

June 14, 2019: Advocacy spotlight on CVS-Aetna merger: Not yet a final deal—AMA outlines competitive harm

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In an unprecedented hearing that began on June 4, Judge Richard Leon of the U.S. District Court for the District of Columbia heard from six witnesses about the \$70 billion merger of pharmacy giant CVS Corp. and mega-insurer Aetna Inc. The U.S. Department of Justice (DOJ) decided in October 2018 to allow the merger after requiring a divestiture of Aetna's Medicare Part D business.

Judge Leon's decision to hold a hearing that included live witnesses as part of a Tunney Act review of the DOJ action is a first, antitrust experts say. If the CVS-Aetna merger is approved, it will be the biggest health care merger in history. The AMA believes this will hurt patients and physicians by significantly reducing competition. This unprecedented federal court hearing speaks to the power of the AMA and the voice of physicians as trusted advocates in health care.

The AMA's expert—Neeraj Sood, PhD—was the lead witness to discuss how the Justice Department's divestiture remedy may affect certain insurance markets for pharmaceuticals. Sood is professor and vice dean for research at the University of Southern California Sol Price School of Public Policy and director of research at the Leonard D. Schaeffer Center for Health Policy & Economics.

In an amicus brief to Judge Leon, the AMA explained why Aetna's proposed divestiture will not come close to restoring competition in the prescription drug plan market to premerger levels.

"The CVS-Aetna deal is popularly described as a vertical merger involving two large companies that don't operate in the same markets. But in fact, CVS and Aetna do compete as formidable rivals in some of the same markets, raising substantial concerns that are specific to a horizontal merger," said AMA Immediate Past President Barbara L. McAneny, MD, in a statement. "It is these competitive concerns that are the catalyst for today's unprecedented evidentiary hearing."

Last year, the AMA outlined in a 141-page analysis (PDF) why the proposed CVS-Aetna merger would run afoul of federal antitrust law, noting how it would likely harm patients. CVS is one of the two largest players in the retail pharmacy market and operates one of the two largest PBMs.

The merger also would reduce competition in certain pharmaceutical benefit markets, leading to higher premiums and lower-quality insurance products. The merger faces enormous implementation challenges and is unlikely to realize efficiencies that benefit patients.

Judge Leon's decision on whether to uphold or dissolve the DOJ settlement on the merger is expected later this summer.

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