

Interlocutory Orders, Etc,

IN THE MATTER OF

**ADVOCATE HEALTH CARE NETWORK,
ADVOCATE HEALTH AND HOSPITALS
CORPORATION,
AND
NORTHSHORE UNIVERSITY HEALTHSYSTEM**

Docket No. 9369. Order, May 6, 2016

Order granting a Joint Expedited Motion seeking a 22-day continuance of the administrative hearing and related pre-hearing deadlines.

ORDER GRANTING CONTINUANCE

On December 17, 2015, the Commission issued an administrative complaint alleging that an affiliation agreement by the Respondents violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. On December 21, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Northern District of Illinois seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. Compl., *FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill.) (Dec. 21, 2015). In accordance with Commission Rule 3.11(b) (4), the evidentiary hearing is scheduled to begin on May 24, 2016.

On March 18, 2016, the Commission denied without prejudice a motion by Respondents to stay the administrative hearing pending a ruling by the district court on the Commission's request for a preliminary injunction.¹ The parties have now filed a Joint Expedited Motion seeking a 22-day continuance of the

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Denying Motion To Stay the Administrative Hearing (Mar. 18, 2016).

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administrative hearing and related pre-hearing deadlines,² citing the fact that the district court hearing on the Commission's motion for preliminary injunction has yet to conclude.³ Respondents represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. They further assert that, if the district court denies the preliminary injunction motion, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission.

In support of their request for a continuance, the parties argue that, should the evidentiary hearing become moot, the requested continuance could relieve third parties of the burden and cost associated with preparing witnesses to testify and filing motions for *in camera* treatment of their confidential materials, which would need to commence soon under the current schedule. The parties also argue that a continuance would not prejudice the Commission, even if the adjudication of this matter were to proceed.

Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings,⁴ we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines. A short continuance would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing. Additionally, a short delay in the start of the administrative hearing would not harm the Commission or the

2 The parties have styled their Joint Motion as one seeking a stay of administrative proceedings, but their request makes clear that what they seek is a continuance of the evidentiary hearing and related deadlines, 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 . . .").

3 The parties note that the evidentiary portion of the hearing will conclude on May 6, but that no date has been set for closing arguments.

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

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public interest should it be necessary for the administrative adjudication to go forward. We note, however, that a more significant delay may not be justified as our rules contemplate that both district court and administrative proceedings can proceed in parallel.

Accordingly, **IT IS HEREBY ORDERED** that the evidentiary hearing shall commence on June 15, 2016 and all related pre-hearing deadlines shall be extended by 22 days.

By the Commission.

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IN THE MATTER OF

**THE PENN STATE HERSHEY MEDICAL
CENTER
AND
PINNACLEHEALTH SYSTEM**

Docket No. 9368. Order, May 12, 2016

Order granting a Joint Expedited Motion for a Continuance of Administrative Proceedings, seeking a 21-day continuance of the administrative hearing and related pre-hearing deadlines.

ORDER GRANTING CONTINUANCE

On December 7, 2015, the Commission issued an administrative complaint alleging that an affiliation agreement by the Respondents violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. On December 9, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Middle District of Pennsylvania seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. Compl., *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362-JEJ (M.D. Pa.) (Dec. 9, 2015). In accordance with Commission Rule 3.11(b) (4), the administrative complaint provides that the evidentiary hearing shall begin on May 17, 2016.

On March 21, 2016, the Commission denied without prejudice a motion by Respondents to stay the administrative hearing pending a ruling by the district court on the Commission's request for a preliminary injunction.¹ On May 4, 2016, the parties filed a Joint Expedited Motion for a Continuance of Administrative Proceedings, seeking a 21-day continuance of the administrative hearing and related pre-hearing deadlines. On May 9, 2016, the

¹ *Penn State Hershey Med. Ctr.*, Docket No. 9368, Commission Order Denying Motion To Stay the Administrative Hearing (Mar. 21, 2016).