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In Antitrust Settlement, California Imposes Unprecedented Controls on Private Equity Purchase of Walgreens

by Jody Boudreault

In an unprecedented antitrust action, the California Attorney General (AG) has intervened in a transaction that did little more than change the ownership of Walgreens Boots Alliance (Walgreens) to a private equity firm (PE) without structural impact on any market. As part of what would have seemed likely to be a routine regulatory approval process, the AG imposed controls on the operation of Walgreens' business in California and prohibited future, speculative vertical M&A transactions with specified companies. In essence, the AG acted against transactions that did not exist and were not under review in the regulatory process and which would involve industries—retail pharmacy and pharmacy benefit management (PBM)—where many previous vertical transactions have passed antitrust review successfully. A blanket prohibition on different transactions not currently in front of the agency in settlement of a deal with no inherent antitrust issues is highly unusual if not unprecedented in this century.

Walgreens traded publicly for many years under the ticker WBA. Historically, Stefano Pessina played an integral role in the business as Executive Chairman of the Board of Directors from 2021, CEO from 2015-2021, and in other roles back to when his company merged with Boots in 2006. He was the largest single shareholder with about 17% of WBA's outstanding stock.

On March 6, 2025, Walgreens entered into an agreement to be acquired by an affiliate of Sycamore Partners (Sycamore), a PE firm. As part of the agreement, Pessina agreed to participate as an investor in Sycamore's acquisition. Specifically, Pessina and his holding company agreed to "reinvest all of their [c]ash [c]onsideration received in the transaction, in addition to an incremental cash investment, into the acquiring company." Pessina invested $1.745 billion reportedly increasing his stake in the company when it went private. The deal closed on August 28, 2025.

On the same day, California AG Rob Bonta announced the landmark settlement with Walgreens and its new owner, Sycamore. The settlement was reviewed under California's retail drug and grocery merger notice law (Corp. Code § 14700 (2024)) enacted in October 2023, and marks a significant departure from prior state-level antitrust enforcement actions involving pharmacy or healthcare transactions or PE buyers.

No Inherent Antitrust Issues in the Deal

The Sycamore buyout replaced shareholders with private equity owners, exchanging shareholder capital for private capital. No structural factors suggest any antitrust issue with the deal.

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Sycamore and Pessina are not strategic buyers of Walgreens—public reports show no ownership of competing or vertically integrated businesses. They do not even appear to own any complementary businesses. The transaction does not implicate any of the guidelines in the 2023 Merger Guidelines issued by the U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC). Thus, nothing inherent in the transaction would seem to raise an antitrust issue.

Generally, the point of a consent settlement "is to protect the competition that existed before a transaction takes place" in the post-transaction world.[1] For the California AG, however, the fact that a PE firm bought a controlling stake in Walgreens was significant enough to trigger this extraordinary settlement.

Harms Identified by California

For proposed retail pharmacy acquisitions, the statute requires the Attorney General "to assess the competitive effects" on "patient choice, medicine pricing, access to medications, and factors affecting the supply of licensed pharmacists, pharmacy technicians, and pharmacists-in-charge."

As noted above, the simple change to the ownership structure of Walgreens fails to threaten a competitive effect or any other effect on the statutory factors. Nevertheless, AG Bonta identified potential theoretical harms from PE ownership and future potential PBM ownership of Walgreens in the court filings:

- An ownership change from a pharmacy operator to a private equity operator may "threaten patient access, safety, and affordability" of medicine "as well as detrimentally impact pharmacists" to the extent Sycamore "takes unreasonable actions that lessen Walgreens' competitive force . . . ." For example, if the company is "leveraged with debt and/or drained of liquidity . . . ."
- The transaction may have negative effects "if Walgreens is transferred in the short run to the Big Three PBMs, thereby increasing vertical integration, lessening patient choice and access, and disadvantaging remaining independent pharmacies in California." California's concern with vertical integration is that "patients [may] be[] steered to the pharmacy operation of the Big Three PBMs even more than is already occurring to the detriment of access and affordability . . . ."

Additionally, in his press release, AG Bonta expressed amorphous alarm over alleged PBM profitability: "PBMs have overtaken the market and now wield outsized power to reap massive profits at the expense of consumers and local community pharmacies."

Based on these concerns, California imposed a seven-year restriction on private capital.

Key Terms of the Settlement

The agreement operates as an injunction that:

- Prohibits selling "the entirety of Walgreens' operations, substantially all of its assets," or substantially all of its pharmacies located in California to any of four pharmacy benefit managers named in the Settlement Agreement for the next seven years;

[1] Fed'l Trade Comm'n, Dissenting Statement of Commissioner Noah Joshua Phillips, Regarding the Commission's Withdrawal of the 1995 Policy Statement Concerning Prior Approval and Prior Notice Provisions in Merger Cases, (July 21, 2021) at 3.

- Requires 90 days' notice to the Attorney General of any plans to sell scripts or pharmacies in California or to terminate pharmacy operations in California;
- Requires Sycamore to use "best efforts" for seven years to maintain operations across Walgreens' 450+ California locations; and
- Requires Walgreens for five years to use commercially reasonable efforts "to negotiate in good faith with any union representing pharmacy workers."

Settlement Prohibits A Future Theoretical Deal Not Reviewed for Anticompetitive Effects

California did *not* review and is not reviewing any proposed sale of Walgreens to any PBM or parent company of a PBM. Yet the settlement prohibits such a sale over the next seven years to companies listed in Exhibit B to the Settlement Agreement: CVS Caremark or CVS Healthcare Corporation, Express Scripts or The Cigna Group, Optum Rx or UnitedHealthcare Group Incorporated, Prime Therapeutics, LLC or any Blue Cross and Blue Shield Association owners of Prime Therapeutics so long as Prime "remains in a material collaboration relationship with Express Scripts . . . ."

While federal antitrust authorities used this type of blanket prohibition on future transactions in the 1950s, that was before the HSR Act required parties to notify antitrust agencies in advance of their mergers.[2] I am not aware of a settlement in the last twenty-five years where both the transaction under review and the future prohibited transaction lacked analysis of an anticompetitive effect.[3] Instead, in modern settlements the antitrust agencies may include prior notice or more rarely prior approval clauses. This gives them a chance to review future transactions by parties settling what the agency believes is an illegal merger. Even in cases of prior approval, however, the agency reviews the potential effects of the future transaction to approve or block it.[4]

California's remedy is unusual because it bans certain transactions without assessing their competitive effects.

Previous PBM-Retail Pharmacy Transactions Successfully Passed Antitrust Review

Retail pharmacies are stores that dispense medications to the public: drugstores, grocery stores with pharmacies, and mass merchant stores with pharmacies. Of the top three PBMs, CVS Caremark is the only one that owns retail pharmacies.

Large retail pharmacy-PBM mergers have passed antitrust review over the past decades. For example, the FTC reviewed CVS's acquisition of Caremark Rx at the end of 2006. At the time, CVS was the second-largest drugstore chain in the country and Caremark Rx was the leading PBM. The

[2] *E.g.*, *United States v. Robertshaw-Fulton Controls Co.*, 1957 U.S. Dist. LEXIS 4218 (W.D. Pa. 1957); *United States v. General Electric Co.*,1952 U.S. Dist. LEXIS 1924 (N.D. Ohio 1952); *United States v. Liquid Carbonic Corp.*, 1952 U.S. Dist. LEXIS 1918 (E.D.N.Y. 1952).

[3] *Cf. e.g.*, DOJ required Baker Hughes to divest its diamond drill bit business to eliminate anticompetitive concerns in the Baker Hughes/Eastman Christensen merger. Baker Hughes was barred from divesting to its major competitors, including Diamant Boart Stratabit. Final Judgment, *U.S. v. Baker Hughes Inc.*, Civ. No. 90-0825 (D.D.C. filed Aug. 22, 1990) at IV.F. Baker Hughes divested to Dresser. Subsequently, Baroid acquired Diamant Boart Stratabit. The Dresser/Baroid transaction threatened the relief obtained in Baker Hughes/Eastman Christensen by bringing under common ownership the former Diamant Boart Stratabit and Baker Hughes diamond drill bit businesses. DOJ challenged Dresser/Baroid to prevent that result and restricted the divestiture buyer's ability to sell the diamond drill bit business to specific companies. DOJ did this to "eliminate[] the possibility that the Department would soon be required again to reinvestigate these lines of business to assure that new transactions did not threaten to undo relief obtained in earlier consent decrees." Response of the U.S. to Public Comment on the Proposal to Modify Final Judgment, *U.S. v. Bariod Corp.*, Civ. No. 93-2621 (D.D.C. filed Sep. 6, 2000) at 4-5 n.1.

[4] *E.g.*, Order Reopening and Modifying Decision and Order, *In the Matter of EnCap Investments L.P.*, Docket No. C-4760 (2025) at 3-4 (describing prior approval process for XCL's proposed acquisition of Altamont Energy, LLC).

FTC closed the investigation without a Second Request and the parties closed their transaction in March 2007.

More recently, in May 2025, CVS Caremark acquired additional retail pharmacies—64 physical stores from Rite Aid in three states and prescription files from 625 Rite Aid stores across 15 states. Currently, CVS operates the largest drugstore chain in the country with over 9,000 stores and the second largest PBM in the country with an estimated 27% market share. Notwithstanding CVS Caremark's size and vertical relationships, no antitrust agency blocked CVS's acquisition of additional retail pharmacies.

Departure from Prior California Enforcement

Even California, which in 2024 reviewed the recent sale of Rite Aid pharmacies under the same retail drug and grocery merger notice law as used in the Walgreens review, did not prohibit the future sale of Rite Aid pharmacies to any particular buyer.

Moreover, in hospital mergers where historically both California and the FTC have challenged deals due to antitrust concerns, California has not prohibited future theoretical deals. For example, the settlement of UCSF's acquisition of two Dignity Health hospitals in San Francisco generally required continued operation of the parties, provision of some amount of charity care, certain capital investments, a payor negotiations firewall, and a five-year price growth cap.

The Walgreens settlement is striking, therefore, in the degree of state interference in future business decisions around capital deployment.

Implications for Future Transactions

This settlement sets a precedent for future retail pharmacy acquisitions and acquisitions of other types of businesses by PE firms. Buyers should anticipate that California may attempt to impose on future deals:

- Heightened scrutiny for private equity buyers;
- Restrictions on future sale of the business; and
- Expanded labor concessions.

Conclusion

Businesses considering transactions expected to involve California review should work with antitrust counsel early to prepare thoughtful strategy and vigorous, persuasive advocacy to avoid an extraordinary settlement such as the one in California.