



The American  
Antitrust Institute

*Express Scripts' Proposed Acquisition of Caremark:  
An Antitrust White Paper*

*February 14, 2007*

**INTRODUCTION**

On December 18, 2006, Express Scripts, Inc. (“Express Scripts”) announced its proposal to acquire Caremark Rx, Inc. (“Caremark”).<sup>1</sup> The American Antitrust Institute (“AAI”) has conducted a preliminary independent review of the proposed acquisition.<sup>2</sup> We believe that this acquisition poses a threat of significant anticompetitive harm in the Pharmaceutical Benefit Management (“PBM”) services market by combining two of the three largest national PBMs. Accordingly, the AAI urges the Federal Trade Commission (“FTC”) to issue a Second Request and conduct a thorough investigation of the competitive effects of this merger.

The AAI’s review of the proposed merger is based on discussions with industry participants and a review of publicly available data and information. This paper provides our preliminary views of the major potential competitive concerns raised by the proposed transaction. Express Scripts’ bid for Caremark follows a competing acquisition proposal from CVS made on November 1, 2006. That proposal has already cleared FTC review and the agency must act on the Express Scripts/Caremark matter by March 8.<sup>3</sup> This White Paper addresses only the Express Scripts/Caremark transaction and renders no opinion on the CVS/Caremark proposal.

---

<sup>1</sup> We understand that Express Scripts has refiled their Hart-Scott-Rodino filing, giving the FTC an additional 30-day period to decide whether to issue a Second Request.

<sup>2</sup> The American Antitrust Institute is an independent Washington-based non-profit education, research, and advocacy organization. Our mission is to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy. For more information, please see [www.antitrustinstitute.org](http://www.antitrustinstitute.org). This working paper has been reviewed by the AAI Policy Committee and other individuals inside and outside the AAI. It has also been approved by the AAI Board of Directors. A list of our contributors of \$1,000 or more is available on request. Many thanks to William Comanor, Timothy Greaney, and David Balto for helpful comment and review.

<sup>3</sup> George Stahl, “CVS Boosts Caremark Bid by Raising Special Dividend,” *Wall Street Journal Online* (February 13, 2007), available <http://online.wsj.com/public/us>.

## SUMMARY

The AAI urges the FTC to conduct a full Second Request investigation of the Express Scripts/Caremark transaction and focus on the following issues:

- ***Is the merger likely to reduce competition for the provision of PBM services to some group of plan sponsors, especially large plan sponsors?***<sup>4</sup> Currently, Caremark, Express Scripts, and Medco are, by far, the three largest PBMs serving large plan sponsors. Express Scripts' proposed acquisition of Caremark reduces from three to two the key providers of PBM services to large plan sponsors and may result in higher prices, less innovation, and increased barriers to entry. The combined firm will have over 50 percent of the large plan sponsor market, a level at which unilateral anticompetitive effects can be presumed. The three national full service PBMs have significant cost advantages from economies of scale and scope in drug purchasing, mail order distribution, and specialty pharmaceuticals. Because of this, it is likely that the remaining PBMs will be unable to constrain any anticompetitive conduct because of their smaller size, geographic limitations, and lack of ability to secure rebates.
- ***Could the merger reduce competition for mail order services?*** The merger will combine two of the three largest pharmaceutical mail order companies in the U.S., giving them a market share of over 50 percent. The three major PBMs are clearly the largest mail order PBM operations in the U.S. with just under a 90 percent market share. As the FTC found in its PBM mail order study, mail order provides important cost savings and is increasingly important to sophisticated plan sponsors.<sup>5</sup> Smaller PBMs without internal mail order operations are at a significant competitive disadvantage.
- ***Could the merger lead to increased prices in the distribution of certain specialty pharmaceuticals?***<sup>6</sup> Specialty pharmaceuticals, which are more costly than traditional pharmaceuticals, are an increasingly important area of concern for cost-conscious plan sponsors and a major source of revenue for PBMs. Each of the major PBMs has acquired specialty pharmaceutical companies in the past three years, demonstrating the competitive significance of internalizing these operations. Express Scripts and Caremark are two of the three largest firms in the distribution of specialty pharmaceuticals. This merger could result in increased prices for the distribution of these drugs.
- ***Could the merger increase the threat of monopsony or oligopsony power in the reduction of services for the delivery of pharmaceutical services?*** The three national full service PBMs already possess the ability and incentive to exercise market power over

---

<sup>4</sup> A plan sponsor is the employer insurance company, union, or other entity which purchases PBM services on behalf of its employees or members.

<sup>5</sup> Federal Trade Commission, "Pharmacy Benefit Managers, Ownership of Mail-Order Pharmacies: A FTC Report" (August 2005), available at <http://www.ftc.gov/opa/2005/09/pharmbenefit.htm>.

<sup>6</sup> Specialty pharmaceuticals are very expensive drugs, typically biotech-developed and protein based drugs that are generally not distributed at a retail pharmacy store. These drugs often require special handling, such as refrigeration. Therefore, there is a need for special distribution capabilities and patient support services.

retail independent and chain pharmacies. PBMs purchase pharmacy services and prescription drugs from retail pharmacies and group them into networks to increase bargaining power vis-à-vis the pharmacy or pharmacy chain. Reimbursement from PBMs is a major source of revenue for retail pharmacies. The merger could allow the two remaining large national PBMs to decrease compensation to the retail pharmacies below competitive levels, ultimately leading to diminished service for consumers.

- ***Although the FTC is familiar with the PBM market, that should not lead to a short cut of this investigation.*** Past merger investigations such as the approval of the Caremark/AdvancePCS merger and other FTC studies should not provide a basis for approving this transaction.<sup>7</sup> Since the Caremark/AdvancePCS merger was consummated, concentration levels in the national full service PBM market have become more problematic as the largest PBMs have grown significantly. This merger reduces the number of competitors from three to two national full service PBMs and poses far more potentially significant competitive concerns than prior mergers.

## **THE IMPORTANT CONTEXT OF PBM MERGERS**

The AAI urges the FTC to consider the potential competitive effects of the proposed Express Scripts/Caremark acquisition in the greater context of the role of networks in health care markets. A recent series of articles in the Wall Street Journal observed that networks have not functioned effectively in the health care context and middlemen often seem to exercise market power:

[W]hile the Internet, deregulation and relentless corporate cost-cutting have squeezed middlemen elsewhere, the health-care middlemen are prospering. The three largest pharmaceutical benefit managers, for instance, had net income of \$1.9 billion last year, a sum that exceeds the annual operating budget of New York's Sloan Kettering cancer center. In corners of the system such as Medicaid managed care and nursing-home drugs, little-known intermediaries rack up tens or hundreds of millions of dollars in profit.<sup>8</sup>

Besides the possibility that market power is already being exercised in the PBM market, the potential competitive concerns that stem from an Express Scripts/Caremark merger must be considered within the context of an industry plagued with substantial allegations of fraudulent, deceptive, and anticompetitive conduct. As a bipartisan group of state legislators has noted:

We know of no other market in which there has been such a significant number of prominent enforcement actions and investigations, especially in a market with

---

<sup>7</sup> We note the law firm that represented one of the parties in the Caremark/AdvancePCS merger observed that the investigation was closed on a "quick look" review. See [http://www.jonesday.com/experience/experience\\_detail.aspx?exID=S9298](http://www.jonesday.com/experience/experience_detail.aspx?exID=S9298). This means that the Commission did not conduct a full investigation of that merger.

<sup>8</sup> Barbara Martinez, et al., "Health-Care Goldmines: Middlemen Strike it Rich," *Wall Street Journal*, A1 (December 29, 2006).

such a significant impact on taxpayers. Simply put, throughout the United States, numerous states are devoting considerable enforcement resources to combating fraudulent and anticompetitive conduct by PBMs. This is because those activities are taking millions of taxpayer dollars and denying government buyers the opportunity to drive the best bargain for the state.<sup>9</sup>

In the past three years alone, cases brought by the U.S. Department of Justice (DOJ) and State Attorneys Generals (AGs) have secured over \$300 million in penalties and fines for deceptive and fraudulent conduct by the three major PBMs. Several investigations of the three major PBMs continue by a group of AGs and the DOJ. The current concentrated nature of the national full service PBM market only exacerbates these problems and it increases the need for both government enforcement and potential oversight of the PBM industry. Careful scrutiny of the proposed merger is necessary to assure that these problems are not heightened by the increased concentration resulting from the combination of Express Scripts and Caremark.

## ANALYSIS

### **The Provision of PBM Services to Large Plan Sponsors May Be Harmed By the Acquisition**

The proposed merger could significantly reduce competition in the market for the provision of PBM services to large plan sponsors.<sup>10</sup> In the Caremark/AdvancePCS merger, the FTC reaffirmed that the provision of PBM services to large plan sponsors is a relevant market. (This market was first defined in the Lilly/PCS enforcement action in 1994). We believe that this market retains its vitality today. Large employers and unions which self insure are dependent on the full range of services that national full service PBMs provide. These entities usually must rely on national full service PBMs, which possess the economies of scale and scope that small PBMs lack.

Since the approval of the Caremark/AdvancePCS acquisition, the role of the three leading national PBMs has become increasingly developed and prominent. The national full service PBMs have created the broadest range of pharmacy networks and the strongest and lowest cost mail order systems. Those distribution systems provide them significant cost advantages over smaller non-integrated PBMs. Mail order, in particular, is the source of substantial cost advantages for PBMs.

In addition, since the Caremark/AdvancePCS investigation, the major PBMs have acquired specialty pharmaceutical firms which provide another substantial competitive distinction. Specialty pharmaceuticals are increasingly a critical part of the services sophisticated PBMs offer plan sponsors. This is because specialty pharmaceuticals are far more costly than traditional drugs and plan sponsors are demanding coverage of a broad range of these drugs for their

---

<sup>9</sup> Letter from Senator Mark Montigny to FTC Chairman Deborah Platt Majoras (May 11, 2005).

<sup>10</sup> We identify large plan sponsors as one group of customers that could be harmed by the merger because the Commission addressed those customers in the Caremark/AdvancePCS investigation. However, even smaller plan sponsors may be adversely affected by the merger and the Commission should investigate that question. Smaller plan sponsors may have even fewer options than large plan sponsors.

subscribers. Moreover, specialty pharmaceuticals are a major source of revenue for PBMs. In the past three years, each of the three national full service PBMs acquired some of the largest specialty pharmaceutical firms, therefore giving them a significant advantage over non-integrated PBMs.<sup>11</sup>

In light of the foregoing developments, it is very likely that smaller, non-integrated PBMs could not constrain any post-merger anticompetitive conduct.<sup>12</sup> In the Caremark/AdvancePCS merger, the FTC predicted that competition among the remaining full service PBMs (Medco, Express Scripts, and Caremark), along with “significant additional competition from several health plans and several retail pharmacy chains offering PBM services should suffice to prevent this acquisition from giving rise to a potentially anticompetitive price increase.”<sup>13</sup> However, the FTC’s predictions about the ability of second-tier PBMs to restrain potential anticompetitive conduct of the three national full service PBMs appear to have missed the mark. The largest PBMs retain over 90 percent of their business. To the extent that each of the major PBMs have lost business, they have primarily lost business to each other rather than to the second-tier PBMs.<sup>14</sup> In fact, major PBM executives have suggested that the only competitive threat they face is from each other.<sup>15</sup>

The fact that second-tier PBMs have not gained more business from the largest PBMs is not surprising. The largest PBMs possess substantial economies of scale in terms of purchasing power, mail order operations, and specialty pharmaceuticals that give them a significant cost advantage over the second tier PBMs. To illustrate this difference, consider the simple issue of buying power. The combined Caremark/Express Scripts entity will have over 150 million covered lives. Medco has over 60 million covered lives. The next largest PBM has only 32 million covered lives. If Express Scripts acquires Caremark, Medco and Express Scripts/Caremark will potentially be able to secure substantially greater rebates on pharmaceuticals purchased, providing a significant cost advantage over second-tier PBMs.

There is a similar disparity in size between the merged firm, Medco, and remaining PBMs in terms of the number of claims processed and prescriptions dispensed.<sup>16</sup> It is important to

---

<sup>11</sup> The fact that the major PBMs acquired other specialty pharmaceutical firms rather than expanding their own specialty pharmaceutical operations suggests that internal growth by smaller PBMs into specialty pharmaceuticals is difficult.

<sup>12</sup> By non-integrated we mean PBMs without mail order or specialty pharmaceutical operations.

<sup>13</sup> See Federal Trade Commission, “Statement, In the Matter of Caremark Rx, Inc./AdvancePCS,” (February 11, 2004), available at <http://www.ftc.gov/opa/2004/02/caremarkadvance.htm>.

<sup>14</sup> See Lehman Brothers, “Medco Health Solutions 5” (December 4, 2006) (observing that in 2006, 29 percent of Medco’s new business was from Caremark and 31 percent was from Express Scripts; in 2007, 33 percent was from Caremark and 26 percent was from Express Scripts).

<sup>15</sup> See Comments of David Snow, CEO of Medco, Medco Health Solutions Earnings Conference Calls (August 4, 2006 at 14; May 5, 2006 at 23).

<sup>16</sup> The disparity in size is similar whether measured on number of prescriptions or claims. For example, in annual prescriptions, the combined firm will have over 1 billion, Medco has over 500 million, and the next largest PBM has over 250 million. In annual claims the combined firm would have over 1.2 billion claims, Medco has over 700 million, and the next largest PBM has over 300 million.

recognize that PBMs are primarily distribution and claims processing businesses and economies of scale are central to cost differences in these types of business. These economies of scale are again a significant differentiating factor between the largest and smaller PBMs. Moreover, the largest PBMs have more sophisticated claims adjudication software, which is critical to handling multiple plans. Economies of scale are also important in operating the most sophisticated Information Technology (IT) systems efficiently, developing new IT systems, and spreading the costs for claims adjudication and cost control.<sup>17</sup>

Scale economies are also critical in the development of drug cost containment programs and new forms of clinical and therapeutic innovation. Clinical cost containment programs are most effective when supported by a strong database based on a large number of covered lives. Moreover, these clinical cost containment programs have large fixed costs associated with having pharmacists, RNs, and qualified staff interact with physician and patients. The largest PBMs are more effective at these types of clinical and therapeutic programs--another important distinction recognized by plan sponsors. Moreover, the success of new clinical innovation strategies is dependent on these economies of scale.<sup>18</sup>

The foregoing scale economies and a PBM's experience in handling large plan sponsors are often critical determinants of which PBMs can bid for the business of large plan sponsors. As an example, consider the Federal Employees Benefit ("FEB") program. The FEB contract was handled by Medco until 2005 when it switched to Caremark. Prior to Caremark's acquisition of AdvancePCS, Caremark may have been too small to effectively bid for the FEB program because it lacked the scale to handle the FEB mail order program. Similarly, the FEB may have been reluctant to rely on a smaller PBM, for which the FEB contract would have accounted for a disproportionate amount of its business. It would appear that with the acquisition of AdvancePCS, Caremark acquired the scale necessary to effectively bid for this business.

The foregoing analysis does not seek to criticize the exercise of buyer power by PBMs or their efforts to assist plan sponsors in controlling costs. Rather, it recognizes that only competition can ensure that the benefits of the exercise of buyer power are actually passed on to the ultimate consumers--the plan sponsors who purchase PBM services. Without competition, consumers cannot be assured that increased buying power will lead to lower prices.

### **There are Significant Barriers to Entry and Expansion**

The parties may suggest that second-tier PBMs serve as a competitive restraint, or could expand to become a more significant restraint. The facts appear to belie this possibility. The three largest PBMs consistently report that they retain over 90 percent of their business when contracts are

---

<sup>17</sup> For example, the largest PBMs have sophisticated proprietary IT systems to manage drug spending. Once a new prescription drug enters the market, these PBMs use modeling software to provide clients with projections of drug spending under various scenarios. From the first day the new drug becomes available, the PBMs use proprietary rule-development systems to make client-specific changes to a benefit plan's formulary, and clinical rules to address the new drug's utilization profile.

<sup>18</sup> Medco Health Solutions, Presentation at Wachovia Securities Healthcare Conference (January 30, 2007).

rebid.<sup>19</sup> Smaller PBMs primarily have adopted a niche strategy aimed at smaller governmental and private plan sponsors. As discussed in the previous section, these smaller PBMs lack the economies of scale and scope to effectively compete with the three major PBMs. Not surprisingly, on the rare occasions where the large PBMs lose business, it is primarily to other large PBMs.

The AAI believes that the following may be significant barriers to expansion by the second-tier firms:

- Second-tier PBMs operate at a significant cost disadvantage
- Second-tier PBMs lack mail order and specialty pharmaceutical operations and the lack of such operations only increases their cost disadvantage
- Second-tier PBMs lack the reputation to handle large plan sponsors
- There are significant switching costs involved in moving from one PBM to another

Reputational barriers can be an important barrier to expansion. PBM services--especially claims processing and clinical management--are heavily dependent on economies of scale and the ability to guarantee the highest level of performance. Thus, large plan sponsors will look for a proven track record and the experience of handling other sophisticated plan sponsors before seriously considering other PBMs.<sup>20</sup> That is another reason why the retention rate of the largest PBMs is so high.

The AAI believes that potential barriers to expansion and entry need to be carefully examined in a complete Second Request investigation which focuses on the significance of each of the factors identified above. In other mergers, the courts have found these types of impediments to be significant barriers to entry and expansion. For example, as the court observed in the FTC's successful challenge to the drug wholesalers mergers: "[t]he sheer economies of scale and scale and strength of reputation that the Defendants already have over these wholesalers serve as barriers to competitors as they attempt to grow in size."<sup>21</sup> We believe a careful examination may lead to a similar conclusion in this merger.

### **The Provision of Mail Order Pharmacy Services May Be Harmed by the Acquisition**

The provision of mail order services is another relevant market that could potentially be harmed by the proposed deal. As the FTC has recognized in its PBM mail order study, mail order services can be an important source of cost savings for plan sponsors and beneficiaries. Mail

---

<sup>19</sup> The fact that the same 3-4 firms have dominated the market since at least the time of the Lilly/PCS consent decree should create a significant level of skepticism about claims of ready expansion into the top tier. The 90 percent retention rate suggests that there are significant switching costs to converting to other PBMs.

<sup>20</sup> See *United States v. United Tote, Inc.*, 768 F. Supp. 1064, 1078 (D. Del. 1991) (describing importance of reputational barriers).

<sup>21</sup> *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 34, 57 (D.D.C. 1998); see *United States v. Rockford Memorial Hosp.*, 898 F.2d 1278, 1283-84 (7<sup>th</sup> Cir. 1990) ("the fact [that fringe firms] are so small suggests that they would incur sharply rising costs in trying almost to double their output ... it is this prospect which keeps them small").

order has increased as an important and efficient source of distributing pharmaceuticals by assisting plan sponsors in reducing the costs of drug distribution. Express Scripts' acquisition of Caremark, however, poses significant competitive concerns in the mail order market. The acquisition combines two of the three largest mail order firms in the United States, giving the combined firm over a 50 percent market share in the mail order market. The three largest PBMs have almost 90 percent of the PBM mail order market.

### **The Provision of Specialty Pharmacy Distribution Services May be Harmed by the Acquisition**

Express Scripts' acquisition of Caremark could pose competitive problems in the distribution of specialty pharmaceuticals. Specialty pharmaceuticals are expensive drugs, which often must be taken in the maintenance basis. Each of the large PBMs recognized the competitive significance of the distribution of specialty pharmaceuticals by acquiring major specialty pharmaceutical distributors in the past three years. Caremark is currently the second largest specialty pharmaceutical distributor in the U.S. behind Medco. The proposed transaction would make the combined entity even more dominant in this market. Moreover, in several drug categories, the combination of Caremark and Express Scripts will create the largest distributor of certain specialty pharmaceuticals and reduce the number of competitors from three to two.

### **The Acquisition May Lessen Competition in the Purchase by PBMs of Pharmacy Services and Prescription Drugs from Retail Pharmacies**

The acquisition poses competitive concerns over the exercise of monopsony power. One of the most important aspects of PBM services is the provision of distribution of drugs through pharmacies. As the Commission is aware, pharmacies play a critical role in providing services to consumers and educating them about the different alternatives in the market place. Pharmacies have also played an essential role in the creation and implementation of Medicare's pharmaceutical benefit program.

The proposed acquisition poses a threat of monopsony or oligopsony effects by enabling the combined firm, either alone or in combination with the other remaining national full service PBM to reduce the dispensing fees paid to retail pharmacies. We respectfully disagree with the observations of the FTC in the Caremark/AdvancePCS merger that characteristics of the PBM market made such an exercise of monopsony power unlikely. Monopsony concerns are not new to the PBM market.<sup>22</sup> There are several on-going private litigation cases alleging the exercise of monopsony power either by the national full service PBMs individually or collectively with each other. Accordingly, AAI believes that the exercise of monopsony power is a question that should be fully investigated.

---

<sup>22</sup> See Federal Trade Commission, "Statement, In the Matter of Caremark Rx, Inc./AdvancePCS," (February 11, 2004), available at <http://www.ftc.gov/opa/2004/02/caremarkadvance.htm> at pp 2-3.

## **This Acquisition May Diminish the Drive to Increase Transparency**

Finally, the merger could have an important impact on service competition between PBMs, primarily in terms of offering transparency to plan sponsors. PBMs raise a myriad of consumer protection issues. Coupled with the opaque nature of PBM operations, this has prompted consumers, employers, and plan sponsors to increasingly call for greater transparency in the PBM contracting process with the disclosure of rebates and guarantees that rebates are passed on to the plan sponsor. Some of the smaller PBMs have been particularly responsive to these calls for increased transparency.

The AAI is concerned that the proposed acquisition may diminish the ability of plan sponsors to secure transparency. Among the three largest PBMs, Express Scripts has been particularly reluctant to provide more transparency. In 2005, a coalition of major employers, led by the HR Policy Association established standards for transparency and a certification process for those PBMs seeking to meet these standards. HR Policy Association has certified several PBMs as compliant with these standards for transparency.<sup>23</sup> Express Scripts has declined to adhere to those standards.

## **The FTC Should Issue a Second Request**

In this white paper, the AAI has posed a number of questions regarding the competitive implications of the proposed Express Scripts/Caremark acquisition. However, these are preliminary concerns informed only by public information. It has been reported that Express Scripts re-filed their HSR filing with the hope of avoiding a Second Request.<sup>24</sup> The AAI believes that it would be a mistake to resolve the issues raised by this merger without issuing a Second Request and conducting a thorough investigation.

It is useful to compare the current matter to the FTC's successful challenge to the drug wholesaler mergers in 1998.<sup>25</sup> Many of the arguments presented in Express Scripts/Caremark regarding market definition, the nature of competition, and entry and expansion were also presented in the drug wholesaler mergers. Yet many of the facts that were critical to the FTC's successful challenge were all secured during the Second Request process including:

- The desire of the merging parties to merge as an effort to “rationalize capacity”
- Evidence of pricing coordination by three of the four wholesalers
- The cost disadvantage of the fringe firms

---

<sup>23</sup> “HR Policy Association Certifies Ten Pharmacy Benefit Managers Willing to Provide Full Transparency in Drug Contracting” (July 24, 2006), available at [http://www.hrpolicy.org/press/2006/release\\_072406.htm](http://www.hrpolicy.org/press/2006/release_072406.htm).

<sup>24</sup> See “Trying to Beat the Antitrust Clock,” *The Daily Deal* (February 5, 2007).

<sup>25</sup> *FTC v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34 (D.D.C. 1998).

Each of these facts was essential to the successful challenge and each was documented by the parties' documents secured in the Second Request process.<sup>26</sup> Absent the discovery in the Second Request process, the FTC may have missed facts critical to its recognition of the competitive problems posed by the merger.

Theoretical arguments--even those supported by voluntary submissions from the parties--may sometimes appear sufficient to assess the competitive impact of a merger. The AAI believes that such an approach would be mistaken in this case. In enjoining the merger of Coca-Cola and Dr Pepper twenty-years ago, Judge Gesell explained the importance of focusing on the parties' documents in determining the "business reality" of "how the market is perceived by those who strive to profit in it."<sup>27</sup> Only discovery through the Second Request process can give the FTC the type of thorough understanding necessary to accurately assess the competitive impact of this merger.

## **CONCLUSION**

PBMs serve an important role in the health care delivery system. In light of increasing pharmaceutical expenditures, PBMs are critical to controlling health care costs. But their promise of cost savings is dependent on a competitive market that will compel them to pass on cost savings to plan sponsors. Given the potential substantial harm to competition that this transaction may cause, the AAI urges the FTC to issue a Second Request and conduct a thorough investigation of whether Express Scripts' proposed acquisition of Caremark violates Section 7 of the Clayton Act.

## **CONTACT INFORMATION**

Diana L. Moss  
Vice President  
American Antitrust Institute  
Phone: 720-233-5971  
E-mail: [dross@antitrustinstitute.org](mailto:dross@antitrustinstitute.org)

---

<sup>26</sup> It is particularly instructive to note the FTC's extensive reliance on the defendants' documents in the FTC's Brief in Support of its Motion for a Preliminary Injunction. *See* <http://www.ftc.gov/os/1998/03/pipublic.pdf>.

<sup>27</sup> *FTC v. Coca-Cola Co.*, 641 F. Supp. 1128, 1132 (D.D.C. 1986).