
AET/CVS: Potential WellCare Divestiture Largely Addresses Concentration Issues in Part D

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Event Driven Takeaways

- The DOJ will look closely to ensure that potential divestiture of Aetna/CVS' Medicare Part D assets to WellCare would restore competition. Event Driven's analysis reveals that a potential divestiture of Aetna/CVS' Part D lives to WellCare will likely address most of the market concentration concerns at the county level.
- Assuming the DOJ requires divestitures of Medicare Part D lives associated with the smaller of the two merging parties in an overlapping county, the sale of these lives to WellCare will not trigger additional concentration concerns in the vast majority of counties where overlaps exist.

Wellcare is an appropriate divestiture buyer, based on an analysis of Medicare Part D market shares in the counties where overlaps exist. Divestiture of Part D covered lives to WellCare is unlikely to raise concentration concerns in the vast majority of counties analyzed, except for some 82 counties spread across states such as Mississippi, Arkansas and Nebraska.

As previously [reported](#), WellCare is the most common name being mentioned as a potential divestiture buyer for Aetna/CVS. The company is growing in Medicare Part D, the prescription drug coverage market which is the expected focus of the DOJ in terms of horizontal overlaps in Aetna/CVS.

When assessing the viability of a divestiture buyer, the DOJ will closely scrutinize whether a divestiture of Aetna/CVS' Medicare Part D assets to WellCare will indeed restore competition in problematic geographic markets. In addition, regulators will also be wary of allowing Aetna/CVS to sell Part D lives to WellCare if the transaction created competition concerns in certain local markets.

“While WellCare may then be the prominent player in the market, I believe the DOJ may still find such an end arrangement to be acceptable,” said Patrick Souter, a healthcare specialist who is of counsel at law firm Gray Reed & McGraw. “This end result may not be optimal but could be beneficial to the marketplace.”

According to several practitioners, the antitrust agencies have become more cautious in recent years about their ability to ensure competition post-divestiture. There are “many examples of divestitures that didn't work,” said Tim Greaney, a law professor at UC Hastings who provided testimony to the California Department of Insurance about the Aetna/CVS deal.

According to Souter, it would be “preferential to have a single buyer due to ease of convenience for the parties, consistency in the products offered and the analysis of submarkets and the market as a whole.” However, that may not be practical, and the end result could be “multiple parties purchasing the product lines based upon geographic location,” he said.

Event Driven's analysis of [August 2018 enrollment data](#) made available by the Centers for Medicare and Medicaid Services, or CMS, reveals that a potential divestiture of Aetna/CVS' Part D lives to WellCare will likely address market concentration concerns in almost all areas except for some 82 counties spread across states such as Mississippi, Arkansas and Nebraska among others.

For example, in Harrison county in Mississippi, both Aetna and CVS currently have significant presence. CVS is in the lead position controlling 4,255 lives, while Aetna is in fourth position controlling 1,501 lives. Post-merger, market concentration as measured by the Herfindahl–Hirschman Index, or HHI, in this county would increase from 1,957 to 2,597. The DOJ would classify this market, according to the horizontal merger guidelines, as “highly concentrated.” Assuming the

DOJ requires sale of Part D lives controlled by the smaller of the two merging parties in the county - in this case Aetna - to WellCare, it would mean that Aetna/CVS would have to sell roughly 1,501 lives. That sell-off would only bring the HHI down from 2,597 to 2,173.

Similarly, in Noxubee County, Mississippi, the HHI increases from 2,277 to 2,844, and sell-off to WellCare would only bring the HHI down to 2,582.

However, despite the divestiture not fully addressing the HHI increase in these counties, the DOJ will also consider that large national players such as United Healthcare, Humana and Express Scripts operate in many of these local markets.

Event Driven identified counties with similar market dynamics to determine if sell-off to WellCare would indeed solve market concentration concerns that the DOJ might have. Figure 1 illustrates the relatively small number of potentially problematic counties associated with a divestiture to WellCare.

Figure 1: Divestiture to WellCare

Divestiture to WellCare	
State	No. of Problematic Counties
Mississippi	50
Arkansas	11
Nebraska	5
Texas	4
Kansas	3
South Dakota	3
Nevada	1
Montana	1
Idaho	1
Arizona	1
North Dakota	1

However, despite any potential concerns related to the 82 counties identified above, Part D sell-off to WellCare would solve a significant chunk of the potential market concentration issues related to Aetna/CVS. As Figure 2 illustrates, there are 1,231 counties where the combination will lead to more than a 200-point increase in HHI and result in what the DOJ considers a “highly concentrated” market. A sell-off to WellCare could easily solve market concentration concerns in 1,109 of these 1,231 counties.

Figure 2: Divestiture to WellCare

Divestiture to WellCare	
Description	No. of Counties
Total No. of Counties	3,215
No. of Counties where Aetna and CVS operate	3,054
No. of Counties where HHI would increase by more than 200 and lead to a "Highly Concentrated" market ("Overlapping Counties")	1,231
No. of "Overlapping Counties" where WellCare has a presence (A)	1,191
No. of "Overlapping Counties" where sell-off to WellCare will potentially create new concentration issues (B)	82
No. of "Overlapping Counties" where sell-off to WellCare will likely solve concentration concerns (C = A - B)	1,109

In counties where Aetna/CVS have market concentration issues and where WellCare does not operate, the DOJ will likely scrutinize whether WellCare can enter those counties and operate a viable business. For example, if WellCare successfully operates in the region, even if the company does not have presence in a particular county, the DOJ may be satisfied as to WellCare's ability to replace any competition lost by the merger.

In addition to antitrust approval from the DOJ, the companies would need approval from CMS to transfer Part D members to WellCare. However, a CMS spokesperson would not say whether CVS and Aetna have already filed a novation agreement with the agency. The spokesperson declined to comment "based on the speculative nature and proprietary concerns on the active merger and its discussions."

--Shrey Verma and Ryan Lynch

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