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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of **DAVITA INC.,** **a corporation.**	)))))))	**Docket No. C-4152**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent DaVita Inc. ("DaVita"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Gambro Healthcare Inc., ("Gambro"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("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 601 Hawaii Street, El Segundo, CA 90245. 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. Gambro is a corporation organized, existing and doing business under and by virtue of the laws of Tennessee, with its office and principal place of business located at 1627 Cole Boulevard, Lakewood, CO 80401. Gambro is an indirect wholly owned subsidiary of Gambro AB, which is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at Jakobsgatan 6, SE-103 91, Stockholm, Sweden. Gambro AB is engaged globally in three business fields: operating dialysis centers, manufacturing dialysis equipment, and providing technology and products to blood centers and hospital blood banks. Gambro is Gambro AB's U.S. dialysis services business and is engaged, among other things, in the provision of outpatient dialysis services.

7. Gambro 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 December 6, 2004, DaVita entered into an agreement ("Purchase Agreement") with Gambro AB to acquire Gambro, for approximately $3.1 billion 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. The relevant geographic markets within which to assess the competitive effects of the proposed merger are the following metropolitan areas, or, in the case of the larger metropolitan areas, narrower geographic areas contained therein: (1) Chico, California; (2) Fairfield, California; (3) Los Angeles-Orange County, California; (4) Palm Springs-Palm Desert, California; (5) Riverside-Pomona-San Bernardino, California; (6) Sacramento, California; (7) San Diego, California; (8) San Francisco-Oakland-San Jose, California; (9) Stockton, California; (10) Lakeland-Winter Haven, Florida; (11) Fort Pierce-Port St. Lucie, Florida; (12) Punta Gorda, Florida; (13) Tampa-St. Petersburg-Clearwater, Florida; (14) Savannah, Georgia; (15) East St. Louis, Illinois; (16) Springfield, Illinois; (17) Grand Rapids, Michigan; (18) Holland-Zeeland, Michigan; (19) Jackson, Michigan; (20) Muskegon-Grand Haven, Michigan; (21) Omaha, Nebraska; (22) Fremont, Nebraska; (23) Charlotte, North Carolina; (24) Goldsboro, North Carolina; (25) Newport News, Virginia; (26) Norfolk-Chesapeake, Virginia; (27) Richmond, Virginia; and (28) Washington, D.C.

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, whether measured by the Herfindahl-Hirschman Index ("HHI") or two or four firm concentration ratios. The combined firm would have a market share that ranges from 47 to 100 percent in each relevant geographic market. The Acquisition would significantly increase concentration in each relevant market, leaving DaVita as the dominant provider of outpatient dialysis services.

13. DaVita and Gambro 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 Gambro 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 third day of October, 2005, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: