



FEDERAL TRADE COMMISSION

[File No. 251 0093]

Ascension Health Alliance; Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “Ascension Health Alliance; File No. 251 0093” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex O), Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to

Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Ascension Health Alliance; File No. 251 0093” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

We encourage you to submit comments through the <https://www.regulations.gov> website. Postal mail addressed to the Commission will be subject to delay because of heightened security screening. If you prefer to file your comment on paper, write “Ascension Health Alliance; File No. 251 0093” on your comment and on the envelope, and send it via overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex O), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f),

and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with

Ascension Health Alliance (“Ascension”) and Ambulatory TopCo, LLC (“AmSurg”) (collectively, the “Respondents”).

The Consent Agreement is intended to remedy the anticompetitive effects that likely would result from Ascension’s proposed acquisition of AmSurg (the “Proposed Transaction”). The Proposed Transaction, valued at approximately \$3.9 billion, would combine two significant providers of outpatient surgical services in several local markets.

The Commission’s Complaint alleges that the Proposed Transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the markets for certain outpatient surgical services in five metropolitan areas. In the relevant markets, the Respondents are close competitors, health plans rely on them as meaningful alternatives, and data and other evidence show significant patient substitution between their facilities.

The Consent Agreement requires divestitures of AmSurg’s ownership interests in specified ambulatory surgery centers in five metropolitan areas in order to restore the competition that the Proposed Transaction would otherwise eliminate.

II. The Respondents and the Proposed Transaction

Ascension is a national nonprofit Catholic health system that operates hospitals, physician groups, senior living facilities, and ambulatory surgery centers. Ascension provides outpatient surgical care through its hospital outpatient departments and through ambulatory surgery centers in which it has ownership or partnership interests.

AmSurg is headquartered in Nashville, Tennessee, and operates ambulatory surgery centers across 34 states and the District of Columbia, typically through joint ventures with local physician groups.

The Proposed Transaction would transfer all non-corporate interests of AmSurg to Ascension for approximately \$3.9 billion.

III. The Relevant Markets

The Complaint alleges that the relevant lines of commerce in which to analyze the Transaction are the sale and provision of outpatient surgeries or procedures performed by, and under the direction of, (i) gastroenterologists, (ii) ophthalmologists, and (iii) orthopedists. Within each specialty, outpatient surgeries and procedures are a cluster of procedures that do not require an overnight stay at a healthcare facility, and can be performed at an ASC, a specialty hospital, or a general acute care hospital.

The relevant geographic markets are five metropolitan areas where the Respondents compete directly and where the data indicate that the Proposed Transaction raises significant competitive concerns:

- (a) Nashville, Tennessee, which means Davidson, Sumner, Williamson, and Wilson Counties;
- (b) Panama City, Florida, which means the Panama City Metropolitan Statistical Area (MSA);
- (c) Tulsa, Oklahoma, which means the Tulsa MSA;
- (d) Waco, Texas, which means the Waco MSA; and
- (e) Wichita, Kansas, which means the Wichita MSA.

IV. Market Structure and Competitive Concerns

The Complaint alleges that the Proposed Transaction would substantially lessen competition in each of the five relevant markets. In each market, the Proposed Transaction would substantially increase concentration, and it would eliminate actual, direct, and substantial head-to-head competition between Respondents, increasing the likelihood that the merged firm would unilaterally charge higher prices and reduce quality and innovation.

V. Entry Conditions

The Complaint alleges that entry or expansion by competitors would not be timely, likely, or sufficient in magnitude to prevent or to deter the anticompetitive effects of the Proposed Transaction.

VI. Proposed Order

The Consent Agreement requires the divestiture of AmSurg's majority interests in seven ambulatory surgery centers in the five relevant geographic markets. These divestitures are intended to preserve the current level of competition that would otherwise be lost through the Proposed Transaction.

Six of the centers will be divested to SC Affiliates, an affiliate of UnitedHealth Group that operates and supports ambulatory surgery centers nationwide. The remaining center in Panama City will be divested to a physician group that currently owns a minority stake and that will assume full ownership. Accordingly, both proposed divestiture buyers operate ambulatory service centers today and can operate the divested centers independently following the Proposed Transaction.

The Consent Agreement includes standard provisions designed to ensure that the divestitures are completed promptly and effectively. Respondents must provide transition assistance for up to one year, protect confidential information, maintain the viability of the divested assets until transfer, and refrain from interfering with the employment relationships at the facilities. The Consent Agreement also requires appointment of a monitor to oversee compliance with all divestiture and transition obligations. If the Commission determines that either buyer is not suitable or that respondents fail to complete the divestitures, the Consent Agreement provides for the appointment of a trustee to complete the divestiture process.

The Consent Agreement contains standard reporting and access requirements. The term of the proposed Order is ten years.

The purpose of this analysis is to facilitate public comment on the Consent

Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

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