



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

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August 24, 2016

Gino J. Agnello, Clerk
U.S. Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

**Re: *FTC v. Advocate Health Care Network*, No. 16-2492
(argued August 19, 2016)**

Dear Mr. Agnello:

The Government hereby responds to appellees' letter of August 22, 2016.

NorthShore's counsel expressly conceded below that even if Northwestern Memorial and Presence St. Francis were added to the Government's proposed 11-hospital market, the merger would still result in market concentration levels that are presumptively anticompetitive. Tr. 1891 (RSA22). In its reply and rebuttal argument, the Government properly pointed to the concession in response to appellees' arguments that the market should have included Northwestern Memorial and Presence St. Francis. To be clear, neither of these hospitals belongs in the market, for the reasons we have shown. But the concession confirms that adding Northwestern Memorial and Presence St. Francis to the 11-hospital market would not materially impact this case.

Appellees now argue that if Northwestern Memorial is included in the market, so must other downtown hospitals like Rush and Lurie Children's. Specifically, they argue that, "geographically speaking" these hospitals also "closely compete" with the appellees' hospitals. But they offer no logic or analysis to support that conclusion. Where insurers can "practicably turn" in constructing a hospital network is a function of how many patients wish to remain in the proposed market, not how many would be willing to go to specific hospitals outside it. Diversion

ratios to individual hospitals outside the Government's proposed market do not, standing alone, determine whether those hospitals are sufficient substitutes from an insurer's standpoint such that they should be included in the market. Here, overwhelming evidence shows that downtown hospitals could not constrain a hypothetical monopolist of the 11 North Shore Area hospitals from imposing a SSNIP. Neither the low diversions from appellees' hospitals to Rush and Lurie, nor any other evidence, suggests that these hospitals are sufficient network alternatives to the North Shore Area hospitals. Thus, even if it were proper to include Northwestern Memorial in the market (which it is not), Rush and Lurie do not belong on the basis of diversions, geography, or any other factor.

Respectfully submitted,

/s/ Matthew M. Hoffman

Matthew M. Hoffman

cc: Counsel of record (via CM/ECF)



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s/ Matthew M. Hoffman



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s/ _____