



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya
In the Matter of Welsh, Carson, Anderson & Stowe
Commission File No. 2010031

January 17, 2024

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 price hike 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

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), hMC ETn3 (21a)6giJ 7es 1 (.8 (he)((.8 t253 0 (our)3 e9 TJ

Act.¹⁵ Congress sought to address these concerns again in 1950 through the Celler 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 start 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 “rollsup” smaller competitors using the private equity firm’s money and acquisition expertise.¹⁷

premerger notification forms that will require firms to disclose expanded information on business incentives and prior acquisitions, mitigating blind spots and allowing enforcement not rollups at their inception.²²

In addition to updating its enforcement tools,

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 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 team 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.

²⁹ Id. at §III.

³⁰ Id. at §IV.