

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
Sixth Street and Pennsylvania Avenue, NW
Washington, DC 20580,

Plaintiff,

v.

MEDIQ INCORPORATED,
One Mediq Plaza
Pennsauken, NJ 08110,

Defendant.

Civil Action No. 97-1916 (SS)

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION PURSUANT TO
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), for a temporary restraining order and a preliminary injunction enjoining defendant MEDIQ Incorporated (“MEDIQ”), including its domestic and foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures, from acquiring through a merger or otherwise any stock, assets, or other interest, either directly or indirectly, from Universal Hospital Services, Inc. (“UHS”); thereby maintaining the status quo during the pendency of an administrative proceeding, challenging defendant’s proposed combination, that will be commenced by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21.

JURISDICTION AND VENUE

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

THE PARTIES

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 et seq., with its principal offices at Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580. The Commission is vested with authority and responsibility for enforcing, inter alia, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Defendant MEDIQ is a corporation organized and existing under the laws of Delaware, with its principal place of business at One Mediq Plaza, Pennsauken, New Jersey 08110.

4. UHS is a corporation organized and existing under the laws of Minnesota, with its principal place of business at 1250 Northland Plaza, 3800 West 80th Street, Bloomington, Minnesota 55431-4442.

5. Defendant MEDIQ is engaged in commerce, as “commerce,” is 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.

6. UHS is engaged in “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.

SECTION 13(b) OF THE FTC ACT

7. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe --

(1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public --

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

THE PROPOSED MERGER AND THE COMMISSION'S RESPONSE

8. On February 10, 1997, MEDIQ and UHS executed an Agreement and Plan of Merger wherein MEDIQ agreed to acquire UHS. The transaction is valued at approximately \$100 million.

9. On July 29, 1997, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the proposed merger during the pendency of administrative proceedings.

10. The defendant and UHS have advised the Commission that, in the absence of a court order to the contrary, they will consummate the proposed acquisition after 12:01 a.m., on August 23, 1997.

11. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the aforesaid proposed merger would violate Section 7 of the Clayton Act because in the United States and numerous metropolitan statistical areas (“MSAs”) within the United States, the acquisition may substantially lessen competition and/or tend to create a monopoly in the relevant market.

LIKELIHOOD OF SUCCESS ON THE MERITS AND NEED FOR RELIEF

12. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the proposed merger, that the proposed merger would violate Section 7 of the Clayton Act. In particular, the Commission is likely ultimately to succeed in demonstrating, inter alia, that:

a. The relevant product market in which the competitive effects of the proposed merger may be assessed is the rental of durable, movable medical equipment to hospitals on an “as needed” basis.

b. The relevant geographic markets within which to assess the competitive effects of the proposed merger are the United States and numerous MSAs within the United States.

c. The effect of the proposed merger, if consummated, may be substantially to lessen competition in the relevant markets by, among other things, eliminating an effective competitor, and eliminating or reducing substantial actual competition between MEDIQ and UHS, thereby increasing the likelihood of anticompetitive activity in the relevant markets once this acquisition is consummated.

13. The reestablishment of MEDIQ and UHS as independent viable competitive entities if they were to merge would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore the businesses as they originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

14. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

1. Preliminarily enjoin defendant MEDIQ, and all affiliates of defendant, from taking any further steps to consummate, directly or indirectly, their proposed merger of their businesses, or any other acquisition of stock, assets, or other interest, either directly or indirectly in UHS;

2. Maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such acquisition, and until such complaint is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

STEPHEN CALKINS
General Counsel

MELVIN H. ORLANS
Attorney
Office of the General Counsel
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2475

Respectfully submitted,

WILLIAM J. BAER
Director

ANN MALESTER
Assistant Director

JAMES H. HOLDEN, JR.
MICHAEL R. MOISEYEV
NORMAN A. ARMSTRONG, JR.
ALISSA S. HECHT
STEVEN K. BERNSTEIN
JOHN E. SCRIBNER
YOLANDA R. GRUENDEL
Attorneys for Plaintiff

ROBERT R. PICKETT
Merger Analyst

SYLVIA M. BROOKS
Research Analyst
Bureau of Competition

By:

JAMES H. HOLDEN, JR.
Attorney for Plaintiff
District of Columbia Bar No. 431713
Federal Trade Commission
6th Street & Pennsylvania Avenue, NW
Washington, DC 20580
(202) 326-2682

Dated: August 22, 1997