FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail

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Agency alleges vertical merger would harm competition in the U.S. market for life-saving Multi-Cancer Early Detection tests

The Federal Trade Commission has filed an administrative complaint and authorized a federal court lawsuit to block Illumina's $7.1 billion proposed acquisition of Grail—a maker of a non-invasive, early detection liquid biopsy test that can screen for multiple types of cancer in asymptomatic patients at very early stages using DNA sequencing. Illumina is the only provider of DNA sequencing that is a viable option for these multi-cancer early detection, or MCED, tests in the United States.

The complaint alleges the proposed acquisition will diminish innovation in the U.S. market for MCED tests. MCED tests could be used to detect up to 50 types of cancer, most of which are not screened for at all today, saving millions of lives around the world. Grail is one of several competitors racing to develop these liquid biopsy tests, which analyze a sample of a patient's blood or other fluid through DNA sequencing.

"The vast majority of cancers, which account for about 80 percent of cancer deaths, are only detected after patients exhibit symptoms. That is often too late to treat effectively," said FTC Acting Chairwoman Rebecca Kelly Slaughter. "The MCED test is a game changer for cancer patients and their loved ones. If this acquisition is consummated, it would likely reduce innovation in this critical area of healthcare, diminish the quality of MCED tests, and make them more expensive."

As the only viable supplier of a critical input, Illumina can raise prices charged to Grail competitors for NGS instruments and consumables; impede Grail competitors' research and development efforts; or refuse or delay executing license agreements that all MCED test developers need to distribute their tests to third-party laboratories. For the specific application at issue in this matter—MCED tests—developers have no choice but to use Illumina NGS instruments and consumables. In December 2019, the FTC challenged Illumina's proposed acquisition of Pacific Biosciences of California.

The complaint alleges that even if a viable substitute to Illumina's NGS platform entered the market, it would take years for MCED test developers to switch to a platform other than Illumina's because they would have to reconfigure their tests to work with the new NGS platform, and in some situations, conduct new clinical trials.

The Commission vote to issue the administrative complaint and to authorize staff to seek a temporary restraining order and preliminary injunction was 4-0. The FTC will file a complaint in the U.S. District Court for the District of Columbia seeking a Temporary Restraining Order and Preliminary Injunction to stop the deal pending an administrative trial. The trial is scheduled to begin on Aug. 24, 2021.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about how competition benefits consumers or file an antitrust complaint. Like the FTC on Facebook(link is external), follow us on Twitter(link is external), read our blogs, and subscribe to press releases for the latest FTC news and resources.

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