



DOJ Files Suit to Enjoin Health Insurance Industry Consolidation

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Last week, the United States Department of Justice's Antitrust Section (DOJ) filed suit to enjoin two proposed mergers that would consolidate the nation's five largest insurance companies into three. The DOJ argues that if Anthem's \$54 billion acquisition of Cigna Corp. and Aetna Inc.'s \$37 billion merger with Humana, Inc. move forward, the deals will raise health insurance costs for certain segments of the individual and employer markets. The complaint against Anthem and Cigna is joined by eleven states and the District of Columbia, while eight states and the District of Columbia have joined the suit against the Aetna-Humana acquisition.

In the lawsuits, the DOJ claims that Anthem's purchase of Cigna would limit competition for nationwide policies offered by large employers, as well as in 35 metropolitan areas. Aetna's merger with Humana would limit competition for Medicare Advantage plans in 21 states, affecting as many as one-and-a-half million seniors who are eligible for the program. The DOJ also argues that both mergers affect competition on the exchanges established by the Affordable Care Act. The companies have countered that the market definitions set forth by the government are too narrow, and that the mergers will increase efficiency and permit the resulting entities to negotiate for lower prices from hospitals and health care providers.

Aetna, Humana, and Anthem have all vowed to fight the DOJ's lawsuits, while Cigna has expressed concern as to whether the acquisition can go forward in light of the lawsuits. As is common in current merger enforcement, both Aetna and Anthem attempted to resolve the government's concerns by presenting divestiture plans to the DOJ. However, government officials rejected both proposals, stating that both fell well short of restoring lost competition in the relevant markets. After the DOJ filed suit, both the American Hospital Association and the American Medical Association applauded the government's action, while health insurance trade groups were considerably more skeptical.

Arnall Golden Gregory has significant experience in structuring acquisitions and advising clients about the potential antitrust effects of business deals, particularly in the healthcare and long-term care industry. Moreover, we have litigated matters in the merger areas. If you are concerned that the potential consolidation in the health insurance market may impact on your company, or if you are called as a witness to the above proceedings or receive subpoenas for documents, Arnall Golden Gregory may be able to help. For more information, please contact Jeff Jacobovitz, former Federal Trade Commission attorney (Bureau of Competition) and co-chair of Arnall Golden Gregory's Antitrust Group.

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