

Statement of Commissioners Mozelle W. Thompson and Pamela Jones Harbour
Victory Memorial Hospital/Provena St. Therese Medical Center

File No. 011-0225

Today, a majority of the Commission voted to close an investigation of the Vista Health joint operating agreement (JOA) between Provena St. Therese Medical Center and Victory Memorial Hospital. We write to explain our dissenting votes.

This investigation included empirical analysis comparing the change in the post-JOA contract prices obtained by St. Therese and Victory with changes in the prices of a "control group" of nearby hospitals in Northern Illinois. Standing alone, the empirical analysis did not conclusively prove that observed post-JOA price increases at St. Therese and Victory were the result of market power created by the JOA. If there were no other evidence in this matter, we would have concurred with the majority vote.

Well-grounded empirical analyses can be important and informative. Here, however, when such analysis is inconclusive, the Commission should weigh the totality of the available evidence before making an enforcement decision.⁽¹⁾ In the present case, the totality of the evidence gives us reason to believe that the antitrust laws are violated by this transaction and that issuing a Part III complaint is warranted. We cannot give the empirical analysis in this matter sufficient weight to offset the additional evidence, including documents and testimony, showing that the Vista joint venture did, in fact, create and maintain market power. This other evidence indicates that, prior to the joint venture, Victory and St. Therese were both strong, aggressive competitors. The evidence also suggests that, for most services, Waukegan patients had no practical alternatives to these two hospitals. Therefore, payors and patients likely benefitted substantially from the now-lost competition between the two hospitals.

Further, the empirical analysis—a snapshot of contract pricing—does not address a plausible theory of competitive harm. We have reason to believe that, but for on-going antitrust investigations, Vista would have more fully exercised its newfound bargaining clout by increasing contract prices over several years—not just during the shorter post-merger period depicted by the empirical analysis.

Accordingly, we have voted against closing this investigation. We would have preferred to see the Commission initiate a Part III proceeding to more fully explore the JOA's competitive effects, utilizing the full range of available evidence.

Endnote:

1. See Mary Coleman, Best Practices for Interacting with the Federal Trade Commission Re: Data and Empirical Analyses in Antitrust Investigations (Feb. 28, 2003), at 4-5, available at <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics/best-practices> (discussing how the Commission might balance empirical analyses with other evidence); David Scheffman & Mary Coleman, FTC Perspectives on the Use of Econometric Analyses in Antitrust Cases (Nov. 12, 2002), available at <https://www.ftc.gov/sites/default/files/attachments/economics-best-practices/ftcperspectivesoneconometrics.pdf>; see especially id. at 2 (noting that economic and econometric analyses are most useful to decision makers when they are "ground firmly . . . in the institutional setting and facts of the case" and thereby establish a "sufficient link" between the empirical conclusions and other evidence in a case).