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FTC Requires Dialysis Services Company DaVita, Inc. to Sell 29 Clinics to Resolve Anticompetitive Effects of its Proposed Acquisition of DSI

The Federal Trade Commission will require dialysis services company DaVita, Inc. to sell 29 outpatient dialysis clinics around the United States, under a proposed settlement that resolves FTC charges that DaVita’s proposed $689 million acquisition of rival CDSI I Holding Company, Inc., also known as DSI, would be anticompetitive.

The proposed settlement preserves competition in 22 geographic markets where the FTC alleges that consumers would be harmed by DaVita’s acquisition of DSI. The settlement requires DaVita to sell the clinics to Dialysis Newco, Inc., a corporation formed by venture capital firms Frazier Healthcare and New Enterprise Associates.

The settlement is part of the FTC’s broader effort to promote competition in the health care sector, which benefits U.S. consumers with products and services that are lower cost and higher quality.

Dialysis treatment is a life-sustaining therapy critical to patients with end-stage renal disease. It replicates kidney function by removing toxins and excess fluid from the blood. DaVita is based in Denver, Colorado and is the second largest provider of outpatient dialysis services in the United States. It operates 1,612 outpatient dialysis clinics in 42 states and the District of Columbia. DSI, headquartered in Nashville, Tennessee, is a privately held company and the fifth largest provider of outpatient dialysis services in the United States, with 106 dialysis centers in 23 states.

According to the FTC’s complaint, without the divestitures, the proposed combination would illegally reduce competition, resulting in higher prices and lower quality for outpatient dialysis services. The FTC alleged that in 16 local markets, the proposed acquisition would either give DaVita a monopoly, or reduce the number of dialysis providers from three to two. In six other markets, the merged firm would have a large share of the market and face only two significant competitors.

In addition to requiring the sale of 29 clinics, the settlement contains several provisions designed to make sure that the divested clinics will compete effectively after they are sold. For example, DaVita will have to obtain the agreement of the medical directors affiliated with the divested clinics to continue providing physician services after the clinics are transferred to Dialysis Newco, Inc. DaVita also will have to get agreement from the landlords of all the divested clinics to assign the leases to Dialysis Newco. Furthermore, DaVita will have to provide certain, limited transition services such as payroll, billing and collection, with appropriate firewalls, to the divested clinics to ensure that Dialysis Newco is able to take over the operations of these clinics quickly and without undue interruption.

The Commission vote approving the complaint and proposed consent order was 5-0. The proposed order will be published in the Federal Register subject to public comment for 30 days, until October 5, 2011, after which the Commission will decide whether to make it final. Comments can be submitted electronically here (https://ftcpublic.commentworks.com/ftc/perrigopaddockconsent/Closed.aspx).

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. A consent order is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $16,000.

Copies (http://www.ftc.gov/os/2011/09/index.shtm#2) of the complaint, consent order, and an analysis to aid public comment are available from the FTC's website at http://www.ftc.gov and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau of Competition about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook and follow us on Twitter.

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