



## Federal Trade Commission

Protecting America's

Consumers 01/05/2012

### Administrative Law Judge Upholds FTC's Complaint Against Ohio Hospital Deal, Orders ProMedica to Divest St. Luke's Hospital

#### Concludes That Deal Would Likely Increase Health Care Costs to Toledo Area Employers, Employees

In an Initial Decision announced today, Chief Administrative Law Judge D. Michael Chappell ruled that [ProMedica Health System, Inc.'s](#) consummated acquisition of rival St. Luke's Hospital harmed competition in violation of U.S. antitrust law and would allow ProMedica to raise the prices of general acute care inpatient hospital services in Lucas County, Ohio (the Toledo area).

In an [order](#) issued with the Initial Decision on December 5, 2011, Judge Chappell ordered ProMedica to divest St. Luke's Hospital to an FTC-approved buyer within 180 days after the order becomes final.

In the Initial Decision announced today, the ALJ found that ProMedica's acquisition of St. Luke's eliminated competition between the two firms in the market for general acute care inpatient hospital services and reduced the number of competing hospitals in the Lucas County market from four to three. The ALJ found that the acquisition would increase ProMedica's bargaining power with commercial health plans, which would lead to higher reimbursement rates. The ALJ also found that those higher rates likely would be passed on to the commercial health plans' customers, including employers and employees, to the detriment of consumers.

"The higher reimbursement rates that ProMedica can demand from [health plans] will directly harm the employers and employees who use Lucas County hospitals," Judge Chappell wrote in the Initial Decision.

In its complaint, the FTC also alleged that the acquisition of St. Luke's harmed competition in the market for inpatient obstetrical services. However, Judge Chappell ruled that complaint counsel failed to demonstrate that this constituted a separate, relevant product market.

ProMedica is a non-profit healthcare system headquartered in Toledo that includes a physician practice group, a hospital component, and an insurance company. ProMedica operates a total of eleven hospitals in Ohio and Michigan, including three general acute-care hospitals (other than St. Luke's) in Lucas County: 1) The Toledo Hospital (including the Toledo Children's Hospital); 2) Flower Hospital; and 3) Bay Park Community Hospital. On September 1, 2010, ProMedica effectively acquired control of St. Luke's, a formerly independent, non-profit general acute-care hospital in Maumee, Ohio. At the time of the acquisition, St. Luke's was widely recognized as a high-quality, low-cost hospital, complaint counsel alleged.

In the Initial Decision, Judge Chappell rejected ProMedica's arguments that market responses would provide a competitive constraint after the St. Luke's acquisition and that the combination of the two firms would lead to procompetitive benefits or increased efficiency that would outweigh the anticompetitive effects of the acquisition. The ALJ also rejected another argument advanced by ProMedica – that the deal should be allowed to proceed because St. Luke's was a "weakened competitor."

Judge Chappell's order is designed to restore competition as it existed before the acquisition by requiring ProMedica to sell St. Luke's to a buyer approved by the FTC. Among other things, the order would also require ProMedica to provide transitional services for one year to St. Luke's to ensure that it can operate as it has since the acquisition. In addition, the order would require ProMedica to take steps to maintain the viability of St. Luke's until it is divested.

The ALJ denied ProMedica's request for an alternative remedy, which would have allowed ProMedica to continue to own St. Luke's, while at the same time requiring ProMedica to establish a separate "firewalled" negotiation team that would have negotiated and administered health plan contracts exclusively for St. Luke's, independent of ProMedica's other Lucas County hospitals.

The ALJ issued his Initial Decision on Monday, December 5, 2011, thereby meeting one of the deadlines created by the Commission in order to expedite the agency's administrative trial process. The FTC's Revised Rules of Practice, which were finalized in April 2009, provide that the ALJ should issue the Initial Decision in a given adjudicative case within 70 calendar days after the last trial briefs and proposed findings are filed, and Chief Judge Chappell met that deadline in this case. The FTC released the public version of the Initial Decision today.

*The Appeals Process.* Both ProMedica and Complaint Counsel appealed from portions of the Initial Decision by filing briefs on December 27. The Commission now will review the ALJ's Initial Decision.

**Copies** of the public version of the Initial Decision by the Administrative Law Judge are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

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(FTC Docket No. 9346)  
(ProMedica.final)

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Related Items:

***In the Matter of ProMedica Health System, Inc., a corporation.***

Docket No. 9346

FTC File No. 101 0167

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