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FTC Settlement With Private Equity Firm Over Anesthesia Roll-Up Suggests No Special Treatment, or Free Pass, Under Second Trump Administration

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On January 17, in the final days of the Biden Administration, the Federal Trade Commission (FTC) reached a settlement with private equity firm Welsh, Carson, Anderson, and Rowe (Welsh Carson) in lieu of bringing an administrative action. The draft complaint accompanying the settlement decision and order alleged that beginning in 2012 Welsh Carson planned and executed a self-described "roll-up" scheme by systematically acquiring anesthesiology practices in Texas to create a single dominant provider and entered into anticompetitive price-setting and market-allocation agreements with other providers, in violation of Section 7 of the Clayton Act, Sections 1 and 2 of the Sherman Act, and Section 5 of the FTC Act.[1]

The administrative settlement follows an action the FTC commenced in federal court in Texas in 2023 against Welsh Carson and U.S. Anesthesia Partners, Inc. (USAP) — the portfolio company that Welsh Carson created and exercised control over to execute the roll-up — under Section 13(b) of the FTC Act seeking to enjoin and redress the same set of antitrust violations. Section 13(b) allows the FTC to seek an injunction in federal court if the defendant "is violating, or is about to violate," the antitrust laws. However, Welsh Carson had already reduced its ownership in USAP to a 23 percent noncontrolling interest back in 2017. Accordingly, last year the federal court dismissed the case against Welsh Carson (but not USAP), holding that the private equity firm was not committing any ongoing antitrust violation.[2] The court offered no opinion on whether Welsh Carson's alleged active participation in the roll-up constituted a past antitrust violation. The FTC then prepared to pursue Welsh Carson separately in its administrative court, but that action was averted by the settlement.

Breaking Down the FTC's Settlement With Welsh Carson

The administrative settlement contains three key provisions:

- *USAP Ownership and Control* – Welsh Carson must freeze its current noncontrolling stake in USAP, reduce its representation on USAP's board to a single non-chair seat, and allow USAP to terminate any contract under which Welsh Carson provides services to USAP;
- *FTC approval of future anesthesia acquisitions* – Welsh Carson must obtain approval from the FTC before investing in any anesthesia business nationwide and before any anesthesia business it controls invests in or acquires another anesthesia business in the same state or metropolitan statistical area; and
- *Notice to FTC of other physician practice acquisitions* – Welsh Carson must provide notice to the FTC before acquiring any hospital-based physician practice (not limited to anesthesia) in any state or metropolitan statistical area where it already controls a practice of the same type.[3]

The Commission voted unanimously (5-0) to approve the settlement with Welsh Carson, but commissioners debated its broader significance.

Lina Khan (who was still the FTC Chair at the time) issued a statement joined by Democratic Commissioners Slaughter and Bedoya that recounted "significant programmatic advances in addressing serial acquisitions" under her tenure. [4] Khan's statement lauded the proposed settlement order against Welsh Carson for its "novel treatment of private equity defendants," whom she described as "sophisticated actors" who use a "complex maze of related entities and funds to carry out business." Specifically, the draft complaint names seven different Welsh Carson affiliates (including two separate private equity funds) as defendants, and the consent order provisions apply to any investment vehicles, funds or otherwise, that the firm may form in the future.

Commissioner Ferguson (who just a few days after this settlement became the Trump Administration's newly appointed FTC Chairman) issued a concurring statement joined by Republican Commissioner Holyoak asserting that there is "no reason for the Commission to single out private equity for special treatment." [5] He explained, the fact "[t]hat Welsh Carson is a private equity firm is irrelevant; the antitrust analysis would be the same if Welsh Carson were, for example, an individual or institutional investor." But individual and institutional investors typically do not steer the business, pricing, or acquisition strategy of their investment targets. Private equity firms, by contrast, actively manage the businesses in which they invest.

Looking Ahead to the Trump Administration's Enforcement Agenda

There are a few takeaways from now-Chairman Ferguson's support of this settlement and his concurring statement:

- Going forward under the Trump administration, private equity does not necessarily have a unique target on its back.

- However, if a private equity firm has an active hand in roll-up acquisitions that substantially lessen competition or tend to create a monopoly, it may well face scrutiny.
- The agencies are prepared to pursue remedies tailored to complex private equity ownership structures as necessary.

The FTC's federal court case against USAP remains pending and will be important to monitor for potential guidance on how the antitrust laws apply to roll-ups. While the complaint sets forth multiple claims and legal theories (ten counts in all), one of the core allegations is that USAP's acquisitions violated Section 7 of the Clayton Act "whether considered individually or as a series of acquisitions."[6] It will be interesting to see whether the court parses the incremental effect of each acquisition on competition or analyzes their cumulative effect. Alternatively, the court could decide the case on one of the other claims, such as monopolization, without reaching the Section 7 analysis. Whatever precedent comes from the case will likely be relevant for companies navigating multiple acquisitions in the same market.

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1 Complaint, *In the Matter of Welsh, Carson, Anderson & Stowe*, No. 201-0031 (F.T.C. Jan. 17, 2025).

2 *Federal Trade Commission v. U.S. Anesthesia Partners, Inc.*, 2024 WL 2137649, No. 4:23-CV-03560 (S.D. Tex. May 13, 2024).

3 Decision & Order, *In the Matter of Welsh, Carson, Anderson & Stowe*, No. 201-0031 (F.T.C. Jan. 17, 2025).

4 Statement of Chair Lina M. Khan Joined by Cmr. Rebecca Kelly Slaughter & Cmr. Alvaro M. Bedoya, *In the Matter of Welsh, Carson, Anderson & Stowe*, No. 201-0031 (F.T.C. Jan. 17, 2025). These developments include the 2023 Merger Guidelines, the Section 5 Policy Statement, and the updated premerger notification form. For more on these policies, see Katten, Antitrust Developments to Monitor Under the Next Trump Administration.

5 Concurring Statement of Cmr. Andrew N. Ferguson Joined by Cmr. Melissa Holyoak, *In the Matter of Welsh, Carson, Anderson & Stowe*, No. 201-0031 (F.T.C. Jan. 17, 2025).

6 Complaint for Injunctive and Other Equitable Relief ¶¶ 353, 378, *Federal Trade Commission v. U.S. Anesthesia Partners, Inc.*, No. 4:23-CV-03560 (S.D. Tex. Sept. 21, 2023).

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