

**Statement of Acting Chairman Maureen K. Ohlhausen
Regarding the Walgreens/Rite Aid Transaction
September 19, 2017**

Walgreens originally proposed to acquire all of Rite Aid in October 2015, and the Commission has been reviewing the original transaction and multiple revisions to that transaction ever since.

The parties terminated that original transaction in June 2017, stating publicly that they were abandoning the deal after being told it would be unable to gain government approval. The Commission subsequently examined a revised transaction whereby Walgreens would acquire roughly 1,900 Rite Aid stores, while Rite Aid would retain the majority of its network.

Our responsibilities in this matter are clear and well established by existing law. Section 7 of the Clayton Act prohibits mergers if “in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.” As the long-established, bipartisan Horizontal Merger Guidelines explain, merger analysis “is a fact-specific process through which the Agencies, guided by their extensive experience, apply a range of analytical tools to the reasonably available and reliable evidence to evaluate competitive concerns in a limited period of time.” As the Guidelines further explain, “[i]n any merger enforcement action, the Agencies will normally identify one or more relevant markets in which the merger may substantially lessen competition.”

Thus, the Guidelines lay out several key imperatives for the U.S. antitrust agencies in a merger review: we must carry out a fact-specific inquiry, typically identify a relevant market or markets, use reasonably available and reliable evidence to evaluate competitive concerns in that market, and do so in a limited period of time. Over the past 22 months, the Commission staff conducted an exactly thorough investigation of the competition issues associated with Walgreen’s acquisition of Rite Aid stores.

The three major chain pharmacies, Walgreens, Rite Aid, and CVS compete to win the business of third parties forming commercial, Medicare, and Medicaid retail pharmacy networks. It is well known that payers play these firms against each other to obtain the lowest possible rates. This competition is important and it needs to be protected.

That said, I do not think that this acquisition can be fairly characterized as a “three-to-two” merger. In some parts of the country, either Rite Aid or Walgreens (or both) have a limited presence, and, in some places, different types of retail pharmacy providers, such as mass merchants or supermarkets like Kroger and Wal-Mart, are significant competitors.

In light of the teaching of the Horizontal Merger Guidelines, I do not believe that a nuanced understanding of these facts can lead one to the view that this transaction is likely to lead to higher prices or otherwise harm consumers. Rite Aid will remain a robust competitor in the areas where its presence matters in the formation of retail pharmacy networks, and it will retain most or all of its stores in those areas. It appears that as part of this transaction, Rite Aid is likely

to achieve comparable or even lower costs for generic drugs for the foreseeable future. In my view, this should make Rite Aid a more attractive and effective competitor in those markets where it has a meaningful presence. By contrast, Walgreens' acquisition of Rite Aid stores in the revised transaction is limited to areas where competition between the two firms is not significant.

Commissioner McSweeney states that she would like the investigation to continue and raises several concerns. Following the Horizontal Merger Guidelines' well-established directives, however, suggests that those concerns are unfounded. Nor does it appear likely that a more extended investigation will somehow uncover additional, different facts overlooked during the staff's exhaustive, 22-month investigation.

Facts matter in antitrust cases, and here the facts compelled a conclusion that the correct resolution of this matter was to bring it to a close.