United States of America, State of New York, & State of Minnesota v. UnitedHealth Group Inc. & Change Healthcare Inc.

Closing Statement

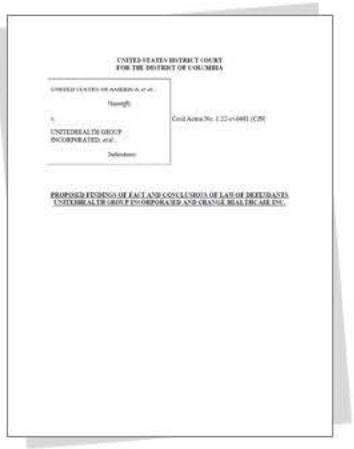
Proposed Merger Harms Competition in Three Ways

Harms competition in insurance markets by giving United access and rights, through Change, to rivals' competitively sensitive information and data

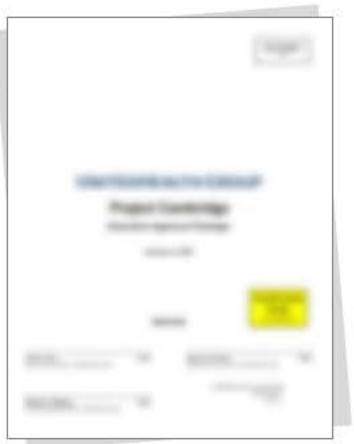
Harms competition in insurance markets by giving United control of Change's EDI clearinghouse, giving United the ability and incentive to raise rivals' costs by denying rivals access to innovations

Harms competition for first pass claims editing, a critical input for health insurers

United's Board Considered Change's Data Rights



August 2022



January 2021

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331. Data did not, however, drive the transaction. Optum's final synergy model did not even include a valuation of Change's data or data rights. 8/5/22 AM Trial Tr. 98:23-25 (Yurjevich (quotation omitted); DX0840. And the UHG board approval package from January 2021, PX195 at 1, makes no mention of Change's data rights. 8/4/22 PM Trial Tr. 17:18-20 (Wichmann).

- **Strategic Rationale**

  modern foundation to …stablish a new and more
  leverage data, technol… …rmation and networks will
  administration and pa… …are and streamline
  transaction processing, improve health outcomes, enhance the patient and physician …xperience and lower the cost of
  healthcare. In support of UHG's Digital and Advanced Technologies and Health Banking and Payments growth
  pillars, the transaction addresses the following:

Integration of information and networks will leverage data

- **Data.** …g EMR systems through its EDI and
  clinical… …rough its client agreements.
  Opport… …expand data used to improve patient
  health and health system performance, as well as support new healthcare discovery.

The company holds significant data rights through its client agreements

Data Rights

- Cambridge holds sig… …aims
  data, through a maj… …eading
  EMR systems throug… …further
  enrich bi-directiona… …and
  health system perfor…

Cambridge holds significant data rights, inclusive of de-identified data sets and multi-payer claims data

Defendants Proposed Findings of Fact ¶ 331; PX195 at 3, 21, 35.

Documents Show Change's Data Use Rights Benefit United

January 2020

[Wichmann] says if we have data rights, he's excited.

We will need to come back to him with a good answer on data and why we get a proprietary advantage from doing this deal . . . which I think we can do.

PX082 at 1, 4.

February 2020

Data page(s) → This is Wichmann's obsession so might suggest we push to have a page or two from McK on data volume, data rights, etc.

PX098 at 1.

May 2020

[Change] manages the highest volume of claims among EDI players and has penetration across medical, dental, and pharmacy networks. [Change] is particularly broad and deep in the areas of commercial claims, dental claims, eligibility and patient statements. Multipayer claims data would be additive to the datasets of Optum which are primarily comprised of UHC claims.

PX368 at 11.

David Wichmann

Retired CEO, UnitedHealth Group

United Healthcare

December 2020

Q. Let's just break it up so the record is really clear. There is the clinical side of things which you were just touching on. There's the administrative services side. . . .

A. Yeah. I wouldn't hastily generalize, but that's the foundation by which the business case was made.

Wichmann (CID) Dep. at 274:21-25; 275:2-12.

December 2020

[W]e believe about 60% of all data has de-identification rights.

PX945 at 2.

DEC 2019 | JAN 2020 | FEB 2020 | MAR 2020 | APR 2020 | MAY 2020 | JUN 2020 | JUL 2020 | AUG 2020 | SEP 2020 | OCT 2020 | NOV 2020 | DEC 2020 | JAN 2021 | FEB 2021 | MAR 2021

Data Is a Strategic Asset

David Wichmann
Former CEO

Q. You had also considered Change's data to be part of **the strategic asset** for the acquisition. Correct?

A. **Well, a network with no data isn't worth very much, yes.**

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United Gaining Change's Data and Data Rights Is Significant

Andrew Witty
CEO

UNITEDHEALTH GROUP®

Q. If the transparent network does not work out, **United will still have the largest EDI clearinghouse in the United States**; right?

A. That's **correct**.

Q. **United will still have a vast amount of data and data rights** that it would acquire with Change; correct?

A. **Correct**.

The Overall Benefit to the Enterprise Is What Matters

David Wichmann
Former CEO
UNITEDHEALTH GROUP®

Q. You took an enterprise view of virtually everything as CEO; isn't that right?

A. That's right.

Daniel Schumacher
Chief Growth Strategy Officer
UNITEDHEALTH GROUP®

Q. And what was being discussed, again, is in the context of having a enterprise, a "one United" approach to doing business. Correct?

A. Yes. Across, you know, both within businesses and across businesses.

Q. Okay. And to go across businesses, you need to have **more unified decision-making** so that you can **remove the silos** between the businesses. Correct?

A. Yes.

Wichmann Trial Testimony 08/4/22 AM at Tr. 20:1-3; Schumacher Trial Testimony 08/10/2022 AM at Tr. 18:15-23.

Anticompetitive Harm Does Not Require Data Misuse

Andrew Witty
CEO

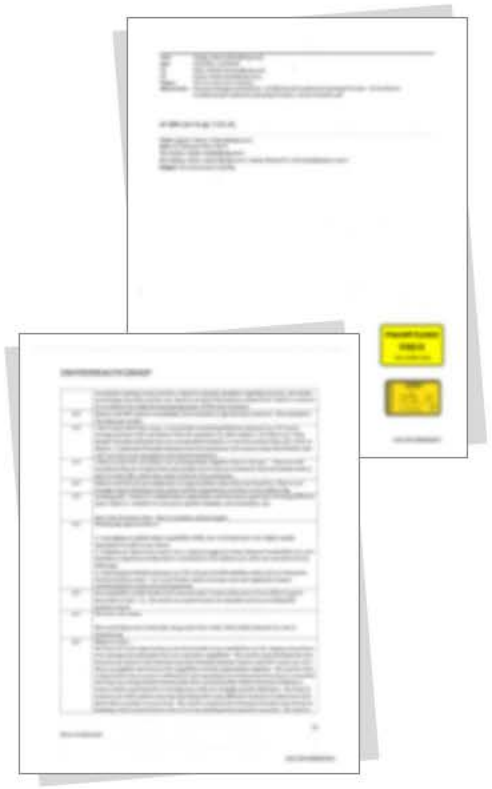
UNITEDHEALTH GROUP®

Q. Okay. So whether it's Optum or whether it's UnitedHealth Group, **it's the lawyers at United that are going to determine where those gray areas are and how those gray areas get resolved**; right?

A. The **lawyers and the compliance organization, yes.**

Witty Trial Testimony 08/10/22 PM at Tr. 78:11-15.

Senior Executive Considers the Gray Area



February 2021

Where to start . . .

We have SO much opportunity to put the breadth of our capabilities on full display and achieve true synergy and scale gains from our extensive capabilities. We need to stop thinking that just because we need to have financial and data firewalls between Optum and UHC means we can't show up together and harness the capabilities of both organizations together. We need to take a deep look at how success is defined for each operating unit and how performance is rewarded and stop any compensation / reward plans that unintentionally inhibit Enterprise thinking or worse create moral hazards or incongruency with our strategic growth objectives. We need to improve our CRM systems and stop operating with many different instances of sales force that don't talk to another at some level. We need to continue the Enterprise Growth work aimed at building a total comprehensive view of our top existing and prospective accounts.

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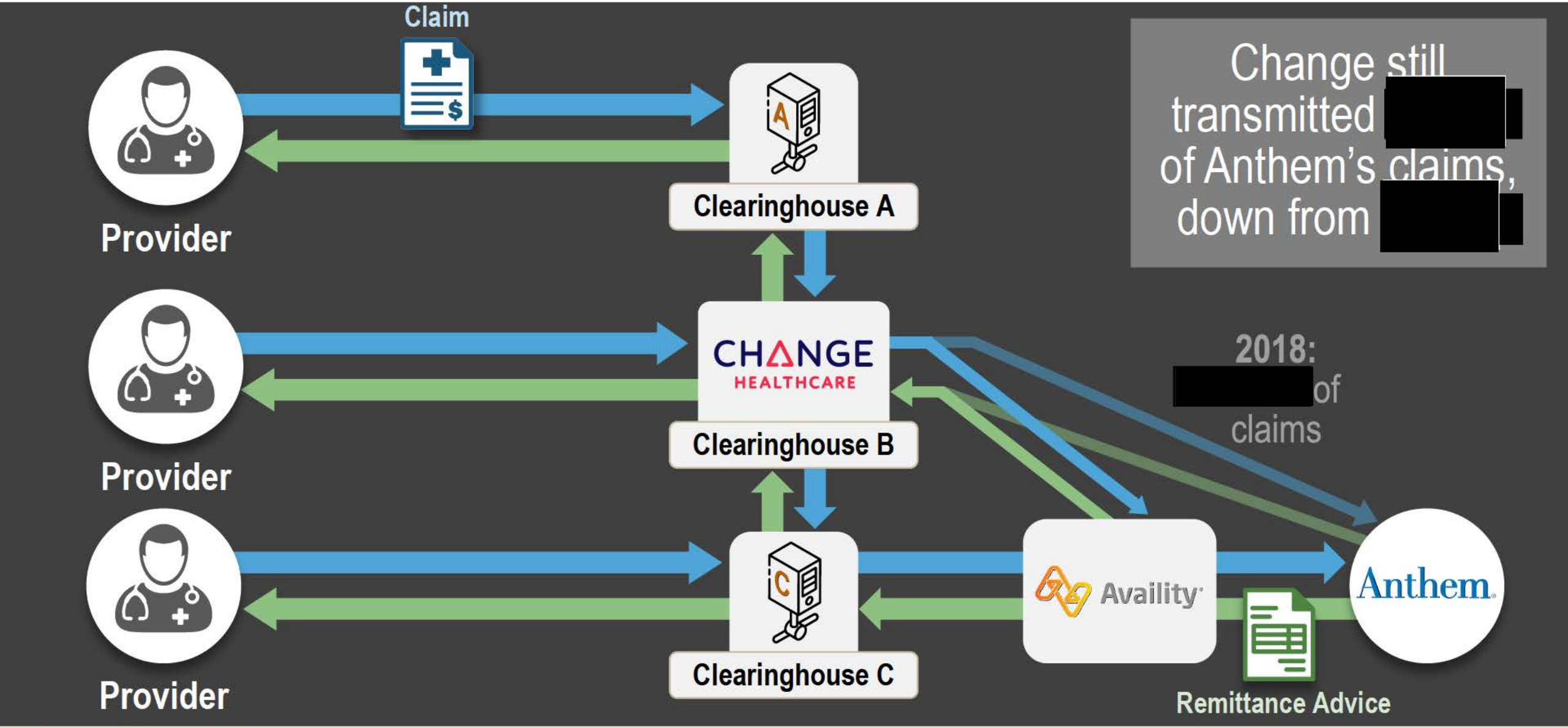
PX615 at 74.

Payers Cannot Disintermediate Change

Transmission Paths of Claims: Anthem



PX1015 at 57-58; PX1036 at 11.

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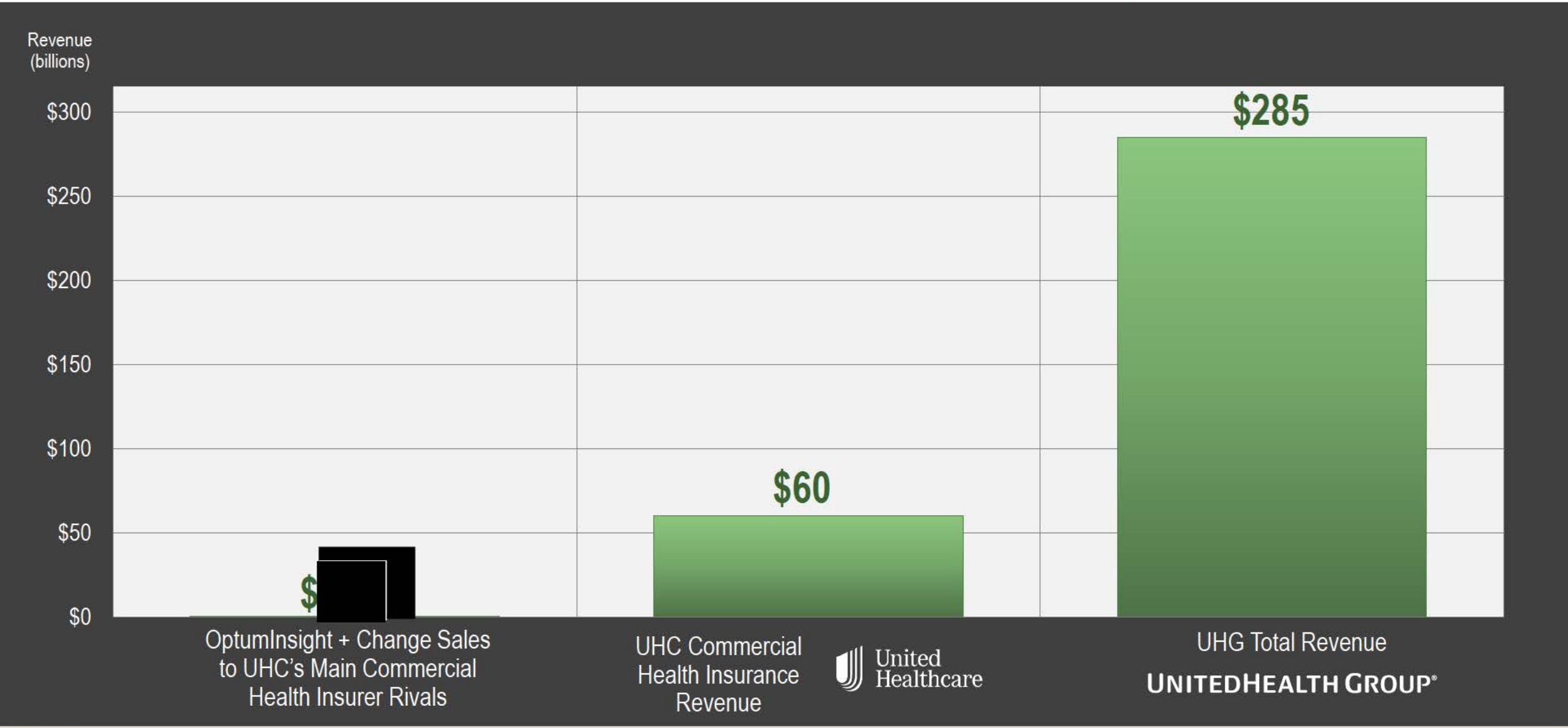
Fallout to Other Business Lines Will Not Constrain United

- No deal documents support harm to Optum
- The U Factor already exists
- Payers that stay with United assume the risk
- Payers that leave are not a meaningful loss for United

Payers Are Unlikely to Switch Based on CSI Use

Sales to Main Rival Health Insurers Are Minimal at an Enterprise Level



PX1036 at 14.

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Horizontal Harm Establishes a Prima Facie Case

Vertical Harm

- From Use of Competitively Sensitive Information Establishes a Prima Facie Case
- From Raising Rivals' Costs Establishes a Prima Facie Case

Purported Efficiencies Do Not Justify The Proposed Transaction

Horizontal Harm Establishes a Prima Facie Case

Vertical Harm

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Purported Efficiencies Do Not Justify The Proposed Transaction

Certainty Is Not Required

United States v. Phila. Nat'l Bank,
374 U.S. 321, 362 (1963) (internal citation omitted)

The goal of Section 7 is to "arrest anticompetitive tendencies in their '***incipiency***.'"

Brown Shoe Co. v. United States,
370 U.S. 294, 323 (1962)

"Congress used the words 'may be substantially to lessen competition' [], to indicate that its concern was with ***probabilities, not certainties***."

United States v. H&R Block, Inc.,
833 F. Supp. 2d 36, 49 (D.D.C. 2011) (citation omitted)

"'To establish a Section 7 violation, [P]laintiff[s] must show that a pending acquisition is ***reasonably likely*** to cause anticompetitive effects.'"

Doubts Are to Be Resolved Against the Transaction

FTC v. Elders Grain, Inc.,
868 F.2d 901, 906 (7th Cir. 1989) (Posner, J.) (citing *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 362–63 (1963))

"Section 7 forbids mergers and other acquisitions the effect of which 'may' be to lessen competition substantially. A certainty, even a high probability, need not be shown. Of course the word 'may' should not be taken literally, for if it were, every acquisition would be unlawful. ***But the statute requires a prediction, and doubts are to be resolved against the transaction.***"

Market Shares Alone Establish A Prima Facie Case

United States v. Phila. Nat'l Bank,
374 U.S. 321, 364 (1963)

"Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, ***we are clear that 30% presents that threat***."

United States v. Aetna Inc.,
240 F. Supp. 3d 1, 42 (D.D.C. 2017) (internal quotation and citation omitted)

"'Sufficiently large HHI figures establish the [Government's] prima facie case that a merger is anti-competitive . . . . ***If a merger would produce a highly concentrated market*** [a market with an HHI over 2,500] ***and involve an increase in the HHI of more than 200 points, then it will be presumed to be likely to enhance market power***.

Defendants Bear Burden of Rebutting Prima Facie Case

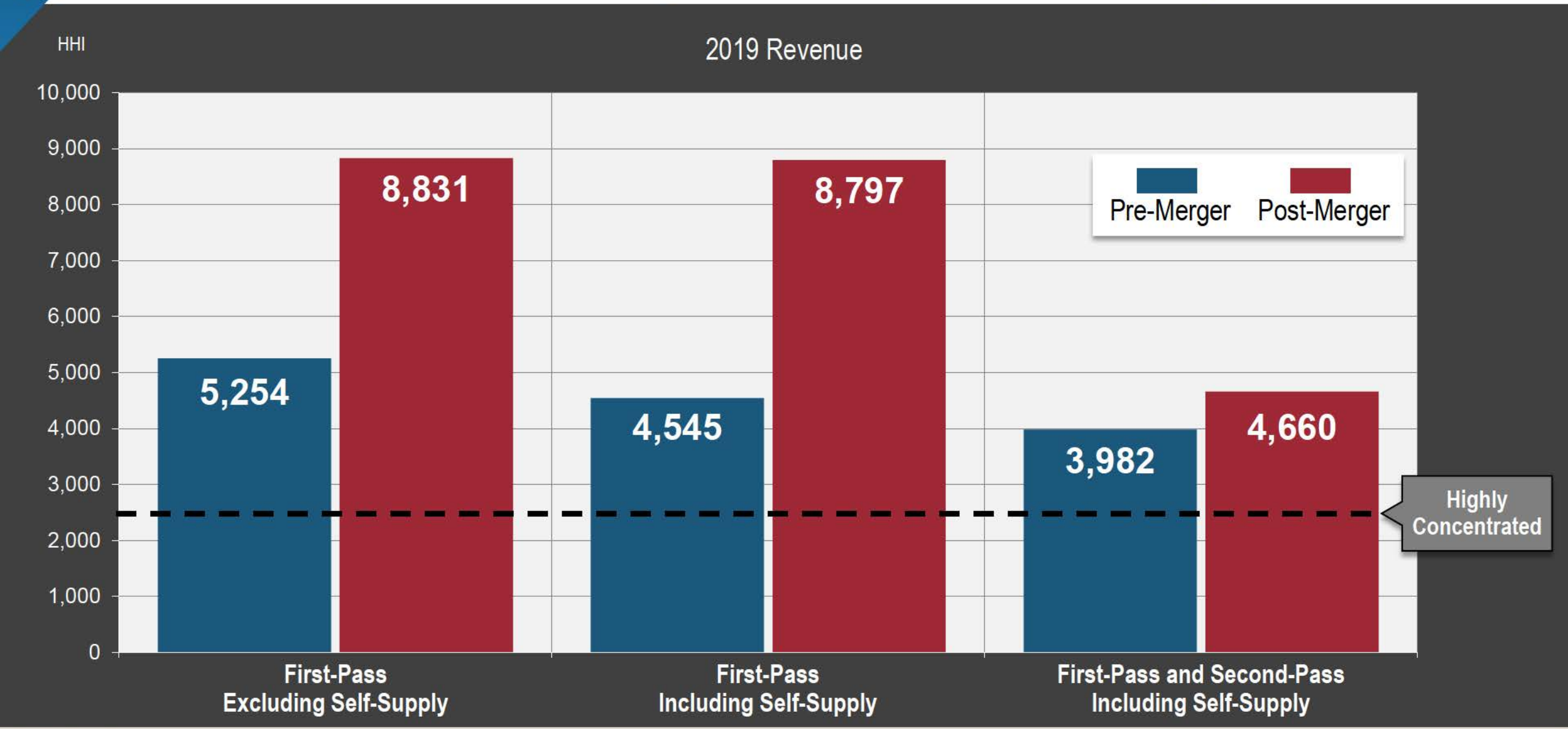
United States v. Baker Hughes Inc.,
908 F.2d 981, 991 (D.C. Cir. 1990) (Thomas, J.)

"The ***more compelling*** the prima facie case, ***the more evidence the defendant must present*** to rebut it successfully."

Horizontal

First-Pass Claims Editing Solutions Market Shares

First-Pass Claims Editing Solutions: HHI Before and After Merger



PX1015 at 12.

Horizontal

Change and Optum Compete Head to Head

UNITEDHEALTH GROUP®
Optum

June 25, 2019
"McKesson [**Change**] **is our big competitor** for this product. We have been approving 20%-25% discounts consistently when [Change] is in the mix."

Aug. 9, 2019
"[W]e gave them **a sweetheart deal to win them away** from McKesson [Change]. . ."

Aug. 28, 2020
"McKesson [Change], knowing they were at risk of losing the business, **cut their price by 50% to try to save it but we still won!**"

Sept. 2020
Change is the **"#1 competitor for first pass"** claims editing

CHANGE
HEALTHCARE

Sept. 23, 2019
"We are facing an **extremely competitive situation from OPTUM.**"

Sept. 27, 2019
"We are **competing with Optum** in all these deals."

Dec. 26, 2019
"We faced **intense competition from OPTUM.**"

Apr. 10, 2020
"[W]e have **competitive cost pressure due to Optum** . . ."

PX103; PX107 at 1; PX106 at 1; PX208 at 37; PX033 at 1; PX224 at 1; PX223 at 1, PX238; Plaintiffs' Opening Statement at 16.

Horizontal Harm Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Horizontal Case

Vertical Harm

- From Use of Competitively Sensitive Information Establishes a Prima Facie Case
- From Raising Rivals' Costs Establishes a Prima Facie Case

Purported Efficiencies Do Not Justify The Proposed Transaction

Divestitures Must Promote Competitive Markets

United States v. Aetna Inc.,
240 F. Supp. 3d 1, 60 (D.D.C. 2017); *id.* (alteration in original) (citation and internal quotation omitted)

" [Defendants have the burden to show] that a proposed divestiture would ***'restore [the] competition' lost*** by the merger. . . . ***Defendants*** in a merger challenge ***bear the burden of producing evidence tending to rebut*** the government's prima facie case."

To do so, defendants must prove that the divestiture will "'replac[e] the ***competitive intensity*** lost as a result of the merger.'"

(quoting *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 72 (D.D.C. 2015)) (alteration in original) (citation omitted)

Rebuttal

Proposed Divestiture Does Not Maintain Current Competitive Intensity

Only ClaimsXten is proposed to be divested

Rebuttal

TPG Is Disadvantaged From the Outset

Carolyn Wukitch
Change Healthcare
ClaimsXten
Manager

CHANGE HEALTHCARE

Q. Okay. The situation will be a little different in competition, though, after the merger, right?

A. Than it is today, yes.

Q. And before the divestiture, they couldn't say, We have a more comprehensive set of solutions than Change, right?

A. The portfolios are similar, so, yes.

Q. **But post divestiture, they will be able to truthfully say, We have a more comprehensive set of solutions than TPG?**

A. **In payment accuracy, yes.**

Proposed Divestiture Does Not Maintain Current Competitive Intensity

Rebuttal

Only ClaimsXten is proposed to be divested

Optum will face less pressure to compete on price

Not all necessary employees are going to TPG

TPG's purchase price for ClaimsXten is not indicative of success

TPG is already considering its exit

Horizontal Harm Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Horizontal Case

Vertical Harm

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Purported Efficiencies Do Not Justify The Proposed Transaction

Vertical Mergers Evaluated By Same Standard Under Section 7

FTC v. Procter & Gamble Co.,
386 U.S. 568, 577 (1967)

"All mergers . . . must be ***tested by the same standard***, whether they are classified as horizontal, vertical [or] conglomerate."

United States v. AT&T, Inc.,
916 F.3d 1029, 1045 (D.C. Cir. 2019)

"Vertical mergers can create harms beyond higher prices for consumers, including decreased product quality and ***reduced innovation***."

Horizontal Harm Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Horizontal Case

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Purported Efficiencies Do Not Justify The Proposed Transaction

Using Sensitive Business Information May Harm Competition

U.S. Dep't of Justice & FTC, Vertical Merger Guidelines (2020)
available at https://www.justice.gov/atr/page/file/1290686/download (Vertical Merger Guidelines) at 4(b)

"In a vertical merger, the transaction may give the combined firm access to and control of sensitive business information about its . . . rivals that was unavailable to it before the merger. . . . In some circumstances, the merged firm can use access to a rival's competitively sensitive information to moderate its competitive response[s] . . . . For example, ***it may preempt or react quickly to a rival's procompetitive business actions***. Under such conditions, ***rivals may see less competitive value in taking procompetitive actions***."

CSI: Change's Data Use Rights Alter United's Ability and Incentives

- **The merger provides United the ability to use rivals' data to the benefit of the enterprise**
- **The merger gives United incentives to use rivals' data to the benefit of the enterprise**

Ability

United Considered Change's Claims Data Rights as Additive

May 2020

- **Multipayer Claims Data**. Cambridge manages the highest volume of claims among EDI players and has penetration across medical, dental, and pharmacy networks. Cambridge is particularly broad and deep in the areas of commercial claims, dental claims, eligibility and patient statements. Multipayer claims data would be additive to the datasets of Optum which are primarily comprised of UHC claims. The addition of Cambridge data could result in tactical savings for certain Optum entities that purchase multipayer claims data; however, more strategic uses of such data should be thoroughly considered. *See potential use cases herein.*

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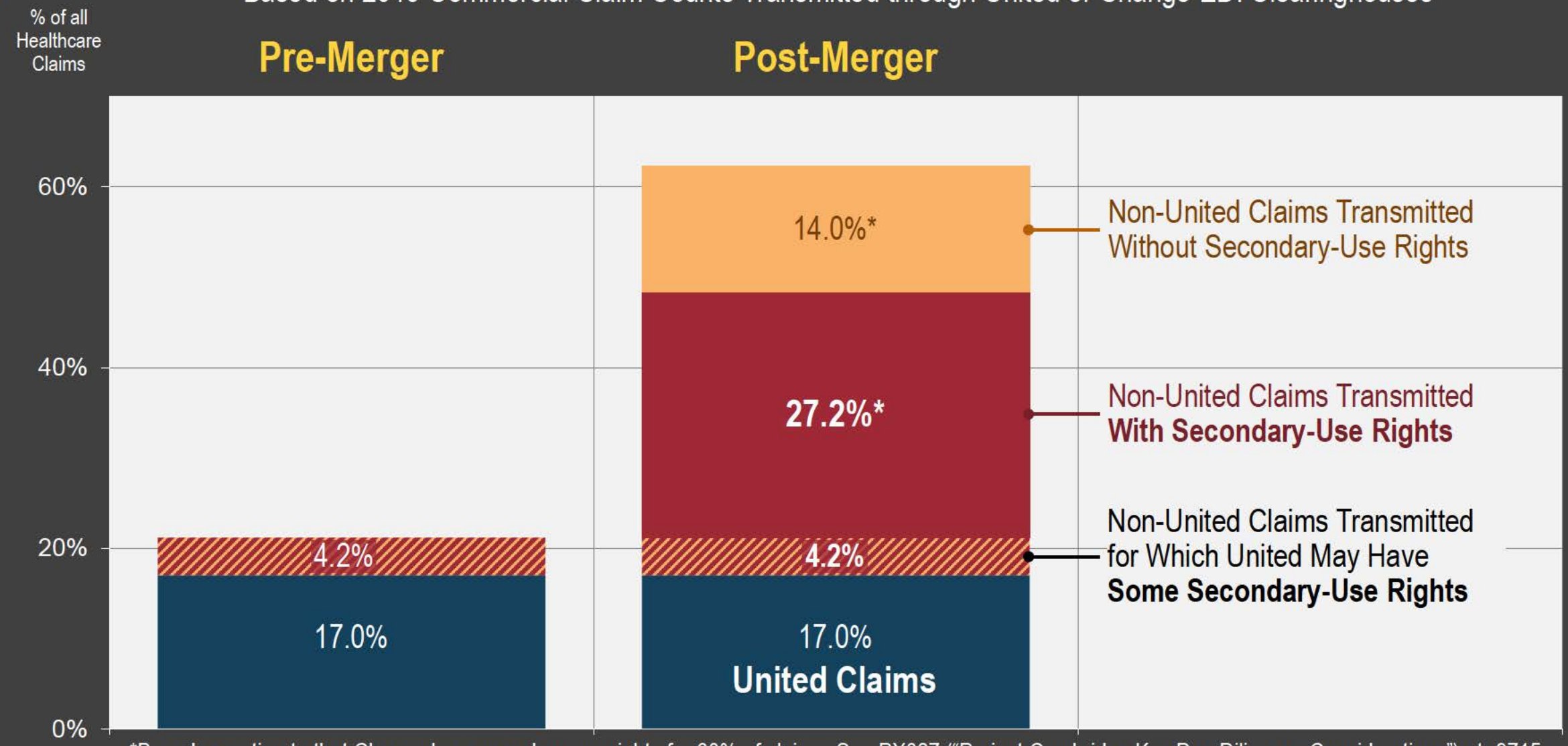
PX944 at 13.

Ability

United Would Gain Substantial Secondary-Use Rights

Based on 2019 Commercial Claim Counts Transmitted through United or Change EDI Clearinghouses



*Based on estimate that Change has secondary-use rights for 60% of claims. See PX027 ("Project Cambridge Key Due Diligence Considerations") at -9715.

PX1015 at 54; PX1036 at 9.

Change Has Broad Secondary Use Rights

Ability

Tim Suther
Senior VP and GM
of Data Solutions

CHANGE HEALTHCARE

Q. And the first category you identified is **unfettered rights**; correct?

A. Yes, which is our **standard data rights language**.

April 2019

CHANGE HEALTHCARE

Standard Data Rights Clause in our BAA

2.3 Data Aggregation. Change Healthcare may Use PHI to provide Data Aggregation services for the Health Care Operations of the Customer as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.4 De-identified Data. Change Healthcare may de-identify PHI in accordance with 45 C.F.R. § 164.514(b) and may Use or Disclose such de-identified data unless prohibited by applicable law.

Based on PX1015 at 50 (Suther Trial Testimony 8/2/22 PM at Tr. 113:18-20); PX460 at 4; PX821 at ¶ 94.

CSI: Change's Data Use Rights Alter United's Ability and Incentives

- The merger provides United the ability to use rivals' data to the benefit of the enterprise
- **The merger gives United incentives to use rivals' data to the benefit of the enterprise**

Incentive

Multiple Use Cases for Change's Data

January 2020

What's in it for UHC?

- Improved provider experience/economics (e g , fast track prior auth, straight through adjudication, greater patient retention, less bad-debt, etc)
- Admin cost reduction with less manual intervention
- Enhanced member experience (e g , more accurate understanding of OOP expenses, improve POS payment options, etc)

Insights to optimize benefit design Utilize transactions intelligence (i.e. clinical utilization) from multiple providers / payers to optimize benefit design

April 2020

Opportunity Name	Data custodian	Path to secure needed data rights	HIPAA Considerations	Provider/Payer/Patient contractual/consent Considerations	Business abrasion, publicity considerations	Estimated long range value
Improved medical policy and benefit design	Optum					
Price transparency						

Likely competitive concerns raised by Cambridge customers.

Likely need to closely assess antitrust concerns on use/sharing of pricing information

PX204 at 21; PX054 at 3.

Incentive

UHC Has Incentive to Use Claims Data to Avoid Insuring "Bad Risk" Groups

Thomas Gehlbach

Former Chief Underwriting Officer

United Healthcare

Q. **Bad risk means a group that has sicker members with higher medical costs** than another group with healthier members?

A. That's how it's usually utilized, **yes**.

Q. And if UnitedHealthcare takes on **too much bad risk** relative to its competitors, then its **medical costs go up**?

A. Yes.

* * *

Q. Yes. In underwriting for large groups, **UnitedHealthcare wants to avoid winning a greater share of bad risk** than its competitors?

A. **Yes; that would be our desire, yes**.

Incentive

Health Insurers Compete On Many Facets

Use Cases for Change's Deidentified Claims Data

Utilization management practices

Provider pricing and reimbursement

Provider network design

Claims adjudication policies

Underwriting

PX1012 at 28.

Incentive

Custom Claims Edits Differentiate Payers to Employers

Lynn Garbee
Former
Managing Director,
Provider Enterprise
Strategy

Cigna

Q. And during your nine years with Cigna, did Cigna ever allow Change Healthcare to share Cigna's custom edits with any other healthcare customers?

A. No.

Q. Why not?

A. We put a lot of time and effort, like I just described, in creating them. We wouldn't want other payers to be piggybacking over us – piggybacking on us for all of the work that we had just done. We feel like it's something that differentiates us in how we sell to our clients.

Garbee Trial Testimony 08/1/2022 AM at Tr. 128:17-129:1.

Incentive

Post-Merger Rivals Will Have Less Incentive to Innovate

Dr. Gautam Gowrisankaran
Professor of Economics
Columbia University

Q. And how do lower returns for United's health insurer rivals affect incentives to innovate?

A.

United would be likely to be able to copy their innovations . . .

[I]f United's rivals understand this, then they understand that the returns to their investments are lower . . .

[T]hese competitors are going to be incentivized to invest less. . . .

[T]hese competitors are less likely to put a downward pressure on price . . .

[U]ltimately, that's going to mean that employers are going to be paying more for health insurance on a quality-adjusted price basis. . . .

Incentive

Defendants Arguments About Data Sidestep The Key Issues

Data use, consistent with United's own policies, can harm competition; no misuse required

Payers can comply with HIPAA and still use data, including payer information, in a variety of ways – HIPAA is a floor

Incentive

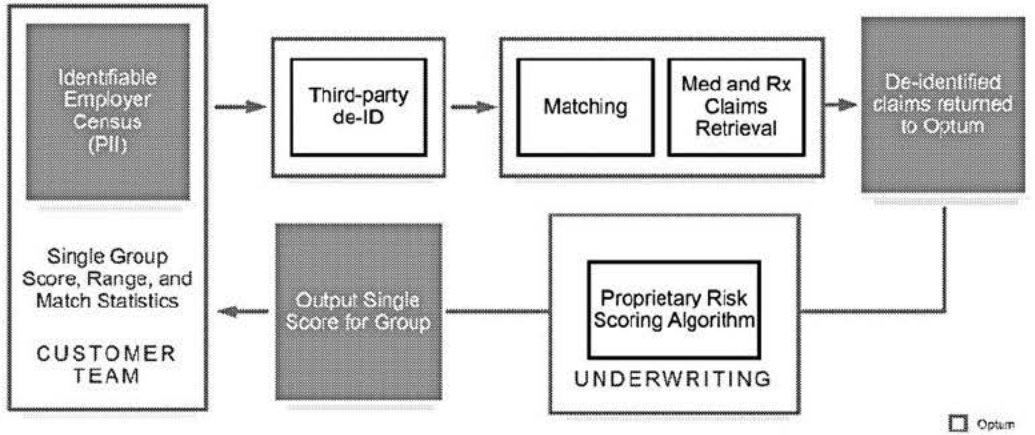
United Uses HIPAA-Compliant Data Today

Claims Data Inform Underwriting

Introducing Group Risk Analytics: Secure, simple, streamlined

Our Optum solution uses de-identified third-party data and proprietary risk scoring to enable payers to better assess the risk of prospective employer group customers.

- Leverages Optum industry-leading Symmetry Risk Engine predictive models
- Fully HIPAA-compliant
- Returns results and analysis in minutes
- Calibrates results based on renewal underwriting manuals and formulas
- Provides the variance of a group's risk score to better inform pricing decisions
- Detailed operational reporting



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UHG-2R-0000062425

Incentive

Defendants Arguments About Data Sidestep The Key Issues

Data use, consistent with United's own policies, can harm competition; no misuse required

Payers can comply with HIPAA and still use data, including payer information, in a variety of ways – HIPAA is a floor

Claims data is used by United for underwriting today

The richness, scope, and scale of Change's data sets it apart from other data sources that are available

Incentive

Defendants' Reliance on Commercial Data Sources is Misplaced

Data Limitations Reduce the Value of the Data for Use Cases

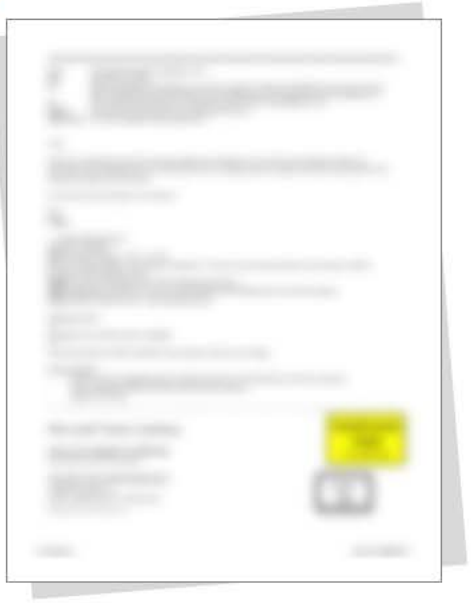
[redacted]

Utilization Management	Provider Reimbursement	Provider Network Design	Claims Adjudication	Underwriting
• No payer ID • No prior authorization information	• No payer ID • Tokenized provider information	• No payer ID • Tokenized provider information	• No payer ID • No claims life cycle information	• No employer ID • No payer ID • Cannot be linked to other datasets

PX1012 at 47.

Incentive

United's Data Strategy



UHG Data Strategy
November 2021

UNITEDHEALTH GROUP®

Addressing highlighted challenges will lead to impact

Define governance standards for which data is shareable across businesses and with external partners

Integrate shareable, linked data from across businesses (CM)

Differentiate offerings in the market

Maximize value of acquired data

		Potential Impact

Acquisition & Integration	• TN: claims, clinical (incl. existing OPA data), payments data
	• Enrich datasets to enable linking of unique member / patient
	• **Streamline EHR contracting, intake, and use agreements** for bringing in EHR data in scalable ways (TN)
	• **Integrate Change data assets** to provide knock-on value
	  • **CM**.: Clinical, consumer, claims data
	  • TN: EMR data connections / Interqual
	• **Secure additional data use rights** for commercial purpose[illegible] TN)
	[illegible] new business models
		• Increase speed to market and to scale for new products
		• Establish proof of concept to strengthen business cases
		• Reduce abrasion / Increase adoption
		• Enhance productivity of member-facing teams
		• Improve management of total cost of care

Duplication & Inefficiency	• **Coordinate internal processes** to reduce duplication and [illegible] inefficiency (CM / TN)	

CM = Care Mgmt.
TN = Transparent Network

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Confidential

UHG-LIT-00645092

Horizontal Harm Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Horizontal Case

Vertical Harm

- **From Use of Competitively Sensitive Information Establishes a Prima Facie Case**
- From Raising Rivals' Costs Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Case:

- ***Firewall Is Insufficient***
- *Customer "Commitments" Are Insufficient*

Purported Efficiencies Do Not Justify The Proposed Transaction

Rebuttal

United's Proposed Firewall Does Not Resolve Competitive Concerns

Permits disclosure and use of data for any purpose under applicable law or agreements with the external customer

Permits exceptions to the firewall

Rebuttal

Firewall Policy Does Not Prevent Use of Data

Andrew Witty
CEO

Q. But **there's not a flat-out no in the document**, the May 12 policy, that says that there will be no exception for the use of CSI information and sharing that with UnitedHealthcare, for example?

A. **Correct**. And there have been many examples where, for example, anonymized data is extremely helpful to create new products, insights, or service for patients and companies.

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Witty Trial Testimony 08/10/22 PM at Tr. 64:16-22.

Rebuttal

United's Proposed Firewall Does Not Resolve Competitive Concerns

Permits disclosure and use of data for any purpose under applicable law or agreements with the external customer

Permits exceptions to the firewall

Permits modification and changes to policy going forward

Horizontal Harm Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Horizontal Case

Vertical Harm

- **From Use of Competitively Sensitive Information Establishes a Prima Facie Case**
- From Raising Rivals' Costs Establishes a Prima Facie Case

Defendants Have Not Rebutted the Plaintiffs' Prima Facie Case:

- *Firewall Is Insufficient*
- ***Customer "Commitments" Are Insufficient***

Purported Efficiencies Do Not Justify The Proposed Transaction

Rebuttal

Customer "Commitments" Do Not Resolve Competitive Concerns

The "commitment" does not apply to all payers competing in markets harmed by proposed merger

The "commitment" terms are vague, lack audit rights, are time-limited, and apply only to existing customers

The "commitments" do not prohibit United's use consistent with the terms of the firewall

"Commitments" Cannot Offset Anticompetitive Harm

United States v. H&R Block, Inc.,
833 F. Supp. 2d 36, 82 (D.D.C. 2011)

"While the Court has no reason to doubt that defendants would honor their promise [of a three-year price guarantee], ***this type of guarantee cannot rebut a likelihood of anticompetitive effects*** in this case."

FTC v. Cardinal Health, Inc.,
12 F. Supp. 2d 34, 64-65 (D.D.C. 1998)

"This Court does not doubt that the Defendants would honor their promises" not to raise prices, but "***Defendants' guarantees alone cannot cure the likely anti-competitive effects*** of the mergers."

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Raising Rivals' Costs May Harm Competition

U.S. Dep't of Justice & FTC, Vertical Merger Guidelines (2020)
available at https://www.justice.gov/atr/page/file/1290686/download (Vertical Merger Guidelines) at 4(a)

"A vertical merger may diminish competition by allowing the merged firm to profitably use its control of the related product to weaken or remove the competitive constraint from one or more of its actual or potential rivals in the relevant market. For example, ***a merger may increase the vertically integrated firm's incentive or ability to raise its rivals' costs by increasing the price or lowering the quality of the related product***."

Brown Shoe Co. v. United States,
370 U.S. 294, 324 (1962) (internal citation and quotation omitted)

"The primary vice of a vertical merger . . . is that . . . the arrangement may act as ***a clog on competition***, which ***deprives . . . rivals of a fair opportunity to compete***."

Raise Rivals' Costs

Change Has All The Core Building Blocks

PRELIMINARY

Cambridge's capabilities are broadly complementary to OI's and could help bridge gaps. Further, it's recent investments in an integrated transaction platform with embedded intelligence and big data could help OI ma

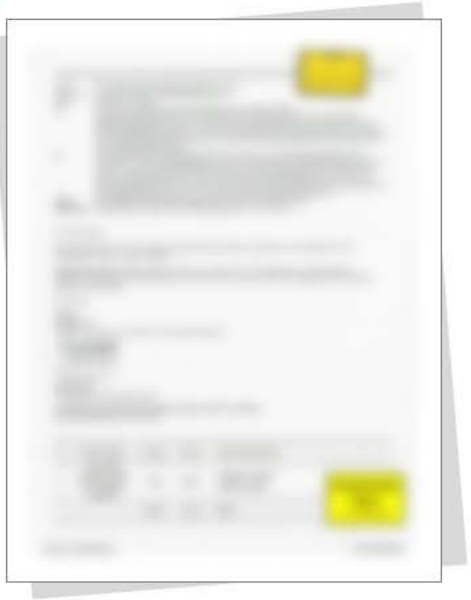
Core building blocks of a frictionless platform	Cambridge
RCM software platform spanning e2e functions	✓ Technology platform and solutions to support 90% of core RCM functions
Intelligent transaction network and clearinghouse	✓ Industry leading clearinghouse/EDI network with nearly 50% market share
Platform for value added data/analytics services	✓ Broad range of provider and Payer 'intelligence' offerings built off the clearing network
Payment integrity and Fraud Waste Abuse solutions	✓ ClaimsExten and InvestiClaim offerings span complete PI value chain

Collectively, Cambridge and OI could occupy a central place in the healthcare ecosystem with the ability to drive scale efficiencies in the near term and materially disrupt the current transaction model in the longer term i.e. from claims based to intelligent settle-and-clear to API/cloud-based peer to peer eventually

OPTUM

Raise Rivals' Costs

Change's Real-Time Settlement



March 2021

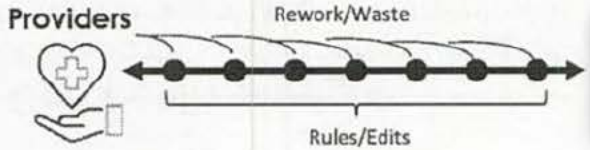
The goal is to deliver a real-time settlement experience and 50% lower admini

Change Healthcare Real-Time Claim Settlement

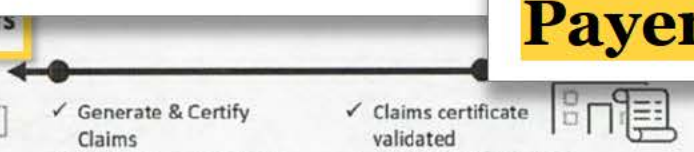
Providers

Payers

Today's Market Standard



	for $1B in claims
• Providers get paid ~40 days after delivering service. Spend 4-6%[2] of collections in SW & service costs	$40-60M
• Payers get poor quality claims & clinical data for payments & risk adjustment. Spend 8-10%[1] in admin costs	$80-100M



	Outcomes
• **Efficiency:** Reduction in administrative costs.	↓50%
• **Revenue Acceleration:** Reduction in payment days	40 → 1
• **Clinical data:** Integrated with claims	Every claim

TAM $20B — End-to-end Real-time Processing for all claims at 50% penetration (2% from payers; 2% from providers; $1 Tr in claims)

Sources: (1) AHIP, *'Where does your Healthcare Dollar Go?'*, 2018; Individual Payer Interviews; (2) TES customer analytics

PROPRIETARY & CONFIDENTIAL

Now Speaking: Shiv Gopalkrishnan

CHANGE HEALTHCARE

CHANGE HEALTHCARE

PX541 at 61.

Raise Rivals' Costs

Change Has Unique Data, Data Rights, and Connections

Erin Schmuker
Transparent Network Vice President

Optum

Q. Today, acquiring Change's EDI connectivity is, you believe, the best way to drive claims editing content into the provider workflow?

A. Well, so there's a lot of connectivity into provider workflow. What we've been focusing on is using Change's. So, if we weren't able to use that, we would have to look at another method. They're not the only people with connections. But we would need those connections, that's correct.

Q. **But you aren't aware, sitting here today, of any alternative acquisition targets or partners who could achieve the same result as Change, correct?**

A. **That's correct.**

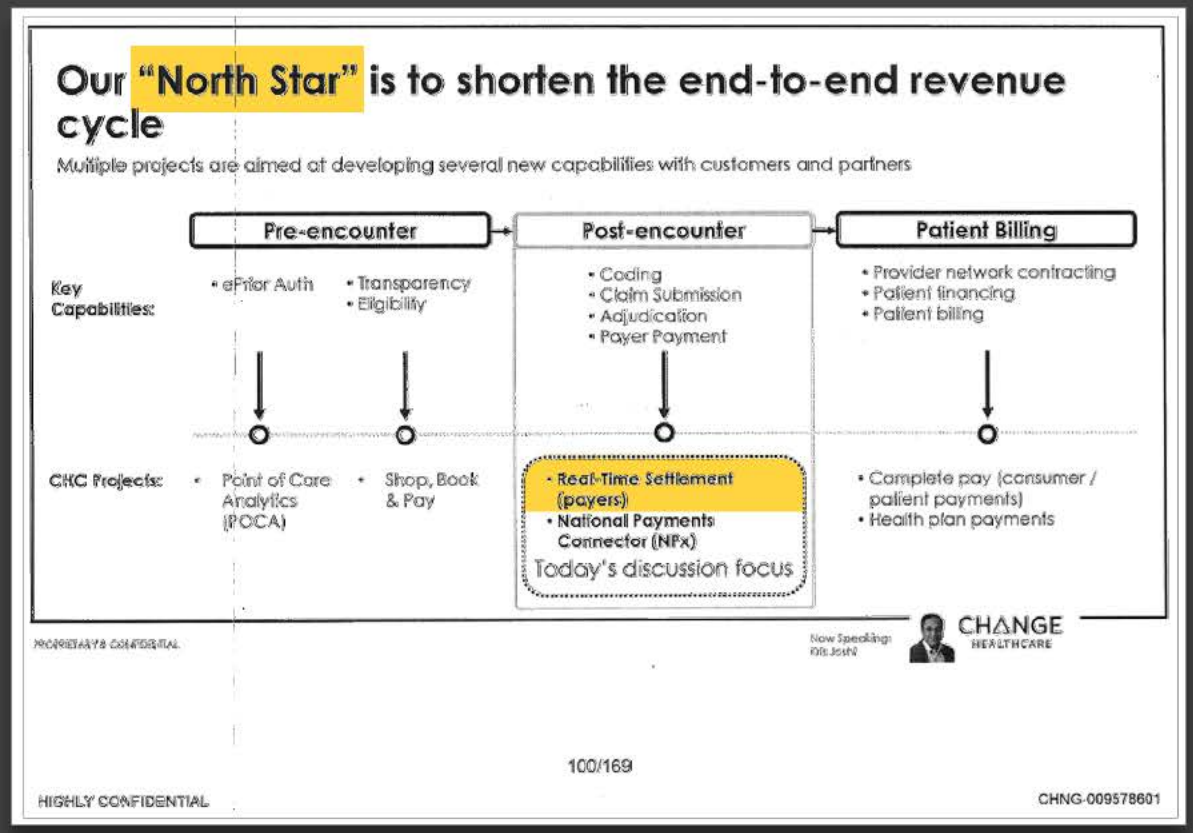
Raise Rivals' Costs

Change Was Innovating Real Time Settlement

March 2021

February 2022

CHANGE HEALTHCARE



Our "North Star" is to shorten the end-to-end revenue cycle

Multiple projects are aimed at developing several new capabilities with customers and partners

	Pre-encounter	Post-encounter	Patient Billing
Key Capabilities:	• ePrior Auth • Transparency • Eligibility	• Coding • Claim Submission • Adjudication • Payer Payment	• Provider network contracting • Patient financing • Patient billing
CHC Projects:	• Point of Care Analytics (POCA) • Shop, Book & Pay	• Real-Time Settlement (payers) • National Payments Connector (NPx) Today's discussion focus	• Complete pay (consumer / patient payments) • Health plan payments

PROPRIETARY & CONFIDENTIAL

Now Speaking: Rob Josh

CHANGE HEALTHCARE

100/169

HIGHLY CONFIDENTIAL

CHNG-009578601

As I mentioned, we are exploring Real-Time Settlement for healthcare claims/billing/payment. I am not sure if there is anything your technology can add to our plans there, but given you asked if there were any truly disruptive areas we are working in, this is one.

PX541 at 59; PX544 at 1.

Abandoning Competitive Endeavors Does Not Prevent Antitrust Scrutiny

United States v. Aetna Inc.,
240 F. Supp. 3d 1, 76 (D.D.C. 2017) (internal citation omitted)

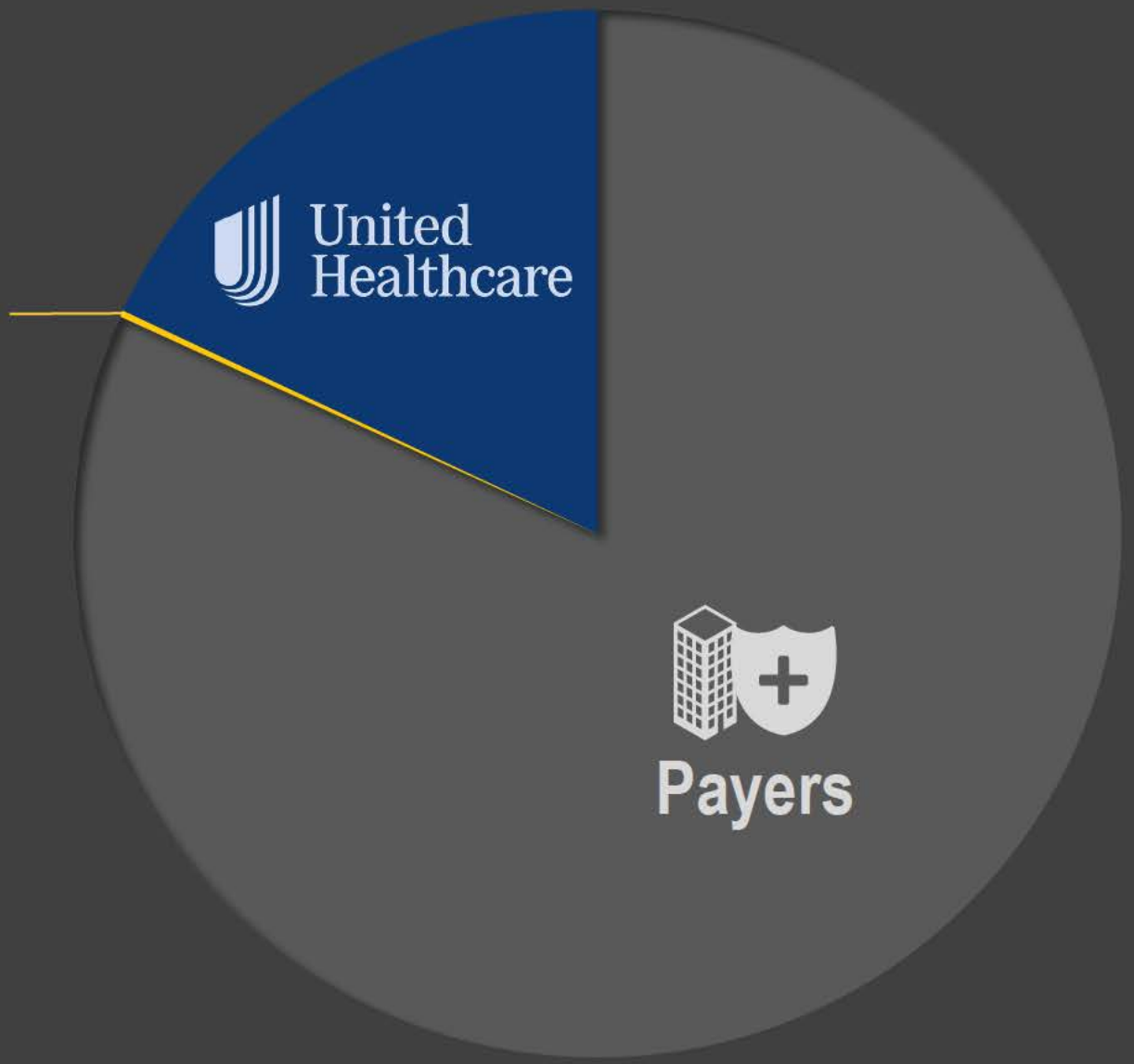
"While there can be no substantial lessening of competition if there is no pre-existing competition to begin with, ***the case law does not support defendants' approach of viewing competition as an on-off switch where a merging party can simply switch it off entirely by withdrawing*** from a market (potentially temporarily). . . . [C]ourts routinely view competitors that may have one foot in and one foot out of the market as actual competitors, and evaluate the anticompetitive effects of a merger using the standard tools of antitrust analysis."

Raise Rivals' Costs

United Has the Financial Incentive to Harm Its Rivals

Vertical Math

United Would Need to Gain
0.2% Market Share
to Make Foreclosure of the Transparent Network Profitable



PX1015 at 37; Plaintiffs' Opening Statement at 28.

Raise Rivals' Costs

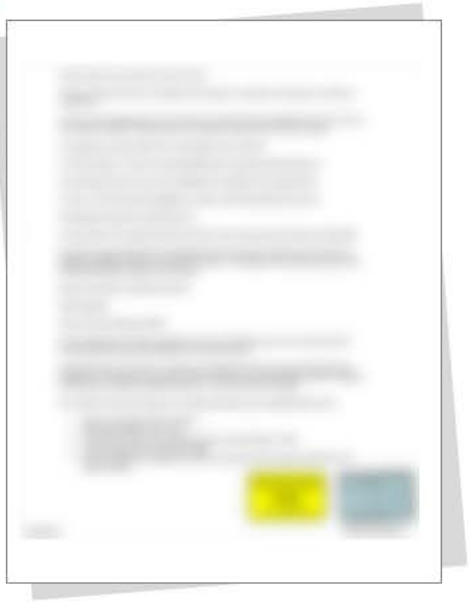
Defendants' Arguments Sidestep The Key Issues

RTS and Transparent Network are examples of how United seeks sole utility of innovations that Change's unique assets enable

United can provide perpetual exclusivity for UHC even with multi-payer strategy

Raise Rivals' Costs

Portfolio Optimization Was Exclusive to United



May 2021

This is the most exciting project I've worked on in quite some time.

This is ahead of the market – exclusive to us for now

UNITEDHEALTH GROUP®

Raise Rivals' Costs

United Planned On Exclusive Access to the Transparent Network

February 2020

Optum

Synergy Opportunities from Cambridge

	Horizon 1 – Years 1 & 2	Horizon 2 – Years 3 to 5	Horizon 3 – Years 6+
1 Combinatorial synergies	▪ Capture SG&A, vendor insourcing and product cost synergies across Payment Integrity, Risk & Quality, Optum Bank, Optum360, and Optum Corporate functions ▪ Implement savings, ve ▪ Develop co RQNS, O3	▪ Consolidate technology and product platforms for overlapping businesses to drive further cost reductions	
2 Optum Transaction Network - Claims	▪ Capture val across ACE ▪ Reduce re- by "shifting		to broader
3 Optum Transaction Network - Payments	▪ Accelerate and Cambr interchange ▪ Up-sell AC ▪ Implement cash management products ▪ Build full menu of Optum Bank solutions	▪ Launch payor and consumer AR acceleration solutions for OptumCare	g solutions to KET Mortgage* umer AR acceleration to broader provider market
4 Optum Clinical Platform	▪ Implement Interqual at UHC and OptumCare – Internalize vendor spend for UHC (MCG) – Integrate Optum Care and Interqual to create best-of-breed guidelines ▪ Internalize chart retrieval vendor spend by leveraging Cambridge EMR connectivity, CommonWell alliance ▪ Launch Data Solutions business leveraging full suite of Cambridge data assets ▪ Turbocharge development and launch of Optimal Care Platform/solution	▪ Reduce prior auth. admin costs for UHC and OptumCare, other providers by standardizing on InterQual ▪ Reduce cost of care at Optum Care CDOs by implementing best-of-breed guidelines ▪ Commercialize guidelines across external provider market leveraging OptumCare experience ▪ Drive rapid growth of Data Solutions business	▪ Fully automated prior auth. Processes ▪ Real-time optimized coding,charge capture, and clinical guidance for providers informed by Optum CDS

OPTUM

Launch Optum Transaction Network to eliminate /minimize claims and adjudicate payments near real-time between UHC and OptumCare, select Gold Card providers

UHG-2R-0003656311

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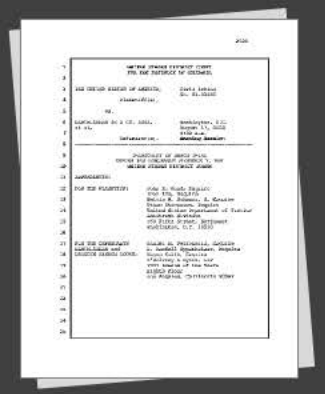
Defendants' Purported Efficiency Defense Fails

United States v. Anthem, Inc.,
855 F.3d 345, 353 (D.C. Cir. 2017) (citation omitted)

"Despite, however, widespread acceptance of the potential benefit of efficiencies as an economic matter, *see, e.g.*, Guidelines § 10, ***it is not at all clear that they offer a viable legal defense*** to illegality under Section 7."

United States v. Bertelsmann, et al.,
Case No. 1:21-cv-02886, 8/17/2022 AM at Tr. 2755:11-18



"***Where efficiencies are not independently verifiable and verified, no court in this jurisdiction has ever given any weight to such efficiencies evidence.*** *See H&R Block*, 833 F.Supp. 2d 36, D.D.C. 2011; *United States v. Aetna*, 240 F.Supp. 3d, D.D.C. 2017; *FTC v. Sysco Corporation*, 113 F.Supp. 3d, 1, D.D.C. 2015; *FTC v. Wilhelmsen Holding, ASA*, 341 F.Supp. 3d 27, D.D.C. 2018; *FTC v. Staples*, 970 F.Supp 1066, D.D.C. 1997."

PX1045 (*U.S. v. Bertelsmann, et al.* Ruling from the Bench re: Efficiencies (Aug. 17, 2022)).

Defendants Did Not Meet Their Burden on Efficiencies

Professor Kevin Murphy
University of Chicago

Q. And nowhere in your report do you quantify this claimed efficiency in a numerical sense, correct?

A. No. I do more to try to explain why these types of efficiencies would be merger specific, and that there are things that you could do better within the firm, in some cases, than you could outside the firm.

Q. So, you make a prediction, but then you don't estimate the dollar value associated with that prediction; is that fair?

A. Yeah. I don't think I have the tool to do that or the data to do that.

Murphy Trial Testimony 08/15/22 AM at Tr. 127:4-13.

Proposed Merger Harms Competition in Three Ways

Harms competition in insurance markets by giving United access and rights, through Change, to rivals' competitively sensitive information and data

Harms competition in insurance markets by giving United control of Change's EDI clearinghouse, giving United the ability and incentive to raise rivals' costs by denying rivals access to innovations

Harms competition for first pass claims editing, a critical input for health insurers

Clayton Act

15 U.S.C. § 18

Section 7 of the Clayton Act prohibits acquisitions "where in any line of commerce . . . in any section of the country, the effect of such acquisition ***may*** be substantially to lessen competition, or to tend to create a monopoly."