Concurring Statement of Maureen K. Ohlhausen
In the Matter of CentraCare Health System
File No. 161-0096
October 6, 2016

I have reason to believe that CentraCare Health System's (CentraCare) acquisition of St. Cloud Medical Group, P.A. (SCMG), if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota. I also believe the Consent Agreement, subject to final approval, represents the outcome most likely to minimize competitive harm and care disruption to the residents of the St. Cloud area. I write separately because, although it is a close determination, I do not believe SCMG meets the stringent failing firm criteria set forth in the Horizontal Merger Guidelines and case law.[1]

Because of SCMG's financial challenges and facts unique to the SCMG practice structure and management, physicians are leaving the group, and compelling evidence indicates that, absent the acquisition, additional physicians plan to leave the group and possibly the area. This would diminish the competitive significance of SCMG and create potential disruptions to care and possible physician shortages in the St. Cloud area. These circumstances raise serious concerns about the likelihood that the Commission will be able to preserve competition and access to care for patients if it were to prevail in its challenge.

Given this difficult scenario, I agree with my colleagues that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the market, ensure ongoing access to care and minimal disruption for area patients, and permit the expansion of local competitive alternatives to CentraCare for the relevant physician services. Accordingly, I support the Consent Agreement on the basis that it is in the public interest.

[1] *See, e.g.*, U.S. DEP'T OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 11 (2010); *Citizen Publishing v. United States*, 394 U.S. 131 (1969) (establishing a three-prong test for satisfying the failing firm defense); *Fed. Trade Comm'n v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 154 (D.D.C. 2004).