The Daily Dish

The FTC Won't Let 'Em Be

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It's hard for the Biden Administration to point to any real wins these days. Gas prices, inflation, baby formula, Supreme Court rulings, the total collapse of the reconciliation bill as a major economic package – it's not a good time to be in the White House. But the administration is getting at least one thing to go its way: The Federal Trade Commission (FTC) has successfully fended off four major hospital mergers, and is looking to take even more action. Three of those canceled mergers didn't even require court action. The administration filed suit against the companies in question, and in turn, the companies stopped the mergers. With the fourth suit, the U.S. Court of Appeals for the Third Circuit affirmed a lower court ruling that put a temporary halt to New Jersey's largest hospital system buying a smaller competitor.

As a previous Daily Dish noted, the Biden Administration's underlying belief that market concentration is out of control and worse than it used to be is fundamentally wrong, at least with respect to many economic sectors. But when it comes to hospitals, there's a lot of smoke indicating a fire. As a previous AAF primer explains, health care markets with the highest concentration have the highest prices – as much as 12 percent higher in markets with a single hospital vs. those of hospitals with four or more competitors. Contrary to the claims of certain hospital groups, the primer notes that hospital market consolidation does not lead to an increase in quality of care. While hospital spending between 2008 –2017 increased *despite* decreased utilization of hospital services (a product of new technologies allowing for shorter hospital stays and increased incentives to use outpatient care), hospitals have been rapidly acquiring physician practices and outpatient clinics to counteract this trend. Between 2012–2018, the number of physicians employed by a hospital increased 71 percent, bringing the 2018 number to 44 percent total. Prices for the physicians went up after they joined a hospital system. Other reports show similar results. A recent report from the Cato Institute found that, in 2017, most markets had one hospital with more than 50 percent of the market share of discharges.

While the four suits mentioned above focused mostly on the harms to the consumer through increased prices, the FTC has signaled it will be taking a closer look at vertical integration, cross-market consolidation, and consolidation's effects on the labor market, among other issues. Some of these would require lesser-known legal theories on antitrust enforcement. In all likelihood, the FTC doesn't need new powers to rein in hospitals – it likely just needs more money and resources to enforce current law, which some proposed pieces of legislation would do. Additionally, the above-mentioned AAF primer notes, consolidation is mostly the product of federal policies that have encouraged it – for example, the 340B Program encourages hospitals to buy up physician practices so they can receive more discounts. What is really needed to handle the hospital consolidation problem is a serious examination of the policies that led us here, not giving the FTC a bigger hammer than it already has.