Healthcare Matters Resolved Without a Case Filed

1. **Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Cigna-Express Scripts Merger (2018)**

Cigna Corporation, a health insurance company, sought to acquire Express Scripts Holding Company ("ESI"), a pharmacy benefit management ("PBM") company. The Department of Justice 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. The Department concluded that the proposed transaction is unlikely to result in harm to competition or consumers. Because Cigna's PBM business nationwide is small and because at least two other large PBM companies and several smaller PBM companies will remain in the market post-merger, the merger is unlikely to lessen competition substantially in the sale of PBM services. The merger also is unlikely to enable the merged company 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.

Read closing statement

2. **Amerigroup Corp.'s Divestiture of its Virginia Operations Addresses Department of Justice's Concerns with WellPoint Inc.'s Proposed Acquisition of Amerigroup (2012)**

WellPoint, an insurer that offered Medicaid managed-care and other health insurance plans, sought to acquire Amerigroup Corporation, an insurer that also offered Medicaid managed-care plans. The proposed merger would have substantially lessened competition because WellPoint and Amerigroup were the only two providers of Medicaid managed-care plans in Northern Virginia. To address the Department of Justice's concerns about the merger, Amerigroup sold its subsidiary, Amerigroup Virginia, to Inova Health System Foundation. The divestiture ensured continued competition in the markets for Medicaid managed-care plans in Northern Virginia and that Medicaid beneficiaries in Northern Virginia would continue to have a choice of at least two Medicaid managed-care entities.

Read press release

3. **Statement of the Department of Justice's Antitrust Division on its Decision to Close its Investigation of Highmark's Affiliation Agreement with West Penn Allegheny Health System (2012)**

Highmark, the Blue Cross and Blue Shield licensee in western Pennsylvania, and West Penn Allegheny Health System ("WPAHS"), the second-largest hospital network in the Pittsburgh region, entered into an affiliation agreement in November 2011. The affiliation agreement did not materially foreclose any horizontal competition between the parties. Although vertical agreements, like the affiliation agreement here, can reduce competition by limiting entry or

expansion by third parties, the agreement was unlikely to produce these effects. Rather, the affiliation agreement was likely to enable WPAHS to compete more effectively with the largest hospital network in the Pittsburgh region. Because the affiliation agreement appeared to increase competition in western Pennsylvania's health care markets, the Justice Department closed its investigation into the affiliation agreement.

Read press release

4. **Blue Cross Blue Shield of Michigan and Physicians Health Plan of Mid-Michigan Abandon Merger Plans (2010)**

Blue Cross Blue Shield of Michigan ("Blue Cross-Michigan"), the largest commercial health insurance provider in Lansing, Michigan, attempted to purchase Physicians Health Plan of Mid-Michigan ("PHP"), the second largest commercial health insurance provider in Lansing, Michigan. Blue Cross-Michigan had a market share of almost 70%, while PHP had a market share of approximately 20%. The merger would have significantly limited competition in the Lansing health insurance market, leading to higher prices, fewer choices, and a reduction in the quality of commercial health insurance plans in the area. The Department of Justice, after working closely with the Michigan Attorney General's office in investigating the merger, informed the parties that it would file an antitrust lawsuit to block the acquisition. Blue Cross-Michigan and PHP then abandoned their proposed deal.

Read press release

5. **Background to Closing of Investigation of UnitedHealth Group's Acquisition of Oxford Health Plans (2004)**

UnitedHealth Group ("United"), one of the largest health insurance companies in the country, sought to acquire Oxford Health Plans ("Oxford"), a significant regional insurer focusing on the tri-state area of Connecticut, New Jersey, and New York. The Antitrust Division's investigation found that the appropriate product market was no broader than the market for fully-insured health insurance products sold to employers that are largely located in the tri-state area. In such markets, the combined firm would have shares ranging from a very small percentage to 25 to 30 percent and would face a number of viable competitors. The Division concluded that the merger likely would not substantially lessen competition in health insurance markets through unilateral or coordinated effects. Also analyzing markets for the purchase of health care provider services, the Division found that the combined firm's negotiating leverage with health care providers would be limited. Given these findings, the Department of Justice closed its investigation of the proposed acquisition.

Read press release

6. **Department of Justice's Antitrust Division Statement on the Closing of its Investigation of Anthem, Inc.'s Acquisition of WellPoint Health Networks, Inc. (2004)**

Anthem, a health insurer and licensee of the Blue Cross Blue Shield Association, sought to acquire WellPoint, another Blues licensee and health insurer. The Antitrust Division's investigation of the proposed transaction focused on potential effects in four areas. First, the Division found that the proposed transaction likely would not enhance Anthem's ability to increase prices or lower quality in the sale of health insurance products because the insurers did not significantly compete against each other anywhere in the country. Second, the Division found that the proposed transaction would not give Anthem buyer-side market power (monopsony power) over health care providers because the transaction would increase Anthem's share of provider purchases by only a very small amount in any geographic market. Third, the Division did not find any significant indication that the merger likely would result in the merged firm being more likely to impose contractual clauses that might raise competitive concerns, such as "most favored nations" clauses. Moreover, the Division retained the ability to challenge these arrangements in the future. Finally, the Division found that the proposed acquisition likely would not reduce competition for the acquisition of Blues plans in the foreseeable future. Because the Division found that the transaction likely would not cause competitive harm, the Division closed its investigation.

Read press release

7. **In re Stanislaus Preferred Provider Organization, Inc. (1983)**

On October 12, 1983, the Justice Department announced publicly that it had advised legal counsel for the Stanislaus Preferred Provider Organization, Inc. ("SPPO") that it was prepared to file a civil antitrust suit in the United States District Court in the Eastern District of California, alleging that the formation and operation of SPPO constituted an unlawful conspiracy in restraint of trade, in violation of § 1 of the Sherman Act. Counsel for SPPO subsequently informed the Department that SPPO's Board of Directors had already started to dissolve SPPO and would complete its dissolution as expeditiously as possible. SPPO was controlled by approximately 230 physicians practicing in and around Stanislaus County, California. The Department alleged that SPPO required its members to agree not to contract with any other managed care plan not affiliated with or sponsored by SPPO, and that SPPO had enrolled as physician members approximately 50% of the physicians practicing in or around Modesto, California, and approximately 90% of the physicians practicing in or around Turlock, California. The Complaint would have alleged that the formation and operation of SPPO restrained competition in the delivery of health care services in both the Modesto, California, and the Turlock, California, areas. Because SPPO notified the Department of its plans to dissolve SPPO quickly and completely, no Complaint was filed.