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**M&A** ALXN/AZN: FTC Changeover May Result in Added Scrutiny

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**Takeaways**

- Antitrust concerns related to product overlaps between AstraZeneca and Alexion are limited, according to antitrust attorneys and Reorg's analysis.
- However, next year's Democrat-led FTC could take a close look at the merger, particularly because of the increased discussion about the competitive effects of large pharmaceutical transactions.
- There could be pressure in the Biden administration for the FTC to "take a more activist position, especially related to healthcare concerns," said Patrick Souter, of counsel at Gray Reed.
- The companies have said they expect to close the transaction in the third quarter of 2021.

Although AstraZeneca and Alexion Pharmaceuticals Inc. have limited product overlaps, the FTC's leadership changes next year could result in a close look at the transaction, according to antitrust attorneys.

"Upon an initial glance, it doesn't seem like there's much overlap, so the three Republican commissioners may not find there to be a significant problem here," said Michael Carrier, a distinguished professor at Rutgers Law School. "On the other hand, given all of the focus on the pharmaceutical industry, this may get a close review."

Carrier, who specializes in IP and antitrust, added that FTC scrutiny would be "particularly likely" if Chairman Joe Simons steps down next year, with President-elect Joe Biden appointing a replacement.

The companies announced on Dec. 12 that they entered into an agreement pursuant to which AstraZeneca will acquire Alexion for implied total consideration of \$39 billion. AstraZeneca has two product candidates that may relate to product candidates in Alexion's pipeline, as [reported](#).

Patrick Souter, of counsel at Gray Reed and professor of healthcare studies at Baylor University School of Law, agreed that the merger could get a close look even though product overlaps are not significant. "The level of increased scrutiny by the FTC will be dependent upon who President-elect Biden chooses to be the chairperson of the FTC and subsequent personnel appointed," he said.

Souter and a pharmaceutical antitrust attorney commented that they do not expect the FTC's enforcement views to change overnight. Some continuity is likely, particularly if there is an interim period during which current FTC Commissioner Rebecca Kelly Slaughter becomes acting chairperson, the pharmaceutical antitrust attorney said.

Nonetheless, the Alexion acquisition may fit into the mold of pharmaceutical transactions that the FTC's Democratic commissioners have recently criticized, they said.

Although Biden is seen as moderate on antitrust issues, it remains to be seen whether antitrust agency officials will align enforcement activity with progressive views, as [reported](#). There could be pressure for a Democrat-led FTC to "take a more activist position, especially related to healthcare concerns," Souter noted.

He added that it is "always a concern when there is a consolidation that increases the size of a market participant like AstraZeneca in light of its other recent acquisitions."

AstraZeneca and Alexion have said they expect to close the transaction in the third quarter of 2021. A

spokesperson for Alexion said that the companies will provide additional detail about timing and process in a proxy statement that will be filed in the first half of next year.

Reorg's previous coverage of this transaction can be found [HERE](#).

-- Ryan Lynch

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