

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

**MERCK & CO., INC., a corporation, and
MERCK-MEDCO MANAGED CARE, L.L.C., a limited liability company.**

Docket No. C-

COMPLAINT

The Federal Trade Commission, having reason to believe that Respondent Merck & Co., Inc. ("Merck"), a corporation subject to the jurisdiction of the Commission, acquired Medco Containment Services, Inc., a corporation, now Respondent Merck-Medco Managed Care, L.L.C. ("Medco"), a limited liability company subject to the jurisdiction of the Commission, that such acquisition violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. § 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, stating its charges as follows:

PARAGRAPH ONE: Respondent Merck & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office located at One Merck Drive, Whitehouse Station, New Jersey.

PARAGRAPH TWO: Respondent Merck is engaged in the development, production and sale of pharmaceutical products, including Mevacor and Zocor, which are "HMG-CoA reductase inhibitors" used for the treatment of high cholesterol, and Prinivil and Vasotec, which are "angiotensin converting enzyme inhibitors" ("ACE Inhibitors") used for the treatment of hypertension, high blood pressure, and heart disease.

PARAGRAPH THREE: Respondent Merck-Medco Managed Care, L.L.C., is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 100 Summit Avenue, Montvale, New Jersey. PARAGRAPH FOUR: Respondent Medco provides pharmacy benefit management ("PBM") services to corporations, insurance companies, labor unions, Blue Cross Blue Shield organizations, federal and state employee plans, health maintenance organizations, and other members of the healthcare industry.

PARAGRAPH FIVE: On November 18, 1993, Merck acquired all the outstanding stock of Medco Containment Services, Inc., now doing business as Merck-Medco Managed Care, L.L.C., for approximately \$6.6 billion.

PARAGRAPH SIX: At all times relevant herein, respondents Merck and Medco have been, and are now, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are "corporations" whose businesses are in or affecting commerce as "corporation" and "commerce" are defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PARAGRAPH SEVEN: A relevant line of commerce within which to analyze the effects of this acquisition is the provision of pharmacy benefit management ("PBM") services by national full-service PBM firms, and any narrower markets contained therein. Other relevant lines of commerce within which to analyze the effects of this acquisition are the development, manufacture and sale of pharmaceutical products in specific therapeutic categories, and narrower markets contained therein (including, but not limited to, the markets for HMG-CoA reductase inhibitors and angiotensin converting enzyme inhibitors).

PARAGRAPH EIGHT: A relevant section of the country within which to analyze the effects of this acquisition is the United States.

PARAGRAPH NINE: The relevant market for PBM services by national full-service PBM

firms, and the relevant markets for pharmaceutical products in specific therapeutic categories, are moderately to highly concentrated.

PARAGRAPH TEN: There are substantial entry barriers into the relevant markets. Even if new entry were to occur, it would take a long time, during which time substantial harm to competition could occur.

PARAGRAPH ELEVEN: As part of its PBM services, Medco maintains drug formularies, which are listings, by therapeutic category, of ambulatory drug products that are approved for use by the U.S. Food & Drug Administration, and which are used by pharmacies, physicians, third-party payors, and other persons, to guide in the prescribing and dispensing of pharmaceuticals. Merck pharmaceutical products are included on Medco's formularies. Medco also provides other PBM services, including claims processing, drug utilization review, pharmacy network administration, mail service, and related services. Medco negotiates with pharmaceutical manufacturers, including Merck, concerning placement of drugs on Medco's formularies, rebates, discounts, prices to be paid for pharmaceutical products purchased pursuant to pharmacy benefit plans managed by Medco, and similar matters. Medco thereby influences the prices of pharmaceutical products and the availability of such products under the Medco pharmacy benefit plans.

PARAGRAPH TWELVE: The effects of Merck's acquisition of Medco may be substantially to lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- (a) Products of manufacturers other than Merck are likely to be foreclosed from Medco's formularies;
- (b) Reciprocal dealing, coordinated interaction, interdependent conduct, and tacit collusion among Merck and other vertically integrated pharmaceutical companies will be enhanced;
- (c) Medco will be eliminated as an independent negotiator of pharmaceutical prices with manufacturers;
- (d) Incentives of other manufacturers to develop innovative pharmaceuticals will be diminished; and
- (e) Pharmaceutical prices are likely to increase and the quality of the pharmaceuticals available to consumers is likely to diminish.

PARAGRAPH THIRTEEN: Merck's acquisition of Medco violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 1998, issues its complaint against respondents Merck and Medco.

By the Commission.

Donald S. Clark
Secretary

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