Comments of the Regulatory Action Center
RE: Multilateral Pharmaceutical Task Force Request for Public Input
FTC-2021-0025-0001
June 25, 2021

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government agencies to which they are entitled to contribute.

On behalf of the below signed individuals and our activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the request for public input on analyzing the effects of pharmaceutical mergers.

The Federal Trade Commission (FTC or Commission) and its counterpart competition enforcement agencies, the Canadian Competition Bureau, the European Commission Directorate General for Competition, the U.K.’s Competition and Markets Authority, the U.S. Department of Justice Antitrust Division (DOJ), and Offices of State Attorneys General have created a task force to review and update analyses of pharmaceutical mergers. The task force seeks input from the public to inform their review.

Currently, there are no industry-specific guidelines or rules for FTC review of mergers and acquisitions. Mergers are governed primarily by the Clayton Act, which prohibits mergers and acquisitions where the effect “may be substantially to lessen competition, or to tend to create a monopoly.”1 This Act also requires companies to notify the government, or “pre-clear,” mergers and acquisitions with the federal government (the FTC and/or DOJ)2 and, depending on the transaction, with foreign regulatory bodies and/or U.S. state Attorneys General.3 Before the merger or acquisition can be consummated, the companies must provide regulatory bodies with data and information on the proposed transaction.

The Federal Trade Commission Act, which created the FTC, provides the Commission sole enforcement authority over the Act’s sweeping bans on “unfair methods of competition” and “unfair or deceptive acts of practices.”4

2 Id., § 18a.
3 Id., § 26.
4 Id., § 45(a).
The FTC and other governmental entities can—and do—challenge in administrative or court proceedings transactions that they believe are anticompetitive. They also have the ability to require divestiture of specific products in cases of potential anticompetitive effects. Moreover, private parties harmed by anticompetitive conduct that the antitrust laws may sue for treble damages and a prohibition on future anticompetitive conduct. In sum, mergers and acquisitions are subject to a tremendous level of governmental scrutiny—including at the federal and potentially international and state levels—and the government has the tools it needs to block problematic mergers.

Finally, the FTC’s current merger/acquisition analysis applies to all companies across a wide variety of industries. The Commission has offered no rationale as to why creating new standards for just one industry is necessary. The current FTC guidelines are well-settled and informed by court decisions. They provide guidance to companies as they contemplate mergers and acquisitions. Creating new guidelines would inject uncertainty in the pharmaceutical space, which is a vital industry to the health and well-being of people around the globe.

Legal uncertainty is the enemy of investment and innovation. The mere hint of mystery surrounding how governments will treat pharma mergers and acquisitions is enough to dissuade innovators, who risk tremendous amounts of money in hopes of creating a breakthrough product or technology that will attract a buyer or merger partner. Maintaining a climate favorable to risk-taking is nowhere more important than in the pharma sector, where innovations lead to literally life-saving products.

If the FTC truly believes that it does not have sufficient authority or information to analyze pharmaceutical mergers and acquisitions, it should be transparent and explain what it lacks to better inform public input. Otherwise, if the system isn’t broken, why is the FTC seeking to fix it?

Respectfully submitted,

Steve Moore  Beverly McKittrick
Senior Economic Advisor  Director, Regulatory Action Center
FreedomWorks Foundation  FreedomWorks Foundation
Brandon A. - Melbourne, FL
Mary B. - Porterville, CA
Mark & Lisa B. - Germanton, NC
Michael B. - Summerville, SC
George B. - Medina, OH
Darlene C. - Little Rock, AR
Kevin D. - Lemont, IL
Fred D. - Leavenworth, WA
Ruthie F. - Aguanga, CA
Beverly F. - Oklahoma City, OK
Kathleen F. - Wichita, KS
Fred G. - Topsfield, MA
Donna G. - Colona, IL
Dustin G. - Grand Isle, LA
Christy H. - Coffeeville, AL
Dottie H. - West Farmington, OH
Stephanie H. - Palm Desert, CA
Martha J. - Chandler, AZ
Christina L. - Sherwood, OR
Jon L. - Republic, MO
Mildred M. - Bellville, TX
Carole M. - La Vale, MD
Phillip M. - Norwood, OH
Linda M. - Camp Verde, AZ
Joanne M. - Bellville, TX
David N. - Litchfield, CT
Shelly O. - Townshend, VT
Dominic P. - East Bridgewater, MA
Caley P. - Fruita, CO
Vernon P. - Grand Junction, CO
Neil P. - Findlay, OH
Darlene P. - Franklin, NJ
Marita P. - Mitchell, SD
Maria P. - Birmingham, AL
Joan P. - Oak Harbor, OH
Svetlana R. - San Anselmo, CA
Brian S. - La Jolla, CA
Verna S. - Danielsville, PA
Charles S. - Chillicothe, OH
David S. - Leetonia, OH
Clayton S. - Nevada, MO
Walter T. - Bronx, NY
Frank T. - Newtown, PA
Elizabeth W. - Tampa, FL
Alicia W. - Asheboro, NC
Tammy W. - Potter, NE
Joseph C. - Alexandria, VA
Dennis D. - Fredericksburg, VA
Amanda L. - Potosi, MO
Sonja N. - Ocean Park, WA
Patty T. - Elkin, NC
Eugene T. - West Chester, PA
Sarah W. - Mifflinburg, PA