



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets

Company used its digital platform to impose anticompetitive vertical and horizontal restraints on commerce, leading to higher prices and reduced consumer choice, agency alleges

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The Federal Trade Commission sued the health information company Surescripts, alleging that the company employed illegal vertical and horizontal restraints in order to maintain its monopolies over two electronic prescribing, or “e-prescribing,” markets: routing and eligibility.

The [FTC’s complaint against Surescripts](#), filed in federal court on April 17, 2019, is the latest example of the agency’s commitment to stopping anticompetitive tactics in the health care industry that harm consumers and raise the cost of care for Americans. In February, the FTC reached a [global settlement with the pharmaceutical manufacturer Teva Pharmaceuticals Industries Ltd.](#), barring the company from engaging in reverse-payment patent settlement agreements that block consumers’ access to lower-priced generic drugs. Last month, the Commission barred another pharmaceutical company, Impax Laboratories LLC, from entering into reverse-payment patent settlements after concluding that Impax used this tactic to [block consumers’ access to a generic version](#) of the extended-release opioid pain reliever Opana ER. And in a record court victory for the Commission last year, a federal court ordered another pharmaceutical company, [AbbVie Inc., to pay \\$448 million to consumers](#) who overpaid for testosterone replacement drug Androgel because of AbbVie’s illegal tactics to maintain its monopoly over the drug.

In the complaint filed on April 17, 2019 against Surescripts, the FTC is seeking to undo and prevent Surescripts’s unfair methods of competition, restore competition, and provide monetary redress to consumers.

“For the past decade, Surescripts has used a series of anticompetitive contracts throughout the e-prescribing industry to eliminate competition and keep out competitors,” said Bureau of Competition Director Bruce Hoffman. “Surescripts’s illegal contracts denied customers and, ultimately, patients, the benefits of competition – including lower prices, increased output, thriving innovation, higher quality, and more customer choice. Through this litigation, we hope to eliminate the anticompetitive conduct, open the relevant markets to competition, and redress the harm that Surescripts’s conduct has caused.”

E-prescribing provides a safer, more accurate, and lower-cost means to communicate and process patient prescriptions than

traditional paper prescribing. According to the complaint, Surescripts monopolized two separate markets for e-prescription services:

- The market for routing e-prescriptions, which uses technology that enables health care providers to send electronic prescriptions directly to pharmacies;
- The market for determining eligibility, a separate service that enables health care providers to electronically determine patients' eligibility for prescription coverage through access to insurance coverage and benefits information, usually through a pharmacy benefit manager.

The FTC alleges that Surescripts intentionally set out to keep e-prescription routing and eligibility customers on both sides of each market from using additional platforms (a practice known as multihoming) using anticompetitive exclusivity agreements, threats, and other exclusionary tactics. Among other things, the FTC alleges that Surescripts took steps to increase the costs of routing and eligibility multihoming through loyalty and exclusivity contracts.

According to the FTC's complaint, Surescripts successfully used these tactics to stop multiple attempts by other companies to enhance competition in the routing and eligibility markets. According to the FTC's complaint, Surescripts's anticompetitive tactics thwarted competitors from gaining share in the routing and eligibility markets, enabling the company to maintain at least a 95 percent share in each market over many years. The complaint alleges that Surescripts succeeded in maintaining its monopolies in routing and eligibility, despite the explosive growth of routing and eligibility transactions – from nearly 70 million routing transactions in 2008 to more than 1.7 billion in 2017.

The Commission vote to file the complaint was 5-0. The complaint was filed under seal in the U.S. District Court for the District of Columbia on April 17, 2019. A redacted version of the complaint was also filed. The complaint alleges that Surescripts's anticompetitive acts violate Section 2 of the Sherman Act, and thus constitute an unfair method of competition, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

NOTE: The Commission files 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 case will be decided by the federal district court.

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