FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Requires Fresenius Medical Care AG to Sell 60 Dialysis Clinics Around the Country as a Condition of Acquiring Liberty Dialysis Holdings, Inc.

Proposed Settlement Order Will Ensure Continued Competition in the Health Care Marketplace

FOR RELEASE

February 28, 2012

TAGS: Competition

The Federal Trade Commission will require Fresenius Medical Care AG & Co. KGaA to sell 60 outpatient dialysis clinics in 43 local markets under a proposed settlement resolving charges that its acquisition of rival dialysis provider Liberty Dialysis Holdings, Inc. would harm competition in numerous local markets for outpatient dialysis services around the country.

The proposed order announced today is the latest action taken by the FTC to ensure that consumers continue to have access to a range of choices in a competitive health care marketplace. By requiring the sales, the FTC settlement preserves competition in each of the local markets, and protects renal care patients from anticompetitive price increases or reductions in quality of care.

Under an agreement dated August 1, 2011, Fresenius proposed to acquire Liberty for approximately $2.1 billion. Headquartered in Bad Homburg, Germany, Fresenius operates more than 1,800 outpatient dialysis clinics throughout the United States, treating approximately 130,000 patients each year. Its total revenues in 2010 were $8 billion. Privately held Liberty, headquartered in Mercer Island, Washington, is the third-largest provider of outpatient dialysis services in the country. It operates 260 dialysis centers, providing services to approximately 19,000 patients in 32 states and the District of Columbia.

According to the FTC's complaint, Fresenius's proposed acquisition of Liberty would be anticompetitive, and would violate Section 5 of the FTC Act and Section 7 of the Clayton Act by reducing competition for outpatient dialysis services. Patients suffering from end stage renal disease use outpatient dialysis treatments to remove toxins and excess fluid from their blood. Most of these patients receive dialysis treatments three times a week, in sessions lasting between three and five hours. Kidney transplantation is the only alternative treatment to dialysis services, but the wait-time for a replacement kidney can be more than five years, and during that time these patients must be on dialysis.

Many end stage renal disease patients are very ill, making it difficult for them to travel more than 30 miles from their home for treatment. As a result, competition between dialysis clinics usually happens at the local level.

According to the FTC, Fresenius's acquisition of Liberty would eliminate head-to-head competition between the firms in the 43 markets at issue, leading to higher prices and reduced quality for dialysis consumers. The proposed acquisition allegedly would to lead to monopolies for outpatient dialysis services in 17 of the 43 local markets. In 24 other markets, the proposed acquisition would cause the number of dialysis providers to drop from three to two. Competition would be significantly reduced in the remaining two markets, the FTC alleges.

The proposed order remedies these competition concerns by requiring Fresenius to divest 54 clinics to Dialysis Newco, Inc., of Nashville, Tennessee; one outpatient clinic to Alaska Investment Partners LLC of Anchorage, Alaska; and five clinics to Dallas Renal Group, of Dallas, Texas. The proposed order also requires Fresenius to end one management services agreement, under which it manages an outpatient dialysis clinic on behalf of a third party. For each clinic it is selling, Fresenius also must assure the doctors currently working there will stay with the clinic after it is sold.

To ensure the required divestitures are successful, the proposed settlement order contains additional terms: 1) providing each buyer with the chance to interview and hire employees affiliated with the clinics they are buying, and preventing Fresenius from offering these employees incentives to decline offers to work with the acquirer; 2) preventing Fresenius from contracting with the medical directors of the divested clinics for three years; 3) if necessary, requiring Fresenius to provide transition services to the divested clinics for up to 12 months; 4) requiring Fresenius to provide each buyer with a licence to use its policies, procedures, and medical protocols at the divested clinics; and 5) requiring Fresenius to notify the FTC before acquiring dialysis clinics in any of the 43 geographic markets addressed in the order.

The Commission vote approving the complaint and proposed consent order was 4-0. The proposed order with will be published in the Federal Register shortly, and will be subject to public comment for 30 days, until March 29, 2012, after which the Commission will decide whether to make it final.

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.

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 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, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., Room 7117, Washington, DC 20580. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook and follow us on Twitter.

(FTC File No. 111-0070)
(Fresenius-Liberty.final)

Contact Information

MEDIA CONTACT:
Mitchell J. Katz,
Office of Public Affairs
202-326-2161
STAFF CONTACT:
Lisa De Marchi Sleigh,
Bureau of Competition
202-326-2535

ftc.gov