

## **Analysis of Agreement Containing Consent Order to Aid Public Comment**

*In the Matter of Ascension Health Alliance, FTC File No. 251 0093, Docket No. C-4832*

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### **I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Ascension Health Alliance (“Ascension”) and Ambulatory TopCo, LLC (“AmSurg”) (collectively, the “Respondents”).

The Consent Agreement is intended to remedy the anticompetitive effects that likely would result from Ascension’s proposed acquisition of AmSurg (the “Proposed Transaction”). The Proposed Transaction, valued at approximately \$3.9 billion, would combine two significant providers of outpatient surgical services in several local markets.

The Commission’s Complaint alleges that the Proposed Transaction, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the markets for certain outpatient surgical services in five metropolitan areas. In the relevant markets, the Respondents are close competitors, health plans rely on them as meaningful alternatives, and data and other evidence show significant patient substitution between their facilities.

The Consent Agreement requires divestitures of AmSurg’s ownership interests in specified ambulatory surgery centers in five metropolitan areas in order to restore the competition that the Proposed Transaction would otherwise eliminate.

### **II. The Respondents and the Proposed Transaction**

Ascension is a national nonprofit Catholic health system that operates hospitals, physician groups, senior living facilities, and ambulatory surgery centers. Ascension provides outpatient surgical care through its hospital outpatient departments and through ambulatory surgery centers in which it has ownership or partnership interests.

AmSurg is headquartered in Nashville, Tennessee, and operates ambulatory surgery centers across 34 states and the District of Columbia, typically through joint ventures with local physician groups.

The Proposed Transaction would transfer all non-corporate interests of AmSurg to Ascension for approximately \$3.9 billion.

### **III. The Relevant Markets**

The Complaint alleges that the relevant lines of commerce in which to analyze the Transaction are the sale and provision of outpatient surgeries or procedures performed by, and under the direction of, (i) gastroenterologists, (ii) ophthalmologists, and (iii) orthopedists. Within each specialty, outpatient surgeries and procedures are a cluster of procedures that do not require

an overnight stay at a healthcare facility, and can be performed at an ASC, a specialty hospital, or a general acute care hospital.

The relevant geographic markets are five metropolitan areas where the Respondents compete directly and where the data indicate that the Proposed Transaction raises significant competitive concerns:

- (a) Nashville, Tennessee, which means Davidson, Sumner, Williamson, and Wilson Counties;
- (b) Panama City, Florida, which means the Panama City Metropolitan Statistical Area (MSA);
- (c) Tulsa, Oklahoma, which means the Tulsa MSA;
- (d) Waco, Texas, which means the Waco MSA; and
- (e) Wichita, Kansas, which means the Wichita MSA.

#### **IV. Market Structure and Competitive Concerns**

The Complaint alleges that the Proposed Transaction would substantially lessen competition in each of the five relevant markets. In each market, the Proposed Transaction would substantially increase concentration, and it would eliminate actual, direct, and substantial head-to-head competition between Respondents, increasing the likelihood that the merged firm would unilaterally charge higher prices and reduce quality and innovation.

#### **V. Entry Conditions**

The Complaint alleges that entry or expansion by competitors would not be timely, likely, or sufficient in magnitude to prevent or to deter the anticompetitive effects of the Proposed Transaction.

#### **VI. Proposed Order**

The Consent Agreement requires the divestiture of AmSurg's majority interests in seven ambulatory surgery centers in the five relevant geographic markets. These divestitures are intended to preserve the current level of competition that would otherwise be lost through the Proposed Transaction.

Six of the centers will be divested to SC Affiliates, an affiliate of UnitedHealth Group that operates and supports ambulatory surgery centers nationwide. The remaining center in Panama City will be divested to a physician group that currently owns a minority stake and that will assume full ownership. Accordingly, both proposed divestiture buyers operate ambulatory service centers today and can operate the divested centers independently following the Proposed Transaction.

The Consent Agreement includes standard provisions designed to ensure that the divestitures are completed promptly and effectively. Respondents must provide transition assistance for up to one year, protect confidential information, maintain the viability of the divested assets until transfer, and refrain from interfering with the employment relationships at

the facilities. The Consent Agreement also requires appointment of a monitor to oversee compliance with all divestiture and transition obligations. If the Commission determines that either buyer is not suitable or that respondents fail to complete the divestitures, the Consent Agreement provides for the appointment of a trustee to complete the divestiture process.

The Consent Agreement contains standard reporting and access requirements. The term of the proposed Order is ten years.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.