

## Statement of the Federal Trade Commission

### *Victory Memorial Hospital/Provena St. Therese Medical Center*

File No. 011 0225

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The Federal Trade Commission has closed its investigation of the merger between two hospitals in Waukegan, Illinois - Victory Memorial Hospital ("Victory") and Provena St. Therese Medical Center ("St. Therese").<sup>(1)</sup> As part of the Commission's continuing effort to provide transparency to its decision-making process,<sup>(2)</sup> and to provide guidance about the application of the antitrust laws to mergers in this market, this statement outlines the reasons for our decision.

Victory and St. Therese merged their operations in 2000, creating a joint operating venture known as Vista Health ("Vista"). The Commission began its investigation regarding this merger approximately one and one-half years later. Following an intensive investigation in which the Commission collected and evaluated evidence from a number of sources, the Commission has decided to close this matter. Based on the information collected during our investigation, we did not find sufficient evidence to support a likelihood of consumer harm resulting from this transaction.

As in any analysis of a consummated merger, we looked for evidence that the merger has had anticompetitive effects. We found that the evidence in this matter as a whole is inconsistent with a hypothesis of merger-related market power and that some evidence undercuts a finding of market power. For example, subsequent to the merger but prior to any antitrust investigation, when Vista sought to renegotiate its contracts with payors, some simply refused, without any effective response by Vista. There was also no readily identifiable explanation (such as buyer market power) to account for this failure, other than the absence of market power on Vista's part.<sup>(3)</sup> Equally important, post-merger price increases at Vista were no greater than those found at similar hospitals in the area. Even payors that expressed concern face considerable empirical evidence that refutes those concerns.

Other evidence collected during the investigation, including the testimony of witnesses and a review of the parties' documents, leads to the same conclusion. Although there is evidence of pre-merger competition between the two hospitals, there is also some evidence (including third-party testimony) that St. Therese was pursuing a non-sustainable strategy, and that price increases at St. Therese would have occurred with or without the merger. Similarly, while there is evidence that payors viewed the two Waukegan hospitals as important elements in their network, there is also evidence that St. Therese and Victory were steadily losing market share to their rivals prior to the merger.

Merger prosecution requires evidence of likely anticompetitive effects, not mere possibilities; here we found no such likelihood. Accordingly, after evaluating the totality of the evidence referred to in the Dissenting Statement - including both the empirical evidence and the other evidence upon which the dissent relies - we have closed this investigation.

## Endnotes:

1. The Commission, by a 4-1 vote, recently issued an administrative complaint challenging a hospital merger in Evanston, Illinois. See *Evanston Northwestern Healthcare Corporation*, Docket No. 9315 (Feb. 10, 2004), available at <http://www.ftc.gov/os/caselist/0110234/040210emhcomplaint.pdf>.
2. See, e.g., Statement of the Federal Trade Commission, *AmeriSource Health Corporation/Bergen Brunswig Corporation* (Aug. 24, 2001), available at <http://www.ftc.gov/os/2001/08/amerisourcestatement.pdf>; Concurring Statement of Commissioner Mozelle W. Thompson, *AmeriSource Health Corporation/Bergen Brunswig Corporation* (Aug. 24, 2001), available at <http://www.ftc.gov/os/2001/08/amerisourcethompsonstatement.pdf>; Statement of the Federal Trade Commission, *Phillips Petroleum Corporation/Tosco Corporation* (Sep. 17, 2001), available at <http://www.ftc.gov/os/2001/09/phillipstoscstmt.htm>; Statement of the Federal Trade Commission Concerning *Royal Caribbean Cruises, Ltd./P&O Princess Cruises plc* and *Carnival Corporation/P&O Princess Cruises plc* (Oct. 4, 2002), available at <http://www.ftc.gov/os/2002/10/cruisestatement.htm>; Dissenting Statement of Commissioners Sheila F. Anthony and Mozelle W. Thompson, *Royal Caribbean/Princess and Carnival/Princess* (Oct. 4, 2002), available at <http://www.ftc.gov/os/2002/10/cruisedissent.htm>; DOJ and FTC Merger Challenges Data, Fiscal Years 1999-2003 (Dec. 18, 2003), available at <http://www.ftc.gov/opa/2003/12/mergereffects.htm>; Statement of the Commission, *Sunoco Inc./Coastal Eagle Point Oil Co.* (Dec. 29, 2003), available at <http://www.ftc.gov/os/caselist/0310139/031229stmt0310139.pdf>; Statement of Chairman Timothy J. Muris, *Genzyme Corporation/Novazyme Pharmaceuticals, Inc.* (Jan. 13, 2004), available at <http://www.ftc.gov/os/2004/01/murisgenzymestmt.pdf>; Dissenting Statement of Commissioner Mozelle W. Thompson, *Genzyme Corporation/Novazyme Pharmaceuticals, Inc.* (Jan. 13, 2004), available at <http://www.ftc.gov/os/2004/01/thompsongenzymestmt.pdf>; Statement of Commissioner Pamela Jones Harbour, *Genzyme Corporation/Novazyme Pharmaceuticals, Inc.* (Jan. 13, 2004), available at <http://www.ftc.gov/os/2004/01/harbourgenzymestmt.pdf>; FTC Horizontal Merger Investigation Data, Fiscal Years 1996-2003 (Feb. 2, 2004), available at <http://www.ftc.gov/opa/2004/02/horizmerger.htm>; Statement of the Federal Trade Commission, *Caremark Rx, Inc./AdvancePCS* (Feb. 11, 2004), available at <http://www.ftc.gov/os/caselist/0310239040211ftcstatement0310239.pdf>; Statement of the Federal Trade Commission, *RJ Reynolds Tobacco Holdings, Inc./British American Tobacco, p.l.c.* (June 22, 2004), available at <http://www.ftc.gov/os/2004/06/040622batrjrstmt.pdf>
3. The Dissenting Statement offers the possibility that the Commission's investigation itself deterred Vista from exercising its market power. That possibility seems unlikely given that Vista was not notified of the Commission's investigation until after these negotiations occurred.