Blog Post

Cigna Announces Proposed Acquisition of Express Scripts, Quickening the Pace of Vertical Mergers

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Late last year, CVS and Aetna announced a merger, combining one of the nation's largest health insurance companies and a large pharmacy benefits management company (a "PBM"), that being CVS' Caremark division. The trend continues, as on March 8, Cigna announced its intention to acquire Express Scripts, another PBM, in a deal reportedly valued at $67 billion. Both transactions, if approved by antitrust regulators, would create "vertically integrated" entities that combine the services of a health insurer with those provided by a PBM, potentially reshaping the way in which healthcare is delivered to consumers.

"Vertical" mergers like these proposed transactions, where the merging parties are not currently competitors, are becoming increasingly common since the passage of the Affordable Care Act, as healthcare entities at all levels of the distribution chain – providers, payors, PBMs and others – have been exploring ways to create more efficient delivery models, designed to try to reduce the ever-escalating cost of healthcare. These efforts have included major hospital systems creating their own payors, proposed combinations between payors and PBMs (including the CVS/Aetna and Cigna/Express Scripts) and the recently announced RiteAid/Albertson's transaction. Notably, if the CVS/Aeta and Cigna/Express Scripts deals are approved, it would

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presumably put them on more equal footing with another payor, UnitedHealth, which acquired the PBM, Catamaran, in 2015 and merged it into its existing entity, Optum Rx.

Like the UnitedHealth/Catamaran transaction, both the CVS/Aetna and Cigna/Express Scripts transactions are subject to antitrust review by federal and state regulators, and that review is likely to be quite thorough. In fact, the DOJ Antitrust Division has already reportedly issued a “Second Request” to CVS and Aetna. This action bars the parties from consummating their deal until the review process is completed, and is designed to provide the DOJ with additional information to better assess whether a legal action challenging the proposed deal on antitrust grounds is warranted. At the same time, a House Judiciary subcommittee also held a hearing on the CVS/Aetna transaction in late February, and questioned representatives of CVS and Aetna about the merits of their proposed transaction and its potential impact on consumers. (View prior blog post here). In addition, demonstrating DOJ’s increased interest in “vertical mergers” generally, late last year DOJ filed an action seeking to enjoin the AT&T/Time Warner transaction. That case is scheduled to begin trial later this month, and is being closely watched by many for a sign as to whether the DOJ’s increased interest in “vertical mergers” is justified.

Given the close look that antitrust regulators (and Congress) are currently giving the CVS/Aetna deal, and the DOJ’s increased interest in vertical mergers generally, it is reasonable to expect the Cigna/Express Scripts transaction will face similar scrutiny. Stay tuned.

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