

# Client Alert

Antitrust & Litigation Practice Group

March 31, 2011

## FTC Granted Preliminary Injunction Against ProMedica/St. Luke's

The U.S. District Court for the Northern District of Ohio granted the request for a preliminary injunction by the Federal Trade Commission (FTC), pending a full administrative trial on the merits of ProMedica Health System Inc.'s proposed acquisition of St. Luke's Hospital on Tuesday, March 29, 2011. The decision marks FTC's first preliminary injunction against parties in a hospital merger in over a decade. The agency stated, "We are gratified that Judge Katz has issued a preliminary injunction to preserve competition between ProMedica and St. Luke's. In a time of rapidly escalating health care costs, we believe that consumers in Lucas County, Ohio are the true beneficiaries of this decision." The FTC press release regarding the preliminary injunction is available at <http://www.ftc.gov/opa/2011/03/promedica.shtm>.

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On January 6, 2011, the FTC announced that it was challenging ProMedica Health System's \$156 million acquisition of St. Luke's Hospital. According to the FTC's complaint, the transaction, which closed in August 2010 but was not consummated pursuant to an agreement with the FTC, reduced the number of general, acute-care hospitals in the St. Lucas County, Ohio area from four to three, giving ProMedica control of nearly 60% of the market for general acute-care inpatient hospital services and over 80% of the market for obstetrical services.

U.S. District Court Judge David Katz wrote, in a 115-page "Findings of Fact and Conclusions of Law" brief, that ProMedica failed to present credible evidence to support its argument that the benefits of the deal would justify the likely competitive harm. Judge Katz noted that the clinical integration, which ProMedica argued was a benefit of the deal, could have been achieved by St. Luke's through other affiliations. Additionally, Judge Katz noted that he would consider revising the preliminary injunction order if the FTC fails to conclude the matter by November 30, 2011.

Although ProMedica is only the second filed FTC hospital merger challenge since 2007, the FTC has been increasingly aggressive in

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investigating hospital mergers, and this recent victory indicates the FTC will continue to closely examine provider combinations.

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