



**Federal Trade
Commission**
Protecting America's
Consumers

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FTC Settles Charges That Cardinal Health's Purchase of Biotech Was Anticompetitive

Cardinal Required to Sell Nuclear Pharmacies in Las Vegas, Albuquerque, and El Paso

The [Federal Trade Commission](#) will require Cardinal Health, Inc. to reconstitute and sell nuclear pharmacies in Las Vegas, Nevada; Albuquerque, New Mexico; and El Paso, Texas under a settlement order resolving the agency's charges that Cardinal's purchase of nuclear pharmacies from Biotech reduced competition for low-energy radiopharmaceuticals in the three cities.

Nuclear pharmacies provide radiopharmaceuticals to hospitals and cardiology clinics, which use the products to diagnose and treat various diseases. Radiopharmaceuticals contain a radioisotope that is combined with a chemical compound. Because radioisotopes used in radiopharmaceuticals have short half-lives and decay rapidly, nuclear pharmacies can only serve customers in their local areas. Accordingly, competition among nuclear pharmacies occurs at a local level.

On July 31, 2009, Cardinal acquired certain assets of Biotech, including its nuclear pharmacies in Las Vegas, Albuquerque, and El Paso. Before the acquisition, Cardinal and Biotech had both operated nuclear pharmacies in these cities. The pharmacies produced, sold, and distributed low-energy radiopharmaceuticals. After the acquisition, Cardinal relocated its nuclear pharmacy businesses to the former Biotech nuclear pharmacy locations and closed its own locations.

As a result of the acquisition, Cardinal now holds a low-energy radiopharmaceuticals monopoly in Albuquerque. In El Paso, Cardinal held a monopoly until November 2010, when another nuclear pharmacy opened in the city. Cardinal still holds a large market share in El Paso. In Las Vegas, there were three competitors before the acquisition, and Cardinal and Biotech were the two leading providers. As a result of the acquisition, Cardinal obtained, and has since held, a large market share.

According to the FTC's complaint, Cardinal's acquisition of Biotech's nuclear pharmacies may substantially lessen competition for the production, sale, and distribution of low-energy radiopharmaceuticals in Las Vegas, Albuquerque, and El Paso by eliminating direct competition between Cardinal and Biotech, reducing Cardinal's incentive to improve customer service, and allowing Cardinal to increase prices.

The order settling the FTC's charges is designed to remedy the anticompetitive effects of Cardinal's acquisition by restoring the competition lost in Las Vegas, Albuquerque, and El Paso. To accomplish this, the order requires Cardinal to reconstitute the three nuclear pharmacies it had operated in these markets prior to the acquisition, and sell each one to an FTC-approved buyer.

In addition, Cardinal must divest to each buyer the intellectual property related to the nuclear pharmacies that Biotech owned before the acquisition. Cardinal also must obtain, maintain, and transfer all regulatory approvals, licenses, permits, clearances, and other assets needed to operate the pharmacies being acquired. Further, Cardinal must demonstrate to the FTC that each buyer has a supply of two vital low-energy radiopharmaceutical inputs, the radioisotope technetium 99 and a heart-perfusion agent. If suitable acquirers are not found within six months, the FTC may appoint a divestiture trustee to carry out Cardinal's obligations to reconstitute and sell the nuclear pharmacy assets.

Other terms of the order require Cardinal to grant its customers in Las Vegas, Albuquerque, and El Paso a two-year right to terminate – without penalty or charge – their existing contracts with Cardinal to buy low-energy radiopharmaceuticals. This will ensure that the acquirer(s) have the chance to compete with Cardinal for business. Cardinal must notify each relevant customer of its right to terminate its existing contract.

To provide the acquirer(s) with access to any necessary employees, the order requires Cardinal to facilitate and not interfere with the recruitment of former Biotech employees and current Cardinal nuclear pharmacy employees in Las Vegas, Albuquerque, and El Paso. Such employees also are released from any restrictions on their ability to work for the acquirer(s).

Finally, the order provides for the appointment by the Commission of Katherine L. Seifert, of Seifert and Associates, Inc., to serve as an independent monitor with fiduciary responsibilities to the Commission to help ensure that Cardinal carries out all of its responsibilities and obligations under the order.

The Commission vote approving the complaint and proposed consent order was 4-0-1, with Commissioner William E. Kovacic recused. The proposed order will be published in the *Federal Register* subject to public comment for 30 days, until August 22, 2011, after which the Commission will decide whether to make it final. Comments can be submitted electronically [here](#).

NOTE: The Commission issues a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The issuance of a complaint is not a finding or ruling that the respondent has violated the law. A consent order 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 up to \$16,000.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read [Competition Counts](#). Like the FTC on [Facebook](#) and follow us on [Twitter](#).

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