CVS-Aetna Merger: Competition and Patient Care Concerns Raised at CDI Hearing

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CVS Health and Aetna Insurance defended their proposed vertical merger to the California Department of Insurance (CDI) on June 19. The Source attended the hearing and brings this report regarding the prospects and impact of the planned merger. Pursuant to the California Insurance Code, Commissioner Dave Jones was able to call the public hearing as it involves an Aetna subsidiary based in California. While the commissioner does not have direct approval authority over the merger, his input could have an impact on how other states view the deal. At the hearing, Commissioner Jones noted that his primary consideration was determining if the merger was in the public interest.

In December 2017, CVS Health announced its intentions to acquire Aetna. This acquisition would be a vertical merger that combines the third largest health insurer, the second largest pharmacy benefit manger (PBM), and the largest pharmacy network in the country. This announcement came on the heels of the announcement by Cigna, the fifth largest insurer, of its plans to merge with Express Scripts, the nation's largest PBM. The Department of Justice (DOJ) is reviewing both proposed mergers after blocking a merger between Anthem and Cigna in 2016. The DOJ guidelines evaluate proposed mergers that raise concerns about harm to "actual potential competition" as well as "perceived potential competition." The Department looks at market concentration, how the merger would affect conditions of entry, and the acquiring firm’s entry advantage. In February, the DOJ issued a “second request” for additional information from both Aetna and CVS about the deal.

When deciding if a merger is in the public interest, Commissioner Jones must weigh consumer costs and access against the potential of a monopolist to raise prices. The first panel at the hearing consisted of representatives from CVS and Aetna. Both companies said the merger would put consumers first, focus on prevention, primary care, and competition, and help address the rising costs of healthcare. They claimed their goal is to create a new model of healthcare that allows the patient to get information from their local retail clinic to manage their own healthcare. Pharmacists would fill in the gaps between doctor’s appointments and help ensure patients stay healthy, especially for patients with chronic conditions like asthma and diabetes. According to representatives from CVS, patients with chronic diseases typically see their primary care physician about 4 times a year but see their pharmacist nearly every month. As a result, pharmacists may be better positioned to ensure compliance with treatment plans and, therefore, reduce healthcare costs by avoiding complications of these diseases, which can be expensive to treat. The companies estimate that the merger will produce $750 million in savings of healthcare costs. However, when asked how much of the $750 million would go to consumers or apply towards reducing premiums, neither company had an answer.

The second panel, comprised of academic witnesses, unanimously agreed that no potential benefits outweigh the potential costs of the merger. University of California Hastings College of the Law Professor Thomas Greaney voiced concerns about harm to consumers from the loss of potential competition. Greaney said that if the merger goes forward, consumers will be faced with a market with only three PBMs, all of which will be integrated into an insurer and have interests aligned with that insurer. This tight oligopoly in the market may force new PBM entrants to enter two markets simultaneously (the PBM and insurance markets) in order to compete effectively. Greaney believes that market concentration is the leading cause of high costs in health care and that antitrust enforcement has neglected the risks, in effect making antitrust laws "really not helpful in terms of guidance." Read Greaney's Statement submitted to Commissioner Jones here.

University of Southern California Sol Price School of Public Policy Professor Neeraj Sood agreed, stressing the effects of market power in the pharmaceutical industry on consumers. He worries that the merger could lead to price discrimination, higher out-of-pocket costs, more gag clauses, and less transparency from PBMs in terms of rebates. Sood thinks that the potential costs of foreclosure in the insurance market outweigh the potential efficiencies in the market and that the loss to consumers is greater than the potential benefits from the merger. Sood also noted that the lack of transparency that results when the PBM and insurer are contained within the same parent company could make identifying and remedying these anticompetitive practices particularly difficult.

Further, Wharton Professor Lawton Burns added that there is no prima facie evidence for consumer welfare benefits arising from the vertical merger. He believes this merger is a "defensive merger" because CVS is losing market share to its competitor, Walgreens, and is concerned about Amazon entering the pharmacy marketplace. Similarly, Burns said, Aetna is failing to grow and is threatened by the PBM integration of OptumRx with insurer UnitedHealth Group. Professor Burns expressed concerns that, should the merger go through, Aetna subscribers would increasingly use CVS's Minute Clinics as a provider of healthcare. Potential problems with increased reliance on CVS's clinics include failure to serve underserved communities, failure to target and effectively treat chronically ill patients, inability to succeed in wellness and prevention, and inability to conduct medication therapy management.

Finally, American Medical Association (AMA) President Barbara McAneny, M.D. asked regulators to block the deal because of its potential impact on the specialty drug market. McAneny worries that if the merger goes through, it might move patient care from the doctor's office to CVS pharmacies, which would have major impacts on the quality of patient care and raise many patient safety concerns. An AMA analysis found that the merger would increase Medicare Part D drug prices, drug spending, and out-of-pocket costs. McAneny stressed that the AMA believes the merger would substantially lessen market competition to the detriment of patients and should, therefore, be blocked.

CVS and Aetna's idea to create a new model of healthcare may not be misguided. With escalating healthcare costs, the country needs to reevaluate the way care is delivered and consider if less-expensive sites of care with better access, like pharmacies, can help better manage chronic diseases. As McAneny pointed out, however, moving patient care from the doctor's office to a pharmacy could have serious adverse patient care and safety impacts. More importantly, as provided by the testimony of many antitrust experts, this merger has the potential to negatively impact consumers by driving up costs both in California and nationwide. Commissioner Jones needs to weigh all these factors when making his decision. We will continue to follow this merger and further developments here on the Source Blog.