Code: 6750-01-P

FEDERAL TRADE COMMISSION

[File No. 201 0031]

Welsh, Carson, Anderson & Stowe; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "Welsh Carson; File No. 201 0031" on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex A), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kara Monahan (202-326-2018), Health Care Division, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions*.

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "Welsh Carson; File No. 201 0031" on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write "Welsh Carson; File No. 201 0031" on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex A), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov*, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social

Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov* – as legally required by FTC Rule § 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN

THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy*.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Welsh, Carson, Anderson & Stowe and its affiliates (collectively "Welsh Carson" or "Respondents"). The Consent Agreement settles charges that Welsh Carson violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, 15 U.S.C. 18, by conspiring to monopolize or controlling, directing, or encouraging the illegal consolidation of hospital-only anesthesia services in Texas.

Welsh Carson is a private equity firm that invests in and manages a portfolio of companies in the healthcare and technology sectors. It runs this business using various corporate entities that share personnel and resources, including WCAS Management Corporation, WCAS Management, LLC, WCAS Management LP, WCAS XII Associates, LLC, and funds such as WCAS XI. All these various corporate entities act together as a single company, and are referred to as "Welsh Carson" or "the Firm."

In 2012, Welsh Carson created U.S. Anesthesia Partners, Inc. ("USAP") to consolidate anesthesia practice groups in Texas. Working together with Welsh Carson, USAP acquired at least 15 competitors in Houston, Dallas, Austin, and across Texas, significantly raising the prices each charged for anesthesia services. Through 2017, Welsh Carson maintained control of USAP through its majority ownership stake or because it held the voting rights of almost all of the other shareholders. Today, Welsh

Carson remains USAP's single-largest shareholder and the most influential member of its board of directors.

The purpose of the Consent Agreement is to protect the public from Welsh Carson's potential future anticompetitive conduct and deter others from engaging in similar anticompetitive conduct. Under the terms of the proposed Decision and Order ("Order"), Welsh Carson will limit its involvement with USAP and must notify—or in certain circumstances obtain approval from—the Commission prior to making acquisitions or investments in anesthesia and other hospital-based physician practices.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or finalize the proposed Order. The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms.

II. The Complaint

According to the complaint, Welsh Carson devised a scheme in 2012 to consolidate the market for hospital-based anesthesia services. It planned to create a company, buy up a critical mass of anesthesia practices in key markets, and then leverage the resulting market power to raise prices to those that pay for health care, including patients, employers, insurance companies, and others. Welsh Carson created USAP to be the vehicle for its anesthesia consolidation scheme, identified acquisition targets, conducted due diligence, provided or secured financing, and helped to develop the strategy to execute price increases with insurers. Under Welsh Carson's control, direction, and encouragement, USAP acquired 15 competitors in Texas.

With Welsh Carson's support, USAP controlled between 60-70 percent of the Houston and Dallas hospital-only anesthesia markets by 2020 and increased its rates with each of the major commercial insurers in Texas. Over time, these increases have cost Texas employers and insurers tens of millions of dollars. In addition to Texas, USAP maintains a presence in at least ten other States, including Florida, Colorado, Washington, Arizona, Indiana, Tennessee, Nevada, Maryland, Kansas, and Oklahoma.

Welsh Carson has also invested in other hospital-based physician specialties, including emergency medicine, neonatology, and radiology. For example, U.S. Radiology Specialists was founded jointly by Welsh Carson and one of the nation's largest radiology groups, and today covers over 80 hospitals in more than a dozen States. Pediatrix, a neonatology practice, was a Welsh Carson portfolio company that acquired over 100 neonatology practice groups. The complaint alleges that Welsh Carson's history of investing in hospital-based practices supports a reasonable likelihood that Welsh Carson will engage in similar or related conduct in the future.

The Complaint alleges monopolization and conspiracy to monopolize claims under section 5 of the FTC Act, as well as violations of section 7 of the Clayton Act.

III. The Proposed Order

The proposed Order seeks to limit Respondents' ongoing involvement in USAP and to prevent recurrence of the conduct alleged in the Complaint, including in other geographic areas and in other hospital-based physician practices with competitive dynamics similar to hospital-only anesthesia services. To accomplish these goals, the proposed Order incorporates Respondents' unique structure into the proposed Order's definitions and operative provisions and as a result, the proposed Order consolidates ownership interests, voting rights, and board appointments across the various Respondents. For example, the definition of each non-fund Respondent aggregates control across WCAS Parties (excluding entities held by a fund) to determine whether

any entity is part of the Respondent, and control over future investments (see Sections III and IV of the proposed Order) will be determined across all WCAS Parties.

Section II of the proposed Order limits Respondents' ongoing ownership rights and entanglements with USAP. Paragraphs II.A and II.B freeze Respondents' current investment in USAP and reduce their board representation to a single seat—who cannot serve as chairman—thereby preventing Welsh Carson from retaking control over USAP and reducing Respondents' ability to benefit from USAP's monopoly position in Texas. To remove any unnecessary connections between Respondents and USAP, Paragraph II.C further requires Respondents, upon a written request from USAP, to terminate (without penalty) contracts under which Respondents provide services to USAP.

To prevent recurrence of Respondents' alleged conduct in anesthesia markets, Section III of the proposed Order requires Respondents to obtain prior approval or provide the Commission notice before completing certain transactions. Such provisions alert the Commission about transactions before they occur, so that the Commission can attempt to stop future anticompetitive serial acquisitions in their incipiency. Prior approval and notice provisions can be particularly important for acquisitions that fall below HSR reporting thresholds, like many of those anticompetitive transactions alleged in the Complaint. Because Respondents have historically invested in anesthesia practices in multiple States, Section III extends nationwide. Paragraph III.A requires prior approval for specified transactions in which Respondents plan to acquire an ownership interest in an anesthesia practice, either through a Respondent itself or through an anesthesia business in which Respondents already have a controlling interest. Paragraph III.B applies when an anesthesia business in which Respondents have a non-controlling ownership interest (other than passive interest of less than ten percent) makes certain acquisitions, and requires Respondents to provide notice to the Commission.

Given Welsh Carson's consolidation of other hospital-based practices, the

proposed Order extends beyond anesthesia investments. Specifically, Section IV of the proposed Order requires Respondents to give the Commission advance notice and pause closing for 30 days for certain investments in other hospital-based physician groups. Section IV applies when Respondents invest directly in a relevant practice or through an entity in which Respondents have more than 50% of ownership, voting rights, or board appointments.

For transactions covered by Sections III and IV, the proposed Order applies whether Respondents make the investment through an existing investment fund or an investment fund created in the future. Section V gives the Commission notice if any such future fund will be operated by a manager other than one of the Respondents. Section VI gives the Commission certain discovery rights with respect to its ongoing litigation against USAP in Federal court in Texas.

Finally, Sections VII, VIII, and IX of the proposed Order include provisions designed to ensure the effectiveness of the relief, including: obtaining information from Respondents that they are complying with the Order; requiring Respondents to submit compliance reports; and requiring Respondents to maintain specific written communications.

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

In September 2023, the Federal Trade Commission filed suit against U.S. Anesthesia Partners, Inc. ("USAP") and private equity firm Welsh, Carson, Anderson & Stowe ("Welsh Carson") alleging that the two executed a multi-year anticompetitive scheme to consolidate anesthesiology practices in Texas, drive up the price of anesthesia

services provided to Texas patients, and boost their own profits.[1] The Commission today announces the issuance of a proposed consent order settling charges that Welsh Carson's conduct violated section 7 of the Clayton Act and section 5 of the FTC Act.[2]

Welsh Carson created USAP in 2012 after observing that anesthesiology in Texas was comprised of small practices competing against one another. This competition enabled insurers to negotiate prices for themselves, resulting in lower prices for Texan businesses and patients. According to the FTC's administrative complaint, Welsh Carson saw an opportunity to profit from eliminating this competition and consolidating these various practices into a dominant provider with the power to extract high prices.[3] Following its creation, USAP acquired more than a dozen anesthesiology practices in Texas.[4] The FTC alleges that as it bought each one, USAP raised the acquired group's rates to USAP's higher rates—resulting in a substantial mark-up for the same doctors as before.[5] This roll-up strategy has made USAP the dominant provider of anesthesia services in Texas and in many of the state's metropolitan areas, including Houston and Dallas.[6] USAP's size and prices now dwarf those of its rivals. As of 2021, it was at least four times larger than the second-largest group in Houston; six times larger than the second-largest group in Dallas; and nearly seven times larger than the second-largest group in all of Texas. USAP is also one of the most expensive, with reimbursement rates

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[1] Press Release, Fed. Trade Comm'n, FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas (Sept. 21, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across.

[2] The settlement follows an initial September 2023 federal court complaint in which the Commission alleged that USAP and Welsh Carson, which created USAP in 2012, engaged in a roll-up scheme by systemically buying up nearly every large anesthesia practice in Texas to create a single dominant provider with the power to demand higher prices. In May 2024, the district court dismissed Welsh Carson from the FTC's federal challenge on procedural grounds, finding that the FTC lacked authority to bring the case against Welsh Carson in federal court because the complaint did not allege that Welsh Carson was currently violating the law, as required under section 13(b) of the FTC Act. *Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., et al.*, No. 4:23-cv-03560 (S.D. Tex. May 13, 2024), ECF No. 146.

[3] Compl., *In the Matter of Welsh, Carson, Anderson & Stowe*, File No. 2010031 (Jan. 16, 2025), ¶¶2, 13.

[4] *See id.* at ¶¶14-21.

[5] *Id.* at ¶¶4, 30.

[6] *Id.* at ¶¶27-30.

that are significantly higher than the median rate of other anesthesia.[7]

This was not a one-off strategy, but rather a tried-and-true playbook that Welsh Carson had already used to "roll up" independent physician groups across other health care markets. For example, after investing in neonatology provider Pediatrix Medical Group in 1998, Welsh Carson subsequently acquired over 100 neonatology practices,[8] eventually priding itself on staffing one in four neonatal intensive care units in the country.[9] In 2015, Welsh Carson bought out an Ohio-based emergency medical staffing and management group to form US Acute Care Solutions and engaged in a similar roll up strategy in the emergency medicine market; by 2019, it had grown to serve six million patients at 220 sites in 20 states.[10] When preparing to enter the radiology market in 2017, Welsh Carson explained that "[g]iven our success to date with USAP and [in emergency medicine], we would like to . . . deploy[] a similar strategy to consolidate the market[.]"[11] Today, U.S. Radiology Specialists, which describes itself as "founded jointly" by Welsh Carson and "one of the nation's largest" radiology groups, covers over 80 hospitals in more than a dozen states.[12]

Nor is this strategy limited to Welsh Carson. Reporting suggests that markets across the economy have been rolled-up through serial acquisitions and other stealth

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[7] According to state regulators, Welsh Carson and USAP have employed a similar strategy in other areas of the country as well, including in the Denver, Colorado metropolitan statistical area ("MSA") where USAP eventually grew to account for more than 70% of health plan reimbursements for surgical anesthesia. *See* Press Release, Office of the Attorney General Colorado Department of Law*, Private equity-run U.S. Anesthesia Partners to end Colorado health care monopoly under agreement with Attorney General Phil Weiser* (Feb. 27, 2024), https://coag.gov/press-releases/usap-health-care-monopoly-attorney-general-phil-weiser-2-27-2024/.

[8] *See* Compl., *Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., et al.*, No. 4:23-cv-03560 (S.D. Tex. Sep. 21, 2023), at ¶¶82-83.

[9] Maureen Tkacik, *Heads They 'Cha-Ching!'; Tails They Take Away Your Malpractice Insurance*, THE AM. PROSPECT (Sep. 22, 2023), https://prospect.org/health/2023-09-22-private-equity-medical-rollups-malpractice-insurance/.

[10] Eileen Appelbaum & Rosemary Batt, *Private Equity Buyouts in Healthcare: Who Wins, Who Loses?*, Ctr. for Econ. and Pol'y Rsch., Working Paper No. 118 (Mar. 15, 2020), at 72, available at https://www.cepr.net/wp-content/uploads/2020/03/WP_118-Appelbaum-and-Batt.pdf.

[11] Compl., *Fed. Trade Comm'n v. U.S. Anesthesia Partners, Inc., et al.*, No. 4:23-cv-03560 (S.D. Tex. Sep. 21, 2023), at ¶339.

[12] *Id.*

acquisitions, from car washes to dry cleaners.[13] The incremental rise of consolidation through successive, smaller acquisitions has, however, long been a top concern for legislators and enforcers alike—and especially so for the FTC.[14] Indeed, it was the inability of the older Sherman Act to cope with "individually minute" lessenings of competition that led to the 1914 enactment of the Clayton Act.[15] Congress sought to address these concerns again in 1950 through the Celler-Kefauver Act, which the Supreme Court observed was specifically intended to address "the rising tide of economic concentration . . . in its incipiency to break this force at its outset and before it gathered momentum."[16]

Much of the modern focus on serial acquisitions has concerned private equity firms' use of "buy-and-build" strategies, where a portfolio company buys a firm, often the market leader, and then "rolls-up" smaller competitors using the private equity firm's money and acquisition expertise.[17] Private equity firms have made serial acquisitions across markets—from nursing homes and apartment buildings to emergency medicine clinics and opioid treatment centers.[18] But serial acquisition strategies are not just limited to private equity firms; they have also been used by large technology companies and

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[13] *See* Miriam Gottfried, *Private Equity Wants to Wash Your Car*, WALL ST. J. (Aug. 20, 2022), https://www.wsj.com/articles/private-equity-wants-to-wash-your-car-11660968031.

[14] *See Brown Shoe Co. v. United States*, 370 U.S. 294, 333-34 (1962) (quoting FED. TRADE COMM'N, THE MERGER MOVEMENT: A SUMMARY REPORT (1948)) ("Imminent monopoly may appear when one large [company] acquires another, but it is unlikely to be perceived in a small acquisition by a large enterprise. As a large [company] grows through a series of such small acquisitions, its accretions of power are individually so minute as to make it difficult to use the Sherman Act tests against them.").

[15] *In re Nat'l Tea Co.*, 69 F.T.C. 226 (1966).

[16] *Brown Shoe*, 370 U.S. at 317-18.

[17] *See* Statement of Comm'r Rohit Chopra Regarding Private Equity Roll-ups and the Hart-Scott Rodino Annual Report to Congress (July 8, 2020), https://www.ftc.gov/system/files/documents/public_statements/1577783/p110014hsrannualreportchoprastatement.pdf; Statement of Chair Lina M. Khan Joined by Comm'r Rebecca Kelly Slaughter and Comm'r Alvaro M. Bedoya In the Matter of JAB Consumer Fund/SAGE Veterinary Partners (Jun. 13, 2022), https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-joined-commissioner-rebecca-kelly-slaughter-commissioner-alvaro-m-bedoya.

[18] *See* Remarks by Chair Lina M. Khan as Prepared for Delivery at the Private Capital, Public Impact Workshop on Private Equity in Healthcare (Mar. 5, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.05-chair-khan-remarks-at-the-private-capital-public-impact-workshop-on-private-equity-in-healthcare.pdf; *see also* U.S. Dep't of Health and Human Services, *HHS Consolidation in Health Care Markets RFI Response* (Jan. 15, 2025), https://www.hhs.gov/sites/default/files/hhs-consolidation-health-care-markets-rfi-response-report.pdf.

other corporate actors to consolidate control over certain markets.[19] By consolidating power gradually and incrementally through a series of smaller deals, firms have sometimes sidestepped antitrust review. In the aggregate, these roll-up plays can eliminate meaningful competition and allow new owners to jack up prices, degrade quality, and neutralize rivals without competitive checks.

Antitrust enforcers have taken a series of steps to address these anticompetitive transactions and help ensure our tools keep pace with changes in how firms now do business. The FTC and DOJ jointly issued the 2023 Merger Guidelines, which recognize that "[a] firm that engages in an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate Section 7" of the Clayton Act.[20] The FTC also issued a policy statement clarifying the full scope of section 5 of the FTC Act, which explicitly identifies as a potential unfair method of competition "a series of mergers, acquisitions, or joint ventures that tend to bring about the harms that the antitrust laws were designed to prevent, but individually may not have violated the antitrust laws."[21] More recently, the agencies finalized updates to the premerger notification forms that will require firms to disclose expanded information on business incentives and prior acquisitions, mitigating blind spots and allowing enforcers to spot roll-ups at their inception.[22]

In addition to updating its enforcement tools, the FTC has also partnered with colleagues across the federal government to share and solicit further helpful information from our sister agencies, market participants, and the broader public to ensure that illegal

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[19] *See* Fed. Trade Comm'n, *Non-HSR Reported Acquisitions by Select Technology Platforms, 2010-2019* (2021), https://www.ftc.gov/system/files/documents/reports/non-hsr-reported-acquisitions-select-technology-platforms-2010-2019-ftc-study/p201201technologyplatformstudy2021.pdf.
[20] U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* at 23 (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.
[21] Fed. Trade Comm'n, *Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act* (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf.
[22] Press Release, Fed. Trade Comm'n, FTC Finalizes Changes to Premerger Notification Form (Oct. 10, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-finalizes-changes-premerger-notification-form.

roll-ups do not evade antitrust scrutiny. For example, the FTC, DOJ, and the Department of Health and Human Services conducted a tri-agency public inquiry to examine the role of private equity and consolidation in health care, [23] and have committed to exchange data and information to help identify potentially unlawful transactions that might otherwise sidestep review. [24] The FTC and DOJ also jointly issued a request for information seeking information from the public to specifically help identify serial acquisitions and roll-up strategies throughout the economy that have led to consolidation that has harmed competition.[25]

The Commission's proposed settlement with Welsh Carson builds upon these significant programmatic advances in addressing serial acquisitions, seeking to restore competition in the affected markets for anesthesiology services, and protecting competition in adjacent markets by better equipping the agency to detect future unlawful transactions. As part of the settlement, Welsh Carson has agreed to freeze its pro rata ownership of USAP at the current minority level and to not provide any new financing that would increase its pro rata ownership.[26] Welsh Carson has also agreed to give up a seat on USAP's board of directors and limit its representation on USAP's board to a single non-Chair board seat.[27] The settlement further prevents Welsh Carson from gaining management rights over USAP and allows USAP to terminate any contract under

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[23] Press Release, Fed. Trade Comm'n, Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care (Mar. 5, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-departmentjustice-department-health-human-services-launch-cross-government; Press Release, U.S. Dep't of Health and Human Services, HHS Releases Report on Consolidation and Private Equity (PE) in Health Care Markets (Jan. 15, 2025), https://www.hhs.gov/about/news/2025/01/15/hhs-releases-report-consolidation-private-equity-health-care-markets.html.

[24] Press Release, The White House, FACT SHEET: Biden-Harris Administration Announces New Actions to Lower Health Care and Prescription Drug Costs by Promoting Competition (Dec. 7, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/07/fact-sheet-biden-harris-administration-announces-new-actions-to-lower-health-care-and-prescription-drug-costs-by-promoting-competition/.

[25] Press Release, Fed. Trade Comm'n, FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy (May 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-doj-seek-info-serial-acquisitions-roll-strategies-across-us-economy.

[26] Decision and Order, at §II.A.

[27] *Id.* at §II.B.

which Welsh Carson provides services to USAP immediately upon written notice.[28] These provisions help to ensure that Welsh Carson can no longer exercise control over USAP's operations or its decision-making.

Critically, the proposed order includes nationwide prior approval and notice provisions which establish key safeguards against future dealmaking that may prove unlawful. The order requires Welsh Carson to obtain the FTC's prior approval for any acquisition of, or investment in, *any* anesthesia business. The proposed order also requires Welsh Carson-controlled portfolio companies to obtain prior approval before acquiring or investing in any anesthesia business that is in the same state or MSA as any other existing Welsh Carson anesthesia investment nationwide.[29] Notably, the proposed relief establishes protections against potentially anticompetitive dealmaking in adjacent markets as well, requiring Welsh Carson to provide the FTC with written notice before acquiring or making a majority investment in any hospital-based physician practice in the same state or MSA as any existing Welsh Carson-controlled hospital-based physician practice investment nationwide.[30]

The proposed order is notable not just because of the scope of the contemplated relief, but also for its novel treatment of private equity defendants. Firms in the modern economy utilize a variety of corporate forms and structures to engage in commerce, and industry actors have become increasingly sophisticated at corporate organization and venture formation. Like other private equity firms, Welsh Carson uses a complex maze of related entities and funds to carry out its business. Indeed, the Commission's complaint in this matter identifies no fewer than seven different Welsh Carson affiliates as defendants, including two separate private equity funds. Thus, to ensure that Welsh Carson cannot evade the requirements outlined in the proposed relief, the order is drafted so that each of

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[28] *Id.* at §§II.B-C.
[29] *Id.* at §III.
[30] *Id.* at §IV.

the provisions, including the nationwide prior approval and notice requirements, apply both to Welsh Carson's existing private equity funds as well as any investment vehicles, funds or otherwise, that the firm may form in the future. This establishes a valuable blueprint for future Commission orders involving financially sophisticated actors.

Many thanks to the FTC's Health Care and Compliance teams for their diligent work on this matter. We will be collecting comments on our proposed order for 30 days and look forward to reviewing this public input.

Concurring Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak

The Commission today issues an administrative complaint and accepts a proposed consent order with Welsh, Carson, Anderson & Stowe ("Welsh Carson").[1] The Complaint alleges that Welsh Carson, through its portfolio company U.S. Anesthesia Partners, acquired a series of anesthesia practices in the Houston and Dallas-Fort Worth metropolitan areas.[2] The Complaint further alleges that these acquisitions gave Welsh Carson monopoly power over anesthesia services in the relevant markets, and it used that monopoly power to increase the prices for anesthesia services above competitive levels.[3] This inflicted real economic injury on Americans at their most vulnerable moments—when they needed medical intervention so substantial that anesthesia was required. That conduct, the Complaint alleges, violated section 2 of the Sherman Act and section 5 of the FTC Act,[4] as well as section 7 of the Clayton Act.[5]

I concur in today's Commission action because it is a routine law-enforcement matter embodying a traditional approach to competition law.[6] A reader might reach a

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[1] *In re Welsh, Carson, Anderson & Stowe XI, L.P.*, Complaint ("Complaint") & Decision and Order.
[2] Compl. ¶ 25.
[3] *Id*. ¶¶ 1–4, 13–21, 27–31.
[4] *Id*. ¶¶ 33-34, 37.
[5] *Id*. ¶ 35.
[6] See Dissenting Statement of Comm'r Andrew N. Ferguson, Regarding the Telemarketing Sales Rule, Matter No. R411001 (Nov. 27, 2024) ("The proper role of this lame-duck Commission is … to hold down the fort, conduct routine law enforcement, and provide for an orderly transition to the Trump

different conclusion given the agency's rhetoric in connection with the public announcement of this settlement. The press release and the Chair's statement both suggest that this case is extraordinary because it involves "private equity" and "serial acquisitions," and hint at antipathy toward private equity.[7]

I write to pierce through this breathless rhetoric to make clear that this case is an ordinary application of the most elementary antitrust principles. That Welsh Carson is a private equity firm is irrelevant; the antitrust analysis would be the same if Welsh Carson were, for example, an individual or institutional investor. Section 7 prohibits mergers that may substantially lessen competition or tend to create a monopoly.[8] In most of our section 7 cases, we are predicting the likely effects of a transaction before it takes place.[9] Here, however, we did not have to predict anything. Welsh Carson made acquisitions. As alleged in the Complaint, those acquisitions demonstrably created monopoly power and Welsh Carson wielded that power to raise prices. That is exactly what section 7 prohibits anyone from doing. There is thus no reason for the Commission to single out private equity for special treatment.

Similarly, the Chair's reference to the 2023 Merger Guidelines is a red herring. The Guidelines provide that "[a] firm engages in an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate Section 7."[10] But

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Administration. I will vote against all new rules not required by statute, and any enforcement action that advances an unprecedented theory of liability until that transition is complete.").

[7] Statement of Chair Lina M. Khan, Joined by Comm'rs Rebecca Kelly Slaughter and Alvaro Bedoya, In the Matter of Welsh, Carson, Anderson & Stowe, Matter No. 2010031 (Jan. 17, 2025); Press Release, FTC, FTC Secures Settlement with Private Equity Firm in Antitrust Roll-Up Scheme Case (Jan. 17, 2025).

[8] 15 U.S.C. 18. Similarly, section 2 of the Sherman Act has long been understood to prohibit "merging viable competitors to create a monopoly." Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law, ¶ 701a (rev. ed. 2024); see also *United States v. Grinnell*, 384 U.S. 563, 576 (Sherman Act section 2 violation based in part on acquisitions of competitors in the central station service business including burglar alarm services, fire alarm services, and the like because "[b]y those acquisitions it perfected the monopoly power to exclude competitors and fix prices.").

[9] *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713, 727 (D.C. Cir. 2001) (preliminarily enjoining a proposed merger and explaining that "Congress has empowered the FTC, *inter alia*, to weed out those mergers whose effect 'may be substantially to lessen competition' from those that enhance competition." (quoting H.R. Rep. No. 1142, at 18–19 (1914))); see also Concurring Statement of Comm'r Andrew N. Ferguson, Final Premerger Notification Form and the Hart-Scott-Rodino Rules, Matter No. P239300, at 2 (Oct. 10, 2024) (describing Congress's intent to provide for premerger review with the 1976 Hart-Scott-Rodino Act).

[10] U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines, at 3, 23 (Dec. 18, 2023).

section 7 does not prohibit anticompetitive "pattern[s]" or "strateg[ies]." It prohibits "acqui[sitions]" "the effect of [which] may be substantially to lessen competition or to tend to create a monopoly."[11] That is what the Complaint accuses Welsh Carson of doing—making acquisitions that in fact tended to create a monopoly and injured vulnerable Americans. The public should disregard my Democratic colleagues' rather clumsy attempt to make a run-of-the-mill enforcement matter seem like an avant-garde application of novel provisions of the 2023 Guidelines.[12]

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[11] 15 U.S.C. 18.

[12] The Chair's reference to the partisan 2022 section 5 Policy Statement for the proposition that serial acquisitions can present an incipient violation of the antitrust laws is equally unavailing. The Complaint charges section 2 and section 7 violations, which section 5 indisputably reaches even under the Democrats' own reading of section 5 jurisprudence. FTC, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act, at 12 (Nov. 10, 2022) ("examples of conduct that have been found to violate Section 5 include: Practices deemed to violate Sections 1 and 2 of the Sherman Act or the provisions of the Clayton Act, as amended (the antitrust laws)").