



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (f)
antitrust@justice.usdoj.gov (Internet)
<http://www.usdoj.gov> (World Wide Web)

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James S. Matthews, Esquire
Lindquist & Vennum P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2205

Dear Mr. Matthews:

This letter responds to your request, on behalf of the Itasca Clinic ("IC") and Grand Rapids Medical Associates ("GRMA"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, with respect to the proposed merger of IC and GRMA. For the reasons set forth below, the Department has no present intention of challenging this merger. The facts relevant to your business review request, as we understand them, are largely based on the representations made and the information submitted with your request.

IC and GRMA each operate a physician clinic in the community of Grand Rapids (pop. 7,976), in Itasca County (pop. 40,863), which is in rural, northern Minnesota; IC also staffs a satellite clinic in Nashwauk (pop. 1,026), about 18 miles northeast of Grand Rapids. IC employs five family practice physicians, two internists and one surgeon; GRMA employs ten family practice physicians, two internists and one general surgeon. IC and GRMA state that the purpose of their merger is to enhance their ability to provide quality care in a cost-effective manner and to facilitate the recruitment of specialist physicians so as to make the merged clinic into a multi-speciality medical group, thus increasing the range of health care services available locally.

The area from which IC and GRMA draw their patients is sparsely populated. In this area, IC and GRMA assert that they are in competition with a number of physician providers, most of whom have practices in Hibbing (pop. 18,406) and Chisholm (pop. 5,290). Hibbing and Chisholm are located, respectively, about 30 miles and 35 miles northeast of Grand Rapids (Nashwauk is located about midway between Grand Rapids and Chisholm). At least thirty-eight family practice physicians, ten internists and six general surgeons have practices in or near these communities, including a clinic with fourteen family practice doctors in Hibbing and Chisholm and a clinic with five family practitioners in Hibbing. Hibbing has a hospital licensed for 175 beds, and Grand Rapids has a 77-bed hospital.

The Department and the courts examine the lawfulness under the antitrust laws of a merger of physician clinics under the same antitrust standards that they apply to any other merger or combination of competing entities. The Clayton Act requires the delineation of the proper "line of commerce" and "area of the country" (i.e., relevant product and geographic markets) and then the evaluation of the likely economic effect of the merger in that market (or

markets). The merger is unlawful if it may tend substantially to lessen competition in any relevant market by creating, enhancing or facilitating the exercise of market power. See Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission § 2 ("Merger Guidelines"). "Market power" is generally defined as "the power to control prices [or restrict output] or exclude competition." United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 391 (1956).

Relying substantially upon your presentation of the pertinent facts, we have evaluated the likely competitive effects of the proposed merger of IC and GRMA in two relevant health care product markets: primary care services provided by family practice doctors and internists, and general surgical services.¹

In your submission, you assert that the relevant geographic market for antitrust analysis of the IC-GRMA merger is at least large enough to include the communities of Grand Rapids, Hibbing and Chisholm because available studies show that residents of Itasca County commonly travel significant distances to receive primary care and other health care services. As a general matter, a geographic market as large as you describe is not as plausible for primary care services as for general surgical services. In this regard, the Division's experience in past investigations, particularly in urban or semi-urban areas, is that geographic markets for primary care services tend to be more localized, often confined to a city and its environs. On the other hand, we also recognize that residents of rural areas such as Itasca County may be accustomed to travelling longer distances for primary care services (because, for example, such travel may often be necessary to receive any care at all), which suggests a larger geographic market in this instance. While we have not conducted a full-scale investigation to determine relevant markets definitively, under the circumstances here we accept your posited geographic market as reasonable for purposes of this business review letter.

In that geographic market, the merger of IC and GRMA would combine clinics that, respectively, employ about 15% and 25% of family practice doctors and internists providing primary care services and that each employ about 16% of the general surgeons. Such a combination could raise competitive concerns, but in this case no managed care plan or other third-party payer has expressed concern that the merger might cause anticompetitive effects. This lack of competitive concern by payers is also consistent with your geographic market claims. Moreover, some payers believe the proposed merger will result in improved access to medical care. Given these considerations and based on the information presently available to us, it does not appear that the merger of IC and GRMA is likely to substantially lessen competition.

¹These are the relevant product markets for our analysis because the majority of IC's and GRMA's physicians are either family practice physicians or internists, all of whom provide a wide range of comparable primary care services. Under the circumstances here, then, all these physicians appear to be in the same product market. See Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust, issued by the U.S. Department of Justice and the Federal Trade Commission, September 27, 1994, at 72. We also have considered the merger's possible effect on the market for general surgical services inasmuch as IC and GRMA each employ one general surgeon, and the services of general surgeons are ordinarily a separate product market. See id.; Business Review Request by Surgical Associates of Western Connecticut, P.C. and Danbury Surgical Associates, P.C., dated August 28, 1987, at 3-4.

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The Department therefore has no present intention to challenge the merger of IC and GRMA. In accordance with our normal practice, however, we remain free to bring whatever action or proceeding as we subsequently come to believe is required by the public interest, if the merger should prove to have an anticompetitive effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you do not timely identify to be confidential business information under Paragraph 10(c) of the Business Review Procedure will also be made publicly available.

Sincerely yours,

Anne K. Bingaman
Assistant Attorney General