

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

UNITEDHEALTH GROUP
INCORPORATED, *et al.*,

Defendants.

Case No. 1:24-cv-03267-JKB

Judge James K. Bredar

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING ON
MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS’ CROSS-MOTION**

UnitedHealth Group Incorporated (“UHG”) and Amedisys, Inc.’s (“Amedisys”) motion to expedite briefing should be granted, and nothing in Plaintiffs’ opposition and cross-motion [ECF No. 83] suggests otherwise. After a year-plus investigation during which Plaintiffs had the benefit of one-sided compulsory process, Plaintiffs should be able to respond on an expedited basis to a motion that simply asserts that Plaintiffs have not adequately alleged the geographic markets they contend will experience a substantial lessening of competition. This is a basic tenet of antitrust law and federal pleading requirements, and Plaintiffs will suffer no prejudice from an abbreviated briefing schedule. In all events, the record does not support an extension of Plaintiffs’ briefing schedule.

1. Plaintiffs have long been aware of the merging parties’ concerns with the lack of geographic market allegations. Within days of the complaint being filed, UHG and Amedisys—on November 15, 2024—sent Plaintiffs a letter cataloguing the deficiencies with Plaintiffs’ geographic market allegations. *See* 11/15/24 T. McCarrick Ltr. to E. Murdock-Park. The merging parties explained that “Plaintiffs’ complaint does not specify the scope of the geographic markets

at issue,” and that “[a]lthough it claims to identify a ‘non-exhaustive’ list of locations in which” UHG and Amedisys operate, “the complaint does not explain the geographic markets” encompassing those locations. *See id.*

2. Plaintiffs’ suggestion that they provided “detailed appendices” that “list the relevant geographies at issue” is misleading. [See ECF No. 83 at 1.] The locations listed in Plaintiffs’ appendices are not geographic markets but a “non-exhaustive” list of home health and hospice “locations *in*” the alleged, unspecified geographic markets. *See* Compl. [ECF No. 1] ¶¶ 60, 65, 70, Compl. App’x A, B, & C [ECF Nos. 1-1, 1-2, 1-3] (emphasis added). But Plaintiffs do not explain the parameters of the geographic markets in which those locations fall, and it is entirely unclear whether the geographic markets plaintiffs allege are townships, counties, multi-county areas, metropolitan areas, some service area threshold, or some other area(s). In other words, the complaint gives no notice of how Plaintiffs will draw the geographic market boundaries *around* the merging parties’ home health and hospice locations.

3. Because of this fundamental and prejudicial pleading defect, UHG and Amedisys tried to negotiate a disclosure provision that would require Plaintiffs to identify their alleged geographic markets within 14 days of the entry of any case management order. The parties discussed this provision throughout November and December 2024, and it appears as a disputed item in the parties’ recent case management submission. [ECF Nos. 72-73.] Plaintiffs rejected that provision, taking the view that they need not identify their alleged geographic markets until expert discovery—five to seven months from now and almost immediately before the parties’ proposed trial dates. [See ECF No. 73 at 11] (arguing that “[g]eographic market discovery should be deferred until the experts can opine on those markets”).

4. After the parties filed the proposed case management order, on January 4, 2025, UHG and Amedisys notified DOJ that they intended to “file a motion to dismiss Plaintiffs’ complaint based on a failure to adequately plead geographic markets,” but made clear that “[i]n the event Plaintiffs agree to UHG and Amedisys’s proposed CMO provision on geographic markets, agree to disclose sufficient information in response to an interrogatory in fact discovery, or agree to amend their complaint to include sufficient information related to geographic markets,” a motion could be avoided. *See* 1/4/25 T. McCarrick Eml. to E. Murdock-Park, et al. Plaintiffs confirmed that they were “willing to consider” a “request to provide additional information through an interrogatory response,” but stated, “without seeing [the] interrogatory request we cannot commit to providing all the information that it seeks.” *See* 1/6/25 E. Murdock-Park Eml. to T. McCarrick, et al.

5. UHG and Amedisys proposed the following interrogatory:

For each product market, please separately and specifically describe each geographic area constituting each alleged geographic market in which Plaintiffs allege a substantial lessening of competition as a result of the proposed transaction.

Any response should list all geographic markets that Plaintiffs claim are part of the “hundreds of local home health markets,” “dozens of hospice markets,” and “hundreds of local labor markets” in which the proposed transaction is presumptively unlawful according to Plaintiffs, including every geographic market encompassing the list of locations in Plaintiffs’ appendices or that are included in Plaintiffs’ calculation of the volume of commerce in presumptively unlawful markets. *See* Compl. ¶¶ 8-9, 16, 48, 51, 60, 65-66, 70, 95-97.

To the extent Plaintiffs’ geographic markets are based on a UHG or Amedisys branch or agency’s service area, specifically provide: (i) the branch or agency around which each market was determined; (ii) whether the proposed market is based on service areas, and if so, at what threshold (*e.g.*, 75%, 90%, 100%); and (iii) all counties or other specific geographic areas within the presumptively unlawful markets alleged.

See 1/6/25 T. McCarrick Eml. to E. Murdock-Park, et al.

6. Given the length of time the parties had been discussing this issue (nearly 60 days), UHG and Amedisys asked Plaintiffs to provide a final counteroffer. *See id.* Plaintiffs provided a counterproposal, but that proposal did not “offer[] to gather and provide even more factual information,” as Plaintiff’ suggest. [*See* ECF No. 83 at 2.] Plaintiffs confirmed during a meet-and-confer that their proposal would not provide a definition of their proposed geographic markets, nor any methodology for determining those areas. Instead, Plaintiffs offered a list of UHG and Amedisys branch and agency identifiers and the 75% and 90% service areas around those locations—information that the merging parties already have and that would include no additional specificity regarding the scope of Plaintiffs’ alleged geographic markets.

7. Plaintiffs were unambiguous that they would not provide any additional information regarding the scope of the geographic markets they allege, leaving the parties at a clear impasse. *See* 1/8/25 T. McCarrick Eml. to E. Murdock-Park, et al.

8. UHG and Amedisys’s request is modest: it simply asks Plaintiffs to allege the geographic markets in which they allege a substantial lessening of competition. Given the extensive discovery that Plaintiffs received during the investigatory phase it is difficult to imagine that Plaintiffs do not know the scope of the geographic markets at issue or would be prejudiced by responding to UHG and Amedisys’s motion on a slightly expedited or normal briefing schedule.

9. For these reasons, UHG’s motion to expedite briefing should be granted, and Plaintiffs’ cross-motion should be denied.

Respectfully submitted,

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