

The FTC's Merger Guidelines provide that an acquisition does not enhance market power if, absent that transaction, one of the firms would fail in the immediate future and its assets would exit the marketplace. *See* Merger Guidelines § 11. This defense is "narrow in scope,"

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“rarely successful,” and applies only when one of the merging firms (1) is unable to meet its immediate financial obligations; (2) is not able to reorganize successfully via a bankruptcy proceeding; and (3) has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its assets in the market and pose a less severe danger to competition than the proposed acquisition. *Id*; Note by the United States, *Failing Firm Defense*, 2 (2009) (hereinafter “Failing Firm Defense”).<sup>8</sup> SCMG is not the rare firm that satisfies the tight requirements of this doctrine, and the FTC should not shield this anticompetitive merger from the strict scrutiny it deserves.

**A. SCMG relies on the failing-firm doctrine only when it suits its needs.**

When the OAG first contacted SCMG regarding the proposed transaction, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In a subsequent follow-up to additional OAG inquiries, [REDACTED]

[REDACTED]

SCMG only changed its story after learning the proposed acquisition posed serious concerns. At an April 2016 meeting [REDACTED]

[REDACTED]

[REDACTED]

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<sup>8</sup> Available at <https://www.justice.gov/sites/default/files/atr/legacy/2011/05/05/270422.pdf>.



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Now that the merger is complete, SCMG has told the public that the purpose of the transaction was to meet the changing expectations of health care purchasers, who demand care with less fragmentation, rather than SCMG's financial struggles. The same day the FTC accepted the consent agreement, SCMG President Dr. Scott Rahm said that the partnership emerged because "As a group of physicians, we began exploring the best way to ensure that we were meeting those changing expectations and delivering the care that our patients need and value. *This partnership is the result of that review.*" Christopher Snowbeck, *FTC clears medical group merger in St. Cloud*, STAR TRIBUNE, Oct. 6, 2016 (emphasis added).<sup>9</sup> It is telling that SCMG used the "failing firm" defense to convince the FTC not to take action against it, but now that the Consent Agreement is signed, tells the public a completely different story.

- B. SCMG should not be able to take advantage of the failing firm doctrine simply because its physician shareholders are unhappy with how much money they are making.**

SCMG's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Its argument completely distorts the manner in which SCMG operates.

SCMG is a subchapter C corporation owned by its physician shareholders. [REDACTED]

[REDACTED]

[REDACTED] It operates in the

same manner as many other professional associations and small businesses.

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<sup>9</sup>Available at <http://www.startribune.com/ftc-clears-medical-group-merger-In-st-cloud/396227371/>

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SCMG physicians receive a salary based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>10</sup> [REDACTED]

[REDACTED]

[REDACTED] See Minnesota

Department of Employment and Economic Development, *St. Cloud MSA 2015 Regional Profile*, 7 (2015) (stating that the median income in the St. Cloud metropolitan statistical area is \$54,015).<sup>11</sup>

The fact that SCMG does not currently generate enough profit to satisfy its physician shareholders is insufficient to satisfy prong one of the failing firm elements as discussed in the

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<sup>10</sup> [REDACTED]

This is a common practice for small businesses.

<sup>11</sup> Available at <http://www.ci.stcloud.mn.us/DocumentCenter/View/9073>.

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Merger Guidelines. [REDACTED] does not constitute a debt under those guidelines. [REDACTED]

[REDACTED]<sup>12</sup> [REDACTED]

A profit-earning firm should not be permitted to rely on the failing firm defense to justify a presumptively anticompetitive merger simply so it can increase its shareholder distribution. Taken to its logical end, that conclusion allows any profit-earning corporation to justify a transaction by setting inflated shareholder “salaries” that are unrelated to what the firm actually earns for its services and then claiming that the business is failing simply because it is unable to meet those “salaries.” The FTC should not permit such blatant manipulation. For this reason alone, SCMG is not a failing firm.

**C. SCMG also should not be able to rely on the failing firm defense because it did not negotiate in good faith with other partners.**

Even if SCMG could rely on a reduction in profits to satisfy prong one of the failing firm defense, it still could not justify the merger because it refused to make good faith efforts to work with other available partners. The need to make a good-faith search for reasonable alternative offers is an important prong of the failing firm defense. If a firm can enter into an arrangement with another entity that would allow it to continue as “an independent competitive force in the market, then the mere fact of current financial distress does not imply the proposed merger is

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<sup>12</sup> [REDACTED]

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necessarily benign.” Failing Firm Defense, *supra* at 2. The burden is on SCMG and CCH to prove that no other reasonable alternatives are available that would be less detrimental to competition. *Id.* They cannot do so here.

Given the dangers that a presumptively anticompetitive transaction poses to consumers, regulators place a relatively low bar as to what constitutes a reasonable alternative offer. In cases where a purchase of assets is contemplated, “[a]ny offer . . . for a price above the liquidation value of [the failing firm’s] assets” is “regarded as a reasonable alternative offer.” Merger Guidelines § 11. Firms are not permitted to discourage offers “above the assets’ liquidation value” and are required to “seriously” pursue legitimate expressions of interest. Failing Firm Defense, *supra*, at 6.

In this case, a serious, reasonable, and less anticompetitive alternative existed from another potential partner. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] consisted of a number of different terms, including

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] clearly meets the reasonable, alternative standards set forth under the Merger Guidelines. [REDACTED] provide SCMG enough [REDACTED] and allow SCMG to [REDACTED] [REDACTED] SCMG would be able to use its strengthened finances [REDACTED] [REDACTED] and to take additional steps toward solidifying the strength of its practice. An anticompetitive merger would be avoided, and SCMG would remain an independent counterweight to CCH, benefiting the Central Minnesota health care market.

SCMG, however, failed to take this offer seriously. It failed to [REDACTED]

[REDACTED] It is clear that SCMG intended for its counterproposal to be rejected so it could pursue its preferred merger with CCH while claiming it made a good-faith effort to [REDACTED] Its conduct should not be tolerated, much less protected, under the Merger Guidelines.

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SCMG has attempted to justify its failure to work [REDACTED] claiming that [REDACTED]

[REDACTED]

[REDACTED] But SCMG made no effort to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup> Perhaps most

importantly, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The fact that SCMG would prefer the merger with CCH does not excuse its failure [REDACTED]

[REDACTED] and does not justify a presumptively anticompetitive merger. For this

reason as well, SCMG is not a failing firm.

**D. The FTC's conclusion that SCMG is a failing firm expands the use of that defense well beyond its intended scope.**

The long-term ramifications of the FTC's decision to accept the failing firm defense in this case became evident shortly after the Consent Agreement was accepted. The parties

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<sup>13</sup> [REDACTED]

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immediately informed the public that the FTC’s acceptance had broad implications and that the acceptance “indicates another way that transactions that look like they have a higher burden might otherwise get done.” Liz Crampton, *Minnesota Health System Can Buy Failing Rival, FTC Says*, BLOOMBERG BNA, Oct. 6, 2016.<sup>14</sup> Others characterized the Consent Agreement as “noteworthy” and noted the decision sent a message that the FTC could consider new “practical conduct remedies” instead of divestitures to buyers vetted in advance. Danyll Foix, *FTC Accepts Practical ‘Failing Firm’ Defense in Ending Challenge to Non-Reportable Transaction*, JDSUPRA BUSINESS ADVISOR, Oct. 19, 2016.<sup>15</sup>

By relying on an ineffective consent decree to protect competition, the FTC has expanded the failing firm defense well beyond its proper scope. Like SCMG, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The FTC should not condone such efforts to flout federal and state antitrust laws protecting competition.

**V. The Risks That The Transaction Poses Exceed Any Posed By An Enforcement Action.**

In a concurring statement, Commissioner Maureen Ohlhausen questioned whether, even if SCMG does not satisfy the failing firm defense, an enforcement action may still not preserve

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<sup>14</sup> Available at [http://antitrust.bna.com/atrc/7032/split\\_display.adp?=-98344634&vname=atrnota\\_lissues&wsn=484352500&searchid=28664406&doctypeid=7&type=oadate4news&mode=doc&split=0&scm=7032&pg=0](http://antitrust.bna.com/atrc/7032/split_display.adp?=-98344634&vname=atrnota_lissues&wsn=484352500&searchid=28664406&doctypeid=7&type=oadate4news&mode=doc&split=0&scm=7032&pg=0).

<sup>15</sup> Available at <http://www.jdsupra.com/legalnews/ftc-accepts-practical-failing-firm-58783/>.

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competition because some SCMG physicians might still depart, causing the group's finances to destabilize. But any such speculation *must* be weighed against the *certain harm* the transaction will cause. Under the circumstances, an enforcement action is warranted.

When analyzing the legality of a proposed transaction, the focus is on "probabilities," rather than "certainties." *See Brown Shoe Co. v. United States*, 370 U.S. 294, 323 (1962). Section 7 of the Clayton Act is a forward-looking statute that asks regulators to predict whether intervention is necessary to prevent competitive harm. Regulators must therefore balance competing interests to determine what is in consumers' best interests.

There is more than ample evidence in the record to conclude that the transaction will have substantial and immediate anticompetitive effects that will gravely impact Minnesota citizens. CCH's conduct immediately following the acquisition should put to rest any doubt regarding the consequences of the transaction. With no competitive counterweight remaining, Central Minnesota consumers will suffer from increased health care costs, reduced choice, and lower quality care. Access to care will decline because increased health care costs will make it less affordable for patients, particularly those with high-deductible policies, to see their doctors.

In contrast, [REDACTED]

[REDACTED] The "risk" that enough SCMG physicians would leave to impact access to care or otherwise harm SCMG's viability pales in comparison to the certain competitive impact the transaction will have.

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**CONCLUSION**

Based on the forgoing, the FTC should withdraw from the Consent Agreement and take action to enjoin the merger.

Dated: November 2, 2016

Respectfully submitted,

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