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

Office of Commissioner
Andrew N. Ferguson

Concurring Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak In the Matter of US Anesthesia Partners/Guardian Anesthesia

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 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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[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 G0 Tw 4e.001 Tc 0p. Ne 976 H76 H,