FOOD MARKETING INSTITUTE

September 1, 2011

The Honorable Jon Leibowitz
Chairman, United States Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 338
Washington, DC 20580

RE: Proposed Merger of Express Scripts, Inc. and Medco Health Solutions, Inc.

Dear Chairman Leibowitz:

The Food Marketing Institute (FMI) is writing in opposition to the proposed merger of Express Scripts (ESI) and Medco Health Solutions (Medco), two of the top three leading pharmacy benefit managers (PBMs). If this merger is approved, the new PBM would wield exorbitant market power, producing anticompetitive effects on pharmacy patient care and health care costs to both consumers and to FMI members as employers. FMI respectfully requests that that the FTC closely and carefully analyze the proposed consolidation.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 15,000 pharmacies. Their combined annual sales volume of $680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

FMI members are concerned about this acquisition because of the impact on their customers and employers. Customers appreciate the convenience of one-stop-shopping for both groceries and prescription drugs. And pharmacies in retail supermarkets have the unique ability to assist consumers with nutritional recommendations to accompany medication regimens. The emergence of supermarkets with retail pharmacies over the last decade has significantly spurred competition in drug distribution. And equally as important, all FMI members offer pharmacy benefits to their employees and are dependent upon the services provided by the large PBMs. The proposed acquisition will harm the ability of FMI members to serve both their customers and employees.

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Harm to pharmacy operations in retail supermarkets

FMI believes the merger between ESI and Medco would reduce competition resulting in decreased patient care and increased health care costs. The merger would likely lead to decreased reimbursement to pharmacies and significant reduction in reimbursement may lead to reduced service and diminished access to pharmacy patient care. The combined company would leave only two major PBMs, ESI and CVS Caremark, with about 80% of the national prescription drug plan market for large employers. ESI alone will have more than 35% of all prescriptions and will cover 6 of the 10 largest employers. With this level of market power, the consolidated PBM will have even more clout to diminish the role of retail pharmacies.

Because of its dominance, ESI would be able to exclude pharmacies from networks reducing consumer choice and convenience. Combining ESI and Medco would significantly increase their mail-order operations giving them enormous power to force patients to mail-order dispensing and away from the pharmacies at their local supermarkets. Highly restrictive pharmacy networks are likely to increase post-merger which will reduce patient choice disrupt patient care, and diminish competition in drug distribution.

Harm to FMI members as purchasers of PBM services

FMI members as employers provide pharmacy benefits for their employees and must purchase PBM services. Many of the FMI members are heavily reliant on the three major PBMs. The three major PBMs focus on integrated models, offering advanced technological capabilities, and in-house mail-order and specialty pharmacy operations. Most smaller PBMs do not have the economies of scale to offer integrated services. As a result, the three major PBMs are the only real alternatives for large employers. With the absence of Medco in the bidding process, there would be a significant loss of competitive pressure on ESI and CVS Caremark to lower prices.

The merger would likely increase the barriers of entry for smaller PBMs who aim to service large employers. The increase in ESI's economies of scale with significant mail-order operations and increased generic purchasing power, and the insurmountably high switching costs would make it difficult for these smaller firms to capture market share away from the remaining two large PBMs.

The combination of ESI and Medco will result in the new PBM having a 50% plus market share in specialty drug dispensing. This market share increases the PBM's buying power and ability to control a limited or exclusive distributorship of specialty drugs. So even if large employers prefer the transparent models of smaller PBMs it is likely they would be pressured to contract with one of the remaining two large PBMs because of their significant hold on specialty drug distribution.

We urge the FTC to adequately investigate the threat to market competition the proposed merger would produce. The behemoth PBM created by the merger would jeopardize proper patient care and adequate pharmacy access, and lead to increased prices and lack of choice for large employers. It is therefore vital that competition in this market be protected. FMI appreciates the opportunity to comment on this important matter and looks forward to working with the Federal Trade Commission as it conducts its review of the proposed merger.

Sincerely,

Erik R. Lieberman
Regulatory Counsel