

## Blog Post

# DOJ Antitrust Division Grants Approval to Proposed Cigna/Express Scripts Merger

September 24, 2018

On September 17, the United States Department of Justice (DOJ) Antitrust Division issued a “closing statement” in which it announced that it was closing its investigation into Cigna’s proposed acquisition of Express Scripts, a transaction valued at \$67 billion. The announcement states that “After a thorough review of the proposed transaction, the Antitrust Division has determined that the combination of Cigna, a health insurance company, and ESI, a pharmacy benefits management (“PBM”) company, is unlikely to result in harm to competition or consumers.” Notably, the announcement brings to an end a six-month investigation by the Antitrust Division, during which it reportedly reviewed over two million documents received from the merging parties and interviewed over one hundred industry participants.

In reaching its decision, the Antitrust Division explained that it had analyzed whether the merger would “(1) substantially lessen competition in the sale of PBM services or (2) raise the cost of PBM services to Cigna’s health insurance rivals,” and that neither issue caused competitive concerns. With respect to the PBM market overall, the Antitrust Division noted that “Cigna’s PBM business nationwide is small” and that there are “at least two other large PBM companies” in the market (presumably a reference to Caremark and Optum). And, as to the possibility that the combined company

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might raise the cost of PBM services for Cigna's health insurance rivals, the Antitrust Division concluded that this was unlikely "due to competition from vertically-integrated and other PBMs" and the fact that the combined company has indicated that Cigna's current PBM partner – Optum – would be permitted to continue to compete for PBM customers that purchase medical insurance from Cigna.

While Antitrust Division approval is unquestionably the biggest step towards regulatory approval of the deal, the merging parties have not yet obtained approval from all of the 29 states that also must approve the deal before it can close. However, those approvals are expected to be received in the coming 60 days, permitting the deal to close before year-end.

With the Antitrust Division having reached its decision on Cigna/ESI, the attention now shifts to Aetna/CVS, the other significant "vertical merger" in the healthcare industry that the Antitrust Division has been reviewing for much of this year. While the CVS/Aetna transaction is also largely a vertical deal, that deal has a horizontal component not found in the Cigna/ESI deal (concerning Medicare Part D). Nevertheless, the Antitrust Division's approval of Cigna/ESI is being widely reported as a very favorable indicator for the CVS/Aetna deal as well. Whether that proves to be correct is likely to be known soon; stay tuned.

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