

IN THE MATTER OF
THE READING HOSPITAL, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket C-3284. Complaint, Apr. 10, 1990—Decision, Apr. 10, 1990

This consent order prohibits, for a period of ten years, among other things, two Berks County, Pa. hospitals from acquiring, without prior Commission approval, all or part of any hospital in Berks County, Pa., with a fair market value or purchase price greater than \$1 million. Respondents are also prohibited, for a period of ten years, from transferring any hospital they operate in Berks County to a person that operates or is acquiring a hospital in Berks County, without prior Commission approval.

Appearances

For the Commission: *Jonathan Banks and Mark Horoschak.*

For the respondents: *David H. Roland, Roland & Schlegel, Reading, Pa. and Christopher Mattson, Barley, Snyder, Cooper & Barber, Lancaster, PA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Reading Hospital and Community General Hospital were consolidated through their formation of Berkshire Health System in violation of 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 the provisions of Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, stating its charges as follows:

I. THE RESPONDENTS

PARAGRAPH 1. Respondent The Reading Hospital ("Reading Hospital") is a non-profit corporation organized, existing and doing business under the laws of the State of Pennsylvania, with its office, principal place of business and mailing address at Sixth Avenue and Spruce Street, Reading, Pennsylvania. Reading Hospital is a person

subject to the jurisdiction of the Commission pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21.

PAR. 2. Respondent Community General Hospital ("Community General") is a non-profit corporation organized, existing and doing business under the laws of Pennsylvania, with its office and principal place of business in Reading, Pennsylvania, and its mailing address at P.O. Box 1728, Reading, Pennsylvania. Community General is a person subject to the jurisdiction of the Commission pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21.

II. THE TRANSACTION

PAR. 3. Until December 27, 1985, Reading Hospital was an independent, private, non-profit corporation, controlled by a self-perpetuating board of directors. Reading Hospital had net revenues of approximately \$86 million in its fiscal year 1985.

PAR. 4. Until December 27, 1985, Community General was an independent, private, non-profit corporation, controlled by a self-perpetuating board of trustees. Community General had net revenues of approximately \$27 million in its fiscal year 1985.

PAR. 5. Pursuant to an Affiliation Agreement, dated December 27, 1985, between Reading Hospital and Community General, the two corporations formed a new corporation, Berkshire Health System ("BHS"), for the purpose of consolidating their operations under the control of BHS. BHS immediately became the sole member of, and thereby acquired control over, both Reading Hospital and Community General.

PAR. 6. After the consolidation described above, and until the disaffiliation and dissolution described below, BHS was a non-profit corporation organized, existing and doing business under the laws of the State of Pennsylvania. BHS was primarily engaged in the establishment and management of a system of health care providers in southeastern Pennsylvania, including Reading Hospital and Community General, among others. BHS was governed by a self-perpetuating Board of Directors, composed principally of members of the Board of Directors of Reading Hospital and of the Board of Trustees of Community General.

PAR. 7. BHS remained the sole member of both Reading Hospital and Community General until on or about March 28, 1989, when BHS relinquished its rights as member of Community General, pursuant to a Disaffiliation Agreement entered into on January 18, 1989, among

BHS, Reading Hospital and Community General. Soon thereafter, Community General trustees resigned from the BHS board of directors, and the articles of incorporation and bylaws of BHS and Community General were amended to eliminate Community General's representation on the BHS board of directors and BHS' status as member of Community General. Subsequently, on December 19, 1989, BHS was dissolved. As a result of BHS' dissolution, Reading Hospital or its affiliates assumed control over BHS' subsidiaries, affiliates and other assets. Reading Hospital and Community General are now, as they were prior to the consolidation described above, independent corporations controlled by separate, self-perpetuating boards of directors or trustees.

PAR. 8. At all times relevant herein, BHS, Reading Hospital and Community General have been and (except for BHS) are now engaged in or affecting commerce within the meaning of Section 1 of the Clayton Act, as amended 15 U.S.C. 12.

III. TRADE AND COMMERCE

PAR. 9. The relevant line of commerce is general acute care hospital services. General acute care hospital services are services provided by health facilities that provide 24-hour inpatient care in connection with services of physicians for conditions for which nursing, medical or surgical services would be appropriate for care, diagnosis, or treatment, other than services provided by facilities that are specially intended for treatment of mental illness, emotional disturbance or substance abuse.

PAR. 10. The relevant section of the country is the Berks County, Pennsylvania, area, and/or parts thereof.

PAR. 11. Prior to the consolidation described above, the general acute care hospital services market in the Berks County area was highly concentrated, with only three firms doing business in the relevant market. Reading Hospital was the largest firm in the relevant market. In 1985, Reading Hospital had a share of approximately 63% of the general acute care hospital services market in the Berks County area. St. Joseph Hospital had a market share of approximately 23%. Community General had a market share of approximately 14%.

PAR. 12. Entry into the general acute care hospital services market in the Berks County area is difficult, especially in light of Pennsylvania's certificate-of-need regulation of entry.

IV. THE EFFECTS OF THE CONSOLIDATION

PAR. 13. As a result of the consolidation of Reading Hospital and Community General through the formation of BHS, BHS controlled two of the three general acute care hospitals in the Berks County area. The consolidation increased the market share of the largest provider of general acute care hospital services in the Berks County area from approximately 63% to approximately 77%, and increased the two-firm concentration ratio from approximately 86% to 100%. As a result of the consolidation, the Herfindahl-Hirschmann index increased by over 1,700 points, from approximately 4,700 points to approximately 6,500 points.

PAR. 14. The consolidation eliminated direct and actual competition between Reading Hospital and Community General.

PAR. 15. Until the disaffiliation described above, the effect of the consolidation of Reading Hospital and Community General through the formation of BHS may have been substantially to lessen competition or tend to create a monopoly in the relevant market in the following ways, among others:

- (a) By substantially reducing actual and potential competition in the relevant market;
- (b) By giving BHS a dominant position in the relevant market;
- (c) By substantially increasing the likelihood of collusion in the relevant market; and
- (d) By denying patients, physicians, and purchasers of health care coverage the benefits of free and open competition based on price, quality, and service.

V. VIOLATION CHARGED

PAR. 16. The consolidation of Reading Hospital and Community General through their formation of BHS violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and

which, if issued by the Commission, would charge respondents with violation of the Clayton Act; and

The respondents, their attorneys, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all of the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Reading Hospital is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office, principal place of business and mailing address at Sixth Avenue and Spruce Street, Reading, Pennsylvania. Respondent Community General Hospital is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business in Reading, Pennsylvania, and its mailing address at P.O. Box 1728, Reading, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

For the purposes of this order:

A. "*Reading Hospital*" means The Reading Hospital (a Pennsylvania corporation), its directors, trustees, officers, agents, employees,

and representatives, its parents and affiliates, and its subsidiaries, divisions, successors, and assigns.

B. "*Community General*" means Community General Hospital (a Pennsylvania corporation, which operates a hospital of the same name in Reading, Pennsylvania), its directors, trustees, officers, agents, employees, and representatives, its parents and affiliates, and its subsidiaries, divisions, successors, and assigns.

C. "*Respondents*" means Reading Hospital and Community General, collectively and individually.

D. "*General acute care hospital*," herein referred to as "*hospital*," means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as 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.

E. To "*acquire a hospital*" means to directly or indirectly acquire all or any part of the stock or assets of any hospital, or enter into any arrangement to obtain direct or indirect ownership, management or control of any hospital or any part thereof, such as a lease of or management contract for a hospital, or the acquisition of the right to designate directly or indirectly the directors of a hospital corporation.

F. To "*operate a hospital*" means to own, lease, manage, or otherwise control or direct the operations of a hospital, directly or indirectly.

G. "*Affiliate*" means any entity whose management and policies are controlled or directed in any way, directly or indirectly, by the person with which it is affiliated.

H. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

II.

It is ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without the prior approval of the Federal Trade Commission:

A. Acquire any hospital in Berks County, Pennsylvania; or

B. Permit any hospital it operates in Berks County to be acquired by

any person that operates, or is in the process of acquiring, any other hospital in Berks County.

Provided, however, that no acquisition shall be subject to this Paragraph II of this order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000).

III.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, no respondent shall, without the prior approval of the Federal Trade Commission, permit any hospital it operates in Berks County, Pennsylvania to be acquired by any person other than another respondent unless the respondent requires, as a condition precedent to the acquisition, that the acquiring party file with the Commission, prior to the closing of the acquisition, a written agreement to be bound to the provisions of this order.

IV.

It is further ordered, That respondents, upon written request of the Secretary of the Federal Trade Commission or the Director of the Bureau of Competition of the Federal Trade Commission made to them at their principal offices, for the purpose of securing compliance with this order, and for no other purpose, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Federal Trade Commission or the Director of the Bureau of Competition:

1. Reasonable access during their office hours, in the presence of counsel, to those books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in their possession or control that relate materially and substantially to any matter contained in this order; and
2. An opportunity, subject to their reasonable convenience, to interview their officers or employees, who may have counsel present, regarding such matters.

V.

It is further ordered, That respondents shall notify the Commission

at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this order.

IN THE MATTER OF
NATURE'S WAY PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3285. Complaint, Apr. 10, 1990—Decision, Apr. 10, 1990

This consent order prohibits, among other things, the Springville, Utah distributors and advertisers of Cantrol from making any claims, contrary to fact, that a consumer can self-diagnose certain yeast conditions; and from making any claims without adequate substantiation concerning whether certain dietary, food, or nutritional supplements can cure, treat, or prevent certain yeast conditions. It also prohibits any unsubstantiated claims that six ingredients of the supplements affect any disease. The consent agreement requires respondents to pay \$30,000 to the National Institutes of Health to support research in candidiasis or the effects of yeast organisms on health.

Appearances

For the Commission: *Toby M. Levin* and *Robert C. Cheek*.

For the respondents: *Kenneth Murdock, Chairman & Brett Wood, General Counsel*, Springville, UT.

COMPLAINT

The Federal Trade Commission, having reason to believe that Nature's Way Products, Inc., a corporation, Murdock International Corporation, a corporation, and Kenneth Murdock, individually and as an officer of said corporations, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1.

- (a) Nature's Way Products, Inc. is an Arizona corporation.
- (b) Murdock International Corporation is a Utah corporation.
- (c) Nature's Way Products, Inc. is a wholly owned subsidiary of Murdock International Corporation.
- (d) Murdock International Corporation dominates and controls the acts and practices of Nature's Way Products, Inc.