

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLESTON AREA MEDICAL CENTER,
INC. and ST. MARY'S MEDICAL CENTER,
INC.,

Defendants.

Case No.: 2:16-cv-03664-JTC

**PLAINTIFF UNITED STATES' MOTION AND MEMORANDUM FOR ENTRY
OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (“APPA” or “Tunney Act”), Plaintiff United States of America moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (attached as [Exhibit A](#)) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement (“CIS”), filed by the United States in the above-captioned matter on April 14, 2016, explains why entry of the proposed Final Judgment is in the public interest. The United States and the Defendants have stipulated to entry of the proposed Final Judgment without further proceedings or a hearing.

The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (attached

as [Exhibit B](#)) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying the statutory waiting periods have expired.

I. Background

On April 14, 2016, the United States filed a Complaint in this matter alleging that since at least 2012, Charleston Area Medical Center (“CAMC”) and St. Mary’s Medical Center, Inc. (“St. Mary’s”) have agreed to unlawfully allocate territories for marketing of competing healthcare services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.¹ The Defendants’ agreement has disrupted the competitive process and harmed patients and physicians.

Simultaneously with the filing of the Complaint, Plaintiff filed the CIS, a proposed Final Judgment, and a Stipulation and Order. The proposed Final Judgment prohibits the Defendants from agreeing with each other about marketing plans, with limited exceptions. The proposed Final Judgment also prohibits the Defendants from communicating with other healthcare providers to prohibit or limit marketing or to divide any geographic market or territory.

The Stipulation and Order signed by Plaintiff and Defendants – and entered by the Court on April 14, 2016 (Docket No. 3) – provides that the proposed Final Judgment may be entered after compliance with the requirements of the APPA. Entry of the proposed Final Judgment would terminate this action with respect to the Defendants, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States

¹ The APPA applies to “proposal[s] for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws [of the United States.]” 15 U.S.C. § 16(b).

filed the CIS with the Court on April 14, 2016 (Docket No. 4) and published the proposed Final Judgment and CIS in the *Federal Register* on April 26, 2016. *See* 81 Fed. Reg. 24636 (2016). Defendants also had summaries of the terms of the proposed Final Judgment and CIS, together with directions for submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* and the *Charleston Gazette-Mail* for seven days, on the following days in 2016: April 26–29 and May 3–5. The 60-day public comment period ended no later than July 5, 2016. The United States did not receive any comments from the public.

The Certificate of Compliance filed simultaneously with this Motion and Memorandum states that all requirements of the APPA have 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 proposed Final Judgment.

III. The Proposed Final Judgment Satisfies the “Public Interest” Standard under the APPA

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court may 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 such entry 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)(1)(A)–(B).

In the CIS, the United States set forth the public interest standard under the APPA and now incorporates those statements by reference. The public has had the opportunity to comment on the proposed Final Judgment as required by the APPA. No member of the public has commented. As explained in the CIS, entry of the proposed Final Judgment is in the public interest. Accordingly, the Court should find that entry of the proposed Final Judgment is appropriate under 15 U.S.C. § 16(e).

IV. Conclusion

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest. The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: July 12, 2016

Respectfully submitted,

/s/ Kathleen Kiernan

Kathleen Kiernan (D.C. Bar #1003748)

Trial Attorney

Antitrust Division

U.S. Department of Justice

Litigation I Section

450 Fifth Street, N.W., Suite 4100

Washington, D.C. 20530

Phone: (202) 353-3100

Email: Kathleen.Kiernan@usdoj.gov

Attorney for the United States

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 2:16-cv-03664-JTC, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

/s/ Kathleen Kiernan

Trial Attorney

Antitrust Division

U.S. Department of Justice

Litigation I Section

450 Fifth Street, N.W., Suite 4100

Washington, D.C. 20530

Phone: (202) 353-3100

Email: Kathleen.Kiernan@usdoj.gov