UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA and STATE OF FLORIDA,	
Plaintiffs,	Civ. No. 94-748-CIV-T-23E
v.	Judge Steven D. Merryday
MORTON PLANT HEALTH SYSTEM, INC., and TRUSTEES OF MEASE HOSPITAL, INC.,	6/30/94
Defendants.	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Consent Judgment (or "the Judgment") submitted for entry against Morton Plant Health System, Inc. ("MPHS") and Trustees of Mease Hospital, Inc. ("TMH") in this civil antitrust proceeding.

I.
NATURE AND PURPOSE OF THE PROCEEDING

The United States of America and the State of Florida, acting under the direction of their respective Attorneys General, filed this civil antitrust suit on May 5, 1994, alleging that the proposed combination of MPHS and TMH, owners of the two largest general acute care hospitals in North Pinellas County, Florida, violates Section 7 of the Clayton Act, 15 U.S.C. § 18.

MPHS owns and operates Morton Plant Hospital in Clearwater, Florida ("Morton Plant"), the largest general acute care hospital in North Pinellas County. TMH owns and operates the Mease hospitals in Dunedin and Safety Harbor, Florida ("Mease"), which together constitute the second-largest general acute care hospital in North Pinellas County.

The Verified Complaint alleges that the combination of these principal competitors under common ownership may

substantially lessen competition in the provision of acute inpatient hospital services in North Pinellas County and likely increase prices for those services to health care consumers. These higher prices will be paid by health care purchasers, particularly health insurance plans, employers, and unions and ultimately result in an increase in prices individual consumers pay for health insurance coverage.

The prayer for relief seeks: (1) a judgment that the proposed consolidation of MPHS and TMH violates Section 7 of the Clayton Act; (2) preliminary and permanent injunctions preventing defendants from consummating their agreement to consolidate or from going forward with any other plan by which Morton Plant would be combined with Mease; (3) attorneys fees; and (4) costs.

II.
THE PRACTICES AND EVENTS GIVING RISE TO THE ALLEGED CLAYTON ACT VIOLATION

A. Background

Morton Plant and Mease are the two largest general acute care hospitals in North Pinellas County. Morton Plant with 672 licensed acute care hospital beds, generated about $130 million in net inpatient revenues in fiscal year 1993. Mease, with a total of 358 licensed acute care hospital beds on two campuses, generated about $75 million in net inpatient revenues in fiscal year 1993.

Morton Plant and Mease, like other general acute care hospitals, receive the bulk of their revenues from the provision of acute inpatient hospital services -- i.e., services provided for the diagnosis and treatment of patients who require an overnight hospital stay. Acute inpatient hospital services include room and board, medical and surgical services, around-the-clock monitoring and observation, nursing care, and laboratory, x-ray and support services.

Acute inpatient hospital services are sold to a variety of purchasers, including managed care health insurance plans such as health maintenance organizations and preferred provider organizations (colloquially known as HMOs and PPOs). These plans contract with a select number of competing hospitals and employ financial incentives to encourage plan enrollees to use the contracted facilities. Hospitals reduce the prices of services provided to managed care plan enrollees in return for the plans' commitment to increase the volume of patients

hospitals receive.

Managed care plans and other price-sensitive health care purchasers rely on competition among hospitals to obtain hospital services at competitive rates. This, in turn, permits managed care plans to offer health insurance to consumers at lower prices. Managed care plans constitute a significant, and growing, percentage of Morton Plant's and Mease's revenues from patient care.

B. Product Market

The Verified Complaint alleges that the appropriate product market within which to assess the competitive effect of the proposed combination of Morton Plant and Mease is the provision of acute inpatient hospital services. A relevant product market consists of those products that are reasonably interchangeable by consumers for the same purpose. The pivotal question in the determination is whether a small but significant increase in the price of one product would cause enough buyers to turn to other products so as to make the price increase unprofitable.

It is well established that acute inpatient services constitute a relevant product market for analyzing a merger of general acute care hospitals. The market for acute inpatient services is separate from the market for outpatient services, which general acute care hospitals also provide. Patients whose treatment or condition requires an overnight hospital stay cannot be safely or effectively treated on an outpatient basis. For this reason, health care purchasers, including managed care plans, do not view outpatient services as substitutes for acute inpatient services. General acute care hospitals profitably could increase the price of acute inpatient hospital services without causing a significant number of health care purchasers to switch to outpatient services.[1]

C. Geographic Market

The Verified Complaint alleges that North Pinellas County, the portion of Pinellas County north of Ulmerton Road, is the relevant geographic market.

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[1] Moreover, mergers between general acute care hospitals typically do not raise competitive concerns in the market for outpatient services because hospitals compete with many other providers (such as clinics, ambulatory surgery centers, and physicians' offices) in the provision of those services.

Pinellas County is the most densely populated county in Florida. A long, narrow peninsula, surrounded on three sides by large bodies of water, the Gulf of Mexico and Tampa Bay, Pinellas County is geographically isolated from Tampa, the area's major city. In addition, because few major highways connect communities in the northern and southern ends of the County, it is extremely difficult to travel between North and South Pinellas County, a problem which is much worse during the winter months when the area's population swells with a seasonal influx of tourists and winter residents.

For these reasons, residents of North Pinellas, physicians practicing in North Pinellas, and health care purchasers such as managed care plans with North Pinellas enrollees strongly prefer to use or contract with general acute care hospitals in North Pinellas for acute inpatient hospital services. In 1992, over 85 percent of North Pinellas County residents who were hospitalized were admitted to general acute care hospitals in North Pinellas. Very few physicians who practice at hospitals in North Pinellas admit patients to hospitals in other areas. Health care purchasers such as managed care plans do not consider hospitals in other areas to be good substitutes for North Pinellas hospitals. Therefore, general acute care hospitals in North Pinellas County profitably could increase the price of acute inpatient hospital services without losing a significant number of patients to hospitals in other areas.

D. Effect of the Combination

As the largest general acute care hospitals in North Pinellas County, Morton Plant and Mease control, respectively, about 38% and 20% of all general acute care hospital beds in that area. Together, Morton Plant and Mease would dominate the market for the provision of acute inpatient hospital services with a combined share of 58%. The market is highly concentrated by any measure of hospital capacity or output, and market concentration would increase substantially as a result of the proposed combination.

Health care purchasers such as managed care plans have secured competitive rates for acute inpatient hospital services because Morton Plant and Mease have vigorously competed for their business. A full-fledged merger of Morton Plant and Mease, in which they would market and price all of their services together, would eliminate that competitive rivalry, significantly reduce the ability of managed care plans to

bargain for competitive rates, and permit the combination to increase prices for acute inpatient hospital services to the detriment of health care purchasers and consumers.

III.
EXPLANATION OF THE PROPOSED FINAL CONSENT JUDGMENT

The United States, the State of Florida and Morton Plant and Mease have stipulated that the Court may enter the proposed Final Consent Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the Judgment may not be entered unless the Court finds entry is in the public interest. Section XII of the proposed Judgment sets forth such a finding.

A. Terms

The proposed Final Consent Judgment prohibits Morton Plant and Mease from merging and requires them to remain as separate, competing hospitals. Morton Plant and Mease may, however, enter into a Partnership in which they consolidate and jointly operate certain general acute care and administrative services under specified terms. The proposed Judgment is designed to permit Morton Plant and Mease to achieve substantial efficiencies while preserving maximum competition between them.

The acute care (or "patient") services eligible for Partnership operation include: outpatient services; laboratory services; mental health services; diagnostic and therapeutic radiology services; and certain inpatient services that are commonly recognized as"tertiary" services - i.e., those procedures performed by physician subspecialists with specialized support staff and expensive equipment. The tertiary services eligible for Partnership operation include: neonatal level III services; open heart surgery and similar procedures; robotically assisted prosthetic implantation and special spinal instrumentation procedures; stem cell procedures, HDR brachy therapy and advanced linear accelerator equipment and procedures; and stereotactic radio therapy. The Partnership also may own and operate home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing, retirement facilities and long-term care. (Section II(A)).

The eligible Partnership administrative services include: human resources (with some exceptions); medical staff organization and development; information services; telephone and other communication services; accounting, billing and collection; housekeeping and laundry; medical records; materials management and plant maintenance; support services for charitable foundations; and certain miscellaneous services. (Section II(B)).[2]

Section V sets forth the conditions under which the Partnership may operate. Morton Plant and Mease may agree to consolidate and jointly operate any eligible Partnership patient care and administrative service. (Section V(A)). They may appoint a Partnership board, which may consist of individuals from each hospital's board. (Section V(C)). The Partnership must sell its services to Morton Plant and Mease on the same terms and conditions in an amount equal to cost. (Section (V(B)).

All services other than those eligible for consolidation through the Partnership are defined as "Independent Services." (Section II(C)). Morton Plant and Mease must continue to operate these services separately. (Section VI(A)). Specifically, all marketing, managed care contracting and pricing decisions must remain independent. (Id.) Each hospital must price and sell all services (both Independent and Partnership Services) in active competition with the other. (Section VI(B)). The Partnership board may not discuss Independent Services, managed care contracting for the hospitals, or the pricing of any service with individual hospital boards with minor exceptions. (Section V(C)).[3]

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[2] Services currently provided by one of the hospitals may be added to the Partnership if plaintiffs are provided with written notification and any information reasonably necessary for them to assess the competitive impact of adding such services and they do not object within 120 days. (Section V(D)). Any new service not currently provided by either Morton Plant or Mease may be combined and jointly operated by the Partnership with at least 90 days notice, so long as the new service is a specialized inpatient procedure commonly recognized in the medical community as tertiary or higher and is performed only by physician subspecialists with specialized support staff and expensive equipment. (Id.).

[3] The Partnership may market and price home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing retirement facilities and long term care as long as Morton Plant and Mease continue

Additionally, the Judgment provides the Morton Plant may lend or grant Mease up to $21 million for Mease's planned expansion under terms preventing Morton Plant from obtaining any control or leverage over Mease's management or operations. (Section V(E)). Moreover, Morton Plant, Mease and the Partnership may become obligated parties, guarantors or co-makers on debt instruments and their assets may be pledged as security for such instruments so long as such obligations are approved separately. Neither Morton Plant nor Mease shall unreasonably withhold consent to, impose conditions on, or attempt to influence the use of funds obtained by the other hospital through such financing for Independent Services. (Section V(F)). The Judgment directs Morton Plant and Mease to establish adequate protections to ensure that the hospitals do not share competitively sensitive information concerning pricing, managed care contracts, and marketing and planning functions. These protections shall include, at a minimum, confidentiality agreements for employees with access to such information and protocols for preparation of separate reports for Morton Plant, Mease, and the Partnership. (Section V(I)). The Judgment also requires Morton Plant and Mease to maintain an antitrust compliance program and annually certify compliance with the Judgment, and permits plaintiffs access to monitor compliance. (Sections VII, VIII, and IX).

B. Effect on Competition

The Court's entry of this proposed Judgment would be a "double win" for consumers. First, the Judgment preserves the vigorous competitive rivalry between Morton Plant and Mease, thereby insuring that consumers will continue to reap the benefits of competition in the form of lower prices and better services. Second, the Judgment permits Morton Plant and Mease to achieve substantial cost savings by combining and jointly operating certain services through a Partnership. The preservation of competition between Morton Plant and Mease will insure that these savings will be passed on to consumers.

The Partnership is unlikely to result in a lessening of competition. The proposed Judgment permits Morton Plant and Mease to consolidate only those services for which consolidation would pose few, if any, competitive concerns. The services eligible for inclusion in the Partnership can be roughly grouped into three categories: outpatient, tertiary, and administrative.

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their present practice of providing patients and physicians with information on other providers of the services in the market.

A consolidation of Morton Plant's and Mease outpatient services would pose no significant competitive risk because there are a very large number of providers of such services in North Pinellas County. In addition to general acute care hospitals, other providers of outpatient services include physician offices, clinics, and ambulatory surgery centers. Furthermore, in North Pinellas County it is relatively easy for new providers of outpatient services to enter the market.

Nor would a consolidation of certain tertiary services offered by Morton Plant or Mease threaten competition. For some of these services, a consolidation would have no effect because only one of the hospitals currently provides that service. For example, open-heart surgery is currently provided by Morton Plant, but not by Mease. Even for services in which the hospitals currently compete, persons are typically willing to travel greater distances for highly sophisticated, tertiary-level care than they are for more routine medical care. Therefore, Morton Plant and Mease compete in providing these services in a geographic market much broader than North Pinellas County. For example, the geographic market for level III neonatal care includes at least several major hospitals in South Pinellas County, and the same is true for other tertiary services that the Judgment permits Morton Plant and Mease to consolidate.

Finally, the proposed Judgment protects against anticompetitive harm from the joint ownership and operation of certain administrative services. Services such as human resources, information services, accounting, billing, and collection, are only a part of the inputs into Morton Plant's and Mease's provision of acute care services. Currently, Morton Plant and Mease independently decide how to allocate their administrative costs in pricing their acute care services to managed care plans and other health care purchasers, and they will continue to do so under the Judgment.[4] Moreover, the proposed Judgment requires the Partnership to establish protections to ensure that the joint operation of administrative services does not result in any sharing of information such as pricing and managed care contracting for Morton Plant and Mease, thus guarding against the risk of "spillover" of competitively sensitive information from the Partnership to the independent hospitals. (Section V(I)).

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[4] Of course, Morton Plant and Mease also "compete" in purchasing these administrative services, but they do so in a geographic market much larger than North Pinellas County. The consolidation would not lessen competition in that market to any substantial degree.

In addition to these protections, the proposed Judgment requires Morton Plant and Mease to market, price and sell all of their services - even those jointly owned and operated through the Partnership - in competition with each other and other hospitals.[5] This ensures that both hospitals will remain as separate and viable competitors and permits them the maximum flexibility in competing for managed care contracts in the future.

IV.
REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Consent Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Judgment has no prima facie effect in any subsequent lawsuits that may be brought against Morton Plant or Mease in this matter.

V.
PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL CONSENT JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Consent Judgment should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, D.C. 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and Morton Plant and Mease, to withdraw its consent to the Judgment at any time prior to entry. Section X of the Judgment provides that the Court retains jurisdiction over this action, and the

[5] The minor exceptions to this would be home health care, home infusion services, durable medical equipment, rehabilitative services, skilled nursing retirement facilities and long term care, for which the markets are very competitive in North Pinellas County. (Section V(C)).

parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Judgment.

VI.
DETERMINATIVE MATERIALS/DOCUMENTS

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Consent Judgment.

VII.
ALTERNATIVE TO THE PROPOSED FINAL CONSENT JUDGMENT

The alternative to the proposed Judgment is a full trial on the merits. While the Department is confident of its ability to succeed in such a trial, the litigation involves difficult issues of law and fact. A favorable outcome is not a certainty. Had the Department won a litigated judgment, at most the Court would have barred the combination. The consent judgment agreed to by the parties achieves the same underlying objective -- preserving the vigorous competitive rivalry between Morton Plant and Mease -- by requiring them to continue competing for all general acute care services, including those consolidated through the Partnership. It has the additional advantage, which a litigated judgment in favor of plaintiffs would not, of allowing defendants to achieve potential efficiencies and cost savings.

Respectfully submitted,

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