

Clients & Friends Memo

Pharmaceutical Mergers: U.S. Antitrust Agencies Join Global Working Group

March 16, 2021

The Federal Trade Commission (“FTC”) [announced](#) today a multilateral working group to share best practices and build a new approach to pharmaceutical mergers. Initiated by the FTC, the working group will include the Canadian Competition Bureau, the European Commission Directorate General for Competition, the UK’s Competition and Markets Authority, the Antitrust Division of the U.S. Department of Justice, and Offices of the State Attorneys General.

The global initiative aims to identify concrete and actionable steps to review and update the analysis of pharmaceutical mergers, tapping into expertise from competition authorities with whom the FTC cooperates frequently, as well as others with relevant experience, to craft effective enforcement methods. Among the questions to be considered:

- How can current theories of harm be expanded and refreshed?
- What is the full range of a pharmaceutical merger’s effects on innovation?
- In merger review, how should we consider pharmaceutical conduct such as price fixing, reverse payments, and other regulatory abuses?
- What evidence would be needed to challenge a transaction based on any new or expanded theories of harm?
- What types of remedies would work in the cases to which those theories are applied?
- What have we learned about the scope of assets and characteristics of firms that make successful divestiture buyers?

“Given the high volume of pharmaceutical mergers in recent years, amid skyrocketing drug prices and ongoing concerns about anticompetitive conduct in the industry, it is imperative that we rethink our approach toward pharmaceutical merger review,” said FTC Acting Chair Rebecca Kelly Slaughter. “Working hand in hand with international and domestic enforcement partners, we intend to take an aggressive approach to tackling anticompetitive pharmaceutical mergers.” FTC Acting

Chair Slaughter's comments were echoed by her regulatory counterparts in Europe, the UK, and Canada.

- Margrethe Vestager, Executive Vice President of the European Commission, stated, "An innovative and well-functioning pharmaceutical sector is essential for meeting the needs of our citizens. Over the past years the European Commission has taken new initiatives in scrutinising global pharmaceutical mergers to ensure effective competition in the sector. We have contributed to fair prices for vital medicines and we have protected the development of new, life saving drugs. I therefore warmly welcome this initiative, which brings together some of our closest partners worldwide to take stock of the lessons learned in recent years and explore new ways to foster vibrant competition to the benefit of citizens."
- Dr. Andrea Coscelli, the Chief Executive of the UK's Competition and Markets Authority, said, "Big pharma plays an essential role in our society, a fact brought home to each of us the rapid rollout of vaccines to fight a global pandemic. But when large pharmaceutical companies decide to merge or to acquire innovative rivals, it is essential that competition authorities work together to protect consumers from any anti-competitive deals."
- Matthew Boswell, Commissioner of Competition in Canada, said, "The pharmaceutical industry is a vital part of Canada's health sector, and we will continue to collaborate closely with our international partners to ensure we are staying on top of emerging issues – with respect to mergers as well as any type of potentially anticompetitive conduct."

The multilateral working group will endeavor to ensure that investigations by the FTC and its domestic and international counterparts will include fresh approaches that fully analyze and address the varied competitive concerns raised by mergers and acquisitions in the pharmaceutical industry.

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If you have any questions, please feel free to contact either of the following Cadwalader attorneys.

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