



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

Today the Federal Trade Commission grants, in part, a petition

Case No. 16-MD-2724 (E.D. Pa. Oct. 31, 2017), <https://www.mass.gov/doc/multistate-heritage-antitrust-complaint/download>; Compl, Conn., et al. v. Teva Pharms. USA, Inc., et al., No. 3:19-cv-00710 (D. Conn. May 10, 2019), <https://www.mass.gov/doc/multistate-teva->

<sup>2</sup> The FTC’s 2012 action alleged that Coopharma facilitated unlawful agreements among its members to fix prices on which they contracted with insurers and pharmacy benefit managers, and the consent order broadly prohibited Coopharma from facilitating these types of agreements.<sup>3</sup>

I have no reason to believe the Commission’s 2012 action was not legally sound and well-intentioned.<sup>4</sup> But I do question the wisdom of dedicating scarce government resources towards pursuing this case, particularly given the acute challenges Americans face in obtaining access to affordable drugs and healthcare—and given the raft of serious allegations pointing to potential collusion, monopolization and unfair methods of competition by major players in these markets.<sup>5</sup>

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<sup>1</sup> Pet. to Reopen & Set Aside or Modify Order, *In re Cooperativa De Farmacias Puertorriqueña*, Docket No. C-4374 (Aug. 8, 2024) [hereinafter Petition].

<sup>2</sup> *Id.* at 4.

<sup>3</sup> See Press Release, Fed. Trade Comm’n, Puerto Rican Pharmacy Cooperative Settles Price-Fixing Charges: FTC Settlement Stops Group’s Alleged Anticompetitive Behavior (Aug. 21, 2012), <https://www.ftc.gov/news-events/news/press-releases/2012/08/puerto-rican-pharmacy-cooperative-settles-price-fixing-charges>.

<sup>4</sup> Given the ferocity of her statement mischaracterizing my arguments, I assume Commissioner Holyoak disagrees with my view that focusing on alleged coordination by small actors while overlooking potential illegal conduct by dominant actors is an unwise use of scarce enforcement resources. See Statement of Comm’r Melissa Holyoak In the Matter of *Cooperativa De Farmacias Puertorriqueña*, Commission File No. C4374 (Dec. 9, 2024), at 2-3.

<sup>5</sup> See, e.g. Compl., *In re Generic Pharms. Pricing Antitrust Litig.*, No. 16-MD-2724 (E.D. Pa. Oct. 31, 2017), <https://www.mass.gov/doc/multistate-heritage-antitrust-complaint/download>; Compl, Conn., et al. v. Teva Pharms. USA, Inc., et al., No. 3:19-cv-00710 (D. Conn. May 10, 2019), <https://www.mass.gov/doc/multistate-teva->

Enforcers must follow the facts and the law. But agency leadership gets to decide where to focus and what to prioritize.<sup>6</sup> A tunnel vision approach that fails to situate specific conduct in the context of broader industry dynamics risks missing the forest for the trees. It may mean that government resources get diverted towards small harms while neglecting big harms.<sup>7</sup> Or that agency actions unwittingly perpetuate competition problems by focusing on symptoms and failing to address root causes.

Petitioners write that the Commission's 2012 Order has "limited the ability of many of Coopharma's independent pharmacy members across the Island to obtain just contracting terms, leading to many pharmacies being forced out of business and the artificial inflation of prices for consumers."<sup>8</sup> According to petitioners, the number of pharmacies in Puerto Rico fell by roughly 28% between 2016 and 2022.<sup>9</sup> The FTC has not independently verified these claims. But the possibility that the Commission's order contributed to these outcomes should give us serious pause.

More generally, we should be wary of approaches that prioritize addressing allegedly unlawful coordination by small businesses, workers, and sole proprietors while ignoring potentially unlawful actions by dominant firms whose conduct has much greater impact on (and can do much greater harm to) many more people.<sup>10</sup> And when the coercive acts or outsized

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[complaint/download](#); Compl., Conn., et al. v. Sandoz, Inc., et al., No. 3:20-cv-00802 (D. Conn. Jun. 10, 2020), <https://www.mass.gov/doc/june-2020-antitrust-drug-pricing-complaint/download>; Mike Scarcella, Blue Cross' \$2.8 Bln Health Provider Settlement Wins Judge's Preliminary Approval, *WALTERS* (Dec. 5, 2024), <https://www.reuters.com/legal/government/blue-cross-28-bln-health-provider-settlement-wins-judges-preliminary-approval-2024-12-05/>; Press Release, Fed. Trade Comm'n, FTC Challenges More Than 100 Improperly Listed Patents in the FDA's Orange Book (Nov. 7, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-challenges-more-100-patents-improperly-listed-fdas-orange-book>.

leverage of dominant firms may be spurring the small-scale actors to coordinate in the first place, focusing on the latter while ignoring the former can be short-sighted.<sup>11</sup>

At their core, the antitrust laws are aimed “at the gigantic trusts and combinations of capital.”<sup>12</sup> Enforcers would be wise to remember this orientation as we seek to faithfully do our jobs.

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