

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
Butterworth Health Corporation,)	
a corporation,)	
)	
and)	
)	
Blodgett Memorial Medical Center,)	
a corporation.)	Docket No. 9283

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 Butterworth Health Corporation and Blodgett Memorial Medical Center, corporations subject to the jurisdiction of the Commission, have agreed to consolidate their services, facilities and operations; that the proposed consolidation, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; 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), stating its charges as follows:

DEFINITIONS

PARAGRAPH ONE: For purposes of this Complaint, the following definitions shall apply:

(a) "General acute care hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

(b) "General acute care inpatient hospital services" means 24-hour inpatient health care at a general acute care hospital, and related medical or surgical diagnostic and treatment

services, for physically injured or sick persons with short term or episodic health problems or infirmities.

(c) "Primary care inpatient hospital services " means basic general acute care inpatient hospital services, such as normal childbirth, general medicine, and basic general surgical procedures.

THE PARTIES

PARAGRAPH TWO: Butterworth Health Corporation ("Butterworth") is a non-profit corporation organized, existing and doing business under the laws of Michigan, with its principal place of business at 100 Michigan N.E., Grand Rapids, Michigan 49503. Butterworth, and/or its subsidiaries or affiliates, owns and/or operates Butterworth Hospital, a general acute care hospital in Grand Rapids.

PARAGRAPH THREE: Blodgett Memorial Medical Center ("Blodgett") is a non-profit corporation organized, existing and doing business under the laws of Michigan, with its principal place of business at 1840 Wealthy S.E., Grand Rapids, Michigan 49506. Blodgett owns and operates Blodgett Memorial Medical Center, a general acute care hospital in Grand Rapids.

JURISDICTION

PARAGRAPH FOUR: Butterworth and Blodgett are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12.

THE PROPOSED CONSOLIDATION

PARAGRAPH FIVE: On or about July 24, 1995, Butterworth and Blodgett entered into an agreement to consolidate their businesses by forming a common parent corporation. Respondents combined annual sales and their combined assets each exceed \$600 million.

NATURE OF TRADE AND COMMERCE

PARAGRAPH SIX: For the purposes of this Complaint, the relevant lines of commerce in which to analyze the proposed acquisition are the production and sale of general acute care inpatient hospital services and/or any narrower group of services contained therein, including, but not limited to, primary care inpatient hospital services.

PARAGRAPH SEVEN: For the purposes of this Complaint, the relevant sections of the country are the greater Kent County area, consisting of Kent County, together with portions of six adjoining counties (southern Newago County, southwest Montcalm County, western Ionia County, northern Barry County, northern Allegan County, and eastern Ottawa County) for acute care inpatient hospital services; and the immediate Grand Rapids area for primary care inpatient hospital services.

MARKET STRUCTURE

PARAGRAPH EIGHT: The relevant markets -- *i.e.*, the relevant lines of commerce in the relevant sections of the country -- are highly concentrated, whether measured by Herfindahl-Hirschman Indices ("HHI") or by four-firm concentration ratios.

ENTRY CONDITIONS

PARAGRAPH NINE: Entry into the relevant markets is difficult, due to state certificate of need regulation of entry, substantial lead times required to establish a new acute care hospital in the relevant markets, and other factors.

COMPETITION

PARAGRAPH TEN: In the relevant markets, Butterworth and Blodgett are actual and potential competitors.

EFFECTS

PARAGRAPH ELEVEN: The effects of the aforesaid consolidation may be substantially to lessen competition in the relevant markets in the following ways, among others:

- (a) it would eliminate actual and potential competition between Butterworth and Blodgett;
- (b) it would significantly increase the already high levels of concentration;
- (c) it may provide the merged entity with the ability to exercise market power;
- (d) it may increase the possibility of collusion or interdependent coordination by the remaining firms; and
- (e) it may deny patients, physicians, third-party payers, and other consumers of general acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service.

VIOLATIONS CHARGED

PARAGRAPH TWELVE: The consolidation described in PARAGRAPH FIVE, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

NOTICE

Notice is hereby given to the respondents Butterworth Health Corporation and Blodgett Memorial Medical Center that the thirteenth day of December, 1996, at 10:00 a.m. o'clock, or such later date as determined by an Administrative Law Judge of the Federal Trade Commission, is hereby fixed as the time and the Federal Trade Commission Offices, Sixth Street and Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge, on the charges set forth in this complaint, at which time and place you will have the right under said 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 twentieth (20th) day after service of it upon you. An answer in which the allegations of this 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 allegations 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 Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the

Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the proposed consolidation challenged in this proceeding would if consummated violate Section 7 of the Clayton 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. Rescission of the agreement between respondents to consolidate their businesses by forming a common parent corporation.

2. If the consolidation is consummated, divestiture of either Butterworth Hospital or Blodgett Memorial Medical Center hospital, and associated assets, in a manner that restores both hospitals as viable, independent competitors in the relevant markets, subject to the prior approval of the Federal Trade Commission.

3. A five (5) year ban on any combination of respondents' hospitals, except as may be approved by the Commission.

4. A requirement, for a ten (10) year period, that each respondent provide prior notice to the Commission of any hospital acquisitions, mergers, consolidations, or any other combinations of a respondent's hospital with any other hospital in the relevant market.

5. Requirements that respondents file periodic compliance reports with the Commission.

6. Any other provisions appropriate to correct or remedy the anticompetitive effects of the transaction.

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 eighteenth day of November, 1996.

By the Commission, Chairman Pitofsky recused and Commissioner Azcuenaga not participating.

SEAL

Donald S. Clark
Secretary