BATES WHITE
ECONOMIC CONSULTING

Express Scripts acquisition of Medco

CASE STUDY

Client

EXPRESS SCRIPTS INC.

MEDCO HEALTH SOLUTIONS INC.

Industry

HEALTHCARE

In July 2011, Express Scripts, Inc. (Express Scripts) agreed to buy Medco Health Solutions Inc. (Medco), a deal valued at $29 billion. Both companies are pharmacy-benefits managers (PBMs), which negotiate drug prices for health-plan sponsors, manage claims, and track patients' use of medicines. Purchasers of PBM services include private employers, government entities, and labor unions, among others.

After the merger announcement, the FTC began an eight month investigation to ensure that the merger, which would create the largest PBM in the United States, would not decrease competition for consumers. Some critics of the merger argued that it was essentially a "3 to 2" merger, reducing the number of significant competitors in the industry to only two. The FTC investigated whether the merger would give the combined company significant market power in the PBM services market or in some segment of the market. The law firm Skadden, Arps, Slate, Meagher & Flom, working on behalf of the merging parties, hired a team of Bates White economists, led by Partner George A. Rozanski and including Eric Emch, Rachel Grinberg, and Keith Waehrer, to examine likely competitive effects of the merger and present their findings to the FTC.

Bates White conducted a robust unilateral effects analysis and detailed merger simulation to evaluate the likely effect of the merger. In-depth analyses of bid and margin data showed that there are many effective competitors within every segment of the PBM industry. Bidding data demonstrated robust competition for even the largest accounts, with many different competitors winning business from both Express Scripts and Medco. The rate at which the merging firms lost existing business to each other relative to other firms in the industry indicated that the two firms were not particularly close competitors.

The merger simulation analysis, based on a bidding model, predicted that the significant efficiencies attributable to the merger would be enough to overcome any potential for anticompetitive effects. These efficiencies are notable in that many of the cost savings attributable to the merger are immediately and automatically passed through to customers due to common contractual provisions that guarantee customers the benefits of upstream cost savings. In addition, many other savings can be expected to be passed through in the normal competitive process.

The Bates White analysis demonstrated that the proposed transaction would not meaningfully put the combined company in a position to exercise market power in any segment of the market. The two firms were shown not to be particularly close competitors among a large variety of PBMs with different strengths and different approaches to the business. In addition, detailed simulations of potential merger effects found that the merger would not yield any anticompetitive effects. Rather, the merger would result in direct and immediate benefits to consumers in the form of substantial pass-through of large cost savings.

The FTC's closing statement indicated that its own analysis reached similar conclusions to that of Bates White.[1] The FTC concluded that the merging firms are part of "a competitive market for PBM services characterized by numerous, vigorous competitors who are expanding and winning business from traditional market leaders. The acquisition of Medco by Express Scripts will likely not change these dynamics." The FTC found no likelihood of future unilateral effects, coordinated effects, or exercise of monopsony power resulting from the merger.

Contact us

George Rozanski, Partner
1300 Eye Street NW, Suite 600
Washington, DC 20005
202.747.1423
george.rozanski@bateswhite.com

1 The case is *The Proposed Acquisition of Medco Health Solutions, Inc., by Express Scripts, Inc.*, FTC file No. 111-0210. The Federal Trade Commission's statement is available at http://www.ftc.gov/os/2012/04/120402expressmedcostatement.pdf.

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