ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT
In the Matter of Mars, Inc. and VCA Inc.
File No. 171 0057

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Mars, Incorporated ("Mars"), which is designed to remedy the anticompetitive effects that would result from Mars' proposed acquisition of VCA Inc. ("VCA").

Pursuant to an Agreement and Plan of Merger announced January 9, 2017, Mars proposes to acquire all of the assets of VCA in a transaction valued at approximately $9.1 billion (the "Acquisition"). Both parties provide specialty and emergency veterinary services in clinics they operate in cities across the United States. The Commission alleges in its Complaint that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the markets for certain specialty and emergency veterinary services in ten different localities in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the Consent Agreement, Mars is required to divest twelve clinics. Mars and VCA have proposed National Veterinary Associates ("NVA"), PetVet Care Centers ("PetVet"), and Pathway Partners Vet Management Company ("Pathway") as buyers of these clinics.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review proposed Consent Agreement and comments received, and decide whether it should withdraw, modify, or make the Consent Agreement final.

II. The Relevant Markets and Market Structures

The relevant lines of commerce in which to analyze the Acquisition are individual specialty and off-hours emergency veterinary services. Specialty veterinary services are required in cases that a general practitioner veterinarian cannot treat properly. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine board certified in the required specialty. Individual veterinary specialties include cardiology, critical care, internal medicine, neurology, oncology, ophthalmology, and surgery. Emergency veterinary services are used in acute situations where a general practice veterinarian is not available or in some cases not trained or equipped to treat the animal's medical problem.

The relevant areas for the provision of specialty and off-hours emergency veterinary services are local, delineated by the distance and time that pet owners travel to receive treatment.

The distance and time customers travel for specialty services are highly dependent on local factors such as the proximity of a clinic offering the required specialty service, population density, population demographics, traffic congestion, or specific local geographic barriers. The markets affected by the transaction differ by area. The localities and services at issue are:

a. Oncology in western suburbs of Chicago, IL;
b. Emergency in Corpus Christi, TX;
c. Critical Care, Emergency, Internal Medicine, and Surgery in Kansas City, MO;
d. Critical Care and Emergency in Mesa, AZ;
e. Critical Care and Oncology in northern New York City, NY and its northern suburbs;
f. Critical Care, Internal Medicine, Neurology, Oncology, and Ophthalmology in Portland, OR;
g. Emergency, Internal Medicine, and Oncology in Rockville, MD;
h. Emergency in San Antonio, TX;
i. Cardiology, Critical Care, Emergency, Internal Medicine, and Neurology in Seattle, WA; and
j. Emergency, Internal Medicine, Oncology, and Ophthalmology in Vienna, VA.

In each locality listed above, the relevant market is highly concentrated. In a number of these markets, the combined firm would be the only provider following the transaction. In other markets, consumers would only have one remaining alternative to the combined firm following the transaction. In all of these markets, the Acquisition would substantially increase concentration within the described localities.

III. Entry

Entry into the relevant markets described above would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. For de novo entrants, obtaining financing to build a new specialty or emergency veterinary facility and acquiring or leasing necessary equipment can be expensive and time consuming. The investment is risky for specialists that do not have established practices and bases of referrals in the area. Further, to become a licensed veterinary specialist requires extensive education and training, significantly beyond that for a general practitioner veterinarian. Consequently, specialists are in short supply, and recruiting them to move to a new area often takes more than two years, making timely expansion by existing specialty clinics unlikely.

IV. Effects of the Acquisition

The Acquisition, if consummated, may substantially lessen competition and tend to create a monopoly in the relevant markets by eliminating head-to-head competition between Mars and VCA in the provision of specialty and emergency veterinary services; increasing the likelihood that Mars would unilaterally exercise market power; and increasing the likelihood that customers would be forced to pay higher prices for and degraded quality of the relevant services.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Acquisition's anticompetitive effects in ten markets where both Mars and VCA operate specialty or emergency veterinary clinics by requiring the parties to divest 12 facilities. Clinics in Kansas City, New York, and Phoenix are to be divested to NVA. Clinics in Portland, Rockville, and Vienna are to be divested to PetVet. Clinics in Chicago, Corpus Christi, San Antonio, and Seattle are to be divested to Pathway. The divestitures will preserve competition between the divested clinics and Mars' BluePearl or VCA's clinics that offer the same specialty or emergency services within each locality. NVA, PetVet, and Pathway are qualified acquirers of the divested assets. Each firm has significant experience acquiring, integrating, and operating specialty and emergency veterinary clinics.

The divestiture includes all regulatory permits and approvals, confidential business information, including customer information, related to the divested clinics, and other assets associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the Order requires Mars and VCA to secure all third-party consents, assignments, releases, and waivers required to permit the buyers to conduct business at the divested clinics.

As part of these divestitures, Mars and VCA are required to provide reasonable financial incentives to certain employees to continue in their positions. Such incentives may include, but are not limited to, guaranteeing a retention bonus for the specialty veterinarians at the divestiture clinics to assure their continued employment at such clinic, a continuation of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by the parties. These provisions ensure that the buyers will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures are successful. First, the Consent Agreement prevents Mars for a period of one year from contracting with any specialty or emergency veterinarian affiliated with a divested clinic. This provides the buyers with sufficient time to build goodwill and working relationships with the veterinarians before Mars could capitalize on its prior relationships in soliciting their services. Second, to ensure continuity of patient care and records as the buyers implement their own quality care, billing, and supply systems, Mars will provide transitional services for a period of one year. Finally, the Consent Agreement requires Mars for a period of ten years from the date the Commission issues the Order to provide prior notice to the Commission of its planned acquisitions of specialty or emergency veterinary clinics in certain geographic areas.

The Order requires Mars and VCA to divest the clinics no later than ten business days after the consummation of the Acquisition.

The Commission has appointed Thomas A. Carpenter, D.V.M. as Interim Monitor to ensure that Mars and VCA comply with all of their obligations pursuant to the Consent

Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to NVA, Pathway, and PetVet. Dr. Carpenter assists client companies undergoing regulator-mandated ownership transitions and has experience with the purchase and sale of veterinary clinics.

If the Commission determines that NVA, Pathway, and PetVet are not acceptable acquirers of the divested assets, or that the manner of the divestitures is not acceptable, the parties must unwind the sale of rights and assets to NVA, Pathway, and PetVet and divest them to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the rights and assets if the parties fail to divest them as required.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.