

Complaint

IN THE MATTER OF

**AGNATEN SE,
VETERINARY SPECIALISTS OF NORTH AMERICA, LLC,
AND
NVA PARENT INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4707; File No. 191 0160

Complaint, February 14, 2020 – Decision, April 9, 2020

This consent order addresses the \$5 billion acquisition by Agnaten SE of all assets of NVA Parent Inc. in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges that the Acquisition would reduce the number of specialty providers of internal medicine, oncology, and ophthalmology service in all of the relevant markets and significantly increase concentration in each market. The Acquisition eliminates head-to-head competition between Compassion First and NVA in the provision of specialty and emergency veterinary services. The consent order requires Respondents to divest, within 10 days after the Acquisition Date, the Divestiture Clinics to MedVet and that Respondent Agnaten shall not acquire Respondent NVA until it has obtained for all the Divestiture Clinics.

Participants

For the *Commission*: *Michael R. Barnett.*

For the *Respondents*: *Matthew P. Hendrickson and Jessica N. Schneider, Skadden, Arps, Slate, Meagher & Flom LLP; Katherine A. Rocco and Muran Zhu, Kirkland & Ellis LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Agnaten SE, the owner of Veterinary Specialists of North America, LLC and Compassion-First Pet Hospitals (“Compassion First”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent NVA Parent Inc. (“NVA”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows

I. RESPONDENTS

1. Respondent Compassion First is a private 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 Rooseveltplatz 4-5/Top 10, A-1090 Vienna, Austria, with its United States

Complaint

office for service of process located at 1701 Pennsylvania Avenue, NW, Suite 801, Washington, D.C. 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 Street, Tinton Falls, New Jersey 07724.

3. Respondent NVA Parent Inc. 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, California 90067.

4. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. 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”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

6. The relevant lines of commerce in which to analyze the effects of 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 patient. General practitioner veterinarians commonly refer such cases to a specialist, typically a doctor of veterinary medicine who is board-certified within the required specialty. Individual veterinary specialties include internal medicine, neurology, oncology, ophthalmology, radiation oncology, and surgery. Emergency veterinary services are those used in acute situations in which a general practice veterinarian is not available, or in some cases, not properly trained or equipped to treat the patient’s medical problem. Compassion First and NVA both provide specialty and off-hours emergency veterinary services in facilities operated across the United States.

7. For the purposes of this Complaint, the relevant areas in which to assess the competitive effects of the Acquisition are local, delineated by the distance and time that pet owners travel to receive treatment.

8. The specific relevant markets in which to analyze the competitive effects of the Acquisition are:

Complaint

- 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.

IV. THE STRUCTURE OF THE MARKETS

9. All of the relevant markets are currently highly concentrated, and the Acquisition combines two close competitors and significantly increases concentration in each market.

10. In the area in and around Asheville, North Carolina and Greenville, South Carolina, the Acquisition would reduce the number of specialty providers of internal medicine, oncology, and ophthalmology services from two to one. The Acquisition would also reduce the number of providers of emergency veterinary services and specialty veterinary surgical services from three to two.

11. In the area between Norwalk, Connecticut and Yonkers, New York, the Acquisition would reduce the number of providers for neurology and radiation oncology from two to one.

12. In the area in and around Fairfax and Manassas, Virginia, Compassion First and NVA are each other's closest competitors and the Acquisition would combine two of a limited number of effective providers of emergency veterinary services in the area.

V. ENTRY CONDITIONS

13. 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. In addition, extensive education and training, beyond that required to become a general practitioner veterinarian, is required to become a licensed veterinary specialist. Consequently, specialists are frequently in short supply, and recruiting them to move to a new area often takes more than two years. Timely entry by emergency clinics is also difficult and expensive due to the costs and risks associated with emergency staffing and equipment.

VI. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of

Order to Maintain Assets

the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by, among other things:

- a. eliminating head-to-head competition between Compassion First and NVA in the provision of specialty and emergency veterinary services;
- b. increasing the likelihood that Compassion First unilaterally exercises market power; and
- c. increasing the likelihood that customers are forced to pay higher prices or experience a degradation in quality of the relevant services.

VII. VIOLATIONS CHARGED

15. The Acquisition constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of February, 2020 issues its Complaint against said Respondents.

By the Commission.

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.

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 Roosevelt place 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.

Order to Maintain Assets

- 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

Order to Maintain Assets

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

Order to Maintain Assets

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.

Order to Maintain Assets

- 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.

Order to Maintain Assets

- 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.

Order to Maintain Assets

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.

Order to Maintain Assets

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

Order to Maintain Assets

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.

Order to Maintain Assets

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.

Decision and Order

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.

DECISION

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 as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as

Decision and Order

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 that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

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 Rooseveltplatz 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, 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.

ORDER**I. Definitions**

IT IS ORDERED that, as used in this Order, the following definitions shall apply and all other definitions used in the Order to Maintain Assets, shall apply:

- A. "Agnaten" means Agnaten, SE, its directors, officers, employees, agents, representatives, successors, and assigns; and its 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 its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by NVA Parent, Inc., and

Decision and Order

the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “MedVet” means MedVet Associates, LLC, a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Ohio, with its executive offices and principal place of business located at 350 East Wilson Bridge Road, Worthington, OH 43085.
- D. “Acquirer” means: means:
 - 1. MedVet; or
 - 2. Any other Person the Commission approves to acquire the Divestiture Clinics pursuant to this Decision and Order.
- E. “Acquisition” means the proposed acquisition by Agnaten of NVA, described in the Stock Purchase Agreement by and among NVA Group, L.P., NVA Parent, Inc., Dino Grandparent, Inc., Petcare Acquisition Co., and JAB Holdings, B.V., dated June 3, 2019.
- F. “Acquisition Date” means the date Respondents consummate the Acquisition.
- G. “Business Records” means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, patient and payor information, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.
- H. “Clinic Assets” means all of Respondents’ rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Divestiture Clinics, including, without limitation, all:
 - 1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), wherever located, including all easements, appurtenances, licenses, and permits, togetherwith all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

Decision and Order

2. Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the Divestiture Clinics, if such property was used by or in connection with the provision of veterinarian services at the Divestiture Clinics on or after June 3, 2019;
3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians and other veterinary health care providers and support staff, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consigners, and consignees;
4. Rights and title in and to use the name or part of the name of the Divestiture Clinic on a permanent and exclusive basis (even as to Respondents), including, but not limited to, the name “Veterinary Care Center,” the name “REACH Veterinary Specialists,” and the name “The Veterinary Referral Center;”
5. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;
6. All consumable or disposable inventory kept in the normal course of business, including, but not limited to, janitorial, office, and medical supplies, and pharmaceuticals;
7. Accounts receivable;
8. Rights under warranties and guarantees, express or implied; and
9. Business Records.

Provided, however, that Clinic Assets do not include Excluded Assets.

Provided further, however, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

- I. “Commission” means the Federal Trade Commission.

Decision and Order

- J. “Confidential Business Information” means information not in the public domain that is related to or used in connection with the Divestiture Clinics, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.
- K. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. “Direct Cost” to an Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.
- L. “Divestiture Agreement(s)” means:
1. Divestiture Agreement by and among Respondents and MedVet, dated October 25, 2019, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-Public Appendix E;
 2. Divestiture Agreement by and among Veterinary Specialists of North America and MedVet, dated November 22, 2019, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-Public Appendix E; or
 3. Any agreement between Respondents (or a Divestiture Trustee appointed pursuant to this Order) and an Acquirer to purchase the Divestiture Clinics, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- M. “Divestiture Clinics” means the following veterinary clinics owned and operated by Respondents:
1. REACH Veterinary Specialists, located at 677 Brevard Road, Asheville, NC 28806;
 2. The Veterinary Care Center, located at 129 Glover Avenue, Norwalk, CT 06850; and
 3. The Veterinary Referral Center, 8614 Centreville Road, Manassas, VA 20110.

Decision and Order

- N. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee appointed pursuant to this Order) consummate the divestiture of the Divestiture Clinics as required by Paragraph II of this Order.
- O. “Divestiture Trustee” means the person appointed pursuant to Paragraph VII of this Order.
- P. “Emergency Veterinary Clinic” means a veterinary clinic that offers 24-hour or overnight service with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation. A veterinarian is in attendance at all hours of operation and sufficient staff is available to provide timely and appropriate care. Veterinarians, support staff, instrumentation, medications, and supplies must be sufficient to provide an appropriate level of emergency care.
- Q. “Excluded Assets” means:
1. Tax and medical records related to the Divestiture Clinics to the extent they are nontransferable by law;
 2. Cash generated by the Divestiture Clinics prior to the Divestiture Date;
 3. Intellectual Property;
 4. Software, including, any third-party practice management software (to the extent not assignable);
 5. Employee benefit plans;
 6. Employee records (a) for any Relevant Employee that is not transferred to Acquirer, or (b) prohibited to be transferred by law; and
 7. Compassion-First’s Strontium-90 probe and the related Radioactive Materials License No. 6-35037-01 held by CF PC.
- R. “Government Approvals” means any permissions or sanctions issued by any government or governmental organization, including, but not limited to, licenses, permits, accreditations, authorizations, registrations, certifications, certificates of occupancy, and certificates of need.
- S. “Intellectual Property” means intellectual property of any kind including, but not limited to, patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- T. “Monitor” means the person appointed as Monitor in this Order.

Decision and Order

- U. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.
- V. “Relevant Notice Area” means the areas and veterinary clinics identified in Non-Public Appendix B to this Order.
- W. “Relevant Employees” means any and all full-time employees, part-time employees, or contract employees, including but not limited to veterinarians, who work or worked at the Divestiture Clinics at any time during the 90 days preceding the date the Acquisition is completed or at any time after the date the Acquisition is completed, and whose duties relate or related to the Divestiture Clinic.
- X. “Respondents” means Agnaten and NVA, collectively or individually.
- Y. “Specialty Veterinarian” means a veterinarian who (i) legally holds himself or herself out as a specialist in veterinary medicine, and (ii) has board certification, in one, or more, of the following specialties: internal medicine, neurology, oncology, ophthalmology, radiation oncology, or surgery.
- Z. “Specialty Veterinary Clinic” means a clinic where a Specialty Veterinarian practices.
- AA. “Tangible Personal Property” means all machinery, equipment, spare parts, tools and tooling, fixtures, vehicles, furniture, inventories, office equipment, computer hardware, supplies and materials, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- BB. “Transitional Services” means support services regarding the transfer and operation of the Divestiture Clinics, including, but not limited to, administrative assistance, assistance relating to billing, accounting, governmental regulation, human resources management, information systems, clinical assistance, and purchasing, as well as providing assistance in acquiring and obtaining access to all software used in the provision of such services.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. Respondents shall, within 10 days after the Acquisition Date, absolutely and in good faith, divest the Divestiture Clinics to MedVet, including all Clinic Assets related to those clinics, pursuant to and in accordance with the Divestiture Agreements, as ongoing businesses.

Decision and Order

Provided, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that MedVet is not an acceptable Acquirer then, after receipt of such written notification: (1) Respondents shall immediately notify the unacceptable Acquirer of the notice received from the Commission and shall as soon as practicable, but no later than 5 business days, effect the rescission of the relevant Divestiture Agreement; and (2) Respondents shall, within 6 months of the date Respondents receive notice of such determination from the Commission, divest the Divestiture Clinics and Clinic Assets, as applicable, absolutely and in good faith, at no minimum price, as ongoing businesses to an Acquirer or Acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Provided further, however, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which any of the divestitures accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture including, but not limited to, entering into additional agreements or arrangements, as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Respondent Agnaten shall not acquire Respondent NVA until it has obtained for all the Divestiture Clinics:
 - 1. All approvals for the assignment to the Acquirer of the rights, title, and interest to each lease for real property of each Divestiture Clinic; and
 - 2. Any and all Governmental Approvals necessary for the Acquirer to operate each Divestiture Clinic, as of the Divestiture Date, in substantially the same manner as the applicable Respondent operated such Divestiture Clinic.
- C. At the option of the Acquirer, Respondents shall grant the Acquirer a royalty-free, worldwide, non-exclusive license for the use, without any limitation, of any Intellectual Property necessary to operate the Divestiture Clinics, including but not limited to, any hospital management software, to use for a period of 1 year following the Divestiture Date.
- D. Respondents:
 - 1. 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; and

Decision and Order

2. After the Divestiture Date:
 - a. 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 this Order, for complying with any law, or for the purposes of billing and collections; and
 - b. 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.
- E. The purpose of the divestiture is to ensure the continuation of the Divestiture Clinics as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreements shall constitute a violation of this Order; provided, however, that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreements after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Asset Maintenance

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

- A. Maintain each of the Divestiture Clinics and all Clinic Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents sign the Consent Agreement;

Decision and Order

- B. Take such actions that are consistent with the past practices of Respondents in connection with each Divestiture Clinic and all the Clinic Assets, and that are taken in the ordinary course of business and in the normal day-to-day operations of the Divestiture Clinics;
- C. Keep available the services of the current officers, employees, and agents of Respondents; and maintain the relations and goodwill with suppliers, veterinarians, landlords, patients, employees, agents, and others having business relations with the Divestiture Clinics and the Clinic Assets; and
- D. Preserve the Divestiture Clinics and Clinic Assets as ongoing businesses and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Divestiture Clinics and Clinic Assets would be diminished.

V. 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

Decision and Order

Employees, and to make offers of employment to any one or more of the Relevant Employees.

- C. 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 V; *provided further, however*, that this Paragraph V 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.
- D. 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 to prevent Respondents from continuing the employment of any employee.
- E. 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.
- 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, related to that particular Divestiture Clinic.

Decision and Order

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

Provided further, however, that this Paragraph V 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 employee, or where the employee'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 V.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 V; *Provided further, however*, that this Paragraph V 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.

VI. Transition Assistance

IT IS FURTHER ORDERED that, at the request of an Acquirer, for a period not to exceed one (1) year, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

Decision and Order

- A. Respondents shall provide Transitional Services to the Acquirer sufficient to enable the Acquirer to operate the Divestiture Clinics, and to provide veterinary services at the Divestiture Clinics in substantially the same manner that Respondents have operated the Divestiture Clinics; and
- B. Respondents shall provide the Transitional Services required by this Paragraph VI at substantially the same level and quality as such services are provided by Respondents at the Divestiture Clinics.

Provided, however, that Respondents shall not (i) require any Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate their obligation to provide Transitional Services because of a breach by the Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such breach.

VII. 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 Order.
- B. No later than one (1) day after the Acquisition Date, Respondents shall, pursuant to the Monitor Agreement, attached as Appendix C and Non-Public Appendix D (Compensation) to this 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 this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Agnaten, which consent shall not be unreasonably withheld. If Agnaten has 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 Agnaten of the identity of any proposed Monitor, Agnaten shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten 10 days after appointment of a substitute Monitor, Agnaten 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 Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

Decision and Order

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order 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 this Order 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 this Order, and the Divestiture Agreements;
 - b. Monitoring any transition services agreements; and
 - c. Ensuring that Confidential Business Information is not received or used by Respondents, except as allowed in this Order.
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 this Order 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 this Order 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 this Order 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 Respondent Agnaten, 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. Respondent Agnaten shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising

Decision and Order

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. Respondent Agnaten shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent Agnaten, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under this Order and the Divestiture Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph VII, 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 this Order, and the Divestiture Agreements.
 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 in the same manner as provided in this Paragraph VII.
 - 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 and the Divestiture Agreements.
 - H. A Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

Decision and Order

VIII. Divestiture Trustee**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the obligations imposed by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Divestiture Clinics, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VIII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VIII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the

Decision and Order

Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *Provided, however*, the Commission may extend the divestiture period only 2 times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph VIII for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an Acquirer as required by this Order; *Provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *Provided further, however*, that Respondents shall select such Person within 5 days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant

Decision and Order

part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's 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 gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *Provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VIII.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

Decision and Order

IX. Prior Notice

IT IS FURTHER ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondent Agnaten shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IX:
1. Acquire any assets of, or financial interest in, any veterinary clinic identified, or located in, the Relevant Notice Areas; or
 2. Enter into any contract to participate in the management, operation, or control of any veterinary clinic identified, or located in, the Relevant Notice Areas.
- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph IX may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph IX for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

X. Compliance

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and

Decision and Order

2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondent Agnaten shall file verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondents have fully complied with the provisions of Paragraph II and Paragraph V (where applicable); annual compliance reports one year after the date this Order is issued, and annually for the next 5 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance:
 - a. a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order; and
 - b. an identification of any and every Relevant Employee hired by Respondents, including a detailed explanation as to why hiring that Relevant Employee does not violate this Order.
 3. Respondent Agnaten shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent’s obligations under the Order and provide copies of these documents to Commission staff upon request.
 4. Respondent Agnaten shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Decision and Order

XI. 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 may affect compliance obligations arising out of this Order.

XII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' 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 office 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.

XIII. Term

IT IS FURTHER ORDERED that this Order shall terminate on April 9, 2030.

By the Commission.

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT**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 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

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.

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**ONE ROCK CAPITAL PARTNERS II, LP,
FXI HOLDINGS, INC.,
BAIN CAPITAL FUND XI, LP,
AND
INNOCOR, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4708; File No. 191 0087
Complaint, February 21, 2020 – Decision, April 20, 2020*

This consent order addresses the \$850 million acquisition by FXI Holdings, Inc. of certain assets of Innocor Inc. The complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in several regional markets for low-density conventional polyurethane foam for home furnishing uses in the United States. The consent order requires the parties to divest foam-pouring plants located in Kent, Washington; Elkhart, Indiana; and Tupelo, Mississippi to Future Foam.

Participants

For the *Commission*: Cem Akleman, Llewellyn Davis, Josh Goodman, Joonsuk Lee, and Blake Risenmay.

For the *Respondents*: Amanda P. Reeves, Latham & Watkins LLP; Jonathan Klarfeld, Ropes & Gray.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent FXI Holdings, Inc. (FXI), an indirect subsidiary of Respondent One Rock Capital Partners II, LP (One Rock) and Respondent Innocor, Inc. (Innocor), an indirect subsidiary of Respondent Bain Capital Fund XI, LP (Bain) (each a “Respondent” or collectively “Respondents”), have agreed to an acquisition, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent One Rock Capital Partners II, LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 30 Rockefeller Plaza, 54th Floor, New York, NY 10112.