

CLOSING STATEMENT

Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Cigna–Express Scripts Merger

September 17, 2018

Assistant Attorney General Makan Delrahim of the Antitrust Division of the U.S. Department of Justice issued the following statement today in connection with the closing of the Division’s investigation into Cigna Corporation’s \$67 billion proposed acquisition of Express Scripts Holding Co. (“ESI”):

“Quality healthcare and competitive pricing for healthcare services and pharmaceutical drugs is critical to U.S. consumers. 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 benefit management (“PBM”) company, is unlikely to result in harm to competition or consumers.”

During the Antitrust Division’s comprehensive, six-month investigation, it received over two million documents, analyzed transactional data from the merging companies and other industry firms, and interviewed over 100 knowledgeable industry participants.

In particular, the Division 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. PBM services are sold to employers and health insurance companies to manage their pharmacy benefits, which can include designing formularies, processing prescription claims, and providing access to pharmacy networks and pharmaceutical rebates.

The merger is unlikely to lessen competition substantially in the sale of PBM services because Cigna’s PBM business nationwide is small. The Division also determined that the proposed transaction is unlikely to lessen competition substantially in markets for customers because at least two other large PBM companies and several smaller PBM companies will remain in the market post-merger.

In evaluating whether the merger may harm competition for the sale of PBM services, the Division understands that Cigna intends to use ESI for PBM services and that Cigna’s current PBM services provider, UnitedHealthcare’s subsidiary Optum, will be free to compete for PBM customers that purchase medical insurance from Cigna upon closing of the transaction.

The Division also considered how the merger would affect ESI’s incentives to provide competitive PBM services to Cigna’s health insurance rivals. ESI currently sells PBM services to some of Cigna’s rivals. The merger is unlikely to enable Cigna to increase costs to Cigna’s health insurance rivals due to competition from vertically-integrated and other PBMs. The merger is unlikely to lead ESI to raise PBM prices to Cigna’s rivals because that likely would result in the merged company losing PBM customers and not result in Cigna’s gaining a sufficient volume of additional health insurance business to offset the loss of PBM customers.

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