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# REGULATORY REVIEW PROCESS FOR INSURANCE COMPANY ACQUISITION

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## ISSUE

This report provides an overview of the regulatory review process for insurer acquisitions, such as the July announcement of Anthem, Inc.'s proposed acquisition of CIGNA Corporation.

## SUMMARY

The announcement of a proposed acquisition of an insurance company by another is the first step in a lengthy process before the transaction may be consummated. Certain of these transactions must be reviewed by federal and state governmental authorities. These authorities include (1) antitrust enforcement authorities at the federal and state level (i.e., the Federal Trade Commission (FTC), the U.S. Department of Justice (DOJ), and state attorneys general) and (2) state insurance regulators. The main purpose of these reviews is to determine the potential anticompetitive effects of the proposed transaction. These authorities act independently of one another and each may take steps to block the transaction if it determines it violates federal or state law.

## ANTITRUST COMPLIANCE

### *Federal Oversight*

Federal law prohibits mergers and acquisitions that may substantially lessen competition or create a monopoly (15 U.S.C. § 13(a)). Under the 1976 Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), parties to a proposed acquisition that exceeds statutory thresholds must notify the FTC and DOJ (the enforcement agencies) of their plans and allow the federal government an opportunity to investigate the proposal before the transaction is consummated (15 U.S.C. § 18a). Whether an acquisition is subject to the HSR Act depends on the value of the acquisition and the size of the parties involved, as measured by their sales and assets.

The parties to an acquisition that is subject to the HSR Act must make a filing with the enforcement agencies describing their respective business operations and the proposed transaction in sufficient detail to allow the agencies to determine whether the transaction will have an anticompetitive effect in the parties' product and geographic markets. The parties must wait for a specified period of time before they may complete the transaction. The waiting period is usually 30 days (15 days if it is a cash tender offer or bankruptcy sale).

If either the FTC or DOJ determines that additional inquiry is necessary, it may request more information from the parties. This "second request" extends the waiting period for a specified period—usually 30 days (10 days if it is a cash tender offer or bankruptcy sale)—after the parties comply with the request.

If, after review, the agencies do not find the proposed transaction will reduce competition substantially, the parties may consummate the transaction when the waiting period expires. If either agency determines that a proposed acquisition may violate the antitrust laws, it may file for an injunction in federal district court to stop it. During an antitrust investigation, agency staff may also discuss terms of a settlement with the parties, which may allow the transaction to proceed.

The HSR Act encourages the government to review acquisitions pre-consummation when remedial action, if necessary, may be more easily undertaken. However, the agencies retain the power to challenge acquisitions post-consummation as well.

For more information about the federal government's enforcement of antitrust laws under the HSR Act, see https://www.ftc.gov/enforcement/premerger-notification-program.

### *State Oversight*

In addition to federal review by the FTC and DOJ, state attorneys general also have authority under state antitrust laws to review proposed acquisitions for possible antitrust violations (e.g., CGS § 35-24, et seq.). According to the Connecticut Office of the Attorney General, the attorney general (AG) has the authority to investigate a proposed transaction, bring suit in civil court to block a transaction, or do neither.

If the AG chooses to investigate a proposed transaction, the investigation focuses on the transaction's likely competitive effects on the relevant market. In conducting an investigation, the AG may review information from the parties to the transaction, conduct interviews with competitors, and review HSR Act filings.

The AG's investigation looks into whether the proposed transaction will substantially lessen competition or tend to create a monopoly. This may include determining if

the acquisition will cause one entity to obtain market power, prices to increase, competition to be excluded, or innovation to be limited. The investigation will also review the likelihood of any proposed efficiencies (e.g., lower prices, improved quality, and new products).

An AG's investigation has three possible outcomes:

1. no competitive problem, so the AG takes no action;
2. competitive concerns that can be resolved through a consent decree; or
3. a competitive problem that cannot be resolved, so the AG sues in civil court in an attempt to block the transaction.

## STATE INSURANCE DEPARTMENT REVIEW

### *The Insurance Holding Company Act*

State law requires the insurance commissioner to administer the Connecticut Insurance Holding Company Act (CGS § 38a-129, et seq.). The purpose of the act is "to safeguard the financial security of Connecticut domestic insurance companies" by empowering the commissioner "to review the acquisition of control over the management of domestic insurance companies," among other things.

According to the Connecticut Insurance Department (CID), no one may acquire control over a domestic (Connecticut) insurer or enter into an agreement to merge with a domestic insurer unless, at the time an acquisition agreement is entered into, the (1) person has filed with the insurance commissioner and has sent to the domestic insurer a statement (called "Form A") containing specified information and (2) commissioner has approved the acquisition (CGS § 38a-130).

### *Form A Filing*

The person seeking to acquire control of a domestic insurer, known as the applicant, must file Form A with the insurance commissioner under oath or affirmation. Generally, the applicant must disclose information pertaining to the proposed acquisition and its plans for the domestic insurer. For example, Form A requires the applicant to disclose, among other things:

1. the domestic insurer's identification and a description of how control will be acquired or the merger effected;
2. the identity and background of the applicant and individuals associated with the applicant;

3. the source, nature, and amount of consideration to be used in effecting the merger or other acquisition of control;

4. a description of any plans or proposals the acquiring party may have for the domestic insurer, such as declaration of an extraordinary dividend; changes in corporate structure or management; plans to merge, consolidate, or liquidate the company; plans to sell its assets; plans to make any other material change in its business operations; or plans or proposals of the acquiring party or its affiliates which may have a material effect on the insurer;

5. a description of the domestic insurer's voting securities and a statement outlining the fairness of the proposal;

6. fully audited financial information regarding the applicant's earnings and financial condition for the preceding five fiscal years;

7. copies of any regulatory filings made in connection with the proposed acquisition or merger and an analysis of the competitive impact in Connecticut on each line of insurance listed in the domestic insurer's annual financial statements; and

8. any additional information the commissioner may determine is necessary for the protection of the insurer's policyholders or in the public interest (CGS § 38a-130 and Conn. Agencies Regs. § 38a-138-1).

### *Public Hearing*

Within 30 days after the applicant files a complete Form A, the commissioner must schedule a public hearing on it (CGS §38a-132). If the applicant amends the form, the commissioner may postpone the hearing for up to 30 days (Conn. Agencies Regs. § 38a-138-6). Either way, the commissioner must provide the applicant at least 20 days' notice of the hearing, and the applicant must publish notice in Connecticut newspapers, as prescribed by the commissioner.

According to CID, it is customary for the commissioner to appoint a hearing officer from among her staff to preside at the hearing. The hearing officer (1) receives evidence, testimony, and public comment and (2) makes findings of fact, conclusions of law, and recommendations to the commissioner. At the hearing, the applicant, the domestic insurer, and any other affected person has the right to present evidence, have counsel, examine or cross-examine witnesses, and offer oral and written argument.

### *Commissioner Approval*

Within 30 days after the hearing concludes, the commissioner must act on the Form A application (CGS § 38a-132). By law, she must approve a merger or other acquisition of control of a domestic insurer, unless she finds that:

1. after the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a license to write the line or lines for which it is presently licensed;

2. the merger or other acquisition of control substantially lessens competition of insurance or tends to create a monopoly in Connecticut;

3. the financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders;

4. the plans or proposals that the acquiring party has for the domestic insurer (e.g., to liquidate the insurer, sell its assets, consolidate or merge it with any person, or make any other material change in its business or corporate structure or management) are unfair and unreasonable to the insurer's policyholders and not in the public interest;

5. the competence, experience, and integrity of those people who would control the insurer's operation would not be in the interest of the insurer's policyholders and of the public; or

6. the acquisition is likely to be hazardous or prejudicial to those buying insurance.

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