

Is There Too Little Antitrust Enforcement in the US Hospital Sector?

Based on BFI Working Paper No. 2024-59, “[Is There Too Little Antitrust Enforcement in the US Hospital Sector?](#)” by Zarek Brot-Goldberg, University of Chicago; Zack Cooper, Yale; Stuart V. Craig, University of Wisconsin-Madison; and Lev Klarnet, Harvard University

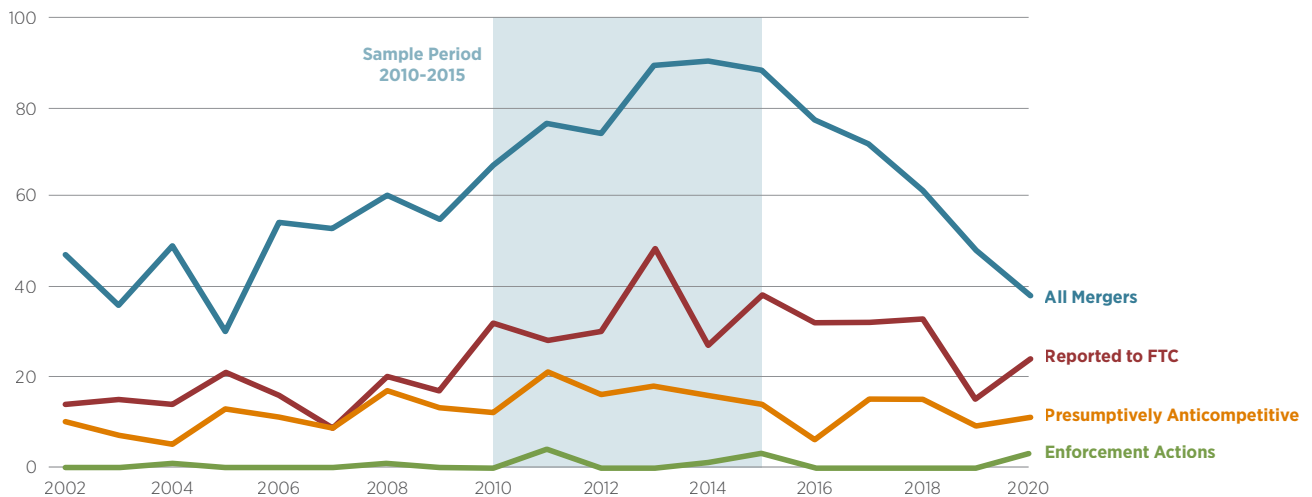
Twenty percent of US hospital mergers that occurred between 2002 and 2020 could have been predicted to lessen competition using the Federal Trade Commission’s standard screening tools. From 2010-2015, predictably anticompetitive mergers increased prices by over 5%.

Between 2002 and 2020 there were over 1,000 mergers among the nation’s approximately 5,000 general acute care hospitals. During this period, the Federal Trade Commission (FTC), the enforcement agency that investigates hospital mergers, only took action to block 13 deals. Partly as a function of this consolidation, 90% of metropolitan areas have hospital markets that are considered “highly

concentrated” according to standards used by the Department of Justice and the FTC. Motivated by this, this paper examines whether there is too little antitrust enforcement in the US hospital sector.

To examine this question, the authors test the effects of the mergers that the FTC did not challenge on competition and prices. If the FTC

Figure 1 • Hospital Mergers, HSR Filings, Presumptively Anticompetitive Mergers, and FTC Enforcement Actions



Note: This graph plots all mergers in the authors’ database from 2002 to 2020. The total count of observed mergers is shown in blue, the count of mergers that were reported to the FTC are shown in red, the count that could be reasonably predicted to reduce competition using the FTC’s standard screening protocol are shown in orange, and the mergers that resulted in enforcement action are tallied in green.

is optimally targeting enforcement, then the mergers that they do not challenge should have minimal effects on competition and prices. As a result, a simple test of the efficacy of antitrust enforcement is to examine whether there are consummated mergers occurring that could have been predicted, *ex ante*, to lessen competition and which, *ex post*, raised prices.

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Ex ante: Before

Ex post: After

The authors use insurance claims data from three of the five largest US insurers — Aetna, Humana, and UnitedHealthcare — to observe hospital mergers. They estimate the post-merger price increases generated by 322 hospital mergers involving 702 hospitals that occurred between 2010 and 2015. They also measure whether the FTC could have predicted the price impacts of the mergers using two common pre-merger evaluation methods that flag presumptively anticompetitive mergers. The authors find the following:

- Approximately 20% of hospital mergers that occurred between 2010 and 2015 could be predicted beforehand to increase concentration or lessen competition using standard screening tools.

- These anticompetitive transactions resulted in large price increases. Consummated mergers that ran afoul of the screening guidelines used by the FTC increased the merging parties' inpatient and outpatient prices by roughly 5%.
- If a hospital merger is beyond a certain size, the parties involved must file an advance notification with the FTC. The authors find that roughly half of the predictably anticompetitive mergers included in their analysis were reported to the FTC per these guidelines.

The results from this research point to vast underenforcement of antitrust laws in the hospital sector. This failure to block pre-disclosed mergers that will predictably raise prices and reduce competition has negative consequences for the US healthcare system. An average year of mergers — approximately 53 transactions — raises health spending on the privately insured in the year following a merger by \$204 million. While the hospital sector only accounts for 6% of US GDP, this merger-driven increase in spending is larger than the antitrust enforcement budget of the FTC.

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