

# Memorandum

## Welsh Carson, FTC Resolve Administrative Complaint While New Chairman Signals a Shift in Views Concerning Private Equity Antitrust Enforcement

January 27, 2025

On January 17, 2025, the last business day of the Biden administration, private equity firm Welsh, Carson, Anderson & Stowe and its affiliates (“Welsh Carson”) reached a settlement with the Federal Trade Commission (“FTC”) in an administrative suit alleging that Welsh Carson and its portfolio company U.S. Anesthesia Partners (“USAP”) had engaged in a roll-up “scheme” to monopolize the market for hospital anesthesia services in Houston and Dallas-Fort Worth.<sup>1</sup> The settlement requires that Welsh Carson:

- Not increase its investment in or gain management rights over USAP and reduce its board representation to a single, non-chair seat;
- Obtain the FTC’s prior approval for any acquisitions involving anesthesiology services nationwide, as well as prior approval for certain acquisitions by any majority-owned Welsh Carson anesthesia group nationwide;
- Provide the FTC with notice at least 30 days prior to acquiring or making majority investments in other hospital-based physician groups in the same state or metro area where Welsh Carson has a controlling interest in a competing asset; and
- Make certain commitments not to frustrate discovery-related activities in connection with the FTC’s ongoing litigation against USAP.

The prior approval and prior notice requirements echo similar terms that the FTC included in both of its 2022 settlements with JAB Consumer Partners as conditions to JAB’s separate acquisitions of two specialty and emergency veterinary clinics.<sup>2</sup> The JAB settlements were the first that the FTC advertised as resolving concerns about a private equity firm’s roll-up acquisition strategy.<sup>3</sup>

<sup>1</sup> *In re Welsh, Carson, Anderson & Stowe XI, L.P.*, [Complaint](#) and [Decision and Order](#).

<sup>2</sup> Decision and Order, *In the Matter of JAB Consumer Partners/SAGE Veterinary Partners* (Aug. 2, 2022); Decision and Order, *In the Matter of JAB Consumer Partners/VIPW/Ethos Veterinary Health* (Oct. 14, 2022).

<sup>3</sup> [Press Release](#), FTC Takes Second Action Against JAB Consumer Partners to Protect Pet Owners from Private Equity Firm’s Rollup of Veterinary Services Clinics (June 29, 2022).

For Welsh Carson, but not USAP, this concludes a saga in the FTC’s challenge<sup>4</sup> that began in September 2023 when the FTC brought an enforcement action in the U.S. District Court for the Southern District of Texas under Section 13(b) of the FTC Act.<sup>5</sup> Section 13(b) allows the FTC to file a claim in federal court to enjoin conduct if there is reason to believe that a party is violating or about to violate an antitrust law. The FTC alleged that Welsh Carson was both violating and about to violate the antitrust laws because Welsh Carson founded USAP in 2012, implemented the roll-up strategy, and maintained a 23% interest in USAP at the time of the suit.<sup>6</sup> Put simply, the FTC argued that Welsh Carson should be held responsible for the ongoing allegedly unlawful conduct of the portfolio company that it created and historically controlled.

On May 13, 2024 the federal court dismissed the antitrust claims against Welsh Carson after finding that the private equity firm no longer had a controlling interest in USAP as of 2017, meaning that in September 2023 there was no ongoing or likely future antitrust violation to enjoin as concerns Welsh Carson.<sup>7</sup> The federal court denied USAP’s motion to dismiss, and that case remains ongoing, with trial currently scheduled no earlier than May 2026.

Following the federal court’s dismissal of Welsh Carson from the federal case on procedural grounds, the FTC threatened a new administrative suit that charged violations—again, by both Welsh Carson and USAP—under Section 2 of the Sherman Act, Section 5(a) of the FTC Act, and Section 7 of the Clayton Act. The administrative complaint alleged that as of 2014, owing to Welsh Carson and USAP’s acquisition strategy, USAP accounted for approximately 40-50% of sales for hospital-only anesthesia services sold to commercial insurers in the Houston and Dallas-Fort Worth areas, and therefore had monopoly power in those same markets which it went on to exercise in various ways. The FTC Commissioners approved the proposed Welsh Carson Consent Order unanimously.

The statements issued simultaneously by the outgoing Democratic FTC leadership and incoming Republican leadership illustrate a broader debate about the singling-out of private equity actors in antitrust enforcement. The antitrust agencies’ skepticism of private equity as a business model under the former Biden administration is well-documented, with so-called roll-up strategies a particular area of focus.<sup>8</sup> To that end, outgoing FTC Chair Lina Khan, joined by fellow Democrat Commissioners Alvaro Bedoya and Rebecca Slaughter, stated that the Welsh

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<sup>4</sup> A private antitrust lawsuit was also launched against both Welsh Carson and USAP on January 9, 2025 in the same Texas Southern District Court. Complaint, *Musharbash v. U.S. Anesthesia Partners, Inc. et al*, 4:25-cv-00116 (S.D. Tex. Jan. 9, 2025).

<sup>5</sup> [Complaint](#), *Federal Trade Commission v. U.S. Anesthesia Partners, Inc. et al*, No. 4:23-cv-03560 (S.D. Tex. Sept. 21, 2023).

<sup>6</sup> *Id.*; see also Memorandum Opinion and Order, *Federal Trade Commission v. U.S. Anesthesia Partners, Inc. et al*, No. 4:23-cv-03560 (S.D. Tex. May 13, 2024).

<sup>7</sup> Memorandum Opinion and Order, *Federal Trade Commission v. U.S. Anesthesia Partners, Inc. et al*, No. 4:23-cv-03560 (S.D. Tex. May 13, 2024).

<sup>8</sup> [See, e.g.](#), “*FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy*” (May 23, 2024).

Carson Consent Order is notable “for its novel treatment of private equity defendants” and “establishes a valuable blueprint for future Commission orders involving financially sophisticated actors.”<sup>9</sup>

Although FTC Chairman Andrew Ferguson and his fellow Republican Commissioner Melissa Holyoak approved the Welsh Carson Consent Order, they disagreed with their Democrat colleagues’ “breathless rhetoric” concerning broader implications for private equity.<sup>10</sup> In their view, the Welsh Carson case constitutes nothing more than “an ordinary application of the most elementary antitrust principles” and Welsh Carson’s organization as a private equity firm has no bearing on the antitrust analysis.<sup>11</sup> From the perspective of the Republican Commissioners, this case was a simple one: Section 7 of the Clayton Act prohibits mergers that may substantially lessen competition or tend to create a monopoly, and Welsh Carson made acquisitions that created monopoly power that was then exercised by USAP to increase prices for hospital-only anesthesia services.

Although the significance of the Welsh Carson settlement for private equity firms appears to be up for debate, it does not seem that the incoming administration shares the same open skepticism about private equity. In his concurring statement, Chairman Ferguson dismissed the notion that the Welsh Carson case represents anything more than a vanilla application of Section 7 of the Clayton Act and directs the public to “disregard” the outgoing Democratic majority’s “attempt to make a run-of-mill enforcement matter” seem like something more.<sup>12</sup>

Of course, as Chairman Ferguson makes clear, that is not to say that acquisitions comprising a “roll-up strategy” are inherently lawful individually or in the aggregate. Section 7 of the Clayton Act prohibits acquisitions that may substantially lessen competition or tend to create a monopoly. This is true whether an acquisition is conducted by an individual or private equity firm, whether an acquisition is pursued independently or as part of a broader strategy, and whether an acquisition is HSR-reportable or not.

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<sup>9</sup> [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) at 5.

<sup>10</sup> [Concurring Statement](#) of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, In the Matter of US Anesthesia Partners/Guardian Anesthesia, Matter No. 2010031 (Jan. 17, 2025) at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2.

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