

November 30, 2023

Cigna-Humana Deal Faces Anti-Merger Sentiment

Congressional Hearings, Letters, & Government Challenge Likely

Relevant Companies



»» Our Take & Next Up

We think that the government would challenge this deal (if announced), with high profile Congressional hearings and anti-merger headlines for 12+ months. The FTC and DOJ, under the Biden Administration, have been activist thus far, so why stop now? As we have highlighted ([here](#), [here](#), and [here](#)), this Administration has implemented a series of vigorous anti-merger policies and guidelines. The deal has not officially been announced, but it has been rumored over the last 24 hours (WSJ [here](#)). The timeline for review would be 9-12 months, with Congressional hearings and letters flying around from the likes of Elizabeth Warren (D-MA). With an anti-consolidation FTC & DOJ, along with a slew of guidelines implemented in the last 2 years, we could see federal antitrust regulators filing suit. We think DOJ will prevail in reviewing the case, despite HMO and PBM businesses being the purview of DOJ and FTC, respectively. The agency in charge would likely be sorted within 30 days post deal announcement.

»» Key Points

Cigna (CI) and Humana (HUM) are looking to combine forces. The two companies have recently discussed a stock and cash deal that could be finalized by the end of the year. This merger would give rise to a \$140 B company, allowing the two companies to surpass the \$86.4 B CVS and to inch a little bit closer to the \$501 B UNH. This merger would combine Cigna's PBM (Express Scripts) and successful commercial insurance line with Humana's #2 Medicare business as well as HUM's PBM (Pharmacy Benefit Solutions).

The two companies have pointed to a potential deal throughout this year. In February, HUM announced ([here](#)) it was selling off the remainder of its business that sold health insurance and administrative services to employers. In addition, earlier this month, it was revealed ([here](#)) that CI was in the process of selling its MA plans. HUM announced ([here](#)) recent leadership changes during their Q3 2023 earnings call with Jim Rechten (prior CEO of Envision Healthcare and President of OptumCare) named as COO and CEO Successor when Bruce Broussard steps down as CEO in 2H 2024.

Antitrust regulators will almost definitely scrutinize this one. There has been large scale federal concern regarding consolidation in healthcare. The Biden administration has signaled it would give scrutiny to health-industry consolidation, given the personal nature of healthcare, its impact on consumers and prices, as premiums and healthcare costs increase.

Congressional oversight hearings are likely to ensue – we will watch the Senate. If the merger is officially announced, we could see the Senate Judiciary Committee (Antitrust Subcommittee, Chair Amy Klobuchar, D-

MN) and/or other Senate Committees (HELP, Chair Sanders, I-VT) hold hearings. The House appears to be less likely to hold a hearing, as they have been somewhat quiet during this Administration.

This is a 9-12 month review process, at a minimum, with managed care overhang likely. These things take time. (1) First FTC and DOJ may spar over who takes over lead review of the deal. Recall, FTC does PBM and DOJ has purview over health insurance. We think DOJ will prevail. (2) We envision a slew of second requests. (3) Process will take a while to play out, and it's all behind closed doors, save for any announcements the companies make along with Congressional hearings and letters circulated (for- and against- deal).

The managed care industry is potentially undergoing scrutiny from the DOJ. This summer, there were indications ([here](#)) DOJ initiated a monopoly probe of the managed-care industry, keeping with the DOJ's antitrust priorities, with potential concern around vertical integration. This is considered a conduct investigation and is not based on any specific transaction. The DOJ can file a civil antitrust suit against any entity if the agency has reason to believe said company has monopolized an industry by engaging in a course of anticompetitive and exclusionary conduct that eliminates competition through acquisitions.

We think this Administration has a strong leg to stand on to challenge. While the insurance overlap may be minimal, since CI is a large commercial player and HUM is a large Medicare player, PBM overlap could be problematic (CI/Express Scripts and HUM/Pharmacy Benefit Solutions). PBMs are already the controversial middlemen of drug pricing negotiations, and of the four largest PBMs, two are owned by CI and HUM. Furthermore, the agencies provided updated merger guidance this summer (our analysis [here](#)) and would provide good rationale to challenge the HUM-CI merger.

There is also precedent to challenge (big) managed care mergers. This would be the largest merger attempt in the health industry since 2015. Recall, in 2015-16, ELV (then Anthem) proposed buying CI and AET proposed buying HUM. The deals were blocked by the DOJ on anticompetitive grounds, the government prevailed in court and even confirmed upon appeal. The companies mutually ended merger agreements in 2017. Aetna was eventually scooped up by CVS.

The DOJ Antitrust Division is led by Jonathan Kanter, Assistant Attorney General. Who runs DOJ investigations? Kanter, 49, began his career as an attorney for the FTC's Bureau of Competition. He does not appear to have much health care experience, last making headlines for filing a lawsuit against Google's market monopolization back in 2020. He easily won Senate confirmation, with a majority of lawmakers backing his to call to police concentrations in tech, agriculture, and healthcare ([here](#)). Bill Baer, Principal Deputy Associate Attorney General at the time, led the challenge of the 2015 proposed merger of AET-HUM and ELV-CI. After his time at the DOJ, Baer was a partner at Arnold & Porter and is now largely retired, serving as a visiting fellow at the Brookings Institute.

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