

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**
*In the Matter of Agnaten SE,
Veterinary Specialists of North America, LLC, and NVA Parent Inc.
File No. 191-0160, C-4707*

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Agnaten SE, the owner of Veterinary Specialists of North America, LLC and Compassion-First Pet Hospitals (“Compassion First”) and NVA Parent Inc. (“NVA”), which is designed to remedy the anticompetitive effects that would result from Compassion First’s proposed acquisition of NVA.

Pursuant to a Stock Purchase Agreement dated June 3, 2019, Compassion First proposes to acquire all of the assets of NVA in a transaction valued at approximately \$5 billion (the “Acquisition”). Both parties provide specialty and emergency veterinary services in clinics located throughout 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 three different localities in the United States.¹ 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, Compassion First is required to divest three clinics, one in each area,² to MedVet Associates, LLC (“MedVet”), an operator of specialty and emergency veterinary clinics elsewhere in the country.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the proposed Consent Agreement as well as any 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 veterinary services and emergency veterinary services. Specialty veterinary services

¹ In the area around Asheville, North Carolina and Greenville, South Carolina, two Compassion First facilities compete closely with an NVA facility to provide internal medicine, oncology, ophthalmology, and surgery veterinary specialty services and emergency veterinary services. In the area between Norwalk, Connecticut and Yonkers, New York, each merging party has a clinic that provides neurology and radiation oncology veterinary specialty services that compete closely. Finally, in the area surrounding Fairfax and Manassas, Virginia, a Compassion First facility and an NVA facility compete closely to provide emergency veterinary services.

² The divested clinics are NVA’s R.E.A.C.H. Specialty Clinic in Asheville, North Carolina; Compassion First’s Veterinary Referral Center of Northern Virginia in Manassas, Virginia; and Compassion First’s Veterinary Care Center in Norwalk, Connecticut.

are required in cases where a general practitioner veterinarian does not have the expertise or equipment necessary to treat the sick or injured animal. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine who is board certified in the relevant specialty. Individual veterinary specialties include internal medicine, neurology, oncology, ophthalmology, radiation oncology, and surgery. Emergency veterinary services are those used in acute situations where a general practice veterinarian is not available or, in some cases, not trained or equipped to treat the patient's medical problem.

The relevant areas for the provision of specialty and 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, appointment availability, population density, demographics, traffic patterns, or specific local geographic barriers.

The Acquisition is likely to result in consumer harm in markets for the provision of the following services in the following localities:

- a. internal medicine, oncology, ophthalmology, and surgery specialty veterinary services and emergency veterinary services in and around Asheville, North Carolina and Greenville, South Carolina;
- b. neurology and radiation oncology specialty veterinary services in the area between Norwalk, Connecticut and Yonkers, New York; and
- c. emergency veterinary services in and around Fairfax and Manassas, Virginia.

All of these relevant markets are currently highly concentrated, and the Acquisition would substantially increase concentration in each market. In some cases, 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.

III. Entry

Entry into the relevant markets 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 required to become a general practitioner veterinarian. Consequently, veterinary specialists are often in short supply, and recruiting them to move to a new area frequently takes more than two years, making timely expansion by existing specialty clinics particularly difficult.

IV. Effects of the Acquisition

The Acquisition, if consummated, may substantially lessen competition in each of the relevant markets by eliminating close, head-to-head competition between Compassion First and NVA for the provision of specialty and emergency veterinary services. In some markets, the Acquisition will result in a merger to monopoly. The Acquisition increases the likelihood that Compassion First will unilaterally exercise market power and cause customers to pay higher prices for, or receive lower quality, relevant services.

V. The Consent Agreement

The proposed Consent Agreement remedies the Acquisition's anticompetitive effects in each market by requiring the parties to divest a facility to MedVet in all three localities. The divestitures will preserve competition between the divested clinics and the combined firm's clinics. MedVet is a qualified acquirer of the divested assets because it has significant experience acquiring, integrating, and operating specialty and emergency veterinary clinics, and it does not currently operate or have plans to operate any veterinary clinics in the relevant markets.

The Consent Agreement requires the divestiture of all regulatory permits and approvals, confidential business information, including customer information, and other assets associated with providing specialty and emergency veterinary care at the divested clinics. To ensure the divestiture is successful, the Consent Agreement also requires Compassion First and NVA to secure all third-party consents, assignments, releases, and waivers necessary to conduct business at the divested clinics.

The Consent Agreement also requires Compassion First and NVA to provide reasonable financial incentives to certain employees to encourage them to stay in their current positions. Such incentives may include, but are not limited to, guaranteed retention bonuses for specialty veterinarians at divestiture clinics. These incentives will encourage veterinarians to continue working at the divestiture clinics, which will ensure that MedVet is able to continue operating the clinics in a competitive manner.

Finally, the Consent Agreement contains several other provisions to ensure that the divestitures are successful. First, the Consent Agreement prevents Compassion First from hiring specialty or emergency veterinarians affiliated with the divested clinics for a period of one year. This provides MedVet with sufficient time to build working relationships with these important employees before Compassion First would be able to hire them back. Second, Compassion First will be required to provide transitional services for a period of one year to ensure MedVet continues to operate the divested clinics effectively as it implements its own quality care, billing, and supply systems. Finally, the Consent Agreement requires Compassion First to provide prior notice to the Commission of plans to acquire certain specialty or emergency veterinary clinics for a period of ten years from the date the Commission issues the Order.

The Order requires Compassion First and NVA 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 Monitor to ensure that Compassion First and NVA comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of rights and assets to MedVet. Dr. Carpenter possesses relevant experience and expertise regarding issues relevant to the divestiture, including experience as a monitor in previous FTC matters.

If the Commission determines that MedVet is not an acceptable acquirer 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 MedVet and divest them to a Commission-approved acquirer within six months of the date on which the Consent Agreement 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. It is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.