April 20, 2022

Re: Submission to DOJ-FTC Merger Guidelines RFI – Hospital Mergers and Price Increases

Dear Assistant Attorney General Kanter and Commissioners Khan, Phillips, Slaughter, and Wilson,

On January 18, 2021, the Federal Trade Commission and the Antitrust Division of the Department of Justice issued a request for information about “how the agencies can modernize enforcement of the antitrust laws regarding mergers.” This letter responds with evidence on merger activity in the hospital sector. It was prepared by health economists with expertise in the study of competition in hospital markets.

Question 2e of your RFI asked, “How frequently have unchallenged mergers or mergers that were subject to remedies resulted in a lessening of competition, and how does that lessening of competition typically manifest? Please identify examples of such mergers. What are the characteristics of those transactions that, if recognized before the merger, would have helped anticipate the adverse outcomes?”

In Cooper et al., (2019) (attached), the research team (which included two of the co-signatories of this letter), analyzed the effect of consummated hospital mergers that occurred between 2007 and 2011. We observe that mergers that occurred during this period between hospitals located less than five miles apart raised prices by 6% and mergers between hospitals located up to 25 miles apart raised prices by approximately 2.4%.

In follow-up work that we are currently carrying out, we are analyzing which mergers, of those that occurred from 2010 to 2014, raised prices. Evidence produced thus far suggests that the mergers that raise prices tend to be deals that are under Hart-Scott-Rodino reporting thresholds and deals structured as strategic affiliations (which thus are not formally mergers). For example, the affiliation between UNC Healthcare and Johnston Health involved a 35% change in board ownership and, if reviewed, would be above the standard HSR reporting threshold.

The harms from hospital mergers are significant. Price increases in the hospital sector likely raise local spending on health care and insurance premiums, and thus feed through to the American public not just through changes in the hospital sector itself, but also through changes in non-health care labor market outcomes. For example, past work has illustrated that increases in private health insurance premiums can lead to reductions in wages and job losses. This occurs because the majority of Americans receive their health insurance coverage through an employer, and rising

2 See https://www.johnstonhealth.org/about-us/unc-health-care-partnership/
health insurance premiums make workers more expensive to hire and retain.\(^3\) Crucially, since insurance premiums must be paid for all employees, these increases, and the wage reductions and job losses that will likely follow, will affect all American workers, not merely those who frequently purchase hospital services.

Going forward, we recommend that the agencies be notified of and review hospital mergers, including those below HSR thresholds. While a $100 million HSR threshold might make sense across all transactions, the agencies might consider different thresholds for industries where most production sales are local (e.g., hospital and physician services). For mergers involving firms with local production and sales, a $100 million threshold will miss many (indeed most) economically significant transactions. Likewise, the agencies should actively investigate and be mindful of competitive harm from strategic affiliations involving non-profit hospitals that are structured in ways to avoid review.

Sincerely yours,

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