



Department of Justice

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**STATEMENT OF THE DEPARTMENT OF JUSTICE'S ANTITRUST DIVISION ON
ITS DECISION TO CLOSE ITS INVESTIGATION OF HIGHMARK'S AFFILIATION
AGREEMENT WITH WEST PENN ALLEGHENY HEALTH SYSTEM**

WASHINGTON – The Department of Justice's Antitrust Division issued the following statement today after announcing the closing of its investigation into Highmark's affiliation agreement with West Penn Allegheny Health System (WPAHS). Highmark is the Blue Cross and Blue Shield licensee in western Pennsylvania and WPAHS is the second-largest hospital network in the Pittsburgh region:

"After a thorough review of the affiliation agreement and other evidence collected by the Antitrust Division in its investigation, the division has determined that the affiliation agreement likely will not reduce competition in the markets for hospital, physician or health insurance services.

"The proposed affiliation holds the promise of bringing increased competition to western Pennsylvania's health care markets by providing WPAHS with a significant infusion of capital and increases the incentives of market participants to compete vigorously.

"The affiliation agreement is a vertical combination of Highmark, the region's dominant health insurance company, and WPAHS. Highmark does not own any hospital assets and owns only a small number of physician groups, and WPAHS does not compete in the health insurance markets. The affiliation agreement between Highmark and WPAHS will not eliminate any material horizontal competition between the parties.

"Vertical agreements, such as the affiliation agreement, can reduce competition by limiting entry or expansion by third parties. Such effects are unlikely here for several reasons. The hospital market in the Pittsburgh region is highly concentrated. Other than WPAHS, the only other significant hospital network is the University of Pittsburgh Medical Center (UPMC), the region's dominant hospital network. In the absence of the affiliation agreement, Highmark would likely not sponsor expansion by a hospital network other than WPAHS because there is no other significant network with which Highmark could partner.

“WPAHS on its own likely would not have promoted entry or expansion by other health insurers. WPAHS has previously tried to sponsor entry by national insurers and largely failed. The affiliation agreement is not likely to reduce WPAHS’s incentive to offer competitive rates to insurers other than Highmark because WPAHS has strong incentives to increase its patient volume.

“Finally, the affiliation agreement likely will not facilitate horizontal collusion by health plans because new entrant national insurers are for the first time in many years aggressively attempting to reduce Highmark’s dominant market share.

“The division remains mindful that vertical acquisitions and affiliations between health insurers and hospitals with market power can potentially reduce competition. The division will continue to monitor developments in the Pittsburgh health care market as part of our broader commitment to vigilantly enforce the antitrust laws and thereby protect competition in our nation’s health care markets.”

Background

In November 2011, Highmark and WPAHS formalized an affiliation agreement under which a new nonprofit parent company will hold all the corporate membership rights in both Highmark and WPAHS. Highmark has agreed to make a financial commitment of up to \$475 million to WPAHS.

Market Overview

High concentration levels have long marked the hospital, physician and health insurance markets in western Pennsylvania. On the insurance side, Highmark maintains shares exceeding 60 percent. On the hospital side, and among certain physician specialties, the UPMC wields a similar degree of market power. These high shares have been stable for many years and have not been upset by either new entry or expansion of smaller market participants.

Recently, there have been developments which could increase competition in both the health insurance and hospital markets. For instance, national insurers recently obtained contracts from UPMC that are significantly more competitive than their prior arrangements, improving their prospects of bringing increased competition to the area’s health insurance markets. And the capital that Highmark will contribute to West Penn under the affiliation agreement will likely make West Penn a stronger competitor to UPMC.

The signs of increased competition are appearing just as an existing long-term contract between Highmark and UPMC comes up for renewal. Long-term contracts between dominant hospitals and insurers can dull their incentives to compete, leading to higher prices and fewer services. If a dominant hospital is guaranteed a predictable revenue stream for many years from a dominant insurer, then the hospital may be less likely to promote the growth of new insurers by offering them competitive rates. Similarly, if a dominant health insurer is guaranteed rates from

a dominant hospital for an extended period, then the insurer may be less likely to promote competition in the hospital market by investing in more affordable hospitals.

Not all contracts between dominant hospitals and insurers are anticompetitive. Contracts with shorter terms can provide significant benefits to consumers by providing consumers with more options, while at the same time encouraging dominant hospitals to promote competition among health insurers, and encouraging dominant health insurers to promote competition among hospitals. The foreseeable expiration of the contracts increases the need for both the dominant hospital and the insurer to have alternatives to their dominant counterparts. In the circumstances here, it appears that the long-term contract between Highmark and UPMC did diminish the incentives of each to compete and expand competition in these highly concentrated health insurance and hospital markets.

This affiliation agreement between WPAHS and Highmark, along with recent market entry, may help to bolster incentives to expand competition. Increased competition in the insurance and hospital markets can increase consumers' access to affordable healthcare services by lowering health plan and hospital prices and improving transparency, which enables consumers to make more informed choices. In addition, we recognize that other considerations, including access to unique healthcare facilities, may require other policy and enforcement measures outside the purview of antitrust analysis.

The Antitrust Division's Closing Statement Policy

The division provides this statement under its policy of issuing statements concerning the closing of investigations in appropriate cases. This statement is limited by the division's obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the division's evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. Enforcement decisions are made on a case-by-case basis, and the analysis and conclusions discussed in this statement do not bind the division in any future enforcement actions. Guidance on the division's policy regarding closing statements is available at www.justice.gov/atr/public/closing/index.html.

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