

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

**Lifespan Corporation,
a corporation**

and

**Care New England Health
System,
a corporation.**

Docket No. 9406

REDACTED PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Lifespan Corporation (“Lifespan”) and Care New England Health System (“CNE”) have executed a definitive agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Lifespan and CNE, the first and second largest healthcare providers in the state of Rhode Island, seek to merge (the “Proposed Transaction”). Lifespan’s and CNE’s inpatient GAC hospitals overlap significantly in the medical, surgical, and diagnostic services they offer that require an overnight hospital stay. These overlapping services account for the majority of inpatients the Respondents treat. Further, Lifespan and CNE operate the only two standalone inpatient behavioral health facilities in Rhode Island.

2. The Proposed Transaction is likely to substantially lessen competition in Rhode Island for inpatient general acute care (“GAC”) hospital services sold and provided to commercial insurers and their members (“inpatient GAC hospital services”) and inpatient behavioral health services sold and provided to commercial insurers and their members (“inpatient behavioral health services”) in violation of Section 7 of the Clayton Act.

3. Currently, Lifespan and CNE are close competitors and frequently refer to each other with terms like [REDACTED]” and [REDACTED]” or “[REDACTED]” both internally and to third parties.

4. Respondents compete to sell inpatient GAC services and inpatient behavioral health services to commercial insurers and to provide these services to commercial insurers’ members. This competition has spurred Respondents to invest in clinical services, access, and quality, to the benefit of all Rhode Island residents. CNE has added services at its Kent hospital, noting they would “[REDACTED]” Similarly, Lifespan has improved access because [REDACTED]

5. The Proposed Transaction would eliminate this competition and create a dominant health system controlling most inpatient GAC services and inpatient behavioral health services in Rhode Island. If this merger is allowed to proceed, Respondents would control at least 70 percent of the markets for inpatient GAC hospital services and inpatient behavioral health services.

6. If allowed to consummate, the Proposed Transaction would significantly increase market concentration in already highly concentrated markets. Under the thresholds established by the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“2010 Merger Guidelines”), the Proposed Transaction is presumptively illegal in the markets for inpatient GAC services and inpatient behavioral health services in Rhode Island. Even including hospitals located in the 19 Massachusetts towns bordering Rhode Island, Respondents would still exceed the 2010 Merger Guidelines thresholds in each market; therefore, the Proposed Transaction is presumptively illegal.

II.

JURISDICTION

7. Respondents, and each of their relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

8. The Proposed Transaction constitutes a transaction subject to Section 7 of the Clayton Act, 15 U.S.C § 18.

III.

RESPONDENTS

9. Respondent Lifespan, the largest healthcare provider in Rhode Island based on inpatient GAC admissions, is a not-for-profit health system with a principal place of business in Providence, Rhode Island. Lifespan operates three inpatient GAC hospitals, Rhode Island's only dedicated children's hospital, and a freestanding behavioral health hospital. Lifespan's Rhode Island Hospital is the largest hospital in the state and is located in downtown Providence, Rhode Island and shares a campus with Lifespan-owned Hasbro Children's Hospital and CNE-owned Women & Infants Hospital. In addition to these facilities, Lifespan operates two other GAC hospitals in Rhode Island – The Miriam Hospital ("Miriam") on the East Side of Providence and Newport Hospital ("Newport") in Newport. Lifespan's behavioral health hospital ("Bradley") is located in East Providence, Rhode Island. Lifespan has 1,165 licensed beds across all its locations. Lifespan employs or affiliates with over 900 primary and specialty care physicians. Through a for-profit joint venture, Lifespan operates the Lifespan Health Alliance, an accountable care organization ("ACO") comprised of the three Lifespan hospitals and approximately 2,100 physicians. Lifespan is the largest private employer in Rhode Island with nearly 16,000 employees, including approximately 3,370 registered nurses. In fiscal year 2021, Lifespan generated approximately \$2.8 billion in revenue and approximately \$89.1 million in operating income.

10. Respondent CNE is a not-for-profit community-based health system made up of two inpatient GAC hospitals and a freestanding behavioral health hospital. CNE's principal place of business is in Providence, Rhode Island. CNE's Women & Infants GAC hospital and CNE's behavioral health hospital, Butler Hospital ("Butler"), are located in downtown Providence and the East Side of Providence, respectively. CNE's Kent County Hospital ("Kent") is the second-largest GAC hospital in Rhode Island and is located in Warwick. CNE has 749 licensed beds across all its locations. CNE employs approximately 442 healthcare providers and, through its ACO, Integra, CNE closely affiliates with an additional 240 primary care providers. CNE employs approximately 1,950 registered nurses. In fiscal year 2021, CNE garnered approximately \$1.25 billion in revenue and approximately \$16.2 million in operating income.

IV.

THE PROPOSED TRANSACTION

11. On February 23, 2021, Lifespan and CNE signed an agreement to combine into a new Rhode Island nonprofit corporation.

12. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a modified timing agreement entered into between Respondents and Commission staff, absent this Court's action, Respondents would be free under federal law to close the Proposed Transaction after 11:59 p.m. EST on February 22, 2022.

V.

RELEVANT SERVICE MARKETS

13. The Proposed Transaction is likely to substantially lessen competition in two service markets sold and provided to commercial insurers and their members in Rhode Island: (1) inpatient GAC hospital services; and (2) inpatient behavioral health services (collectively “Healthcare Service Markets”). Hospitals compete on rates offered to commercial insurers to achieve “in-network” status. For each Healthcare Service Market, a hypothetical monopolist profitably could impose a small but significant and non-transitory increase in price (“SSNIP”). Because commercial insurers would accept a SSNIP rather than market a network to employers and individuals that omitted inpatient GAC hospital services and would accept a SSNIP rather than market a network that omitted inpatient behavioral health services, each of these Healthcare Service Markets constitutes a relevant market for analyzing the Proposed Transaction.

14. Inpatient GAC hospital services sold and provided to commercial insurers and their members is a relevant market in which to analyze the Proposed Transaction. Inpatient GAC hospital services include a broad cluster of hospital services—medical, surgical, and diagnostic services requiring an overnight hospital stay—offered by both Lifespan and CNE and for which competitive conditions are substantially similar. Here, inpatient GAC hospital services include all overlapping inpatient primary, secondary, and tertiary services offered by Lifespan and CNE. Non-overlapping services are not included in the relevant market.

15. Although the Proposed Transaction’s likely effect on competition could be analyzed separately for each individual inpatient GAC hospital service, it is appropriate to evaluate the Proposed Transaction’s likely effects across this cluster of inpatient GAC hospital services because these services are offered to patients under similar competitive conditions. Thus, grouping the hundreds of individual, overlapping inpatient GAC hospital services into a cluster for analytical convenience enables the efficient evaluation of competitive effects without forfeiting the accuracy of the overall analysis.

16. Outpatient services are not included in the inpatient GAC hospital services market because commercial insurers and patients cannot substitute outpatient services for inpatient services in response to a price increase for inpatient GAC hospital services. Additionally, outpatient services are offered by a different set of competitors under different competitive conditions than inpatient GAC hospital services.

17. The inpatient GAC hospital services market does not include services related to psychiatric care, substance abuse, or rehabilitation services. These services are offered by a different set of competitors under different competitive conditions than inpatient GAC hospital services.

18. Inpatient behavioral health services sold and provided to commercial insurers and their members is a relevant market in which to analyze the Proposed Transaction. Inpatient

behavioral health services include a cluster of inpatient services that treat, among other conditions, depressive disorders, personality disorders, and eating disorders, offered by both Lifespan and CNE and for which competitive conditions are substantially similar. Further, narrower relevant markets may exist for: (1) inpatient behavioral health services for adults sold and provided to commercial insurers and their members; and (2) inpatient behavioral health services for adolescents sold and provided to commercial insurers and their members.

19. Although the Proposed Transaction's likely effect on competition could be analyzed separately for each individual inpatient behavioral health service, it is appropriate to evaluate the Proposed Transaction's likely effects across the cluster of inpatient behavioral health services because treatment services across different disorders are offered to patients under similar competitive conditions. Thus, grouping these inpatient behavioral health services into a cluster for analytical convenience enables the efficient evaluation of competitive effects without forfeiting the accuracy of the overall analysis.

20. Partial hospitalization behavioral health programs and intensive outpatient behavioral health programs are not included in the inpatient behavioral health services market because they do not provide the same level of treatment intensity; thus, commercial insurers and patients cannot substitute these services for inpatient behavioral health services in response to a SSNIP for inpatient behavioral health services. Additionally, partial hospitalization behavioral health programs and intensive outpatient behavioral health programs are offered by a different set of competitors under different competitive conditions than inpatient behavioral health services.

VI.

RELEVANT GEOGRAPHIC MARKETS

21. For each Healthcare Service Market alleged above, a relevant geographic market in which to analyze the effects of the Proposed Transaction is Rhode Island.

22. Rhode Island is the main area of competition between Lifespan and CNE for inpatient GAC hospital services and inpatient behavioral health services. Lifespan and CNE each analyze competition within Rhode Island and identify hospitals within Rhode Island as their competitors.

23. Rhode Island residents strongly prefer to obtain inpatient GAC hospital services and inpatient behavioral health services close to where they live, with approximately 90 percent obtaining services from a Rhode Island provider. Therefore, it would be very difficult for a commercial insurer to market successfully a health plan to Rhode Island employers and residents that excluded all Rhode Island GAC hospitals. It would also be very difficult for a commercial insurer to market successfully a health plan to Rhode Island employers and residents that excluded all Rhode Island hospitals providing inpatient behavioral health services.

24. A hypothetical monopolist of inpatient GAC services in Rhode Island—e.g., the entity that would result from the merger of *all* Rhode Island hospitals providing these services—profitably could impose a SSNIP for these services on commercial insurers. The same is true for a hypothetical monopolist of inpatient behavioral health services in Rhode Island.

25. Because a hypothetical monopolist of all inpatient GAC hospitals in Rhode Island profitably could impose a SSNIP on insurers, Rhode Island is a relevant geographic market in which to analyze the Proposed Transaction.

26. A hypothetical monopolist of all hospitals in Rhode Island that provide inpatient behavioral services also profitably could impose a SSNIP on insurers and, thus, Rhode Island is a relevant geographic market in which to analyze the Proposed Transaction.

27. In the alternative, residents of Rhode Island and the 19 surrounding Massachusetts towns (collectively, the “MARI area”) strongly prefer to obtain inpatient GAC hospital services and inpatient behavioral health services close to where they live. Therefore, it would be very difficult for a commercial insurer to market successfully a health plan to MARI-area employers and residents that excluded all MARI-area GAC hospitals. It would also be very difficult for a commercial insurer to market successfully a health plan to MARI-area employers and residents that excluded all MARI-area hospitals providing inpatient behavioral health services.

28. Because a hypothetical monopolist of all inpatient GAC hospitals in the MARI area profitably could impose a SSNIP on insurers, the MARI area is also a relevant geographic market in which to analyze the Proposed Transaction.

29. A hypothetical monopolist of all hospitals in the MARI area that provide inpatient behavioral services also profitably could impose a SSNIP on insurers and, thus, the MARI area is a relevant geographic market in which to analyze the Proposed Transaction.

VII.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PRESUMPTIVE ILLEGALITY

30. The Proposed Transaction will substantially increase concentration in already highly concentrated markets for inpatient GAC hospital services and inpatient behavioral health services sold to commercial insurers and their members in Rhode Island as well as the MARI area.

31. Based on commercial inpatient admissions for patients seeking care at Rhode Island hospitals, post-transaction, Respondents would control at least 70 percent of inpatient GAC hospital services and at least 70 percent of inpatient behavioral health services in Rhode Island.

32. Based on commercial inpatient admissions for patients seeking care at hospitals located in the MARI area, post-transaction, Respondents would control roughly 60 percent of inpatient GAC hospital services and at least 50 percent of inpatient behavioral health services in the MARI area.

33. The 2010 Merger Guidelines and courts measure concentration using the Herfindahl-Hirschman Index (“HHI”). HHI levels are calculated by totaling the squares of the market shares of each firm in the relevant market. A relevant market is “highly concentrated” if it has an HHI level of 2,500 or more. A merger or acquisition is presumed likely to create or enhance market power—and is therefore presumptively illegal—when it would increase the HHI by more than 200 points and result in a post-merger HHI exceeding 2,500.

34. The Proposed Transaction would increase the HHI in each of the Healthcare Service Markets in Rhode Island by over 1,500 points, resulting in a post-transaction HHI of over 5,000 in each of the relevant Healthcare Service Markets, far exceeding the threshold over which the Proposed Transaction is presumed likely to create or enhance market power and to be presumptively illegal. As such, the Proposed Transaction is presumptively illegal.

35. The Proposed Transaction would increase the HHI in each of the Healthcare Service Markets in the MARI area by over 1,000 points, resulting in a post-transaction HHI of over 3,000 in each of the relevant Healthcare Service Markets, far exceeding the threshold over which the Proposed Transaction is presumed likely to create or enhance market power and to be presumptively illegal. As such, the Proposed Transaction is presumptively illegal.

VIII.

ANTICOMPETITIVE EFFECTS

A.

Competition Between Hospitals Benefits Patients

36. Competition between hospitals occurs in two distinct but related stages. First, hospitals compete for inclusion in commercial insurers’ health plan provider networks. Second, in-network hospitals compete to attract patients, including commercial insurers’ health plan members. These dynamics apply to hospital competition for inpatient GAC services and inpatient behavioral health services.

37. In the first stage of hospital competition, hospitals compete to be included in commercial insurers’ health plan provider networks. To become an “in-network” provider, a hospital negotiates with a commercial insurer and enters into a contract if both sides agree on terms. The financial terms under which a hospital is reimbursed for services rendered to a health plan’s members are a central component of those negotiations.

38. Health plan members typically pay far less to access in-network hospitals than those that are out-of-network. In-network status thus benefits hospitals because, all else being equal, an in-network hospital will attract more patients from a particular health plan than an out-of-network one. This dynamic motivates hospitals to offer lower rates and other more favorable terms to commercial insurers to win inclusion in their networks.

39. From the insurers' perspective, having hospitals in-network is beneficial because it enables the insurer to create a health plan provider network in a particular geographic area that is attractive to current and prospective members, typically local employers and their employees.

40. A critical determinant of the relative bargaining positions of a hospital and a commercial insurer during contract negotiations is whether other, nearby comparable hospitals, or combinations of hospitals, are available to the commercial insurer and its health plan members as alternatives in the event of a negotiating impasse. Alternative comparable hospitals limit a hospital's bargaining leverage and constrain its ability to obtain more favorable reimbursement terms from commercial insurers. Where there are fewer meaningful alternatives, a hospital will have greater bargaining leverage to demand and obtain higher reimbursement rates and other more favorable reimbursement terms.

41. A merger between hospitals that are substitutes in the eyes of commercial insurers and their health plan members tends to increase the merged entity's bargaining leverage. Such mergers lead to higher reimbursement rates by eliminating an available alternative for commercial insurers.

42. Changes in the reimbursement terms negotiated between a hospital and a commercial insurer, including increases in reimbursement rates, significantly impact the commercial insurer's health plan members. When hospital rates increase, commercial insurers generally pass on a significant portion of these increased rates to their customers, employers and their employees and individuals, in the form of higher premiums, co-pays, and deductibles. Customers' employees and individual plan members may bear some portion of the increased cost through increased premiums, co-pays, and deductibles.

43. In the second stage of hospital competition, hospitals compete to attract patients to their facilities. Because health plan members often face similar out-of-pocket costs for in-network hospitals, hospitals in the same network compete to attract patients on non-price features, such as quality of care, access to services and technology, reputation, physicians and faculty members, amenities, convenience, and patient satisfaction. Hospitals compete on these non-price dimensions to attract all patients, regardless of whether they are covered by commercial insurance, a governmental insurance program, or lack any insurance. A merger of competing hospitals reduces this competition for patients and reduces the merged entity's incentive to improve and maintain service, access, and quality. As CNE's CEO explained,

[REDACTED] The Proposed Transaction weakens the competitive pressure motivating Respondents to improve

their respective service offerings and quality today, and Rhode Islanders will lose their ability to choose between Respondents.

B.

The Proposed Transaction Would Eliminate Beneficial Head-to-Head Competition Between Respondents

44. Lifespan and CNE compete vigorously and treat each other as “ ” They compete with one another on rates offered to commercial insurers and they constantly vie to innovate and improve the quality of the care they provide, in direct response to each other. This competition has spurred Respondents to invest in clinical services, access, and quality, to the benefit of all Rhode Island residents.

45. Lifespan and CNE also track each other’s market shares, quality scores, advertising, and brand recognition, implementing strategies and tactics to win patients from the other. For example, 

In response, Lifespan 

46. Economic analysis confirms that Lifespan and CNE are close competitors for inpatient GAC hospital services and inpatient behavioral health services. Diversion analysis, an economic tool that uses data on where patients receive hospital services, shows that if CNE’s hospitals were to become unavailable to patients for inpatient GAC hospital services or inpatient behavioral health services, a significant number of those patients would seek care at a Lifespan hospital. Likewise, if Lifespan hospitals were to become unavailable to patients for inpatient GAC hospital services or inpatient behavioral health services, a significant fraction of Lifespan’s patients would seek care at a CNE hospital.

47. Today, this close head-to-head competition between the Respondents incentivizes them to keep prices lower and quality of care higher than they would without this competition.

C.

The Proposed Transaction Would Increase Respondents’ Bargaining Leverage in Negotiations with Insurers

48. The reduction in competition caused by the Proposed Transaction would increase Respondents’ already significant bargaining leverage in contract negotiations with commercial insurers. This increase in bargaining leverage would apply to contract negotiations for all healthcare services Respondents offer and would result in Respondents commanding higher reimbursement rates and more favorable reimbursement terms.

49. Respondents serve as key alternatives to one another for most inpatient GAC and inpatient behavioral health services, and Respondents each have added or considered adding services with the express purpose of competing with the other on rates offered to commercial insurers. Consequently, insurers have achieved more favorable rates and other terms through separate, independent negotiations with each Respondent.

50. Such competition would be eliminated as a result of the Proposed Transaction, thereby reducing Respondents' incentive to offer lower rates and leading to increased prices. Merging will enhance Respondents' already significant leverage when negotiating with commercial insurers and lead to higher reimbursement rates and terms that are more favorable to Respondents. Both Respondents also operate accountable care organizations ("ACOs") through which they negotiate with commercial insurers. The combination of the Respondents' ACOs may provide another avenue through which they can exercise their increased bargaining leverage for higher rates or more onerous terms that give Respondents less incentive to control healthcare spending and improve quality.

51. Regulation from the Rhode Island Office of the Health Insurance Commissioner ("OHIC") will not be sufficient to prevent the Respondents from exercising market power after the Proposed Transaction. OHIC's regulation does not apply to all types of healthcare services or all health insurance products; thus, Respondents can exercise market power through healthcare services or insurers' lines of business that OHIC does not regulate.

D.

The Proposed Transaction Would Eliminate Vital Quality and Service Competition

52. Lifespan and CNE compete with one another to attract patients, which incentivizes them to improve the quality of care they provide, enhance access, recruit high quality physicians, and expand their service offerings. The Proposed Transaction would eliminate this competition, weakening Respondents' incentives to invest in new or expanded services, innovation, and technology.

53. Lifespan and CNE track and respond to one another's service offerings. CNE has added several significant services in direct competition with Lifespan and Lifespan has responded by increasing access to or further promoting its own services.

54. For example, CNE [REDACTED] CNE emphasized [REDACTED] Upon starting its [REDACTED] service [REDACTED] and Respondents continue to compete in this service line today. In preparing to start performing [REDACTED] a CNE executive described [REDACTED]

” and noted that “

55. Lifespan and CNE have also taken steps to increase patient access to their respective hospitals to avoid losing patients to one another. In response to Lifespan’s CEO’s instruction that “” because “” Lifespan

56. Lifespan and CNE also track quality recognitions and considers these achievements when developing their own strategy. CNE pursued noting Kent was “” and that it would

57. Lifespan and CNE have competed with one another to employ or affiliate with physicians, an important source of patient referrals. CNE pursued noting the physician “” Lifespan began recruiting because it had a

58. Patients benefit from this direct non-price competition. The Proposed Transaction will diminish the combined firm’s incentive to compete on quality of care, access to care, and service offerings to the detriment of all patients who use these hospitals, including commercially insured, Medicare, Medicaid, and self-pay patients.

IX.

LACK OF COUNTERVAILING FACTORS

A.

Entry Barriers

59. Neither entry by new market participants nor expansion by current market participants is likely to deter or counteract the Proposed Transaction’s likely harm to competition for inpatient GAC hospital services or inpatient behavioral health services.

60. New entry into inpatient GAC hospital services and inpatient behavioral health services or significant expansion by current providers or employers of these services is not likely, nor would such entry or expansion be timely or sufficient to offset the Proposed Transaction’s likely harmful competitive effects. Entry or significant expansion is unlikely due to high costs and risks associated with constructing and opening inpatient GAC or inpatient

behavioral health hospitals, or significantly expanding these services. Construction of a new hospital (including inpatient GAC services and/or inpatient behavioral health services) or substantial expansion of an existing one would involve high costs and significant financial risk, including the time and resources to conduct studies, develop plans, acquire land or repurpose a facility, obtain regulatory approvals, including a CON, and build or renovate and open the facility.

61. Additionally, Respondents' reputations, size, and breadth and depth of the inpatient GAC hospital services and inpatient behavioral health services they provide make it unlikely that there will be entry on a sufficient scale to counteract or constrain post-Transaction competitive effects.

62. Even if *de novo* hospital construction or significant expansion by incumbent providers were likely, such entry or significant expansion would not be timely. In addition to the time and costs associated with planning and constructing a hospital or significantly expanding existing facilities, Rhode Island's CON regulations pose a significant barrier to entry.

63. Rhode Island's CON regulations require anyone seeking to build a new hospital or significantly modify an existing hospital to undergo an extensive application process and justify the need for such construction or modifications. Applicants must demonstrate, among other things, demand and community need and their ability to fund the project. Obtaining CON approval is a time-consuming process and there is no guarantee such approval will be granted.

64. Even a successful entrant would be unlikely to counteract the loss of competition resulting from the Proposed Transaction, as a new provider would face significant challenges to replicate CNE's competitive significance and reputation.

B.

Efficiencies

65. Respondents have not substantiated merger-specific, verifiable, and cognizable efficiencies that likely would be sufficient to reverse the Proposed Transaction's potential to harm customers in the markets for inpatient GAC services or inpatient behavioral health services.

X.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

1. The allegations of Paragraphs 1 through 65 above are incorporated by reference as though fully set forth.

2. The Proposed Transaction constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

3. The allegations of Paragraphs 1 through 65 above are incorporated by reference as though fully set forth.

4. The Proposed Transaction, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the twentieth day of July, 2022, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at

the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.2l(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.3l(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Proposed Transaction challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A prohibition against any transaction between Lifespan and CNE that combines their businesses, except as may be approved by the Commission.
2. If the Proposed Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as Lifespan and CNE were offering and planning to offer prior to the Proposed Transaction.
3. A requirement that, for a period of time, Lifespan and CNE provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.
6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Proposed Transaction or to restore CNE as viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this seventeenth day of February, 2022.

By the Commission.

April J. Tabor
Secretary

SEAL: