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UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the Matter of: )  
NOVANT HEALTH, INC. and ) Docket No. 9425  
COMMUNITY HEALTH SYSTEMS, )  
Respondents. )  
-----)

INITIAL PREHEARING CONFERENCE VIA TELEPHONE  
TUESDAY, FEBRUARY 20, 2024

BEFORE THE HONORABLE D. MICHAEL CHAPPELL  
Administrative Law Judge

Reported by: Susanne Bergling, RMR-CRR-CLR

APPEARANCES:

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2/20/2024

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2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

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4 Federal Trade Commission

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1 ON BEHALF OF RESPONDENT COMMUNITY HEALTH SYSTEMS:

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1 P R O C E E D I N G S

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3 (Proceeding called to order at 3:00 p.m. )

4 THE COURT: Okay, let's go on the record.

5 This is the prehearing scheduling conference in  
6 Docket Number 9425, in the matter of Novant Health, Inc.  
7 and Community Health systems, Inc. I'm Judge Chappell.

8 This scheduling conference is being conducted  
9 telephonically and is being transcribed by a court  
10 reporter who is on the line with us.

11 Will the court reporter please state your name  
12 for the record.

13 THE REPORTER: Susanne Bergling, with For The  
14 Record, Incorporated, Court Reporter.

15 Thank you.

16 THE COURT: I have decided to conduct this  
17 scheduling conference telephonically. This choice will  
18 save time and resources for a short scheduling  
19 conference which is merely procedural and is not  
20 evidentiary. This also allows access to the public in  
21 much larger numbers than could attend in the courtroom.

22 I will need everyone to mute your phones when you  
23 are not speaking to prevent feedback and echoes. Also,  
24 before you speak on the call, I need you to identify  
25 yourself for the court reporter.

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1 I will now take appearances of those designated  
2 to speak for the parties, and I will also need you to  
3 identify who is on the call with you for your client or  
4 party.

5 We'll start with Complaint Counsel for the  
6 Government.

7 MR. STEBINGER: Thank you, Your Honor. This is  
8 Nicholas Stebinger for Complaint Counsel, and I'm on my  
9 own today.

10 THE COURT: All right.

11 And will Respondent -- is it "Novant" or  
12 "Novant"?

13 MS. HUBBARD: It's "Novant," Your Honor. Thank  
14 you. Heidi Hubbard from Williams & Connolly. I'm  
15 appearing for Novant Health, and on the phone with me is  
16 my colleague, also from Williams & Connolly, Al Mufti,  
17 M-U-F-T-I, and my co-counsel from Crowell & Moring,  
18 Alexis Gilman.

19 THE COURT: Okay, thank you.

20 And for Respondent Community Health Systems,  
21 Inc.?

22 MS. FRANCE: This is Jamie France from Gibson  
23 Dunn on behalf of Respondent Community Health Systems  
24 Inc.

25 THE COURT: All right, thank you.

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1 Do you have anyone on the line with you?

2 MS. FRANCE: No, I don't.

3 THE COURT: All right.

4 Also on the line with me are my attorney-  
5 advisors. In addition, the press and public have access  
6 to this scheduling conference through a toll-free  
7 telephone connection that allows them to listen in.  
8 Therefore, you are cautioned not to reveal any  
9 confidential information.

10 Let's talk about the scheduling order. The  
11 parties were provided a proposed scheduling order in  
12 advance of this conference. The parties did submit a  
13 jointly proposed -- well, they submitted jointly  
14 proposed changes to that scheduling order. All of those  
15 requested changes are acceptable except as to the  
16 suggested limits on post-trial briefs. I'm not inclined  
17 to impose those limits at this time.

18 I will issue the scheduling order incorporating  
19 the parties' other proposed changes shortly. I  
20 understand there's a parallel federal action in North  
21 Carolina. I will need the parties to provide me with  
22 updates and copy me with any substantive orders in the  
23 case.

24 Who wants to give me an update or status of that  
25 federal action in North Carolina?

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1 MS. HUBBARD: Your Honor, this is Heidi  
2 Hubbard --

3 MR. STEBINGER: Your Honor -- go ahead.

4 MS. HUBBARD: Okay, I'll go first, Your Honor.  
5 It's Heidi Hubbard from Williams & Connolly for Novant  
6 Health.

7 We do have a case management order in place in  
8 the federal action. We can provide Your Honor with a  
9 copy of that. Fact discovery has kicked off gearing  
10 towards an evidentiary hearing on Complaint Counsel's  
11 motion for a preliminary injunction.

12 That evidentiary hearing is set to begin on April  
13 29th, and the Court has indicated -- the Honorable Judge  
14 Kenneth Bell, he has indicated that he has reserved the  
15 week of April 29th, with the understanding that it's  
16 possible the hearing could go beyond that week.

17 THE COURT: Okay. Is Judge Bell aware of the  
18 deadline that we have to start our trial and that he  
19 could hopefully get a ruling out before then?

20 MS. HUBBARD: So I think we need to update Judge  
21 Bell on the timeline for this Part 3 proceeding. The  
22 case management order he has entered indicates that  
23 there will be briefing after the close of the  
24 preliminary injunction hearing, at least ten days  
25 following the hearing, so the timing is looking a little

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1 tight here.

2 I think as a practical matter it's probably  
3 important to say that we don't anticipate that we -- if  
4 we prevail in the preliminary injunction hearing that  
5 the FTC will continue with the Part 3 proceeding, the  
6 Part 3 trial. I think, as is customary, the Commission  
7 has typically not done that.

8 So we do think that preliminary injunction  
9 hearing makes it unlikely that the Administrative Part 3  
10 trial will happen, but in response to Your Honor's  
11 question, I believe we do need to update Judge Bell on  
12 the timing here.

13 THE COURT: All right. Anyone else want to --  
14 oh, go ahead.

15 MR. STEBINGER: Yes, Your Honor. Nicholas  
16 Stebinger for Complaint Counsel. I would note that the  
17 timing of the -- of this administrative proceeding was  
18 noted in at least some of the pleadings in front of  
19 Judge Bell, and I believe it was a factor in getting the  
20 schedule that we received from the District Court.

21 So although certainly we can provide Judge Bell  
22 with the -- with the subsequent scheduling order in this  
23 administrative proceeding, I do believe that the Judge  
24 was well aware in the District Court of the scheduled  
25 Part 3 administrative proceeding.



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1           And further, we would disagree with the  
2     characterization by Respondents that this is unlikely to  
3     proceed to a hearing -- to an evidentiary hearing in  
4     this Part 3 administrative proceeding depending on the  
5     outcome of the Federal District Court proceeding. I  
6     think that's a determination that's, frankly, premature  
7     to make as to what either side may do in the event of an  
8     adverse ruling.

9           THE COURT: Of course, they can't speak for you  
10    and you can't speak for Respondents, correct?

11          MR. STEBINGER: That's correct, Your Honor.

12          THE COURT: Well, in my experience with a number  
13    of these, especially hospital mergers, the ruling on the  
14    preliminary injunction proceeding will almost always  
15    take care of this case. Someone decides that it's over  
16    and they back off.

17           I would strongly suggest that the parties file a  
18    joint motion to delay the start of our trial until  
19    there's time for the Judge to rule on this proceeding in  
20    North Carolina, because in the event the trial is going  
21    away in our court, it is a tremendous waste of effort  
22    and resources -- and I'm talking about for the hospitals  
23    and their attorneys and also for the taxpayers funding  
24    the Government's case -- and so keep that in mind. It  
25    doesn't -- it doesn't help anyone for us to proceed to a

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1 trial that's going to go away after we start. Does  
2 everyone understand?

3 MS. HUBBARD: Yes, Your Honor, and we appreciate  
4 that guidance, and we agree with Your Honor's  
5 sentiments.

6 MR. STEBINGER: Yes, Your Honor, we understand,  
7 although, Your Honor -- again, Nicholas Stebinger from  
8 Complaint Counsel -- I believe that in receiving and  
9 proposing, frankly, the schedule that we proposed to the  
10 District Court, the intent of the FTC there and  
11 Complaint Counsel here was to provide the District Court  
12 ample time to rule in advance of the Part 3 evidentiary  
13 hearing, and although we certainly will continue to  
14 discuss scheduling and consider the need for efficiency  
15 and the appropriate use of our resources, Defendant's --  
16 Respondent's resources and the public's resources, I  
17 believe that at this time it is our intent to proceed  
18 expeditiously to the Part 3 hearing, the administrative  
19 trial as well, but we will continue to discuss.

20 THE COURT: Well, it's my understanding the  
21 Government wants to proceed to trial even though there  
22 may not be a trial. Is that what I heard?

23 MR. STEBINGER: No, Your Honor. It's that we are  
24 prepared for or we intend to prepare for the  
25 administrative hearing set for June and at this time do

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1 not have any intent to abandon the -- you know, this  
2 proceeding, depending on what -- what the District Court  
3 may decide.

4 And so although we understand that that may  
5 change depending on circumstances as they develop, at  
6 this time it is our intent to proceed as though the June  
7 26th hearing is going to happen as scheduled.

8 THE COURT: Well, it does appear, looking at  
9 timelines, that depending on the Judge's docket -- and I  
10 have no idea what's going on there -- that it really  
11 could come down before we start our trial.

12 So let me ask -- I trust the parties have at  
13 least attempted to settle. Have there been any  
14 settlement discussions? I'll let the Government go  
15 first to provide me any status of settlement  
16 discussions.

17 MR. STEBINGER: Thank you, Your Honor. Nicholas  
18 Stebinger for Complaint Counsel. We have discussed the  
19 possibility of settlement as required by the Federal  
20 District Court action, and we are open to discussing any  
21 proposals; however, we have not received any proposals  
22 at this time.

23 THE COURT: And for Respondent?

24 MS. HUBBARD: Thank you, Your Honor. Heidi  
25 Hubbard for Novant Health.

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1           As Complaint Counsel indicated, we did have an  
2   initial settlement conference on February 8th per court  
3   order in the Federal Court action. It was not  
4   successful, but we remain willing to engage with  
5   Complaint Counsel to try to seek a meaningful meeting of  
6   the minds.

7           THE COURT: And I'm not familiar -- you know, we  
8   haven't had a trial and I haven't seen any evidence. I  
9   don't know if these hospital systems have a number of  
10  facilities. Is this the type of situation where perhaps  
11  some facilities could be dropped out of the deal, or is  
12  that not something feasible in this case?

13          MS. HUBBARD: In this particular action, Your  
14  Honor, in this particular transaction, that is probably  
15  not feasible. The transaction centers on two hospitals  
16  currently owned by Community Health Systems that Novant  
17  Health is proposing to acquire and improve and improve  
18  patient quality of care. So it's really just those two  
19  hospitals.

20          THE COURT: All right. Anything else on the  
21  settlement update?

22          MR. STEBINGER: Not from Complaint Counsel, Your  
23  Honor.

24          MS. HUBBARD: And not from Novant, Your Honor.

25          THE COURT: All right. Thank you for the

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1 settlement update.

2 Do we have anything further from the Government  
3 for this hearing?

4 MR. STEBINGER: No, Your Honor.

5 THE COURT: And from Respondent, Novant?

6 MS. HUBBARD: No. Thank you, Your Honor.

7 THE COURT: From Community Health?

8 MS. FRANCE: Nothing for CHS. Thank you.

9 THE COURT: All right. Hearing nothing further,  
10 thank you for your time, and we are adjourned. Have a  
11 good day.

12 ALL COUNSEL: Thank you, Your Honor.

13 (Whereupon, at 3:11 p.m., the hearing was  
14 concluded.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/ NUMBER: 9425

3 CASE TITLE: NOVANT/COMMUNITY HEALTH

4 DATE: FEBRUARY 20, 2024

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

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DATED: 2/29/2024

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SUSANNE BERGLING, RMR-CRR-CLR

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