

Director John M Huff
Director
Department of Insurance, Financial Institutions & Professional Registration
Truman State Office Building
Room 530
P.O. Box 690
Jefferson City, MO 65102

Re: Public Hearing for Anthem-Cigna Merger

Dear Director Huff:

We write regarding the proposed Anthem-Cigna merger and its potential impact on Missouri health insurance markets.¹ This proposed merger would combine two of the nation's five largest insurers. We understand that currently the Missouri Department of Insurance, Financial Institutions, & Professional Registration ("DIFP") is reviewing the proposed merger. We appreciate DIFP's thorough process on the proposed Aetna-Humana merger, including its extensive hearing and thoughtful order rejecting the merger.

We urge DIFP to hold a hearing on the Anthem-Cigna merger, and we request to participate in such a hearing. We are concerned that the merger of these dominant insurers, especially in conjunction with the Aetna-Humana merger and against the background of increased consolidation in the health insurance industry, could substantially lessen competition and harm millions of Missouri consumers.

We are concerned that:

- The merger is likely to substantially harm consumers in the fully-insured employer group market and the self-insured employer group market;
- the merger will likely lead to higher premiums based on what has happened in previous mergers;
- any potential efficiencies that might result from the merger will not overcome the likely competitive harm from the merger; and
- past remedies that attempted to correct problems from problematic mergers have failed.

Under Missouri law, the Director, after a public hearing, is authorized to prevent any merging insurer from doing business in the state if "there is substantial evidence that the effect of the

¹ We [submitted comments](#) and testified on behalf of Empower Missouri, the Missouri Budget Project, the Missouri Health Advocacy Alliance, US PIRG, Consumer Action, Consumers Union, Consumer Federation of America, and SEIU Healthcare Illinois, Indiana, Missouri, Kansas in your proceeding in the Aetna-Humana merger.

acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein.”² In assessing if a health insurance merger substantially lessens competition, the statute states that it is *prima facie* evidence of a violation of the competitive standards if there is a significant trend toward concentration in the product and geographical market, one of the merging insurers is in a grouping of the two to eight largest insurers in the market, and the other has a market share of 2% or more.³ The relevant Missouri statute also states that it is *prima facie* evidence of a violation if the merger is between a company with 19% or more and a company with 1% or more of a market or a company with 15% or more and a company with 1% or more in a highly concentrated market.⁴ Even absent such a showing of *prima facie* evidence, the Commissioner “may establish the requisite anticompetitive effect based upon other substantial evidence.”⁵ The approach taken by the statute is consistent with the Horizontal Merger Guidelines⁶ and with approaches taken in other state insurance statutes.⁷

Although Anthem and Cigna claim various benefits associated with the merger, the credible scholarly evidence suggests that consumers will lose facing higher costs, less choice, and diminished quality of care.

With the prospect that this merger might proceed, we urge DIFP to hold a public hearing, allow us to participate in the hearing, carefully analyze this merger, and be ready to consider imposing requirements to protect consumers from harm.

Respectfully submitted,

David A. Balto
Matthew Lane
Brad Wasser
The Law Offices of David A. Balto
1325 G. St.
Suite 500
Washington, DC 20005
202-577-5424
David.balto@dcantitrustlaw.com
Matt.lane@dcantitrustlaw.com
Brad.wasser@dcantitrustlaw.com

² M.R.S. § 382.095.4-5.

³ M.R.S. § 382.095.4(2)(b).

⁴ M.R.S. § 382.095.4(2)(a).

⁵ M.R.S. § 382.095.4(4).

⁶ See U.S. Department of Justice & FTC, Horizontal Merger Guidelines (2010).

⁷ E.g., O.C.G.A. §33-13-3.