

Interlocutory Orders, Etc.

IN THE MATTER OF

**CABELL HUNTINGTON HOSPITAL, INC.,
PALLOTTINE HEALTH SERVICES, INC.,
AND
ST. MARY’S MEDICAL CENTER, INC.**

Docket No. 9366. Order, April 22, 2016

Order extending the withdrawal of this matter from adjudication until a short time after the WVHCA determines whether to approve or deny Cabell’s application for approval.

ORDER EXTENDING WITHDRAWAL FROM ADJUDICATION

On November 5, 2015, the Commission issued an administrative complaint challenging Cabell Huntington Hospital’s proposed acquisition of St. Mary’s Medical Center. On March 24, 2016, the Commission issued an Order withdrawing this matter from adjudication, and staying all proceedings before the Administrative Law Judge, until April 25, 2016. We found good cause to take these steps in order to evaluate the impact, if any, of a newly enacted West Virginia statute, which empowers the West Virginia Health Care Authority (“WVHCA”) to prospectively review and approve or disapprove certain “cooperative agreements” between hospitals.¹

On March 22, 2016, the WVHCA informed Cabell that it would have to secure WVHCA approval before consummating the proposed acquisition, and Cabell filed the requisite application on March 25, 2016. On April 18, 2016, Complaint Counsel and Respondents filed a Joint Motion to extend the withdrawal of this matter from adjudication and continue the current stay of proceedings until 14 days after the WVHCA “issues its written decision” regarding Cabell’s application.² As a condition of their

¹ See W. Va. Code § 16-29B-28 (a)(2).

² Joint Motion at 1.

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Joint Motion, “Respondents agree not to consummate the Transaction while this matter is withdrawn from adjudication.”³

As we stated in our March 24 Order, we are committed to moving forward as expeditiously as possible with adjudicative proceedings.⁴ We have determined, however, that there is good cause to extend the withdrawal of this matter from adjudication until a short time after the WVHCA determines whether to approve or deny Cabell’s application. The new statute requires WVHCA to issue a written decision no more than 75 days after receipt of Cabell’s completed application,⁵ and as noted above, Respondents have agreed not to consummate the proposed acquisition while this matter is withdrawn from adjudication.⁶ As a result, extending the withdrawal from adjudication until 14 days after the WVHCA issues its decision will enable us to evaluate its significance without any adverse effects on competition or consumer interests. We have therefore determined to grant the Joint Motion. Accordingly,

IT IS HEREBY ORDERED that the withdrawal of this matter in its entirety from adjudication, and the stay of all proceedings before the Administrative Law Judge, are extended until 11:59 p.m. EDT on the 14th calendar day after the West Virginia Health Care Authority issues its written decision, pursuant to Section 16-29B-28(e)(3) of the Code of West Virginia, regarding the Application for Approval of Cooperative

3 *Id.* at 3 & n.3.

4 See Commission Rule 3.1, 16 C.F.R. § 3.1 (“[T]he Commission’s policy is to conduct [adjudicative] proceedings expeditiously.”); Rule 3.41(b), 16 C.F.R. § 3.41(b) (“Hearings shall proceed with all reasonable expedition . . .”).

5 Joint Motion at 2, *citing* W. Va. Code § 16-29B-28(e)(3). If the WVHCA requests additional information, it may take an additional 15 days following receipt of that information to approve or deny Cabell’s application. Joint Motion at 2 note 2, *citing* W. Va. Code § 16-29B-28(e)(3).

6 If the WVHCA has not issued a written decision within 120 days of this Order, (1) the Respondents may provide Complaint Counsel and the Commission with seven-days’ notice of their intent to consummate the transaction and (2) the Commission may return this matter to adjudication upon providing the Respondents with seven days’ notice.

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Agreement (Acquisition of St. Mary's Medical Center) filed by
Respondent Cabell on March 25, 2016.

By the Commission.

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IN THE MATTER OF

STAPLES, INC.
AND
OFFICE DEPOT, INC.

Docket No. 9367. Order, April 29, 2016

Order granting Complaint Counsel and Respondents Joint Expedited Motion seeking a 21-day continuance of the evidentiary hearing and related pre-hearing deadlines.

ORDER CONTINUING ADMINISTRATIVE PROCEEDING FOR 21 DAYS

On December 7, 2015, the Commission issued an administrative complaint alleging that a merger agreement between Respondents Staples, Inc. and Office Depot, Inc. violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that if the merger were consummated, it would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, as well as Section 5 of the FTC Act. In accordance with Commission Rule 3.11(b)(4), the administrative complaint provides that the evidentiary hearing is scheduled to begin on May 10, 2016.

On April 22, 2016, Complaint Counsel and Respondents filed a Joint Expedited Motion (“Joint Motion”) seeking a 21-day continuance of the evidentiary hearing and related pre-hearing deadlines.¹ The parties represent that the district court recently concluded its hearing on the Commission’s motion for preliminary injunction under 15 U.S.C. § 53(b) in *FTC v. Staples, Inc.*, No. 1:15-cv-02115 (EGS) (D.D.C.) and that the court has committed to issue its order on the motion by May 10. Respondents further represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. If the district court denies the motion, Respondents

¹ Although the parties have styled their Joint Motion as one seeking a 21-day *stay* of administrative proceedings, the substance of their request makes clear they seek a 21-day continuance of the evidentiary hearing, which we have the authority to grant under Commission Rule 3.41(b). 16 C.F.R. § 3.41(b) (“The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .”).