



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 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

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.

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 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 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

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.*

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.”).

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 incipency 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 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

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>.

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.

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 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 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.

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>.

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-department-justice-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.

²⁸ *Id.* at §§II.B-C.

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 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.

²⁹ *Id.* at §III.

³⁰ *Id.* at §IV.