

CAPITOL STREET

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United Antitrust Investigation Will Take Time

Not A Lawsuit (Yet)

Relevant Companies



»» Our Take & Next Up

Investigations take time and if the DOJ believes United Healthcare is behaving anti-competitively then a lawsuit may well be initiated. The WSJ [reported](#) that the Department of Justice (DOJ) launched an investigation into United Healthcare (UNH) practices and relationships. No specific behavior is called out though the press notes concern regarding Optum unit & provider group ownership and incentives (and possibly documentation, coding intensity) given United is primarily a health insurer that owns providers. No specific merger is called out, despite UNH acquisitions that span home health, health tech/data analytics, and of course provider groups.

»» Key Points

Some things:

- **Conduct investigations are not atypical.** Live Nation, Google and Apple have been under investigation for monopolistic behavior. Tech & healthcare are high on regulators' radar, as seen by Rebecca Slaughter, Jonathan Kanter, Lina Khan public comments, official statements ([here](#) and [here](#))
- **It is extremely difficult to unscramble the eggs.** That is, unwinding UnitedHealth into components is virtually impossible. The FTC is attempting this very idea with Facebook's purchase of Instagram.
- **How may the leak have happened?** The agency is extremely unlikely to have provided investigation info directly to the press. Rather it's more likely that a competitor interviewed in the same matter provided the information to WSJ/other outlets.

The agency is likely focused on UNH's vertical consolidation (physicians, home health, health data analytics). As a reminder, Optum is known for its aggressive physician acquisition with Optum employing roughly 90,000 doctors (10% of the physician workforce) at year end 2023. UNH is continuing its physician network expansion, looking to buy the Corvallis Clinic, an 11-clinic physician owned system in Oregon in January. United also owns one of the three largest pharmacy benefit managers and a large home health organization. Optum's clinics, home-care services, drug plans and pharmacies frequently provide services to UNH members, which allows the company to accelerate their revenue growth by turning their insurance expenses for their members into revenue for Optum.

DOJ is also in the middle of reviewing UNH's Amedisys (home health) acquisition. The Amedisys acquisition is still under review by the DOJ after being announced in June 2023. If completed in early 2024, it is the second home health company to be acquired by UNH following its LHC acquisition in February 2023. The deal is expected to significantly increase UNH's presence in home healthcare which may be a contributing factor in the DOJ's anti-trust investigation against the company. As a reminder, the DOJ has gone against UNH acquisitions before (and lost). In February 2022, the DOJ sued the company to stop UNH's acquisition of Change Healthcare. However, the agency lost their case in DC District Court and dropped their appeal in 2023, allowing the acquisition to proceed.

The agency's new horizontal and vertical merger guidelines make deals easier to challenge. In fact, most deals can now be challenged (regardless of sector). In July 2023, FTC & DOJ [released](#) their draft merger guidelines which aimed to increase oversight over dealmaking. The draft guidance lowers the Herfindahl-Hirschman Index (HHI), a measure of market concentration, thresholds (2,500 to 1,800), and there is a new 50% test that is detrimental to vertical integration (e.g., health plans/post-acute care/providers). There is also a crack-down on serial acquisitions. See our take [here](#).

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