



of Section 5 of the FTC Act, 15 U.S.C. § 45, and, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. The parties consummated the Transaction on December 15, 2011. Motion at 3.

The HCA Respondents' Motion does not provide an adequate factual or legal basis for dismissing them from the proceeding at this time. *Cf.* Order Denying Motion By ENH Medical Group, Inc., For Removal of Name From Caption, *In re Evanston Northwestern Healthcare Corp.*, Docket No. 9315 (Jan. 5, 2006). The Motion states that the HCA Respondents "no longer own or operate any of the assets at issue in this action or any other assets in the Albany, Georgia area," that they "have not been active participants in the continuing litigation in federal court," and therefore that they have no "legally cognizable interest in the outcome of this action." Motion at 3.

Notwithstanding these assertions, the HCA Respondents may still have relevance to this proceeding. If the Commission determines that the FTC Act or the Clayton Act has been violated at the conclusion of this proceeding, the Commission may need to impose obligations upon the HCA Respondents in its Final Order to fully restore competition in the relevant market. For example, Paragraph 1 of the Notice of Contemplated Relief in the Complaint states that the Commission may require rescission of the Asset Purchase Agreement or divestiture of the acquired assets. The same paragraph also states that any ordered divestiture may be made to, among other entities, Respondents HCA or Palmyra. Furthermore, Paragraph 2 of the Notice of Contemplated Relief provides that the Commission may also impose a ban on Palmyra entering into certain transactions in the relevant market without prior Commission approval.

The HCA Respondents may, however, renew their motion at such time as the record establishes that they have no further relevance to this litigation, from either a liability or a prospective relief perspective.

Accordingly, for the foregoing reasons,

**IT IS ORDERED THAT** the Motion To Dismiss HCA Inc. and Palmyra Park Hospital, Inc. be, and it hereby is, **DENIED**.

By the Commission.

Donald S. Clark  
Secretary

Issued: April 22, 2013