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May 28, 2009

The Honorable Jon Leibowitz  
Chairman  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, D.C. 20580

*Re: CVS Caremark Corporation Merger*

Dear Chairman Leibowitz:

I respectfully ask the Commission to reopen its investigation of CVS Corporation's acquisition of Caremark Corporation. This merger, combining the largest pharmaceutical chain with the second largest pharmaceutical benefit manager, was cleared by the FTC after only a brief investigation in November 2007. Some evidence suggests that the merged entity, CVS Caremark, may be engaging in unfair business practices that are harming not only consumers and patients, but also local community pharmacies.

In recent months, I have been made aware of reports that consumers are being deceived or harmed by CVS Caremark's practices. Specific reports include:

- CVS Caremark has placed consumers on a so-called "maintenance choice" program, under which consumers can only get their prescriptions by mail or at a CVS pharmacy. CVS Caremark apparently switched consumers to the "maintenance choice" program without their permission or the permission of their health plan;
- CVS Caremark has significantly reduced the co-pays for members when they fill their long-term prescriptions at CVS pharmacies, which raises the costs for members who choose to use non-CVS pharmacies;
- CVS Caremark has adopted a program to steer consumers to CVS pharmacies. When a Caremark member fills a prescription at a CVS pharmacy, the CVS pharmacist is informed through the Caremark electronic system whether the recipient uses non-CVS pharmacies. In those situations, the CVS pharmacist tells the consumer that it is dangerous to use multiple pharmacies. This is an apparent misuse of consumer information possessed by Caremark and may be a violation of CVS' firewall agreement with other pharmacies; and

- CVS Caremark co-brands its prescription drug card in a fashion that may mislead consumers that the benefit card can only be used at CVS.

Should these reports prove to be well-founded, patients, consumers, and local pharmacies will suffer clear harm. I encourage the FTC to reopen the CVS Caremark merger investigation and to review whether the acquisition poses a threat of reducing competition or whether CVS Caremark is engaging in any unfair or deceptive practices. Should you have any questions regarding this matter, please contact Celeste Drake (202-225-6676) in my office.

I appreciate your consideration of this important matter.

Sincerely,



Linda T. Sánchez