

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

IN THE MATTER OF)

UnitedHealth Group Incorporated,

II. JURISDICTION

8. Respondents, and each of their relevant operating and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

9. The Proposed Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III. THE PROPOSED ACQUISITION

10. On December 5, 2017, UnitedHealth Group entered into an equity purchase agreement to acquire DaVita's DMG division for approximately \$4.9 billion in cash. The purchase price was amended to \$4.3 billion on December 11, 2018. The Proposed Acquisition includes DMG's medical groups and affiliated networks across all six states where DMG operates, including Nevada.

IV. THE RELEVANT MARKETS

A. MCPO Services Sold to MAOs

11. MCPO services sold to MAOs constitute a relevant service market in which to analyze the effects of the Proposed Acquisition. MCPO services include physician ~~both~~ lines primary care physicians and specialists are integrated ~~with~~ other aspects of care coordination and cost containment provided by MCPOs. MCPOs offer to MAOs a broad set of providers that can independently manage an MA network while effectively coordinating care, managing utilization, and containing costs for a covered patient population.

12. The relevant geographic market in which to analyze the effects of the Proposed Acquisition on MCPO services sold to MAOs is no broader than the Las Vegas Area, which includes Clark and Nye counties in Nevada.

B. MA Plans Sold to Individual MA Members

13. Another relevant product market in which to analyze the effects of the Proposed Acquisition is the market for MA health plans (MA plans) sold to individual MA members. MA plans are meaningfully differentiated from other types of insurance products, including Original Medicare, eligible restricted Medicare options (e.g., special needs plans or SNPs), employer group MA plans, and commercial health plans. MA plans are differentiated from Original Medicare in several important respects including MA plan limited network caps on out-of-pocket spending, coordination of ~~by~~ providers and members access to supplemental benefits like prescription drug coverage. SNPs are MA plans specifically designed for qualifying individuals to treat specific medical conditions, ~~and they~~ are not available to seniors who enroll in a typical MA plan unless they have or develop one of the specified conditions required for SNP eligibility. Likewise, employer group MA plans are limited to

employees of a participating organization; MA enrollees cannot enroll in an employer group MA plan unless they are a former employee of a participating employer. The market for MA plans also excludes commercial health plans because MA plans often feature zero or very low premiums, which are much less expensive than commercial health plans, which frequently charge much higher premiums. Medicare-eligible seniors who purchase MA plans therefore are either not likely to select Original Medicare or purchase a commercial health plan, or are restricted from purchasing a SHOP employer group MA plan, in the event of a price increase on all MA plans.

14. Clark County and Nye County are each a relevant geographic market in which to analyze the effects of the Proposed Acquisition on MA plans sold to individual MA members; however, the competitive conditions and market structure for MA plans sold to individual MA members are similar in both counties, so it may be appropriate to cluster Clark and Nye counties together as the Las Vegas Area for analytical convenience.

V. THE STRUCTURE OF THE RELEVANT MARKETS

15. UnitedHealth Group's OptumCare and DaVita's HCPNV are the two largest providers of MCPO services sold to MAOs in the Las Vegas Area. The Proposed Acquisition will cause OptumCare and HCPNV to cover over 80% of MA members in the Las Vegas Area, which will result in a highly concentrated market.

16. In the market for MA plans sold to individual MA members in the Las Vegas Area, United covers over 50% of MA lives. Humana is responsible for approximately 35% of the MA lives in the Las Vegas Area. The remainder of the Las Vegas Area market for MA plans sold to individual MA members comprises a number of MA insurers with less than 10% of the market.

VI. EFFECTS OF THE PROPOSED ACQUISITION

A. Horizontal Effects in the Las Vegas Area

17. The Proposed Acquisition would eliminate direct and substantial price competition between UnitedHealth Group's OptumCare and DaVita's HCPNV MCPO services sold to MAOs in the Las Vegas Area. The elimination of this competition would allow UnitedHealth Group to exercise market power unilaterally following the consummation of the Proposed Acquisition. The ultimate effect of the Proposed Acquisition would be to increase the likelihood that prices of MCPO services provided to MAOs in the Las Vegas Area would rise above competitive levels. The Proposed Acquisition would also result in a decrease in incentive to compete on quality services, and other amenities in the Las Vegas Area.

B. Vertical Effects in the Las Vegas Area

18. The Proposed Acquisition would also result in vertical competitive effects stemming from the integration of UnitedHealth Group and HCPNV, because UnitedHealth Group—which owns United, the leading MAO in the Las Vegas Area—would control a competitively significant input—HCPNV—for United's rival MAOs' networks. This would give UnitedHealth

