



***United States of America, State of New
York, & State of Minnesota v.
UnitedHealth Group Inc. & Change
Healthcare Inc.***

Opening Statement

UnitedHealth Group: Full Year 2021



Proposed Merger Harms Competition in Three Ways



Harms competition for first pass claims editing, a critical input for health insurers

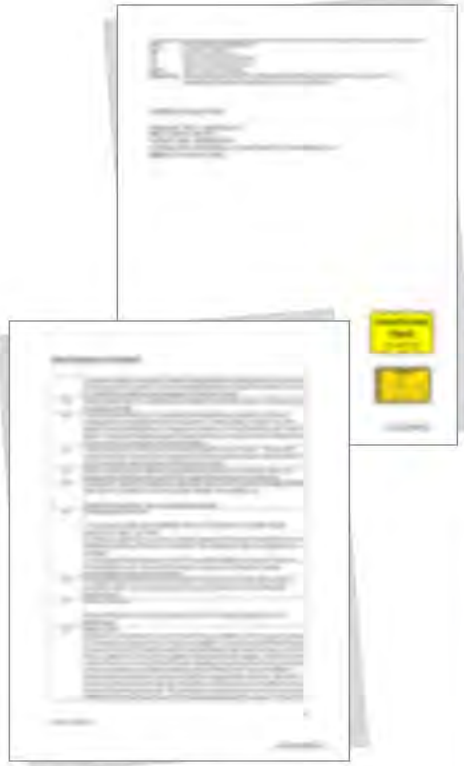


Harms competition in insurance markets by giving United control of Change's EDI clearinghouse, giving United the ability and incentive to raise rivals' costs by denying rivals access to innovations



Harms competition in insurance markets by giving United access to Change's customers' competitively sensitive information and data, disincentivizing innovation

UHG: “Enterprise thinking” Over “financial and data firewalls”



Feb. 25, 2021

Where to start . . .

We have SO much opportunity to put the breadth of our capabilities on full display and achieve true synergy and scale gains from our extensive capabilities. We need to stop thinking that just because we need to have financial and data firewalls between Optum and UHC means we can't show up together and harness the capabilities of both organizations together. We need to take a deep look at how success is defined for each operating unit and how performance is rewarded and stop any compensation / reward plans that unintentionally inhibit Enterprise thinking or worse create moral hazards or incongruency with our strategic growth objectives. We need to improve our CRM systems and stop operating with many different instances of sales force that don't talk to another at some level. We need to continue the Enterprise Growth work aimed at building a total comprehensive view of our top existing and prospective accounts.

Clayton Act



15 U.S.C. § 18

Section 7 of the Clayton Act prohibits acquisitions “where in any line of commerce or . . . in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”

Certainty Is Not Required



Brown Shoe Co. v. United States,
370 U.S. 294, 323 (1962)

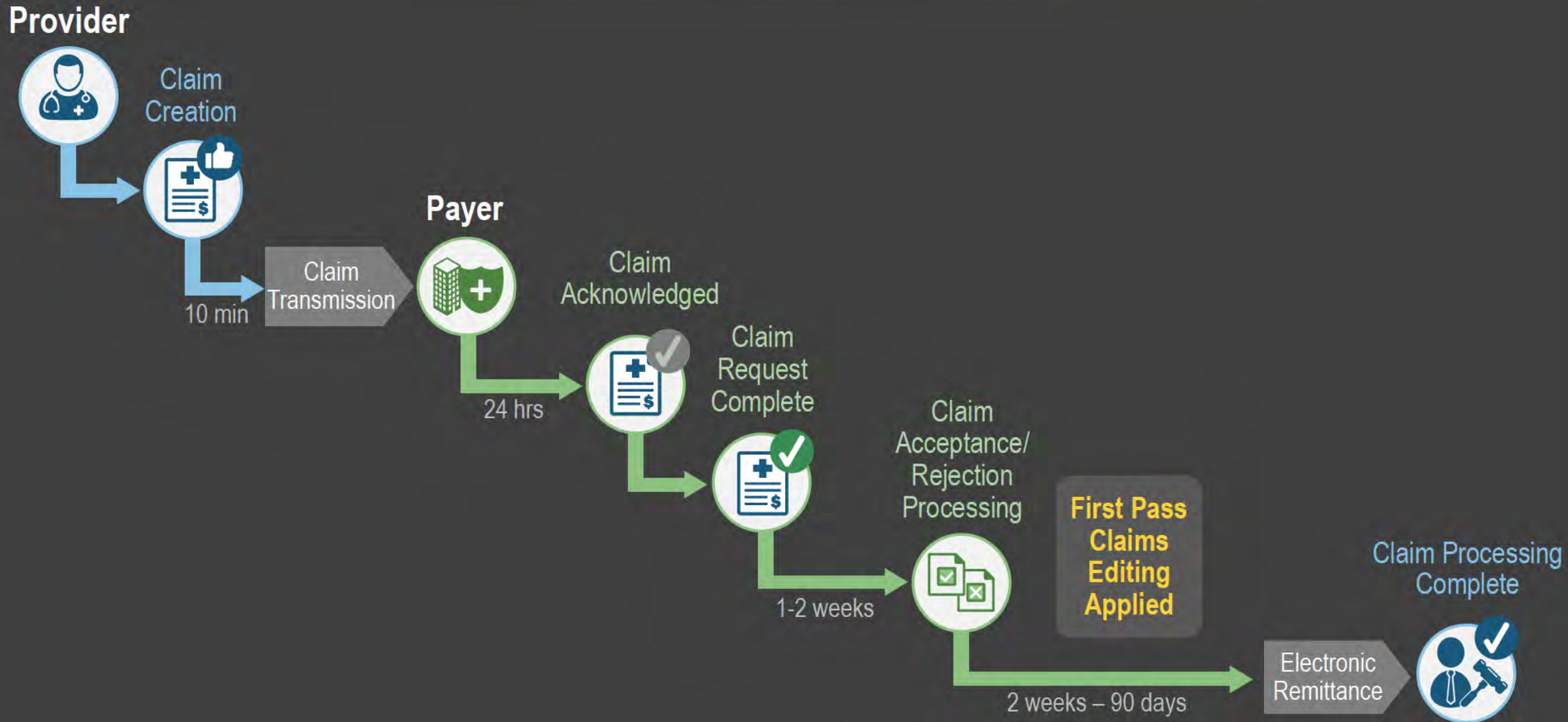
“Congress used the words ‘may be substantially to lessen competition’ [], to indicate that its concern was with **probabilities, not certainties.**”



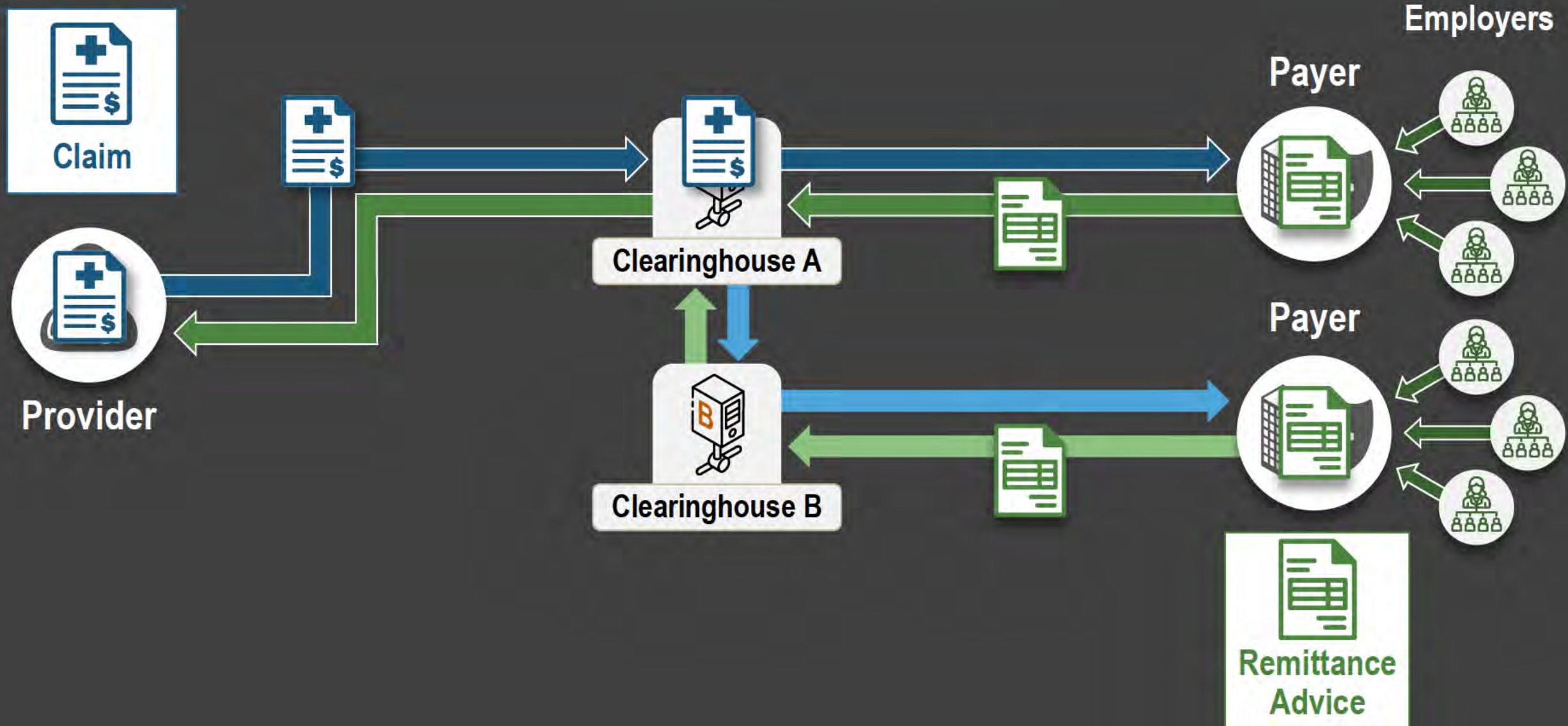
United States v. H&R Block, Inc.,
833 F. Supp. 2d 36, 49 (D.D.C. 2011) (citation omitted)

“To establish a Section 7 violation, [P]laintiff[s] must show that a pending acquisition is **reasonably likely** to cause anticompetitive effects.”

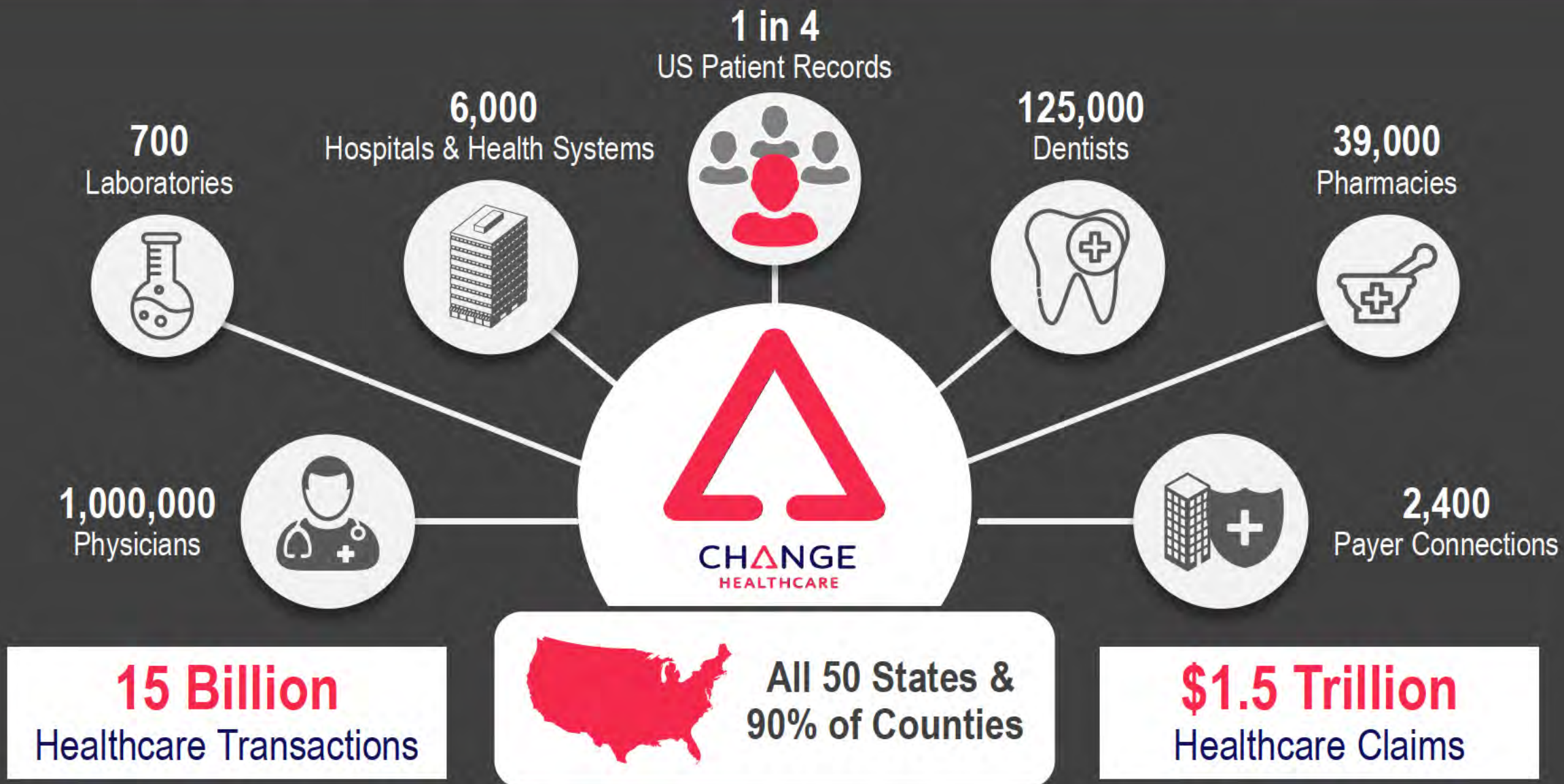
Insurance Claim Process



Claim Pathway



“Innovation at the Center of the Healthcare Ecosystem”



Both Change And United Agree: Change Is Unique



The healthcare system, and how payers and providers interact and transact, would not work without Change Healthcare.



Risk of Payer Customer Attrition

✓ All Paths Lead to Eagle

- Industry is not just a 1:1 intermediary between payers and providers, it is a many to many relationship
- Even if Relay or others are used, those companies use Eagle for connections they possess

[Internal Code for Change Healthcare]

Change's EDI Clearinghouse Is a Market Leader

Project Cambridge Key Due Diligence Considerations

Cambridge (Change) maintains the **highest volume of claims and penetration across EDI companies** for medical, dental and pharmacy networks.

Change Healthcare Inc. Company Profile

Change operates **one of the largest health care networks in the U.S.**

McKinsey
& Company



Market Assessment

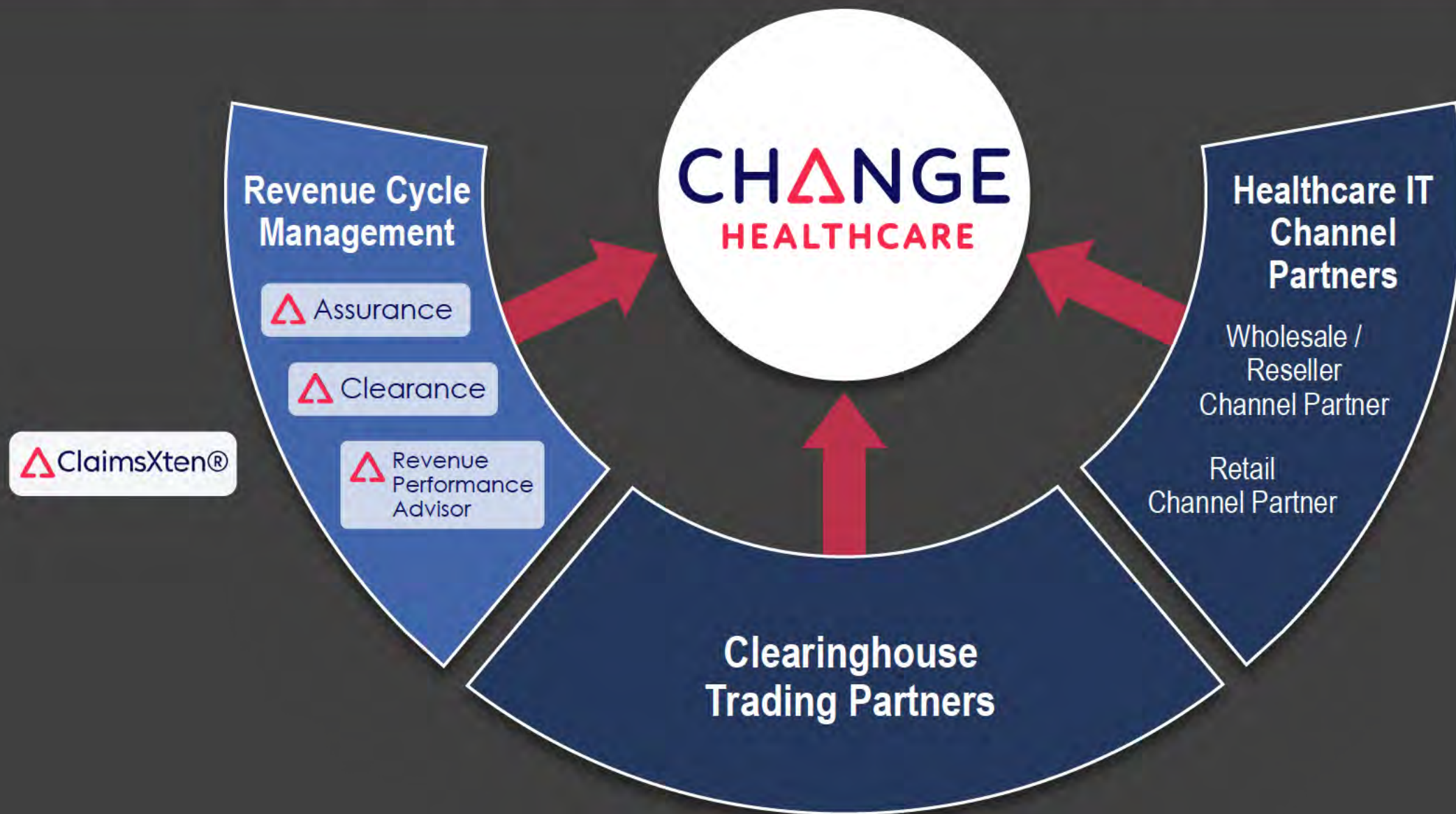
Steerco 3 - Discussion Document

Change: **largest, only player across segments**

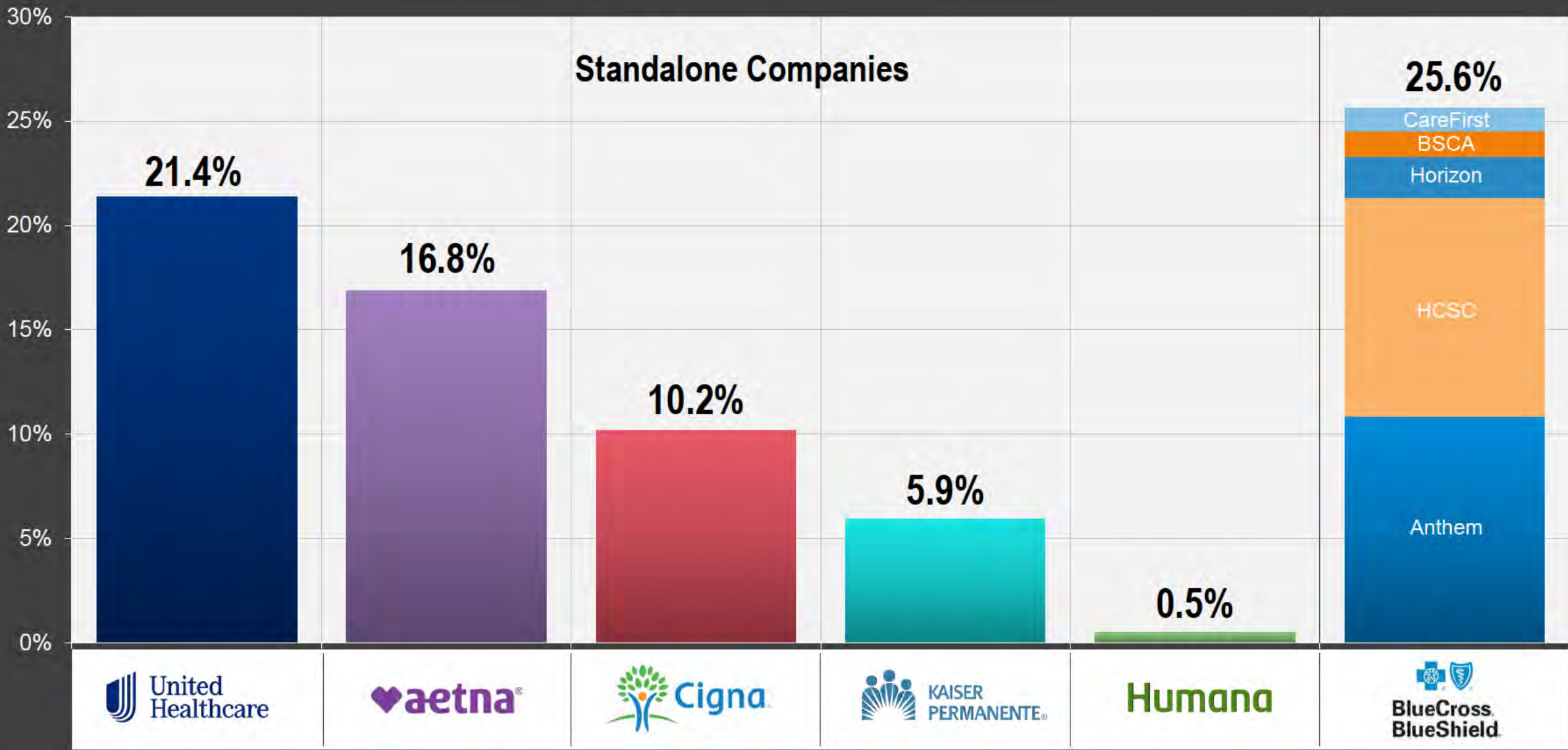
EDI: Cambridge enjoys broadest and deepest datasets in several categories; has unrestricted access under HIP AA guidelines

Cambridge manages the **highest volume of claims** compared to any other EDI competitor as well as a **large percentage of longitudinal data sets** that are more valued

Providers Connect to Change's EDI Clearinghouse in Many Ways











UnitedHealthcare Leads National Accounts Market



Horizontal Harm

First Pass Claims Editing Is Distinct

	First Pass	Second Pass
Speed 	<ul style="list-style-type: none">• Individual Review • Real Time 	<ul style="list-style-type: none">• Batch Review • Not Real Time 
Claim Library 	<ul style="list-style-type: none">• Full Set of Edits	<ul style="list-style-type: none">• Limited Set of Edits
Cost 	<ul style="list-style-type: none">• Per Transaction• Perpetual License	<ul style="list-style-type: none">• On Contingency
Vendor 	<ul style="list-style-type: none">• Single	<ul style="list-style-type: none">• Multiple

Change and Optum Compete Head to Head

UNITEDHEALTH GROUP®
Optum

June 25, 2019

“McKesson [**Change**] **is our big competitor** for this product. We have been approving 20-25% discounts when [Change] is in the mix.”

Aug. 9, 2019

“[W]e gave them **a sweetheart deal to win them away** from McKesson [Change]. . .”

Aug. 28, 2020

“McKesson [Change], knowing they were at risk of losing the business, **cut their price by 50% to try to save it but we still won!**”

Sept. 2020

Change is the “**#1 competitor for first pass**” claims editing

CHANGE
HEALTHCARE

Sept. 23, 2019

“We are facing an **extremely competitive situation from OPTUM.**”

Sept. 27, 2019

“We are **competing with Optum** in all these deals.”

Dec. 26, 2019

“We faced **intense competition from OPTUM.**”

Apr. 10, 2020

“[W]e have **competitive cost pressure due to Optum . . .**”

Horizontal Competition: Market Share

Market Share

100%

94%

75%

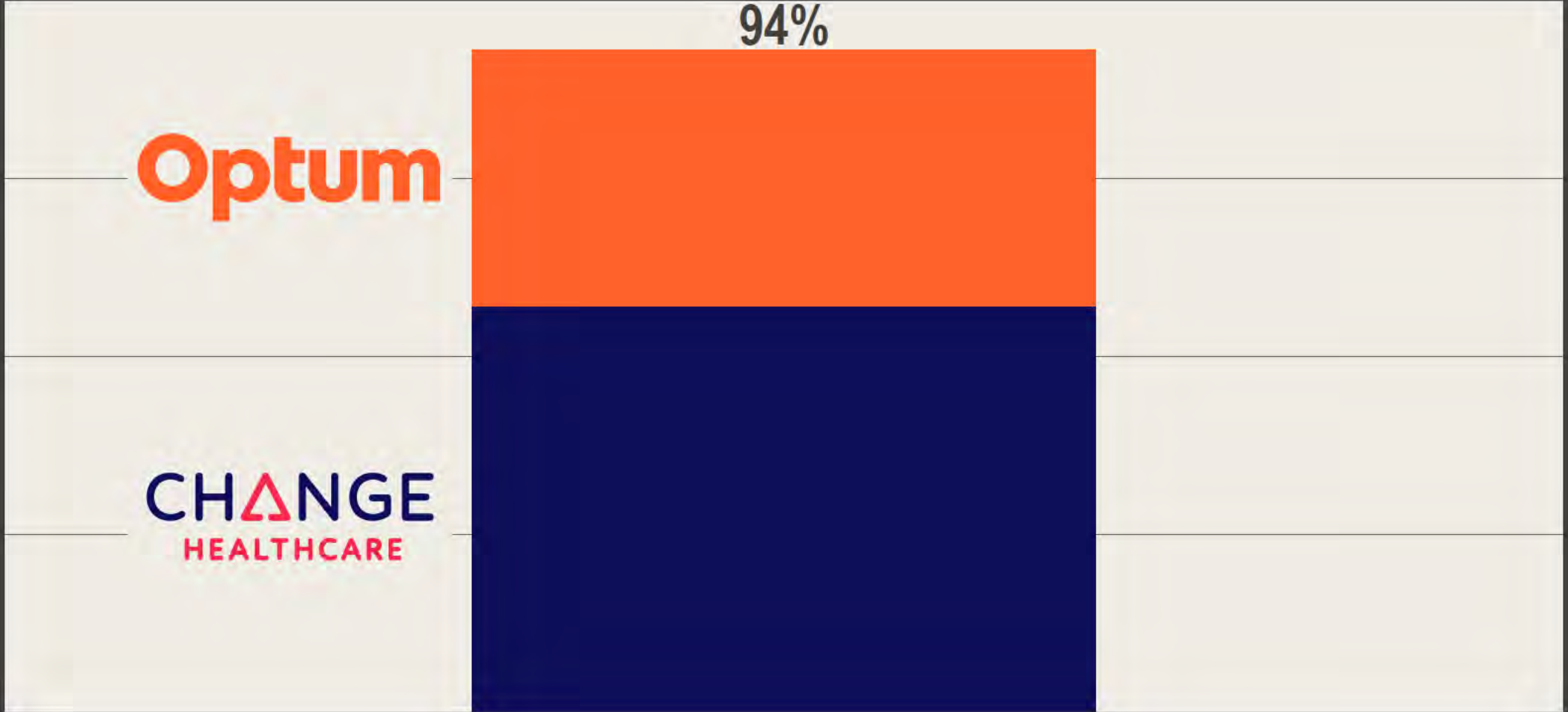
Optum

50%

25%

CHANGE
HEALTHCARE

0%



Market Concentration Here Exceeds Precedent Cases in this District

Market Share

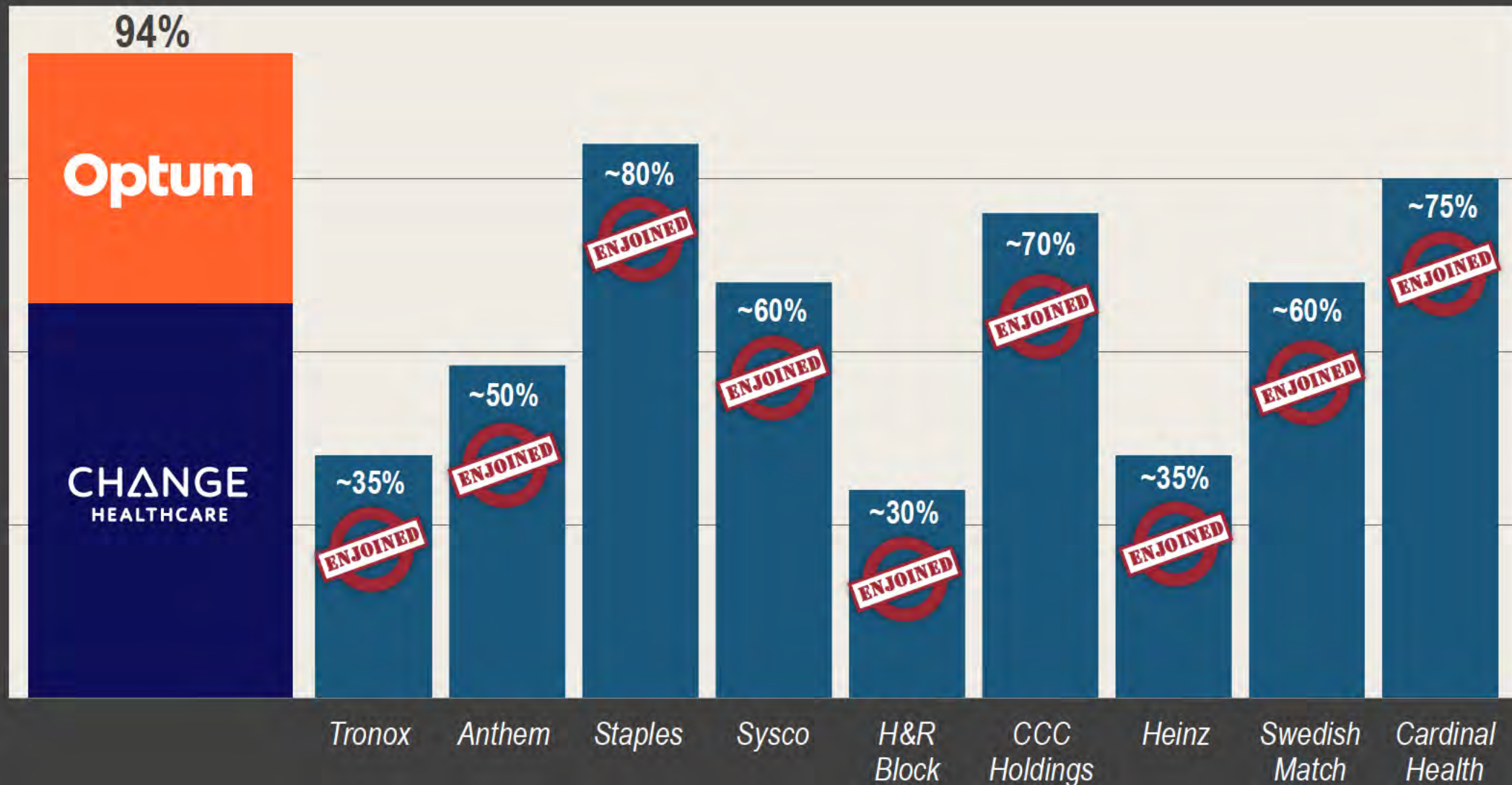
100%

75%

50%

25%

0%



Divestitures Must Promote Competitive Markets



United States v. Aetna Inc.,

240 F. Supp. 3d 1, 60 (D.D.C. 2017) (quoting *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 72 (D.D.C. 2015)) (alteration in original) (citation omitted)

To do so, defendants must prove that the divestiture will “replac[e] the **competitive intensity** lost as a result of the merger.”

Defendants Bear Burden of Rebutting Prima Facie Case



United States v. Aetna Inc.,

240 F. Supp. 3d 1, 60 (D.D.C. 2017); *id.* (alteration in original) (citation and internal quotation omitted)

“Defendants in a merger challenge bear the burden of producing evidence tending to rebut the government’s prima facie case.”

Defendants have the burden to show “that a proposed divestiture would ‘restore [the] competition’ lost by the merger.”

Defendants' Proposed Divestiture Is Not Sufficient



Proposed purchaser has no experience in market



Proposed purchaser's incentives and commitments do not support robust, long-term competition



Proposed divestiture is narrow, lacking necessary products to promote strong competition

Real-Time Settlement



Feb. 5, 2022



Mar. 9, 2021

CHANGE
HEALTHCARE

As I mentioned, we are exploring Real-Time Settlement for healthcare claims/billing/payment. I am not sure if there is anything your technology can add to our plans there, but given you asked if there were any **truly disruptive** areas we are working in, this is one.

This is **core to the company's future** so we need to have a strategic vs. solely tactical discussion about this.

Vertical Harm

Merger Harm in the Relevant Commercial Insurance Markets

UNITEDHEALTH GROUP®



Clearinghouse

ClaimsXten®

With Control of Change's Clearinghouse and ClaimsXten Products, United Can Harm Rivals and Competition



Degrade quality



Raise cost



Deny or delay innovation



Data



Data Rights

With Change's Competitively Sensitive Information, United Can Harm Competition



Surveil its insurance rivals' sensitive information, lessening innovation



Single out and **avoid** insuring high-risk groups

Merger Harm in the Relevant Commercial Insurance Markets

UNITEDHEALTH GROUP®



Clearinghouse



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With Control of Change's Clearinghouse
and ClaimsXten Products,
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Degrade quality



Raise cost



Deny or delay innovation

Vertical Harm

TODAY, ABSENT A MERGER

CHANGE
HEALTHCARE

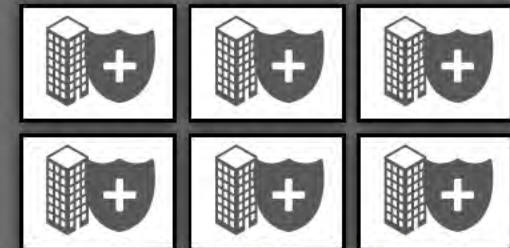
Healthcare
Technology Sales



Commercial Health
Insurance Sales



COMPETITORS



Vertical Harm

IF THE MERGER TAKES PLACE

Healthcare
Technology Sales

Market Size:

(millions)

Commercial Health
Insurance Sales

Market Size:

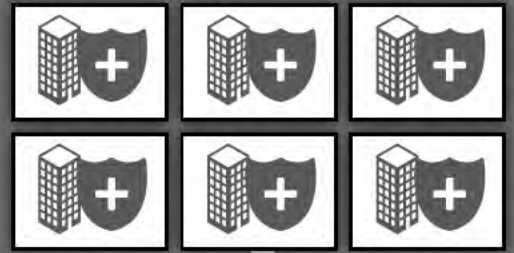
(billions)



Reduced incentive for upstream sales to rivals due to ability to recapture downstream health insurance sales



COMPETITORS



BID \$\$\$

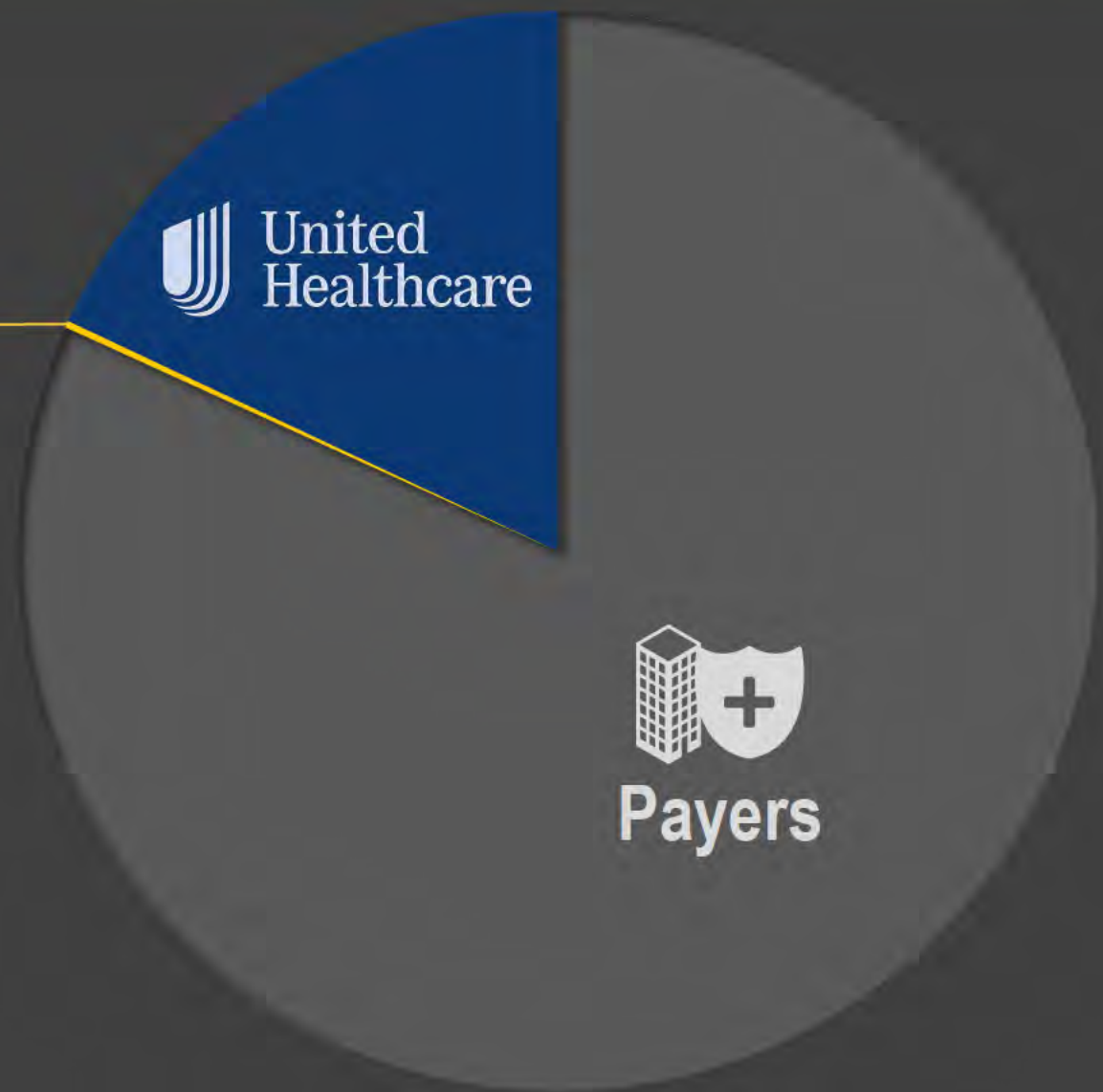
BID \$\$\$\$



Higher costs for rivals reduces competition in downstream markets

Only a Tiny Share Shift Makes Foreclosure Profitable

United Would Need to Gain
0.2% Market Share
to Make Foreclosure of the
Transparent Network Profitable



Merger Harm in the Relevant Commercial Insurance Markets

UNITEDHEALTH GROUP®



Data



Data Rights

With Change's Competitively Sensitive Information, United Can Harm Competition

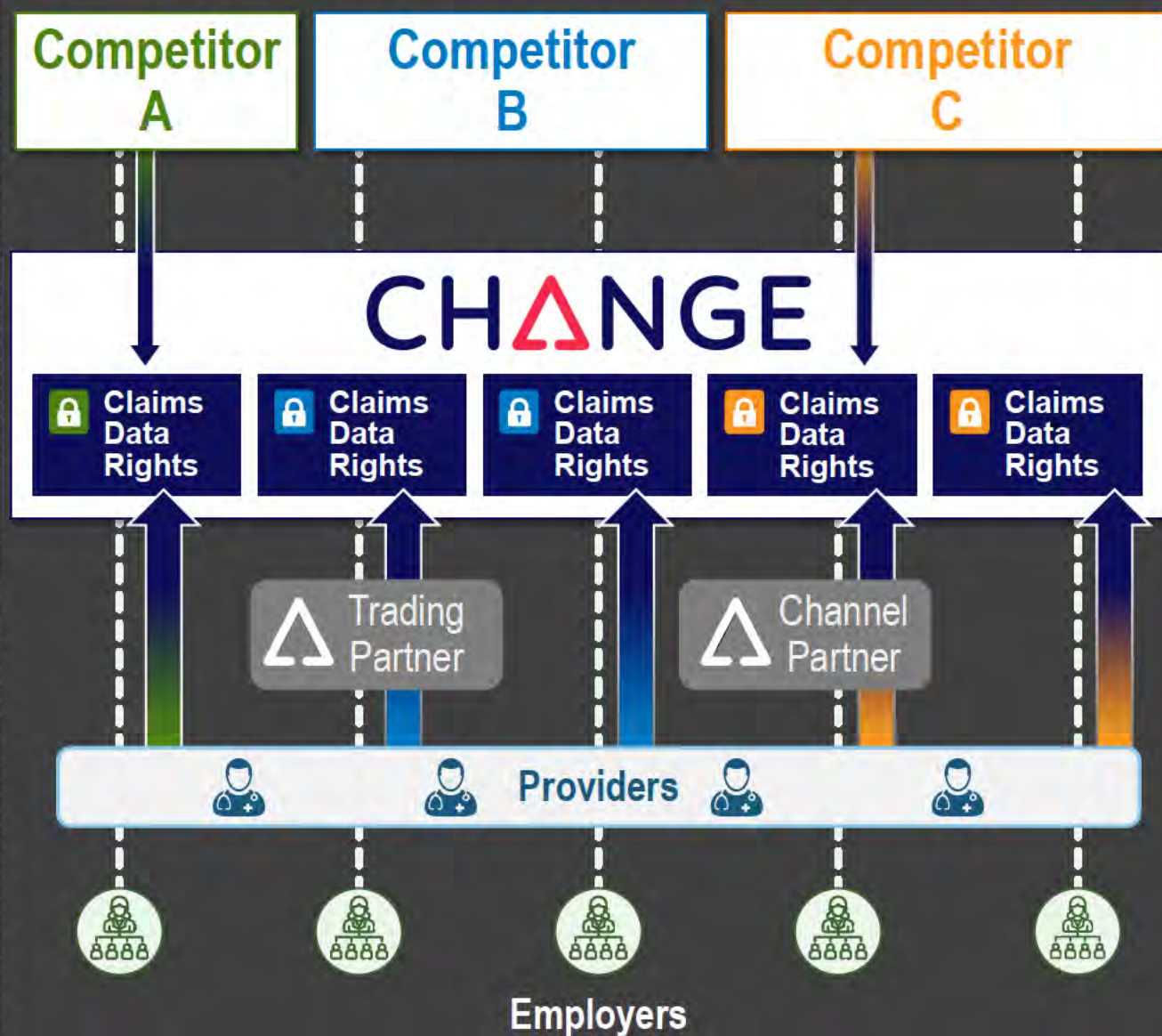
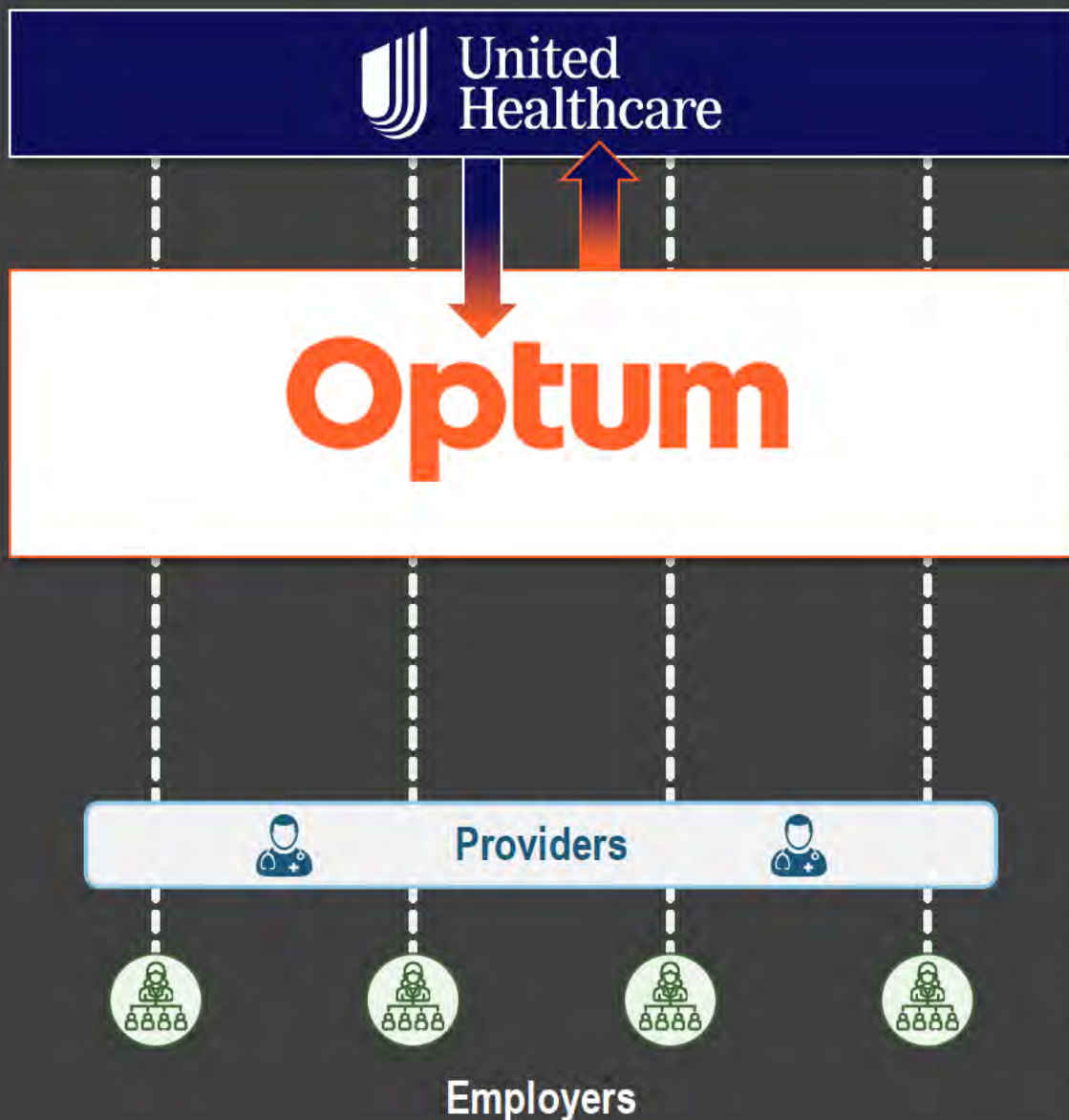


Surveil its insurance rivals' sensitive information, lessening innovation

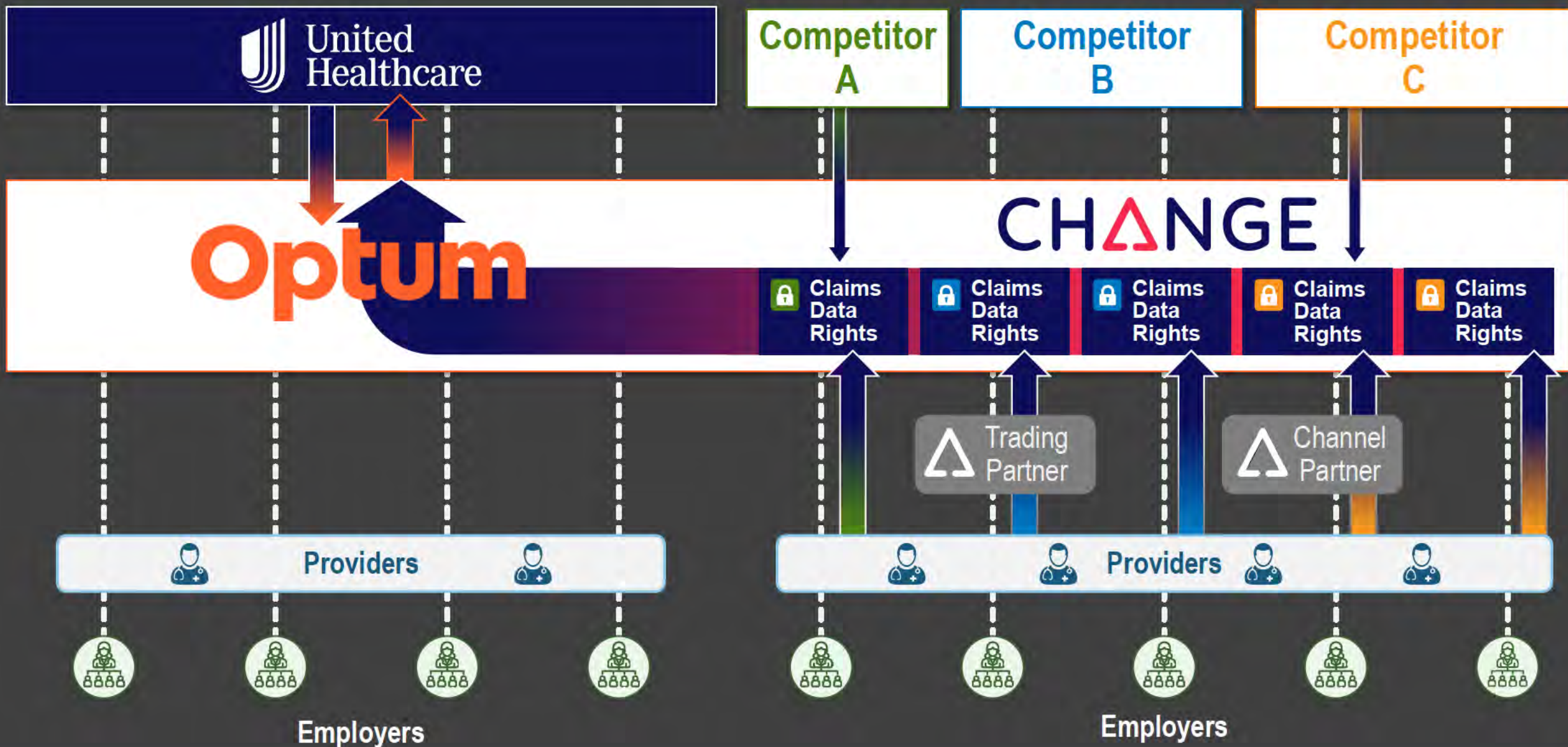


Single out and **avoid** insuring high-risk groups

Claims Data and Insights Flow Absent Merger



Claims Data and Insights Flow to United With Merger



United's Incentive: "enterprise math"



Optum

Schumacher Notes

2. Take a macro view and compromise (includes sharing data, quantifying value to enterprise and making compromises, etc)

As for changing the answer on the termination...importantly, we sought #2 macro view and did the enterprise math and it was clear that UHC needed to get to a different place with that health system

UnitedHealth Group Enterprise Data Governance Policy 2019

Policy Purpose

The purpose of this Policy is to create an Enterprise-wide approach to Data Transactions that is consistent with the Enterprise mission and otherwise in the best interests of the Enterprise and the constituents it serves.

Data Is Important to UHG

Data is viewed as both a challenge and a critical success factor to meeting business objectives

Unrealized Market Opportunity

- Fragmented data can't be used as competitive advantage to 1) grow existing biz models, and 2) identify and capture new biz models

Challenges continue to exist in enacting programs that cross silos -either those within Optum or those between Optum and UHC.

So what should UHG be doing:
- Data security and policy for sharing

The potential Change acquisition provides significant data assets, data use rights . . .

Claims

- 2,300 payer connections



Data Is Important to UHG



Be explicit about what information we are going to share between companies . . . not just grant permission, but require it

**Email From
D. Schumacher to
A. Witty**
March 3, 2021

Optum

Data Rights

January 8, 2020

Email from R. Musslewhite to J. Maack Re: Wichmann



Email from
R. Musslewhite to
J. Maack
January 8, 2020

[Wichmann] says if we have data rights, he's excited.

We will need to come back to him with a good answer on data and why we get a proprietary advantage from doing this deal . . . which I think we can do.

PX082 at 1, 4.

Data Rights

January 8, 2020

Email from R. Musslewhite
Maack Re: Wichmann Me

February 2, 2020

Email from J. Ma
Narayanan Re: C
(Change) Walka



**Email from J. Maack
to S. Narayanan Re:
Cambridge (Change)
Walkaround Deck
February 2, 2020**

**Data page(s) → This is Wichmann's
obsession** so might suggest we push
to have a page or two from [Change]
on data volume, data rights, etc.

PX098 at 1.

Data Rights

January 8, 2020

Email from R. M...
Maack Re: Wichm...

May 1, 2020



**UnitedHealth Group's
Follow-Up Materials
to Change (*Project
Cambridge*)
May 1, 2020**

[Change] manages the highest volume of claims among EDI players and has penetration across medical, dental, and pharmacy networks. [Change] is particularly broad and deep in the areas of commercial claims, dental claims, eligibility and patient statements. Multipayer claims data would be additive to the datasets of Optum which are primarily comprised of UHC claims.

PX368 at 11.

Data Rights



UnitedHealth /
Change (*Project
Cambridge*) Due
Diligence Materials
December 20, 2020

[W]e believe about 60% of
all data has de-identification
rights.

PX945 at 2.

December 20, 2020
UnitedHealth / Change
(*Project Cambridge*)
Due Diligence Materials

Data Rights



David Wichmann
Retired CEO,
UnitedHealth Group



Q. Let's just break it up so the record is really clear. There is the clinical side of things which you were just touching on. There's the administrative services side.

On the administrative services side, is it correct that from your working with the team, it was your understanding that UnitedHealth Group would have access to the data rights as relates to the administrative services side of the business for Change Healthcare; is that correct?

A. Yeah. I wouldn't hastily generalize, but that's the foundation by which the business case was made.

Wichmann (CID) Dep. at 274:21-25; 275:2-12.

December 20, 2020
UnitedHealth / Change
(Project Cambridge)
Due Diligence Materials

December 29, 2020
**FINAL BOARD
DECISION**

“U-Factor” Casts a Shadow Over Optum



**Mega Payer Sales
Strategy**
December 2019

Optum

Large nationals
skeptical about the
“U” factor

- Optum is perceived as a respectable and competent vendor, however large payers have concerns contracting with Optum given its ownership by United
- Optum is perceived by all executives as facing “Chinese wall” problems with other large payers, mainly Nationals. Not perceived as such a constraint for Blues and mid sized payers.

The U-Factor in 2021

Doctors Accuse UnitedHealthcare of Stifling Competition

A multistate group of anesthesiologists filed cases in Texas and Colorado, accusing the insurance giant of squeezing them like a "box constraint."

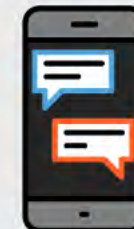
Well, my meetings with [REDACTED] this morning here in Nashville should be interesting after yesterday's NYT article on UnitedHealthcare - Anesthesia Partners. You folks make life interesting!

The old U-factor as we call it. Interesting is one way to put it - good luck



Neil de Crescenzo
President / CEO

CHANGE
HEALTHCARE



Rick Hardy
CEO

Optum Insight

United's Access to Data and Data Rights Harms Competition



United monitors rivals, thwarting incentives of rivals to innovate and affecting costs



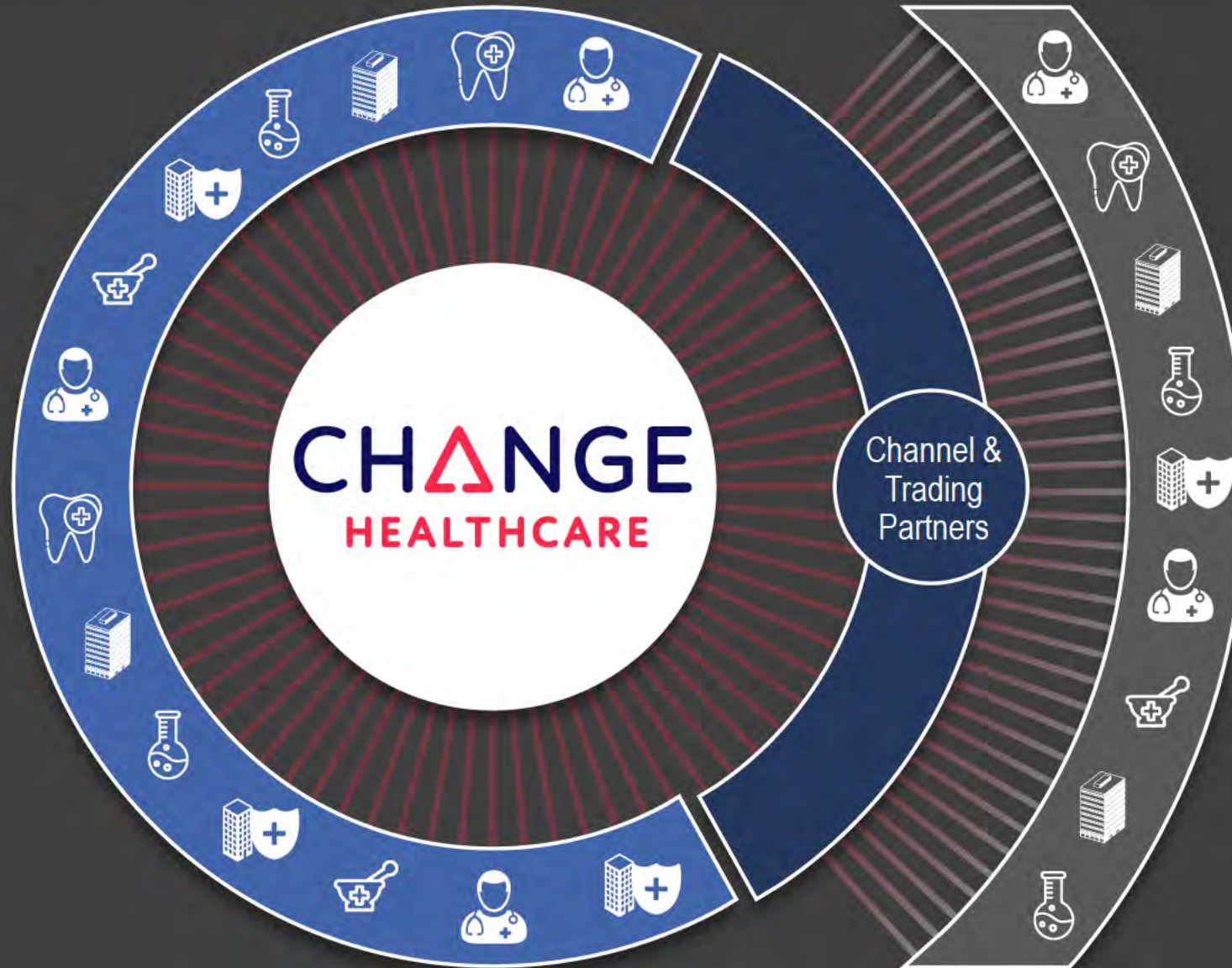
United understands more about employer groups, bidding only on profitable accounts



United retains access to Change's clearinghouse, exposing rivals' claims data

Competitively Sensitive Information Not Shielded from Change

Significant Costs
of Time / Money
Prevent Provider
Switching



If Providers
Switch,
*Their Data Still
Flows Through*
Change's
Clearinghouse

Defendants' Arguments Are Not Persuasive



Efficiencies are not verifiable, merger-specific, and do not flow through to consumers



Customer commitments are vague and illusory



Behavioral firewalls and policies / procedures are fundamentally flawed

Proposed Merger Harms Competition in Three Ways



Harms competition for first pass claims editing, a critical input for health insurers



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Brown Shoe Co. v. United States,
370 U.S. 294, 337 (1962) (internal quotation omitted)

“[I]f anticompetitive effects of a merger are probable in ‘any’ significant market, the merger—at least to that extent—is proscribed.”

