

August 4, 2021

Richard Powers
Acting Assistant Attorney General
Antitrust Division
U. S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Acting Assistant Attorney General Powers:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes to express its concern with the adequacy of any potential remedies to resolve the substantial competitive concerns raised by UnitedHealth Group’s (UHG) proposed acquisition of Change Healthcare (“Change”) (the “Transaction”).

As we wrote to you in our letter of March 17, 2021, UHG and Change are well aware that their transaction is likely to violate the antitrust laws because, under the terms of their merger, they are required, in order to obtain DOJ approval, to divest assets that generate hundreds of millions of dollars in revenue.¹ We respectively maintain that the massive divestiture provision to which the parties have agreed does not provide the pathway needed to remedy the transaction’s likely substantial illegalities; rather, it strongly indicates that the deal cannot be “fixed.”

In its recent successful challenge to enjoin Aon/Willis Tower Watson’s merger, the Antitrust Division explained that the “key to any effective antitrust merger remedy is preserving competition that would otherwise be lost.”² Here, it is highly unlikely that any remedy will preserve the substantial level of competition between the parties that will be lost if the transaction is completed.

¹ Agreement and Plan of Merger, Change Healthcare, Inc. UnitedHealth Group, Inc. and Cambridge Merger Sub Inc, Jan. 5, 2021, §7.6, Annex A.

² Compl. ¶ 73, *United States v. AON plc and Willis Towers Watson plc*, No. 1:21-cv-01633, (D.D.C., June 15, 2021). See also Dep’t of Justice, Merger Remedies Manual, 2020, 1 (Division should ensure that any remedy “preserves or restores competition.”)



Recipient Name

Date

Page 2 of 3

First, Change’s securities filings make clear that among the company’s core strengths is its wide range of services. Change’s most recent 10-K states:

*Our platform and comprehensive suite of software, analytics, technology enabled services and network solutions drive improved results in the complex workflows of healthcare system payers and providers by enhancing clinical decision making, simplifying billing, collection and payment processes, and enabling a better patient experience.*³

Second, Change’s own securities filing state that the company’s success depends to a significant degree on “the advantages of scale” which “makes us a preferred technology partner.”⁴ The company represented that its “size, scale, expertise, and presence throughout the healthcare ecosystem...” are key factors in its success.⁵

Change also believes that its scale is needed to service hospitals’ requirements, as employers shift costs to patients through high-deductible plans:

*As providers become more consumer-oriented, they require increasingly sophisticated, dynamic, and personalized digital solutions, which generally necessitate scale for efficient implementation and cost-effectiveness.*⁶

UHG’s securities filing and investor reports similarly reflect the benefits of scale in providing healthcare IT services. As we discussed in our March 17 letter, according to UHG, Optum is one of the largest providers of health care IT services. More than 5,000 (9 out of 10) hospitals⁷ rely on Optum’s data analytic services. Optum has one of the broadest networks of payer connections – more than 2,300 – including connections with the top five health insurance companies in the United States.⁸ In addition, OptumInsight processes more than 5 billion pages of clinical documents and processes data covering nearly 250 million people annually.⁹

³ Change Healthcare, Annual Report (Form 10-K) (May, 27, 2021), 5.

⁴ Id. at 5, 9.

⁵ Id. at 5 (emphasis added).

⁶ Id. at 8.

⁷ Optum, About us, <https://www.optum.com/about-us.html>; UnitedHealth Group, Annual Report (Form 10-K) (Dec. 31, 2019), 8. UnitedHealth Group, 2020 Investor Conference, 1 https://www.unitedhealthgroup.com/viewer.html?file=/content/dam/UHG/PDF/investors/2020/investor-conference/IC20_Optum_Overviews_QandA.pdf.

⁸ OptumInsight Medical Payer List (July 26, 2021), <https://iedi.optum.com/iedi/enspublic/Download/Payerlists/Medicalpayerlist.pdf>.

⁹ UnitedHealth Group, 2020 Investor Conference, 4.

Recipient Name

Date

Page 3 of 3

Third, a divestiture, even one that involves assets that generate hundreds of millions of dollars (as contemplated by the parties here), will do nothing to resolve the substantial anticompetitive conflicts of interests that will be produced by UHG acquiring Change's proprietary dataset. These conflicts include (1) greater ability for UHG to favor UnitedHealthcare's health plans over those of competitors; (2) the potential that UHG will modify Change's InterQual clinical support algorithms to favor payors over patients;¹⁰ and (3) the increased risk that UHG will gain access to competitors' pricing and other competitively sensitive information. Moreover, allowing UHG to acquire Change's data sets, even if a divestiture buyer also acquires them, is precisely the type of incomplete remedy that the Antitrust Division has warned will "increase the risk [that] a remedy will not preserve competition."¹¹

In short, given the integrated nature of Change's large set of offerings, its substantial scale, and UHG's ability to misuse Change's datasets to favor its own lines of business, it is highly unlikely that any "extracted" partial divestiture of Change's business could reliably replace the substantial competitive pressure that Change places on UHG today.

We would be pleased to discuss our concerns with you in more detail at your convenience. Please contact me at mhatton@aha.org.

Sincerely,

/s/

Melinda Reid Hatton
General Counsel

cc: Kathleen O'Neill, Senior Director of Investigations and Litigation, Antitrust Division
Aaron Hoag, Chief, Technology and Platforms Section, Antitrust Division

¹⁰ InterQual is a collection of evidence-based clinical criteria that payors use for utilization management purposes, e.g., to adjudicate prior authorization requests and assess whether a service should be covered. Change Healthcare currently owns the InterQual dataset, and UnitedHealthcare has moved to InterQual from the only comparable competitor, MCG Care Guidelines, effective May 1, 2021. Once under UHG ownership, InterQual will no longer be an unbiased source of clinical criteria. Instead, UHG would be able to adjust the medical necessity criteria to meet the health plans' financial needs.

<https://www.uhcprovider.com/en/resource-library/news/2021-network-bulletin-featured-articles/0221-interqual.html#:~:text=We%20will%20transition%20to%20InterQual.reduce%20clinical%20decision%20turnaround%20times>

¹¹ Dep't of Justice, Merger Remedies Manual, 2020, 20.