UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning

October 16, 2017

The Honorable Frank W. Berry, Commissioner
Georgia Department of Community Health
6th Floor
2 Peachtree Street, N.E.
Atlanta, Georgia 30303

Dear Commissioner Berry:

The Federal Trade Commission's ("FTC" or "Commission") Office of Policy Planning, Bureau of Competition, and Bureau of Economics (collectively, "FTC staff") appreciate the opportunity to provide input into your consideration of GA 2017 – 030, the Certificate of Need ("CON") Application filed by Lee County Medical Center ("the Application").[1] We submit these comments both at the request of the Board of Commissioners of Lee County Georgia[2] and pursuant to the FTC's mission to promote health care competition and consumer welfare.[3] For reasons explained below, and to promote the interests of Georgia health care consumers, we urge you to consider the likely benefits of increased competition when evaluating any CON application. In particular, we recommend that you grant the CON requested by Lee County Medical Center.[4]

Competition is the core organizing principle of America's economy.[5] Competition spurs innovation, lower prices, and higher quality goods and services for consumers. When evaluating any CON application, we urge Georgia's Department of Community Health ("Department") to consider the benefits that Georgia's health care consumers are likely to enjoy from increased competition.

As recently as 2015, the FTC closely examined the competitive conditions in the six-county region in Georgia comprising Lee, Dougherty, Mitchell, Terrell, Worth, and Baker counties.[6] We are concerned about the current lack of hospital competition in this region. These concerns are particularly acute in Lee County, where there are no hospitals at all, so residents must travel across county lines to get to the nearest hospital. Further, Phoebe Putney Health System is the dominant provider in the area and the exclusive source of hospital services – consumers' sole choice – in several neighboring counties.[7] If the Department approves the CON, consumers in and around Lee County (and third-party payors) may benefit from greater choice, higher quality, and lower prices spurred by competition.

I. The FTC's Interest and Experience

The Commission works to promote competition through enforcement of the antitrust laws,[8] which prohibit certain conduct that undermines competition and harms consumers. The Commission also encourages competition through various forms of advocacy.[9]

Because health care competition plays a vital role for consumers and the economy as whole, anticompetitive mergers and conduct in health care markets have long been a critical focus of FTC law enforcement, research, and advocacy.[10] For example, the Commission and its staff have examined the competitive effects of barriers to entry for various health care professionals[11] and new models of health care services delivery,[12] as well as the effects of concentration in health care provider markets.[13]

The FTC has considerable experience in evaluating competition issues involving health care providers, including proposed hospital, outpatient facility, and physician group mergers, as well as alleged anticompetitive conduct by providers. The FTC focuses on whether the mergers or conduct are, on balance, likely affect consumer welfare by benefiting or harming competition.[14] The Commission's approach is grounded in a substantial body of empirical economic research, as well as its competition enforcement experience. Relevant research includes, for example, a series of studies designed and conducted by FTC staff to examine, retrospectively, the effects of consummated hospital mergers.[15] Building on earlier economic research, FTC staff tested general assumptions about the effects of hospital mergers and more concentrated markets on prices and quality of care to refine the Commission's approach to competition in health care markets more generally.

II. Hospital Competition and Georgia Health Care Consumers

The Commission's enforcement experience in health care provider cases informs our broader understanding of the effects of hospital concentration and the relative consumer benefits and costs of more or less competitive hospital markets. As such, it provides an important background for our views on barriers to entry for health care providers.[16] As noted above, the Commission's interest in fostering greater hospital competition matches interests expressly recognized by Georgia's CON statute, which aims to "foster[] competition that is shown to result in lower patient costs without a loss of the quality of care."[17] The Commission's understanding of hospital competition can help inform the Department's consideration of a hospital's CON application, including the cost of care,[18] the likely "effects of new institutional health service on payors for health services, including governmental payors,"[19] quality of care,[20] efficiency of provider operations,[21] potential "improvements or innovations in the financing or delivery of health services,"[22] and access to care by patients local to the proposed facility.[23]

a. Empirical Research on the Competitive Effects of Hospital Consolidation

Empirical evidence on competition in health care markets – studies by FTC staff and independent scholars – shows that health care consumers benefit from lower prices and higher quality when health care provider markets are more competitive.[24] Economic studies also consistently demonstrate that a reduction in hospital competition leads to higher prices for hospital care.[25] These effects are not limited to for-profit hospitals: mergers between not-for-profit hospitals can also result in substantial anticompetitive price increases.[26] Further, and particularly relevant to the Department's consideration here, hospital competition tends to be highly localized.[27]

FTC merger retrospective studies, supplemented by a large and growing body of literature, confirm these observations, and strongly suggest that health care providers with significant market power can (and do) negotiate higher-than-competitive payment rates.[28] The price differences ultimately paid by consumers in concentrated markets can be significant.[29] For example, price increases as high as 40 percent have been observed when competition was lost after one hospital system acquired a competing hospital.[30]

The best empirical evidence also suggests that greater competition incentivizes providers to innovate and become more efficient, with both price and non-price benefits for health care consumers. Evidence shows that "[h]ospital competition improves quality of care,"[31] while "[p]hysician-hospital consolidation has not led to either improved quality or reduced costs."[32] Additional evidence indicates that "[a]t least for some procedures, hospital concentration reduces quality."[33] Recent work also shows that hospitals in more competitive environments have better management practices.[34]

Finally, empirical evidence contradicts the assertion that dominant providers use their market power to cross-subsidize charity care. For example, one empirical study of the relationship between competition and charity care found a "*complete lack of support* for the 'cross-subsidization hypothesis': that hospitals use increased market power to fund more charity care or, stated in the negative, that increased competition will harm patients who rely on charity care."[35]

b. Hospital Competition in Southwest Georgia

There are no hospitals in Lee County. As a result, residents must travel to neighboring counties for hospital services; and a single provider system maintains hospital facilities in those neighboring counties. In short, patients in the area – and their health plans – have few alternatives across Lee County, Dougherty County, and a larger part of southwest Georgia.

The FTC is familiar with the dynamics of hospital competition in Southwest Georgia. In April, 2011, the Commission challenged a merger between Phoebe Putney Health System and its constituent hospitals and Palmyra Park Hospital based on its established and highly fact-specific approach to analyzing hospital competition matters.[36] Based on FTC staff's substantial investigation, the Commission found reason to believe that "the combination of Phoebe Putney with Palmyra, its only rival in Albany, would create a monopoly in the provision of inpatient general acute-care hospital services."[37] The Commission's complaint alleged that Phoebe Putney's market power would extend beyond Albany and Dougherty County to Lee County, among others:

> Even in an expansive geographic market encompassing the six counties surrounding Albany, Phoebe Putney's … [market share would] jump to approximately 86%. … The Transaction dramatically increases concentration in an already highly concentrated market, giving rise to a presumption of unlawfulness by a wide margin under the relevant case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines.[38]

The State of Georgia itself initially joined the FTC in seeking to enjoin the merger in federal court.[39]

The Commission's concerns about the competitive effects of Phoebe Putney's acquisition were in no way ameliorated during the four subsequent years of proceedings. In its 2015 statement settling the case, the Commission observed that there was still "reason to believe that Phoebe Putney's acquisition of Palmyra violated Section 7 of the Clayton Act and Section 5 of the FTC Act."[40] At the time, the Commission noted that practical considerations – including barriers to entry in Dougherty County – precluded structural relief via a divestiture, which "would have been the most appropriate and effective remedy to restore the lost competition in Albany and the surrounding six-county area from [the] merger to monopoly."[41] Phoebe Putney itself, in its 2015 consent agreement with the Commission, stipulated that the effect of its acquisition "may be substantially to lessen competition within the relevant service and geographic markets alleged in the Complaint."[42]

Little has changed to improve hospital competition in southwest Georgia, including the "six-county region" identified in the FTC's 2015 Decision and Order in the Phoebe Putney Health System matter.[43] Although Phoebe Putney does not own or operate any hospital facilities in Lee County, it does not appear to face any significant competition from nearby hospitals in providing hospital services to Lee County consumers.[44] According to the Department, Phoebe Putney Health System maintains the only hospital in Dougherty County, which is adjacent to Lee County to the south. Phoebe Putney Health System also maintains the only hospital in Sumter County, which is adjacent to Lee County to the north, and the only hospital in Worth County, which is adjacent to Lee County to the east.[45] The Department lists no hospitals in Terrell County, which is adjacent to Lee County to the west.[46]

III. Conclusion

FTC staff urge you to consider the likely consumer benefits of competitor entry and increased health care competition. Consistent with Georgia's CON laws, we encourage you to foster "competition that is shown to result in lower patient costs without a loss of the quality of care" in order to improve the welfare of Georgia health care consumers, not on behalf of any particular provider or would-be competitor.

For these reasons, we recommend that the Department grant the Certificate of Need requested by Lee County Medical Center, GA 2017 – 030.

Respectfully submitted,

Tara Isa Koslov, Acting Director
Office of Policy Planning

D. Bruce Hoffman, Acting Director
Bureau of Competition

Michael G. Vita, Acting Director
Bureau of Economics

[1] This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize us to submit these comments.

[2] Letter from James M. Skipper, Bd. Comm. Lee Cty. Georgia to Tara I. Koslov & D. Bruce Hoffman, Fed. Trade Comm'n (Sept. 13, 2017); Resolution Directing the Lee County Attorney to Submit an Invitation to the Federal Trade Commission

(FTC) to File Comments with the Georgia Department of Community Health (DCH) on the Pending Application for a Certificate of Need for a New Hospital to be Built and Operated in Lee County, and for Other Purposes (Sept. 12, 2017).

[3] *See* U.S.C. § 18; FTC Act, 15 U.S.C. § 45.

[4] While we recommend granting the CON request to add a pro-consumer measure of competition; we do not suggest that the proposed Lee County Medical Center will address all competitive concerns about hospital services in the area. We recognize that the Department considers and balances various policy goals when evaluating a CON application. Georgia's CON statute specifically recognizes and promotes procompetitive values similar to those we advocate here in requiring consideration of, among other things, innovation in health care delivery, cost and quality effectiveness, and most notably entry of new providers, which "fosters competition that is shown to result in lower patient costs without a loss of the quality of care." O.C.G.A. § 31-6-42(a)(13). Lastly, our analysis is limited to competitive issues and their impact on consumer welfare; we express no view on other issues that may bear on the CON application's review or approval.

[5] *See, e.g.*, N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101, 1109 (2014) ("Federal antitrust law is a central safeguard for the Nation's free market structures."); Standard Oil Co. v. FTC, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy has long been faith in the value of competition.").

[6] See pp. 3-4, *infra,* regarding hospital competition in Southwest Georgia.

[7] Georgia Dep't Community Health, Find a Facility, http://167.193.144.247/facsearch.asp (last visited Sept. 26, 2017). There is one small acute care hospital, Crisp Regional Hospital, in Cordele, Georgia, more than thirty miles from the proposed Lee County facility. *Id.*

[8] Congress has charged the FTC with enforcing the Clayton Act, which prohibits mergers and acquisitions that may substantially lessen competition or tend to create a monopoly, and the Federal Trade Commission Act, which established the FTC and prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. *See* Clayton Act, 15 U.S.C. § 18; FTC Act, 15 U.S.C. § 45. In addition, the U.S. Supreme Court has held that violations of the Sherman Act are also violations of Section 5 of the FTC Act. FTC v. Cement Inst., 333 U.S. 683, 694 (1948); FTC v. Indiana Federation of Dentists, 476 U.S. 447, 454 (1986).

[9] Competition advocacy may include, e.g., comments or testimony on legislation or proposed regulations, publication of Commission and staff reports, informal discussions with policy makers, and court filings (e.g., submission of amicus briefs where the Commission has pertinent expertise but is not a party to the proceedings). *See, e.g.*, Fed. Trade Comm'n, Competition in the Health Care Marketplace, https://www.ftc.gov/tips- advice/competition-guidance/industry-guidance/health-care; Fed. Trade Comm'n, Policy, https://www.ftc.gov/policy (describing and linking to various policy, advocacy, and research work undertaken by the Commission and its staff).

[10] *See, e.g.*, Fed. Trade Comm'n, Competition in the Health Care Marketplace, *supra* note 9; FED. TRADE COMM'N, OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS (2017), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/overview_health_care_september_2017.pdf; Joseph Farrell, Paul A. Pautler & Michael G. Vita, Fed. Trade Comm'n, *Economics at the FTC: Retrospective Merger Analysis with a Focus on Hospitals*, 35 REV. INDUS. ORG. 369 (2009); Maureen Ohlhausen, *Beyond Law Enforcement:The FTC's Role In Promoting Health Care Competition And Innovation*, Health Affairs Blog (Jan. 26, 2015), http://healthaffairs.org/blog/2015/01/26/beyond-law-enforcement-the-ftcs-role-in-promoting-health-care-competition-and-innovation/; *see also* FED. TRADE COMM'N & U.S. DEP'T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), https://www.ftc.gov/sites/default/files/documents/reports/improving-health-care-dose-competition-report-federal-trade-commission-and-department-justice/040723healthcarerpt.pdf [hereinafter A DOSE OF COMPETITION].

[11] *See, e.g.*, Daniel J. Gilman & Tara I. Koslov, *Policy Perspectives: Competition and the Regulation of Advanced Practice Nurses*, Fed. Trade Comm'n Staff Paper (2014), https://www.ftc.gov/reports/policy-perspectives-competition-regulation-advanced-practice-nurses.

[12] FTC Staff Comment to the Alaska State Legislature Regarding Telehealth Provisions in Senate Bill 74, Which Would Allow Licensed Alaska Physicians Located Out-of-State to Provide Telehealth Services (2016), https://www.ftc.gov/policy/advocacy/advocacy-filings/2016/03/ftc-staff-comment-alaska-state-legislature-regarding; FTC Staff Comment Before the Kentucky Cabinet for Health and Family Services Concerning Regarding Proposed Rule to Regulate Limited Service Clinics (Jan. 2010), http://www.ftc.gov/os/2010/02/100202kycomment.pdf (restrictions on entry and operation of retail clinics or "limited service" clinics).

[13] *See, e.g.*, A DOSE OF COMPETITION, *supra* note 10; *see also* Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice Regarding Certificate-of-Need (CON) Laws and Alaska Senate Bill 62, Which Would Repeal Alaska's CON Program, n. 15 and accompanying text (2017),

https://www.ftc.gov/system/files/documents/advocacy_documents/joint-statement-federal-trade-commission-antitrust-division-us-department-justice-regarding/v170006_ftc-doj_comment_on_alaska_senate_bill_re_state_con_law.pdf; Fed. Trade Comm'n Workshops, Examining Health Care Competition (2014, 2015), https://www.ftc.gov/news-events/events-calendar/2014/03/examining-health-care-competition.

[14] *See* FED. TRADE COMM'N, OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS, *supra* note 10, at 49-82.

[15] For an overview, see Orley Ashenfelter et al., *Retrospective Analysis of Hospital Mergers*, 18 INT'L J. ECON. BUS. 5 (2011); Farrell, Pautler &Vita, *supra* note 10, at 375-383. Individual studies were published initially as Bureau of Economics Working Papers, and subsequently by independent academic journals. *See* Patrick S. Romano & David J. Balan, *A Retrospective Analysis of the Clinical Quality Effects of the Acquisition of Highland Park Hospital by Evanston Northwestern Healthcare*, 18 INT'L J. ECON. BUS. 45 (2011); Deborah Haas-Wilson & Christopher Garmon, *Two Hospital Mergers on Chicago's North Shore: A Retrospective Study*, 18 INT'L J. ECON. BUS. 17 (2011); Aileen Thompson, *Effect of Hospital Mergers on Inpatient Prices: A Case Study of the New Hanover-Cape Fear Transaction*, 18 INT'L J. ECON. BUS. 91 (2011); Steven Tenn, *The Price Effects of Hospital Mergers: A Case Study of the Sutter-Summit Transaction*, 18 INT'L J. ECON. BUS. 65 (2011); Michael G. Vita & Seth Sacher, *The Competitive Effects of Not-for-Profit Hospital Mergers: A Case Study*, 49 J. INDUS. ECON. 63 (2001). Publication of a revised version of a recent Bureau of Economics Working Paper, Christopher Garmon, *The Accuracy of Hospital Merger Screening Methods*, Fed. Trade Comm'n Bureau of Econ. Working Paper No. 326 (2016), https://www.ftc.gov/system/files/documents/reports/accuracy-hospital-merger-screening-methods/rwp_326.pdf, is forthcoming in the RAND Journal of Economics.

[16] *See, e.g.*, , Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice Regarding Certificate-of-Need (CON) Laws, *supra* note 13 (concerns about competitive effects of Alaska's CON regime as a potential barrier to hospital and other provider entry); FTC Staff's Third Submission to the Tennessee Department of Health Regarding the Certificate of Public Advantage Application of Mountain States Health Alliance and Wellmont Health System (2017), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staffs-third-submission-tennessee-department-health-regarding-certificate-public-advantage/ftc_-_third_comment_to_tennessee_-_final_public_version.pdf (analyzing likely competitive effects of a particular proposed hospital transaction).

[17] O.C.G.A. § 31-6-42(a)(13).

[18] *Id.* at § 31-6-42(a)(3), (5), (7), (13).

[19] *Id.* at § 31-6-42(a)(5); *see also id.* at § 31-6-42(a)(14) (impact on HMOs).

[20] *Id.* at § 31-6-42(a)(6), (13), (15).

[21] *Id.* at § 31-6-42(a)(9), (13).

[22] *Id.* at § 31-6-42(a)(13).

[23] *Id.* at § 31-6-42(a)(2), (3), (10), (17).

[24] *See, e.g.*, Martin Gaynor & Robert Town, *The Impact of Hospital Consolidation – Update*, ROBERT WOOD JOHNSON FOUNDATION: THE SYNTHESIS PROJECT (2012) (synthesizing research on the impact of hospital mergers on prices, cost, and quality and finding that hospital consolidation generally results in higher prices, hospital competition improves quality of care, and physician-hospital consolidation has not led to either improved quality or reduced costs); Martin Gaynor & Robert J. Town, *Competition in Health Care Markets*, 2 HANDBOOK OF HEALTH ECONOMICS 499, 637 (2012); Martin Gaynor et al., *The Industrial Organization of Health-Care Markets,* 53 J. ECON.2 LITERATURE 235, 284 (2015) (critical review of empirical and theoretical literature regarding markets in health care services and insurance).

[25] Gaynor & Town, *Impact of Hospital Consolidation*, *supra* note 24, at 1 (citing, e.g., Haas-Wilson & Garmon, *Hospital Mergers and Competitive Effects: Two Retrospective Analyses*, supra note 15, at 30 (post-merger review of Agency methods applied to two hospital mergers; data "strongly suggests" that large price increases in challenged merger be attributed to increased market power and bargaining leverage); Leemore Dafny, *Estimation and Identification of Merger Effects: An Application to Hospital Mergers*, 52 J. L. & ECON. 523, 544 (2009) ("hospitals increase price by roughly 40 percent following the merger of nearby rivals"); Cory Capps & David Dranove, *Hospital Consolidation and Negotiated PPO Prices*, 23 HEALTH AFFAIRS 175, 179 (2004); *see also, e.g.*, Joseph Farrell et al., *Economics at the FTC: Retrospective Merger Analysis with a Focus on Hospitals*, 35 REV. INDUS. ORG. 369 (2009) (mergers between not-for-profit hospitals can result in substantial anticompetitive price increases).

[26] Farrell, Pautler &Vita, *supra* note 10, at 382 (corroborating Vita & Sacher, *supra* note 15).

[27] *Id.*

[28] *See*, *e.g.*, Paul B. Ginsburg, *Wide Variation in Hospital and Physician Payment Rates Evidence of Provider Market Power* (Center for Studying Health System Change, Research Brief No. 16, 2010), *available at* http://www.hschange.com/CONTENT/1162/.

[29] Martin Gaynor, *Competition Policy in Health Care Markets: Navigating the Enforcement and Policy Maze*, 33 HEALTH AFF. 1088 (June 2014).

[30] Tenn, *The Price Effects of Hospital Mergers: A Case Study of the Sutter-Summit Transaction*, *supra* note 15, at 65-82.

[31] *Impact of Hospital Consolidation*, *supra* note 24, at 1.

[32] *Id.*

[33] *Id.* at 3; *see also* Romano & Balan, *A Retrospective Analysis of the Clinical Quality Effects of the Acquisition of Highland Park Hospital by Evanston Northwestern Healthcare*, *supra* note 15. Such direct evidence of the effects of provider concentration on the quality of care should not be obscured by significant – if mixed – evidence about the "volume/outcome" relationship in hospital services. Advocates of dominant hospital providers sometime suggest that, for example, quality of care or the provision of charity care might justify concentration or monopoly, but the evidence for such propositions tends to be lacking. Although there is evidence for a volume/outcome relationship – that is, the notion that providers performing higher volumes of procedures have better patient outcomes – the most pronounced effect of volume on quality outcomes may be limited to certain relatively complicated procedures. Compare, e.g., Martin Gaynor et al., *The Volume-Outcome Effect, Scale Economies, and Learning-by-Doing*, 95:2 AM. ECON. REV. 243, 245 (2005) with Ethan A. Halm et al., *Is Volume Related to Outcome in Health Care? A Systematic Review and Methodological Critique of the Literature*, 137.6 ANNALS INTERNAL MED. 511, 514 (2002).

[34] *See, e.g.*, Nicholas Bloom et al., *The Impact of Competition on Management Quality: Evidence from Public Hospitals*, 82 REV. ECON. STUDIES 457, 457 (2015).

[35] Christopher Garmon, *Hospital Competition and Charity Care*, 12 FORUM FOR HEALTH ECON. & POL'Y 1, 13 (2009) (emphasis added).

[36] In the Matter of Phoebe Putney Health System, Inc., Docket No. 9348 (Apr. 2011) (complaint) [hereinafter Phoebe Putney Health System complaint]; *see also* FTC v. Phoebe Putney Health Sys., Inc., 793 F. Supp. 2d 1356, 1358-1359 (M.D. Ga. 2011) (plaintiffs FTC and the State of Georgia).

[37] Phoebe Putney Health System complaint at 1-2.

[38] *Id.* at 3. Details of Southwest Georgia hospital competition and the transaction can be found in the Phoebe Putney Health System complaint, a copy of which is attached to this comment.

[39] FTC v. Phoebe Putney Health Sys., Inc., 793 F. Supp. 2d 1356, 1358-1359 (M.D. Ga. 2011) (plaintiffs FTC and the State of Georgia). Although subsequent litigation focused on the defendants' motion to dismiss the FTC's complaint based on an affirmative defense that the state action doctrine immunized the transaction from federal antitrust scrutiny – a defense ulimately rejected by a unanimous decision of the U.S. Supreme Court, FTC v. Phoebe Putney Health Sys. Inc., 133 S. Ct. 1003, 1011 (2013) – we note the Court's observation, *in dictum*, that the U.S. Court of Appeals had, as an initial matter, "agree[d] with the [FTC] that, on the facts alleged, the joint operation of Memorial and Palmyra would substantially lessen competition or tend to create, if not create, a monopoly." Id. at 1009 (quoting FTC v. Phoebe Putney Health Sys., Inc., 663 F.3d 1369, 1375 (11th Cir. 2011)).

[40] Statement of the Fed. Trade Comm'n, In the Matter of Phoebe Putney Health System, Inc., Docket No. 9348 (Mar. 31, 2015). A copy of the statement is attached to this letter.

[41] *Id.*

[42] In the Matter of Phoebe Putney Health System, Inc., Docket No. 9348, 3 (Mar. 31, 2015) (decision and order).

[43] "'Six-County Region' means the six-county region of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia, as described in Paragraph 51 of the Complaint." *Id.* at § I.(m).

[44] Georgia Dep't Community Health, Find a Facility, http://167.193.144.247/facsearch.asp (last visited Sept. 26, 2017). There is one small acute care hospital, Crisp Regional Hospital, in Cordele, Georgia, more than thirty miles from the proposed Lee County facility. *Id.*

[45] *Id.*

[46] *Id.*

Statement of the Federal Trade Commission[1]
In the Matter of Phoebe Putney Health System, Inc. et al.
Docket No. 9348
March 31, 2015

Our challenge to this anticompetitive hospital acquisition resulted in an important Commission victory at the Supreme Court regarding the application of state action immunity. By reaffirming that state action immunity from the antitrust laws only applies where states have clearly intended to restrain competition, the Court's decision will benefit competition and consumers throughout the economy in the future. Regrettably, however, that victory did not alleviate the significant concerns we have about the anticompetitive effects of this merger on the citizens of Albany, Georgia.

Today we finalize a consent agreement with the Respondents[2] to settle the administrative litigation challenging the Hospital Authority's acquisition of Palmyra from HCA and subsequent transfer of all management control of Palmyra to Phoebe Putney under a long-term lease arrangement (the "Transaction") that closely mirrors the consent agreement the Commission accepted for public comment in this matter in 2013. Notably, this final order, like the originally proposed version, does not require a divestiture. While it would have been the most appropriate and effective remedy to restore the lost competition in Albany and the surrounding six-county area from this merger to monopoly, Georgia's certificate of need ("CON") laws and regulations unfortunately render a divestiture in this case virtually impossible, leading us to accept this less-than-ideal remedy.

The Commission first challenged this Transaction in April 2011, alleging that the combination of Phoebe Putney with Palmyra, its only rival in Albany, would create a monopoly in the provision of inpatient general acute-care hospital services sold to commercial health plans in Albany and its surrounding six-county area, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. In addition to issuing an administrative complaint, the Commission authorized staff to file a complaint for temporary and preliminary relief in federal district court. In June 2011, the district court granted the defendants' motion to dismiss, holding that the state action doctrine immunized the Transaction from federal antitrust scrutiny.[3]

On appeal by the Commission, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal on state action grounds, but agreed that "on the facts alleged, the joint operation of [PPMH] and Palmyra would substantially lessen competition or tend to create, if not create, a monopoly."[4] Following its ruling, the Eleventh Circuit dissolved the injunction pending appeal that had prevented the parties from merging, and the parties

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[1] This statement reflects the views of Chairwoman Ramirez and Commissioners Brill and Ohlhausen. Commissioners Wright and McSweeny did not participate in this vote.
[2] Respondents include Phoebe Putney Health System, Inc. ("PPHS"), Phoebe Putney Memorial Hospital ("PPMH"), Phoebe North, Inc. ("Phoebe North") (collectively "Phoebe Putney"), HCA Inc. ("HCA"), Palmyra Park Hospital, Inc. ("Palmyra"), and the Hospital Authority of Albany-Dougherty County ("Hospital Authority").
[3] *FTC v. Phoebe Putney Health Sys. Inc.*, 793 F. Supp. 2d 1356, 1381 (M.D. Ga. 2011).
[4] *FTC v. Phoebe Putney Health Sys. Inc.*, 663 F.3d 1369, 1375 (11th Cir. 2011).

consummated the Transaction in December 2011. The Commission filed a petition for certiorari, which the Supreme Court granted in June 2012.

In defending the challenged transaction, Respondents argued that the manner in which it was structured—whereby the Hospital Authority took title to Palmyra and then turned operational control over to PPHS—rendered it immune from the federal antitrust laws under the state action doctrine. Respondents contended that since the legislature gave hospital authorities broad general corporate powers, including the power to acquire hospitals, the challenged conduct was a foreseeable result of the law.

In February 2013, a unanimous Supreme Court ruled in favor of the Commission and reversed the dismissal of the complaint, holding that the state action doctrine did not bar the Commission from taking action.[5] Notably, the Court found that Respondents' interpretation of the state action doctrine was overbroad and inconsistent with the principle that "state-action immunity is disfavored."[6] We thereafter determined to proceed with the administrative action that had been stayed pending the collateral federal court appeals.

In August 2013, although we still had reason to believe the transaction created an unlawful monopoly, the Commission accepted for public comment a proposed non-structural remedy in light of the apparent unavailability of a practical and meaningful structural remedy. In particular, we provisionally accepted the consent based on an understanding that Georgia's CON laws likely would have prevented a divestiture of hospital assets, even assuming a finding of liability following a full merits trial and appeal.

In September 2014, we withdrew our provisional acceptance of the 2013 consent agreement in response to new information received, including through public comments, suggesting that the CON laws might not bar a structural remedy. Additionally, in March 2014, North Albany Medical Center, LLC ("North Albany"), a then newly formed health care entity, expressed an interest in acquiring Palmyra and operating it as a competing general acute-care hospital, believing it could do so consistent with Georgia's CON laws. Seeking clarification on whether those laws would impede such an acquisition, North Albany filed a "request for determination" with the Georgia Department of Community Health ("DCH") on the issue. DCH staff issued an initial determination in June 2014 finding, among other things, that "returning Phoebe North to its status as a separately licensed . . . hospital for divestiture would not require a prior CON review and approval."[7] The initial DCH staff determination was on appeal when we withdrew acceptance of the consent agreement. We believed that allowing the administrative

[5] *FTC v. Phoebe Putney Health Sys. Inc.*, 133 S. Ct. 1003, 1011 (2013).
[6] *Id.* at 1010 (citing *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992)). The Supreme Court reiterated this principle in its recent *North Carolina Dental* decision, in which the Court affirmed the Commission's ruling that state regulatory boards comprised of individuals participating in the market they are regulating must demonstrate active supervision by the state to enjoy state action immunity. *See N.C. State Bd. of Dental Exam'rs v. FTC*, No. 13-534, slip op. at 7 (U.S. Feb. 25, 2015) ("[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'") (citations omitted).
[7] *See* Letter from Matthew Jarrad, Deputy Division Chief/Health Planning Dir., Healthcare Facility Regulation Div., Ga. Dep't of Cmty. Health, to G. Edward Alexander, President and CEO, North Albany Medical Ctr. 4 (June 3, 2014).

and DCH proceedings to continue in parallel would avoid further delay in restoring competition to Albany if the Commission found liability on the merits and DCH determined that Georgia CON laws would not bar divestiture.

Unfortunately, developments occurring since we returned this matter to administrative litigation now appear to preclude structural relief. In October 2014, following review of the June DCH staff determination, a DCH Hearing Officer issued a written finding that the CON laws would apply to the proposed sale of Phoebe North. Shortly after this ruling, DCH Commissioner Clyde L. Reese III, who would have decided any appeal from the Hearing Officer's ruling, stated publicly that he was "in full support of and in agreement with the Hearing Officer decision."[8] Neither North Albany nor DCH staff chose to appeal the decision, rendering the Hearing Officer's ruling final.

While we continue to have reason to believe that Phoebe Putney's acquisition of Palmyra violated Section 7 of the Clayton Act and Section 5 of the FTC Act, any relief attempting to restore the competition lost as a result of the merger is precluded by Georgia's strict CON requirements. Specifically, the fact that the Albany region is deemed "over-bedded" makes it unlikely that any divestiture buyer could obtain the necessary CON approval to operate an independent hospital. Indeed, the Hearing Officer's ruling effectively ensures any prospective buyer intending to operate a competing hospital would have to endure a lengthy legal battle with, at best, an uncertain outcome. Thus, divestiture—the Commission's preferred remedy to restore competition—is simply unavailable.

In light of these developments, we believe it is unlikely that continuing with the administrative proceeding, even after a finding of liability, would yield a substantially different outcome than is available through this consent. For this reason, we now make final the consent agreement settling the administrative litigation in this matter.

Under the final consent agreement, Phoebe Putney and the Hospital Authority will be required to give the FTC prior notice of certain future transactions and will be barred from opposing certain applications by potential competitors seeking state certification to enter local health care markets. The order also includes a stipulation by Phoebe Putney and the Hospital Authority that the Transaction was anticompetitive.

The outcome in this case underscores the importance of obtaining preliminary injunctive relief prior to the consummation of a transaction. By maintaining the status quo, injunctive relief prevents the possibility of competitive harm—sometimes, as in this case, irremediable harm—from occurring during the Commission's administrative proceedings and any appeals. Moreover, this case also illustrates how state CON laws, despite their original and laudable goal of reducing health care facility costs, often act as a barrier to entry to the detriment of competition and healthcare consumers.[9]

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[8] *See* Complaint Counsel's Memorandum Relating to Respondent's Unopposed Motion for Temporary Stay, Ex. 1, *Georgia Health Commissioner Agrees Certificate Needed For Phoebe Putney Breakup*, MLEX MARKET INSIGHT, Oct. 8, 2014, *In re Phoebe Putney Health System, Inc.*, Docket No. 9348.

[9] The Commission has long advocated that states consider the costs that CON laws may impose on consumers. *See, e.g.*, Joint Statement of the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission

As noted above, notwithstanding the unsatisfactory remedial outcome in this case, the Commission nevertheless achieved a significant victory in the Supreme Court with respect to the state action doctrine. By ensuring that state action immunity remains true to its doctrinal foundation of protecting the *deliberate* policy choices of sovereign states and is applied in a manner that promotes competition and enhances consumer welfare, this important win will unquestionably benefit competition and consumers going forward.

Before the Illinois Task Force on Health Planning Reform 1-2 (Sept. 15, 2008), *available at* https://www.ftc.gov/policy/policy-actions/advocacy-filings/2008/09/ftc-and-department-justice-written-testimony-illinois ("The Agencies' experience and expertise has taught us that Certificate-of-Need laws impede the efficient performance of health care markets. . . . Together, we support the repeal of such laws, as well as steps that reduce their scope."); Fed. Trade Comm'n & U.S. Dep't of Justice, IMPROVING HEALTH CARE: A DOSE OF COMPETITION Ch. 8, p. 6 (July 2004), *available at* https://www.ftc.gov/reports/improving-health-care-dose-competition-report-federal-trade-commission-department-justice ("[T]he Agencies urge states with CON programs to reconsider whether they are best serving their citizens' health care needs by allowing those programs to continue.").

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of Phoebe Putney Health System, Inc. a corporation, and Phoebe Putney Memorial Hospital, Inc. a corporation, and Phoebe North, Inc. a corporation, and HCA Inc. a corporation, and Palmyra Park Hospital, Inc. a corporation, and Hospital Authority of Albany-Dougherty County.	)	Docket No. 9348 REDACTED PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondents Phoebe Putney Health System, Inc. ("PPHS"), Phoebe Putney Memorial Hospital, Inc. ("PPMH"), Phoebe North, Inc. ("PNI") (collectively, "Phoebe Putney"); Respondents HCA Inc. ("HCA") and Palmyra Park Hospital, Inc. ("Palmyra"); and Respondent Hospital Authority of Albany-Dougherty County ("the Authority"), having entered into an agreement pursuant to which control of Palmyra shall be transferred to Phoebe Putney (the "Transaction"), in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), and Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. The Transaction creates a virtual monopoly for inpatient general acute care services sold to commercial health plans and their customers in Albany, Georgia and its surrounding area. The Transaction will eliminate the robust competitive rivalry between Phoebe Putney and Palmyra – the only two hospitals in Albany and in Dougherty County – that has benefitted consumers for decades. The result will be significant increases in healthcare costs for local residents, many of whom are already struggling to keep up with rising medical expenses, and the stifling of beneficial quality improvements.

2. Phoebe Putney and Palmyra knew that creating a virtual monopoly would not pass muster with the antitrust authorities; indeed, Palmyra conditioned the deal on [redacted] So Phoebe Putney – without even informing the Authority that it was doing so – structured the Transaction in hopes of using the state action doctrine to shield the Transaction from potential antitrust challenges. The Transaction positions the Authority as a strawman to transfer control of Palmyra to Phoebe Putney in a three-step process: *first*, the Authority will purchase Palmyra's assets from HCA using PPHS's money; *second*, the Authority will immediately give control of Palmyra to Phoebe Putney under a management agreement; and *third*, Phoebe Putney will enter into a lease giving it control of the Palmyra assets for 40 years. In a nutshell, the Authority, using Phoebe Putney's money, would buy Palmyra, and then upon closing, immediately turn it over to Phoebe Putney.

3. Thus, the Authority is the acquirer of Palmyra on paper only. By using the Authority as a strawman, Phoebe Putney sought to shield this overtly anticompetitive Transaction from antitrust scrutiny. The Authority played no meaningful role in the Transaction. Phoebe Putney initiated and negotiated the deal. The Authority undertook no substantive analysis of the Transaction or its effect on the community and played no independent role in negotiating it. The parties included the Authority at the eleventh hour solely in an effort to avoid antitrust enforcement by having the Authority rubber-stamp this sale from one private party to another. Indeed, the entire Transaction is premised on the immediate handover of Palmyra's assets to Phoebe Putney; the Authority has considered no other options.

4. So certain was Phoebe Putney that the Authority would rubber-stamp the Transaction, that it [redacted] with Palmyra. Before the Transaction was even presented to the Authority, Phoebe Putney agreed with Palmyra that if the Authority failed to [redacted] Phoebe Putney would [redacted].

5. Phoebe Putney's confidence that the Authority would rubber-stamp the deal comes from years of operating without active supervision by the Authority under its long-term Lease and Management Agreement of the hospital's assets to Phoebe Putney's subsidiary,

PPMH ("the Lease"). As the [redacted] explained to a new Authority member and to Phoebe Putney's CEO, [redacted]." The [redacted] has similarly expressed that he did not consider hospital oversight a function of the Authority.

6. Phoebe Putney, a private hospital system determined to increase its already dominant market share, acted alone when it sought out the Transaction. And Phoebe Putney alone will benefit from it at the expense of area businesses and residents. There is no *bona fide* state action whatsoever associated with the Transaction. Even under a new prospective lease arrangement, the [redacted] expects it to be business as usual, as the Authority does not plan to engage in any meaningful additional oversight of the *de facto* monopoly, falling far short of the active state supervision required to satisfy the state action doctrine.

7. Following the Transaction, Phoebe Putney will control 100% of the licensed general acute care hospital beds in Dougherty County. Even in an expansive geographic market encompassing the six counties surrounding Albany, Phoebe Putney's pre-Transaction market share based on commercial patient discharges nears 75%. With the Transaction, this will jump to approximately 86%. The hospital with the next-largest share (of less than 4%) is located 40 miles from Albany. The Transaction dramatically increases concentration in an already highly concentrated market, giving rise to a presumption of unlawfulness by a wide margin under the relevant case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines").

8. Phoebe Putney and Palmyra are each other's closest competitors, and they are regarded as closest substitutes for one another by both health plans and their members. The two hospitals have battled fiercely for inclusion in health-plan networks and have gone to great lengths to increase their appeal to health-plan members. While Palmyra has [redacted] relative to Phoebe Putney, the latter has for years offered its deepest commercial payor discounts to health plans that exclude Palmyra from their networks.

9. The Transaction will end that beneficial competition. The CEO of Phoebe Putney stated publicly that the Transaction affords the opportunity to "get the rivalry behind us." A requirement of the Transaction is that Palmyra drop its pending monopolization lawsuit against Phoebe Putney.

10. Other southwest Georgia hospitals offer scant competition to Phoebe Putney and Palmyra. The nearest independent hospitals, located over 30 miles from Albany, are small and serve only their own local communities. Given health-plan members' unwillingness to travel significant distances for inpatient general acute care services, these hospitals are simply too distant to serve as practical substitutes for residents of the Albany area, even in the event of a small but significant price increase at the Albany hospitals. Health plans and local employers have testified that their networks must

include PPMH or Palmyra, or both, in order to be commercially viable for Albany-area employers and other groups.

11. The Transaction greatly enhances Phoebe Putney's bargaining position in negotiations with health plans, giving it the unfettered ability to raise reimbursement rates without fear of losing customers. Without Palmyra or any other independent competitive alternative to PPMH, health plans will be forced either to accept the higher rates or to exit the local marketplace. Higher hospital rates are ultimately borne by the health plans' customers – local employers that pay their employees' healthcare claims directly or pay premiums to health plans on their employees' behalf – and by the individual health-plan members themselves. Those increased costs impact local employers' ability to compete, expand, and remain vibrant.

12. The vigorous price and non-price competition eliminated by the Transaction will not be replaced by other hospitals in the next several years, if ever. Significant barriers to entry and expansion, including Certificate of Need ("CON") and funding requirements, prevent other hospitals from extending their reach into the Albany area. Even Palmyra has struggled mightily to expand into new service lines, such as obstetrics, due to stringent CON requirements and fierce opposition from Phoebe Putney. Phoebe Putney has stated it would take many years to construct a new facility comparable to Palmyra. Any purported efficiencies associated with the Transaction are insufficient to offset the great anticompetitive harm almost certain to result from the Transaction.

II.

BACKGROUND

A.

Respondents

13. All Phoebe Putney Respondents are not-for-profit corporations under Internal Revenue Code § 501(c)(3) and the Georgia Nonprofit Corporate Code, with their principal places of business at 417 Third Avenue, Albany, Georgia 31701. Respondent PPMH, directly or indirectly, is a Georgia corporation wholly-owned or controlled by PPHS, a Georgia corporation. PPHS is responsible for the operation of all Phoebe Putney hospital facilities in Albany, Georgia as well as the hospital in Sylvester, Georgia (in the Albany Metropolitan Area), where Phoebe Worth Medical Center, Inc. is located. Respondent Phoebe North, Inc. is an entity that was created by PPHS in connection with the Transaction, to manage and operate Palmyra, under the control of PPHS and PPMH.

14. PPMH is a 443-bed hospital located at 417 Third Avenue, Albany, Georgia 31701. Opened in 1911 at its current site, the hospital offers a full range of general acute care hospital services, as well as emergency care services, tertiary care services, and

outpatient services. PPMH serves its local community, but also draws tertiary-service referrals from a broader region.

15. Total annual patient revenues for Phoebe Putney for all services, at all facilities, are over $1.16 billion. Total discharges for all services are over 19,000. Phoebe Putney's annual net income or surplus is over $19 million. General acute care hospital services account for the majority of its services and revenues.

16. Phoebe Putney's reach extends beyond Dougherty County, operating, through its wholly-owned subsidiary Phoebe Worth Medical Center, Inc., a 25-bed critical access hospital located at 807 S. Isabella Street, Sylvester, Georgia 31791, and Phoebe Sumter Medical Center, a 76-bed general acute care hospital located in Americus, Georgia.

17. Respondent HCA is a for-profit health system that owns or operates 164 hospitals in 20 states and Great Britain. Founded in 1968, HCA is one of the nation's largest healthcare service providers with almost 40,000 licensed beds. Total annual revenues for HCA for all services and facilities are over $30.68 billion. HCA is incorporated in the State of Delaware. Its offices are located at One Park Plaza, Nashville, Tennessee 37203.

18. HCA owns and operates Respondent Palmyra Park Hospital, Inc., doing business as Palmyra Medical Center, a 248-bed acute care hospital incorporated in the State of Georgia, and located at 2000 Palmyra Road, Albany Georgia 31701. Palmyra was built in 1971 in response to requests by local physicians and community leaders to broaden the healthcare options available to residents of Dougherty County and the surrounding counties. Palmyra provides general acute care services, including but not limited to services in non-invasive cardiology, gastroenterology, general surgery, gynecology, oncology, pulmonary care, and urology.

19. Respondent Authority is organized and exists pursuant to the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 *et seq*., a statute which governs 159 counties over the entire state, where at least 92 hospital authorities currently exist. The Authority maintains its principal place of business at 417 Third Avenue, Albany, Georgia 31701, the same address as PPMH; it has no budget, no staff, and no employees. Phoebe Putney pays all the Authority's expenses. The Authority's nine unpaid/volunteer members are appointed to five-year terms by the Dougherty County Commission. The Authority holds title to the hospital's assets, but leased them in 1990 to PPMH for $1.00 per annum under the Lease, which has been extended several times and will expire in 2042. The Lease establishes certain contractual rights, duties, and responsibilities PPMH and the Authority owe with respect to one another. PPHS itself is not a party to the Lease and does not report to the Authority.

B.

Jurisdiction

20. Respondents, and each of their relevant operating subsidiaries and parent entities are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

21. The Transaction, including the Authority's acquisition of Palmyra and lease of Palmyra's assets to Phoebe Putney, constitutes an acquisition subject to Section 7 of the Clayton Act.

C.

Phoebe Putney's Private Interests

22. Under the terms of the Lease, the relationship between the Authority and PPMH is defined as and limited to that of landlord and tenant. Section 10.18 reads in pertinent part that "no provisions in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Transferor and Transferor [sic] other than the relationship of landlord and tenant."

23. The Lease (and the attachments incorporated into the Lease as stipulated in Sections 4.02(h) and 4.15) provides that PPHS, through its Board of Directors, controls the assets and operations of PPMH. Under the terms of the December 3, 1990, *Contract Between Dougherty County, Georgia and the Authority of Albany-Dougherty County*, an attachment to the Lease, the Authority and Dougherty County stipulate in paragraph no. 4, on page five, that PPMH "has the sole discretion to establish its rate structure."

24. Since the Lease took effect in 1990, the Authority has not and does not countermand, approve, modify, revise, or in other respects actively supervise Phoebe Putney's actions regarding competitively significant matters. It is Phoebe Putney's executives, not the Authority, who control Phoebe Putney's revenues, expenditures, salaries, prices, contract negotiations with health insurance companies, available services, and other matters of competitive significance. At no time, from the date the Authority and PPMH entered into the Lease, has the Authority exercised management, control, or active supervision over the affairs of PPMH. Indeed, during all those years, the Authority never asked once for lower prices at PPMH.

25. As if to illustrate its deference to Phoebe Putney, the Authority waived its right to acquire Palmyra or any other hospital in Albany as a term of the Lease. Section 4.21 of the Lease, at page 26, stipulates that "[d]uring the term of this Agreement, Transferor [Authority] shall not own, manage, operate or control or be connected in any manner with the ownership, management, operation or control of any hospital or other health care

facility other than the [Phoebe Putney Memorial] Hospital in Albany, Georgia . . . ." Once the Authority rubber-stamped the Transaction and the Management Agreement that would put Phoebe Putney in control of its only Dougherty County competitor, however, PPMH agreed to waive this condition.

D.

The Transaction

26. In the Spring and Summer of 2010, two important events occurred: (1) in April, the Eleventh Circuit reinstated Palmyra's antitrust suit accusing Phoebe Putney of using its monopoly power in obstetrics, neonatal and cardiovascular care to foreclose competition; and (2) in July, Mr. Joel Wernick, PPHS's President and Chief Executive Officer, authorized Mr. Robert J. Baudino, a consultant and attorney engaged by PPHS, to begin discussions with HCA regarding the possible acquisition of Palmyra by Phoebe Putney.

27. Mr. Baudino played a number of roles in the Transaction. Through his Baudino Law Group, he provides legal counsel to PPHS with regard to the deal and other matters. He is also a member of the Sovereign Group which was engaged by PPHS to represent it in the Transaction in a non-legal capacity. The Sovereign Group is charging PPHS a fee of [redacted] percent of the $[redacted] million transaction value, plus expenses, the payment of which is contingent on closing the Transaction. More recently, Mr. Baudino has also claimed to represent the Authority as "special counsel" in the Transaction, although the Authority was unaware of his representation of PPHS or his nearly $[redacted] contingency fee.

28. Mr. Baudino and his Sovereign Group began negotiations on behalf of PPHS to acquire Palmyra in August 2010. At this point, Phoebe Putney had not notified the Authority that it was considering buying its rival. HCA, Palmyra's owner, did not intend to sell the hospital and informed Mr. Baudino that "[redacted]" Palmyra's business was improving, and HCA executives expected its financial performance to continue improving; they also expected to be successful in the battle with Phoebe Putney in both the antitrust lawsuit and in obtaining Palmyra's obstetrics CON.

29. HCA was open to hearing an offer for Palmyra, but it expected "[redacted]," "[redacted]," and "[redacted]." PPHS set out to meet those requirements and to acquire Palmyra.

30. The [redacted] was the easiest condition. Although it is a non-profit, PPHS operates the very lucrative PPMH, leased from the Authority for $1 per year. Phoebe Putney has cash reserves of over a quarter of a billion dollars.

31. As the negotiations progressed, HCA made clear that an [redacted] offer would have to meet or exceed [redacted] times Palmyra's annual net revenue. HCA's expectations were shared with PPHS's bankers who analyzed similar transactions and found that HCA's demand far exceeded [redacted]

[redacted] CA's demand presented an obvious obstacle: it would be difficult to find an independent investment bank to issue a fairness opinion to PPHS opining that the price to be paid for Palmyra is fair, as is often done in significant transactions. But Mr. Baudino had a ready solution: structure the deal so that the Authority would acquire Palmyra, likely eliminating the need for a fairness opinion. Mr. Baudino was right. When Phoebe Putney finally presented the Transaction and the sale price to the Authority, the Authority neither sought a fairness opinion nor asked a single question about the price, despite never before having reviewed a transaction of this magnitude.

32. Mr. Baudino believed he had an easy answer to the antitrust risk as well. In a purportedly "[redacted]" method, Phoebe Putney would not buy Palmyra directly. Rather, it would structure the Transaction so that the Authority would acquire Palmyra, with PPHS guaranteeing the purchase price and the Authority's performance under the purchase agreement. Once the Authority obtained title, it would simply lease Palmyra to PPHS for $1.00 per year for 40 years on terms similar to the PPMH lease. Subsequently, in an effort to head-off an antitrust enforcement action by the Commission and the State of Georgia, the Authority approved a term sheet prepared by Mr. Baudino for implementing the new lease with ostensibly more oversight than had been exercised in the past two decades under the original 1990 Lease. But [redacted] admitted that the term sheet is a wish list, to which Phoebe Putney has not agreed, and that the Authority's role after the Transaction will not differ meaningfully from its current one – *i.e.*, it will continue to let Phoebe Putney do "whatever it takes to make the wheels turn."

33. HCA's demand that there not be any [redacted] until the Transaction was signed also did not pose a problem. PPHS does not consider itself subject to Georgia's Open Meetings Act, and it strictly limited the knowledge of the Transaction to people with a "need to know." Although PPHS was negotiating an agreement that included the Authority as a key party, PPHS did not consider the Authority to be among those with a "need to know."

34. Unlike PPHS, the Authority must comply with Georgia's Open Meetings Act. But PPHS sidestepped that problem by not presenting the Transaction to the Authority until all of its terms were definitively determined and the vote was a "[redacted]" The Authority could then rubber-stamp the completed deal at an open meeting, thereby addressing all of HCA's antitrust and confidentiality concerns.

35. On October 7, 2010, PPHS's board approved management's recommendation that it make a formal offer to HCA for Palmyra.

36. PPHS's negotiations for Palmyra were well underway before PPHS even mentioned them to any of the Authority's nine members. On October 21, Mr. Wernick and Tommy Chambless, PPHS's General Counsel, held a 30-minute informational session with two of

the Authority's members, Ralph Rosenberg and Charles Lingle. The Authority had neither delegated responsibility for the Transaction to them nor designated them to speak on its behalf. Mr. Wernick informed them that PPHS intended to acquire Palmyra, but gave them no documents explaining the acquisition or justifying the substantial premium PPHS was contemplating. Rosenberg and Lingle signed confidentiality agreements, which they understood prevented them from discussing the Transaction with other Authority members.

37. Two weeks later, on November 4, 2010, the Authority had its regularly scheduled quarterly meeting. There was no discussion of the Transaction at that meeting.

38. On November 10, 2010, Mr. Baudino, acting as "counsel to Phoebe Putney Health System Inc.," explained to HCA in a six-page letter how PPHS would structure the Transaction to eliminate antitrust risks. He believed that, under the state action doctrine, having the Authority make the acquisition would insulate the deal from notice to, or antitrust law enforcement by, the Commission and the United States Department of Justice. Mr. Baudino went on to explain that "the Authority would acquire Palmyra and, after the acquisition, lease Palmyra to a non-profit corporation controlled by PPHS. That lease would be on substantially the same terms as the Authority's existing lease of Phoebe Putney Memorial Hospital Inc."

39. On November 16, 2010, PPHS made a formal offer to HCA for Palmyra for [redacted] its net patient revenue for the prior 12 months. The Authority did not review or approve the offer.

40. On December 2, the PPHS Board approved the final terms of the deal between PPHS and HCA. PPHS and HCA concluded their negotiations shortly thereafter. The Transaction had still not been presented to, or vetted by, the Authority. PPHS agreed to guarantee a $195 million payment, which according to reports generated by PPHS's advisors, was [redacted] The Authority played no role in negotiating that price, and the [redacted] prepared by PPHS's advisors was not shared with the Authority.

41. PPHS also agreed to pay a $[redacted] million break-up fee, representing nearly [redacted]% of the purchase price. In addition, under Section 10.1(a) of the Respondents' *Asset Purchase Agreement,* PPHS likewise agreed to pay HCA a $[redacted] million "rescission fee" if, after closing, there is a final court order rescinding the transaction. The Authority had no role in negotiating the break-up or rescission fees.

42. With the negotiations between PPHS and HCA concluded, it was time to present the Transaction to the Authority. But first, on December 20, 2010, the eve of the meeting at which it would be presented to the Authority, PPHS [redacted] would approve the Transaction without any changes. [redacted]

[redacted] If, once presented, the Authority failed to [redacted] PPHS would pay [redacted] within two business days' time. During the preceding week, Mr. Wernick had met in small groups with other Authority members without the knowledge of the Authority Chairman.

43. On December 21, 2010, at a special meeting, the Transaction was presented to the Authority for the first time. In a 94-minute meeting, PPHS's CEO and its advisor, Mr. Baudino (who appeared as special counsel to the Authority without addressing his work for Phoebe Putney or the Sovereign Group's financial interest in the Transaction), presented the terms of the Transaction and the related transactions using a PowerPoint presentation recycled from PPHS's December 2 Board meeting. [redacted] the Authority did just what PPHS expected it would do. The members did not seek to change a single term of the Transaction. Indeed, they asked no questions and sought no extra counsel or independent analysis. Having no reason to acquire Palmyra independent of PPHS's desire to do so, the Authority rubber-stamped the Asset Purchase Agreement *exactly* as PPHS had negotiated it.

44. At that meeting, the Authority also approved a 17-page Management Agreement that will give Phoebe Putney control over Palmyra's operations immediately upon closing the Transaction.

45. The Authority understood that the Transaction negotiated and entered into by PPHS was an integrated transaction which included the expected lease of Palmyra to Phoebe Putney.

46. On April 4, 2011, the Authority approved a lease term sheet prepared by Mr. Baudino that makes abundantly clear that the Authority's plan remains to lease Palmyra's and PPMH's assets to Phoebe Putney under a single lease. The term sheet is a wish list that has not even been presented to Phoebe Putney, let alone agreed upon. But even assuming Phoebe Putney were to agree to every single proposed term, [redacted] does not expect the Authority to make significant changes from its current activities, such as hiring staff to oversee Phoebe Putney's *de facto* monopoly or involving itself in Phoebe Putney's pricing or arrangements with commercial health-plan providers. In other words, Phoebe Putney will have free rein, just as it has for the last 20 years, only now it will operate as a virtual monopolist.

III.

THE RELEVANT SERVICE MARKET

47. The Transaction threatens substantial harm to competition in the relevant market for inpatient general acute-care hospital services sold to commercial health plans.

48. Inpatient general acute care hospital services encompasses a broad cluster of basic medical and surgical diagnostic and treatment services that include an overnight hospital stay. It is appropriate to evaluate the Transaction's likely effects across this cluster of services, rather than analyzing effects as to each service independently, because the group of services in the market is offered by Phoebe Putney and Palmyra under very similar competitive conditions. There are no practical alternatives to the cluster of inpatient general acute care hospital services.

49. The inpatient general acute care services market excludes outpatient services because health plans and patients cannot substitute them for inpatient care in response to a price increase. Similarly, the general acute care hospital services market does not include highly specialized tertiary or quaternary hospital services, such as those involving major surgeries and organ transplants, because they too are not practical substitutes for general acute care hospital services.

50. Phoebe Putney and Palmyra negotiate reimbursement-rate contracts with commercial health plans. These contracts set the reimbursement rates that the health plans (and their self-insured customers) will pay the hospital for the services provided to health-plan members.

IV.

THE RELEVANT GEOGRAPHIC MARKET

51. The relevant geographic market in which to analyze the effects of the Transaction is *no broader than* the six-county region consisting of Dougherty, Terrell, Lee, Worth, Baker, and Mitchell Counties in Georgia.

52. Health-plan members strongly prefer to obtain inpatient hospital services close to their homes. Members' physicians typically have admitting privileges at their local hospitals, but not more distant facilities. Close proximity provides convenience for patients and also their visiting family members. Members are generally unwilling to travel outside of their communities for inpatient general acute care services, unless a particular needed service is unavailable locally, or the quality offered by local facilities is perceived as insufficient.

53. The only hospitals available to health plans to serve residents of the Albany area are located in Dougherty County, in the City of Albany. Health plans *must have* either Phoebe Putney or Palmyra, or both, in their networks in order to offer commercially viable insurance products to residents of Albany and the six-county area.

54. The nearest independently owned hospitals located outside of Albany are Mitchell County Hospital (31 miles away), Crisp Regional Hospital (39 miles away), and Calhoun Memorial Hospital (39 miles away). Health plans and their members do not view these

hospitals, given their distance and limited service offerings, as practical substitutes for Phoebe Putney or Palmyra.

55. Health plans could not steer their members to hospitals outside the six-county area in response to a small but significant rate increase at the hospitals within the area. It would therefore be profitable for a hypothetical monopolist controlling all hospitals in the relevant geographic market to increase commercial reimbursement rates by a significant amount.

56. As reflected by their ordinary-course documents and their actions, Phoebe Putney and Palmyra focus their competitive efforts and attention on one another, to the exclusion of any hospitals located outside the six-county area. Phoebe Putney's longstanding contracting strategy was to require health plans to exclude Palmyra, *but no other hospitals*, from their provider networks.

57. Hospitals outside the six-county area do not regard themselves as, and are not, meaningful competitors of Phoebe Putney or Palmyra for inpatient general acute care services as defined herein.

V.

MARKET STRUCTURE AND PRESUMPTIVE ILLEGALITY

58. The Transaction is for all practical purposes a merger to monopoly, by any measure.

59. In addition to Phoebe Putney and Palmyra, there is only one other independently owned hospital located within the expansive six-county region set forth above. That is 25-bed Mitchell County Hospital, a very small limited care facility about 31 miles away. In addition, there are two hospitals located *outside* the six-county area – Tift Regional Medical Center and John D. Archbold Medical Center – which account for a small but nontrivial share of discharges for health-plan members residing within the six-county area. The two other hospitals mentioned above, Crisp Regional and Calhoun Memorial, are also located outside the six-county area and account for an insignificant share of the relevant market.

60. Under relevant case law and the Merger Guidelines, the Transaction is presumptively unlawful. PPHS's post-Transaction market share, based on discharges for commercial patients residing in the six-county area, is approximately 86%. This extraordinarily high market share easily exceeds levels that the United States Supreme Court has found presumptively unlawful.

61. The Merger Guidelines measure market concentration using the Herfindahl-Hirschman Index ("HHI"). A merger or acquisition is presumptively likely to create or enhance market power (and presumed illegal) when the post-merger HHI exceeds 2,500 points and the transaction increases the HHI by more than 200 points.

62. The market concentration levels here exceed these thresholds by a wide margin. The post-Transaction HHI will increase by 1,675 points to 7,453, as shown in the following table:

Hospital	Discharges	Pre-Transaction Share of Discharges	Post-Transaction Share of Discharges
PPHS	6,662	74.9%	86.1%
Palmyra	1,000	11.2%	
Tift Regional Medical Center	351	3.9%	3.9%
John D. Archbold Memorial Hospital	218	2.5%	2.5%
Others (each 1% or less)	659	7.4%	7.4%
Total	8,890		
		Pre-Transaction HHI:	5,778
		Delta:	1,675
		Post-Transaction HHI:	7,453

VI.

ANTICOMPETITIVE EFFECTS

A.

The Transaction Eliminates a Unique Pricing Constraint Upon Phoebe Putney

63. By eliminating vigorous competition between Phoebe Putney and Palmyra, the Transaction enhances Phoebe Putney's ability and incentive to increase reimbursement rates for commercial health plans and their membership.

64. In its actions, documents, testimony, and public statements, Phoebe Putney has acknowledged the intense competition between it and Palmyra. For example, Phoebe Putney had a longstanding contracting strategy in which it offered substantially more attractive reimbursement rates to commercial health plans, including Blue Cross Blue Shield of Georgia, that were willing to enter into an exclusive in-network relationship with Phoebe Putney *but not Palmyra*. In essence, Phoebe Putney recognized that its

financial success depended on keeping health-plan members away from Palmyra, its only true competitor.

65. Cognizant of Palmyra's competitive threat, Phoebe Putney has repeatedly challenged Palmyra's efforts to obtain a CON for obstetrics. Palmyra was initially granted a CON to build an obstetrics department, after which Phoebe Putney appealed the decision twice, and lost. Phoebe Putney then sued in state court to block Palmyra from going forward with its plans and was successful. Palmyra's appeal of that decision is currently pending. Palmyra is also prosecuting an antitrust lawsuit against Phoebe Putney, alleging monopolization and illegal tying.

66. Palmyra has demonstrated the ability to capture market share from Phoebe Putney. [redacted] testified that Palmyra's market share has increased during the last two years, while Phoebe Putney's share has declined by an equal amount. And Mr. Wernick's December 21, 2010 presentation to the Authority states that one of the strategic consequences to Phoebe Putney were it not to buy Palmyra is "[redacted]."

67. In a fact sheet prepared by Phoebe Putney, the Authority stated on December 21st:

[redacted]

68. The overt competitive rivalry between Phoebe Putney and Palmyra has yielded price benefits to health plans and their members. While Phoebe Putney has [redacted] Palmyra's competitive strategy in the marketplace has been to [redacted] versus Phoebe Putney. As the two hospitals will operate as a single entity under one lease, the Transaction eliminates incentives for either hospital to discount its rates in an effort to gain business from health plans and their members.

69. Following the Transaction, the combined Phoebe Putney/Palmyra will become an absolute "must-have" hospital for health plans, which will have no available practical alternative hospitals to offer their members. This significant change in the negotiating dynamic will enhance Phoebe Putney's ability and incentive to obtain rate increases for its own services, as well as for Palmyra's services. Health plans anticipate that Palmyra's rates will increase significantly, and that Phoebe Putney's rates will rise incrementally as well, due to the elimination of its only significant competitor.

70. Rate increases resulting from the Transaction ultimately will be shouldered by local employers and their employees. A significant percentage of the commercial health-plan

membership in the Albany area is self-insured. Self-insured employers rely on health plans to negotiate rates and provide administrative support, while directly paying the full cost of their employees' healthcare claims. As a result, self-insured employers and employees immediately and directly bear the full burden of higher rates, including higher premiums, co-pays, and out-of-pocket costs. Fully-insured employers also are inevitably harmed by higher rates, because health plans pass on at least a portion of hospital rate increases to these customers through premium increases and administrative fees. To avoid having to pay the higher prices, some Albany-area employers may opt no longer to provide healthcare coverage for their employees, and some Albany area residents may be forced to forego or delay healthcare services because of the higher prices.

71. Non-profit hospitals such as Phoebe Putney are no less likely than their for-profit counterparts to negotiate aggressively with health plans over reimbursement rates and to exercise market power gained through acquisition of a competitor.

C.

The Loss of Quality Competition

72. The Transaction will reduce the quality and breadth of services available in the Albany area.

73. Absent the Transaction, Phoebe Putney and Palmyra would continue to be close rivals with differentiated competitive offerings in the market for general acute care hospital services. Health plans perceive little quality difference between the two hospitals currently.

74. Competition between Phoebe Putney and Palmyra has spurred the two hospitals to offer additional services; it also has fostered other non-price benefits for residents of the Albany area. For example, in response to Palmyra advertising its real-time emergency room wait times on its website and electronic billboards, Phoebe Putney executives sought to improve their own services. After Palmyra was granted a CON for an obstetrics department, Phoebe Putney developed plans to increase the availability of private rooms to its obstetrics patients. If the Transaction moves forward, these benefits of competition will be lost.

VII.

ENTRY BARRIERS

75. Entry by new hospitals will not deter or counteract the Transaction's likely harm to competition in the relevant service market. There is little chance that other firms would be able to enter to counter Phoebe Putney's anticompetitive practices.

76. The regulatory environment in which hospitals are permitted to operate prevents other institutions from entering. Under Georgia law, GA. Code Ann. §§ 31-6-42 (a)(3), only specially licensed facilities are permitted to offer general acute care hospital services, and before they may do so, the State must issue a CON before a new facility may be built.

77. Even if a CON were obtained, the construction of a new general acute care hospital comparable to Palmyra would cost millions of dollars and take well over two years – indeed, [redacted] years according to Phoebe Putney's counsel – from initial planning to opening doors to patients.

78. The construction of Palmyra in 1971 was the last example of new hospital entry in the Albany area. No other hospitals in southwest Georgia – the most likely candidates for new entry or expansion – have stated they will enter, or even are considering entering, the relevant geographic market.

VIII.

ANTICIPATED AFFIRMATIVE DEFENSES

A.

State Action

79. The Transaction was motivated and planned exclusively by Phoebe Putney, which acts in its independent, private, and pecuniary interests. Rather than acting in furtherance of the public interest, or even evaluating those interests, the Authority served only as a strawman to permit Phoebe Putney to attempt to shield this overtly anticompetitive Transaction from antitrust scrutiny.

80. The Authority engaged in no independent analysis to determine whether the Transaction would be in the public's interest. Having no reasons for acquiring Palmyra other than those advanced by Phoebe Putney, it authorized a $195 million purchase of Palmyra – using Phoebe Putney's money – without even considering: (i) the adverse effect this virtual merger to monopoly would have on healthcare pricing in the community; (ii) the valuation of Palmyra; (iii) alternatives to leasing Palmyra's to Phoebe Putney; or (iv) who specifically from Phoebe Putney would run Palmyra immediately after the Transaction.

81. Just as it played no supervisory role in the Transaction, since at least 1990 when the Lease became effective, the Authority has not actively supervised Phoebe Putney in any sense, including with respect to strategic planning, pricing, and other competitively sensitive affairs. Rather, the Authority's oversight is limited to conducting quarterly breakfast meetings (the minimum required by statute) lasting approximately one hour. The [redacted] testified that he cannot remember an instance in which a vote was less than unanimous, and he had never seen a price list for the services provided by

the hospital, despite serving on the Authority for over five years. The [redacted] believes pricing is a function of the hospital board, not the Authority. Consistent with that belief, the Authority made no effort to challenge, or even evaluate, PPMH's most recent price increases. The [redacted] testified that he was not aware of PPMH's price changes in the last several years or how much PPMH's prices have increased during his eight-plus years on the Authority. And, the Authority has no authority to oversee PPHS.

82. By contract, beginning immediately after the Transaction, Phoebe Putney will assume responsibility for setting prices for the services furnished at Phoebe North, the hiring and firing of Phoebe North employees, and other competitively significant decisions necessary for the operation of a hospital or hospital annex. The [redacted] does not expect any of that to change when it officially leases Palmyra's assets to Phoebe Putney.

83. In sum, there is no state action here. Rather, it is the private, self-interested Phoebe Putney that has agreed to purchase Palmyra and will exercise – unfettered and unchecked by the Authority or any hospital competitor – the extraordinary market power gained through the Transaction.

B.

Efficiencies

84. Extraordinary efficiencies that cannot be achieved absent the merger are necessary to justify the Transaction in light of its vast potential to harm competition. Such efficiencies are lacking here.

IX.

VIOLATION

85. The allegations of Paragraphs 1 through 84 above are incorporated by reference as though fully set forth.

86. The Transaction constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

87. The Transaction, if consummated, would substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the 19th day of September, 2011, at 10:00 a.m. is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania

Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the last answering respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the answer is filed by the last answering respondent). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving a respondent's answer, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Transaction challenged in this proceeding violates Section 7 of the Clayton Act, as amended, and Section 5 of the FTC Act, as amended, the Commission

may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the merger is consummated, (a) rescission of the Asset Purchase Agreement and/or (b) divestiture of Palmyra, and associated assets, in a manner that restores Palmyra as a viable, independent competitor in the relevant market, with the ability to offer such services as Palmyra was offering and planning to offer prior to the Transaction. Any ordered divestiture may be to, among other entities, Respondents HCA and/or Palmyra.

2. A ban, for a period of time, on any transaction involving Phoebe Putney, the Authority, or Palmyra through which Phoebe Putney would acquire, manage, or control the operations of Palmyra or which would combine Phoebe Putney's and Palmyra's businesses in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Phoebe Putney provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of its hospital or other health facilities in the relevant market with other hospitals or health facilities in the relevant market.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the Transaction or to ensure the creation of one or more viable, competitive independent entities to compete against Phoebe Putney and Palmyra in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 19th day of April, 2011.

By the Commission.

Richard J. Donohue
Acting Secretary

SEAL