

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION

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TERESA L. DEPPNER, CLERK
U.S. District & Bankruptcy Courts
Southern District of West Virginia

UNITED STATES OF AMERICA,)
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)
 Plaintiff,)
)
 v.)
)
 BLUEFIELD REGIONAL MEDICAL)
 CENTER, INC. and)
 PRINCETON COMMUNITY HOSPITAL)
 ASSOCIATION, INC.,)
)
 Defendants.)

Civil Action No. 1:05-0234
Chief Judge David A. Faber

**PLAINTIFF UNITED STATES' MOTION AND MEMORANDUM
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. There is no objection to the entry of the proposed Final Judgment without a hearing from any of the parties. The Competitive Impact Statement ("CIS") and Response to public Comments, filed by the United States in this matter, respectively, on March 21, 2005 and June 30, 2005 explain why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth

the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

MEMORANDUM

I. Background

On March 21, 2005, the United States filed a Complaint alleging that, on January 30, 2003, Bluefield Regional Medical Center, Inc. (BRMC) and Princeton Community Hospital Association, Inc. (PCH) entered into two agreements in which BRMC agreed not to offer many cancer services and PCH agreed not to offer cardiac-surgery services. As explained more fully in the Complaint and CIS, the BRMC-PCH agreements effectively allocated markets for cancer and cardiac-surgery services and restrained competition to the detriment of consumers in violation of Section 1 of the Sherman Act.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the BRMC-PCH agreements. The proposed Final Judgment will restore competition by annulling the BRMC-PCH agreements and prohibiting BRMC and PCH from taking actions that would reduce competition between the two hospitals for patients needing cancer and cardiac-surgery services.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The

United States and defendants have also stipulated that defendants will comply with the proposed Final Judgment from the date of signing of the Stipulation (filed with the court on March 21, 2005), pending entry of the proposed Final Judgment by the Court. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for appeal.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS in this Court on March 21, 2005; published the proposed Final Judgment, Stipulation, and CIS in the *Federal Register* on April 4, 2005, *see* 70 Fed. Reg. 17117 (2005); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days beginning on April 1, 2005 and continuing on consecutive days through April 7, 2005, and the *Charleston Gazette*, a newspaper of general circulation in the Southern District of West Virginia, beginning on April 4, 2005 and continuing on consecutive days through April 9, 2005, and on April 11, 2005. The 60-day period for public comments ended on June 3, 2005, and one comment was received. Plaintiff United States filed its Response to Public Comments and the comments themselves with this Court on June 30, 2005, and published the Response and the public comments in the *Federal Register* on July 12, 2005. *See* 70 Fed. Reg. 40058 (2005). The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate

for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS previously filed with the Court on March 21, 2005, the United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. The proposed Final Judgment is within the range of settlements consistent with the public interest.

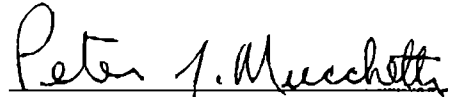
IV. Conclusion

For the reasons set forth in this Motion and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: July 13, 2005


Respectfully submitted,

FOR PLAINTIFF UNITED STATES:



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