

CLIENT ALERT

FTC Sues Virginia Health System for Alleged Anticompetitive Acquisition of Imaging Center and Outpatient Surgery Center

July 28, 2009

The Federal Trade Commission ("FTC" or the "Commission") sued a Roanoke, Virginia-based health system on July 23, 2009, claiming that its acquisition of an imaging center and an outpatient surgery center will lessen competition. The complaint alleges that Carilion Clinic's acquisition of the two outpatient provider entities -- the Center for Advanced Imaging ("CAI") and the Center for Surgical Excellence ("CSE") will eliminate the only non-hospital based competitor from each market, leaving only HCA as a competitor to Carilion. Specifically, the administrative complaint alleges that CAI and CSE "offered high-quality services at prices substantially lower than Carilion's" prior to the acquisitions. The FTC alleges that these acquisitions will decrease competition in the area while driving up prices for health plans and consumers.

The case is the Commission's first challenge in over a decade involving a health care provider acquisition other than a hospital acquisition. Previously, in 1995, the FTC challenged Columbia/HCA's proposed acquisition of Medical Care America, a provider of outpatient surgery services and the owner of the Alaska Surgery Center in Anchorage, Alaska. The case is also notable because the size of the transactions made them too small to trigger advance notification requirements to the government.

According to the Commission, Carilion is the dominant hospital system in Southwest Virginia, controlling approximately 80 percent of the hospital beds in the Roanoke area. It has an ownership interest in eight acute care hospitals and various other healthcare businesses throughout Southwest Virginia, including outpatient clinics, nursing homes, a psychiatric hospital, a pediatric hospital, laboratory testing facilities and physician practices.

Among the possible anticompetitive effects alleged, the FTC claims that "health plans can no longer threaten, implicitly or explicitly, to exclude CAI or CSE from their networks, now that the centers are owned by Carilion." The Commission claims this will substantially increase Carilion's leverage when negotiating rates for the services to be provided at these centers.

As a result of Carilion's acquisition of CAI and CSE, the FTC also claims that a drastic increase in patient out-of-pocket costs will occur. For example, the complaint alleges that "once Carilion implements its fee structure to the services provided at CAI, the out-of-pocket cost for a brain MRI for many patients will increase by almost 900%, from approximately \$40 to \$350."

The Commission vote to file an administrative complaint was 4-0. Evidentiary hearings in the case are scheduled to begin in March before an administrative law judge.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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