



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

May 23, 2012

Kevin Finnegan
State of New York

Re: *In the Matter of Fresenius Medical Care AG & Co. KGaA,*
File No. 111-0170, Docket No. C-4348

Thank you for your comments regarding the proposed consent order accepted by the Federal Trade Commission for public comment in the above-captioned matter. As we understand your comment, you have concerns about the future employment of certain dialysis clinic employees. The Commission has reviewed your comments in connection with its decision concerning whether to accord final approval to the proposed consent order.

The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and it has been given careful consideration. The investigation examined all of the markets in which the transaction was likely to have a competitive impact, including the area surrounding Poughkeepsie, New York. Because that market is highly concentrated and the parties taken together would account for a large portion of that market, the proposed consent order requires the Respondent Fresenius to divest the Dutchess Dialysis center to Dialysis Newco, Inc. ("DSI"), among other things. The proposed consent order further provides DSI with the opportunity to hire employees who have worked full-time or part-time on the premises of this clinic at any time since July 1, 2011 and prohibits Fresenius from interfering in employment negotiations between such employee and DSI, including eliminating any restrictions on the employee's ability to work for DSI, all of which will help to ensure the continued competitive viability of the Dutchess Dialysis center after it is acquired by DSI. In light of these considerations, among others, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form. A copy of the final Decision and Order is enclosed for your information. Relevant materials also are available from the Commission's website at <http://www.ftc.gov>.

It helps the Commission's analysis to hear from a variety of sources in its work on antitrust and consumer protection issues, and we appreciate your interest in this matter.

By direction of the Commission, Commissioner Ohlhausen not participating.

Donald S. Clark
Secretary