



Office of the Chair

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

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya
In the Matter of JAB Consumer Fund/SAGE Veterinary Partners
Commission File No. 2110140**

June 13, 2022

In June 2021, JAB Consumer Partners SCA SICAR (“JAB”) proposed to buy SAGE Veterinary Partners, LLC (“SAGE”). JAB is a \$55 billion private equity fund whose investments span a host of consumer-facing businesses, from Keurig, Dr. Pepper, and Panera Bread to Krispy Kreme and Bally.¹ In recent years, JAB has expanded into pet care and pet health services. JAB’s proposed transaction here would combine its existing holdings of Compassion-First Pet Hospitals and National Veterinary Associates (“NVA”) with SAGE to form an entity that controls nearly 100 specialty and emergency clinics throughout the country.

After conducting a thorough investigation here, the Commission determined it had reason to believe that this deal—JAB’s proposed acquisition of SAGE—was illegal, alleging in its complaint that the deal would have enabled the firm to establish a dominant position in key markets for specialty and emergency veterinary services in California and Texas.

This is not the first time that JAB and its entities have proposed a deal that the Commission alleged was unlawful. In 2020, the FTC brought an action against an earlier acquisition by JAB’s entities when JAB first acquired NVA.² In the complaint issued in that action, the FTC alleged that JAB’s combined ownership of Compassion-First Pet and NVA violated the antitrust laws and ordered JAB to divest three clinics. The entities before us have repeatedly proposed acquisitions that the Commission has had reason to believe would violate the antitrust laws.

As is routine in Commission actions, the FTC’s proposed relief would require a host of divestitures in both states. Critically, however, the proposed order here goes further, addressing not only the allegedly unlawful aspects of this specific acquisition, but also establishing key safeguards against future dealmaking that may also prove unlawful. These extra protections are warranted given that this is the second Commission consent order against JAB, the rapid pace of JAB/NVA’s ongoing acquisitions of veterinary clinics throughout the country, and the ongoing consolidation in the industry.³

¹ JAB HOLDING CO., ANNUAL REPORT, at 4 (2021), https://www.jabholco.com/documents/2/JAB_Holding_Company_S.%C3%A0.r.l.-Annual_Report_2021.pdf.

² Press Release, Fed. Trade Comm’n, FTC Requires Veterinary Service Providers Compassion First and National Veterinary Associates to Divest Assets in Three Local Markets (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>.

³ Ross Kelly, *Pandemic Hastens Ongoing Trend in Veterinary Consolidation*, VINNEWS (Dec. 30, 2021) (“Frenetic merger activity among veterinary hospitals in 2021 has lifted the market share of corporate consolidators in the United States to close to 50% of all companion animal practice revenue by at least one estimate, as the pandemic

Because the deal may illegally lessen competition in three local markets in California and Texas—in and around Austin, Texas; San Francisco, California; and the East Bay—the FTC’s proposed order would require JAB to divest clinics in these markets. This type of relief is a staple of the FTC’s merger enforcement program: the agency identifies specific local markets where the merging parties have overlapping assets and where the deal would therefore most directly reduce competition, and it requires the merging companies to divest those overlapping assets to a separate buyer.

This proposed order, however, has two additional key protections. First, if JAB seeks to buy a specialty or emergency veterinary clinic located within 25 miles of any JAB clinic anywhere in California or Texas in the next 10 years, JAB will first have to seek the FTC’s affirmative approval for the purchase. By covering *all* future acquisitions within a short driving distance of clinics that JAB already owns in California and Texas, the order establishes heightened protections that extend beyond the specific local markets at issue in this transaction. Moreover, the heightened protections will cover not just overlaps with clinics that JAB owns today, but also with any clinics that JAB subsequently owns in California and Texas—a feature of the order that helps future-proof the relief.

Second, the order will require JAB to provide 30-day advance written notice before JAB (including its relevant operating companies, Compassion-First Pet Hospitals and National Veterinary Associates) attempts to acquire a specialty or emergency veterinary clinic within 25 miles of a JAB clinic *anywhere* in the United States that JAB owns now or in the future. This provision—the first of its kind in a Commission order—ensures that the FTC will have advance notice of any unreported purchases that would ordinarily escape our review, providing the agency with the opportunity to investigate those transactions before they are consummated.

These prior approval and nationwide prior notice provisions are one way that the FTC can more closely monitor the potentially unlawful dealmaking activities of companies like JAB/NVA that have repeatedly attempted acquisitions the Commission alleged were unlawful. As we explained last year when we reinitiated the agency’s use of prior approval and prior notice, the Commission must use all of its tools and authorities to protect Americans from potentially unlawful deals—and prior approval provisions in particular can help deter anticompetitive deals and conserve scarce FTC resources.⁴ Indeed, the prior notice provision in the earlier order involving JAB has had a beneficial effect. And just recently, for example, the FTC conditioned a merger in gasoline markets, in which one of the parties explicitly sought to “try to take over” the Utah gasoline marketplace, with a prior approval requirement designed to thwart any such future efforts by the parties to acquire market power and raise gas prices for the America public.⁵

spurs demand for pet-care services.”), <https://news.vin.com/default.aspx?pid=210&Id=10652228>. This rapid consolidation is happening worldwide and gaining the attention of antitrust enforcers in other countries, too. Ross Kelly, *Competition Watchdog Bares Teeth Again in Veterinary Realm*, VINNEWS (May 4, 2022), <https://news.vin.com/default.aspx?pid=210&catId=620&Id=10922952> (noting recent U.K. Competition and Markets Authority challenges to veterinary mergers there).

⁴ Fed. Trade Comm’n, Statement of the Commission on Use of Prior Approval Provisions in Merger Orders, https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.

⁵ Press Release, Fed. Trade Comm’n, FTC Requires ENCAP to Sell Off EP Energy Corp.’s Entire Utah Oil Business amid Concerns that Deal would Increase Pain at the Pump (Mar. 25, 2022), <https://www.ftc.gov/news->

Provisions like the ones in this matter will also allow the FTC to better address stealth roll-ups by private equity firms like JAB/NVA and serial acquisitions by other corporations. Antitrust enforcers must be attentive to how private equity firms' business models may in some instances distort incentives in ways that strip productive capacity, degrade the quality of goods and services, and hinder competition.⁶ Private equity firms' playbook for purchasing or investing in companies can include tactics such as leveraged buyouts, which saddle businesses with debt and shift the burden of financial risk in ways that can undermine long-term health and competitive viability.⁷ While private equity firms can support capacity expansion and upgrades, firms that seek to strip and flip assets over a relatively short period of time are focused on increasing margins over the short-term, which can incentivize unfair or deceptive practices and the hollowing out of productive capacity. Meanwhile, serial acquisitions or "buy-and-buy" tactics can be used by private equity firms and other corporations to roll up sectors, enabling them to accrue market power and reduce incentives to compete, potentially leading to increased prices and degraded quality.⁸

Private equity firms have been particularly active in health care, including anesthesiology, emergency medicine, hospice care, air ambulances, and opioid treatment centers. A focus on short-term profits in the health care context can incentivize practices that may reduce quality of care, increase costs for patients and payors, and generate appalling patient outcomes.⁹ Research and reporting suggests these effects are especially pronounced in specialty practices, such as elder care and disability care facilities. Research has shown that private equity ownership of elder care facilities is correlated with increased deaths at those nursing homes, potentially owing to cost-cutting measures like staffing reductions.¹⁰ In another case, as one firm consolidated ownership of group homes for people with disabilities, media reporting revealed repeated failed inspections, overworked staff, and even deaths.¹¹

Commissioners Phillips and Wilson take issue with the scope of the prior approval and prior notice in our proposed order, arguing that these heightened protections are not warranted because this acquisition by JAB raises no special concern, and that consolidation at a national

[events/news/press-releases/2022/03/ftc-requires-encap-sell-ep-energy-corps-entire-utah-oil-business-amid-concerns-deal-would-increase.](https://www.ftc.gov/system/files/documents/public_statements/1577783/p110014hsrannualreportchoprastatement.pdf)

⁶ See, e.g., EILEEN APPELBAUM & ROSEMARY BATT, PRIVATE EQUITY AT WORK: WHEN WALL STREET MANAGES MAIN STREET (2014).

⁷ *Id.*

⁸ Statement of Commissioner 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.

⁹ Richard M. Scheffler et al., *Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk*, AM. ANTITRUST INST. & PETRIS CTR. ON HEALTH CARE MKTS. AND CONSUMER WELFARE 2 (May 18, 2021), <https://publichealth.berkeley.edu/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL.pdf>.

¹⁰ Atul Gupta et al., *Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28474, 2021),

https://www.nber.org/system/files/working_papers/w28474/w28474.pdf. See also Melea Atkins, *The Impact of Private Equity on Nursing Home Care: Recommendations for Policymakers*, ROOSEVELT INST. 2 (Apr. 2021), https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_NursingHomesandPE_IssueBrief_202104.pdf.

¹¹ Kendall Taggart et al., *The Private Equity Giant KKR Bought Hundreds Of Homes For People With Disabilities. Some Vulnerable Residents Suffered Abuse And Neglect.*, BUZZFEED NEWS (Apr. 25, 2022), <https://www.buzzfeednews.com/article/kendalltaggart/kkr-brightspring-disability-private-equity-abuse>.

level is “irrelevant” and “not inherently concerning.”¹² But this critique is belied by both market realities and prevailing law. For one, JAB has been rapidly acquiring veterinary clinics throughout the country, and it would be unwise for enforcers to ignore how private equity funds in particular can be incentivized to engage in roll-up strategies. The law also grants the FTC discretion to order fencing-in relief, particularly when confronting a repeat offender.¹³ Moreover, the statement that consolidation at a national level should play no role in our analysis is also at odds with governing Supreme Court precedent, which states that assessing general industry trends is a basic component of merger analysis.¹⁴ Ignoring this mandate raises rule of law concerns.

Strategic use of prior notice and prior approval provisions is one way that the Commission can better track and prevent unlawful acquisitions by private equity firms and other corporations. Our revision of the merger guidelines provides an additional opportunity to ensure our tools reflect current market realities, including the expanding role of private equity in our economy.¹⁵ In the meantime, we will continue to use our existing authorities to fully protect Americans from unlawful transactions.

¹² Concurring Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, JAB Consumer Partners SCA SICAR/SAGE Veterinary Partners, LLC (Comm’n File No. 2110140) (June 9, 2022).

¹³ *Telebrands Corp. v. F.T.C.*, 457 F.3d 354, 358 (4th Cir. 2006) (noting that evidence of prior violations supports stronger relief). FTC orders “may prohibit not only the further use of the precise practice found to have existed in the past, but also, the future use of related and similar practices.” *Carter Prods., Inc. v. F.T.C.*, 323 F.2d 523, 532-33 (5th Cir. 1963) (internal quotation marks and citation omitted). The Commission has wide discretion to fashion a remedy appropriate to the unlawful practices found. *Jacob Siegel Co. v. F.T.C.*, 327 U.S. 608, 612-13 (1946); *accord Fed. Trade Comm’n v. Cement Inst.*, 333 U.S. 683, 726 (1948); *Carter Prods., Inc. v. F.T.C.*, 323 F.2d 523, 532-33 (5th Cir. 1963).

¹⁴ *See, e.g., Brown Shoe Co. v. United States*, 370 U.S. 294, 322 (1962) (“Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry. That is, whether the consolidation was to take place in an industry that was fragmented, rather than concentrated, that had seen a recent trend toward domination by a few leaders, or had remained fairly consistent in its distribution of market shares among the participating companies ... all were aspects, varying in importance with the merger under consideration, which would properly be taken into account.”). *See id.* at 332-33 (“Another important factor to consider is the trend toward concentration in the industry... [R]emaining vigor cannot immunize a merger if the trend in that industry is toward oligopoly.”). *Id.* at 344-45 (“Other factors to be considered in evaluating the probable effects of a merger in the relevant market lend additional support to the District Court’s conclusion that this merger may substantially lessen competition. One such factor is the history of tendency toward concentration in the industry.”).

¹⁵ Press Release, Fed. Trade Comm’n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers>. *See also* Regulations.gov, Request for Information on Merger Enforcement, FTC-2022-0003 (Jan. 18, 2022), <https://www.regulations.gov/document/FTC-2022-0003-0001>.