

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

The proposed consent order announced today settles the Commission’s allegations that the proposed acquisition of SAGE Veterinary Partners, LLC (“SAGE”) by JAB Consumer Partners SCA SICAR (“JAB”), the owner of Compassion-First Pet Hospitals and NVA Parent Inc. (collectively, “Compassion-First/NVA”), may substantially lessen competition for individual specialty veterinary services and emergency veterinary services in three local markets: (i) Austin, TX; (ii) in and around San Francisco, CA; and (iii) in and between Oakland, Berkley, and Concord, CA. The proposed divestiture resolves all competitive overlaps between Compassion-First/NVA and SAGE in the alleged relevant markets.

Because it does so, we voted to accept this proposed consent order for public comment. But we write separately to object to the Complaint’s invocation of rhetoric unrelated to competition and the order’s apparent predication of remedies upon both that rhetoric and the majority’s evident distaste for private equity as a business model, instead of the facts uncovered in the investigation.

The Complaint alleges a “growing trend towards consolidation in the emergency and specialty veterinary services markets across the United States in recent years by large chains”.¹ That allegation, and Chair Khan’s concurrently-released statement regarding private equity as a business model,² are the apparent bases for imposing broad prior approval and prior notice requirements on the parties.³ Even though we found competitive problems in just the three local markets discussed above, we are imposing prior approval requirements across California and Texas, and prior notice requirements across the entire U.S.

The “growing trend” allegation, in isolation, is not an appropriate basis for incremental remedies. , our investigation revealed that the relevant competition occurs at the local level, driven by the distance and time that pet owners are willing to travel to obtain each relevant veterinary service. That is why the Complaint pleads local markets and the divestitures are designed to resolve overlaps in three specific local areas—two across the Bay Bridge from one another. For competition purposes, there is no national antitrust market for emergency and specialty veterinary services. To the extent there is consolidation on a national level, based on what

¹ Complaint,

paragraph

were divested to an acceptable buyer, which is critical to maintaining competition.⁹ The effect of imposing broader prior approval requirements because of such settlements will be to deter not mergers, but settlements. It will deter parties from submitting for agency review the complete set of assets subject to the deal, instead “fixing it first”: selling what they want to whom they want. The Commission has traditionally eschewed this approach because it reduces our ability to ensure the robustness of the divestiture and the quality of the buyer and because, without a consent order, there is no accountability should parties fail to meet their obligations. Fix-it-first transactions remove Commission oversight and increase the likelihood that competition will not be preserved and that consumers will be harmed.

As we warned when the Commission (actually, two sitting Commissioners and a zombie vote) issued the ill-advised Prior Approval Policy, the broad and subjective factors enunciated in that policy lack limiting principles and are almost certain to lead to the routine imposition of prior approval provisions on geographic and product markets beyond those at issue in any given merger. We acknowledge that there are cases where the evidence supports the imposition of these more onerous remedies.¹⁰ This does not appear to be one of those cases.

We encourage comments during the public comment period regarding the statewide prior approval and nationwide prior notice provisions that appear in today’s consent order. In addition, we encourage comments on the implications of the agency’s apparent shift to an approach that incentivizes fix-it-firsts.

(Feb. 14, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/02/ftc-requires-veterinary-service-providers-compassion-first-national-veterinary-associates-divest> (The FTC required divestiture of 3 out of over 70 clinics operated by the parties).

⁹ (Jan. 2017), https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf.

¹⁰ Decision, (Oct. 25, 2021) https://www.ftc.gov/system/files/documents/cases/davita_order_9_24_final.pdf (DaVita was subject to a statewide prior provision, requiring prior approval from the Commission before acquiring any new ownership interest in a dialysis clinic in Utah.).