

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

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| In the Matter of |) | |
| |) | |
| |) | |
| Agnaten, SE, |) | |
| a corporation, |) | |
| |) | |
| Veterinary Specialists of North America, LLC |) | |
| a limited liability company, |) | |
| |) | Docket No. C-4707 |
| and |) | |
| |) | |
| NVA Parent, Inc., |) | |
| a corporation. |) | |
| |) | |
| |) | |

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Agnaten, SE (“Agnaten”), the owner of Veterinary Specialists of North America and Compassion-First Pet Hospitals, of Respondent NVA Parent, Inc. (“NVA”), 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 Containing Consent Orders (“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 Consent 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 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 considered the matter and determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 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 issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent Agnaten is a corporation organized, existing, and doing business under and by virtue of the laws of Austria, with its office and principal place of business located at Rooseveltplaz 4-5/Top 10, A-1090 Vienna, Austria, with its United States office for service of process located at 1701 Pennsylvania Ave., NW, Suite 801, Washington, DC 20006.
2. Respondent Veterinary Specialists of North America 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 106 Apple St, Suite 207, Tinton Falls, NJ 07724.
3. Respondent NVA is a corporation 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 2000 Avenue of the Stars, 12th Floor, Los Angeles, CA 90067.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

I. Definitions

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, shall apply:

- A. “Agnaten” means Agnaten, SE, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Agnaten, SE, including, but not limited to, Veterinary Specialists of North America, Compassion-First Pet Hospitals, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “NVA” means NVA Parent, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by NVA Parent, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Decision and Order” means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final 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.
- D. “Monitor” means any Person appointed by the Commission to serve as a Monitor pursuant to the Decision and Order and this Order to Maintain Assets.
- E. “Orders” means the Decision and Order and this Order to Maintain Assets.

II. Asset Maintenance

IT IS FURTHER ORDERED that, until the Divestiture Date, Respondents shall:

- A. Maintain the viability, marketability, and competitiveness of the Divestiture Clinics, and shall not cause the wasting or deterioration of any of the Divestiture Clinics. Respondents shall not cause the Divestiture Clinics 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 Divestiture Clinics.
- B. Continue to maintain the Divestiture Clinics in the regular and ordinary course of business, in accordance with past practice, including regular repair and maintenance efforts and maintaining customary hours of operation and departments, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Divestiture Clinics.
- C. Maintain the organization and properties of each of the Divestiture Clinics, including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Divestiture Clinics. Among other actions as may be necessary to comply with these obligations, Respondents shall, without limitation:
1. Use best efforts to retain employees at each of the Divestiture Clinics; when vacancies occur, replace the employees in the regular and ordinary course of business, in accordance with past practice; and not transfer any employees from any of the Divestiture Clinics;
 2. Provide each employee of the Divestiture Clinics 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 Divestiture Clinics;

3. Not transfer any Clinic Assets from any Divestiture Clinics, other than in the ordinary course of business, in accordance with past practice;
4. Make all payments required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with each of the Divestiture Clinics, in each case in a manner in accordance with past practice;
5. Maintain the Business Records of each of the Divestiture Clinics;
6. Provide each of the Divestiture Clinics with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to the related Divestiture Clinics, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for each of the Divestiture Clinics;
7. Continue, at least at their scheduled pace, any additional expenditures for each of the Divestiture Clinics authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all repairs, renovations, distribution, marketing, and sales expenditures;
8. Provide the resources necessary to respond to competition and to prevent any diminution in sales at each of the Divestiture Clinics;
9. Make available for use by each of the Divestiture Clinics funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, any assets related to the operation of the Divestiture Clinics;
10. Provide support services to each of the Divestiture Clinics at least at the level as were being provided to the Divestiture Clinics by Respondents as of the date the Consent Agreement was signed by Respondents; and
11. Maintain, and not terminate or permit the lapse of, any Governmental Approvals necessary for the operation of any Divestiture Clinic.

III. Employees

IT IS FURTHER ORDERED that, Respondents:

- A. Shall, no later than 10 days after a request from an Acquirer, provide the Acquirer with the following information for each Relevant Employee, and, to the extent known and applicable, each independent contractor who has worked at a Divestiture Clinic since June 3, 2019, as and to the extent permitted by law (unless such information has already been provided):
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Shall, within a reasonable time after a request from an Acquirer, provide to the Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees.
- C. Shall remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with an Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by an Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from an Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
- D. Shall provide reasonable financial incentives for Relevant Employees, as identified by Respondents and any Acquirer, to continue in their positions. Such incentives may

include, but are not limited to, guaranteeing a retention bonus for the 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 Respondents.

E. Shall not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Acquirer; *PROVIDED, HOWEVER*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph III.E.; *PROVIDED FURTHER, HOWEVER*, that this Paragraph III.E. shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

F. Shall not, for a period of one (1) year following the Divestiture Date of the particular Divestiture Clinic, hire a Relevant Employee that is a doctor of veterinary medicine to work at any of Respondents' veterinary clinics in the areas identified in Appendix A of the Decision and Order, related to that particular Divestiture Clinic.

PROVIDED HOWEVER, Respondent Agnaten may offer part-time contract hours to a doctor of veterinary medicine at a Divestiture Clinic who has been working as a part-time contract veterinarian for Respondent Agnaten or Respondent NVA in the areas identified in Appendix A of the Decision and Order, related to that particular Divestiture Clinic, if the part-time contract hours offered by Respondent Agnaten would not, in any way, interfere with the ability of the doctor of veterinary medicine to fulfill his or her employment responsibilities to the Acquirer.

PROVIDED FURTHER, HOWEVER, that this Paragraph III.F. shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee that is a doctor of veterinary medicine if an Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that doctor of veterinary medicine, or where the doctor of veterinary medicine's employment has been terminated by the Acquirer.

- G. Shall not, for a period of 2 years following the Divestiture Date of any Divestiture Clinic, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with an Acquirer to terminate his or her employment with the Acquirer; *PROVIDED, HOWEVER*, that Respondents may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
 2. Subject to Paragraph III.F. above, hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph III.G.; *PROVIDED FURTHER, HOWEVER*, that this Paragraph III.G. shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if an Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

IV. Confidentiality

IT IS FURTHER ORDERED that Respondents:

- A. Shall not disclose Confidential Business Information relating exclusively to any of the Divestiture Clinics to any Person other than the Acquirer of the Divestiture Clinics;
- B. Shall not use Confidential Business Information relating exclusively to any of the Divestiture Clinics for any purpose other than for complying with the terms of the Orders, for complying with any law, or for the purposes of billing and collections; and
- C. Shall destroy all records of Confidential Business Information relating exclusively to any of the Divestiture Clinics, except to the extent that: (i) Respondents are required by law to retain such information, and (ii) Respondents' inside or outside attorneys may keep one copy solely for archival purposes, but may not disclose such copy to the rest of Agnaten or NVA, respectively.

V. Monitor

IT IS FURTHER ORDERED that:

- A. Thomas Carpenter shall be appointed Monitor to ensure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, attached as Appendix B and Non-Public Appendix C (Compensation) to the Decision and Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Orders.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor. Not later than 10 days after appointment of a Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Orders.
- D. Respondents shall Consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of the Orders and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:
 - a. Ensuring that Respondents expeditiously comply with all obligations and perform all responsibilities as required by the Orders, and the Divestiture Agreements;
 - b. Monitoring any transition services agreements; and
 - c. Ensuring that Confidential Business Information is not received or used by Respondents or the Acquirers, except as allowed in the Orders.

2. The Monitor shall serve as an independent third party and not as an employee or agent of any Respondent or of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Divestiture Agreements.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders and the Divestiture Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Divestiture Agreements.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the 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. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. Respondents shall report to the Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders and the Divestiture Agreements.
8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph V.D., every 60 days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders and the

Divestiture Agreements. The reporting obligations contained in the Decision and Order shall control after the Decision and Order becomes final.

9. 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*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor pursuant to Paragraph V.C., above.
- 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 ensure compliance with the requirements of the Orders and the Divestiture Agreements.
- H. A Monitor appointed pursuant to this Order to Maintain Assets may be the same Person appointed as a Divestiture Trustee pursuant to the Decision and Order.

VI. Compliance Reports

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 all the provisions of this Order to Maintain Assets; *PROVIDED, HOWEVER*, that, after the Decision and Order in this matter becomes final, 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. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Monitor. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts to comply with this Order.

VII. Change in Respondents

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

- A. Any proposed dissolution of Agnaten, SE;
- B. Any proposed acquisition, merger, or consolidation of Agnaten, SE; and
- C. Any other change in Respondent Agnaten, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon 5 days' written notice to the applicable Respondent made to its principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

IX. Purpose

The purpose of this Order to Maintain Assets is to: (1) maintain and preserve the Divestiture Clinics as viable, marketable, competitive, and ongoing businesses until the divestiture required by the Decision and Order is achieved; (2) ensure that Respondents obtain no Confidential Business Information relating to the Divestiture Clinics, except in accordance with the provisions of the Orders; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) remedy any anticompetitive effects of the Acquisition.

X. Term

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

- A. 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;
- B. The day after Respondents or a Divestiture Trustee completes the divestiture required by the Decision and Order; *PROVIDED, HOWEVER*, that, if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate the day after the Decision and Order becomes final;
- C. The day after Respondents, with the concurrence of the Acquirer, certifies in writing to the Commission as to the completion of all Transition Assistance provided by Respondents to the Acquirer; or
- D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:
ISSUED: February 14, 2020