**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT**

In the Matter of DaVita, Inc., RV Management Corp., Renal Ventures Partners, LLC, Renal Ventures Limited, LLC, and Renal Ventures Management, LLC

File No. 151-0204

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from DaVita, Inc. ("DaVita"). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from DaVita's purchase of Renal Ventures Management, LLC from Renal Ventures Limited, LLC, which is owned by RV Management Corp. and Renal Ventures Partners, LLC (together, "Renal Ventures"). Under the terms of the Consent Agreement, DaVita is required to divest seven dialysis clinics in seven markets across the United States.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order ("Order").

The Transaction

Pursuant to an agreement dated August 17, 2015, DaVita proposes to acquire all issued and outstanding equity interests in Renal Ventures in a transaction valued at approximately $358 million. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the provision of outpatient dialysis services in seven markets.

The Respondents

Headquartered in Denver, Colorado, DaVita is the second-largest provider of outpatient dialysis services in the United States. DaVita operates or manages 2,251 outpatient dialysis clinics in forty-six states and the District of Columbia at which approximately 180,000 end stage renal disease ("ESRD") patients receive treatment. In 2015, DaVita's revenues were approximately $13.8 billion.

Renal Ventures, headquartered in Lakewood, Colorado, is a privately held company and the seventh-largest provider of outpatient dialysis services in the United States. Renal Ventures operates thirty-six dialysis centers, providing dialysis services to approximately 2,300 patients in six states. In 2015, Renal Ventures' revenues were approximately $161 million.

The Relevant Product and Structure of the Markets

Outpatient dialysis services is the relevant product market in which to assess the effects of the proposed transaction. For patients suffering from ESRD, dialysis treatments are a life-sustaining therapy that replaces the function of the kidneys by removing toxins and excess fluid from the blood. Kidney transplantation is the only alternative to dialysis for ESRD patients. 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, ESRD patients have no alternative to dialysis treatments. Unless hospitalized, ESRD patients must obtain dialysis treatments from outpatient dialysis clinics.

Because most ESRD patients receive outpatient dialysis treatment three times per week in sessions lasting between three and five hours, the relevant geographic markets are local and limited by the travel distance from patients' homes. ESRD patients are often very ill and suffer from multiple health problems, making travel further than thirty miles or thirty minutes very difficult. As a result, competition among dialysis clinics occurs at a local level, corresponding to metropolitan areas or subsets thereof. The exact contours of each market vary depending on traffic patterns, local geography, and the patients' proximity to the nearest center.

Competitive Effects of the Acquisition

Each of the seven geographic markets identified in the Complaint is highly concentrated. In each of the affected markets, the proposed acquisition would cause the number of providers to drop from three to two or cause a merger to monopoly, and the post-acquisition HHI levels to exceed 5,000, and in the three-to-two provider markets, changes in their HHIs greater than 200. The high post-acquisition concentration levels, along with the elimination of the head-to-head competition between DaVita and Renal Ventures, suggest the proposed combination likely would result in higher prices for outpatient dialysis services in each geographic market. In addition, market participants compete for patients on a number of quality measures—including quality of facilities, wait times, operating hours, and location. The proposed combination likely also would result in diminished service and quality for patients in each market.

Entry

Entry into the outpatient dialysis services markets identified in the Commission's Complaint is not likely to occur in a timely manner at a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction. By law, each dialysis clinic must have a nephrologist medical director, and most dialysis clinics have long-term (seven to ten year) contracts with nephrologist medical directors that also include non-competes. As a practical matter, medical directors also serve as the primary source of referrals and are essential to a clinic's success. The relative shortage and lack of available nephrologists, particularly those with an established referral stream, is a significant barrier to entry into each of the relevant markets. These obstacles make entry in the affected markets more challenging and less likely to avert the anticompetitive effects of the transaction.

The Consent Agreement

The Consent Agreement remedies the proposed acquisition's anticompetitive effects in seven markets where both DaVita and Renal Ventures operate dialysis clinics by requiring DaVita to divest seven outpatient dialysis clinics to PDA-GMF Holdco LLP, a joint venture between Physicians Dialysis and GMF Capital LLC ("PDA"). Physicians Dialysis has been in business since 1990 and currently operates several outpatient dialysis clinics. The Commission is satisfied that PDA is a qualified acquirer of the divested assets.

As part of the divestitures, DaVita is required to obtain the agreement of the medical director affiliated with each divested clinic to continue providing physician services after the transfer of ownership to the buyer. Similarly, the Consent Agreement requires DaVita to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to the buyer. These provisions ensure that the buyer will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to help ensure the continued competitiveness of the divested clinics. First, the Consent Agreement provides the buyer with the opportunity to interview and hire employees affiliated with the divested clinics and prevents DaVita from offering these employees incentives to decline the buyer's offer of employment. This helps ensure the buyer has access to patient care and supervisory staff familiar with the clinics' patients and the local physicians. Second, the Consent Agreement prevents DaVita from contracting with the medical directors affiliated with the divested clinics for three years, to prevent DaVita from potentially limiting the competitiveness of the divested clinics. Third, to ensure continuity of patient care and records as the buyer implements its quality care, billing, and supply systems, the Consent Agreement requires DaVita to provide transition services for a period up to twenty-four months. Firewalls and confidentiality agreements will prevent the exchange of competitively sensitive information. Fourth, the Consent Agreement requires DaVita to provide the buyer with a license to Renal Ventures' policies, procedures, and medical protocols, as well as the option to obtain and use DaVita's medical protocols, policies, and procedures, to help with continuity of care for the divested clinics' patients.

The Consent Agreement requires DaVita to provide notice to the Commission prior to any acquisitions of dialysis clinics in the markets addressed by the Consent Agreement to ensure that subsequent acquisitions do not adversely impact competition in those markets or undermine the remedial goals of the proposed order. Finally, the Consent Agreement allows the Commission to appoint a monitor to oversee DaVita's compliance with the Consent Agreement.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order, or to modify its terms in any way.