(''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective March 28, 2017, following receipt of a petition filed with the Commission and Commerce by Charter Steel, Saukville, Wisconsin; Gerdau Ameristeel US Inc., Tampa, Florida; Keystone Consolidated Industries, Inc., Peoria, Illinois; and Nucor Corporation, Charlotte, North Carolina. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of carbon and certain alloy steel wire rod from South Africa and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 20, 2017 (82 FR 44001). The hearing was held in Washington, DC, on November 16, 2017 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on March 1, 2018. The views of the Commission are contained in USITC Publication 4766, March 2018, entitled *Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine: Investigation Nos. 731–TA–1353 and 1356 (Final).*

By order of the Commission.

Issued: March 1, 2018.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2018–04585 Filed 3–6–18; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission also finds that imports of wire rod subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on South Africa.

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. W.A. Foote Memorial Hospital, d/b/a Allegiance Health; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Notification of Settlement and Explanation of Consent Decree Procedures, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Michigan in *United States and State of Michigan* v. *W.A. Foote Memorial Hospital,* Civil Action No. 15–cv–12311 (JEL) (DRG). On June 25, 2015, the United States and the State of Michigan filed a Complaint alleging that Defendant W.A. Foote Memorial Hospital d/b/a Allegiance Health (''Allegiance'') entered into an agreement with Hillsdale Community Health Center that unlawfully allocated customers in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and 2 of the Michigan Antitrust Reform Act, MCL 445.772. The proposed Final Judgment, filed February 9, 2018, prohibits Allegiance from agreeing with other healthcare providers to prohibit or limit marketing or to divide any geographic market or territory. The proposed Final Judgment also prohibits Allegiance from communicating with competing healthcare systems regarding its marketing plans, with limited exceptions. The proposed Final Judgment also imposes an antitrust compliance officer and other training and monitoring requirements on Allegiance.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment on the proposed Final Judgment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter J. Mucchetti, Chief, Healthcare & Consumer Products Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and State of Michigan, and Plaintiffs, v. *Hillsdale Community Health Center, W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Community Health Center of Branch County*, and *Promedica Health System, Inc.,* Defendants.

Case No.: 2:15–cv–12311–JEL–DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

COMPLAINT

The United States of America and the State of Michigan bring this civil antitrust action to enjoin agreements by Defendants Hillsdale Community Health Center (''Hillsdale''), W.A. Foote Memorial Hospital, d/b/a Allegiance Health (''Allegiance''), Community Health Center of Branch County (''Branch''), and ProMedica Health System, Inc. (''ProMedica'') (collectively, ''Defendants'') that unlawfully allocate territories for the marketing of competing healthcare services and limit competition among Defendants.

NATURE OF THE ACTION

1. Defendants are healthcare providers in Michigan that operate the only general acute-care hospital or hospitals in their respective counties. Defendants directly compete with each other to provide healthcare services to the residents of south-central Michigan. Marketing is a key component of this competition and includes advertisements, mailings to patients, health fairs, health screenings, and outreach to physicians and employers.

2. Allegiance, Branch, and ProMedica's Bixby and Herrick Hospitals (''Bixby and Herrick'') are Hillsdale's closest Michigan competitors. Hillsdale orchestrated agreements to limit marketing of competing healthcare services. Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County.'' Branch's CEO described the Branch agreement with Hillsdale as a ''gentlemen's agreement not to market services.'' A ProMedica communications specialist described the ProMedica agreement with Hillsdale

in an email: ''The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project.''

3. The Defendants' agreements have disrupted the competitive process and harmed patients, physicians, and employers. For instance, all of these agreements have deprived patients, physicians, and employers of information they otherwise would have had when making important healthcare decisions. In addition, the agreement between Allegiance and Hillsdale has deprived Hillsdale County patients of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, it denied Hillsdale County employers the opportunity to develop relationships with Allegiance that could have allowed them to improve the quality of their employees' medical care.

4. Defendants' senior executives created and enforced these agreements, which lasted for many years. On certain occasions when a Defendant violated one of the agreements, executives of the aggrieved Defendant complained about the violation and received assurances that the previously agreed upon marketing restrictions would continue to be observed going forward.

5. Defendants' agreements are naked restraints of trade that are *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The State of Michigan brings this action in its sovereign capacity under its statutory, equitable and/or common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants' violations of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

7. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4 (as to claims by the United States); Section 16 of the Clayton Act, 15 U.S.C. § 26 (as to claims by the State of Michigan); and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1367.

8. Venue is proper in the Eastern District of Michigan under 28 U.S.C. § 1391 and Section 12 of the Clayton Act, 15 U.S.C. § 22. Each Defendant transacts business within the Eastern District of Michigan, all Defendants reside in the State of Michigan, and at least two Defendants reside in the Eastern District of Michigan.

9. Defendants all engage in interstate commerce and in activities substantially affecting interstate commerce. Defendants provide healthcare services to patients for which employers, health plans, and individual patients remit payments across state lines. Defendants purchase supplies and equipment from out-of-state vendors that are shipped across state lines.

DEFENDANTS

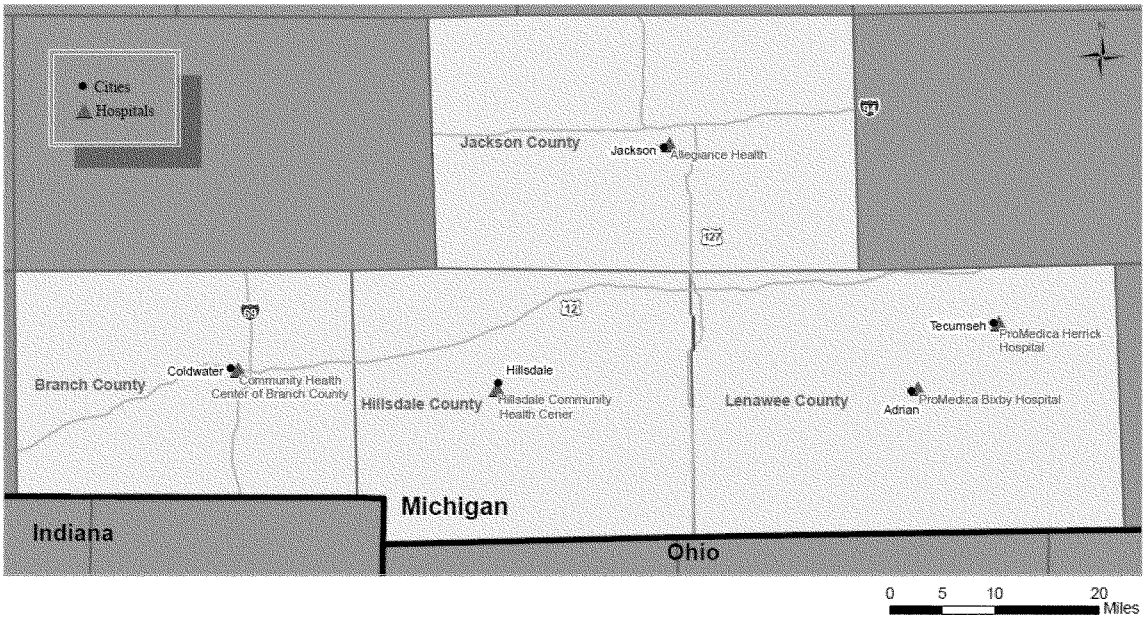
10. Hillsdale is a Michigan corporation headquartered in Hillsdale, Michigan. Its general acute-care hospital, which is in Hillsdale County, Michigan, has 47 beds and a medical staff of over 90 physicians.

11. Allegiance is a Michigan corporation headquartered in Jackson, Michigan. Its general acute-care hospital, which is in Jackson County, Michigan, has 480 beds and a medical staff of over 400 physicians.

12. Branch is a Michigan corporation headquartered in Coldwater, Michigan. Its general acute-care hospital, which is in Branch County, Michigan, has 87 beds and a medical staff of over 100 physicians.

13. ProMedica is an Ohio corporation headquartered in Toledo, Ohio, with facilities in northwest Ohio and southern Michigan. ProMedica's Bixby and Herrick Hospitals are both in Lenawee County, Michigan. Bixby is a general acute-care hospital with 88 beds and a medical staff of over 120 physicians. Herrick is a general acute-care hospital with 25 beds and a medical staff of over 75 physicians.

Map of Defendants' Hospitals



BACKGROUND ON HOSPITAL COMPETITION

14. Hillsdale competes with each of the other Defendants to provide many of the same hospital and physician services to patients. Hospitals compete on price, quality, and other factors to sell their services to patients, employers, and insurance companies. An important tool that hospitals use to compete for patients is marketing aimed at informing patients, physicians, and employers about a hospital's quality and scope of services. An executive from each Defendant has testified at deposition that marketing is an important strategy through which hospitals seek to increase their patient volume and market share.

15. Defendants' marketing includes advertisements through mailings and media such as local newspapers, radio, television, and billboards. Allegiance's marketing to patients also includes the provision of free medical services, such as health screenings, physician seminars, and health fairs. Some Defendants also market to physicians through educational and relationship-building meetings that provide physicians with information about those Defendants' quality and range of services. Allegiance also engages in these marketing activities with employers.

HILLSDALE'S UNLAWFUL AGREEMENTS

16. Hillsdale has agreements limiting competition with Allegiance, ProMedica, and Branch.

Unlawful Agreement Between Hillsdale and Allegiance

17. Since at least 2009, Hillsdale and Allegiance have had an agreement that limits Allegiance's marketing for competing services in Hillsdale County. As Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center, Duke Anderson, to not conduct marketing activity in Hillsdale County.''

18. In compliance with this agreement, Allegiance has excluded Hillsdale County from marketing campaigns since at least 2009. For example, Allegiance excluded Hillsdale County from the marketing plans outlined in the above-referenced 2013 oncology marketing plan. And according to a February 2014 board report, Allegiance excluded Hillsdale from marketing campaigns for cardiovascular and orthopedic services.

19. On at least two occasions, Hillsdale's CEO complained to Allegiance after Allegiance sent marketing materials to Hillsdale County residents. Both times—at the direction of Allegiance CEO Georgia Fojtasek—Allegiance's Vice President of Marketing, Anthony Gardner, apologized in writing to Hillsdale's CEO. In one apology he said, ''It isn't our style to purposely not honor our agreement.'' Mr. Gardner assured Hillsdale's CEO that Allegiance would not repeat this mistake.

20. Allegiance also conveyed its hands-off approach to Hillsdale in 2009 when Ms. Fojtasek told Hillsdale's CEO that Allegiance would take a ''Switzerland'' approach towards Hillsdale, and then confirmed this approach by mailing Hillsdale's CEO a Swiss flag.

21. Allegiance executives and staff have discussed the agreement in numerous correspondences and business documents. For example, Allegiance staff explained in a 2012 cardiovascular services analysis: ''Hillsdale does not permit [Allegiance] to conduct free vascular screens as they periodically charge for screenings.'' As a result, around that time, Hillsdale County patients were deprived of free vascular-health screenings.

22. In another instance, in 2014 Allegiance discouraged one of its newly employed physicians from giving a seminar in Hillsdale County relating to competing services. In response to the physician's request to provide the seminar, the Allegiance Marketing Director asked the Vice President of Physician Integration and Business Development: ''Who do you think is the best person to explain to [the doctor] our restrictions in Hillsdale? We're happy to do so but often our docs find it hard to believe and want a higher authority to confirm.''

23. The agreement between Hillsdale and Allegiance has deprived Hillsdale County patients, physicians, and employers of information regarding their healthcare-provider choices and of free health-screenings and education.

Unlawful Agreement Between Hillsdale and ProMedica

24. Since at least 2012, Hillsdale and ProMedica have agreed to limit their marketing for competing services in one another's county.

25. This agreement has restrained marketing in several ways. For example, in June 2012, Bixby and Herrick's President asked Hillsdale's CEO if he would have any issue with Bixby marketing its oncology services to Hillsdale physicians. Hillsdale's CEO replied that he objected because his hospital provided those services. Bixby and Herrick's President responded that he understood. Bixby and Herrick then refrained from marketing their competing oncology services in Hillsdale County.

26. Another incident occurred around January 2012, when Hillsdale's CEO complained to Bixby and Herrick's President about the placement of a ProMedica billboard across from a physician's office in Hillsdale County. At the conclusion of the conversation, Bixby and Herrick's President assured Hillsdale's CEO that he would check into taking down the billboard.

27. ProMedica employees have discussed and acknowledged the agreement in multiple documents. For example, after Hillsdale's CEO called Bixby and Herrick's President to complain about ProMedica's billboard, a ProMedica communications specialist described the agreement to marketing colleagues via email: ''According to [Bixby and Herrick's President] any potential marketing (including network development) efforts targeted for the Hillsdale, MI market should be run by him so that he can talk to Hillsdale Health Center in advance. The agreement is that they stay our [sic] of our market and we stay out of theirs unless we decide to collaborate with them on a particular project.''

28. The agreement between Hillsdale and ProMedica deprived patients, physicians, and employers of Hillsdale and Lenawee Counties of information regarding their healthcare-provider choices.

Unlawful Agreement Between Hillsdale and Branch

29. Since at least 1999, Hillsdale and Branch have agreed to limit marketing in one another's county. In the fall of 1999, Hillsdale's then-CEO and Branch's CEO reached an agreement whereby each hospital agreed not to market anything but new services in the other hospital's county. Branch's CEO testified recently in deposition that ''There's a gentlemen's agreement not to market services other than new services.''

30. Branch has monitored Hillsdale's compliance with the agreement. For example, in November 2004, Hillsdale promoted one of its physicians through an advertisement in the Branch County newspaper. Branch's CEO faxed Hillsdale's then-CEO a copy of the advertisement, alerting him to the violation of their agreement.

31. In addition to monitoring Hillsdale's compliance, Branch has directed its marketing employees to abide by the agreement with Hillsdale. For example, Branch's 2013 guidelines

for sending out media releases instructed that it had a ''gentleman's agreement'' with Hillsdale and thus Branch should not send media releases to the *Hillsdale Daily News.*

32. The agreement between Hillsdale and Branch deprived Hillsdale and Branch County patients, physicians, and employers of information regarding their healthcare-provider choices.

NO PROCOMPETITIVE JUSTIFICATIONS

33. The Defendants' anticompetitive agreements are not reasonably necessary to further any procompetitive purpose.

VIOLATIONS ALLEGED

First Cause of Action: Violation of Section 1 of the Sherman Act

34. Plaintiffs incorporate paragraphs 1 through 33.

35. Allegiance, Branch, and ProMedica are each a horizontal competitor of Hillsdale in the provision of healthcare services in south-central Michigan. Defendants' agreements are facially anticompetitive because they allocate territories for the marketing of competing healthcare services and limit competition among Defendants. The agreements eliminate a significant form of competition to attract patients.

36. The agreements constitute unreasonable restraints of trade that are *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1. No elaborate analysis is required to demonstrate the anticompetitive character of these agreements.

37. The agreements are also unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, under an abbreviated or ''quick look'' rule of reason analysis. The principal tendency of the agreements is to restrain competition. The nature of the restraints is obvious, and the agreements lack legitimate procompetitive justifications. Even an observer with a rudimentary understanding of economics could therefore conclude that the agreements would have anticompetitive effects on patients, physicians, and employers, and harm the competitive process.

Second Cause of Action: Violation of MCL 445.772

38. Plaintiff State of Michigan incorporates paragraphs 1 through 37 above.

39. Defendants entered into unlawful agreements with each other that unreasonably restrain trade and commerce in violation of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

REQUESTED RELIEF

The United States and the State of Michigan request that the Court:

(A) judge that Defendants' agreements limiting competition constitute illegal restraints of interstate trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

(B) enjoin Defendants and their members, officers, agents, and employees from continuing or renewing in any manner the conduct alleged herein or from engaging in any other conduct, agreement, or other arrangement having the same effect as the alleged violations;

(C) enjoin each Defendant and its members, officers, agents, and employees from communicating with any other Defendant about any Defendant's marketing in its or the other Defendant's county, unless such communication is related to the joint provision of services, or unless the communication is part of normal due diligence relating to a merger, acquisition, joint venture, investment, or divestiture;

(D) require Defendants to institute a comprehensive antitrust compliance program to ensure that Defendants do not establish any similar agreements and that Defendants' members, officers, agents and employees are fully informed of the application of the antitrust laws to hospital restrictions on competition; and

(E) award Plaintiffs their costs in this action, including attorneys' fees and investigation costs to the State of Michigan, and such other relief as may be just and proper.

Dated: June 25, 2015.
Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

William J. Baer,
Assistant Attorney General for Antitrust.
David I. Gelfand,
Deputy Assistant Attorney General.
\s\

Katrina Rouse (D.C. Bar #1013035),
Jennifer Hane,
Barry Joyce,
Attorneys, Litigation I, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530, (202) 305–7498, email: katrina.rouse@usdoj.gov.

LOCAL COUNSEL:

Barbara L. McQuade,
United States Attorney.
\s\ with the consent of Peter Caplan

Peter Caplan,
Assistant United States Attorney, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226, (313) 226–9784, P30643, *E-mail: peter.caplan@usdoj.gov.*

FOR PLAINTIFF STATE OF MICHIGAN:

Bill Schuette, Attorney General, State of Michigan.
\s\ *with the consent of Joseph Potchen*

Joseph Potchen,
Division Chief.
\s\ with the consent of Mark Gabrielse

Mark Gabrielse (P75163),
D.J. Pascoe,
Assistant Attorney Generals, Michigan Department of Attorney General, Corporate Oversight Division, G. Mennen Williams Building, 6th Floor, 525 W. Ottawa Street, Lansing, Michigan 48933, (517) 373–1160, Email: gabrielsem@michigan.gov.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and *State Of Michigan, Plaintiffs,* v. *W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Defendant.*

Case No.: 5:15–cv–12311–JEL–DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

[PROPOSED] FINAL JUDGMENT

Whereas, Plaintiffs, the United States of America and the State of Michigan, filed their joint Complaint on June 25, 2015, alleging that W.A. Foote Memorial Hospital, d/b/a/Allegiance Health; Hillsdale Community Health Center; Community Health Center of Branch County; and ProMedica Health System, Inc. violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

And Whereas, Plaintiffs and W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And Whereas, Plaintiffs require Allegiance to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

And Whereas, Plaintiffs require Allegiance to agree to be bound by the provisions of the Final Judgment pending its approval by the Court;

Now Therefore, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Allegiance regarding any issue of fact or law, and upon consent of the parties to this action, it is *Ordered, Adjudged, and Decreed*:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. 28 U.S.C. §§ 1331, 1337(a), 1345, 1367(a). The Complaint states a claim upon which relief may be granted against Allegiance under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

II. DEFINITIONS

As used in this Final Judgment:

A. ''Allegiance'' means Defendant W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health, a corporation organized and existing under the laws of the State of Michigan and affiliated with the Henry Ford Health System with headquarters in Detroit, Michigan, (i) its successors and assigns, (ii) all subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures that are controlled by Henry Ford Allegiance Health, and (iii) their directors, officers, managers, agents, and employees.

B. ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. ''Communicate'' means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner.

D. ''Communication'' means any discussion, disclosure, transfer, dissemination, or exchange of information or opinion.

E. ''Joint Provision of Services'' means any past, present, or future coordinated delivery of any healthcare services by two or more healthcare providers, including a clinical affiliation, joint venture, management agreement, accountable care organization, clinically integrated network, group purchasing organization, management services organization, or physician hospital organization.

F. ''Marketing'' means any past, present, or future activities that are involved in making persons aware of the services or products of the hospital or of physicians employed or with privileges at the hospital, including advertising, communications, public relations, provider network development, outreach to employers or physicians, and promotions, such as free health screenings and education.

G. ''Marketing Manager'' means any company officer or employee at the level of director, or above, with responsibility for or oversight of Marketing.

H. ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

I. ''Provider'' means any physician or physician group and any inpatient or outpatient medical facility including hospitals, ambulatory surgical centers, urgent care facilities, and nursing facilities.

III. APPLICABILITY

This Final Judgment applies to Allegiance and all other persons in active concert or participation with Allegiance who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

A. Allegiance shall not enter into, attempt to enter into, maintain, or enforce any Agreement with any other Provider that:

(1) prohibits or limits Marketing; or

(2) allocates any service, customer, or geographic market or territory between or among Allegiance and any other Provider, unless such Agreement is reasonably necessary for and ancillary to a bona fide Agreement providing for the Joint Provision of Services.

B. Allegiance shall not Communicate with any other Provider about Allegiance's Marketing in its or the Provider's county, except Allegiance may:

(1) Communicate with any Provider about joint Marketing if the Communication is related to the Joint Provision of Services;

(2) Communicate with any Provider about Marketing if the Communication is part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture; or

(3) Market to Providers, including through its physician liaison program.

C. Allegiance shall not exclude or eliminate Hillsdale County from its Marketing or business development opportunities.

V. REQUIRED CONDUCT

A. Within thirty days of entry of this Final Judgment, Allegiance shall hire and appoint an Antitrust Compliance Officer. The Antitrust Compliance Officer may be a current employee of Henry Ford and must be approved by Plaintiffs.

B. Antitrust Compliance Officer shall:

(1) within sixty days of entry of the Final Judgment, furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1 to (a) all of Allegiance's Marketing Managers and other employees engaged, in whole or in part, in activities relating to Allegiance's Marketing or business development activities; (b) all direct reports of Allegiance's CEO; and (c) Allegiance's officers and directors (including their Boards of Directors);

(2) within thirty days of any person's succession to any position described in Section V.B.(1) above, furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1;

(3) annually brief each person designated in Section V.B.(1) and (2) on the meaning and requirements of this Final Judgment and the antitrust laws;

(4) obtain from each person designated in Section V.B.(1) and (2), within sixty days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not already been reported to Allegiance; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against Allegiance and/or any person who violates this Final Judgment;

(5) maintain a record of certifications received pursuant to Section V.B.(4);

(6) annually communicate to Allegiance's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

(7) ensure that each person identified in Section V.B.(1) and (2) of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this Final Judgment and the antitrust laws, such training to be delivered by the Antitrust Compliance Officer or an attorney with relevant experience in the field of antitrust law;

(8) maintain a log of telephonic, electronic, in-person, and other communications regarding Marketing with any Officers or Directors of any healthcare system Provider and make it available to Plaintiffs for inspection upon either Plaintiff's request; and

(9) provide to Plaintiffs annually, on or before the anniversary of the effective date of this order, a written statement affirming Allegiance's compliance with Section V of this order, and including the training or instructional materials used or supplied by Allegiance or Henry Ford in connection with the training as required by Section V.B.(7).

C. Allegiance shall:

(1) upon learning of any violation or potential violation of any of the terms

and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment;

(2) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, within thirty days of its becoming known, file with each Plaintiff a statement describing any violation or potential violation, and any steps taken in response to the violation, which statement shall include a description of any communication constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication; and

(3) certify to each Plaintiff annually on the anniversary date of the entry of this Final Judgment that Allegiance has complied with the provisions of this Final Judgment.

VI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice or the Office of the Michigan Attorney General, including consultants and other retained persons, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, and on reasonable notice to Allegiance, be permitted:

(1) access during Allegiance's office hours to inspect and copy, or at the option of the United States or the State of Michigan, to require Allegiance to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Allegiance, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Allegiance's officers, directors, employees, or agents, who may have individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Allegiance.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, Allegiance shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States or the State of Michigan to any person other than an authorized representative of the executive branch of the United States or the State of Michigan, except in the course of legal proceedings to which the United States or the State of Michigan is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allegiance to the United States or the State of Michigan, Allegiance represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Allegiance marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States and the State of Michigan shall give Allegiance ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. INVESTIGATION FEES AND COSTS

Allegiance shall pay to the United States the sum of $5,000.00 for pre-trial litigation costs and the State of Michigan the sum of $35,000.00 to partially cover transcripts and related litigation costs.

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time prior to the expiration of this Final Judgment for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. ENFORCEMENT OF FINAL JUDGMENT

A. Plaintiffs retain and reserve all rights to enforce the provisions of this Final Judgment, including their right to seek an order of contempt from this Court. Allegiance agrees that in any civil contempt action, any motion to show cause, or any similar action brought by Plaintiffs regarding an alleged violation of this Final Judgment, Plaintiffs may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Allegiance waives any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that Allegiance has violated this Final Judgment, Plaintiffs may apply for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Allegiance agrees to reimburse the Plaintiffs for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States or the State of Michigan shall be sent to the persons at the addresses set forth below (or such other address as the United States or the State of Michigan may specify in writing to Allegiance):

Chief
Healthcare & Consumer Products Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, Suite 4100
Washington, DC 20530

Division Chief
Corporate Oversight Division
Michigan Department of Attorney General
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909

XII. PUBLIC INTEREST DETERMINATION

The parties, as required, have complied with the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

Exhibit 1

[Letterhead of Allegiance]
[Name and Address of Antitrust Compliance Officer]
Dear [XX]:

I am providing you this notice to make sure you are aware of a court order recently entered by the Honorable Judith E. Levy, a federal judge in Ann Arbor, Michigan. This court order applies to our institution and all of its employees, including you, so it is important that you understand the obligations it imposes on us. Ms. Georgia Fojtasek has asked me to let each of you know that they expect you to take these obligations seriously and abide by them.

In a nutshell, the order prohibits us from agreeing with other healthcare providers, including hospitals and physicians, to limit marketing or to divide any geographic market, territory, customers, or services between healthcare providers. This means you cannot give any assurance to another healthcare provider that Henry Ford Allegiance Health will refrain from marketing our services, and you cannot ask for any assurance from them that they will refrain from marketing. The court order also prohibits communicating with any health care system provider, or their employees about our marketing plans or about their marketing plans. There are limited exceptions to this restriction on communications, such as discussing joint projects, but you should check with me before relying on those exceptions.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,

[Allegiance's Antitrust Compliance Officer]

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

United States of America and *State of Michigan, Plaintiffs,* v. *W.A. Foote Memorial Hospital, D/B/A Allegiance Health, Defendant.*

Case No.: 5:15-cv-12311-JEL-DRG
Hon. Judith E. Levy
Mag. Judge David R. Grand

COMPETITIVE IMPACT STATEMENT

Plaintiff the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment concerning W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health (''Allegiance'') submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 25, 2015, the United States and the State of Michigan filed a civil antitrust Complaint alleging that Allegiance, Hillsdale Community Health Center (''HCHC''), Community Health Center of Branch County (''Branch''), and ProMedica Health System, Inc. (''ProMedica'') violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. Concerning Allegiance, the Complaint alleged that Allegiance entered into an agreement with HCHC to limit marketing of competing healthcare services in Hillsdale County. This agreement eliminated a significant form of competition to attract patients and substantially diminished competition in Hillsdale County, depriving consumers, physicians, and employers of important information and services. The hospitals' agreement to allocate territories for marketing is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

With the Complaint, the United States and the State of Michigan filed a Stipulation and proposed Final Judgment (''Original Judgment'') with respect to HCHC, Branch, and ProMedica. That Original Judgment settled this suit as to those three defendants. Following a Tunney Act review process, the Court granted Plaintiffs' Motion for Entry of the Original Judgment (Dkt. 36) and dismissed HCHC, Branch, and ProMedica from the case (Dkt. 37). The case against Allegiance continued.

Allegiance has now agreed to a proposed Final Judgment, which contains terms that are similar to those in the Original Judgment, as well as additional terms. The United States filed this proposed Final Judgment with respect to Allegiance (''proposed Final Judgment'') on February 9, 2018 (Dkt. 122–1). The proposed Final Judgment is described in more detail in Section III below.

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. Background on Allegiance and Its Marketing Activities

Allegiance is a nonprofit general medical and surgical hospital in Jackson County, which is adjacent to HCHC's location in Hillsdale County in South Central Michigan. Allegiance is the only hospital in its county. Allegiance directly competes with HCHC to provide many of the same hospital and physician services to patients.

An important tool that hospitals use to compete for patients is marketing aimed at informing consumers, physicians, and employers about a hospital's quality and scope of services. Allegiance and HCHC's marketing includes advertisements through mailings and media, such as local newspapers, radio, television, and billboards, as well as the provision of free medical services, such as health screenings, physician seminars, and health fairs. Allegiance and HCHC also market to physicians and employers through educational and relationship-building meetings that provide physicians and employers with information about the hospitals' quality and range of services.

B. Allegiance's Unlawful Agreement with HCHC to Limit Marketing

Allegiance agreed with HCHC to suppress its marketing in Hillsdale County, and since at least 2009 to the time of filing of the Complaint in June 2015, Allegiance and HCHC's agreement limited Allegiance's marketing for competing services in Hillsdale County. Allegiance believed that HCHC might refer more complicated cases to Allegiance because of Allegiance's agreement to pull its competitive punches in Hillsdale County. Allegiance executives acknowledged the agreement in numerous documents. The hospitals' senior executives, including their CEOs, created, monitored, and enforced the agreement, which lasted for many years. The harmful effects of the agreement continue to the present day.

In compliance with this agreement, Allegiance routinely excluded Hillsdale County from many of its marketing campaigns. As Allegiance explained in a 2013 oncology marketing plan: ''[A]n agreement exists with the CEO of Hillsdale Community Health Center . . . to not conduct marketing activity in Hillsdale County.'' Allegiance employees repeatedly referred in internal documents to an ''agreement'' or a ''gentleman's agreement'' with HCHC, with a high-ranking executive

describing Allegiance's ''relationship with HCHC'' as ''one of seeking 'approval' to provide services in their market.'' Allegiance executives on occasion apologized in writing to HCHC for violating the agreement and assured HCHC executives that Allegiance would honor the previously agreed-upon marketing restrictions going forward: ''It isn't our style to purposely not honor our agreement.'' Allegiance even reduced the number of free health benefits, such as physician seminars and health screenings, offered to residents of Hillsdale County because of the agreement. This unlawful agreement between Allegiance and HCHC has deprived Hillsdale County consumers, physicians, and employers of valuable free health screenings and education and information regarding their healthcare provider choices.

C. Allegiance's Marketing Agreement Is Per Se Illegal

The agreement between Allegiance and HCHC disrupted the competitive process and harmed consumers. The agreement deprived consumers of information they otherwise would have had when making important healthcare decisions. The agreement also deprived Hillsdale County consumers of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, Allegiance's agreement with HCHC denied employers the opportunity to receive information and to develop relationships that could have allowed them to improve the quality of their employees' medical care. And the agreement diminished Allegiance's and HCHC's incentives to compete on quality or to improve patient experience, all to the detriment of South Central Michigan consumers.

The agreement to restrict marketing constituted a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. *See United States* v. *Topco Assocs., Inc.,* 405 U.S. 596, 607–08 (1972) (holding that naked market allocation agreements among horizontal competitors are plainly anticompetitive and illegal per se); *United States* v. *Cooperative Theatres of Ohio,* Inc., 845 F.2d 1367, 1371, 1373 (6th Cir. 1988) (holding that the defendants' agreement to not ''*actively* solicit[] each other's customers'' was ''undeniably a type of customer allocation scheme which courts have often condemned in the past as a *per se* violation of the Sherman Act''); *Blackburn* v. *Sweeney,* 53 F.3d 825, 828 (7th Cir. 1995) (holding that the ''[a]greement to limit advertising to different geographical regions was intended to be, and sufficiently approximates[,] an agreement to allocate markets so that the *per se* rule of illegality applies''). Allegiance's agreement with HCHC was not reasonably necessary to further any procompetitive purpose.

The antitrust laws would not prohibit a hospital from making its own marketing decisions and conducting marketing activities as it sees fit, so long as it does so unilaterally. By agreeing with a competitor to restrict marketing, however, Allegiance engaged in concerted action. By doing so, Allegiance deprived consumers of the benefits of competition and ran afoul of the antitrust laws.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and will restore the competition restrained by the anticompetitive agreement between Allegiance and HCHC. Section X of the proposed Final Judgment provides that these provisions will expire five years after its entry.

A. Prohibited Conduct

Under Section IV of the proposed Final Judgment, Allegiance cannot agree with any healthcare provider to prohibit or limit marketing. Allegiance also cannot allocate any services, customers, or geographic markets or territories, subject to narrow exceptions relating to the provision of certain services jointly with another healthcare provider. Allegiance is prohibited from communicating with any healthcare provider about Allegiance's marketing in its or the provider's county, subject to narrow exceptions relating to legitimate procompetitive activities.

Additionally, Allegiance is prohibited from excluding Hillsdale County from its marketing or business development activities. This prohibition restores competition that was eliminated during the course of the agreement, which Allegiance implemented in part by carving out Hillsdale County from many of its marketing activities. This prohibition ensures that Hillsdale County consumers will benefit from competition.

B. Compliance and Inspection

The proposed Final Judgment sets forth various provisions to ensure Allegiance's compliance with the proposed Final Judgment. Section V of the proposed Final Judgment requires Allegiance to hire and appoint an Antitrust Compliance Officer within thirty days of the Final Judgment's entry. The Antitrust Compliance Officer may be a current employee of Henry Ford Health System, and Allegiance must obtain Plaintiffs' approval for the person appointed to this position.

The Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and a notice explaining the Final Judgment's obligations to Allegiance's officers and directors (including its Board of Directors), direct reports to Allegiance's Chief Executive Officer, marketing managers at the level of director and above, and all other employees engaged in activities relating to Allegiance's marketing or business development activities. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agrees to abide by the terms of the Final Judgment. The Antitrust Compliance Officer must maintain a record of all certifications received. The Antitrust Compliance Officer shall annually brief each person receiving a copy of the Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. In addition, the Antitrust Compliance Officer shall ensure that each recipient of the Final Judgment and this Competitive Impact Statement receives at least four hours of training annually on the meaning and requirements of the Final Judgment and the antitrust laws.

Section V of the proposed Final Judgment requires the Antitrust Compliance Officer to communicate annually to Allegiance's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws. In addition, the Antitrust Compliance Officer shall maintain a log of communications relating to marketing between Allegiance staff and any officers or directors of other healthcare system providers. Annually, for the term of the Final Judgment, the Antitrust Compliance Officer must provide to Plaintiffs written confirmation of Allegiance's compliance with Section V, including providing copies of the training materials used for Allegiance's antitrust training program.

Additionally, within thirty days of learning of any violation or potential violation of the terms and conditions of the Final Judgment, Allegiance must file with the United States a statement describing the violation and the actions Allegiance took to terminate it.

To ensure Allegiance's compliance with the Final Judgment, Section VI of the proposed Final Judgment requires Allegiance to grant the United States and the State of Michigan access, upon reasonable notice, to Allegiance's records and documents relating to matters contained in the Final Judgment. Upon request, Allegiance also must make its employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the Final Judgment.

After entering into the settlement and specifically agreeing not to carve out Hillsdale County from its marketing campaigns, Allegiance issued a press release that claimed that it was allowed to ''continue [its] marketing strategies.'' John Commins, *Henry Ford Allegiance ''Reluctantly'' Settles DOJ Antitrust Suit,* HealthLeaders Media, Feb. 12, 2018, *http://www.healthleadersmedia.com/marketing/henry-ford-allegiance-reluctantly-settles-doj-antitrust-suit#.* This statement demonstrates that Allegiance's need for an effective antitrust compliance program is particularly acute and underscores the importance of provisions in the proposed Final Judgment to allow Plaintiffs to closely monitor Allegiance's actions to ensure compliance.

C. Investigation Fees and Costs

The proposed Final Judgment requires Allegiance to reimburse Plaintiffs for a portion of their litigation costs. Allegiance is required to pay the United States the sum of $5,000.00 and the State of Michigan the sum of $35,000.00.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of consent decrees as effective as possible. Paragraph IX(A) provides that Plaintiffs retain and reserve all rights to enforce the provisions of the proposed Final Judgment, including their rights to seek an order of contempt from the Court. Under the terms of this paragraph, Allegiance has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by Plaintiffs regarding an alleged violation of the Final Judgment, Plaintiffs may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Allegiance has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph IX(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Allegiance has violated the Final Judgment, Plaintiffs may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph IX(B) requires Allegiance to reimburse Plaintiffs for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Allegiance.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, which conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Peter J. Mucchetti
Chief, Healthcare and Consumer Products Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Allegiance. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and ensure that consumers, physicians, and employers benefit from competition. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
(B) the impact of entry of such judgment upon competition in the relevant market

> or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B).[1] In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (describing the public-interest standard under the Tunney Act); *United States v. InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. One court explained:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of [e]nsuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States v. Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft,* 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language captured Congress's intent when it enacted the Tunney Act in 1974. Senator Tunney explained: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 27, 2018
Respectfully submitted,
FOR PLAINTIFF UNITED STATES OF AMERICA:

Peter Caplan (P–30643),
Assistant United States Attorney, U.S. Attorney's Office, Eastern District of Michigan, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226, (313) 226–9784, *peter.caplan@usdoj.gov*.
\s\Katrina Rouse
Katrina Rouse (D.C. Bar No. 1013035),
Garrett Liskey,
Andrew Robinson,
Jill Maguire,
Healthcare & Consumer Products Section, Antitrust Division, U.S. Department of Justice, 450 Fifth St., NW, Washington, DC 20530, (415) 934–5346, *Katrina.Rouse@usdoj.gov*.

Certificate of Service

I hereby certify that on February 27, 2018, I electronically filed the foregoing paper with the Clerk of Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 5:15-cv-12311–JEL–DRG, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

\s\Garrett Liskey

Garrett Liskey (D.C. Bar No. 1000937)
Antitrust Division, Healthcare and Consumer Products Section, U.S. Department of Justice, 450 Fifth St., NW, Washington, DC 20530, (202) 598–2849, *Garrett.Liskey@usdoj.gov*.

[FR Doc. 2018–04593 Filed 3–6–18; 8:45 am]
BILLING CODE 4410–11–P

[3] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States v. Mid-Am. Dairymen, Inc.,* No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93-298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liabiilty Act

On February 22, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of New York in a lawsuit entitled *United States* v. *Steel of West Virginia,* Civil Action No. 18–1661.

In this action the United States seeks, as provided under the Comprehensive Environmental Response, Compensation and Liability Act, recovery of response costs from Steel of West Virginia regarding the Port Refinery Superfund Site (''Site'') in the Village of Rye Brook, New York. The proposed Consent Decree resolves the United States' claims and requires Steel of West Virginia to pay $35,829 in reimbursement of the United States' past response costs regarding the Site.

The publication of this notice opens a public comment period on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Steel of West Virginia,* Civil Action No. 18–1661, D.J. Ref. 90–11–3–1142/4. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please email your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–04570 Filed 3–6–18; 8:45 am]
BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of 2 years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the Charter for the Advisory Committee on the Medical Uses of Isotopes for the 2 year period commencing on March 1, 2018, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional