United States v. Geisinger Health and Evangelical Community Hospital
Questions and Answers for the General Public

<u>The Transaction and the Parties:</u>

1. What is the underlying transaction?

Geisinger Health and Evangelical Community Hospital entered into a transaction on February 1, 2019. Under the agreement, Geisinger acquired a 30% interest in Evangelical, in exchange for agreeing to provide $100 million to Evangelical: $90 million in cash for future investment projects and $10 million in attributed intellectual property. The agreement also provides certain rights to Geisinger, including rights of first offer and first refusal and the right to approve Evangelical's expenditure of certain funds, creating many entanglements, financial and not, between these two competitors.

The transaction fundamentally alters the hospitals' relationship as competitors, curtailing their incentives to compete independently for patients and raising the likelihood that the two hospitals would coordinate their activity. The transaction also increases Geisinger's bargaining leverage and is likely to lead to higher prices for commercial insurers, which are passed through to consumers through higher premiums, copays, and other out-of-pocket costs.

2. Who are the parties to the transaction?

Geisinger Health is an integrated healthcare provider of hospital and physician services, operating in Pennsylvania and New Jersey. Geisinger has a significant presence in the central and northeastern parts of Pennsylvania. Geisinger Medical Center—its flagship hospital—is located in Danville, Pennsylvania, and is 17 miles away from Evangelical Community Hospital. Geisinger also operates the Geisinger Health Plan, which provides health insurance to approximately 600,000 members. Geisinger Health's revenues in FY2019 were approximately $7.1 billion.

Evangelical Community Hospital is an independent community hospital in Lewisburg, Pennsylvania. It owns physician practices and operates an urgent-care facility and several other outpatient facilities in central Pennsylvania. Its revenues in FY2019 were approximately $259 million.

3. What are the terms of the transaction that concern the Division?

The agreement creates numerous entanglements between Geisinger and Evangelical that, taken together, likely will lead to a substantial lessening of competition for inpatient general acute-care services in central Pennsylvania. The provisions in the agreement that threaten competition in this market include:

- Geisinger acquires a 30% interest in Evangelical, its close rival in central Pennsylvania.

- Geisinger commits to pay $100 million to Evangelical, and is poised to remain a critical source of funding to Evangelical for the foreseeable future.

- Geisinger obtains rights of first offer and first refusal with respect to any future joint venture, competitively significant asset sale, or change-of-control transaction by Evangelical, which ensures that Geisinger will have the opportunity to interfere if Evangelical tries to enter into any of these transactions with a healthcare entity other than Geisinger.

- Geisinger obtains the right to approve Evangelical's use of certain funds, giving it additional improper influence, increased opportunities to inappropriately share competitively sensitive information, and advanced notice of Evangelical's strategic plans.

<u>The Alleged Harm</u>

4. In which relevant market is the transaction likely to cause harm?

Geisinger and Evangelical's transaction is likely to substantially lessen competition in the market for inpatient general acute-care services in the six-county region of central Pennsylvania comprised of Union, Snyder, Northumberland, Montour, Lycoming, and Columbia counties.

5. What is the nature of the Division's competitive concerns?

Geisinger and Evangelical are close competitors for inpatient general acute-care hospital services for many patients in a six-county area in central Pennsylvania comprised of Union, Snyder, Northumberland, Montour, Lycoming, and Columbia counties. Competition between Geisinger and Evangelical has benefited patients by improving the quality, availability, and price of these hospital services in the region.

The agreement creates substantial entanglements between Geisinger and Evangelical that reduce their incentives to independently compete on the quality, scope, and availability of services and increase the likelihood that they will coordinate their behavior. The transaction builds on Defendants' previous coordinated behavior, in which they would pick and choose when to compete and when not to compete. The combination of this prior coordination and the transaction's additional entanglements is likely to result in harm to patients in the form of higher prices, lower quality care, and less access to high-quality inpatient hospital services in central Pennsylvania. The transaction likely substantially lessens competition in the relevant geographic market for inpatient general acute-care services in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

6. Who would be hurt by the transaction?

The transaction is likely to harm all patients who receive services at Geisinger or Evangelical, including commercially insured patients, Medicare patients, Medicaid patients, and uninsured patients. This includes members of several religious communities that include Amish and Mennonite practitioners, who Defendants refer to as the "Plain Community."

In addition, the transaction is likely to lead to higher costs of insurance for commercially insured patients, as well as for employers who contribute to employees' health insurance plans.

7. How would patients be hurt by the transaction?

Hospitals compete to attract patients to their facilities by offering high quality care, a broad scope of services, amenities, convenience, customer service, and attention to patient satisfaction. This competition improves access to healthcare, reduces wait times, and improves the quality of care for all patients, including commercially insured, Medicare, Medicaid, and uninsured patients. Hospitals also compete to be included in health insurers' networks and this competition enables insurers to negotiate lower reimbursement rates and other terms that reduce healthcare costs, all for the benefit of patients. This transaction permanently and fundamentally alters the competitive relationship between Geisinger and Evangelical by linking them together in a number of ways that, taken together, raise the likelihood of coordination and reduce Defendants' incentives to compete aggressively against each other. This reduction in competition is likely to occur from the combination of Geisinger's influence over Evangelical, Defendants' reduced incentives to expand and improve services, and the facilitation of information sharing and coordination between Geisinger and Evangelical. As a result, the transaction is likely to lead to higher prices, lower quality, and reduced access to high-quality inpatient hospital services for patients in central Pennsylvania.

In addition, the transaction creates incentives for Geisinger to raise prices to commercial insurers and other purchasers of inpatient general acute-care services.

8. Why was Division concerned about this transaction given that it is not an outright merger?

Although Geisinger is not proposing to buy Evangelical outright, this transaction between two close competitors in an already highly concentrated market poses a similar danger to consumers. Partial acquisitions, like mergers, vary in their potential for anticompetitive effects, and the Division considers the specific facts of each transaction to assess the likelihood of harm to competition. In this case, Geisinger has acquired a substantial ownership interest in Evangelical and created significant entanglements between the two, likely leading to a substantial lessening of competition between these hospitals. Specifically, the Division is concerned that this transaction likely would substantially lessen competition for inpatient general acute-care services as a result of:

- *Financial entanglements*. The transaction creates financial arrangements that establish an indefinite partnership between Evangelical and Geisinger.

- *Improper influence.* The agreement contains provisions that give Geisinger improper influence over Evangelical, including over Evangelical's ability to partner with another healthcare entity and Evangelical's spending of certain funds allocated under the agreement.

- *Less independent expansion and more anticompetitive cooperation.* The agreement lessens Evangelical's incentives to expand independently because it likely will be reluctant to disrupt its relationship with Geisinger.

- *Sharing of competitively sensitive information.* The transaction provides the means for Geisinger and Evangelical to share competitively sensitive information by enabling ongoing interactions between them.

- *Increased prices*. The transaction gives Geisinger greater bargaining leverage in negotiations with insurers and the ability to set higher prices for patients who lack insurance because Geisinger can partially recover the value of patients lost to Evangelical. Geisinger would have strongly preferred to fully acquire Evangelical. Defendants quickly recognized, however, that a full acquisition would likely violate the antitrust laws. Instead of merging, Geisinger and Evangelical concocted a complicated partial-acquisition agreement, in part, to avoid antitrust scrutiny.

Unlike some mergers that result in efficiencies from integration that accrue to the benefit of consumers, Geisinger's purchase of a 30% stake in its close competitor and the resulting harm to competition is not needed to achieve any of the benefits that Defendants tout. Put simply, this transaction poses many of the competitive threats of a merger but offers none of the potential efficiencies.

9. If the agreement was entered into in February 2019, have Defendants already fully implemented their agreement?

In response to the United States' investigation into the Defendants' transaction, the Defendants agreed to a hold-separate agreement with the United States to maintain the status quo pending completion of the Antitrust Division's investigation. The hold-separate agreement, entered into on October 1, 2019, requires Geisinger and Evangelical to cease certain activities contemplated by the agreement, including making most expenditures, integrating IT systems, and planning joint ventures. As a result, Geisinger and Evangelical have not implemented many of the provisions of the agreement. The hold-separate agreement remains in force until this Court makes a final decision.

10. If I'm a patient at one of these two hospitals, how will this lawsuit impact me?

The filing of this lawsuit will not affect the ability of patients to receive care at either hospital. The Antitrust Division brought this lawsuit to protect competition for the benefit of patients and employers in central Pennsylvania to ensure that they have access to higher-quality care at affordable prices. A hold-separate has been in place since

October 1, 2019, which will continue during the lawsuit, to minimize the adverse effects of the transaction during the pendency of the lawsuit.

11. What is the no-poach agreement alleged in the complaint and why does that matter to the Division?

The no-poach agreement alleged in the complaint was formed between executives of these two competitors and suppressed competition between them for healthcare workers. It reduces competition between them to hire hospital personnel, harming essential healthcare workers seeking competitive pay, benefits, and other terms of employment. Defendants' no-poach agreement is an example of past anticompetitive coordination between these two hospitals that this transaction will only enhance in violation of Section 7 of the Clayton Act.

Separately, no-poach agreements are a form of market allocation that unreasonably restrain trade in violation of the antitrust laws, which may also give rise to liability under Section 1 of the Sherman Act.

The Proposed Remedy

12. What is the Division asking the Court to do?

The Division is asking the Court to rescind and enjoin Geisinger and Evangelical's transaction and enjoin Defendants from entering into the same or substantially similar agreement in the future, and to require Geisinger Health to divest its 30% ownership interest in Evangelical Community Hospital.