

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **William Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

**In the Matter of**

**DAVITA, INC.,  
a corporation,**

**Docket No. C-4334**

**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that the Respondent DaVita Inc. (“DaVita”), a company subject to the jurisdiction of the Commission, has entered into an agreement to acquire CDSI I Holding Company, Inc. (“DSI”), a company subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. DEFINITIONS**

1. “Dialysis” means filtering a person’s blood, inside or outside of the body, to replicate the functions of the kidney.
2. “ESRD” means end stage renal disease, a chronic disease characterized by a near total loss of function of the kidneys, which in healthy people remove toxins and excess fluid from the blood.
3. “Outpatient dialysis services” means all procedures and services related to administering chronic dialysis treatment.

## **II. RESPONDENT**

4. Respondent DaVita is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1551 Wewatta St. Denver, Colorado 80202. Respondent DaVita, among other things, is engaged in the provision and sale of outpatient dialysis services.

5. Respondent DaVita is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **III. THE ACQUIRED COMPANY**

6. DSI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 424 Church Street, Suite 1900, Nashville, TN 37219. DSI, among other things, is engaged in the provision and sale of outpatient dialysis services.

7. DSI is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **IV. THE PROPOSED ACQUISITION**

8. On February 4, 2011, DaVita entered into an agreement (“Purchase Agreement”) to acquire DSI for approximately \$689 million in cash (the “Acquisition”).

## **V. THE RELEVANT MARKET**

9. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the provision of outpatient dialysis services. Most ESRD patients receive dialysis treatments three times per week in sessions lasting between three and five hours. The only alternative to outpatient dialysis treatments for patients suffering from ESRD is a kidney transplant. However, the wait-time for donor kidneys – during which ESRD patients must receive dialysis treatments – can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

10. The relevant geographic market for the provision of dialysis services is defined by the distance ESRD patients are willing and/or able to travel to receive dialysis treatments, and is thus local in nature. Because ESRD patients often suffer from multiple health problems and may require assistance traveling to and from the dialysis clinic, these patients are unwilling and/or unable to travel long distances to receive dialysis treatment. As a general rule, ESRD

patients do not travel more than 30 miles or 30 minutes to receive dialysis treatment, although travel times and distances vary depending on geographic barriers, travel patterns, and whether an area is urban, suburban, or rural.

11. For the purposes of this Complaint, the 22 geographic markets within which to assess the competitive effects of the proposed merger are the following 14 metropolitan statistical areas (“MSAs”) and micropolitan statistical areas (“μSAs”) other areas, or particular geographic areas contained therein: (1) Birmingham-Hoover, AL MSA; (2) Blytheville, AR μSA; (3) Phoenix-Mesa-Glendale, AZ MSA; (4) Tampa-St. Petersburg-Clearwater, FL MSA; (5) Atlanta-Sandy Springs-Marietta, GA MSA; (6) Chicago-Joliet-Naperville, IL-IN-WI MSA; (7) Indianapolis-Carmel, IN MSA; (8) Louisville/Jefferson County, KY-IN MSA; (9) Baton Rouge, LA MSA; (10) Greenville-Mauldin-Easley, SC MSA; (11) Memphis, TN-MS-AR MSA; (12) Beeville, TX μSA; (13) Corpus Christi, TX MSA; and (14) El Paso, TX MSA.

## **VI. THE STRUCTURE OF THE MARKET**

12. The market for the provision of outpatient dialysis services is highly concentrated in each of the local areas identified in Paragraph 11, as measured by the Herfindahl-Hirschman Index (“HHI”) concentration ratios. The proposed acquisition represents a merger to monopoly in 1 market and would cause the number of providers to drop from three to two in fifteen other markets. Additionally, concentration increases significantly in the remaining six markets.

13. DaVita and DSI are actual and substantial competitors in each of the relevant markets.

## **VII. ENTRY CONDITIONS**

14. The most significant barrier to entry into the relevant markets is locating a nephrologist with an established referral base to serve as the clinic’s medical director. By law, each dialysis clinic must have a nephrologist medical director. The medical director is essential to the competitiveness of the clinic because he or she is the clinic’s primary source of referrals. The lack of available nephrologists with an established referral stream is a significant barrier to entry into each of the relevant geographic markets identified in Paragraph 11. Additionally, an area must have certain attributes (such as a rapidly growing ESRD population, a favorable regulatory environment, average or below nursing and labor costs, and a relatively low penetration of managed care) to attract entry. The absence of these attributes is an additional barrier to entry into many of the relevant geographic markets.

15. New entry into the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 16 is unlikely to occur, and would not occur in a timely manner because it would take over two years to enter and achieve significant market impact.

## VIII. EFFECTS OF THE ACQUISITION

16. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. eliminating actual, direct, and substantial competition between DaVita and DSI in the market for the provision of outpatient dialysis services;
- b. increasing the ability of the merged entity unilaterally to raise prices of outpatient dialysis services; and
- c. reducing incentives to improve service or product quality in the relevant markets.

## IX. VIOLATIONS CHARGED

17. The Purchase Agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The Acquisition described in Paragraph 8, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this second day of September, 2011, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL: