

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

***In the Matter of JAB Consumer Partners SCA SICAR, National Veterinary Associates, Inc.,
and SAGE Veterinary Partners, LLC
File No. 211 0140, Docket No. C-4766***

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with JAB Consumer Partners SCA SICAR (“JAB”), the owner of Compassion-First Pet Hospitals and NVA Parent Inc. (collectively, “Compassion-First/NVA”), and SAGE Veterinary Partners, LLC (“SAGE”) which is designed to remedy the anticompetitive effects that would result from Compassion First/NVA’s proposed acquisition of SAGE.

Pursuant to an Equity Purchase Agreement dated June 14, 2021, Compassion-First/NVA proposes to acquire SAGE for approximately \$1.1 billion (the “Acquisition”). Both parties provide specialty and emergency veterinary services in clinics located in 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. The Consent Agreement, which contains the proposed Decision and Order (“D&O”) and Order to Maintain Assets, will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Acquisition. Specifically, under the terms of the D&O, Compassion-First/NVA is required to divest six clinics to United Veterinary Care, LLC (“UVC”), an operator of specialty and emergency veterinary clinics elsewhere in the country. In order to protect robust future competition in markets trending towards increased consolidation, including due to acquisitions by JAB that may or may not be reportable under the Hart-Scott-Rodino Premerger Notification Act (“HSR”), the D&O provides for (1) a statewide prior approval by the parties in Texas and California for acquisitions proximate to existing and future NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future NVA emergency and specialty clinics.

The Consent Agreement with the proposed D&O and the Order to Maintain Assets 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 D&O as well as any comments received, and decide whether it should withdraw, modify, or make the D&O final. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

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 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, medical oncology, critical care, ophthalmology, 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 in nature, 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 impediments like large bodies of water or other geographic impediments.

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, neurology, medical oncology, critical care, and surgery veterinary specialty services and emergency veterinary services in and around Austin, Texas;
- b. internal medicine, neurology, ophthalmology, and surgery veterinary specialty services and emergency veterinary services in and around San Francisco, California; and
- c. internal medicine, medical oncology, and surgery veterinary specialty services in addition to emergency veterinary services in the area in and between Oakland, Berkeley, and Concord, California.

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/NVA and SAGE 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 Proposed Decision and Order

The proposed D&O remedies the Acquisition's anticompetitive effects in each market by requiring the parties to divest six facilities¹ to UVC. The divestitures will preserve competition between the divested clinics and the combined firm's clinics. UVC is a qualified acquirer of the divested assets because it has experience acquiring, integrating, and operating specialty and emergency veterinary clinics. UVC does not currently operate or have plans to operate any specialty and emergency veterinary clinics in the relevant markets.

The D&O 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 D&O also requires Compassion-First/NVA and SAGE to secure all third-party consents, assignments, releases, and waivers necessary to conduct business at the divested clinics.

The D&O also requires Compassion-First/NVA and SAGE to provide reasonable financial incentives to certain employees to encourage them to stay in their current positions. Such incentives may include 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 UVC is able to continue operating the clinics in a competitive manner.

Finally, the D&O contains other provisions to ensure that the divestitures are successful. For example, Compassion-First/NVA will be required to provide transitional services for a

¹ The divested clinics include (1) SAGE's Central Texas Veterinary Specialty & Emergency Hospital (North, South, and Round Rock facilities) in Austin, Texas; and (2) Compassion-First/NVA's North Peninsula Veterinary Emergency Clinic (San Mateo), PETS Referral Center (Berkeley), and Solano-Napa Pet Emergency Clinic (Fairfield) in and around San Francisco, Berkeley, Oakland, and Concord, California. The divestitures include all assets, including equipment and intellectual property, necessary to compete effectively in each relevant market.

period of up to one year to ensure UVC continues to operate the divested clinics effectively as it implements its own quality care, billing, and supply systems.

Additionally, because of the growing trend towards consolidation in specialty and emergency veterinary services markets across the country, as well as the likelihood of future acquisitions by JAB in these markets, many of which may be non-HSR reportable, the D&O includes (1) a statewide prior approval by the parties in Texas and California for acquisitions proximate to existing and future NVA emergency and specialty clinics, and (2) a nationwide prior notice for proposed acquisitions proximate to existing and future NVA emergency and specialty clinics. These provisions are effective for ten years. UVC will also be required to obtain prior approval from the Commission before transferring any of the divested assets to any buyer for a full ten years after UVC acquires the divestiture assets, except in the case of a sale of all or substantially all of UVC's business.

The Commission will appoint Dr. Michael Cavanaugh, DVM, to act as an independent Monitor to oversee the Respondents' compliance with the requirements of the Order, and to keep the Commission informed about the status of the transfer of the divested clinics to UVC. The D&O requires Compassion-First/NVA and SAGE to divest the clinics no later than ten business days after the consummation of the Acquisition.

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