

and low-cost presented a serious threat to Carilion. For example, Carilion recognized that CAI was effective at winning physician referrals in the Roanoke area, and opposed CAI's state application for additional MRI equipment, noting that "CAI has affected our volume(a)Tj8.2200 0.0000 TD(f)Tj3.0000 0.0000 TD200 0.0000 TD(as)Tj9.7200 0.0000 TD(ef)Tj11.22

101 Elm Avenue, Roanoke, Virginia; and Carilion Clinic, Brambleton Center at 3707 Brambleton Avenue, Roanoke, Virginia.

9. In addition to the newly-acquired CSE, Carilion provides outpatient surgical services at the following locations in the Roanoke area: Carilion Clinic, Brambleton Center at 3707 Brambleton Avenue, Roanoke, Virginia; Carilion Roanoke Community Hospital, 101 Elm Avenue, Roanoke, Virginia; and Carilion Roanoke Memorial Hospital, 1906 Belleview Avenue, Roanoke, Virginia. Carilion also operates an ASC as a joint venture partner with various physicians. The ASC, Roanoke Ambulatory Surgery Center, is located at 1102 Jefferson Street, SE, Roanoke, Virginia.
10. Carilion is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the Commonwealth of Virginia, with its office and principal place of business located at 213 Jefferson Street, Suite 720, Roanoke, Virginia. For the fiscal year ending 2008, Carilion had revenues of \$2.48 billion.
11. Carilion is, and at all relevant times has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, or in activities affecting commerce. Prior to the acquisition, CAI and CSE were engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, or in activities affecting commerce.
12. Carilion’s acquisition of CAI and CSE constitutes an acquisition under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

THE ACQUISITION

13. On August 22, 2008, Carilion acquired all of the membership interests of Odyssey IV, LLC d/b/a CAI and CSE for [

REDACTED

]

14. Pursuant to the acquisition, Carilion acquired total ownership and control of CAI, located at 2923 Franklin Street, Roanoke, Virginia, and CSE, located at 2107 Rosalind Avenue, Roanoke, Virginia.

15. [

REDACTED

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THE RELEVANT PRODUCT MARKETS

Advanced Outpatient Imaging Services

16. One relevant product market in which to analyze the competitive effects of the acquisition is advanced outpatient imaging services sold to private payors, including commercial health plans. Advanced outpatient imaging services are a cluster of imaging services, including primarily MRI and Computerized Tomographic Imaging (“CT”) scanning, used to obtain images of the internal anatomy.
17. There are no services that are reasonably interchangeable with or viable substitutes for advanced outpatient imaging services.

Outpatient Surgical Services

18. Outpatient surgical services constitute a relevant product market in which to analyze the competitive effects of the acquisition. Outpatient surgical services are a cluster of procedures performed at hospitals or certified freestanding clinics (commonly called outpatient surgery hospitals or ASCs) that do not require an overnight stay at a hospital.¹ Outpatient surgery services include a wide variety of surgical services, such as interventional spine surgeries, vascular access surgeries for cancer and dialysis patients, open rotator cuff repair, and laser coagulation of the prostate (for urine flow).²
19. There are no services that are reasonably interchangeable with or viable substitutes for outpatient surgical services.

THE RELEVANT GEOGRAPHIC MARKET

20. The relevant geographic market in which to analyze the acquisition is the Roanoke area, which includes the Counties and Cities of Roanoke and Salem, Virginia. This area extends roughly 15 to 20 miles around Roanoke and Salem. The existence of this relevant geographic market is evidenced, by among other things, the ability of Carilion to impose significant and non-transitory price increases upon private payers in the purchase of advanced outpatient imaging services and surgical services.

¹ A freestanding clinic is “certified” when it has received a COPN and a license to operate as an outpatient surgery hospital from Virginia, and Medicare certification as an ASC provider.

² In some areas, including the Roanoke area, there are ASCs dedicated to providing specialized ophthalmological procedures such as cataract, refractive, and LASIK surgeries. These surgical procedures do not compete with the cluster of outpatient surgical services that constitute the relevant product market in this matter.

21. Hospitals and other providers outside of the relevant geographic market do not compete with Carilion for the provision of advanced outpatient imaging or surgical services in the relevant geographic market. Few patients who live within the relevant geographic market travel outside its borders to seek these outpatient services. Indeed, patients generally expect to be able to access such services within 30 minutes of their homes.
22. The next closest provider for the services outside of the relevant geographic market is located 35 miles away from the Roanoke area.

MARKET STRUCTURE AND THE MERGER GUIDELINES PRESUMPTION

Advanced Outpatient Imaging Services

23. Under the 1992 DOJ and FTC Horizontal Merger Guidelines (“Merger Guidelines”) and relevant case law, Carilion’s acquisition of CAI is presumptively unlawful in the market for advanced outpatient imaging services.
24. Under the Herfindahl-Hirschman Index (“HHI”), which is the standard measure of market concentration under the Merger Guidelines, an acquisition is presumed to create or enhance market power or facilitate its exercise if it increases the HHI by more than 100 points and results in a post-acquisition HHI that exceeds 1,800 points. The acquisition at issue created market concentration well in excess of these thresholds. For advanced outpatient imaging services, the acquisition increased the HHI by [REDACTED]. The acquisition resulted in Carilion controlling [REDACTED] of the market for advanced imaging services in the Roanoke area.³ It also created a duopoly for imaging services in the Roanoke area, leaving HCA as the only competitor to Carilion.

Outpatient Surgical Services

25. The acquisition reduced the number of outpatient surgical services providers

³ For MRI services, the acquisition increased the HHI by [REDACTED] (based on number of procedures). For CT services, the acquisition increased the HHI by [REDACTED] (based on number of procedures). The acquisition resulted in Carilion controlling [REDACTED] of the market for MRIs and [REDACTED] of the market for CT scans in the Roanoke area.

upon receiving its Medicare certification, and likely would have become a significant independent provider of outpatient surgical services in competition with Carilion but for the acquisition.

ANTICOMPETITIVE EFFECTS

The Competitive Significance of CAI and CSE

27. Prior to the acquisition, CAI and CSE offered patients independent imaging and surgery services in a facility more accessible than Carilion's or HCA's hospital-based services. In add

The Anticompetitive Effects of the Acquisition

32. The acquisition will reduce the number of imaging and surgical services providers in the Roanoke area from three to two, and will eliminate substantial price and non-price competition that benefit

the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge will schedule an initial pre-hearing scheduling conference to be held not later than ten (10) days after the answer is filed by the last answering respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (and in any event no later than five (5) days after the answer is filed by the last answering respondent). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving a respondent's answer, to make certain initial disclosures without awaiting a discovery request.

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6. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore CAI and CSE as viable, independent competitors in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twenty-third day of July, 2009.

By the Commission.

Donald S. Clark
Secretary

SEAL