

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of)	
)	
)	
H.I.G. Bayside Debt & LBO Fund II, L.P.,)	
a partnership;)	
)	Docket No. C-4494
and)	
)	
Crestview Partners, L.P.,)	
a partnership.)	
)	
)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent H.I.G. Bayside Debt & LBO Fund II, L.P. (“H.I.G.”), a limited partnership subject to the jurisdiction of the Commission, has agreed to acquire Symbion Holdings Corporation (“Symbion”) from Respondent Crestview Partners, L.P. (“Crestview”), a limited partnership 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 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. RESPONDENTS

1. Respondent H.I.G. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1450 Brickell Avenue, 31st Floor, Miami, Florida 33131.

2. H.I.G. is the parent of Surgery Center Holdings, Inc., which does business as Surgery Partners (“Surgery Partners”). Surgery Partners is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 333 West Upper Wacker Drive, Chicago, IL 60606.

3. Surgery Partners owns and operates single and multi-specialty ambulatory surgery centers (“ASCs”) across the country. ASCs are freestanding clinical facilities that provide outpatient surgery services. Surgery Partners owns, in whole or in part, 47 ASCs in 18 states. Surgery Partners generated approximately \$280 million in revenue during 2013.

4. Respondent Crestview is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 667 Madison Avenue, 10th Floor, New York, New York 10065.

5. Crestview is the parent of Symbion, the acquired company.

II. THE ACQUIRED COMPANY

6. Symbion is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 40 Burton Hills Boulevard, Suite 500, Nashville, Tennessee 37215.

7. Symbion is a holding company that wholly owns Symbion, Inc., which owns, in whole or in part, 44 ASCs in 21 states, as well as several short-stay surgical hospitals. Symbion, Inc., generated more than \$535 million in revenue during 2013.

III. THE PROPOSED MERGER

8. Pursuant to an Agreement and Plan of Merger dated June 13, 2014, H.I.G. proposes to acquire all of the voting securities of Symbion (“the Merger”).

9. The Merger would combine ownership of the only two multi-specialty ASCs in Orange City, Florida. These ASCs are two of the three largest providers of outpatient surgical services to commercially insured patients in a relevant geographic market that approximates southwestern Volusia County and includes the cities of Orange City and Deltona, Florida.

10. Surgery Partners and Symbion each own a significant interest in and operate one ASC in southwestern Volusia County. Surgery Partners owns a significant interest in Orange City Surgery Center in Orange City, Florida. Symbion owns a significant interest in Blue Springs Surgery Center, also in Orange City. Orange City Surgery Center and Blue Springs Surgery Center are located approximately one mile apart. They are each other’s closest competitors and they compete head-to-head on a number of price and non-price factors.

IV. JURISDICTION

11. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

12. The Merger constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

V. THE RELEVANT PRODUCT MARKET

13. The relevant line of commerce in which to analyze the Merger is the sale and provision of outpatient surgical services to commercial health plans and commercially insured patients. Outpatient surgical services are a broad cluster of procedures that do not require an overnight stay at a healthcare facility. Outpatient surgical services can be performed at an ASC, a specialty hospital, or a general acute care hospital.

14. No other services are reasonably interchangeable with or viable substitutes for outpatient surgical services. Although each outpatient surgical service could be its own relevant service market, in analyzing the Merger it is appropriate to cluster these services together as they are offered by a unique set of providers under similar competitive conditions.

VI. THE RELEVANT GEOGRAPHIC MARKET

15. The relevant geographic market in which to assess the competitive effects of the Merger is local in nature and approximates southwestern Volusia County, Florida, including the cities of Orange City and Deltona (the “Orange City/Deltona Area”).

16. In general, patients prefer to obtain outpatient surgical services close to where they live or work. Accordingly, most commercially insured patients who reside in the Orange City/Deltona Area receive outpatient surgical services from providers located in the Orange City/Deltona Area. Commercially insured patients who reside in the Orange City/Deltona Area are unlikely to seek outpatient surgical services from more distant providers, even in response to a small but significant and non-transitory increase in price.

VII. MARKET CONCENTRATION

17. The market for the sale and provision of outpatient surgical services to commercial health plans and commercially insured patients in the Orange City/Deltona Area is moderately concentrated. The Merger will substantially increase concentration in this market, resulting in a post-merger Herfindahl-Hirschman Index (“HHI”) of greater than 2,500 and a delta of greater than 1,000. The Merger would combine the only two multi-specialty ASCs in the Orange City/Deltona Area and, post-merger, would leave commercial health plans and commercially insured patients in the Orange City/Deltona Area with only one meaningful alternative to Respondents for outpatient surgical services.

VIII. ENTRY CONDITIONS

18. Entry into the relevant geographic market would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with constructing or expanding an ASC or hospital-based outpatient surgical services facility, regulatory and licensing requirements that govern the provision of outpatient surgical services, and the need to recruit a sufficient number of physicians to staff an ASC.

IX. EFFECTS OF THE ACQUISITION

19. The Merger, if consummated, would substantially lessen competition for the sale and provision of outpatient surgical services to commercial health plans and commercially insured patients in the Orange City/Deltona Area identified in Paragraph 15, in the following ways, among others:

- (a) by eliminating direct and substantial competition between Surgery Partners and Symbion; and
- (b) by increasing the likelihood that Surgery Partners will unilaterally exercise market power.

20. The likely ultimate effect of the Merger would be that prices of outpatient surgical services sold to commercial health plans and commercially insured patients would rise above competitive levels, and there would be a decrease in the quality or availability of outpatient surgical services in the Orange City/Deltona Area.

X. VIOLATIONS CHARGED

21. The agreement described in Paragraph 8 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the Merger, if consummated, would violate 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, Federal Trade Commission on this thirty-first day of October, 2014, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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