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Health co-op difficulties unlikely a factor in pending insurance merger reviews

PaRR Strong evidence

• More than one third of co-ops have failed since ACA's passage
• Entering, staying in health insurance markets a challenge
• Undercapitalization, lack of scale contributed to failures

The antitrust reviews of both the **Humana** (NYSE:HUM) and **Aetna** (NYSE:AET) merger and the **Cigna** (NYSE:CI) and **Anthem** (NSYE:ANTM) deal should not be adversely affected by the failure of numerous Consumer Oriented and Operated Plans (co-ops), several industry specialists said.

Co-ops, which are formed at the national, state or local level, are nonprofit organizations that offer insurance through the healthcare exchanges.

Created by the Affordable Care Act (ACA), co-ops were seen as an alternative to the public insurance option that health reform lacked. But more than one-third of 23 co-ops across the US have already failed, and other co-ops are expected to close their doors in the near future.

These failures, in states such as New York and Colorado, raise questions about the difficulty of entering and succeeding in health insurance markets. And they are particularly timely given Aetna's proposed USD 37bn acquisition of Humana and Anthem's proposed USD 54bn purchase of Cigna.

The DoJ is reviewing the two transactions, both of which were announced in July and are currently under a second request for information.

As reported by this news service, Peter Mucchetti, chief of the Litigation I Section in the Department of Justice Antitrust Division, said on 20 October that the success of co-ops is a "very important factor" as the agency examines competition on the health insurance exchanges.

However, an Aetna spokesperson said the experience of co-ops does not clearly relate to the Humana purchase. "Our proposed acquisition is about Medicare," the spokesperson said. "Humana doesn't have much commercial business and the co-ops aren't in the Medicare business."

A spokesperson for Anthem declined to comment.

Allen Feezor, former chair of the US Department of Health and Human Services (HHS) Advisory Board to the Co-op Program, said it was not clear why co-ops, which compete largely in the market for small groups, would affect the DoJ's review of two mega-mergers. "That logic sort of escapes me," he said.

Further, co-ops were not central to post-ACA competition, according to Len Nichols, a professor at George Mason University who served as a senior health advisor during the Clinton administration. "Their failure does not matter to competition in marketplaces, because their market shares were small," he said.

Tough business

On the other hand, there are possible lessons from the co-op experience, which has shown that “entry is not so easy” and that it is difficult to have staying power, said Tim Greaney, a law professor and co-director of the Center for Health Law Studies at Saint Louis University School of Law.

Greaney, who previously worked at the DoJ Antitrust Division, said it makes sense for the agency to look at the co-ops in analyzing competition. But as others pointed out, the takeaways are not obvious.

Even with respect to market entry, “there are arguments that could be made both ways,” said Rick Curtis, the president of the Institute for Health Policy Solutions who has also served on the HHS Advisory Board to the Co-op Program.

Along with facing a number of unique market constraints and regulatory issues, co-ops were also under pressure to become operational within a short period after the government issued regulations pursuant to the passage of the ACA in 2010, a timeline Feezor called “very unrealistic”.

Co-ops were also limited in terms of which markets they could participate in, how they were structured, and – perhaps most important – their dependence on federal government payments that were often insufficient and behind schedule.

In addition to being undercapitalized, co-ops have failed in part because they were not big enough to get discounts from providers like larger firms do, Nichols said. They also had to spread fixed costs among a smaller number of people than the major insurers.

Connecting the co-op experience to the broader health insurance market, Feezor said that entering and succeeding in the health insurance market require tremendous amounts of capital and dedication.

“Can there be new starts in the healthcare marketplace that we have?” he asked. “Yes, but it is a very steep uphill run that your competitors aren’t going to be faced with.”

by Ryan Lynch in Washington DC and Madeline O’Leary in New York