

September 26, 2024

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: McKesson's and Cardinal Health's Proposed Acquisitions of Oncology Practice Networks

Dear Chair Khan, Commissioner Slaughter, Commissioner Bedoya, Commissioner Holyoak, and Commissioner Ferguson:

We write to urge the Federal Trade Commission (FTC) to block two recently proposed acquisitions by wholesale pharmaceutical distributors of management services organizations (MSOs) for oncology practice networks. On August 26, McKesson Corporation proposed to acquire a controlling stake in the Florida Cancer Specialists & Research Institute's (FCS') MSO, Core Ventures, for \$2.5 billion.¹ Less than a month later, Cardinal Health similarly proposed to acquire the Integrated Oncology Network, an MSO for an oncology practice network spanning 10 states, with 17 of its 50 locations in California, for \$1.1 billion.² If approved, the deals would vertically integrate major players from two heavily consolidated health care industries, exacerbating well-documented patient harms, particularly for patients receiving cancer treatment, and lessening competition in violation of antitrust laws.³

Both Acquirors — McKesson and Cardinal Health — Play Dominant Roles in the Highly Consolidated Wholesaler Market

Like pharmacy benefit managers (PBMs) and group purchasing organizations (GPOs), wholesalers such as McKesson and Cardinal Health are drug industry middlemen. Whereas PBMs manage pharmacy benefits on behalf of health plan sponsor clients and GPOs purchase drugs from manufacturers on behalf of providers, wholesalers distribute those drugs to hospitals, pharmacies, and other health care facilities.⁴ The wholesaler industry also has become extremely concentrated. The Big Three — McKesson, Cencora (formerly known as AmerisourceBergen), and Cardinal Health — account for 98% of the market.⁵

¹ "McKesson Signs Agreement to Acquire Controlling Interest in Florida Cancer Specialists & Research Institute's Core Ventures," McKesson, August 26, 2024, <https://www.mckesson.com/about-mckesson/newsroom/press-releases/2024/mckesson-signs-agreement-to-acquire-controlling-interest-in-florida-cancer-specialists--research-institutes-core-ventures/>.

² "Cardinal Health to acquire Integrated Oncology Network, a physician-led independent community oncology network," Cardinal Health, September 20, 2024, <https://www.prnewswire.com/news-releases/cardinal-health-to-acquire-integrated-oncology-network-a-physician-led-independent-community-oncology-network-302254191.html>.

³ "Confronting America's Concentration Crisis: A Ledger of Harms and Framework for Advancing Economic Liberty for All," American Economic Liberties Project, July 2020, <https://www.economicliberties.us/wp-content/uploads/2020/08/Ledger-of-Harms-R41.pdf>.

⁴ Sara Sirota, "The Dirty Secret of Drug Shortages," American Economic Liberties Project, October 2023, https://www.economicliberties.us/wp-content/uploads/2023/10/20230720-AELP-DrugShortages_Brief_v7.pdf.

⁵ "Regarding the Federal Trade Commission (FTC) and U.S. Department of Health and Human Services (HHS) Solicitation of Public Comment to Understand Lack of Competition and Contracting Practices that

McKesson leads this trio at 37% market share and ranks ninth on the Fortune 500, with a valuation of \$70.5 billion amassed via serial acquisitions.⁶ In 2010, McKesson purchased US Oncology, an MSO for the nation's largest network of independent oncology practices, for \$2.2 billion.⁷ MSOs circumvent state corporate practice of medicine laws, which prohibit corporations from owning medical practices.⁸ In a typical arrangement, a corporation forms an MSO to invest in medical practices helmed by a "friendly physician," who remains the legal owner of the practice while the MSO manages the practice in exchange for compensation.⁹ While nearly indistinguishable from corporate ownership, this arrangement is legal in most states and has allowed McKesson to essentially operate oncology physician practices.

McKesson has also acquired two GPOs, a specialty drug distributor, a specialty pharmacy, and a data and research arm.¹⁰ One of McKesson's GPO subsidiaries, Unity, reportedly leverages the US Oncology physician network's demand to negotiate steep rebates from drug manufacturers.¹¹ Research shows that GPOs pocket these rebates instead of passing them through to their provider clients, ultimately driving up costs.¹² McKesson likewise reportedly steers U.S. Oncology toward purchasing drugs that are most profitable to Unity, regardless of whether they are best suited to an individual patient's treatment plan; since the most profitable drugs are often the most expensive, this steering increases costs and may even adversely impact patient outcomes if they are steered away from the most effective drugs.¹³

McKesson's ownership of US Oncology presents an inherent conflict of interest. As one internal medicine physician explained, "US Oncology is incentivized to increase the price per dose... It's

May be Contributing to Drug Shortages," Hercules Pharmaceuticals, May 30, 2024, https://downloads.regulations.gov/FTC-2024-0018-6403/attachment_1.pdf.

⁶ Ibid. at 5. Molly Gamble, "Fortune 500's top 25 healthcare companies," *Becker's Hospital Review*, June 6, 2024,

<https://www.beckershospitalreview.com/rankings-and-ratings/fortune-500s-top-25-healthcare-companies-2024.html>.

⁷ "McKesson to Purchase US Oncology in a Transaction Valued at \$2.16 Billion," McKesson, November 10, 2010, <https://www.sec.gov/Archives/edgar/data/1333191/000119312510245200/dex991.htm>. Alicia Ault, "Oncology Mergers Are on the Rise. How Can Independent Practices Survive?" *Medscape*, June 19, 2024,

<https://www.medscape.com/viewarticle/oncology-mergers-are-rise-how-can-independent-practices-2024a1000be3>.

⁸ Erik Peinert, "Tools to Challenge Big Medicine: A Guide for State Lawmakers," American Economic Liberties Project, October 23, 2023,

<https://www.economicliberties.us/wp-content/uploads/2023/10/Tools-to-Challenge-Big-Medicine.pdf>.

⁹ For an example of corporate guidance for circumventing these laws, see Matt Wilmot, Wes Scott, and Ethan Rosenfeld, "Corporate Practice of Medicine Doctrine: Increased Enforcement on the Horizon?" Nelson Mullins, January 17, 2023,

https://www.nelsonmullins.com/insights/blogs/healthcare_essentials/enforcement/corporate-practice-of-medicine-doctrine-increased-enforcement-on-the-horizon.

¹⁰ "McKesson Uses PBM-Like Tactics in Oncology Drug Market to Boost Profits, Critics Allege," *The Capitol Forum*, August 22, 2023, <https://library.thecapitolforum.com/docs/70h9zc49hhrt>.

¹¹ Ibid. at 10.

¹² AELP et al. to the Federal Trade Commission, November 22, 2024,

<https://www.economicliberties.us/wp-content/uploads/2022/11/2022-11-22-AELP-FTC-6B-GPO-Letter-Fin al.pdf>.

¹³ Ibid. at 10.

incentivized to increase the number of doses. And it's incentivized to increase the number of patients in order to maximize revenue and maximize profits. [McKesson has] a responsibility to their shareholders."¹⁴ Cardinal Health, which accounts for 28% of the U.S. wholesale drug distribution market and ranks 14th on the Fortune 500, has similarly pursued a strategy of horizontal and vertical consolidation.¹⁵ Earlier this year, Cardinal completed its acquisition of Specialty Networks, a multi-specialty GPO and data analytics firm, for \$1.2 billion.¹⁶ Other significant acquisitions over the past decade include several of Medtronic's medical device lines for \$6.1 billion and the Harvard Drug Group, another wholesaler, for \$1.2 billion.¹⁷ Cardinal also formed Red Oak Sourcing, a generic purchasing consortium, as a joint venture with CVS Health in 2014. Acquiring the Integrated Oncology Network would give Cardinal a foothold among providers, extending its vertical integration along the pharmaceutical supply chain and thus raising similar concerns of patient steering.¹⁸

Both Targets — FCS' Core Ventures and the Integrated Oncology Network — Are in the Highly Consolidated Oncology Practice Management Services Market

Now, McKesson is looking to further expand its market power in oncology care by acquiring FCS' Core Ventures, the MSO for Florida's largest independent oncology practice, with more than 250 physicians across nearly 100 locations. Similarly, Cardinal Health has proposed to acquire the Integrated Oncology Network, an MSO for an oncology practice network that includes more than 100 providers.

Like other health care providers, oncology practices are highly concentrated.¹⁹ Between January 2008 and April 2020, 722 oncology practices were acquired by hospitals, and 203 merged with

¹⁴ AHealthcareZ – Healthcare Finance Explained, "US Oncology Owned by Healthcare Corporation McKesson... Conflict of Interest in Cancer Care?" YouTube, January 1, 2021, <https://www.youtube.com/watch?v=MboDGeUgnAY>.

¹⁵ Ibid. at 6.

¹⁶ "Cardinal Health completes acquisition of Specialty Networks and its PPS Analytics platform," Cardinal Health, March 18, 2024, <https://newsroom.cardinalhealth.com/2024-03-18-Cardinal-Health-completes-acquisition-of-Specialty-Networks-and-its-PPS-Analytics-platform>. "Cardinal Health to acquire Specialty Networks and its PPS Analytics platform, a technology enabled multi-specialty group purchasing and practice enhancement organization," Cardinal Health, January 31, 2024, <https://newsroom.cardinalhealth.com/2024-01-31-Cardinal-Health-to-acquire-Specialty-Networks-and-its-PPS-Analytics-platform,-a-technology-enabled-multi-specialty-group-purchasing-and-practice-enhancement-organization-in-urology,-rheumatology-and-gastroenterology>.

¹⁷ "Cardinal Health Completes Acquisition Of The Harvard Drug Group For \$1.115 Billion," Cardinal Health, July 6, 2015, <https://newsroom.cardinalhealth.com/2015-07-06-Cardinal-Health-Completes-Acquisition-Of-The-Harvard-Drug-Group-For-1-115-Billion>. "Cardinal Health Completes Acquisition Of The Harvard Drug Group For \$1.115 Billion," Cardinal Health, July 6, 2015, <https://newsroom.cardinalhealth.com/2015-07-06-Cardinal-Health-Completes-Acquisition-Of-The-Harvard-Drug-Group-For-1-115-Billion>.

¹⁸ Adam Fein, "The Big Three Generic Drug Mega-Buyers Drove Double-Digit Deflation in 2018. Stability ahead? (rerun)," Drug Channels, July 9, 2019, <https://www.drugchannels.net/2019/07/the-big-three-generic-drug-mega-buyers.html>.

¹⁹ Michael Milligan, "Practice Consolidation Among US Medical Oncologists, 2015-2022," *JCO Oncology Practice*, February 26, 2024, <https://ascopubs.org/doi/10.1200/OP.23.00748>.

another practice or were acquired by a corporate entity, such as a private equity firm.²⁰ Another study found that, “[b]etween 2007 and 2017, hospital and health system ownership of oncology practices increased from 20% to 54%.”²¹ By 2022, the 102 largest oncology practices employed 44% of oncologists.²²

Early this year, FCS announced it had established an MSO, Core Ventures, opening the door for a wholesaler acquisition as McKesson is currently proposing to further foreclose competition in the oncology market.

Wholesaler Acquisitions of Oncology MSOs Harm Patients and Competition

McKesson and Cardinal Health are not alone in pursuing this strategy; private equity firms have also played a significant role in consolidating oncology practice networks.²³ But, unlike other types of acquirors, wholesalers use their market power in various parts of the health care supply chain to more directly gain at the expense of cancer patients, who suffer from persistent drug shortages and higher prices. Specifically, the Big Three wholesalers leverage their market share to put downward price pressure on generic drug manufacturers, from whom they also demand exclusive contracts; the manufacturers, in turn, consolidate, discontinue production of unprofitable drugs, underinvest in factories, or close — all of which have contributed to record-high shortages.²⁴ A June 2024 survey of cancer centers found 89% of respondents reported shortages of oncology drugs, including the chemotherapies vinblastine, etoposide, and topotecan.²⁵

²⁰ “2020 Community Oncology Alliance Practice Impact Report,” Community Oncology Alliance, April 23, 2020, <https://mycoa.communityoncology.org/education-publications/practice-impact-reports/2020-community-oncology-alliance-practice-impact-report>.

²¹ Zachary Frosch et al., “Does American Cancer Care Need a Bailout? Independent Oncology Practices in the COVID-19 Era,” *JAMA Oncology*, September 1, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8278977/>.

²² *Ibid.* at 20.

²³ “TPG and AmerisourceBergen Announce Completion of Acquisition of OneOncology,” Cencora, June 9, 2023,

<https://investor.cencora.com/news/news-details/2023/TPG-and-AmerisourceBergen-Announce-Completion-of-Acquisition-of-OneOncology/default.aspx>. “USA Community Oncology Services Market Competitor Scenario — Market Positioning And Player-Based Strategies,” The Business Research Company, February 21, 2023, <https://www.prnewswire.com/news-releases/usa-community-oncology-services-market-competitor-scenario--market-positioning-and-player-based-strategies-by-the-business-research-company-301751845.html>.

“TPG, AmerisourceBergen to buy OneOncology in \$2.1 billion deal,” Reuters, April 20, 2023, <https://www.reuters.com/article/business/tpg-amerisourcebergen-to-buy-oneoncology-in-2-1-billion-deal-id-USNIKBN2WH12L/>.

²⁴ *Ibid.* at 4. “Drug Shortage Statistics,” American Society of Health System Pharmacists and the University of Utah Drug Information Service, accessed August 8, 2024, <https://www.ashp.org/drug-shortages/shortage-resources/drug-shortages-statistics?loginreturnUrl=SSOCheckOnly>.

²⁵ “New Survey from NCCN Finds Cancer Drug Shortage Management Remains a Moving Target, Impacting Clinical Trials,” National Comprehensive Cancer Network, June 26, 2024, <https://www.nccn.org/home/news/NewsDetails?NewsId=4620>.

As mentioned, wholesalers do not necessarily pass along the savings to their clients, compounding other middlemen price markups along the drug supply chain for providers, health plan sponsors, and patients. In fact, FCS cited drug shortages and price increases as motivation for establishing Core Ventures, which handles contracting with wholesalers and GPOs.²⁶

Competition also suffers. By pursuing vertical consolidation via serial acquisitions along the pharmaceutical supply chain, including of GPOs and oncology practice network MSOs, a wholesaler secures its role as a network's prime or sole distributor and GPO, effectively foreclosing rivals and new market entrants in two lines of business.²⁷ As a result, upstart wholesalers are unable to break into the market; the generic drug manufacturer market grows less resilient; and patients and providers have fewer options from which to choose.

Both Acquisitions Likely Violate Antitrust Law

Given these harms, McKesson's and Cardinal Health's proposed acquisitions likely violate Section 7 of the Clayton Act. As the Supreme Court has explained, vertical mergers and acquisitions — where companies in a supplier-customer relationship become entwined — inherently entail a risk that, “by foreclosing the competitors of either party from a segment of the market otherwise open to them, the arrangement may act as a clog on competition,” depriving “rivals of a fair opportunity to compete.”²⁸ While not per se unlawful, like any other transaction subject to the Clayton Act, vertical transactions are prohibited 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.”²⁹ The intent of the Clayton Act is to halt monopolization trends in their incipiency. See, e.g., *United States v. AT&T, Inc.*, 916 F.3d 1029, 1032 (D.C. Cir. 2019); see also *FTC v. Heinz*, 246 F.3d 708, 719 (D.D.C. 2001) (A merger violates Section 7 if it “create[s] an appreciable danger” of anticompetitive consequences after consummation of the merger.)

The 2023 Merger Guidelines issued by the FTC and the Antitrust Division of the Department of Justice flag a variety of situations where a merger may raise antitrust concerns, including where a merger would “limit access to products or services that... rivals use to compete” (Guideline 5), “entrench or extend a dominant position” (Guideline 6), heighten the risk of concentration in an industry already undergoing a trend toward consolidation (Guideline 7), or continue a practice of serial acquisitions (Guideline 8).³⁰

Both proposed acquisitions:

- Likely would limit access to products, services, or routes to market that the merged firms' rivals use to compete. By acquiring an MSO for an oncology practice network, a

²⁶ “Florida’s Largest, Long-Standing Community Oncology Practice Establishes Management Services Organization,” Florida Cancer Specialists & Research Institute, January 5, 2024, <https://flcancer.com/articles/mso2024/>.

²⁷ Adam Fein, “The Battle for Oncology Margin: How Private Equity Enables Vertical Integration by Pharmaceutical Wholesalers (rerun),” Drug Channels, December 14, 2023, <https://www.drugchannels.net/2023/12/the-battle-for-oncology-margin-how.html>.

²⁸ *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 346 (1962) (cleaned up, citations omitted); see also “Merger Guidelines,” U.S. Department of Justice and Federal Trade Commission, December 18, 2023, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

²⁹ 15 U.S.C. § 18.

³⁰ See Merger Guidelines at 28.

wholesaler ensures that “neither a manufacturer nor a competitor can disrupt the business relationship.”³¹ Therefore, the merged firm “is more able to limit access ... if competition to supply [alternative options to the merged firm’s related product] is limited.”³²

- Involve an already dominant firm — McKesson and Cardinal Health, respectively — attempting to extend that dominant position into a different market: oncology practice management services.
- Would increase barriers to entry.³³ By buying its practice client, a wholesaler would have both the ability and incentive to foreclose its existing rivals and new market entrants from competing for that client’s business. Thus, in addition to existing barriers to entry, such as licensing and accreditation requirements, regulatory compliance, and contracting with drug manufacturers at competitive prices, an independent wholesaler would have several new challenges, including identifying and selling to provider customers that are not yet owned by or in an exclusive contract with one of the Big Three.³⁴ To compete for the Big Three’s existing customers, an independent wholesaler would not only have to offer lower prices but also navigate anticompetitive contract terms, such as rights of first refusal, which entitle the Big Three to match any competitive offer.³⁵
 - In either case, the independent wholesaler would incur high capital costs and time investments to enter the market: “Manufacturers are generally unwilling to supply wholesalers without a sufficient customer base, while healthcare providers and pharmacies will not find it valuable to engage a wholesaler until it has sourced a sufficiently broad [inventory] at significant volume. Startups thus face a ‘cold start problem’ where an entrant needs to achieve ‘enough critical mass [of suppliers and customers] to trigger a positive feedback loop.’”³⁶
 - An independent wholesaler would also be denied scale that comes from network effects. This is because the resulting merged firm could “extract volumes of sensitive data regarding customers’ operations, contracts, and finances, including: purchasing demand and usages, pricing, competitive offers, reimbursement structures, administrative cost centers, and more. Customers input and provide access to this data ... often not realizing that the data is being analyzed and used to benefit the distribution enterprise, including by locking down these same customers’ business and excluding competition.”³⁷
- Fit into a broader trend toward vertical integration, as evidenced by each of the Big Three’s serial acquisitions along the pharmaceutical supply chain. More specifically, McKesson acquired US Oncology in 2010, followed by Cencora’s 2023 acquisition of OneOncology and McKesson’s and Cardinal Health’s recently proposed acquisitions.

³¹ Ibid. at 28.

³² See Merger Guidelines at 28.

³³ Courts have held that the presence of entry barriers is a factor that weighs in favor of blocking a vertical transaction. See, e.g., *Fruehauf Corp. v. FTC*, 603 F.2d 345, 351 (2d Cir. 1979) (considering various factors including capital costs and scale economies); *U.S. Steel Corp. v. FTC*, 426 F.2d 592, 605 (6th Cir. 1970) (explaining that entry barriers can include “possible reliance on suppliers [sic] from a vertically integrated firm with whom he is also competing.”). Entry barriers are also addressed in Guidelines 5 and 6 of the Merger Guidelines.

³⁴ Ibid. at 5.

³⁵ Ibid. at 5.

³⁶ Ibid. at 5.

³⁷ Ibid. at 5.

Moreover, as a result of this trend, “[o]ncology is now the most vertically integrated specialty.”³⁸

Under the Biden-Harris administration, the FTC has blocked or forced the abandonment of several similarly harmful health care mergers, including unwinding the Illumina-GRAIL merger, which would have created a monopoly over cancer screening tests.³⁹ More recently, the agency sued the “Big Three” PBMs for inflating insulin prices at the expense of vulnerable patients.⁴⁰ The suit follows the release of an interim staff report on PBMs, which documents how vertical integration enables patient steering, as part of an ongoing inquiry into drug industry middlemen.⁴¹ The agency also partnered with DOJ and the U.S. Department of Health and Human Services to investigate the impact of corporate ownership in health care.⁴²

We respectfully request that the FTC apply the same level of scrutiny to block McKesson’s proposed acquisition of FCS’ Core Ventures and Cardinal Health’s proposed acquisition of the Integrated Oncology Network, both of which exceed the threshold for merger review by at least ninefold.⁴³ Otherwise, American cancer patients will be left to pay the life-threatening costs of ever-increasing wholesaler concentration, casualties in an intensifying “cancer care arms race.”⁴⁴

Sincerely,

American Economic Liberties Project
Just Care USA

³⁸ Ibid. at 22.

³⁹ Harris Meyer, “Biden’s FTC Has Blocked 4 Hospital Mergers and Is Poised to Thwart More Consolidation Attempts,” *KFF Health News*, July 18, 2022, <https://kffhealthnews.org/news/article/biden-ftc-block-hospital-mergers-antitrust/>. “FTC Orders Illumina to Divest Cancer Detection Test Maker GRAIL to Protect Competition in Life-Saving Technology Market,” Federal Trade Commission, April 3, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/04/ftc-orders-illumina-divest-cancer-detection-test-maker-grail-protect-competition-life-saving>.

⁴⁰ “FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices,” Federal Trade Commission, September 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

⁴¹ “Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies,” Federal Trade Commission, July 9, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.

⁴² “Federal Trade Commission, the Department of Justice and the Department of Health and Human Services Launch Cross-Government Inquiry on Impact of Corporate Greed in Health Care,” Federal Trade Commission, March 5, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/03/federal-trade-commission-department-justice-department-health-human-services-launch-cross-government>.

⁴³ “FTC Announces 2024 Update of Size of Transaction Thresholds for Premerger Notification Filings,” Federal Trade Commission, January 22, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-announces-2024-update-size-transaction-thresholds-premerger-notification-filings>.

⁴⁴ Dave Muoio, “Cardinal Health acquiring Integrated Oncology Network for \$1.1B,” *Fierce Healthcare*, September 20, 2024, <https://www.fiercehealthcare.com/practices/cardinal-health-acquiring-integrated-oncology-network-11b>.

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