Articles + Publications | January 21, 2025

# FTC Takes Another Shot at Private Equity Roll-Ups

**WRITTEN BY**

Barbara T. Sicalides | Daniel N. Anziska | Samantha R. Weber

At the end of the Biden administration, the Federal Trade Commission (FTC) announced a settlement with private equity firm Welsh, Carson, Anderson, and Stowe, and several of its affiliates (Welsh Carson), resolving what the FTC dubbed "a multi-year anticompetitive scheme."[1] The settlement put an end to a potential administrative proceeding against Welsh Carson, following the FTC's failed attempt to sue them in a 2023 federal court lawsuit.[2] The federal court granted Welsh Carson's motion to dismiss, finding that the FTC lacked the authority to bring a case against the private equity firm, while allowing the case to proceed against its portfolio company, U.S. Anesthesia Partners (USAP).

The FTC's administrative allegations parallel those made in its federal litigation, except that USAP is not a named respondent here. In essence, the FTC claims that Welsh Carson developed and executed a "scheme," through USAP, to consolidate anesthesia practices, stifle competition, and drive up costs for patients in Texas. According to the FTC, Welsh Carson created USAP in 2012 to execute its roll-up strategy, including the purchase of large anesthesia practices in Texas and creating one dominant provider.[3] As often occurs with subsequent provider acquisitions, USAP allegedly raised the rates for each office it purchased to match USAP's higher price point.[4] The FTC also alleged that USAP entered into or maintained several arrangements with other independent anesthesia groups, setting their rates and allocating markets.[5]

The FTC's proposed consent agreement requires Welsh Carson to freeze its investment in USAP and reduces its board representation to a single, non-chair seat; obtain prior approval for any future investments in anesthesia and certain acquisitions by any Welsh Carson-controlled anesthesia group across the U.S.; and give 30-days' advance notice for certain transactions involving other hospital-based practices such as pathology, anesthesia, or emergency medicine.[6]

Although the FTC vote to approve the consent agreement was unanimous, Commissioner Andrew Ferguson, who became FTC chair shortly after the inauguration, issued a concurrence "to pierce through this breathless rhetoric to make clear that this case is an ordinary application of the most elementary antitrust principles. Specifically, he took issue with the "suggest[ion] that this case is extraordinary because it involves 'private equity' and 'serial acquisitions,' and [the] hint at antipathy toward private equity."[7] Commissioner Ferguson made clear that Welsh Carson's private equity status is "irrelevant" to the antitrust analysis. The concurrence further noted the serial acquisition provisions of the 2023 Merger Guidelines played no special role. Rather, he wrote that the public should disregard the Democratic commissioners' "clumsy attempt to make a run-of-the-mill enforcement matter seem like an avant-garde application of novel provisions of the 2023 Guidelines."[8] While the concurrence suggests a change in tone and maybe even in process or priorities, it does not necessarily suggest less enforcement.

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[1] Compl., *Fed. Trade. Comm'n v. Welsh, Carson, Anderson & Stowe XI, L.P.,* No. 4:23-cv-03560, 2 (S.D. Tex. Sept. 21, 2023), US Anesthesia Partners Complaint.

[2] *FTC Secures Settlement with Private Equity Firm in Antitrust Roll-Up Scheme Case*, Fed. Trade. Comm'n (Jan. 17, 2025), FTC Secures Settlement with Private Equity Firm in Antitrust Roll-Up Scheme Case | Federal Trade Commission.

[3] Compl., *supra* note ¶¶1-3.

[4] *Id.* at ¶4.

[5] *Id.* at ¶¶22-23.

[6] Decision and Order, Welsh, Carson, Anderson & Stowe XI, L.P., FTC Matter No. 2010031 (Jan. 17, 2025) (consent order), Decision and Order.

[7] Concurring Statement of Commissioner Andrew N. Ferguson, In the Matter of U.S. Anesthesia Partners/Guardian Anesthesia, FTC Matter No. 2010031 (Jan. 17, 2025), Concurring Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak In the Matter of US Anesthesia Partners/Guardian Anesthesia

[8] *Id.* at 2.

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