

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of)	
)	
AIR MEDICAL GROUP HOLDINGS, INC.)	
a corporation,)	
)	
KKR North America Fund XI (AMG) LLC)	
a limited liability company,)	Docket Number C-4642
)	
and)	
)	
AMR HOLDCO, INC.)	
a corporation.)	
)	
)	

ORDER TO MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Air Medical Group Holdings, Inc. (“AMGH”), controlled by Respondent KKR North America Fund XI (AMG) LLC (“KKR”), of Respondent AMR Holdco, Inc. (“AMR”) (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3)

waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent AMGH is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 209 State Highway 121 Bypass, Suite 21, Lewisville, Texas 75067.
2. Respondent AMR is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 6363 S. Fiddlers Green Circle, 14th Floor, Greenwood Village, Colorado 80111.
3. Respondent KKR North America Fund XI (AMG) LLC, is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 9 West 57th Street, Suite 4200, New York, New York 10019.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. "Assets To Be Divested" means the Air Ambulance Assets and Ground Ambulance Assets.
- B. "Decision and Order" means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

- C. “Orders” means the Decision and Order in this matter and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of any of the Assets To Be Divested. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested.
- B. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice, making all payments required to be paid under any contract or lease, and providing sufficient working capital to operate at least at current rates of operation to meet all capital calls with respect to the Assets To Be Divested.
- C. Respondents shall not terminate the operation of any of the Assets To Be Divested and shall maintain the books and Records of each of the Assets To Be Divested.
- D. Respondents shall continue to maintain the operation, inspection and maintenance schedule of each of the Assets To Be Divested at levels and intervals in the regular and ordinary course of business, in accordance with past practice, including: (1) providing funds sufficient to perform all routine maintenance and maintenance necessary to, and all replacements of, any assets related to the operation of the Assets To Be Divested; (2) providing support services at least at the level as was being provided as of the date the Consent Agreement was signed by Respondents; and (3) maintaining, and not terminating or permitting the lapse of, any permit or license necessary for the operation of any Asset To Be Divested.
- E. Respondents shall maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Assets To Be Divested, including:

1. Providing each employee of the Assets To Be Divested with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Assets To Be Divested;
2. Using reasonable best efforts to retain employees at each of the Assets To Be Divested;
3. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
4. Not transferring any employees from any of the Assets To Be Divested.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Air Ambulance Business; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
 1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial, regulatory, or other legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Air Ambulance Assets or Ground Ambulance Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order to Maintain Assets, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph III. as to their employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. Rex Fujichaku shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix A (“Monitor Agreement”) and Non-Public Appendix B (“Monitor Compensation”). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. No later than one day after the Acquisition Date, Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall (i) monitor Respondents’ compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 - 2. Respondents shall (i) insure that the Monitor has full and complete access to all Respondents’ personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform her duties pursuant to this Order;
 - 3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities;
 - 4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor’s gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every 30 days after the Acquisition Date for a period of one year, (ii) every 90 days thereafter until Respondents have completed all obligations required by Paragraph II. of this Order (including a final report when Respondents have completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:
 1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondents shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

V.

IT IS FURTHER ORDERED that within 30 days after the date this Order to Maintain Assets is issued by the Commission, and every 30 days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Each Respondent shall submit at the same time a copy of its report concerning compliance with the Order to the Monitor. Each Respondent shall include in its reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all of the Assets To Be Divested, (ii) the maintenance of the Assets To Be Divested, and (iii) transitional services being provided by the relevant Respondent to the Acquirer; and
- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports required to be submitted by Respondents pursuant the Decision and Order.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.;
- B. Any proposed acquisition, merger, or consolidation of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.; or
- C. Any other change in Respondents, including assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities, and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of Respondents, related to compliance with the Consent Agreement and/or the Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon 5 days' notice to Respondents, and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. the day after the divestitures pursuant to Paragraph II of the Decision and Order are accomplished, or
 - 2. three (3) days after the related Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: March 6, 2018

Appendix A
Monitor Agreement

**Non-Public
Appendix B**

Monitor Compensation Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]