BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Berkeley Center for Law, Business and the Economy

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

Antitrust Concerns Stem From Merger Frenzy in Healthcare Industry

By Daniel Tucker Dowling, LL.M Candidate 2015 | September 30, 2014

Mergers and acquisitions within the healthcare industry have become increasingly common since the implementation of the Patient Protection and Affordable Care Act (PPACA) in March 2013. Parties to the individual merger transactions often cite the need to comply with and survive under the PPACA as a justification for the unification between otherwise-competitors in the healthcare services market. In the view of the Federal Trade Commission (FTC), however, the consolidation of competing healthcare service providers raises anticompetitive concerns that must be monitored and regulated to ensure compliance with Federal antitrust laws.

The recent "merger frenzy" in the healthcare industry is largely attributable to the policy directives and other economic forces advanced by the PPACA. Large-scale systemic changes, including mergers with competitor-hospitals and acquisition of private physician practice-groups, are sought as a means to achieve the "triple aims" of the PPACA: controlling health care delivery costs, improving access to facilities, and enhancing patient care quality. Consolidation of healthcare services in a given market achieves these aims by enabling more uniform treatment methods and a more efficient process that is less driven by a "fee-for-service" model and more focused on obtaining desirable results.

While collaboration and coordination between competing healthcare services providers may ensure compliance with many aims of the PPACA, FTC officials bemoan the mergers' negative effects on the underlying economy that result from decreased competition. According to the FTC, "[w]hen health care markets are competitive, consumers benefit from lower costs, better care and more innovation." As an example in the health care industry, horizontal mergers reduce competition between hospitals in the same market, allowing "super-hospitals" to control the prices for healthcare services and dominate the market.

Whether in an effort to achieve market dominance or to comply with the PPACA, it seems that courts applying antitrust laws in hospital merger cases are not concerned with the intent of the parties to the merger. For example, in the 2012 case *FTC v. St. Luke's Health System*, that a merger between an Idaho hospital and the largest independent physician group in the state was primarily intended to improve the quality of patient care was of no moment. Noting that "there are other ways to achieve the same effect that do not run afoul of the antitrust laws," the court ordered the acquiring hospital to divest itself of the physician group.

Supporters of hospital mergers contend that holdings such as the one in *St. Luke's* reflect the flaws in rigid application of antitrust laws. Effectively, hospitals claim that the goals of the PPACA and the antitrust laws are at odds, making compliance with both impracticable. FTC officials have pointed out, however, that less than one percent of horizontal hospital mergers have been challenged. FTC chairwoman Edith Ramirez says the low number of challenges illustrates that there is no inherent conflict between the aims of the PPACA and the antitrust laws—each seeks to provide consumers with quality healthcare at low prices.

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

For now, the PPACA remains and hospitals contemplating merger transactions may be wise to consult the FTC's general guidelines for compliance available at its website, lest they risk offending antitrust laws, which clearly remain in full force—even for hospitals.