

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Commissioners: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya

In the Matter of

Novant Health, Inc.,
a corporation,

and

Community Health Systems, Inc.,
a corporation.

Docket No. 9425

PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Novant Health, Inc. (“Novant”) and Community Health Systems, Inc. (“CHS”) entered into an Asset Purchase Agreement in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, under which Novant would acquire Lake Norman Regional Medical Center (“Lake Norman Regional”), Davis Regional Medical Center (“Davis”), and related assets in North Carolina for \$320 million (the “Proposed Transaction”), which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 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 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. NATURE OF THE CASE

1. Novant, one of the largest hospital systems in the southeastern United States and in North Carolina, seeks to acquire CHS’s Lake Norman Regional and Davis hospitals in North Carolina. If completed, the Proposed Transaction would threaten to substantially lessen competition for critical healthcare services in the “Eastern Lake Norman Area,” which primarily includes Iredell County and northern Mecklenburg County. The loss of competition would likely result in millions of dollars in increased healthcare costs.

independent basis for the merger’s illegality. Today, the two hospitals vigorously compete to attract patients by improving their quality, service offerings, and facilities. For example, [REDACTED]

[REDACTED] This non-price competition, and the investment it drives, benefits all patients that use these hospitals regardless of whether they are commercially insured, use a government payment program such as Medicaid or Medicare, or are uninsured. The Proposed Transaction would immediately eliminate this competition, likely reducing healthcare investment and improvements to quality of care in the Eastern Lake Norman Area.

II. JURISDICTION

7. Respondents are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

8. The Proposed Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. RESPONDENTS

9. Respondent Novant is a multi-state non-profit healthcare provider that operates one of the largest hospital systems in North Carolina. It is headquartered in Winston-Salem, North Carolina. Novant’s annual revenue in 2022 was \$7.6 billion.

10. Novant operates 16 GAC hospitals in North Carolina, as well as more than 800 outpatient facilities and physician offices across North Carolina and South Carolina. Six of Novant’s GAC hospitals are in Charlotte or its surrounding suburbs. One of those hospitals is in the Eastern Lake Norman Area: Novant Huntersville, a 151-bed community hospital located in Mecklenburg County, approximately 14 miles north of center-city Charlotte.

11. Novant grew to its current size through a decades-long series of mergers in North Carolina. Shortly after acquiring one of the largest hospitals in the state in 2021, Novant accelerated its campaign of consolidation. Including the Proposed Transaction, [REDACTED]

12. Respondent CHS is a for-profit healthcare system that operates 71 hospitals and thousands of sites of care, including physician practices and outpatient facilities, across 15 states. It is incorporated in Delaware and headquartered in Franklin, Tennessee. CHS’s annual revenue in 2022 was \$12.2 billion.

13. CHS operates two hospitals in North Carolina: Lake Norman Regional and Davis. Both hospitals are in the Eastern Lake Norman Area. Lake Norman Regional is a [REDACTED] 123-bed community hospital in Mooresville, roughly 25 miles north of center-city

Charlotte. Davis is in Statesville, equidistant between Charlotte and Winston-Salem. In 2022, CHS ceased offering inpatient GAC services at Davis and converted the facility to a dedicated behavioral health hospital.

IV. THE PROPOSED TRANSACTION

14. On February 28, 2023, Novant and CHS executed an Asset Purchase Agreement in which Novant agreed to pay CHS \$320 million to acquire Lake Norman Regional, Davis, and related assets, [REDACTED]

V. THE PROPOSED TRANSACTION WOULD SIGNIFICANTLY INCREASE CONCENTRATION IN A HIGHLY CONCENTRATED MARKET

15. The Proposed Transaction would significantly increase concentration in the already concentrated market for inpatient GAC services sold to commercial insurers and their members in the Eastern Lake Norman Area. The increased concentration in this market establishes a prima facie case that the Proposed Transaction is unlawful.

A. **Relevant Service Market: Inpatient GAC Services Sold to Commercial Insurers and Their Members**

16. Inpatient GAC services sold to commercial insurers and their members is a relevant service market in which to assess the Proposed Transaction's competitive effects.

17. Inpatient GAC services include a broad cluster of hospital services—medical, surgical, and diagnostic services requiring an overnight hospital stay—for which competitive conditions are substantially similar. In this case, inpatient GAC services cover all such services that both CHS's Lake Norman Regional and Novant Huntersville offer. Non-overlapping services are not included in the relevant service market, as the Proposed Transaction is not likely to affect competition for those services.

18. Examples of inpatient GAC services include childbirth, complex surgeries such as cardiac surgery, treatment of serious illnesses and infections, and some emergency care. Inpatient GAC services are required by distinct customers: individuals who need medical, surgical, and diagnostic services that necessitate an overnight hospital stay. Inpatient GAC services are provided by specialized providers—GAC hospitals.

19. Due to the specialized facilities, regulatory and licensing requirements, and high level of care involved, inpatient GAC services have distinct prices that are relatively insensitive to price changes for other medical services, such as outpatient services. Industry participants, including Respondents, recognize inpatient GAC services as a distinct category of services in the ordinary course of their business.

20. Although the Proposed Transaction's likely effects could be analyzed separately for each of the hundreds of individual inpatient acute-care services Respondents both offer, it is appropriate to assess competitive effects and calculate market concentration for inpatient GAC

services as a cluster of services. These services are offered in the Eastern Lake Norman Area under substantially similar competitive conditions. Grouping the hundreds of individual inpatient acute care services into a cluster for analytical convenience enables the efficient evaluation of competitive effects and reflects commercial and competitive realities.

21. Outpatient services, which are typically less intensive than inpatient services and do not require an overnight hospital stay, are excluded from the cluster market for inpatient GAC services. Examples of outpatient services include minor surgeries, MRI scans, and mammograms. The decision whether to treat a patient with an outpatient or inpatient service is a medical determination based on that patient's specific clinical need. Commercial insurers and their members generally cannot substitute an outpatient service for an inpatient service in response to a price increase, degradation of quality, or other exercise of market power with respect to inpatient GAC services. Additionally, outpatient services are offered in the Eastern Lake Norman Area by a broader set of providers under different competitive conditions and in a wider variety of settings, such as ambulatory surgery centers and physician offices.

22. The relevant service market does not include other services that are neither substitutes for nor offered under similar competitive conditions as inpatient GAC services. For example, the relevant service market does not include pediatric hospital services or inpatient psychiatric, substance abuse treatment, or rehabilitation services.

23. The hypothetical monopolist test is a quantitative tool that courts and federal agencies use to assist in determining relevant markets in antitrust cases. The test involves examining whether a hypothetical monopolist of a candidate market could profitably impose a small but significant and non-transitory increase in price or other worsening of terms. If a hypothetical monopolist could impose such an increase or other worsening of terms, that candidate market is a valid market for antitrust analysis.

24. A hypothetical monopolist of inpatient GAC services sold to commercial insurers and their members could profitably impose a small but significant and non-transitory increase in the price or other worsening of terms of those services. The market for inpatient GAC services sold to commercial insurers and their members therefore satisfies the hypothetical monopolist test.

B. Relevant Geographic Market: The Eastern Lake Norman Area

25. An appropriate relevant geographic market in which to analyze the competitive effects of the Proposed Transaction is the Eastern Lake Norman Area, which chiefly includes Iredell County and northern Mecklenburg County. The Eastern Lake Norman Area is the primary area in which Lake Norman Regional and Novant Huntersville compete.

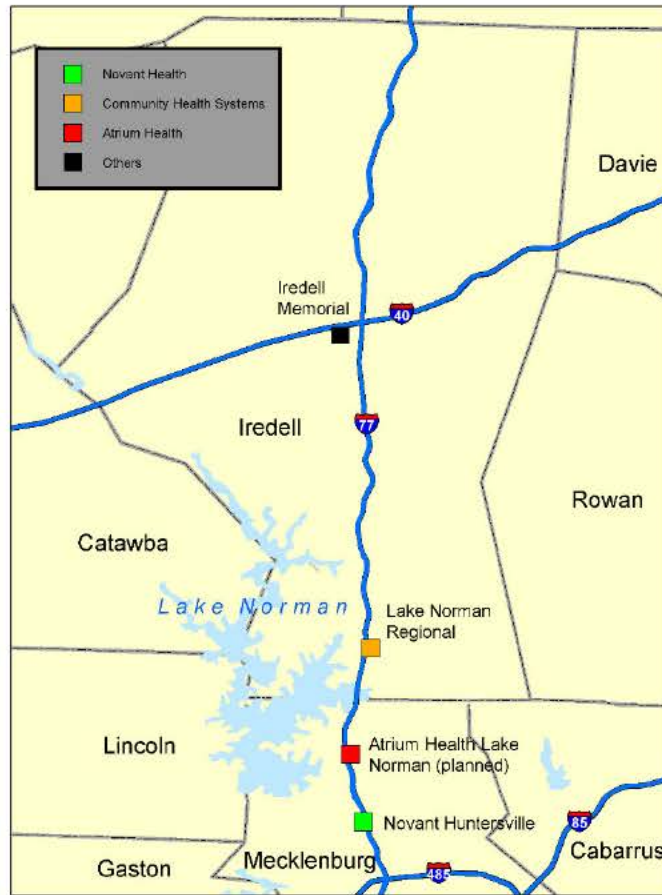
26. The Eastern Lake Norman Area is a rapidly growing suburban community north of Charlotte. Its population of more than 335,000 residents is centered in Mooresville, Davidson, Cornelius, Huntersville, and Statesville. These municipalities form a narrow corridor along Interstate 77 ("I-77"), a significant north-south thoroughfare.

27. The Eastern Lake Norman Area is a distinct community, as recognized by residents, business leaders, and market participants. On its south, the Eastern Lake Norman Area

is bordered by Interstate 485, which divides the city of Charlotte from its outer suburbs. Lake Norman forms a [REDACTED] near the western side of the relevant geographic market, creating a physical impediment to east-west travel and a preference among residents to receive healthcare services on their side of the lake. The north and east ends of the Eastern Lake Norman Area are more sparsely populated areas along the Iredell and Mecklenburg county lines. Residents of the Eastern Lake Norman Area are highly attuned to traffic congestion and driving times to center-city Charlotte, which dissuade many from traveling to Charlotte for healthcare services.

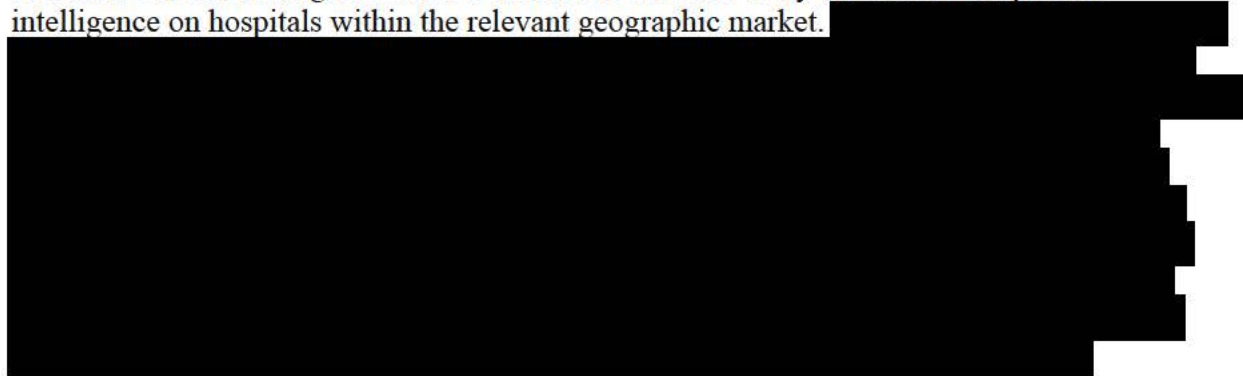
28. Patients in the Eastern Lake Norman Area prefer to receive inpatient GAC services close to their homes. Many patients do not view hospitals outside the Eastern Lake Norman Area as viable alternatives, and most patients from the Eastern Lake Norman Area stay within the area to receive inpatient GAC services. Employers contracting for commercial insurance seek health plans with a provider network that is satisfactory for a broad set of their employees. For these reasons, insurers do not believe they could successfully market health plans in the Eastern Lake Norman Area if their provider networks did not include a GAC hospital in the Eastern Lake Norman Area. Additionally, federal time-and-distance requirements applicable to some commercial health plans can be satisfied only by including at least one of the Eastern Lake Norman Area hospitals in-network.

29. The following map shows the Eastern Lake Norman Area and the locations of the four GAC hospitals located therein: CHS's Lake Norman Regional, Novant Huntersville, Iredell Memorial, and the planned Atrium Lake Norman.



30. The Eastern Lake Norman Area is an important market for commercial insurers because of its fast-growing population and the high proportion of its residents covered by employer-based commercial insurance. An insurer would incur significant financial harm if it could not offer a marketable provider network to employers with workers who reside in the Eastern Lake Norman Area.

31. Novant and CHS both assess competitive dynamics in the Eastern Lake Norman Area and execute strategic initiatives tailored to the area. They also focus competitive intelligence on hospitals within the relevant geographic market.



32. Respondents track market shares in geographies that closely correspond to the Eastern Lake Norman Area. Lake Norman Regional, Novant Huntersville, and Iredell Memorial

and Atrium Lake Norman would likely draw its patients from this area presuming it opens.

33. Evidence of existing intense head-to-head competition further demonstrates that the Eastern Lake Norman Area is a relevant geographic market.

The competition between Lake Norman Regional and Novant Huntersville supports a geographic market in which they are the market leaders. Additionally, the hospitals' competitive focus on Iredell Memorial and Atrium Lake Norman indicates that a well-defined geographic market will encompass those facilities.

34. Quantitative analysis confirms this commercial reality. A hypothetical monopolist of inpatient GAC services sold to commercial insurers and their members in the Eastern Lake Norman Area could profitably impose a small but significant and non-transitory increase in price or other worsening of terms of those services. The Eastern Lake Norman Area therefore satisfies the hypothetical monopolist test.

35. In the alternative—although less illuminative of the competitive effects of the Proposed Transaction—the broader Center City/Northern Charlotte Region also constitutes a relevant geographic market. Alongside the Eastern Lake Norman Area, this geographic area adds center-city Charlotte, the northern and northeastern sections of Charlotte, and the western portion of Cabarrus County. This broader area encompasses the four GAC hospitals in the Eastern Lake Norman Area and several others, including Novant's Presbyterian Medical Center, Atrium Health Carolinas Medical Center, Atrium Health Mercy, Atrium Health University City, and Atrium Health Cabarrus. It would be very difficult for a commercial insurer to successfully market a health plan to Center City/Northern Charlotte Region employers and residents if its provider network excluded all GAC hospitals from that area.

36. A hypothetical monopolist of inpatient GAC services across the entire Center City/Northern Charlotte Region could profitably impose a small but significant and non-transitory increase in price or other worsening of terms on commercial insurers that sell health plans in the Center City/Northern Charlotte Region.

C. The Proposed Transaction Would Lead to a Presumptively Illegal Increase in Concentration

37. The Proposed Transaction is presumptively illegal because it significantly increases concentration and results in a highly concentrated market for inpatient GAC services sold to commercial insurers and their members in the Eastern Lake Norman Area. The impact of the Proposed Transaction on market concentration is sufficient to establish a prima facie case that the Proposed Transaction violates the antitrust laws.

38. Courts, federal and state agencies, and economists commonly employ market shares and a metric known as the Herfindahl-Hirschman Index ("HHI") to measure market concentration. The HHI for a given market is calculated by summing the squares of the individual firms' market shares. HHIs range from a number approaching zero (in the case of an

atomistic market) to 10,000 (in the case of a pure monopoly). A market is considered highly concentrated if it has an HHI of more than 1,800.

39. An acquisition is presumptively illegal if it increases the HHI of a relevant market by more than 100 points and either (a) produces a post-acquisition HHI greater than 1,800 points or (b) creates a combined firm with a market share greater than 30 percent.

40. The Proposed Transaction's impact on market concentration far exceeds the levels that trigger a presumption of illegality, increasing the HHI in the Eastern Lake Norman Area by well over 1,000 points, leading to a post-acquisition HHI significantly above 3,500 points, and a post-acquisition market share for Novant of considerably more than 30 percent. Indeed, the most appropriate measures indicate that the Proposed Transaction would increase the HHI in the market by more than [REDACTED] resulting in a (a) post-acquisition HHI of more than [REDACTED] and (b) market share for Novant of approximately [REDACTED] percent. These post-transaction concentration estimates assume Atrium Lake Norman is currently a market participant, despite Atrium's projection that the facility will become operational only in mid-2025.

41. Assuming an operational Atrium Lake Norman, the Proposed Transaction would reduce the number of healthcare providers offering inpatient GAC services in the Eastern Lake Norman Area from four to three. Moreover, the risk of competitive harm would be even more severe before the planned opening of Atrium Lake Norman in mid-2025. During that period, the Proposed Transaction would leave only two competing providers in the Eastern Lake Norman Area: Novant and Iredell Memorial.

42. The presumption of anticompetitive harm from the Proposed Transaction does not depend on a market defined around the Eastern Lake Norman Area. Even if the hospitals in the Center City/Northern Charlotte Region are included in the geographic market, the Proposed Transaction would still produce presumptively illegal market concentration levels and increases in market concentration. Including these hospitals—although less reflective of competitive realities—shows the Proposed Transaction would still increase the HHI by more than [REDACTED] points, resulting in a post-acquisition HHI of over [REDACTED] points and a post-merger market share of more than [REDACTED] percent for Novant. The Proposed Transaction, therefore, remains presumptively illegal even if analyzed in a broader region than the Eastern Lake Norman Area.

VI. THE PROPOSED TRANSACTION WOULD ELIMINATE HEAD-TO-HEAD COMPETITION BETWEEN LAKE NORMAN REGIONAL AND NOVANT HUNTERSVILLE

43. CHS's Lake Norman Regional and Novant Huntersville currently compete closely to provide inpatient GAC services to commercial insurers and their members. This competition creates numerous benefits for patients in the Eastern Lake Norman Area, driving Respondents to offer more competitive reimbursement rates and to invest in improving the quality of their healthcare services. The Proposed Transaction would immediately eliminate this important head-to-head competition. It would combine what is currently a [REDACTED] for inpatient GAC services in the Eastern Lake Norman Area with [REDACTED] hospital systems. The anticompetitive effects of the Proposed Transaction would likely burden employers and residents in the Eastern Lake Norman Area with higher healthcare

costs and hospitals that face a reduced incentive to invest in innovative, accessible, and high-quality care.

44. The Proposed Transaction would eliminate substantial competition between Lake Norman Regional and Novant Huntersville to sell inpatient GAC services to commercial insurers and their members. The loss of this substantial competition constitutes an additional and independent ground on which the Proposed Transaction is unlawful.

A. Competition Between Hospitals Benefits Consumers

45. Hospital competition to provide healthcare services to commercially insured patients occurs in two distinct but related stages. First, hospitals compete for inclusion in commercial insurers' health plan provider networks. Second, in-network hospitals compete to attract patients.

46. In the first stage of hospital competition, hospitals compete to be included in the provider networks for commercial insurers' health plans. To become an in-network provider in a health plan, a hospital negotiates with an insurer and enters into a contract if it can agree on terms with the insurer. The reimbursement rates for services rendered to a health plan's members are a central component of these negotiations. This is true regardless of whether reimbursements are tied to fee-for-service contracts, value-based contracts, or other types of contracts.

47. Insurers seek to create a network of healthcare providers that is attractive to current and prospective customers. Employers aim to find health plans with a provider network that is suitable for a broad range of their employees. For this reason, insurers attempt to contract with local hospitals that are desirable to residents who are current or prospective members of a commercial health plan. Patients prefer to seek treatment close to where they live. It is typically far less expensive for health plan members to receive care from an in-network hospital than a hospital that is not included in the health plan's provider network. Having local hospitals in-network thus enables the insurer to assemble a provider network that is attractive to current and prospective customers in a particular geographic area, generally local employers and their employees.

48. A hospital is likely to attract more of a health plan's members if it is in-network because members will face lower out-of-pocket costs for care at that facility. Hospitals therefore have an incentive to offer competitive terms and reimbursement rates to induce insurers to include the hospital in their provider networks.

49. A hospital has significant bargaining leverage if its absence would make an insurer's health plan provider network substantially less attractive to current and prospective customers and members in a geographic area. The relative importance of a hospital to the insurer hinges on whether other nearby hospitals could serve as viable in-network substitutes in the eyes of customers and health plan members. The nearby presence of alternative, high-quality hospitals creates important competition that limits the ability of hospitals to raise prices and to impose other unfavorable terms in negotiations with insurers. Where there are fewer meaningful alternatives—i.e., less competition—a hospital will have greater bargaining leverage to obtain higher reimbursement rates and other more onerous contract terms.

50. A merger involving hospitals that are good substitutes for patients increases the combined entity's bargaining leverage with insurers. Such a merger can lead to higher prices and a reduced incentive to invest in innovation and quality of care because the merger eliminates an alternative that an insurer could otherwise offer (or threaten to offer) its customers and health plan members.

51. Increases in reimbursement rates significantly impact health plan customers and members, such as through higher premiums, increased cost-sharing payments, or fewer benefits. Self-insured employers fully bear increased reimbursement rates because they pay for claims directly. Fully insured employers face higher premiums driven by increased reimbursement rates. Individual consumers also can feel the burden of increased reimbursement rates in the form of higher insurance premiums, co-pays, co-insurance, deductibles, or other out-of-pocket costs.

52. In the second stage of hospital competition, hospitals compete to attract patients to their facilities by offering convenient, high-quality healthcare services. After selecting a health plan, patients generally do not face different out-of-pocket costs to access various hospitals included in their health plan's provider network. As a result, hospitals compete on non-price features, including location, quality of care, enhanced service offerings, reputation, amenities, and patient satisfaction. Hospitals also compete for patient volume by seeking to persuade physicians to refer or admit patients to their facility.

53. Non-price competition benefits all patients of the competing hospitals, whether those patients are covered by commercial insurance, Medicare or Medicaid, or no insurance at all. Indeed, many Medicaid and low-income patients have limited transportation options, which makes local non-price competition particularly important. A merger of competing hospitals eliminates this significant non-price competition.

B. Lake Norman Regional and Novant Huntersville Compete Closely

54. CHS's Lake Norman Regional and Novant Huntersville are direct competitors. Each hospital pays close attention to the competitive threat posed by the other.

55. Lake Norman Regional treats Novant Huntersville as its most important competitive rival. In July 2022, Lake Norman Regional's CEO shared a set of growth strategies he characterized as [REDACTED]

[REDACTED] Executives at Lake Norman Regional repeatedly prepared strategic presentations featuring a [REDACTED]

[REDACTED] CHS also characterized Novant Huntersville as the [REDACTED] Lake Norman

Regional's leaders monitor Novant Huntersville's [REDACTED]

[REDACTED] noting that [REDACTED]

[REDACTED] In 2022, CHS named Novant Huntersville as [REDACTED]

56. Novant likewise views Lake Norman Regional as one of its closest competitors. For example, Novant's strategic plans for its self-defined [REDACTED]

[REDACTED]
o Novant Huntersville. Novant regularly tracks Lake Norman Regional's [REDACTED]

57. Lake Norman Regional and Novant Huntersville are significant competitors because they offer a similar set of services in close geographic proximity. The two hospitals are located closer to each other than either is to any other currently operating GAC hospital. The “service areas” of these hospitals (i.e., the areas from which the hospitals draw their patients) overlap significantly, particularly in southern Iredell County, where [REDACTED] and [REDACTED]

58. Both CHS and Novant have strong incentives to compete vigorously in the Eastern Lake Norman Area. This geographic area has rapid population growth and a lucrative “payor mix” that features a large proportion of commercially insured patients. Hospitals receive substantially higher reimbursement rates for commercially insured patients relative to patients covered by Medicare, Medicaid, or related managed care health plans.

59. Lake Norman Regional and Novant Huntersville currently serve as important alternatives to one another for insurers constructing provider networks. They are the only currently operating GAC hospitals along the 42-mile stretch of I-77 between Iredell Memorial in Statesville and center-city Charlotte. Insurers believe that a health plan must have an in-network GAC hospital within fewer than 15 or 20 miles to be marketable in parts of northern Mecklenburg and southern Iredell counties—leaving Respondents’ hospitals as the only two options. Moreover, for commercial health plans sold on the Affordable Care Act Health Insurance Marketplace, Lake Norman Regional and Novant Huntersville are the only hospitals that can satisfy geographic access requirements for large swathes of northern Mecklenburg County.

60. Respondents recognize that patients frequently choose between Lake Norman Regional and Novant Huntersville. Lake Norman Regional’s CEO pointed out his hospital’s [REDACTED] of [REDACTED] Novant Huntersville’s progress [REDACTED]

When Lake Norman Regional launched a [REDACTED] plan to shore up its market share, its target was clear. The plan involved [REDACTED]

61. Patients treat Lake Norman Regional and Novant Huntersville as close substitutes, which drives the intensity of competition between the two hospitals. Diversion analysis is an economic tool that measures patterns of patient substitution between hospitals using data describing where patients receive hospital services. Diversion analysis shows that, if Lake Norman Regional became unavailable to patients for inpatient GAC services, Novant Huntersville would be their top alternative destination. If Novant Huntersville were to become unavailable, a substantial proportion of Novant Huntersville’s patients would seek inpatient GAC

services at Lake Norman Regional. Insurers similarly consider Lake Norman Regional and Novant Huntersville to be important substitutes in the eyes of their health plan members.

62. In addition to removing CHS as a competitor, the Proposed Transaction would eliminate the possibility of a different healthcare system acquiring Lake Norman Regional and continuing to compete against Novant Huntersville. [REDACTED]

[REDACTED] The Proposed Transaction would put an immediate stop to competition between Novant Huntersville and Lake Norman Regional and the benefits it produces for patients.

63. Atrium’s plan to open a small, 30-bed hospital in Cornelius does not neutralize the competitive intensity between Lake Norman Regional and Novant Huntersville. Atrium Lake Norman aspires to open its doors in mid-2025, but that timeline is not certain. Assuming Atrium Lake Norman is operational, the Proposed Transaction would reduce the number of competing providers in the Eastern Lake Norman Area from four to three, and it would leave a weaker set of competitive alternatives. Even if it were consistently filled to maximum capacity, Atrium Lake Norman would serve less than 50 percent as many patients as Lake Norman Regional and less than 30 percent as many patients as Novant Huntersville. [REDACTED]

[REDACTED] Atrium Lake Norman’s limited capacity and service offerings would make it unable to treat a meaningful proportion of the patients seeking care in the area.

C. Head-to-Head Competition Between Lake Norman Regional and Novant Huntersville Constrains Healthcare Rates

64. Today, close head-to-head competition between CHS’s Lake Norman Regional and Novant Huntersville incentivizes Respondents to keep prices lower and quality of care higher than they would absent this competition. Lake Norman Regional obtains in-network status with insurers by offering low reimbursement rates relative to other GAC hospitals. Across the largest commercial insurers in North Carolina, [REDACTED]

65. CHS also competes on non-price factors to ensure the inclusion of Lake Norman Regional in insurers’ provider networks. Lake Norman Regional has sought to [REDACTED]

66. By eliminating Lake Norman Regional and Novant Huntersville as competitive alternatives, the Proposed Transaction likely would increase Novant’s leverage in insurer negotiations to obtain higher reimbursement rates, especially at Lake Norman Regional. Today, competitive pressure may prevent Lake Norman Regional from negotiating higher rates with insurers. But if the Proposed Transaction is allowed to close, Novant would be able to leverage its control of an even greater proportion of the Eastern Lake Norman Area’s hospitals when negotiating rates for Lake Norman Regional. The Proposed Transaction is likely to substantially

reduce the need to offer attractive rates at Lake Norman Regional to persuade insurers to include the hospital in their provider networks.

67. CHS recognizes that [REDACTED] In an email, the company's [REDACTED] He predicted that [REDACTED] Instead, CHS began [REDACTED]

68. [REDACTED]

69. Novant would have the ability to profitably raise prices at both Lake Norman Regional and Novant Huntersville following the Proposed Transaction. The competitive harm of the Proposed Transaction is likely to increase annual healthcare costs by approximately [REDACTED] Rate increases are likely to be particularly acute at Lake Norman Regional—economic modeling indicates the post-merger entity may be able to obtain [REDACTED]

70. Post-merger, insurers constructing a provider network would have fewer alternatives to either Lake Norman Regional or Novant Huntersville. Iredell Memorial in Statesville is a 20- to 30-minute drive north of population centers in Mooresville, Cornelius, and Huntersville, making it a less desirable replacement for Lake Norman Regional or Novant Huntersville. Even upon the anticipated opening of the 30-bed Atrium Lake Norman hospital in Cornelius, its limited capacity would make it a less effective substitute for hospitals in an insurer's provider network than Lake Norman Regional and Novant Huntersville are for each other. As a result, should Novant acquire Lake Norman Regional, the merged firm would likely be able to command higher reimbursement rates or other more onerous contractual terms than Respondents do separately today. Such higher rates would likely harm employers and consumers through increased costs—such as higher insurance premiums, co-pays, co-insurance, and deductibles—or decreased benefits.

71. Moreover, the risk of competitive harm is even more severe prior to Atrium Lake Norman's anticipated opening in mid-2025. Before that point, the planned opening of Atrium Lake Norman may provide a limited competitive constraint at most. The Proposed Transaction therefore poses a particularly strong likelihood of substantially lessening competition during the period immediately after Respondents complete the acquisition.

D. Current Competition between Respondents to Attract Patients Drives Investment in Quality of Care and Innovation

72. In addition to constraining healthcare rates, CHS's Lake Norman Regional and Novant Huntersville also compete with one another to attract patients to utilize their inpatient GAC services, regardless of the patient's insurer. This competition currently incentivizes each hospital to improve quality, technology, amenities, equipment, access to care, and service offerings. The benefit of that competition would be lost if the Proposed Transaction is allowed to proceed.

i. Quality and Service Improvements

73. Respondents have invested in their healthcare systems and facilities to compete to attract patients to Lake Norman Regional and Novant Huntersville.

[REDACTED]

74. [REDACTED]

75. [REDACTED]

76.

[REDACTED]

77.

[REDACTED]

78. All patients of Lake Norman Regional and Novant Huntersville benefit from the hospitals' non-price competition. The intense head-to-head competition between the two hospitals has spurred investments that have delivered newer medical equipment, more accessible healthcare services, and expanded service offerings. If the Proposed Transaction is allowed to close, the competitive pressure driving these business investments would cease the day the merger is completed.

ii. Physicians and Physician Referrals

79. Respondents also compete with one another by recruiting physicians.

[REDACTED]

80. Lake Norman Regional and Novant Huntersville also currently compete for physician referrals.

[REDACTED]

iii. Investments in Capacity and Output

81. The Proposed Transaction also threatens to eliminate planned improvements in capacity and quality in the Eastern Lake Norman Area. [REDACTED]

VII. COUNTERVAILING FACTORS DO NOT OFFSET THE PROPOSED TRANSACTION'S THREAT TO COMPETITION

82. *De novo* entry of providers of inpatient GAC services in the Eastern Lake Norman Area in response to the Proposed Transaction would not be timely, likely, or sufficient to offset the Proposed Transaction's anticompetitive effects.

83. Constructing a new hospital is expensive and involves significant financial risks, including the time and resources necessary to develop plans, acquire land or repurpose a facility, garner community support, obtain regulatory approvals, build the hospital, and prepare to open its doors.

84. North Carolina state law requires providers to obtain a certificate of need ("CON") before building a new GAC hospital or expanding an existing GAC hospital. The process of obtaining a CON is expensive, time-consuming, and uncertain to succeed. Denial of a CON application would bar a prospective competitor from entering the market or increasing the number of beds with which to provide inpatient GAC services.

85. Atrium's experience pursuing the opening of Atrium Lake Norman illustrates the high barriers to building a new hospital in this area. State regulators twice denied Atrium's applications for a CON for Atrium Lake Norman. Atrium gained approval only after it abandoned its attempt to secure new licensed beds, instead reallocating 30 licensed beds that were already approved at other Atrium hospitals. Atrium did not begin construction of Atrium Lake Norman until May 2023, nearly four years after it applied for a CON for the facility in 2019. The hospital has faced multiple years of delays and cost overruns of nearly 50 percent. Atrium Lake Norman is now projected to open in mid-2025—nearly six years after Atrium first filed its CON application. Other healthcare systems agree that opening a new hospital is an enormously daunting proposition that would require hundreds of millions of dollars.

86. There are no pending CON applications to add new inpatient beds in the Eastern Lake Norman Area. None of the healthcare systems in other parts of the Charlotte region have announced plans to enter the Eastern Lake Norman Area.

87. Expanding existing GAC hospitals would encounter similarly high barriers, including substantial time and expense for planning, pursuing a CON and other regulatory approvals, and construction. [REDACTED]

88. Expansion of inpatient capacity at existing GAC hospitals in the Eastern Lake Norman Area in response to the Proposed Transaction would not be timely, likely, or sufficient to offset the Proposed Transaction's anticompetitive effects.

89. Atrium has not applied to expand Atrium Lake Norman's inpatient capacity beyond its 30 currently licensed beds. There is a low likelihood that Atrium Lake Norman would be able to timely expand its capacity to blunt the anticompetitive effects of the Proposed Transaction.

90. Respondents cannot demonstrate merger-specific, verifiable, and cognizable efficiencies sufficient to overcome the structural presumption of illegality or to show that the Proposed Transaction does not threaten to substantially lessen competition.

VIII. VIOLATION

Count I – Illegal Agreement

91. The allegations of Paragraphs 1 through 90 above are incorporated by reference as though fully set forth herein.

92. The Asset Purchase Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

Count II – Illegal Acquisition

93. The allegations of Paragraphs 1 through 90 above are incorporated by reference as though fully set forth herein.

94. The Proposed Transaction, if consummated, may substantially lessen competition, or tend to create a monopoly, in a relevant antitrust market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the twenty-sixth day of June, 2024, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Proposed Transaction and/or Asset Purchase Agreement challenged in this proceeding violate Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the Proposed Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Novant and CHS were offering and planning to offer prior to the Proposed Transaction.

2. A prohibition against any transaction between Novant and CHS that combines their businesses in the relevant market, except as may be approved by the Commission.
3. A requirement that, for a period of time, Novant and CHS shall not, without giving prior notice to and obtaining the prior approval of the Commission, acquire, merge with, or combine their businesses with any other company engaged in business activity in the relevant market.
4. A requirement to file periodic compliance reports with the Commission.
5. A requirement that Respondents' compliance with the order be monitored at Respondents' expense and by an independent monitor, for a term to be determined by the Commission.
6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Proposed Transaction and/or the Asset Purchase Agreement or to restore Lake Norman Regional Medical Center and/or Davis Regional Medical Center as viable, independent competitors in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 25th day of January, 2024.

By the Commission.

April J. Tabor
Secretary



SEAL:
ISSUED: 1/25/24