



June 11, 2019

The Honorable Mike Lee  
Chairman  
Subcommittee on Antitrust, Competition  
Policy and Consumer Rights  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Amy Klobuchar  
Ranking Member  
Subcommittee on Antitrust, Competition  
Policy and Consumer Rights  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Lee and Ranking Member Klobuchar:

Consumer Reports is pleased the Subcommittee is holding this hearing to examine the effects of vertical integration in the health care marketplace. Over the years, since our founding in 1936, we have supported efforts to ensure that quality health care is available and affordable for all Americans.

An important key to making the marketplace work for consumers is meaningful choice, from effective competition, so consumers can shop around. That empowers consumers by motivating businesses to respond to consumers' wants and needs, with more affordability and better quality – lest consumers go elsewhere.

As you undertake this examination, we hope you will keep the following considerations in mind:

First, increasing vertical integration in the health care marketplace can restrict and diminish consumer choice in a number of ways. As we testified last year in connection with the pending merger of Aetna and CVS,<sup>1</sup> vertical integration creates new market-straddling corporate structures, with powerful new profit-maximizing incentives to undermine competition, potentially impacting all parts of the healthcare marketplace.

Specifically, as explained in our testimony, there are restrictive and exclusionary practices that do not make business sense when the various parts – insurers, providers, hospitals, clinics, and pharmacies – are separate from each other, because each of them has business

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<sup>1</sup> <https://docs.house.gov/meetings/JU/JU05/20180227/106898/HHRG-115-JU05-Wstate-SloverG-20180227.pdf>.

incentive to want interactions with each other, because that's what customers want. These restrictive and exclusionary practices become attractive for an integrated corporation, however, when the payoff is that it can use its power to steer customers from one part of its market-straddling enterprise to the other parts that it now has brought in-house, and to disadvantage or exclude have now become its competitors.

As we stated when the Justice Department announced its proposed consent decree last October<sup>2</sup> – which is still under court review – we are concerned that the limited conditions the proposed decree puts on this merger are woefully insufficient to ensure that a combined CVS-Aetna doesn't use its outsized resources in ways that stifle competition and reduce choice at all levels up and down the chain – ultimately leaving consumers with fewer options and higher costs.

Second, given the essential role the antitrust laws play in the healthcare marketplace, it is unfortunate and ill-advised that an entire major sector of this marketplace is off-limits to the antitrust laws – the business of health insurance, as a result of the antitrust exemption in the McCarran-Ferguson Act. Last week, Consumer Reports, along with Consumer Federation of America and Consumer Action, wrote to the Committee urging its support for S. 350, the “Competitive Health Insurance Reform Act of 2019,”<sup>3</sup> which would remove this exemption as it applies to health insurance. Identical legislation passed the House in the last Congress by an overwhelming bipartisan vote of 416-7. We hope the Senate will join in supporting this pro-consumer legislation, so that it can be enacted into law.

Sincerely,



George P. Slover  
Senior Policy Counsel  
Consumer Reports

cc: Members, Subcommittee on Antitrust, Competition Policy and Consumer Rights

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<sup>2</sup> [https://advocacy.consumerreports.org/press\\_release/consumers-union-statement-on-approval-of-cvs-aetna-merger/](https://advocacy.consumerreports.org/press_release/consumers-union-statement-on-approval-of-cvs-aetna-merger/).

<sup>3</sup> <https://advocacy.consumerreports.org/research/letter-to-house-and-senate-judiciary-committees-in-support-of-competitive-health-insurance-reform-act/>.