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Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 21, 2012), on the World Wide Web, at :// . . / / . . A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 20, 2012. Write ''Coopharma, File No. 101 0079'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at :// . . / / . . As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. FTC Rule 4.9(c), 16 CFR 4.9(c).

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Coopharma achieved this result by encouraging its members: (1) To refuse to deal with third-party payers except through Coopharma; and (2) to threaten termination, or actually terminate, contracts with payers that refused to deal with Coopharma on the terms it demanded.

Coopharma collectively negotiated reimbursement rates with more than ten payers and has reached agreements on behalf of its members with seven of them. The mere threat of Coopharma members' collective action led two additional payers to pay higher rates. The proposed complaint alleges that Coopharma's actions caused payers to pay higher reimbursement rates to Coopharma members, and that this price increase ultimately may be passed along to consumers in the form of higher premium payments, diminished service, or reduced coverage. As a result, Coopharma's actions caused substantial harm to the consumers of Puerto Rico. Coopharma's conduct was unrelated to any efficiency-enhancing integration among its members.

As a specific example of Coopharma's misconduct, the proposed complaint alleges that CVS-Caremark (''Caremark''), a pharmacy benefits manager operating in Puerto Rico, was forced to rescind a rate cut and to enter into a master contract at a higher rate because of the collective action of Coopharma members.

In 2008, Caremark notified pharmacies throughout the country that it was reducing reimbursement on its Medicare Part D contracts. Coopharma mobilized its members to collectively resist that rate change. Coopharma provided its members with a form letter, which many sent, rejecting the new Medicare Part D contracts and telling Caremark to negotiate rates through Coopharma. Coopharma then informed Caremark that its members would not accept Caremark's reimbursement offer and demanded higher rates. Coopharma also informed certain Caremark clients that Caremark was threatening to terminate pharmacies that did not accept Caremark's rate change. This pressure led Caremark to rescind the Part D rate change for the pharmacies that sent letters rejecting the change.

Coopharma continued to pressure Caremark to enter into a master contract on all lines of business, including Medicare Part D. Coopharma used the same basic tactics to accomplish this goal, by: (1) Demanding that Caremark negotiate exclusively through Coopharma; (2) threatening that its members would terminate their Caremark contracts; and (3) contacting Caremark's clients. Indeed, Coopharma took the matter public by placing a newspaper advertisement stating that negotiations with Caremark had failed and that, as of May 28, 2009, ''we will not continue providing services'' to Caremark patients.

In August 2009, Caremark agreed to replace Coopharma's members' individual contracts with a master contract with Coopharma. The proposed complaint alleges that Caremark's price concessions cost it approximately $640,000 in 2009 alone.

In addition, the proposed complaint alleges that in at least two instances, the mere threat of collective terminations benefitted individual Coopharma pharmacies at a cost of millions of dollars to third-party payers. Coopharma pharmacies obtained higher reimbursement rates from third-party payers Medco and Medicare Mucho Mas even though negotiations with Coopharma did not result in a master contract. During its negotiations with Medco, Coopharma threatened to pull all Coopharma pharmacies out of Medco's network. In an attempt to prevent such a disruption of its network, Medco raised the reimbursement rates it paid to individual Coopharma pharmacies, a concession that cost Medco and its clients over $2 million between 2007 and 2011. Medicare Mucho Mas, a large

[2] P v. , 317 U.S. 341 (1943).

[3] v. , ., 445 U.S. 97, 105 (1980).

[4] 26 L.P.R.A. § 3101, .

[5] ., 26 L.P.R.A. §§ 31.040; 31.050; 31.060.

[6] The Commission is aware that Law 239, which regulates cooperatives generally, declared that cooperatives ''shall not be considered conspiracies or cartels to restrict business.'' 5 L.P.R.A. § 4516 (Law 239, § 20.5). The Commission and the Puerto Rico Department of Justice interpret Law 203 (which was passed after Law 239) to supersede Law 239. At the very least, Law 203 imposes additional requirements on health care cooperatives, which Coopharma cannot meet.

[7] . P v. , 486 U.S. 94, 101 (1988) (''The active supervision prong of the test requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.'').

de Puerto Rico (''COSSEC''), has no process in place for reviewing cooperatives' negotiations with payers or for approving or disapproving prices and other terms that result from such negotiations.

The Proposed Consent Order

The proposed consent order is designed to prevent the continuance and recurrence of the illegal conduct alleged in the proposed complaint, while allowing Coopharma to engage in legitimate joint conduct.

Paragraph II prevents Coopharma from continuing the challenged conduct. Paragraph II.A prohibits Respondent from entering into or facilitating agreements between or among any pharmacies: (1) To negotiate on behalf of any pharmacy with any payer; (2) to refuse to deal or threaten to refuse to deal with any payer; (3) to include any term, condition, or requirement upon which any pharmacy deals, or is willing to deal, with any payer, but not limited to, price terms; or (4) not to deal individually with any payer, or not to deal with any payer other than through Respondent.

The other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits Respondent from facilitating exchanges of information between pharmacies concerning whether, and on what terms, to contract with a payer. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

Paragraph III is designed to prevent the challenged conduct from reoccurring. Paragraph III.A requires Coopharma to send a copy of the complaint and consent order to its members, its management and staff, and any payers with whom Coopharma has contracted at any time since January 1, 2008. Paragraph III.B allows for contract termination if a payer voluntarily submits a request to Coopharma to terminate its contract. Pursuant to such a request, Paragraph III.B requires Coopharma to terminate, without penalty, any pre-existing payer contracts. Upon receiving such request, Paragraph III.C requires that Coopharma notify in writing each pharmacy that provides services through that contract to be terminated. Paragraph III.D requires Coopharma, for three years, to distribute a copy of the complaint and consent order to new members, officers, directors, and employees, and to payers who begin contracting with Coopharma and to post them on its Web site.

Paragraphs IV, V, and VI impose various obligations on Coopharma to report or to provide access to information to the Commission to facilitate its compliance with the consent order. Finally, Paragraph VII provides that the proposed consent order will expire 20 years from the date it is issued.

By direction of the Commission.

Donald S. Clark,

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