

Blog Post

House Commerce Committee Urges the FTC to Investigate Past PBM Mergers

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The leadership of the House Energy & Commerce Committee has called upon the Federal Trade Commission to undertake a retrospective review of past mergers involving pharmacy benefit managers (PBMs). Specifically, in a July 27 letter to FTC Chairman Joseph Simons, House Commerce Committee Chairman Greg Walden (R-OR) requested that the FTC examine “(1) how these mergers have affected downstream prices for consumers and (2) whether these mergers have helped PBMs save plan sponsors money.”

The Commerce Committee’s request follows a February 14 hearing on the effects of consolidation in the healthcare industry generally, in which several witnesses testified that the competitive impact of several large mergers in the PBM industry over the last decade (which ultimately created what are today Caremark, Express Scripts and Optum Rx) were somewhat unclear. The letter cites a 2016 report that concluded that PBMs help plan sponsors generate savings by, among other things, reducing waste, negotiating discounts and encouraging the use of generic drugs. However, the letter also notes that other reports suggest that, in some circumstances, consolidation among PBMs may have led to an increase in drug costs and increased co-pays for insureds. Given these opposing views, several witnesses, including Professor Leemore Dafny, who previously served as the Deputy Director for

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Healthcare and Antitrust in the FTC's Bureau of Economics, expressly suggested that a retrospective review of these mergers by the FTC would likely be beneficial.

The Commerce Committee's letter also notes that FTC Chairman Simons himself testified during his confirmation hearing that conducting retrospective reviews of past mergers to analyze the impact of such transactions on consumers would be beneficial, and that during that testimony he expressly identified the PBM industry as a potential candidate for such a review. Accordingly, the Commerce Committee's letter expressly requests that the FTC indicate, no later than August 10, whether it will comply with the Commerce Committee's request and commence a retrospective study of past mergers in the PBM industry.

Notably, the Commerce Committee's call for a review of past PBM mergers comes at a time where CVS (Caremark's parent company) is currently seeking regulatory approval of its proposed merger with health insurer Aetna, and Express Scripts is seeking to merge with Cigna. What impact, if any, a retrospective review of past PBM mergers might have on those pending transactions remains to be seen. Stay tuned.

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