



Novant/CHS Deal Scrapped after FTC Intervenes

In February 2023, Novant Health, a 19-hospital, non-profit health system operating throughout the Carolinas,¹ agreed to acquire two North Carolina hospitals – Davis Regional Medical Center and Lake Norman Regional Medical Center – from Community Health System (CHS), a publicly-traded mega-system operating in 15 states.² After the \$320 million deal was announced, the Federal Trade Commission (FTC) began an extensive review of the acquisition, and concluded that: (1) the transaction may substantially reduce competition; (2) create a monopoly; and (3) constitute an unfair method of competition.³ Consequently, on January 25, 2024, the agency filed a complaint to initiate an administrative proceeding (to determine the legality of the transaction) and filed suit in the Western District of North Carolina, requesting a temporary retaining order and preliminary injunction so that Novant and CHS could not complete their transaction while the FTC’s proceedings were ongoing.⁴ In its complaint, the FTC claimed the transaction was illegal because it would:

- (1) “[S]ignificantly increase concentration in the already highly concentrated market,” as “Novant would control a significant percentage of the Eastern Lake Norman Area market”;
- (2) “[E]liminate price competition between CHS and Novant that constrains reimbursement rates for hospital services in the market”; and
- (3) Result in insurers having “fewer competing alternatives for inpatient [general acute care] services in the [market].”⁵

The district court, in considering whether the Novant/CHS deal could proceed during the FTC’s administrative process, weighed the “public equities” associated with the transaction and the injunction (i.e., “whether it is in the public interest to allow Novant to buy [the hospitals]” and whether “the public [will] be better off and/or worse off if an injunction is entered”).⁶ In doing so, the court considered the FTC’s allegations that:

- (1) “[I]nsurance companies and ultimately their customers will be charged Novant’s higher prices”;
- (2) “[S]tate and local governments will receive millions less in tax revenues as soon as [the hospitals] are owned by a ‘non-profit’ hospital system”; and

- (3) “CHS could make additional investments or enter into partnerships with other healthcare companies if the transaction is not enjoined.”⁷

The court also considered Novant and CHS’s assertions that:

- (1) Davis Regional Medical Center, a behavioral health hospital, would quickly close without the transaction, “depriving the community of important mental health services”;
- (2) Certain medical service lines that had been lost at Lake Norman Regional Medical Center would be immediately added back if the transaction went through; and
- (3) “Novant has committed not to raise prices at LNR for three years, to support LNR’s doctors and nurses with additional staff and higher pay, and to add numerous capital improvements (which CHS will either be unwilling or unable to provide).”⁸

After weighing the parties’ arguments, the district court denied the FTC’s request for a preliminary injunction,⁹ concluding that the merger appeared to carry an equal amount of competitive benefit as it did competitive harm, and that an immediate closure of Davis Regional Medical Center and the addition of medical service lines at Lake Norman Regional Medical Center outweighed the loss of tax revenue.¹⁰

The FTC subsequently appealed the decision to the U.S. Court of Appeals for the Fourth Circuit and filed a motion in the district court to enjoin the transaction until the Fourth Circuit heard the appeal.¹¹ While the district court denied the FTC’s motion, it extended a temporary restraining order until June 21, 2024, giving the FTC time to seek an injunction from the Fourth Circuit.¹²

Three days before the temporary retaining order expired, the Fourth Circuit granted the FTC’s motion for an injunction, which would keep Novant and CHS from consummating the transaction until the appeals process was complete.¹³ With any appeal of the injunction potentially taking up to two years, Novant ultimately decided to call off the CHS hospital acquisition.¹⁴

Novant’s spokesperson said that Novant had “worked tirelessly for more than a year to create a path forward for Lake Norman Regional Medical Center and Davis Regional Medical Center.”¹⁵ The spokesperson also asserted that Novant is:

“steadfast in our belief that these facilities and their patients would have greatly benefited from joining Novant Health, but with the FTC’s continued roadblocks we do not see a way to finalize this transaction. The communities served by these facilities deserve better than the fate they’ve been dealt by the FTC so we will look for other ways to support patients and clinicians in these communities.”¹⁶

This latest scrapped hospital deal underscores the federal government’s push to increase competition in the healthcare industry. Over the past couple of years, the FTC has filed a number of lawsuits seeking to halt transactions, including:

- (1) Suing to block a merger of two New Jersey-based health systems, RWJ Barnabas Health and Saint Peter’s Healthcare System, which caused the systems to scrap their merger plans;¹⁷
- (2) Suing to block HCA Healthcare’s acquisition of five Utah hospitals from Steward Health, which caused HCA to abandon the acquisition;¹⁸
- (3) Suing to block a merger of two Rhode Island health systems, Lifespan and Care New England, which caused the systems to abandon their merger plans;¹⁹ and
- (4) Suing to block New Jersey’s biggest hospital system, Hackensack Meridian Health, from acquiring competitor Englewood Healthcare,

which caused Hackensack to scrap the acquisition.²⁰

While the scrapped Novant/CHS deal represents yet another win for the FTC, this case is different from the FTC’s past successes. In this circumstance, Novant may have been able to successfully appeal the Fourth Circuit decision, but decided against it. The dissenting judge in the Fourth Circuit’s order highlighted the fact that:

“sending this [case] back to the FTC and the administrative law judge is a process that ordinarily takes over two years... Given the evidence I am not sure any financially hard-pressed healthcare facility would have that amount of time. Hospitals such as [the two CHS hospitals] may not provide a full menu of advanced procedures, but they do tend to increase access to vital healthcare for underserved populations.”²¹

The dissenting judge also called out the FTC, stating that the agency “is acting too aggressively in this case, forgetting there is such a thing as a vibrant private sector.”²² The Novant case highlights not only the emboldened actions of the FTC in hospital mergers and acquisitions, but hospitals not wanting to engage in years of litigation (particularly when one or more of the hospitals at issue are financially distressed), and simply scrapping hospital mergers and acquisitions, which may have the undesirable effect of those un-acquired, financially distressed hospitals ultimately closing.

1 “Company” Novant Health, <https://www.novanthealth.org/about/company/> (Accessed 6/27/24).
 2 “Company Overview” Community Health Systems, <https://www.chs.net/company-overview/> (Accessed 6/27/24); “Investor Relations” Community Health Systems, <https://www.chs.net/investor-relations/> (Accessed 6/27/24); “District Court Denies FTC Request to Block Novant’s Purchase of Hospitals from CHS — Purchase Can Go Forward” Stevens & Lee, June 6, 2024, <https://www.stevenslee.com/health-law-observer-blog/district-court-denies-ftc-request-to-block-novants-purchase-of-hospitals-from-chs-purchase-can-go-forward/> (Accessed 6/26/24).
 3 “District Court Denies FTC Request to Block Novant’s Purchase of Hospitals from CHS — Purchase Can Go Forward” Stevens & Lee, June 6, 2024, <https://www.stevenslee.com/health-law-observer-blog/district-court-denies-ftc-request-to-block-novants-purchase-of-hospitals-from-chs-purchase-can-go-forward/> (Accessed 6/26/24).
 4 *Ibid.*
 5 “In the Matter of Novant Health, Inc., and Community Health Systems, Inc.” Docket No. 9425, Federal Trade Commission Office of Administrative Law Judges, Complaint (January 25, 2024), p. 2-3.
 6 “Federal Trade Commission v. Community Health Systems, Inc. and Novant Health, Inc.” Case No. 5:24-CV-00028, Order (June 5, 2024), p. 5, 52.
 7 *Ibid.*, p. 5.
 8 *Ibid.*
 9 Stevens & Lee, June 6, 2024.
 10 Case No. 5:24-CV-00028, Order (June 5, 2024), p. 55.
 11 “Judge denies latest FTC attempt to halt Novant Health-CHS deal” By Andrew Cass, Becker’s Hospital Review, June 11, 2024, <https://www.beckershospitalreview.com/legal-regulatory-issues/judge-denies-latest-ftc-attempt-to-halt-Novant-Health-chs-deal.html> (Accessed 6/13/24).
 12 The extension of the temporary restraining order was an alternate request from the FTC, an order which typically precedes an injunction “Judge denies another FTC request to block Novant Health-CHS deal” By Caroline Hudson, Modern Healthcare, June 11, 2024, <https://www.modernhealthcare.com/legal/Novant-Health-health-chs-ftc-injunction-north-carolina> (Accessed 6/13/24).
 13 “Novant Health gives up \$320M hospital deal after FTC secures appeals court injunction” By Dave Muoio, Fierce Healthcare, June

18, 2024, <https://www.fiercehealthcare.com/providers/novant-health-gives-320m-hospital-deal-after-ftc-secures-appeals-court-injunction> (Accessed 6/19/24).
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 15 “Judge denies FTC’s preliminary bid to block Novant Health, CHS’ \$320M hospital deal” By Dave Muoio, Fierce Healthcare, June 5, 2024, <https://www.fiercehealthcare.com/providers/judge-denies-ftcs-preliminary-bid-block-Novant-Health-chs-320m-hospital-deal> (Accessed 6/7/24).
 16 “Novant Health gives up \$320M hospital deal after FTC secures appeals court injunction” By Dave Muoio, Fierce Healthcare, June 18, 2024, <https://www.fiercehealthcare.com/providers/novant-health-gives-320m-hospital-deal-after-ftc-secures-appeals-court-injunction> (Accessed 6/19/24).
 17 “2 N.J. health systems call off merger after federal lawsuit” By Spencer Kent, NewJersey.com, June 15, 2022, <https://www.nj.com/healthfit/2022/06/2-nj-health-systems-call-off-merger-after-federal-lawsuit.html> (Accessed 6/7/24).
 18 “Following FTC Action, HCA, Steward Call Off Utah Deal” By David Raths, Healthcare Innovation, June 17, 2022, <https://www.hcinnovationgroup.com/finance-revenue-cycle/mergers-acquisitions/news/21271444/following-ftc-action-hca-steward-call-off-utah-deal> (Accessed 6/7/24).
 19 “Lifespan and Care New England officially pull the plug on merger” By Patrick Anderson, The Providence Journal, February 23, 2022, <https://www.providencejournal.com/story/news/politics/2022/02/23/ri-lifespan-and-care-new-england-pull-plug-on-merger/6914674001/> (Accessed 6/7/24).
 20 “FTC’s lawsuit can put the brakes on N.J. hospital merger - 3rd Circ” By Barbara Grzincic, Reuters, March 23, 2022, <https://www.reuters.com/legal/litigation/ftcs-lawsuit-can-put-brakes-nj-hospital-merger-3rd-circ-2022-03-23/> (Accessed 6/7/24).
 21 “Federal Trade Commission v. Community Health Systems, Inc. and Novant Health, Inc.” Case No. 24-1526, Order (June 18, 2024), p. 2-3.
 22 *Ibid.*, p. 4.



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