

Rob Fuller Quoted in Global Competition Review Article “White & Case, Cadwalader handle antitrust for Anthem/Cigna”



The July 27th article from Global Competition Review titled “White & Case, Cadwalader

handle antitrust for Anthem/Cigna” by Pallavi Guniganti covers Anthem’s recent purchase of rival health insurer Cigna for what it values as \$54.2 billion in cash and stock, raising an immediate chorus of concern from health-care providers and politicians. The companies said they expect the deal to close in the second half of 2016, and that it comes with a reverse breakup fee of 3.8 per cent of the stated deal value – approximately \$2 billion.

In a conference call following the announcement on last week, Anthem chief financial officer Wayne DeVeydt said the merger agreement includes no hell or high water provisions, “so there is a breakup fee in the event we aren’t able to obtain regulatory approval.”

[Rob Fuller](#), a former hospital executive now practicing at specialist health-care law firm Nelson Hardiman in Los Angeles, said despite rhetoric regarding national players, the DOJ will look at geographic markets on a state-by-state basis and “approval will hinge on regional competitors.”

If the merging companies can articulate and identify enough of a regional marketplace, he said, the antitrust division may allow the deals after requiring some divestitures to bolster regional competitors. The insurance companies’ assets are the existing contracts, which would be put up for sale in a divestiture.

For example, he said, in California there will be only three significant players, harming employers who will have few health plans vying for their business. If a market had just Anthem and Cigna as dominant players, “hospitals will yell and scream” about the monopsony and demand divestitures, Fuller said.

He predicted the DOJ will look at each product – Medicare Advantage, commercial insurance largely provided by employers, and so forth – as a different market.

Insurance tends to be state-driven as companies are licensed on a state-by-state basis, Fuller said, with markets generally not smaller than the state but also not crossing state borders. If a state runs a health insurance “exchange” under the Affordable Care Act, he said, it might take an interest in competition concerns because consolidation could lead to fewer carriers competing on the exchange.

California has such an exchange, and Fuller said he would expect the state’s attorney general Kamala Harris to get involved in the merger review.

For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.