Statement of Judiciary Committee Chairman Bob Goodlatte
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Oversight Hearing on
"Competition in the Pharmaceutical Supply Chain: the Proposed Merger of CVS Health and Aetna"
Tuesday, February 27, 2018 at 1:30 p.m.

I want to thank Chairman Marino for holding this hearing. This is an important opportunity to examine both the proposed merger and the broader issue of rising healthcare spending.

In 1960, healthcare spending was 5% of the economy. Today it is over 17% of GDP and projected to reach almost 20% by 2026. Prescription drugs account for the fastest increase, due, in part, to the high cost of advanced medications.

Competition is an important factor in healthcare costs and drug prices.

That is precisely why the Committee has been studying the question so closely. In fact, this hearing is the sixth that the Committee has held on competition in the healthcare market.

Mergers like this one are analyzed under section 7 of the Clayton Act, which prohibits mergers that would "substantially lessen competition" or "tend to create a monopoly."

The 69-billion-dollar union of CVS Health and Aetna is an example of a vertical merger. Since the companies operate at different levels in the pharmaceutical supply chain, they are not in direct competition.

The Federal Trade Commission has written that vertical mergers can "generate significant cost savings and improve coordination of manufacturing or distribution." I look forward to hearing specific examples of how the integrated company would achieve such potential savings and pass them on to consumers.

On the other hand, the FTC has also observed that "some vertical mergers present competitive problems." An integrated company has the ability to harm competitors' access to needed inputs. I am eager to hear our witnesses' response to those concerns.

On the broader question of rising drug costs, there has been a lot of finger-pointing in the industry. For the past few years, the Committee has examined nearly every aspect of the industry to identify every lever that can be pulled to lower costs. We recently examined FDA's drug approval process to determine how to curb certain abuses which have slowed the ability of cost-saving generics to get to market. Now we have an opportunity to study the structure of the supply chain.

The physical flow of pharmaceuticals is generally straightforward. Manufacturers sell to wholesalers, who sell to pharmacies, who sell to patients. By contrast, the payment structure is opaque.

Pharmaceutical manufacturers negotiate separate contracts at each link in the supply chain. This means separate deals with wholesalers, retail pharmacies, insurers, and pharmacy benefit managers. The manufacturers offer each of these entities discounts based on their ability to influence the amount of the manufacturer's drugs sold in the marketplace.

Generally speaking, the more middlemen there are, and the more arcane the pricing structure, the easier it is for inefficiencies to creep into the process.

Indeed, a study commissioned by drug companies found that middlemen account for 30% of the annual costs of medication.

Similarly, a June 2017 study from the University of Southern California found that for every 100 dollars spent at retail pharmacies, about 41 dollars accrue to intermediaries in the distribution system.

Perhaps because of this, there is renewed interest in rethinking the pharmaceutical supply chain.

Walgreens is reportedly now in takeover talks with AmerisourceBergen, one of three major drug wholesalers who together control 90% of the market. On January 30, 2018, Amazon announced a partnership to bring its penchant for disruptive innovation to the healthcare space. I understand that CVS and Aetna see their own proposed merger as an opportunity for disruptive innovation as well.

So there is much to discuss, and we have a distinguished panel of witnesses to assist us. I look forward to hearing from them.

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