



February 26, 2020

[Submitted electronically via verticalmergerguidelines@ftc.gov and Washington, DC 20580

The Honorable Makan Delrahim
Assistant Attorney General
U.S. Department of Justice (DOJ)
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Draft Vertical Merger Guidelines for

Dear Chairman Simons and Assistant Att

The American Pharmacists Assoc
regarding the new draft 2020 Vertical Merger
describe how the federal antitrust agency
mergers violate antitrust law

We also submitted joint comment
(Alliance for Pharmacy Compounding & Me
Alliance of State Pharmacy Associations
recommending:

- x The agencies closely evaluate ve
significant anticompetitive effects
- x A reinvigorated and reimagined a
the status quo.
- x The agencies account for anticom
in vertical merger enforcement po
- x The agencies rigorously scrutinize
whether any efficiencies will be pa

lower quality or innovation for consumers. For example, in industries with extensive networks, many firms already have market power through their ownership of established networks or installed bases involving huge sunk costs. Vertical mergers can, in certain instances, increase those barriers to entry even more, raising costs and reducing innovation and quality for consumers.³

it contracts” from the PBMs just to continue to serve their longstanding patients. Such contracts often include blind price terms and onerous obligations that disadvantage community pharmacies. However, from a business standpoint, community pharmacies cannot just walk away from these contracts because if they did, they would lose patients/customers given the large share of covered lives these PBMs represent. From a patient care and consumer services

by 2020.²⁸ It also acts as a deterrent to smaller PBM and community pharmacies use of a Pharmacy Services Administrative Organization or a PSAO to contract on their behalf. PSAOs are no match for the PBMs. In 2013, the Government Accountability Office (“GAO”) conducted a study on the role and ownership of PSAOs and stated that “over half of the PSAOs we spoke with reported having little success in modifying certain contract terms as a result of negotiations. This may be due to PBMs’ use of standard contract terms and the dominant market share of the largest PBMs. Many PBM contracts contain standard terms and conditions that are largely nonnegotiable.”²⁹

Thank you for your consideration of our comments and your continued efforts to address the issues raised in our comments.