

Senators Seem Skeptical of Pharmacy Merger

By Meghan McCarthy

Tuesday, December 6, 2011 | 9:30 p.m.

Senate Judiciary Committee members were skeptical on Tuesday that a proposed merger of two of the country's three largest pharmacy-benefit managers, Express Scripts and Medco, could help save consumers money, saying they feared the deal would instead create an anticompetitive market.

The Senate Judiciary Subcommittee on Antitrust examined the proposed merger on Tuesday, and the Federal Trade Commission is investigating the deal. Together, the companies manage nearly one of every four prescriptions filled in the United States. While Congress has no authority to approve or disapprove the merger, subcommittee Chairman **Herb Kohl**, D-Wis., can wield a powerful influence on the FTC process just by expressing his opinion.

Tuesday's hearing was a chance to see where members fall on the potential merger, and what specific points are most important to them. Most expressed concern that the deal might not be best for consumers, and would lead small, independent pharmacies to close.

"Reducing the number of competitive choices from three to two raises the dangerous possibility that these large companies will have little choice but to pay more for PBM services," Kohl said in his opening statement.

Senate Judiciary ranking member **Chuck Grassley**, R-Iowa, said it was important for Congress to review the merger. "Whether people know it or not, this proposed merger will affect them," Grassley said.

While Sen. **Mike Lee**, R-Utah, the ranking member of the Antitrust Subcommittee, did not back the proposed merger outright, his questions were the most supportive of the deal. He asked former Federal Trade Commission official David Balto, who now has his own legal practice, if PBM profits argued against a merger.

"I think it is relevant. Certainly we don't condemn a market because there's high profit. But if the market was truly competitive ... this is an intermediary, like a credit card, and we would expect their profit to be very low," Balto said. "The profits are fabulously higher."

George Paz, the CEO of Express Scripts, pushed back, saying his company's profit was 3 percent. "It's not like these are big, big numbers," Paz said.

Kohl asked the CEOs of Express Scripts and Medco how much a merger really could save consumers. "How large do you have to be before you maximize your discounts?" Kohl asked. Paz said the merger would deliver not just discounts, but that combining with Medco would create "back-office efficiencies" and add to Express Scripts' ability to deliver specialty pharmaceuticals, like injectable drugs used to treat rare diseases.

"So you're not nearly as certain as some people might think that this deal might result in discounts ... there are other ways this deal might pay off?" Kohl asked. "That is correct," Paz said. Sen. **Richard Blumenthal**, D-Conn., focused on the merger's potential effect on the specialty therapeutic-drug market. If Medco and Express Scripts combine efforts, they will control 60 percent of that market, Blumenthal said.

"I'm very concerned about this merger," Blumenthal said, calling the potential market power of a combined Express Scripts and Medco "fearsome" and "problematic."