

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLESTON AREA MEDICAL CENTER,
INC.,

Defendant.

Civil Action No. 2:06-0091

Judge Joseph R. Goodwin

**PLAINTIFF UNITED STATES' MOTION AND MEMORANDUM
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. The defendant does not object to the entry of the proposed Final Judgment without a hearing. The Competitive Impact Statement ("CIS"), filed by the United States in this matter on February 6, 2006, explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

MEMORANDUM

I. Background

On February 6, 2006, the United States filed a Complaint alleging that defendant Charleston Area Medical Center, Inc. (CAMC) persuaded HCA Inc. (HCA) in an April 17, 2002 memorandum of understanding (the CAMC-HCA MOU) to agree not to develop a competing cardiac-surgery program at Raleigh General Hospital in Raleigh County, West Virginia. As explained more fully in the Complaint and CIS, the CAMC-HCA MOU unreasonably restrained competition to the detriment of consumers and in violation of Section 1 of the Sherman Act by effectively ensuring that no hospital in Raleigh County would compete with CAMC to provide cardiac-surgery services.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the CAMC-HCA MOU. The proposed Final Judgment would restore competition between CAMC and Raleigh General that the CAMC-HCA MOU eliminated and prevent CAMC from engaging in similar anticompetitive conduct in the future.

The United States and CAMC have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and CAMC have also stipulated that CAMC will comply with the proposed Final Judgment from the date of signing of the Stipulation (filed with the court on February 6, 2006), pending entry of

the proposed Final Judgment by the Court. Should the Court decline to enter the proposed Final Judgment, CAMC has also committed to continue to abide by its requirements until the expiration of time for appeal.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS in this Court on February 6, 2006; published the Complaint, proposed Final Judgment, and CIS in the *Federal Register* on February 24, 2006, *see* 71 Fed. Reg. 9598-606 (2006); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days beginning on February 20, 2006 and continuing on consecutive days through February 26, 2006, and the *Charleston Gazette*, a newspaper of general circulation in the Southern District of West Virginia, beginning on February 20, 2006 and continuing on consecutive days through February 25, 2006, and on February 27, 2006. The sixty-day period for public comments ended on April 25, 2006, and no public comments were received. The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

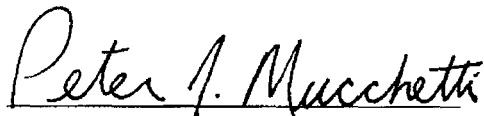
In its CIS previously filed with the Court on February 6, 2006, the United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. The proposed Final Judgment is within the range of settlements consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: April 27, 2006

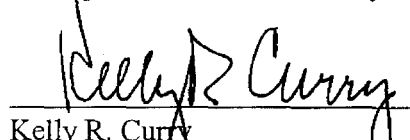
Respectfully submitted,



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