

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2022

Tuesdays and Thursdays, 3:30-5:30 pm
Dale Collins
wdc30@georgetown.edu
www.appliedantitrust.com

READING GUIDANCE

Class 25 (November 29): UnitedHealth/Change (Unit 17)

On Tuesday, we will examine the DOJ's challenge to UnitedHealth Group's pending \$13 billion acquisition of Change. The complaint, which was filed in the District of Columbia, advanced three theories of anticompetitive harm:

1. *Horizontal*. The combination of Change's ClaimsXten and UHG's Claims Edit System would tend to create a monopoly in the sale of first-pass claims editing solutions in the United States
2. *Vertical 1*. UHG's control over Change's EDI clearinghouse¹—a key input for UHG competitors—would give UHG the ability and incentive to use rivals' competitively sensitive information (CSI) for its own benefit.
3. *Vertical 2*. UHG's control over Change's EDI clearinghouse would give UHG the ability and incentive to withhold innovations and raise rivals' costs in the markets for national accounts and large group health insurance.

The case is interesting for the court's detailed treatment of the fix to resolve the horizontal claim and its analysis of the vertical claims, especially its analysis of the UHG's incentives to keep its rivals CSI confidential and not misuse it.

Since it is the end of the semester and you are undoubtedly pressed for time, I will not ask you to read all the materials. At a minimum, read the district court's opinion (pp. 99-156) carefully. You may also find interesting the merging parties' post-trial brief, where they defend the "fix" in detail. On October 3, 2022, after the district court dismissed the complaint on the merits and refused to enter an injunction pending an appeal, the parties closed the transaction. A few days ago, on November 18, the DOJ filed its notice of appeal. The DOJ has yet to file its brief in the D.C. Circuit, so it is not clear yet what errors the DOJ is claiming the district court made. Think about what errors you would assert if you were representing the government.

As you will see when you read the opinion, the district court paid careful attention to the testimony of the business people and largely credited it over what the court found to be the more "theoretical" concerns raised by the DOJ's testifying economists about the transaction. The willingness of the trial court to credit the testimony of the business representatives over the economists in the case has been a feature of several recent cases. The excerpts from the

¹ EDI clearinghouses enable the electronic transmission of claims, remittances, and other information between and among healthcare payers and healthcare providers. The information transmitted through an EDI clearinghouse may be very competitively sensitive.

T-Mobile/Sprint and Sabre/Farelogix opinions are especially instructive (pp. 167-79). They are short and you should read them with care.

You should feel free to skim or skip any of the other materials in the required reading.

Email me if you have any questions. I hope you enjoy/enjoyed the Thanksgiving break.

P.S. Do not forget that we have an optional review session on Friday, December 2, from 1:00 pm to 3:00 pm in McD 110. It will be recorded and available on Panopto if you cannot make it.