

Blog Post

FTC Commissioners Call for Study on the Competitive Effects of Consummated Healthcare Transactions that Did Not Previously Receive Regulatory Review

February 12, 2020

The Federal Trade Commission (FTC) announced on February 11, 2020 that it had issued Special Orders to five large technology companies, requiring them to provide information to the FTC concerning all corporate acquisitions they have completed over the last 10 years that had not previously been required to be submitted for review by the FTC under the Hart-Scott-Rodino Act (HSR). The request is intended to focus, for the most part, on transactions where the companies avoided regulatory review because the size of the transactions were below the HSR reporting thresholds. As described in the announcement, the FTC intends to assess “whether the federal agencies are getting adequate notice of transactions that might harm competition” but are currently unreported, and, accordingly, to consider “whether additional transactions should be subject to premerger notification requirements.” A link to the announcement can be found [here](#).

Notably, particularly for those in the healthcare industry, two FTC Commissioners – Commissioner Christine Wilson and Commissioner Rohit Chopra – issued a separate Statement accompanying the announcement stating that, in their view, a similar study should be launched concerning healthcare transactions. Specifically, they stated that “Given the

Related Work

Antitrust and Trade Regulation
Healthcare
Healthcare M&A and Joint Ventures

Related Offices

Washington, D.C.

Health Law Rx Blog

Akerman Perspectives on the Latest Developments in Healthcare Law

[View this Akerman blog](#)

FTC's significant expertise in the healthcare industry, and the vital importance of quality healthcare services at competitive prices to every American consumer, we encourage the Commission to analyze sub-HSR deals in [healthcare] next." Their Statement is available [here](#). As explained in their Statement, many healthcare transactions occur below the current HSR reporting thresholds and, as a result, federal regulators often are not aware of these transactions, much less in a position to assess the potential competitive implications of these deals. In the Statement, the Commissioners identify several healthcare markets – including pharmaceuticals and hospitals – where they contend that a “more complete” understanding of the competitive effects of currently-unreported transactions would be beneficial.

While the FTC has not yet indicated whether it will formally adopt Commissioner Wilson and Commissioner Chopra's suggestion, should a similar review of healthcare transactions be launched, the results of such a study could lead to significant changes in how and when healthcare transactions are reviewed by federal regulators. Stay tuned.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.