

Statement of Commissioner Terrell McSweeney Regarding the Walgreens/Rite Aid Transaction

I disagree with allowing Walgreens' acquisition of 1,932 Rite Aid stores to move forward without further investigation.¹ It is important for antitrust agencies to fully examine each transaction with the potential to reduce competition, especially given the trend towards consolidation across a number of U.S. industries.

Today, there are just three national drugstore chains in the United States: CVS, Walgreens, and Rite Aid. Rite Aid is already the smallest of the three – with roughly half the store count of CVS and Walgreens. This transaction would make Rite Aid's presence much more regional, leaving it with just over one-quarter the store count of either CVS or Walgreens. Rite Aid's footprint across much of the United States would be eliminated.

A substantial reduction in Rite Aid's geographic footprint would leave two or fewer major pharmacy chains in a number of regions where Walgreens and Rite Aid formerly competed. I am concerned that the transaction will leave some communities with fewer pharmacy options and could lead to higher drug prices and a deterioration in non-price aspects of competition.

One possible factor that could put upward pressure on prices is the transaction's potential impact on Rite Aid's costs. In particular, I am concerned that the transaction could reduce Rite Aid's long-term ability to obtain low generic drug prices and thus put upward pressure on drug prices generally. Rite Aid's CEO himself has said that "generic purchasing is a very big part of our business."² A Rite Aid with roughly 2,000 fewer stores could face higher generic drug acquisition costs in the future.³ The fact that Rite Aid, itself, felt it necessary to secure a contractual option to purchase generic drugs through an affiliate of Walgreens for a period of ten years following the transaction⁴ only highlights this concern for me. While the ten-year supply agreement might protect, and potentially even lower, Rite Aid's generic drug acquisition costs in the short run, I do not understand how this will solve the issue from a competition perspective.

¹ See Walgreens Press Release, Walgreens Boots Alliance Secures Regulatory Clearance for Purchase of Stores and Related Assets from Rite Aid (Sept. 19, 2017), <http://www.walgreensbootsalliance.com/newsroom/news/walgreens-boots-alliance-secures-regulatory-clearance-for-purchase-stores-and-related-assets-from-rite-aid.htm>.

² Rite Aid, Q1 2015 Earnings Call (June 19, 2014), <https://seekingalpha.com/article/2278193-rite-aids-rad-ceo-john-standley-on-q1-2015-results-earnings-call-transcript?part=single>.

³ See, e.g., *id.*, in which Rite Aid's CEO explained that decision to enter a strategic purchasing arrangement with McKesson was designed to harness the companies' "combined purchasing power" and motivated by the strategic need to "be very competitive on our drug cost." Rite Aid told investors that during the period of time it was transitioning its drug purchasing to McKesson, it experienced "a period of vulnerability that occurs here where we don't have as much leverage in the marketplace."

⁴ See Rite Aid Press Release, Rite Aid Enters Into an Agreement with Walgreens Boots Alliance to Sell 2,186 Rite Aid Stores and Related Assets for \$5.175 Billion (June 29, 2017), https://www.riteaid.com/corporate/news?p_p_id=riteaidpressreleases_WAR_riteaidpressreleasesportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-3&p_p_col_pos=2&p_p_col_count=3&riteaidpressreleases_WAR_riteaidpressreleasesportlet_action=getNewsRoomDetailItemNumber=2043.

The agreement is unlikely to fundamentally preserve Rite Aid's current underlying purchasing scale – it merely props that scale up for a limited period of time.

While I am disappointed that the transaction will move forward, I would like to recognize and thank the FTC staff for its extremely hard work investigating this transaction as well as the previous proposed Walgreens-Rite Aid merger. That deal would have involved the outright acquisition of Rite Aid by Walgreens⁵ – a far worse outcome in my mind. The parties abandoned their original transaction in June 2017. At the time, Rite Aid publicly stated that “[b]ased on FTC feedback, [Walgreens] and Rite Aid believed the merger would not be consummated.”⁶

The parties' new deal – particularly following its restructuring to leave hundreds more stores with Rite Aid – is better than the previous one. Many of the most obvious harms to competition have been addressed. Nevertheless, I am concerned that even the revised current Walgreens-Rite Aid deal continues to raise significant competition issues.

⁵ Press Release, Walgreens Boots Alliance, Walgreens Boots Alliance to Acquire Rite Aid for \$17.2 Billion in All-Cash Transaction (Oct. 27, 2015), <http://www.walgreensbootsalliance.com/newsroom/news/walgreens-boots-alliance-to-acquire-rite-aid-for-172-billion-in-all-cash-transaction.htm>.

⁶ Rite Aid, WBA/RAD Transaction Update, June 29, 2017, at 3, https://www.sec.gov/Archives/edgar/data/84129/000110465917042360/a17-15896_1ex99d2.htm. The parties terminated their original transaction voluntarily. The Commission did not take any official action with respect to the original Walgreens-Rite Aid merger. See Press Release, Federal Trade Commission, Statement of the Acting Director of FTC's Bureau of Competition Regarding the Walgreens/Rite Aid Transaction (June 29, 2017), <https://www.ftc.gov/news-events/press-releases/2017/06/statement-acting-director-ftcs-bureau-competition-regarding>.