

**Statement of The Federal Trade Commission
AmeriSource Health Corporation/Bergen Brunswig Corporation**

File No. 011-0122

The Federal Trade Commission today voted to close its investigation of the proposed merger of AmeriSource Health Corporation and Bergen Brunswig Corporation and to allow the merger to proceed without taking any enforcement action.

In light of recent Commission action in the drug wholesaling industry, as well as the precedent set by *Cardinal Health*,¹ the Commission conducted a particularly detailed investigation of the proposed merger of AmeriSource and Bergen Brunswig. The investigation revealed several significant differences between this merger and the transactions that the Commission challenged in 1998.

In the first place, this transaction will combine the third- and fourth-ranked firms in the drug wholesaling business into a presumably stronger number three;² if the 1998 transactions had proceeded, only the top two firms would have survived. In addition to bare numbers, however, we believe there is insufficient evidence to support a theory of competitive harm. For example, there is insufficient evidence that either of the merging firms has contributed significantly to the

¹ In 1998, the Commission won a federal district court order blocking two proposed mergers involving the nation's four largest drug wholesalers. *FTC v. Cardinal Health, Inc., et al.*, 12 F. Supp. 2d 34 (D.D.C. 1998); *see also* FTC News Release, "FTC Wins Court Order Blocking Mergers of Nation's Four Largest Drug Wholesalers into Two Companies" (July 31, 1998), *available at* <<http://www.ftc.gov/opa/1998/9807/drugcrt.htm>>. The court in *Cardinal Health* found that the Commission was entitled to a preliminary injunction, pending an administrative trial, because the Commission had met its burden of proof by showing that it was likely to succeed on the merits of its case in a full administrative proceeding. The four parties subsequently abandoned their respective transactions.

² *Cf.* Timothy F. Bresnahan & Peter C. Reiss, *Entry and Competition in Concentrated Markets*, 95 J. POL. ECON. 977 (1991); John E. Kwoka, *The Effect of Market Share Distribution on Industry Performance*, 61 REV. ECON. STAT. 101 (1979).

ongoing trend of decreases in drug wholesaling prices, or that the resulting industry structure would lead to price increases or prevent further price reductions.

Another notable difference relates to our evaluation of the parties' efficiencies claims. In merger cases – particularly those where the Commission likely will be able to sustain a *prima facie* case based on market structure and concentration – parties may argue that their proposed transaction will generate efficiencies sufficient to outweigh any potential harm to competition. As the *Horizontal Merger Guidelines* indicate, “[t]he greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market.”³ In *Cardinal Health*, the court held that, while the parties had proved that significant efficiencies likely would result from the proposed mergers, they had not established that “the projected savings from the mergers are enough to overcome the evidence that tends to show that possibly greater benefits can be achieved by the public through existing, continued competition.”⁴

Here, however, we believe that the parties' efficiencies arguments meet the test in the *Horizontal Merger Guidelines*. Based on our review, the proposed transaction likely will give the merged firm sufficient scale so that it can become cost-competitive with the two leading firms and can invest in value-added services desired by customers. Furthermore, we believe that the combined firm will be able to initiate these improvements more rapidly than either could do individually, and that this timing advantage will be significant enough to constitute a cognizable

³ U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* (as revised April 8, 1997), at §4.

⁴ *Cardinal Health*, 12 F. Supp. 2d at 63; *see also* FTC v. H.J. Heinz Co. & Milnot Holding Corp., 246 F.3d 708 (D.C. Cir. 2001) (applying same burden-shifting analytical framework).

merger-specific efficiency.⁵ The resulting firm, operating in a market increasingly characterized by value-added services, likely will provide customers with greater choices among suppliers and therefore will give customers sufficient leverage to obtain competitive prices.

Consequently, based on our review of the available evidence and the distinct factual circumstances of the drug wholesaling industry today, the proposed merger does not appear likely substantially to lessen competition or tend to create a monopoly in any relevant market. We have therefore closed our investigation.

As always, the Commission reserves the right to take such further action as the public interest may require.

⁵ *See Horizontal Merger Guidelines* § 4 at n.35.