

IN THE MATTER OF

COLUMBIA HOSPITAL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9256. Complaint, Feb. 18, 1993--Decision, May 5, 1994

This consent order, among other things, requires the respondent to seek prior Commission approval, for ten years, before consummating any partial or total merger of a Columbia hospital in the Charlotte County area with any other acute care hospital in that area, and also requires Columbia to give the Commission notice prior to completing a joint venture that satisfies specified criteria with any other acute-care hospital in the area.

Appearances

For the Commission: *Oscar Voss* and *Mark Horoschak*.

For the respondent: *Raymond A. Jacobson, Howrey & Simon*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent, Columbia Hospital Corporation, a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire Medical Center Hospital in Punta Gorda, Florida and related assets ("Medical Center") from Adventist Health System/Sunbelt Health Care Corporation and its affiliates; that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended; that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

For purposes of this complaint the following definitions shall apply:

1. "*Columbia*" means Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of Nevada, with its principal place of business at 777 Main Street, Suite 2100, Fort Worth, Texas, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

2. "*AHS/Sunbelt*" means Adventist Health System/Sunbelt Health Care Corporation, a non-profit corporation organized, existing and doing business under the laws of Florida, with its principal place of business at 2400 Bedford Road, Orlando, Florida, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of AHS/Sunbelt's divisions, subsidiaries, affiliates, successors and assigns.

3. "*Acute care inpatient hospital services*" means 24-hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities. In Florida, acute care inpatient hospital services are provided only by health care institutions licensed as hospitals, in facilities thereof licensed or certified to provide acute care (as opposed to other types of hospital care, such as psychiatric, substance abuse, rehabilitation or subacute skilled nursing care).

II. THE PARTIES

4. Respondent Columbia Hospital Corporation is a for-profit corporation organized, existing and doing business under the laws of Nevada, with its principal place of business at 777 Main Street, Suite 2100, Fort Worth, Texas. Columbia owns and operates, through a wholly-owned subsidiary, Fawcett Memorial Hospital ("Fawcett"), a general acute care hospital in Port Charlotte, Florida.

5. Adventist Health System/Sunbelt Health Care Corporation is a non-profit corporation organized, existing and doing business under

the laws of Florida, with its principal place of business at 2400 Bedford Road, Orlando, Florida. AHS/Sunbelt controls and operates, through a wholly-owned affiliate, Medical Center.

III. JURISDICTION

6. Columbia, AHS/Sunbelt, and Medical Center, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12. The businesses of Columbia, AHS/Sunbelt, and Medical Center, at all times relevant herein, have been and are now in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE PROPOSED ACQUISITION

7. On or about October 19, 1992, Columbia entered into an agreement to acquire Medical Center and related assets from AHS/Sunbelt. The total value of the assets and other interests to be acquired is approximately \$40 million.

V. NATURE OF TRADE AND COMMERCE

8. The relevant line of commerce in which to analyze the proposed acquisition is the production and sale of acute care inpatient hospital services and/or any narrower group of services contained therein.

9. The relevant section of the country is eastern Charlotte County, Florida, and certain adjacent areas of Sarasota and DeSoto Counties in Florida.

VI. MARKET STRUCTURE

10. The relevant market is highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI") or by four-firm concentration ratios.

VII. ENTRY CONDITIONS

11. Entry into the relevant market is difficult due to certificate-of-need regulation of entry by the State of Florida, substantial lead times required to establish a new hospital, and other factors.

VIII. COMPETITION

12. Fawcett and Medical Center are actual and potential competitors in the relevant market.

IX. EFFECTS

13. The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

- (a) It would eliminate actual and potential competition between Fawcett and Medical Center, and between Medical Center and others;
- (b) It would significantly increase the already high levels of concentration;
- (c) It may create a firm whose market share is so high as to lead to unilateral anticompetitive effects;
- (d) It would eliminate Medical Center as a substantial independent competitive force;
- (e) It may enhance the possibility of collusion or interdependent coordination by the remaining firms in the relevant market; and
- (f) It may deny patients, physicians, third-party payers and other consumers of hospital services the benefits of free and open competition based on price, quality, and service.

X. VIOLATIONS CHARGED

14. The acquisition agreement described in paragraph seven above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

15. The acquisition described in paragraph seven, if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

Columbia Healthcare Corporation (into which the respondent was merged after issuance of the complaint in this matter), its attorney, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by Columbia Healthcare Corporation 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 Columbia Healthcare Corporation that the law had been or would have been violated by its proposed acquisition as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(b) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Columbia Healthcare Corporation, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for the purposes of this order, the following definitions shall apply:

A. "*Columbia*" means Columbia Healthcare Corporation, a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "*Acute care 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. For purposes of this order, health facilities whose inpatient services are limited to mental health care rehabilitation or substance abuse are not "acute care hospitals."

C. To "*acquire an acute care hospital*" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

D. To "*operate an acute care hospital*" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

E. "*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.

F. The "*Charlotte County area*" means the combined area consisting of Charlotte County, Florida, together with those portions of Sarasota and DeSoto Counties, Florida within twelve (12) miles of the present site of Columbia's Fawcett Memorial Hospital in Port Charlotte, Florida, excluding the part of that combined area which is west of the Myakka River.

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

H. The "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Columbia shall not, without the prior approval of the Commission:

A. Acquire any acute care hospital in the Charlotte County area;
or

B. Permit any acute care hospital it operates in the Charlotte County area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the Charlotte County area.

Provided, however, that such prior approval shall not be required for:

(1) The establishment of a new hospital service or facility (other than as a replacement for a hospital service or facility, not operated by Columbia, in the Charlotte County area, pursuant to an agreement or understanding between Columbia and the person operating the replaced service or facility); or

(2) Any transaction 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, part thereof or interest therein 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, Columbia shall not, without providing advance notification to the Commission, consummate any joint venture or other arrangement with any other acute care hospital in the Charlotte County area for the joint establishment or operation of any new acute care hospital, hospital medical or surgical diagnostic or treatment service or facility, or part thereof in the Charlotte County area. Such advance notification shall be filed immediately upon Columbia's issuance of a letter of intent for, or execution of an agreement to enter into, such a transaction, whichever is earlier.

The notification required by this paragraph III of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations (as amended), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of Columbia and not of any other party to the transaction. If the transaction for which notification is required by this paragraph III of this order requires state regulatory approval under a health facilities certificate of need law, Columbia may, in lieu of the foregoing notification, submit to the Commission a copy of the application for such state approval.

Columbia shall comply with reasonable requests by the Commission staff for additional information concerning any transaction subject to this paragraph III of this order, within fifteen (15) days of service of such requests.

Provided, however, that no transaction shall be subject to this paragraph III of this order if:

(1) The fair market value of the assets to be contributed to the joint venture or other arrangement by acute care hospitals not operated by Columbia does not exceed one million dollars (\$1,000,000);

(2) The service, facility or part thereof to be established or operated in a transaction subject to this order is to engage in no activities other than the provision of the following services: laundry; data processing; purchasing; materials management; billing and

collection; dietary; industrial engineering; maintenance; printing; security; records management; laboratory testing; personnel education, testing, or training; or health care financing (such as through a health maintenance organization or preferred provider organization); or

(3) Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, or prior approval by the Commission is required, and has been requested, pursuant to paragraph II of this order.

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, Columbia shall not permit all or any substantial part of any acute care hospital it operates in the Charlotte County area to be acquired by any other person unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement Columbia shall require as a condition precedent to the acquisition.

V.

It is further ordered, That Columbia shall, one year after the date this order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this order.

VI.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Columbia made at its principal offices, Columbia shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in Columbia's

possession or control relating to any matter contained in this order;
and

2. Upon five days' notice to Columbia and without restraint or interference from Columbia, to interview its officers or employees, who may have counsel present, regarding such matters.

VII.

It is further ordered, That Columbia 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.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA CONCURRING IN PART AND DISSENTING IN PART

I concur in the decision to issue the order, but I would have preferred that the order require Columbia to provide notice of acquisitions outside the relevant market. Prior notice can be useful, the Commission has required such relief in other litigated hospital merger cases, *see, e.g., Hospital Corporation of America*, 106 FTC 361, 524 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 107 S. Ct. 1975 (1987), and there is no apparent reason for granting more favorable treatment to this respondent.

IN THE MATTER OF

TEXTRON, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9226. Complaint, Feb. 28, 1989--Decision, May 6, 1994

This consent order requires, among other things, the respondent to license to a Commission-approved entity the right to manufacture and sell Monobolt rivets, divest to the licensee certain Monobolt manufacturing assets, and provide technical assistance to the licensee for five years.

Appearances

For the Commission: *Howard Morse* and *Allee A. Ramadhan*.

For the respondent: *Dhikhaii M. Maneckii*, in-house counsel, Providence, R.I. *Patricia Bailey, Squire, Sanders & Dempsey*, Washington, D.C. *Patricia Hennessey, Beigel & Sandler*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Textron Inc., ("Textron"), a corporation subject to the jurisdiction of the Commission, has entered into agreements with Avdel PLC ("Avdel") and Banner Industries, Inc. that violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that pursuant to these agreements, Textron has acquired stock in "Avdel" and has commenced a cash tender offer to acquire all outstanding shares of Avdel, which acquisition, cash tender offer, and merger would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, 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 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows: