

## HEALTH CARE ANTITRUST ALERT

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### Court Denies FTC'S Bid to Prohibit Health System Merger

By **[Christina M. Kuta](#)**, Associate

After a six-day evidentiary hearing, on June 14, 2016, the United States District Court for the Northern District of Illinois issued an opinion denying a request by the Federal Trade Commission (FTC) for a preliminary injunction to block the proposed merger of Advocate Health Care (Advocate) and NorthShore University HealthSystem (NorthShore) on antitrust grounds. Currently, Advocate and NorthShore are two of the largest Chicago-area healthcare systems; Advocate has 12 hospitals and NorthShore operates four hospitals. Their merger would result in the single largest hospital system in the State of Illinois.

During the hearing, Advocate and NorthShore argued that the goal of the merger is to decrease healthcare costs by being able to offer an insurance product with premiums far less than those on the existing market and not to monopolize the relevant healthcare market.

In opposition, the FTC argued that allowing the merger will amount to an 8% increase in healthcare costs and create a monopolization of 60% of the hospital market in the northern Chicago suburban area. Advocate and NorthShore believed the FTC failed to adequately define the relevant market and the merger would only afford them 28% market share.

In denying the injunction, the court found that the FTC did not meet its burden of showing that it was likely to prevail on its antitrust challenge. The FTC has indicated that it will explore additional options to challenge the merger.

The final opinion will not be available to the public until the parties have an opportunity to redact business-sensitive information.

This is the second time in recent months that the FTC's attempt to prohibit the merger of two healthcare systems has failed. Recently, a court approved the merger of Penn State Hershey Medical Center and PinnacleHealth System in Pennsylvania.

For additional information on how this merger may affect your healthcare practice, now or in the future, please contact one of the listed Roetzel attorneys.

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