**FEDERAL TRADE COMMISSION**

August 27, 1998

Merck Settles FTC Charges that Its Acquisition of Medco Could Cause Higher Prices and Reduced Quality for Prescription Drugs

Company Agrees to Preserve Competition in the Pharmaceutical Market

The Federal Trade Commission today announced an agreement with Merck and Co., Inc. ("Merck"), a leading pharmaceutical manufacturer, and its subsidiary, Merck-Medco Managed Care, LLC (“Medco”), resolving antitrust concerns resulting from Merck’s acquisition of Medco. The Commission alleged that Merck’s acquisition of Medco, a pharmacy benefits manager (“PBM”), may substantially lessen competition in the manufacture and sale of pharmaceuticals, and in the provision of PBM services, leading to higher prices and reduced quality. PBMs serve as middlemen in the provision of prescription drugs to managed care plans. **The settlement would require Medco to take steps to diminish the effects of any unwarranted preference that might be given to Merck’s drugs over those of Merck’s competitors in connection with the pharmacy benefit management services that it provides.**

**According to the FTC, when Merck acquired Medco in late 1993, it became the first pharmaceutical manufacturer to vertically integrate into the then relatively-new business of pharmacy benefit management. Since then, several other pharmaceutical companies have joined with PBMs. In 1995, the FTC challenged Eli Lilly and Company’s acquisition of PCS, another PBM, from the McKesson Corporation, alleging violation of the antitrust laws. At that time, the Commission pledged to monitor the industry carefully and cautioned that it might take future action if it concluded there were signs of anticompetitive conduct in the industry.**

“Our investigation into the PBM industry has revealed that Merck’s acquisition of Medco has reduced competition in the market for pharmaceutical products,” said William J. Baer, Director of the FTC’s Bureau of Competition. “We have found that Medco has given favorable treatment to Merck drugs. As a result, in some cases, consumers have been denied access to the drugs of competing manufacturers. In addition, the merger has made it possible for Medco to share with Merck sensitive pricing information it gets from Merck’s competitors, which could foster collusion among drug manufacturers. The settlement that we have reached with the companies addresses these consequences of the acquisition to ensure lower prices, better quality and greater choice for consumers.”

Merck, located in Whitehouse Station, New Jersey, manufactures and sells pharmaceutical products, including Mevacor and Zocor, used for the treatment of high cholesterol, and Prinivil and Vasotec, used for the treatment of hypertension, high blood pressure, and heart disease.

Merck’s subsidiary, Medco, located in Montvale, New Jersey, is engaged in the business of providing pharmacy benefit management services to corporations, insurance companies, labor unions, third-party payers, and other members of the health care industry.

Medco is the nation’s largest PBM. As middlemen between pharmaceutical companies and managed care plans, PBMs provide a variety of services including sophisticated computerized claims processing, drug utilization review, pharmacy network administration, mail- order prescription services and formulary services that include aggressive rebate negotiation with manufacturers. A drug “formulary” is a list of drugs that PBMs give to pharmacies, physicians, and third-party payers to guide them in prescribing and dispensing prescriptions to health plan beneficiaries.

According to the complaint outlining the Commission’s charges, Medco negotiates with pharmaceutical manufacturers, including Merck, concerning placement of drugs on the Medco formulary. Medco also negotiates rebates, discounts, and prices that pharmacy benefit plans managed by Medco pay for pharmaceutical products. Medco, the FTC charged, thereby influences the prices of pharmaceutical products and the availability of such products under the Medco pharmacy benefit plans.

The FTC charged that the effects of the acquisition of Medco by Merck may be to:

foreclose the products of manufacturers other than Merck from Medco’s formularies;

enhance the chances for collusion and other illegal anticompetitive conduct;

eliminate Medco as an independent negotiator of pharmaceutical prices with manufacturers;

reduce other manufacturers’ incentives to develop innovative pharmaceuticals; and

increase the prices and diminish the quality of the pharmaceuticals available to consumers.

The proposed consent agreement, which was announced today for public comment, would require Merck-Medco to maintain an “open formulary” -- one that includes drugs selected and approved by an independent Pharmacy and Therapeutics ("P&T") Committee. This committee would consist of physicians and pharmacologists who have no financial interest in Merck. The consent order would require that this P&T Committee independently make all decisions concerning the inclusion and exclusion of drugs on the open formulary.

The agreement also would ensure that Medco will accept all discounts, rebates or other concessions offered by any other manufacturer of pharmaceutical products in connection with the listing of those products on the open formulary, and to accurately reflect such discounts in ranking the drugs on the formulary. Merck and Medco also would be prohibited from sharing proprietary or other non-public information they receive from one another’s competitors -- such as prices -- with exceptions for attorneys and auditors.

In addition, the consent order would require Merck-Medco to make known the availability of the Open Formulary to anyone who currently has a PBM agreement with Medco, and (for a period of five years) to prospective customers.

Finally, the settlement would contain various reporting provisions that would assist the FTC in monitoring Merck-Medco’s compliance with the final order.

The Commission vote to publish the proposed consent agreement was 4-0.

An analysis of the proposed agreement will appear in the Federal Register shortly. The agreement will be subject to public comment for 60 days, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the complaint, the proposed consent order and the analysis of the proposed consent order to aid public comment are available from the FTC's web site at: http://www.ftc.gov and also from the FTC's Consumer Response Center, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-4357; TDD for the hearing impaired 1-866-653-4261. Consent agreements subject to public comment also are available by calling 202-326-3627. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.