BEFORE THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION
STATE OF MISSOURI

DIVISION OF INSURANCE COMPANY REGULATION,	)	
PETITIONER,	)	
v.	)	**Case No. 160325191C**
AETNA INC.	)	
and	)	
HUMANA INC.,	)	
RESPONDENTS.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter comes before the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director" of the "Department"), after a hearing on May 16, 2016, regarding the section 382.095, RSMo,[1] Form E preacquisition notification filed by Aetna Inc. to acquire Humana Inc.

PUBLIC COMMENTS

The Director offered interested persons the opportunity to appear at the hearing and provide oral or written comment regarding the proposed acquisition by Aetna Inc. ("Aetna") of Humana Inc. ("Humana"). The Director also offered interested persons the opportunity to submit written comments prior to and after the hearing.[2] The following is a summary of the written comments:

(1) The Coalition to Protect Patient Choice ("Coalition") expressed in its comments submitted prior to the hearing its concerns for the proposed acquisition that the merger could substantially lessen competition and harm consumers in Missouri. The

[1] All references to section 382.095 of the Revised Statutes of Missouri, unless otherwise noted, are to the section as amended by House Bill 50 (2015), effective August 28, 2015.

[2] Notice of Hearing and Order Appointing Hearing Officer, issued March 25, 2016; Amended Notice of Hearing, issued March 29, 2016.

Coalition is comprised of Empower Missouri, Missouri Budget Project, Missouri Health Advocacy Alliance, Missouri Health Care for All, US PIRG, Consumer Action, Consumers Union, Consumer Federation of America, and SEIU Healthcare Illinois, Indiana, Missouri, Kansas. The Coalition critically examined the merger and its impact and determined that the credible scholarly evidence suggests that consumers will face "higher costs, less choice and diminished quality and innovation." In its comment submitted after the hearing, the Coalition provided additional information in response to one of Aetna's expert witnesses who concluded, "the Department should consider both Medicare Advantage and traditional Medicare as a single product market in its evaluation of the competitive implications of the Aetna/Humana merger." The Coalition outlined studies supporting its position "that Medicare Advantage is its own separate and distinct market."

(2) The Missouri Hospital Association ("MHA") submitted comments on behalf of its 148 members that include every acute care hospital in Missouri. MHA "believes that the proposed merger will result in reduced benefit choices, higher premiums and inadequate healthcare access for Missouri citizens, especially vulnerable seniors who are enrolled in Medicare Advantage plans across the state." MHA considered detailed market share data and health insurance studies to support is conclusion that the merger "threatens to jeopardize the stability of the payer system in Missouri," will offer "far fewer choices among plans," and "affect the ability of hospitals and other health care providers to bargain competitively for contracts."

(3) The Missouri State Medical Association ("MSMA") presented comments on behalf of its 5,000 physician members and their patients. MSMA "thinks the proposed acquisition will substantially lessen competition in many Missouri markets, especially for Medicare Advantage products, which will be harmful to the public." MSHA, after reviewing scholarly literature and market share data, concluded, "the Aetna-Humana merger will create for the newly-combined enterprise an unhealthy concentration of market power in Missouri, especially in the Medicare Advantage marketplace."

(4) Empower Missouri commented that the merger of Aetna and Humana will threaten Missourians' "access to quality healthcare and lead to greater concentration in health insurance markets. We know that highly concentrated health insurance markets can lead to rising healthcare costs for consumers, decreased innovation, lower quality of care and decreased consumer satisfaction, and less consumer choice."

(5) Missouri Health Advocacy Alliance raised questions regarding the impact of the merger in several areas, including the effect on premium prices, the increased market share in the Medicare Advantage market, the fact that the Director does not have authority to refuse an unreasonable rate increase, and consumers' access to providers. It asked the Director "not to allow the merger to move forward at this time."

(6) Freeman Health System, located in Joplin, Missouri, expressed its desire to "continue to partner with our payors to meet the healthcare needs of our community while balancing affordability, access and quality." Freeman supported the merger stating, "the merger will benefit the consumer with greater access to Aetna patients of Humana products and for Humana greater access to commercial members of Aetna."

(7) Encompass Medical Group supported the Aetna acquisition of Humana. Encompass Medical Group is the largest independent medical practice in the Greater Kansas City Metro area that provides medical services to a combined total of over 10,000 members of the insurers' healthcare plans. "Both organizations [Aetna and Humana] have a common purpose to serve their patients on a local level by working closely with area providers, hospitals, and other resources."

(8) Missouri Primary Care Association ("MPCA") is a statewide organization of Community Health Centers. The MPCA and its members "appreciate the mutually beneficial relationship with Aetna and believe their efforts to acquire Humana will only strengthen our relationship."

(9) Paul Cesare discussed that "history has shown that when large insurance companies merge, premiums increase," services are not necessarily improved, and consumers' providers were no longer part of the new network. Cesare asked the Director to not allow the merger between Aetna and Humana.

(10) The YMCA of Greater Kansas City noted, "Humana has been a great partner to the Y in helping us strengthen our community and in particular deliver healthy living programming" and therefore endorsed "Humana's efforts to strengthen its overall capacity to health and well-being by teaming with Aetna."

(11) The American Medical Association ("AMA") detailed its analysis relating to the proposed merger and concluded that it "will likely impair access, affordability and innovation in the sell-side market for health insurance, and on the buy-side, will deprive physicians of the ability to negotiate competitive health insurer contract terms." The AMA included comments of H.E. Frech III submitted to the California Department of Insurance.

(12) Missouri Health+, a clinically integrated network of Federally Qualified Health Centers, looked "forward to continuing our strong partnership with Aetna and support[s] Aetna's acquisition of Humana in order to provide higher levels of care, service and value to Missouri."

(13) Visor, Inc. commended Aetna's efforts during open enrollment to hire a person to exclusively handle Missouri escalated cases where no other carrier responded similarly. Visor recognized Humana's "very sophisticated Medicare Supplement business and broad ancillary product line. . . . Adding the above product lines would

help Aetna with its mission to manage health cost and maintain profitability in providing service to Missourians."

(14) Missouri Health Care for All is a non-partisan organization of faith and community groups who believe all Missourians deserve access to quality and affordable health care. While noting that the Missouri health insurance market is already dominated by a few insurers and is highly concentrated in many local markets, the organization raised its concerns that rather than improve quality and reduce costs for consumers, "the merger could threaten meaningful competition" and result in increased premiums.

(15) Consumers Council of Missouri, an advocacy group for Missouri consumers, shared its "profound concern" regarding the merger of these two dominant insurers, especially as there are no laws that protect consumers against excessive rates. The group "stands in full opposition of this merger."

The following is a summary of the oral comments:

(1) Gerard J. Grimaldi, with Truman Medical Centers ("TMC"), described TMC as Kansas City's essential hospital providing services to uninsured and underinsured, providing about 12% of all uncompensated care in Missouri. TMC "is concerned that narrow network decisions and/or pricing behavior by insurers after acquisitions occur could have a significant impact on continuity of care for TMC patients, many of whom are low income, especially our Medicare Advantage enrollees." Mr. Grimaldi also provided a written copy of his comment.

(2) Brad Wasser spoke on behalf of Empower Missouri, Missouri Budget Project, Missouri Health Advocacy Alliance, Missouri Health Care for All, US PIRG, Consumer Action, Consumers Union, Consumer Federation of America, and SEIU (previously identified as the Coalition). Wasser recognized that these groups had already submitted written comments to the Director, but made three points in his oral comments: first, there are anti-competitive effects stemming from the Aetna/Humana merger; second, the efficiencies proffered by the merging insurers are not sufficient to overcome the harm arising from the anti-competitive effects; and third, there is a competitive problem about which something needs to be done.

NOW THEREFORE, after a hearing at which Aetna, joined by Humana, and the Division of Insurance Company Regulation of the Department (the "Division") presented extensive evidence, having read the full record including all the evidence, and based on the competent and substantial evidence on the record, the Director finds and concludes the following:

I. FINDINGS OF FACT

1. Aetna controls the following 13 subsidiaries licensed to write insurance business in the state of Missouri: Aetna Better Health of Missouri LLC (NAIC #95318), Aetna Dental Inc. (NAIC #95910), Aetna Health and Life Insurance Company (NAIC #78700), Aetna Health Inc. (NAIC #95109), Aetna Health Insurance Company (NAIC #72052), Aetna Insurance Company of Connecticut (NAIC #36153), Aetna Life Insurance Company (NAIC #60054), American Continental Insurance Company (NAIC #12321), Continental Life Insurance Company of Brentwood, Tennessee (NAIC #68500), Coventry Health and Life Insurance Company (NAIC #81973), Coventry Health Care of Kansas, Inc. (NAIC #95489), Coventry Health Care of Missouri, Inc. (NAIC #96377), and First Health Life & Health Insurance Company (NAIC #90328) (collectively with Aetna Inc., "Aetna").[3]

2. Three subsidiaries controlled by Aetna are Missouri domestics: Aetna Better Health of Missouri LLC, Coventry Health and Life Insurance Company, and Coventry Health Care of Missouri, Inc.[4]

3. Aetna controls NAIC Group #1.[5]

4. Humana controls the following 10 subsidiaries licensed to write insurance business in the state of Missouri: Arcadian Health Plan, Inc. (NAIC #12151), CompBenefits Dental, Inc. (NAIC #11228), CompBenefits Insurance Company (NAIC #60984), The Dental Concern, Inc. (NAIC #54739), Emphesys Insurance Company (NAIC #88595), Humana Benefit Plan of Illinois, Inc. (NAIC #60052), Humana Health Plan, Inc. (NAIC #95885), Humana Insurance Company (NAIC #73288), HumanaDental Insurance Company (NAIC #70580), and Kanawha Insurance Company (NAIC #65110) (collectively with Humana Inc., "Humana").[6]

5. Humana does not control any Missouri domestic insurance companies.[7]

6. Humana controls NAIC Group #119.[8]

7. Aetna's Form E filing identified a total of seventeen lines of insurance.[9]

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[3] Exhibit 9; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

[4] Exhibit 9; Testimony of John Rehagen at 91:25 – 92:14; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

[5] Exhibit 9; Testimony of John Rehagen at 91:7-15; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

[6] Exhibit 10; Official Notice at 30:22-25, 32:2-5, 34:25-35:10 of the transcript. References to the transcript will be by page number followed by the line number. For example "30:22-25" means transcript page 30, lines 22 through 25.

[7] Exhibit 10; Testimony of John Rehagen at 95:21-23; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

[8] Exhibit 10; Testimony of John Rehagen at 95:10-14; Official Notice at 30:22-25, 32:2-5, 34:25-35:10.

8. At the hearing, the parties filed a Stipulation that stated:

> Aetna Inc., Humana Inc., and the Division of Insurance Company Regulation (collectively, the "Parties"), hereby stipulate and agree that, with respect to the Health Only Reporters – Disability, Long-Term Care, Stop Loss & Other Health, which is identified in Aetna's Form E submission, the effect of the proposed acquisition in the captioned matter would not be substantially to lessen competition or tend to create a monopoly therein pursuant to § 382.095, RSMo (Supp. 2015).

9. In its Form E filing, Aetna identified the following lines of insurance in Missouri of Aetna and/or Humana from 2010 to 2014:[10]

(1) Ordinary Life Insurance (Life, Accident & Health Reporter) ("LA&HR")
(2) Group Life Insurance (LA&HR)
(3) Accident & Health Group Policies Only (LA&HR)
(4) Federal Employees Health Benefits Program (LA&HR)
(5) Medicare Title VIII Exempt from State Taxes or Fees (LA&HR)
(6) Guaranteed Renewable Accident & Health (LA&HR)
(7) Non-Renewable Stated Reasons Only (LA&HR)
(8) All Other Accident & Health (LA&HR)
(9) Comprehensive Group (Health Only Reporter) ("HOR")
(10) Comprehensive Individual (HOR)
(11) Dental Only (HOR)
(12) Disability, Long-Term Care, Stop Loss & Other Health (HOR)
(13) Federal Employees Health Benefits Programs (HOR)
(14) Medicare Supplement (HOR)
(15) Title XIX Medicaid (HOR)
(16) Title XVIII Medicare (combined LA&HR and HOR)
(17) Vision Only (HOR)

10. Of the lines identified in the Form E, the parties only presented evidence regarding the following: Comprehensive Individual, Comprehensive Group and Title XVIII Medicare.

11. In its "[Proposed] Findings of Fact, Conclusions of Law and Recommendation," Aetna recited that, with respect to Comprehensive Group, Comprehensive Individual, and Title XVIII Medicare, the Division established that the shares of those lines "exceed the thresholds set forth in Section 382.095.4(2), which therefore establishes prima facie evidence of a violation of the competitive standard."[11]

12. Pursuant to Missouri law, "[i]n the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line

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[9] Exhibit 11.
[10] Exhibit 11, pp. 8, 98-110.
[11] Aetna's and Humana's "[Proposed] Findings of Fact, Conclusions of Law and Recommendation," at Paragraphs 15-17.

of business, such line being that used in the annual statement required to be filed by insurers doing business in this state...."[12]

13. The Health Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.[13]

14. The Life and A&H Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.[14]

15. The Property & Casualty Annual Statement Blank for the year 2015 is an annual statement required to be filed by insurers doing business in this state.[15]

16. The Health Annual Statement Blank for the year 2015, Life and A&H Annual Statement Blank for the year 2015, and Property & Casualty Annual Statement Blank for the year 2015 each contain a page titled "Supplemental Health Care Exhibit – Part 2."[16]

17. Insurers filling out the "Supplemental Health Care Exhibit – Part 2" page for Missouri report direct written premium on row 1.1 for 12 lines of business in columns 1-12, and a total for such columns in column 13.[17]

18. Insurers doing business in Missouri report direct written premium in the comprehensive individual health insurance line of business in row 1.1, column 1 of the "Supplemental Health Care Exhibit – Part 2" page.[18]

19. References to the "Comprehensive Individual" product market or line of business throughout the Findings of Fact, Conclusions of Law and Order shall refer to the line of business in column 1 of the "Supplemental Health Care Exhibit – Part 2" page within the Health Annual Statement Blank for the year 2015, the Life and A&H Annual Statement Blank for the year 2015, and the Property & Casualty Annual Statement Blank for the year 2015.

20. Insurers doing business in Missouri report direct written premium in the comprehensive small group employer health insurance line of business in row 1.1, column 2 of the "Supplemental Health Care Exhibit – Part 2" page.[19]

21. References to the "Comprehensive Small Group" product market or line of business throughout the Findings of Fact, Conclusions of Law and Order shall refer to the line of

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[12] Section 382.095.4(3)(b).

[13] Exhibit 15; Testimony of John Rehagen at 101:25-103:1; section 376.350.1, RSMo (2000); section 354.435, RSMo (Supp. 2013); 20 CSR 200-1.030(1).

[14] Exhibit 15; Testimony of John Rehagen at 103:7-12; section 376.350.1, RSMo (2000); 20 CSR 200-1.030(1).

[15] Testimony of John Rehagen at 103:7-12; section 379.105.1, RSMo (2000); 20 CSR 200-1.030(1).

[16] Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

[17] Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

[18] Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

[19] Exhibit 15, pg. 197; Testimony of John Rehagen at 117:11-118:18.

business in column 2 of the "Supplemental Health Care Exhibit – Part 2" page within the Health Annual Statement Blank for the year 2015, the Life and A&H Annual Statement Blank for the year 2015, and the Property & Casualty Annual Statement Blank for the year 2015.

22. The federal government provides Medicare Parts A and B, also known as Traditional Medicare.[20]

23. Medicare Advantage (also known as Medicare+Choice) plans are Medicare Part C plans offered by private insurance companies in which individuals may choose to enroll in lieu of Medicare Parts A and/or B.[21]

24. Medicare Advantage plans typically offer greater benefits than Medicare Parts A and B, including more favorable deductibles and co-payments, dental benefits, prescription drug benefits, vision benefits, and wellness programs.[22]

25. The federal government recognizes and has promoted Medicare Advantage as a separate economic entity from Traditional Medicare.[23]

26. The health insurance industry has promoted Medicare Advantage as a separate economic entity.[24]

27. Medicare Advantage is provided by private insurers, whereas Traditional Medicare is provided by the federal government.[25]

28. Medicare Advantage ("MA") is the name of the current program that allows beneficiaries to enroll in private health plans rather than having their care covered through Medicare's traditional fee-for-service ("FFS") program.[26]

29. Medicare Advantage provides much broader coverage of enrollees' out-of-pocket costs than does Traditional Medicare.[27]

30. Medicare Advantage restricts enrollee choice of provider, whereas Traditional Medicare does not.[28]

31. Medicare Advantage plans compete with each other to set their reimbursement rates, subject to a government ceiling.[29]

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[20] Testimony of Angela Nelson at 60:17-61:13.

[21] Exhibit 31, pg. 4, n. 5 & 6, Exhibit 34, pg. 3; Exhibit Q, pg. 2; Testimony of Angela Nelson at 61:14-21; 42 U.S.C. § 1395w-21(a).

[22] Testimony of Angela Nelson at 61:22-62:19; see also, Exhibit Q, pg. 2.

[23] Exhibit 31, pp. 3-7; Exhibit 34, pp. 2, 4-6; see also Exhibit Q, pg. 2.

[24] Exhibits 32 and 33.

[25] Exhibit 34, pp. 3-5; Exhibit C, ¶ 49; Testimony of Angela Nelson at 60:20-63:19.

[26] Exhibit 31, pg. 4.

[27] Exhibit 34, pg. 3; Exhibit K, pg. 22.

[28] Exhibit 34, pg. 3; Exhibit K, pg. 22.

32. Medicare Advantage plans use marketing to attract enrollees to their plans, whereas Traditional Medicare does not.[30]

33. The health care spending of those switching to Medicare Advantage plans from Traditional Medicare have total annual health care costs that are 45% lower than those in Traditional Medicare.[31]

34. Switchers from Traditional Medicare to Medicare Advantage tend to be younger than the overall Medicare-eligible population.[32]

35. Between 3% and 4% of Medicare Advantage enrollees switch back to Traditional Medicare each year.[33]

36. Among the 3% of enrollees who switch back to FFS each year, the sickest enrollees are the ones most likely to switch back.[34]

37. To obtain the same benefit package as Medicare Advantage plans provide, Traditional Medicare enrollees must purchase a Part D Prescription Drug Plan and Medicare Supplemental insurance (also known as Medigap) plan.[35]

38. The average premium for a Medicare Advantage plan, which includes Part D coverage, is $38.56 per month.[36]

39. The average Medigap premium is $101.41 per month.[37]

40. The average premium for a stand-alone Part D Prescription Drug plan is $39.46 per month.[38]

41. Both Traditional Medicare and Medicare Advantage enrollees must pay the Medicare Part B premium.[39]

42. The extent to which Medicare Advantage plans pass higher payments from the government through to enrollees is highly dependent on the extent of concentration in the Medicare Advantage market: the lower the concentration in the Medicare Advantage market, the greater the pass through to enrollees.[40]

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[29] Exhibit 34, pg. 3.
[30] Exhibit 34, pg. 7.
[31] Id., citing Brown et al., "How Does Risk Selection Respond to Risk Adjustment? New Evidence from the Medicare Advantage Program," 104 American Economic Review 3335-3364 (2014).
[32] Exhibit K, pg. 38.
[33] Exhibit 34, pg. 7.
[34] Exhibit 34, pg. 7, citing Brown et al., "New Evidence from the Medicare Advantage Program" (2014).
[35] Exhibit K, pg. 22; Exhibit C, ¶ 53; Exhibit 34, pg. 5; see https://www.medicare.ogv/pubs/pdf/02110.pdf.
[36] Exhibit K, pg. 22.
[37] Id.
[38] Id.
[39] Exhibit C, ¶ 53.
[40] Exhibit 34, pg. 11, citing Brown et al., "New Evidence from the Medicare Advantage Program" (2014).

43. When Medicare private fee-for-service plans exited the market, Medicare Advantage plans in the least competitive Medicare Advantage markets reduced their benefits by more than three times the benefit reductions Medicare Advantage plans imposed in the most competitive markets.[41]

44. The consumer surplus produced by Medicare Advantage plans has been shown to be 12 times greater in counties with four Medicare Advantage plans than in those counties with one plan.[42]

45. Only private insurers sell Medicare Advantage, and only the federal government sells Traditional Medicare.[43]

46. Agents or brokers are paid by Medicare Advantage carriers when they sell Medicare Advantage plans.[44]

47. Agents or brokers do not sell Traditional Medicare, and are not paid by Traditional Medicare.[45]

48. At its website Humana sells six different Medicare Advantage plans that include various levels of drug coverage. The premiums for those plans in zip code 64101 (Kansas City) are $0, $26.10, $34.00, $76.00, $81.00, and $118.00.[46]

49. To approximate the same benefits provided by a Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy.[47]

50. At its website, Humana offers three prescription drug plans, at monthly premiums of $18.40, $24.80, and $65.20.[48]

51. At its website, Humana also offers eight Medicare Supplement plans, at monthly premiums ranging from $60.39 to $204.89.[49]

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[41] Exhibit 34, pg. 11, citing Pelech, "Paying More for Less? Insurer Competition and Health Plan Generosity in the Medicare Advantage Program," Ph.D. thesis, Harvard University (2016).

[42] Exhibit 34, pg. 11, citing Town and Liu, "The Welfare Impact of Medicare HMOs," 34 RAND Journal of Economics 719-36 (2003).

[43] Exhibit 34, pg. 3; Exhibit C, ¶ 49.

[44] Exhibit C, ¶ 51.

[45] Id.; Testimony of Dr. McCarthy at 511:17-512:17.

[46] Exhibit 36 (not referencing the three Medicare Advantage plans that do not provide drug coverage). A 5% increase would raise the cost of five of those six plans by $4.05 or less, and would raise the cost of even the highest-priced plan by less than $6.00.

[47] Exhibit C, ¶¶ 49-51, 53; Exhibit K, pg. 22.

[48] Exhibit 36.

[49] Id.

52. The low, median, and high priced Humana Part D and Medigap plans, along with the total someone choosing those plans would pay when the Medicare Part B premium is added in, is as follows:

	Part D	Medigap	Part B[50]	Total
Low option	18.40	60.39	104.90	186.04
Median	24.80	148.43	104.90	222.14
High option	65.20	204.89	104.90	383.11

53. A 5% increase would raise the price of Humana's Medicare Advantage plans by between $0 (for its zero premium plan) to $5.90 (for its $118.00 monthly premium plan).[51]

54. Dr. McCarthy asserts that Traditional Medicare acts as a competitive constraint on Medicare Advantage plans.[52]

55. Dr. McCarthy does not quantify the extent to which Traditional Medicare constrains Medicare Advantage.[53]

56. Mr. Orszag concludes that there is no general relationship between Medicare Advantage competition and market outcomes in Missouri.[54]

57. Mr. Orszag's conclusion is contradicted by Dr. Gruber's analysis and the journal articles Dr. Gruber analyzes.[55]

58. Mr. Orszag characterizes Dunn, Does Competition Among Medicare Advantage Plans Matter? (2009) as "consistent with substantial competition between MA and FFS Medicare."[56]

59. In fact the Dunn article states that "evidence of competition among MA insurers demonstrates that the relevant product market may be as narrow as MA insurance."[57]

60. Each month, the Centers for Medicare & Medicaid Services ("CMS") collect and make public enrollment data by plan and by county and contract data for all insurers doing Medicare Advantage business in the United States.[58]

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[50] See https://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-glance.html.

[51] Id.

[52] Exhibit C, ¶¶ 55, 57, 62.

[53] Id.

[54] Exhibit K, pp. 50-56; Orszag Demonstrative Exhibit, pp. 27-28; Testimony of Jonathan Orszag at 377:19-278:25, 388:20-389:13.

[55] Exhibit 34, pp. 10-12.

[56] Exhibit K, pg. 41.

[57] Exhibit EE, pg. 4 (AET000921).

[58] Exhibit 5; Exhibit 19; Exhibit 20; Exhibit 35; Testimony of Angela Nelson at 63:24-64:12; Testimony of John Rehagen at 135:13-146:11.

61. CMS considers reporting enrollments of 10 or less in one plan in one county to violate the privacy laws of HIPAA, and therefore only reports enrollments of 11 or more.[59]

62. This public enrollment data and contract data was filtered and combined by the Division to calculate enrollment in each county by plan.[60]

63. The filtered data was separated into individual Medicare Advantage plans, Special Needs Plans, and group Medicare Advantage plans by the Division.[61]

64. For individual Medicare Advantage plans and group Medicare Advantage plans, the Division calculated total statewide enrollment and market share, and enrollment and market share in each of Missouri's 115 counties, for the parent organizations reporting non-zero enrollment.[62]

65. References to the "Individual Medicare Advantage" product markets throughout the Findings of Fact, Conclusions of Law and Order shall refer to enrollment in individual Medicare Advantage plans, excluding Special Needs Plans and group Medicare Advantage plans, based on public data made available by CMS and analyzed by the Division.

66. References to the "Group Medicare Advantage" product markets throughout the Findings of Fact, Conclusions of Law and Order shall refer to enrollment in group Medicare Advantage plans, excluding Special Needs Plans and individual Medicare Advantage plans, based on public data made available by CMS and analyzed by the Division.

67. The majority of Individual Medicare Advantage plans are offered on a county-by-county basis.[63]

68. Missouri residents may only enroll in Individual Medicare Advantage plans in the county where they reside.[64]

69. For purposes of the Findings of Fact, Conclusions of Law and Order, references to the counties of Missouri include the City of St. Louis.

70. Statewide, the four largest insurer groups, in terms of direct written premium for the Comprehensive Individual line of business used in the Supplemental Health Care Exhibit – Part 2 page of the annual statements filed by Life and A&H, Health, and Property & Casualty companies, hold a 91.02% share of the market.[65]

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[59] Exhibit 19, pg. 2; Testimony of John Rehagen at 138:8-19.
[60] Exhibit 20; Exhibit 21; Exhibit 35; Testimony of John Rehagen at 139:5-143:25.
[61] Exhibit 20; Exhibit 21; Testimony of John Rehagen 144:5-18.
[62] Exhibit 20; Exhibit 21; Testimony of John Rehagen at 144:19-157:17.
[63] Exhibit 5; Exhibit 6; Exhibit 19;Testimony of Angela Nelson at 65:16-23; 42 C.F.R. § 422.2 (definition of "service area"); 42 C.F.R. § 422.4(a)(1).
[64] Exhibit 19; 42 C.F.R. § 422.2 (definition of "service area"); 42 C.F.R. § 422.50(a)(3)(i).
[65] Exhibit 17, pg. 3

71. Statewide, Aetna holds a 36.88% market share in the Comprehensive Individual market.[66]

72. Statewide, Humana holds a 1.93% market share in the Comprehensive Individual market.[67]

73. Statewide, the four largest insurer groups, in terms of direct written premium for the Comprehensive Small Group line of business used in the Supplemental Health Care Exhibit – Part 2 page of the annual statements filed by Life and A&H, Health, and Property & Casualty companies, hold a 88.49% share of the market.[68]

74. Statewide, Aetna holds a 12.14% market share in the Comprehensive Small Group market.[69]

75. Statewide, Humana holds a 5.99% market share in the Comprehensive Small Group market.[70]

76. The combined market share of the four largest insurer groups in the Individual Medicare Advantage statewide market is 96.83%.[71]

77. In the 11 Individual Medicare Advantage county markets where five insurers have non-zero market share, the combined market shares of the four largest insurer groups in those 11 counties are as follows:[72]

County	Share[73]
Christian	92.03%
Clay	96.76%
Greene	93.10%
Jackson	98.27%
Jefferson	99.49%
Platte	97.35%
St. Charles	98.34%
St. Louis County	97.48%
St. Louis City	97.51%
Taney	96.42%
Webster	98.59%

[66] Exhibit 17, pg. 3.
[67] Exhibit 17, pg. 3.
[68] Exhibit 17, pg. 3.
[69] Exhibit 17, pg. 3.
[70] Exhibit 17, pg. 3.
[71] Exhibit 20, pp. 30-32.
[72] Exhibit 20, pp. 30-32.
[73] The chart extrapolates or condenses data in Exhibit 20 and is supported by Exhibit 20. Any apparent mathematical inconsistencies can be explained by reference to Exhibit 20 and have no material impact on the Findings and Conclusions.

78. The combined market shares of the four largest insurer groups in the 104 Individual Medicare Advantage county markets not listed in paragraph 77 is 100%.[74]

79. The market shares of Aetna and Humana in the Individual Medicare Advantage statewide market are 32.82% and 20.94%, respectively.[75]

80. The market shares of Aetna and Humana in Individual Medicare Advantage county markets each exceed 4.0% in the following 65 counties:[76]

County	Aetna	Humana	Combined[77]
Audrain	37.23%	21.05%	58.28%
Barry	47.09%	31.97%	79.06%
Barton	71.93%	15.53%	87.47%
Bates	75.87%	17.18%	93.05%
Benton	47.14%	37.71%	84.85%
Boone	9.11%	13.30%	22.41%
Caldwell	20.51%	16.67%	37.18%
Callaway	21.08%	19.80%	40.88%
Carroll	42.86%	32.28%	75.13%
Cass	54.14%	30.89%	85.03%
Cedar	67.28%	29.50%	96.78%
Christian	38.69%	21.68%	60.38%
Clay	35.36%	51.72%	87.08%
Clinton	59.76%	11.83%	71.60%
Cole	46.13%	22.34%	68.47%
Cooper	33.76%	20.56%	54.31%
Crawford	27.32%	6.06%	33.38%
Dade	49.42%	37.81%	87.23%
Dallas	52.32%	29.46%	81.78%
Douglas	33.03%	36.29%	69.32%
Franklin	49.73%	5.21%	54.94%
Gasconade	10.79%	4.96%	15.76%
Greene	40.71%	20.67%	61.37%
Henry	60.58%	30.13%	90.71%
Hickory	59.53%	34.08%	93.61%
Howard	24.42%	22.58%	47.00%
Jackson	46.14%	39.22%	85.36%
Jasper	48.04%	42.82%	90.86%
Jefferson	16.99%	6.61%	23.59%
Johnson	47.53%	45.68%	93.21%

[74] Exhibit 20, pp. 30-32.
[75] Exhibit 20, pp. 30-32.
[76] Exhibit 20, pp. 30-32.
[77] The chart extrapolates or condenses data in Exhibit 20 and is supported by Exhibit 20. Any apparent mathematical inconsistencies can be explained by reference to Exhibit 20 and have no material impact on the Findings and Conclusions.

Laclede	49.22%	41.63%	90.84%
Lafayette	33.58%	52.54%	86.11%
Lawrence	44.34%	26.78%	71.12%
Lincoln	67.73%	9.61%	77.34%
Livingston	61.93%	14.72%	76.65%
Maries	18.69%	12.15%	30.84%
McDonald	32.16%	59.85%	92.01%
Miller	26.15%	36.83%	62.98%
Moniteau	38.67%	19.14%	57.81%
Montgomery	60.29%	13.71%	74.00%
Newton	40.95%	47.61%	88.56%
Osage	45.58%	20.00%	65.58%
Ozark	9.12%	60.42%	69.54%
Perry	8.70%	27.33%	36.02%
Pettis	34.65%	33.17%	67.82%
Phelps	37.48%	34.87%	72.35%
Pike	27.71%	36.00%	63.71%
Platte	32.22%	56.34%	88.56%
Polk	55.73%	32.39%	88.12%
Pulaski	47.29%	42.08%	89.37%
Randolph	17.16%	15.09%	32.25%
Ray	24.70%	51.78%	76.48%
Saline	51.93%	30.76%	82.69%
St. Charles	31.93%	5.16%	37.09%
St. Clair	40.66%	48.13%	88.80%
St. Louis County	24.50%	4.50%	29.00%
St. Louis City	21.29%	7.58%	28.87%
Ste. Genevieve	74.08%	6.54%	80.63%
Stone	34.78%	27.96%	62.75%
Taney	29.65%	30.57%	60.21%
Vernon	32.43%	44.48%	76.91%
Warren	37.04%	7.02%	44.06%
Washington	5.59%	51.02%	56.61%
Webster	47.47%	21.09%	68.57%
Wright	34.03%	32.44%	66.47%

81. The combined market share of the four largest insurer groups in the Group Medicare Advantage statewide market is 96.33%.[78]

82. In the seven Group Medicare Advantage county markets where five or six insurer groups have non-zero market share, the combined shares of the four largest insurer groups in those seven counties are as follows:[79]

[78] Exhibit 21, pp. 34-36.
[79] Exhibit 21, pp. 34-36.

County	Combined Share[80]
Cass	93.43%
Clay	88.65%
Jackson	91.03%
Jefferson	95.36%
Platte	84.47%
St. Charles	99.01%
St. Louis County	99.01%

83. The combined market shares of the four largest insurer groups in the 108 Group Medicare Advantage county markets not listed in paragraph 82 is 100%.[81]

84. The market shares of Aetna and Humana in the Group Medicare Advantage statewide market are 18.77% and 10.80%, respectively.[82]

85. The market shares of Aetna and Humana in Group Medicare Advantage county markets each exceed 4.0% in the following 16 counties:[83]

County	Aetna	Humana	Combined[84]
Boone	17.65%	9.80%	27.45%
Camden	8.76%	9.89%	18.64%
Cass	23.05%	17.70%	40.75%
Christian	27.88%	12.12%	40.00%
Clay	14.07%	19.23%	33.30%
Greene	38.00%	11.19%	49.19%
Jackson	15.72%	30.47%	46.18%
Jefferson	13.93%	4.64%	18.57%
Platte	17.01%	25.51%	42.51%
St. Charles	24.79%	4.13%	28.92%
St. Louis County	26.02%	4.49%	30.50%
St. Louis City	34.69%	9.23%	43.91%
Stone	19.16%	9.81%	28.97%
Taney	12.50%	10.19%	22.69%
Warren	13.38%	4.21%	17.59%
Webster	24.55%	10.00%	34.55%

86. The market shares of Aetna and Humana in Group Medicare Advantage county markets exceed 15.0% and 1.0%, respectively, in the following county:[85]

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[80] The chart extrapolates or condenses data in Exhibit 21 and is supported by Exhibit 21. Any apparent mathematical inconsistencies can be explained by reference to Exhibit 21 and have no material impact on the Findings and Conclusions.

[81] Exhibit 21, pp. 34-36.

[82] Exhibit 21, pp. 34-36.

[83] Exhibit 21, pp. 34-36.

[84] The chart extrapolates or condenses data in Exhibit 21 and is supported by Exhibit 21. Any apparent mathematical inconsistencies can be explained by reference to Exhibit 21 and have no material impact on the Findings and Conclusions.

County	Aetna	Humana	Combined
Lincoln	17.79%	3.02%	20.81%

87. The market shares of Aetna and Humana in Group Medicare Advantage county markets exceed 7.0% and 3.0%, respectively, in the following county:[86]

County	Aetna	Humana	Combined
Franklin	8.63%	3.84%	12.47%

88. The eight largest insurer groups in the Missouri Comprehensive Individual market hold the following market shares:[87]

Group	Group Code[88]	2015 Market Share
Aetna Inc.	1	36.88%
Anthem Inc.	671	23.01%
UnitedHealth Group	707	15.79%
Blue Cross and Blue Shield of Kansas City	537	15.33%
Assurant Inc.	19	2.81%
Humana Inc.	119	1.93%
Cox Insurance	1203	1.90%
Cigna Health	901	1.84%

89. The insurer groups not listed in paragraph 88 with market share in the Missouri Comprehensive Individual market possess a combined market share of 0.50%.[89]

90. The four largest insurer groups in the Missouri Comprehensive Individual market hold a combined market share of 91.02%, well in excess (by 16.02%) of 75.0%.[90]

91. No insurer group in the Missouri Comprehensive Individual market outside of the four largest insurer groups holds a market share above 2.81%.[91]

92. In the Missouri Comprehensive Individual market in 2010, the six largest insurer groups in order of market share were Anthem Inc., Blue Cross and Blue Shield of Kansas City, UnitedHealth Group, Assurant Inc., Coventry Corp.,[92] and Aetna Inc.[93]

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[85] Exhibit 21, pp. 34-36.
[86] Exhibit 21, pp. 34-36.
[87] Exhibit 17, pg. 3.
[88] Official Notice of NAIC Group Codes at 32:8-35:10.
[89] Exhibit 17, pg. 3.
[90] Exhibit 17, pg. 3.
[91] Exhibit 17, pg. 3.
[92] Coventry Corp., NAIC Group #1137, was acquired by Aetna Inc. between 2010 and 2015. Exhibit 29, pp. 42-48.
[93] Exhibit 18, pg. 3.

93. In the Missouri Comprehensive Individual market in 2015, the five largest insurer groups in order of market share were Aetna Inc., Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, and Assurant Inc.[94]

94. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Individual market in 2010 and 2015 are identical.[95]

95. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Individual market with at least $1,000,000 in direct written premium dropped from 17 to nine.[96]

96. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Individual market with at least 2.0% market share dropped from eight to five.[97]

97. Between 2010 and 2015, the Missouri Comprehensive Individual market has experienced the following trends of concentration:[98]

Grouping	2010	2015	Increase/(Decrease) in Concentration
Top 2 Groups	57.70%	59.89%	2.19%
Top 3 Groups	74.03%	75.69%	1.66%
Top 4 Groups	83.50%	91.02%	7.52%
Top 5 Groups	87.67%	93.83%	6.16%
Top 6 Groups	89.87%	95.76%	5.89%
Top 7 Groups	92.03%	97.66%	5.63%
Top 8 Groups	94.20%	99.50%	5.30%

98. Financial filings made by the eight largest insurer groups in the Missouri Comprehensive Individual market provide the following information:

Group	Group Code[99]	Total Assets
Aetna Inc.	1	$24.2 billion[100]
Anthem Inc.	671	$61.7 billion[101]
UnitedHealth Group	707	$111.4 billion[102]
Blue Cross and Blue Shield of Kansas City	537	$1.1 billion[103]

[94] Exhibit 17, pg. 3.
[95] Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.
[96] Exhibit 17, pg. 2; Exhibit 18, pg. 2.
[97] Exhibit 17, pg. 3; Exhibit 18, pg. 3.
[98] Exhibit 17, pg. 3; Exhibit 18, pg. 3.
[99] Official Notice of NAIC Group Codes at 32:8-35:10.
[100] Exhibit 22, pg. 32. This is the total asset figure for Aetna Inc. only as of December 31, 2015, and does not include assets of its subsidiaries.
[101] Exhibit 25, pg. 82. This is the consolidated total asset figure for Anthem Inc. as of December 31, 2015.
[102] Exhibit 24, pg. 48. This is the consolidated total asset figure for UnitedHealth Group as of December 31, 2015.
[103] Exhibit 27, pg. 2. This is the total asset figure for Blue Cross and Blue Shield of Kansas City as of December 31, 2015 on a statutory accounting basis. Testimony of John Rehagen at 162:9-163:13.

Assurant Inc.	19	n/a[104]
Humana Inc.	119	$24.7 billion[105]
Cox Insurance	1203	$1.5 billion[106]
Cigna Health	901	$57.1 billion[107]

99. Eighteen insurer groups and one unaffiliated insurer with positive direct written premium in the Missouri Comprehensive Individual market in 2010 did not report any direct written premium in the Missouri Comprehensive Individual market in 2015: NAIC Groups #7, 20, 143, 241, 304, 332, 449, 450, 451, 542, 612, 687, 781, 826, 872, 1137, 2538, 4750, and NAIC Company #64580.[108]

100. One insurer group and one unaffiliated insurer with positive direct written premium in the Missouri Comprehensive Individual market in 2015 did not report positive direct written premium in the Missouri Comprehensive Individual market in 2010: NAIC Group #4826 and NAIC Company #71439.[109]

101. The two new entrants to the Missouri Comprehensive Individual market in 2015, as compared to 2010, reported a combined total of $2,848 of direct written premium and a 0.00% combined market share in 2015.[110]

102. The total direct written premium in the Missouri Comprehensive Individual market increased from $525,596,708 in 2010 to $1,406,615,726 in 2015.[111]

103. Anthem Inc. does not participate in the Missouri Comprehensive Individual market in at least 30 Missouri counties.[112]

104. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Comprehensive Individual market in at least 85 Missouri counties.[113]

105. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete against each other in the Missouri Comprehensive Individual market in any Missouri county.[114]

106. Two UnitedHealth Group insurers that wrote approximately $138,741,000 of direct written premium in the Missouri Comprehensive Individual market in 2015 have

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[104] No financial filings pertaining to Assurant Inc. are in the record.

[105] Exhibit 23, pg. 85. This is the consolidated total asset figure for Humana Inc. as of December 31, 2015.

[106] Exhibit 28, pg. 6. This is the consolidated total asset figure for CoxHealth as of September 30, 2014. CoxHealth is the parent company of NAIC Group #1203. Testimony of John Rehagen at 163:14-167:2.

[107] Exhibit 26, pg. 65. This is the consolidated total asset figure for Cigna Corporation as of December 31, 2015.

[108] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[109] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[110] Exhibit 17, pp. 2-3; Exhibit 18, pp. 2-3.

[111] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[112] Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

[113] Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

[114] Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

withdrawn from the Missouri Comprehensive Individual market effective January 1, 2017.[115]

107. By analyzing the state-by-state effect of UnitedHealth Group not selling on the Exchange in all states in 2014, Professor Gruber has found that premiums would have been 5.4% lower on the Exchanges had UnitedHealth Group participated in them.[116]

108. A substantial body of empirical research indicates that fewer insurers on the Exchanges could reduce competitive pressure and that could lead to higher consumer premiums.[117]

109. The Exchanges have no standardized plans. There is substantial heterogeneity in each metal tier, thus making effective shopping difficult.[118]

110. The eight largest insurer groups in the Missouri Comprehensive Small Group market hold the following market shares:[119]

Group	Group Code[120]	2015 Market Share
Anthem Inc.	671	39.53%
UnitedHealth Group	707	21.83%
Blue Cross and Blue Shield of Kansas City	537	14.98%
Aetna Inc.	1	12.14%
Humana Inc.	119	5.99%
Federated Mutual	7	3.36%
Cox Insurance	1203	1.02%
Principal Financial	332	0.69%

111. The insurer groups not listed in paragraph 110 with market share in the Missouri Comprehensive Small Group market possess a combined market share of 0.46%.[121]

112. The four largest insurer groups in the Missouri Comprehensive Small Group market hold a combined market share of 88.49%, well in excess (by 13.49%) of 75.0%.[122]

113. No insurer group in the Missouri Comprehensive Small Group market outside of the six largest insurer groups holds a market share above 1.02%.[123]

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[115] Exhibit 3, pg. 9; Exhibit 4, pg. 7; Exhibit 17, pg. 2; Testimony of Angela Nelson at 52:5-53:17, 55:6-20.

[116] Exhibit 34, pg. 14, citing attachment Dafny, Gruber and Ody, "More Insurers Lower Premiums: Evidence from Initial Pricing in the Health Insurance Marketplaces."

[117] Exhibit 34, pg. 13, citing attachment Dafny, Gruber and Ody, "More Insurers Lower Premiums: Evidence from Initial Pricing in the Health Insurance Marketplaces."

[118] Exhibit 34, pg. 13.

[119] Exhibit 17, pg. 3.

[120] Official Notice of NAIC Group Codes at 32:8-35:10.

[121] Exhibit 17, pg. 3.

[122] Exhibit 17, pg. 3.

[123] Exhibit 17, pg. 3.

114. In the Missouri Comprehensive Small Group market in 2010, the six largest insurer groups in order of market share were Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, Coventry Corp.,[124] Humana Inc., and Aetna Inc.[125]

115. In the Missouri Comprehensive Small Group market in 2015, the five largest insurer groups in order of market share were Anthem Inc., UnitedHealth Group, Blue Cross and Blue Shield of Kansas City, Aetna Inc., and Humana Inc.[126]

116. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Small Group market in 2010 and 2015 are identical.[127]

117. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Small Group market in 2010 and 2015 rank in identical order, one through five, in terms of direct written premium.[128]

118. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Small Group market with at least $1,000,000 in direct written premium dropped from 15 to nine.[129]

119. Between 2010 and 2015, the number of insurer groups in the Missouri Comprehensive Small Group market with at least 2.0% market share dropped from seven to six.[130]

120. Between 2010 and 2015, the Missouri Comprehensive Small Group market has experienced the following trends of concentration:[131]

Grouping	2010	2015	Increase/(Decrease)
Top 2 Groups	61.61%	61.36%	(0.25%)
Top 3 Groups	75.79%	76.34%	0.55%
Top 4 Groups	85.71%	88.49%	2.78%
Top 5 Groups	89.34%	94.47%	5.13%
Top 6 Groups	91.89%	97.83%	5.94%
Top 7 Groups	94.18%	98.85%	4.67%
Top 8 Groups	95.66%	99.54%	3.88%

121. Financial filings made by the eight largest insurer groups in the Missouri Comprehensive Small Group market provide the following information:

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[124] Coventry Corp., NAIC Group #1137, was acquired by Aetna Inc. between 2010 and 2015. Exhibit 29, pp. 42-48.

[125] Exhibit 18, pg. 3.

[126] Exhibit 17, pg. 3.

[127] Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.

[128] Exhibit 17, pg. 3; Exhibit 18, pg. 3; Exhibit 29, pp. 42-48.

[129] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[130] Exhibit 17, pg. 3; Exhibit 18, pg. 3.

[131] Exhibit 17, pg. 3; Exhibit 18, pg. 3.

Group	Group Code[132]	Total Assets
Anthem Inc.	671	$61.7 billion[133]
UnitedHealth Group	707	$111.4 billion[134]
Blue Cross and Blue Shield of Kansas City	537	$1.1 billion[135]
Aetna Inc.	1	$24.2 billion[136]
Humana Inc.	119	$24.7 billion[137]
Federated Mutual	7	n/a[138]
Cox Insurance	1203	$1.5 billion[139]
Principal Financial	332	n/a[140]

122. Seven insurer groups with positive direct written premium in the Missouri Comprehensive Small Group market in 2010 did not report any direct written premium in the Missouri Comprehensive Small Group market in 2015: NAIC Groups #429, 450, 458, 525, 687, 1137, and 4727.[141]

123. One insurer group with direct written premium in the Missouri Comprehensive Small Group market in 2015 did not report positive direct written premium in the Missouri Comprehensive Small Group market in 2010: NAIC Group #123.[142]

124. The new entrant to the Missouri Comprehensive Small Group market in 2015, as compared to 2010, reported $137,951 of direct written premium and held a 0.00% market share in 2015.[143]

125. Anthem Inc. does not participate in the Missouri Comprehensive Small Group market in at least 30 Missouri counties.[144]

126. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Comprehensive Small Group market in at least 85 Missouri counties.[145]

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[132] Official Notice of NAIC Group Codes at 32:8-35:10.

[133] Exhibit 25, pg. 82. This is the consolidated total asset figure for Anthem Inc. as of December 31, 2015.

[134] Exhibit 24, pg. 48. This is the consolidated total asset figure for UnitedHealth Group as of December 31, 2015.

[135] Exhibit 27, pg. 2. This is the total asset figure for Blue Cross and Blue Shield of Kansas City as of December 31, 2015 on a statutory accounting basis. Testimony of John Rehagen at162:9-163:13.

[136] Exhibit 22, pg. 32. This is the total asset figure Aetna Inc. only as of December 31, 2015, and does not include assets of its subsidiaries.

[137] Exhibit 23, pg. 85. This is the consolidated total asset figure for Humana Inc. as of December 31, 2015.

[138] No financial filings pertaining to Federated Mutual are in the record.

[139] Exhibit 28, pg. 6. This is the consolidated total asset figure for CoxHealth as of September 30, 2014. CoxHealth is the parent company of NAIC Group #1203. Testimony of John Rehagen at 163:14-167:2.

[140] No financial filings pertaining to Principal Financial are in the record.

[141] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[142] Exhibit 17, pg. 2; Exhibit 18, pg. 2.

[143] Exhibit 17, pp. 2-3; Exhibit 18, pp. 2-3.

[144] Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

[145] Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

127. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete against each other in the Missouri Comprehensive Small Group market in any Missouri county.[146]

128. The market shares of Aetna and Humana each exceed 4.0% in each of the 65 Individual Medicare Advantage county markets where Aetna has non-zero enrollment.[147]

129. The combined market shares of Aetna and Humana exceed 70.0% in the following 33 Individual Medicare Advantage county markets:[148]

County	Aetna	Humana	Combined[149]
Barry	47.09%	31.97%	79.06%
Barton	71.93%	15.53%	87.47%
Bates	75.87%	17.18%	93.05%
Benton	47.14%	37.71%	84.85%
Carroll	42.86%	32.28%	75.13%
Cass	54.14%	30.89%	85.03%
Cedar	67.28%	29.50%	96.78%
Clay	35.36%	51.72%	87.08%
Clinton	59.76%	11.83%	71.60%
Dade	49.42%	37.81%	87.23%
Dallas	52.32%	29.46%	81.78%
Henry	60.58%	30.13%	90.71%
Hickory	59.53%	34.08%	93.61%
Jackson	46.14%	39.22%	85.36%
Jasper	48.04%	42.82%	90.86%
Johnson	47.53%	45.68%	93.21%
Laclede	49.22%	41.63%	90.84%
Lafayette	33.58%	52.54%	86.11%
Lawrence	44.34%	26.78%	71.12%
Lincoln	67.73%	9.61%	77.34%
Livingston	61.93%	14.72%	76.65%
McDonald	32.16%	59.85%	92.01%
Montgomery	60.29%	13.71%	74.00%
Newton	40.95%	47.61%	88.56%
Phelps	37.48%	34.87%	72.35%
Platte	32.22%	56.34%	88.56%
Polk	55.73%	32.39%	88.12%
Pulaski	47.29%	42.08%	89.37%
Ray	24.70%	51.78%	76.48%
Saline	51.93%	30.76%	82.69%

[146] Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.
[147] Exhibit 20, pp. 30-32.
[148] Exhibit 20, pp. 30-32.
[149] The chart extrapolates or condenses data in Exhibit 20 and is supported by Exhibit 20. Any apparent mathematical inconsistencies can be explained by reference to Exhibit 20 and have no material impact on the Findings and Conclusions.

St. Clair	40.66%	48.13%	88.80%
Ste. Genevieve	74.08%	6.54%	80.63%
Vernon	32.43%	44.48%	76.91%

130. Between 2008 and 2016, the statewide Individual Medicare Advantage market has undergone the following volatility of ranking of market leaders:[150]

Rank	2008	2012	2016
1st	UHC (30.77%)	Coventry (30.15%)	Aetna (32.82%)
2nd	Humana (26.69%)	Humana (25.24%)	UHC (24.95%)
3rd	Coventry (16.29%)	UHC (24.83%)	Humana (20.94%)
4th	Mercy (10.70%)	Essence (13.94%)	Essence (18.12%)
5th	Essence (9.27%)	WellPoint (3.82%)	Anthem (2.27%)
6th	WellPoint (2.63%)	WellCare (0.90%)	Cigna (0.49%)

131. Accounting for the acquisition of Mercy by Coventry Corp.,[151] the acquisition of Coventry Corp. by Aetna,[152] and the change of name from WellPoint to Anthem,[153] the three largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.[154]

132. Accounting for the acquisition of Mercy by Coventry Corp.,[155] the acquisition of Coventry Corp. by Aetna,[156] and the change of name from WellPoint to Anthem,[157] the four largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.[158]

133. Accounting for the acquisition of Mercy by Coventry Corp.,[159] the acquisition of Coventry Corp. by Aetna,[160] and the change of name from WellPoint to Anthem,[161] the five largest groups in the statewide Individual Medicare Advantage market in 2008, 2012, and 2016 are identical.[162]

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[150] Exhibit 20, pp. 4-6, 16-18, 30-32.
[151] Exhibit 29, pp. 27-28.
[152] Exhibit 29, pp. 42-48.
[153] WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice of NAIC Group Codes at 32:8-35:10.
[154] Exhibit 20, pp. 4-6, 16-18, 30-32.
[155] Exhibit 29, pp. 27-28.
[156] Exhibit 29, pp. 42-48.
[157] WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice of NAIC Group Codes at 32:8-35:10.
[158] Exhibit 20, pp. 4-6, 16-18, 30-32.
[159] Exhibit 29, pp. 27-28.
[160] Exhibit 29, pp. 42-48.
[161] WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice of NAIC Group Codes at 32:8-35:10.
[162] Exhibit 20, pp. 4-6, 16-18, 30-32.

134. Between 2008 and 2016, accounting for the acquisition of Mercy by Coventry Corp.,[163] the acquisition of Coventry Corp. by Aetna,[164] and the change of name from WellPoint to Anthem,[165] the Individual Medicare Advantage county markets have undergone little volatility of ranking of market leaders.[166]

135. The four largest insurer groups in the Individual Medicare Advantage county markets hold a minimum 92.03% market share in all 115 county markets, with a 100.0% market share in 104 of those 115 county markets.[167]

136. The three largest insurer groups in the Individual Medicare Advantage county markets hold a 100.0% market share in 86 of those 115 county markets.[168]

137. The two largest insurer groups in the Individual Medicare Advantage county markets hold a 100.0% market share in 49 of those 115 county markets.[169]

138. Between April 2008 and April 2016, the statewide Individual Medicare Advantage market has experienced the following trends of concentration:[170]

Grouping	2008	2012	2016	Post-Merger
Top 2 Groups	57.45%	55.39%	57.78%	78.71%
Top 3 Groups	73.74%	80.22%	78.71%	96.83%
Top 4 Groups	84.44%	94.16%	96.83%	99.10%
Top 5 Groups	93.71%	97.97%	99.10%	99.59%
HHI[171]	2,136.8	2,372.8	2,472.2	3,846.6
Total Enrollees	136,270	201,249	273,197	273,197

139. Between April 2008 and April 2016, the Individual Medicare Advantage county markets have experienced the following trends of concentration based on the number of competitors:[172]

[163] Exhibit 29, pp. 27-28.
[164] Exhibit 29, pp. 42-48.
[165] WellPoint maintained the same NAIC Group Code when it changed its name to Anthem. Official Notice of NAIC Group Codes at 32:8-35:10.
[166] Exhibit 20, pp. 4-32.
[167] Exhibit 20, pp. 30-32.
[168] Exhibit 20, pp. 30-32.
[169] Exhibit 20, pp. 30-32.
[170] Exhibit 20, pp. 4-6, 16-18, 30-32.
[171] The HHI, or Herfindahl-Hirschman Index, is often used by federal agencies to calculate and measure market concentration. Federal agencies generally consider markets with an HHI between 1,500 and 2,500 to be moderately concentrated, and markets with an HHI above 2,500 to be highly concentrated. Exhibit 7R, pp. 18-19.
[172] Exhibit 20, pp. 4-6, 16-18, 30-32.

No. of Providers	2008[173]	2012	2016	Post-Merger
2 or fewer	50	69	49	85
3	19	20	37	19
4	17	11	18	11
5+	29	15	11	0
Average	3.30	2.67	2.87	2.30
Total Enrollees	136,270	201,249	273,197	273,197

140. Among the counties in Missouri, a wide variance exists in the number of insurer groups with actual enrollment.[174]

141. A properly licensed insurer that decides to newly enter or expand into the Individual Medicare Advantage statewide or county markets in Missouri is subject to a waiting period between 10 ½ and 22 ½ months.[175]

142. Waiting periods of this length are uncommon to other Missouri insurance markets.[176]

143. An insurer seeking to enter the Individual Medicare Advantage statewide or county markets in Missouri must undergo a rigorous application and approval process through CMS.[177]

144. Insurers offering products in the Individual Medicare Advantage statewide or county markets in Missouri must comply with a lengthy set of substantive requirements.[178]

145. Anthem Inc. does not participate in the Individual Medicare Advantage county markets in at least 30 Missouri counties.[179]

146. Blue Cross and Blue Shield of Kansas City does not participate in the Individual Medicare Advantage county markets in at least 85 Missouri counties.[180]

147. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete against each other in any of the 115 Individual Medicare Advantage county markets.[181]

148. The insurer groups in the Missouri Group Medicare Advantage market hold the following market shares:[182]

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[173] Information in these columns represents the number of Missouri counties with the corresponding number of providers.

[174] Exhibit 20, pp. 30-32.

[175] Exhibit 6, pg. 12; Testimony of Angela Nelson at 74:6-75:16.

[176] Testimony of Angela Nelson at 75:17-76:18.

[177] Exhibit 6; 42 C.F.R. § 422.500-527.

[178] 42 C.F.R. § 422.100-458.

[179] Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.

[180] Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.

[181] Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.

[182] Exhibit 21, pp. 34-36; Official Notice at 34:25-35:10.

Group	Group Code[183]	April 2016 Market Share
UnitedHealth Group	707	46.56%
Blue Cross and Blue Shield of Michigan	572	20.19%
Aetna Inc.	1	18.77%
Humana Inc.	119	10.80%
Blue Cross and Blue Shield of Kansas City	537	2.95%
Highmark	812	0.54%
Anthem Inc.	671	0.19%

149. The four largest insurer groups in the Missouri Group Medicare Advantage market hold a combined market share of 96.33%, well in excess (by 21.33%) of 75.0%.[184]

150. Between April 2008 and April 2016, the statewide Group Medicare Advantage market has experienced the following trends of concentration:[185]

Grouping	2008	2012	2016	Post-Merger
Top 2 Groups	60.77%	80.68%	66.75%	76.14%
Top 3 Groups	86.39%	95.66%	85.53%	96.33%
Top 4 Groups	95.07%	98.33%	96.33%	99.28%
Top 5 Groups	97.98%	99.07%	99.28%	99.81%
HHI[186]	2,593.0	3,523.2	3,053.8	3,459.4
Total Enrollees	18,627	21,180	36,929	36,929

151. A properly licensed insurer that decides to newly enter or expand into the Group Medicare Advantage statewide or county markets in Missouri is subject to a waiting period between 10 ½ and 22 ½ months.[187]

152. Waiting periods of this length are uncommon to other Missouri insurance markets.[188]

153. An insurer seeking to enter the Group Medicare Advantage statewide or county markets in Missouri must undergo a rigorous application and approval process through CMS.[189]

154. Insurers offering products in the Group Medicare Advantage statewide or county markets in Missouri must comply with a lengthy set of substantive requirements.[190]

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[183] Official Notice of NAIC Group Codes at 32:8-35:10.

[184] Exhibit 21, pp. 34-36.

[185] Exhibit 20, pp. 4-6, 16-18, 30-32.

[186] The HHI, or Herfindahl-Hirschman Index, is often used by federal agencies to calculate and measure market concentration. Federal agencies generally consider markets with an HHI between 1,500 and 2,500 to be moderately concentrated, and markets with an HHI above 2,500 to be highly concentrated. Exhibit 7R, pp. 18-19.

[187] Exhibit 6, pg. 12; Testimony of Angela Nelson at 74:6-75:16.

[188] Testimony of Angela Nelson at 75:17-76:18.

[189] Exhibit 6; 42 C.F.R. § 422.500-527.

[190] 42 C.F.R. § 422.100-458.

155. Anthem Inc. does not participate in the Missouri Group Medicare Advantage market in at least 30 Missouri counties.[191]

156. Blue Cross and Blue Shield of Kansas City does not participate in the Missouri Group Medicare Advantage market in at least 85 Missouri counties.[192]

157. Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete against each other in the Missouri Group Medicare Advantage market in any Missouri county.[193]

158. Gregory Martino, Assistant Vice President for Aetna Inc. in state government affairs,[194] testified regarding claimed nationwide benefits from the proposed acquisition.[195]

159. Mr. Martino admitted that none of his testimony about the claimed nationwide benefits from the proposed acquisition applied specifically to Missouri.[196]

160. Aetna's expert did not independently verify Aetna's efficiencies claims.[197]

161. Aetna's expert did not determine the time at which Aetna's asserted efficiencies would be achieved and did not have any opinion to any certainty that the asserted efficiencies will actually be accomplished.[198]

162. Aetna's expert stated that competition would force Aetna to pass through any savings resulting from efficiencies to consumers.[199]

163. Professor Gruber analyzed the literature on the extent to which Medicare Advantage plans pass on the increases in the payments they receive to consumers.[200]

164. One study analyzed by Professor Gruber finds that Medicare Advantage insurers retain 47 cents of every dollar they receive in increased payments.[201]

165. Another study analyzed by Gruber found that Medicare Advantage insurers retain more than 80% of every dollar they receive in increased payments.[202]

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[191] Exhibit 1; Testimony of Angela Nelson at 42:4-43:14.
[192] Exhibit 2; Testimony of Angela Nelson at 42:4-43:14.
[193] Exhibit 1; Exhibit 2; Testimony of Angela Nelson at 42:4-43:14, 47:17-48:2.
[194] Testimony of Gregory Martino at 262:2-6.
[195] Testimony of Gregory Martino at 283:12-14.
[196] Testimony of Gregory Martino at 283:15-18.
[197] Testimony of Dr. McCarthy at 532.
[198] Testimony of Dr. McCarthy at 532, 534.
[199] Testimony of Dr. McCarthy at 535.
[200] Exhibit 34, pg. 8.
[201] Exhibit 34, pg. 8, citing Cabral, Geruso and Mahoney, "Does Privatized Health Insurance Benefits Patients or Producers? Evidence from Medicare Advantage," NBER Working Paper #20470 (Sept. 2014).
[202] Id. at 8, citing Duggan, Starc and Vabson, "Who Benefits When the Government Pays More? Pass-through in the Medicare Advantage Program," NBER Working Paper #19989 (March 2014).

166. Aetna is a multinational company.[203]

167. Aetna produced no evidence that it had allocated the efficiencies it asserts by country.

168. Aetna produced no evidence that it had allocated the efficiencies it asserts by state.

169. Aetna produced no evidence that it had allocated the efficiencies it asserts by line of business.

170. Aetna produced no evidence that any efficiencies produced by the merger would outweigh the anticompetitive effects of the merger in Missouri.

171. Gregory Martino was unable to testify as to any definite plans of Aetna to offer any new products post-merger in Missouri that are not currently offered by either Aetna or Humana.[204]

172. On October 15, 2015, Aetna filed its Form E[205] preacquisition notification proposing to acquire Humana.[206]

173. On November 13, 2015, the Director, through the Division, required additional material and information from Aetna.[207]

174. On February 26, 2016, Aetna provided the required additional material and information to the Division.[208]

175. On March 25, 2016, the Division filed a Request for Hearing.[209]

176. The hearing officer appointed by the Director conducted a hearing on May 16, 2016 at the Harry S Truman State Office Building, Room 520B in Jefferson City, Missouri.

177. At the hearing, the parties presented evidence in the form of testimony and exhibits.

178. The hearing officer admitted the Division's Exhibits 1 through 36 and Aetna's Exhibits A through EE into evidence.

179. Humana presented no evidence and rested its case on the evidence submitted by Aetna.[210]

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[203] Exhibit 22.
[204] Testimony of Gregory Martino at 275:23 – 277:8.
[205] 20 CSR 200-11.101.
[206] Exhibit 11; Testimony of John Rehagen at 96:12-97:9; Exhibit A.
[207] Exhibit 12; Testimony of John Rehagen at 97:10-98:6.
[208] Exhibit 13; Testimony of John Rehagen at 98:8-99:13; Exhibit B.
[209] Exhibit 14; Request for Hearing filed by Petitioner on March 25, 2016 in this matter.
[210] Transcript at 541:14-21.

180. The hearing officer instructed the parties to file Proposed Findings of Fact, Conclusions of Law and Order and offered the parties the opportunity to file written closing arguments, briefs and other argument.[211]

181. The Division submitted its "Findings of Fact, Conclusions of Law, and Order" and Aetna submitted its "[Proposed] Findings of Fact, Conclusions of Law and Recommendation."

182. If and to the extent any proposed finding of fact, including any commingled proposed findings of fact and conclusions of law, offered by either party is not specifically set forth in these Findings of Fact, it is overruled.

183. For the reasons stated on the record and pursuant to Section 610.021(14), 382.095.3, 417.453(4), RSMo, 20 CSR 10-2.400(3)(K)(2), and 417.453(4), and the hearing officer's May 2, 2016 Order, Exhibits 8, 11, 12 (except for page 1), A, B, C, I, J, K, N, O, P, and Q are closed records.

II. CONCLUSIONS OF LAW

A. Statutory Background.

The statute most relevant to this proceeding is section 382.095, RSMo. In summary, this statute applies "to any acquisition in which there is a change of control of an insurer authorized to do business in this state," unless exempted from the statute. An insurer otherwise covered by this statute is required to file a preacquisition notification. On October 15, 2015, Aetna filed a Form E preacquisition notification. On November 13, 2015, prior to the expiration of the initial, thirty-day waiting period in section 382.095.3, the Director, through the Division, required additional material and information from Aetna to determine whether the proposed acquisition, if consummated, would violate the competitive standards found in the statute. Section 382.095.3. Aetna responded to the request by providing additional material and information to the Division on February 26, 2016. On March 25, 2016, prior to the expiration of the subsequent thirty-day waiting period of section 382.095.3, the Division filed a Request for Hearing. The purpose of the hearing was to collect evidence to determine whether the proposed acquisition would violate the competitive standards, meaning that it may substantially "lessen competition in any line of insurance in this state or tend to create a monopoly." Section 382.095.4. The statute permits this violation to be demonstrated by the existence of a prima facie case as set forth in the statute or by presenting other substantial evidence of a violation. *Id.* The insurance company may establish the absence of the requisite anticompetitive effect base on other substantial evidence, including a showing of market shares, the volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and the ease of entry and exit into the market. *Id.* Additionally, an order finding that the acquisition will result in a violation of the competitive standards shall not be issued where the economies of scale or in resources cannot otherwise be feasibly achieved or the acquisition will substantially increase the availability of insurance and the increased public benefits of these economies or increased insurance availability exceed the public benefits that would arise from not lessening competition.

[211] Transcript at 552-553.

As authorized by the statutory scheme, the Director issues these Findings of Fact, Conclusions of Law and Order within the time frames permitted by the statute. Section 382.095.5.

B. The Product Market.

The first step in analyzing whether the proposed acquisition will violate the statute's competitive standard is to determine the product market.

1. Comprehensive Individual Product Market. "In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state."[212] The Comprehensive Individual line of business is a line of business reflected in the insurer's required annual statement.[213] The parties did not present facts sufficient to support a deviation from this product market definition for comprehensive individual health insurance business. Because no sufficient information to the contrary was presented, the statutory Comprehensive Individual product market will be utilized.

2. Comprehensive Small Group Product Market. Just as in the comprehensive individual product market, "[i]n the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state."[214] The Comprehensive Small Group line of business is a line of business reflected in the insurer's required annual statement.[215] The parties did not present facts sufficient to support a deviation from this product market definition for comprehensive small group employer health insurance business. Because no sufficient information to the contrary was presented, the statutory Comprehensive Small Group product market will be utilized.

3. The Individual Medicare Advantage Product Market. In this market, the Division put on sufficient evidence to establish that the statutory market definition should be displaced by a more specific submarket. In *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962), the Supreme Court set forth seven "practical indicia" for determining whether a relevant antitrust product market exists. Specifically, "[t]he boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors." *Id.* at 325. While a relevant antitrust product market can exist even if only some of the *Brown Shoe* factors are present, e.g., *Beatrice Foods Co. v. FTC*, 540 F.2d 303 (7th Cir. 1976) (submarket exists based on industry recognition, peculiar characteristics of the product, and differences in production methods and prices), the facts demonstrate that Medicare Advantage satisfies each of the seven *Brown Shoe* "practical indicia:"

1. The insurance industry and the federal government recognize and promote the Medicare Advantage market as a separate economic entity.

[212] Section 382.095.4(3)(b).
[213] Section 382.095.4(3)(b).
[214] Section 382.095.4(3)(b).
[215] Section 382.095.4(3)(b).

2. Medicare Advantage has characteristics and uses that differ from those of Traditional Medicare.

3. Medicare Advantage is produced by private insurers, whereas Traditional Medicare is produced by the federal government.

4. Medicare Advantage and Traditional Medicare each have distinct customers.

5. Medicare Advantage and Traditional Medicare each have distinct prices.

6. Medicare Advantage is sensitive to price changes of other Medicare Advantage plans, not price changes of Traditional Medicare.

7. Medicare Advantage and Traditional Medicare each have specialized vendors: Medicare Advantage is sold by private insurers through agents and brokers, whereas Traditional Medicare is sold directly by the government, without the involvement of agents or brokers.

Because Medicare Advantage satisfies each of the *Brown Shoe* "practical indicia," Medicare Advantage constitutes a relevant antitrust product market within the meaning of section 382.095.4(3)(b).

The Horizontal Merger Guidelines[216] are not binding on the Department, but they may be considered by the Director in evaluating a merger. Under the SSNIP test set forth in the Horizontal Merger Guidelines, a product is in its own antitrust product market if a hypothetical monopolist of that product could impose a non-transitory 5% price increase on that product.

To approximate the benefits provided by a typical Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy. The facts demonstrate that a 5% increase in the Medicare Advantage premium is negligible in comparison to the combined cost of Traditional Medicare, Medigap, and Part D. Therefore, a hypothetical monopolist in the Medicare Advantage market could impose a non-transitory 5% increase on its individual Medicare Advantage policies. Thus, the individual Medicare Advantage product market constitutes a separate antitrust product market under the SSNIP test set forth in the Merger Guidelines.

4. The Group Medicare Advantage Product Market. The conclusions made in the previous section with respect to the exclusion of Traditional Medicare from the individual Medicare Advantage market are equally applicable to the Group Medicare Advantage Market and are adopted herein. The exclusion of Traditional Medicare enrollment from this product market definition is consistent with product markets advanced by the federal government in two prior civil actions brought to enjoin mergers involving Medicare Advantage insurance business under Section 7 of the Clayton Act, 15 U.S.C. § 18.[217]

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[216] Exhibit 7, pp. 355-391.

[217] *See United States v. UnitedHealth Group Inc. and Sierra Health Services, Inc.*, No. 1:08-cv-00322-ESH (D.C. Cir. 2008) (Complaint pg. 6, ¶ 18) (Final Judgment, entered September 24, 2008, requiring divestiture of certain assets); *United States v. Humana Inc. and Arcadian Mgmt. Services, Inc.*, No. 1:12-cv-00464 (D.C. Cir. 2012) (Complaint pg. 7, ¶ 21) (Final Judgment, entered October 22, 2012, requiring divestiture of certain assets).

Because only retirees of a firm that offers health coverage for retirees can buy group Medicare Advantage coverage, there is an Individual Medicare Advantage market and a Group Medicare Advantage market.

C. The Geographic Market.

The second step in analyzing whether the proposed acquisition will violate the statute's competitive standard is to determine the geographic market.

1. The Geographic Market for the Comprehensive Individual Product. The relevant geographical market is assumed to be the State of Missouri "[i]n the absence of sufficient information to the contrary."[218] The parties did not present facts sufficient to support a deviation from the statewide geographical market for the Comprehensive Individual Product Market.[219] Because no sufficient information to the contrary was presented, the statutory geographical market of the State of Missouri is assumed with regard to the Comprehensive Individual product market and will be utilized.

2. The Geographic Market for the Comprehensive Small Group Product. The relevant geographical market is assumed to be the State of Missouri "[i]n the absence of sufficient information to the contrary."[220] The parties did not present facts sufficient to support a deviation from the statewide geographical market for the comprehensive small group employer product market. Because no sufficient information to the contrary was presented, the statutory geographic market of the State of Missouri is assumed with regard to the Comprehensive Small Group product market and will be utilized.

3. The Geographic Markets for Individual Medicare Advantage Products. The facts found demonstrate that individuals residing in a county of Missouri may only enroll in Individual Medicare Advantage plans offered in that county. Those facts further demonstrate that insurers typically must receive approval from CMS prior to offering an Individual Medicare Advantage plan in any county in Missouri. Finally, the facts demonstrate that the number of insurer groups with enrollment in any given county varies widely throughout Missouri. Being fully cognizant that Medicare services are delivered at the county level and that the anticompetitive effect of any merger can seriously impact the delivery of healthcare services to consumers, the evidence presented is sufficient to support a deviation from the statewide geographical market to 115 different geographical markets, defined as the 114 counties of Missouri and the City of St. Louis, for the Individual Medicare Advantage product market.

4. The Geographic Market for Group Medicare Advantage Products. Again, the relevant geographical market is assumed to be the State of Missouri "[i]n the absence of sufficient information to the contrary."[221] The parties did not present facts sufficient to support a deviation from the statewide geographical market for the Group Medicare Advantage product market. Because no sufficient information to the contrary was presented, the statutory geographical market of the State of Missouri is assumed with regard to the Group Medicare Advantage product market.

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[218] Section 382.095.4(3)(b).

[219] Furthermore, evidence presented relating to the proper geographical market for the implicitly proposed individual Exchange product market does not necessarily apply to the Comprehensive Individual product market as a whole.

[220] Section 382.095.4(3)(b).

[221] Section 382.095.4(3)(b).

D. The Prima Facie Case.

The third step in assessing whether the proposed acquisition violates the statute's competitive standards is to determine whether the evidence demonstrates the existence of a prima facie case that those standards are violated. The relevant market percentages constituting a prima facie case for highly concentrated and not highly concentrated markets are set forth in the statute.

1. Comprehensive Individual Market. The facts found above demonstrate that the Missouri Comprehensive Individual Market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a. Statewide, Aetna and Humana hold market shares of 36.88% and 1.93%, respectively. These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), pursuant to section 382.095.4(2)(a)a.

2. Comprehensive Small Group Market. The facts found above demonstrate that the Missouri Comprehensive Small Group Market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a. Statewide, Aetna and Humana hold market shares of 12.14% and 5.99%, respectively. These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), pursuant to section 382.095.4(2)(a)a.

3. The Individual Medicare Advantage Market. The facts found above demonstrate that the Individual Medicare Advantage Market is highly concentrated pursuant to section 382.095.4(2)(a)a, in each of Missouri's 115 counties. Statewide, Aetna and Humana provide coverage to 32.82% and 20.94%, respectively, of Missourians enrolled in Individual Medicare Advantage plans. These market shares would be prima facie evidence of violation of the competitive standard of section 382.095.4(1), pursuant to section 382.095.4(2)(a)a, if the statewide geographical market were used.

Using the geographical market definitions found to be applicable to the Individual Medicare Advantage Market, the market shares of Aetna and Humana in Individual Medicare Advantage county markets are at least 4.0% in the 65 relevant counties. These market shares are prima facie evidence of violations of the competitive standard of section 382.095.4(1), pursuant to section 382.095.4(2)(a)a, in each of the 65 counties.

4. The Group Medicare Advantage Market. The facts found above demonstrate that the Group Medicare Advantage Market is highly concentrated statewide pursuant to section 382.095.4(2)(a)a. Statewide, Aetna and Humana provide coverage to 18.77% and 10.80%, respectively, of Missourians enrolled in Group Medicare Advantage plans. These market shares are prima facie evidence of violation of the competitive standard of section 382.095.4(1), pursuant to section 382.095.4(2)(a)a.

In its "[Proposed] Findings of Fact, Conclusions of Law, and Recommendation," at page 6, Aetna recites that "the Division established its prima facie case...." Furthermore, the Division's evidence establishes a prima facie case that the proposed merger violates the statute's competitive standards as to the four markets identified above.

E. Other Substantial Evidence Concerning Competitive Effect.

In addition to establishing a violation of the statute's competitive standards by demonstrating the existence of a prima facie case, the anticompetitive effect of the proposed acquisition can be shown by other substantial evidence of that effect. Section 382.095.4(4). Similarly, the statute permits a party insurer to "establish the absence of the requisite anticompetitive effect, based on other substantial evidence." *Id.* This may include, but is not

limited to, evidence concerning "market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and the ease of entry and exit into the market." *Id.*

1. Other Substantial Evidence Concerning Competitive Effect in the Comprehensive Individual Market. Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect in the Comprehensive Individual Market. They assert that self-insurance offerings minimize competitive concerns in the individual market. Specifically, Dr. McCarthy asserts that almost all firms with more than 1,000 employees purchase self-insured products, but the record is devoid of evidence showing the percentage of Missourians actually employed by or covered by firms that purchase self-insurance products. As a consequence, there is no substantial evidence that self-insurance alleviates the anticompetitive effects of the proposed acquisition in Missouri. Furthermore, the Division presented additional substantial evidence demonstrating the requisite anticompetitive effects of the proposed acquisition in the statewide Comprehensive Individual Market.

(a). *Market Share.* The Horizontal Merger Guidelines state "[m]arket shares may not fully reflect the competitive significance of firms in the market or the impact of merger. They are used in conjunction with other evidence of competitive effect."[222] The evidence presented concerning the "market shares" factor demonstrates that Aetna and Humana possess market shares of 36.88% and 1.93%, respectively, in the statewide Comprehensive Individual Market. This is well in excess of the highly concentrated statutory thresholds of 15% and 1% necessary to establish prima facie evidence of violation of the competitive standards.

(b). *Volatility of Market Leader Ranking.* The evidence presented concerning the "volatility of ranking of market leaders" factor demonstrates that the statewide Comprehensive Individual market leader rankings have undergone very little volatility between 2010 and 2015. In fact, accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Individual Market in 2010 and 2015 are identical.

(c). *Number of Competitors.* The evidence presented concerning the "number of competitors" factor demonstrates that the number of competitors in the statewide Comprehensive Individual market has dropped substantially between 2010 and 2015, with just five insurer groups holding at least 2.0% market share in 2015 (down from eight in 2010) and a net loss of eight insurer groups with direct written premium of at least $1,000,000 from the market.

(d). *Concentration.* The evidence presented concerning the "concentration" factor demonstrates that the degree of concentration in the statewide Comprehensive Individual market far exceeds the statutory threshold of section 382.095.4(2), far past that at which a market is highly concentrated under Missouri law. In fact, the evidence demonstrated that the four largest insurer groups in the Comprehensive Individual Market hold a combined market share of 91.02%.

(e). *Trend of Concentration.* The evidence presented concerning the "trend of concentration in the industry" factor demonstrates that the statewide Comprehensive Individual market has trended toward becoming more highly concentrated between 2010 and 2015. In fact, the evidence demonstrated increases in concentration in each of the top two through the top eight groupings.

(f). *Ease of Market Entry/Exit.* The evidence presented concerning the "ease of entry and exit into the market" factor demonstrates that the statewide Comprehensive Individual

[222] Exhibit 7R, pg. 18.

market is comprised of well-capitalized competitors and has experienced negligible entry into the market between 2010 and 2015.

(g). *Other Relevant Factors*. The statute permits other relevant factors to be considered in determining whether a violation of the anticompetitive standards would occur as a result of the proposed acquisition. Such additional factors include evidence demonstrating that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Individual Market, and that UnitedHealth Group's market share in the Comprehensive Individual Market is likely to significantly decrease beginning January 1, 2017, when two UnitedHealth Group insurers withdraw from the Individual Comprehensive Market.

One potential way to minimize an anticompetitive effect that can result from some mergers would be for the state insurance regulator to have the authority to control the rates charged by the merged entities. The Director has no authority to disapprove unreasonable health insurance rates in Missouri. While legislation is pending that would require that health insurance rates be filed with and reviewed by the Department, creating rate transparency, this legislation does not authorize the Director to disapprove unreasonable health insurance rates.[223]

Despite some evidence offered by Aetna that attempted to minimize the significance of the Division's evidence or obscure its import, the Division presented substantial other evidence demonstrating that the proposed acquisition would produce an anticompetitive effect by exacerbating a significant trend toward increased concentration and, additionally, by lessening competition in this line of insurance.

2. Other Substantial Evidence Concerning Competitive Effect in the Comprehensive Small Group Market. Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect in the Comprehensive Small Group Market. In fact, the Division presented additional substantial evidence demonstrating the requisite anticompetitive effects of the proposed acquisition in the statewide Comprehensive Small Group Market.

(a). *Market Share*. The Horizontal Merger Guidelines state "[m]arket shares may not fully reflect the competitive significance of firms in the market or the impact of merger. They are used in conjunction with other evidence of competitive effect."[224] The evidence presented concerning the "market shares" factor demonstrates that Aetna and Humana possess market shares of 12.14% and 5.99%, respectively, in the statewide Comprehensive Group Market. This is in excess of the highly concentrated statutory thresholds of 10% and 2% necessary to establish prima facie evidence of violation of the competitive standards.

(b). *Volatility of Market Leader Ranking*. The evidence presented concerning the "volatility of ranking of market leaders" factor demonstrates that the statewide Comprehensive Small Group Market leader rankings have undergone very little volatility between 2010 and 2015. Accounting for the acquisition of Coventry Corp. by Aetna, the five largest insurer groups in the Missouri Comprehensive Small Group market in 2010 and 2015 are identical.

(c). *Number of Competitors*. The evidence presented concerning the "number of competitors" factor demonstrates that the number of competitors in the statewide Comprehensive

[223] CCS to HCS for SB 865 & 866, 98th General Assembly, 2016 (pending before the Governor and, if signed, would go into effect on August 28, 2016).

[224] Exhibit 7R, pg. 18.

Small Group Market has dropped substantially between 2010 and 2015, with just six insurer groups holding more than 1.02% market share in 2015 (down from seven in 2010) and a net loss of six insurer groups with direct written premium of at least $1,000,000 from the market.

(d). *Concentration.* The evidence presented concerning the "concentration" factor demonstrates that the degree of concentration in the statewide Comprehensive Small Group Market far exceeds the statutory threshold of section 382.095.4(2), past which a market is highly concentrated under Missouri law. In fact, the evidence demonstrated that the four largest insurer groups in the Missouri Comprehensive Small Group Market hold a combined market share of 88.49%.

(e). *Trend of Concentration.* The evidence presented concerning the "trend of concentration in the industry" factor demonstrates that the statewide Comprehensive Small Group Market has trended toward becoming more highly concentrated between 2010 and 2015. In fact, the evidence demonstrated increases in concentration in each of the top three through the top eight groupings.

(f). *Ease of Market Entry/Exit.* The evidence presented concerning the "ease of entry and exit into the market" factor demonstrates that the statewide Comprehensive Small Group Market is comprised of well-capitalized competitors and has experienced negligible entry into the market between 2010 and 2015.

(g). *Other Relevant Factors.* The statute permits other relevant factors to be considered in determining whether a violation of the anticompetitive standards would occur as a result of the proposed acquisition. Such additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Small Group Market.

One potential way to minimize an anticompetitive effect that can result from some mergers would be for the state insurance regulator to have the authority to control the rates charged by the merged entities. The Director has no authority to disapprove unreasonable health insurance rates in Missouri. While legislation is pending that would require that health insurance rates be filed with and reviewed by the Department, creating rate transparency, this legislation does not authorize the Director to disapprove unreasonable health insurance rates.[225]

Despite some evidence offered by Aetna that attempted to minimize the significance of the Division's evidence or obscure its import, the Division presented substantial other evidence demonstrating that the proposed acquisition would produce an anticompetitive effect by exacerbating a significant trend toward increased concentration and, additionally, by lessening competition in this line of insurance.

3. Other Substantial Evidence Concerning Competitive Effect in the County Individual Medicare Advantage Markets. Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect in the county Individual Medicare Advantage Markets. While Aetna and Humana contend that Traditional Medicare operates as a competitive constraint on the Medicare Advantage Market, the evidence demonstrates that to approximate the benefits provided by a typical Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy. The facts demonstrate that a 5% increase in the Medicare Advantage

[225] CCS to HCS for SB 865 & 866, 98th General Assembly, 2016 (pending before the Governor and, if signed, would go into effect on August 28, 2016).

premium is negligible in comparison to the combined cost of Traditional Medicare, Medigap, and Part D. A hypothetical monopolist in the Medicare Advantage market therefore could impose a non-transitory 5% increase on its individual Medicare Advantage policies. Hence, Aetna and Humana failed to demonstrate that Traditional Medicare operates as a competitive constraint in the Medicare Advantage market. Furthermore, the Division presented additional substantial evidence demonstrating the requisite anticompetitive effects of the proposed acquisition in the county Individual Medicare Advantage markets where Aetna has enrollment.

(a). *Market Share*. The evidence presented concerning the "market shares" factor demonstrates that Aetna and Humana possess market shares in the 65 county Individual Medicare Advantage Markets in excess of the highly concentrated statutory thresholds of 4% and 4% necessary to establish prima facie evidence of violations of the competitive standards. In many cases, the markets share of Aetna and Humana far exceed those statutory thresholds.

(b). *Volatility of Market Leader Ranking*. The evidence presented concerning the "volatility of ranking of market leaders" factor demonstrates that the Individual Medicare Advantage statewide and county market leader rankings have undergone very little volatility between 2010 and 2015. In fact, accounting for numerous acquisitions the three, four and five largest groups in the statewide Individual Medicare Advantage Market is identical for 2008, 2012, and 2016.

(c). *Number of Competitors*. The evidence presented concerning the "number of competitors" factor demonstrates that the average number of competitors in the Individual Medicare Advantage county markets has dropped from 3.30 in 2008 to 2.87 in 2016. The number of Individual Medicare Advantage county markets with at least five competitors has dropped from 29 in 2008 to 11 in 2016, and would drop to zero post-merger.

(d). *Concentration.* The evidence presented concerning the "concentration" factor demonstrates that the degrees of concentration in the Individual Medicare Advantage statewide and 115 county markets far exceeds the statutory threshold of section 382.095.4(2), past which a market is highly concentrated under Missouri law. In fact, the four largest insurer groups in the Individual Medicare Advantage county markets hold a minimum 93.10% market share in all 115 county markets, with a 100.0% market share in 104 of those 115 county markets.

(e). *Trend of Concentration*. The evidence presented concerning the "trend of concentration in the industry" factor demonstrates that the Individual Medicare Advantage statewide and county markets have trended toward becoming more highly concentrated between 2008 and 2016.

(f). *Ease of Market Entry/Exit*. The evidence presented concerning the "ease of entry and exit into the market" demonstrates that entry into the Individual Medicare Advantage county markets requires a significant waiting period, a rigorous application process with approval required by CMS, and compliance with a lengthy set of substantive requirements.

(g). *Other Relevant Factors*. Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the county Individual Medicare Advantage. The Director has no authority concerning Medicare Advantage rates in Missouri. Rather, such rates are subject to federal regulatory authority.[226]

Despite some evidence offered by Aetna that attempted to minimize the significance of the Division's evidence or obscure its import, the Division presented substantial other evidence

[226] 42 U.S.C. § 1395w-24(a)(5).

demonstrating that the proposed acquisition would produce an anticompetitive effect by exacerbating a significant trend toward increased concentration and, additionally, by lessening competition in this line of insurance.

4. Other Substantial Evidence Concerning Competitive Effect in the Group Medicare Advantage Market. Aetna and Humana failed to meet their burden of presenting substantial evidence to establish the absence of the requisite anticompetitive effect in the Group Medicare Advantage Market. While Aetna and Humana contend that Traditional Medicare operates as a competitive constraint on the Medicare Advantage Market, the evidence demonstrates that to approximate the benefits provided by a typical Medicare Advantage plan a Traditional Medicare enrollee would have to also purchase separate Part D coverage and a separate Medigap policy. The facts demonstrate that a 5% increase in the Medicare Advantage premium is negligible in comparison to the combined cost of Traditional Medicare, Medigap, and Part D. A hypothetical monopolist in the Medicare Advantage market therefore could impose a non-transitory 5% increase on its individual Medicare Advantage policies. Hence, Aetna and Humana failed to demonstrate that Traditional Medicare operates as a competitive constraint in the Medicare Advantage market. In fact, the Division presented additional substantial evidence demonstrating the requisite anticompetitive effects of the proposed acquisition in the Group Medicare Advantage Market.

(a). *Market Share.* The evidence presented concerning the "market shares" factor demonstrates that Aetna and Humana possess market shares of 18.77% and 10.80%, respectively, in the statewide Group Medicare Advantage Market. This is well in excess of the highly concentrated statutory thresholds of 15% and 1% necessary to establish prima facie evidence of violation of the competitive standards.

(b). *Concentration.* The evidence presented concerning the "concentration" factor demonstrates that the degree of concentration in the statewide Group Medicare Advantage market far exceeds the statutory threshold of section 382.095.4(2), past which a market is highly concentrated under Missouri law. In fact, the evidence demonstrated that the four largest insurer groups in the Group Medicaid Advantage Market hold a combined market share of 96.33%.

(c). *Trend of Concentration.* The evidence presented concerning the "trend of concentration in the industry" factor demonstrates that the statewide Group Medicare Advantage market has trended toward becoming more highly concentrated between 2008 and 2016.

(d). *Ease of Market Entry/Exit.* The evidence presented concerning the "ease of entry and exit into the market" demonstrates that entry into the statewide Group Medicare Advantage market requires a significant waiting period, a rigorous application process with approval required by CMS, and compliance with a lengthy set of substantive requirements.

(e). *Other Relevant Factors.* Additional evidence presented demonstrates that Anthem Inc. and Blue Cross and Blue Shield of Kansas City do not compete anywhere in the State of Missouri in the Comprehensive Small Group market. The Director has no authority concerning Medicare Advantage rates in Missouri. Rather, such rates are subject to federal regulatory authority.[227]

Despite some evidence offered by Aetna that attempted to minimize the significance of the Division's evidence or obscure its import, the Division presented substantial other evidence demonstrating that the proposed acquisition would produce an anticompetitive effect by

[227] 42 U.S.C. § 1395w-24(a)(5).

exacerbating a significant trend toward increased concentration and, additionally, by lessening competition in this line of insurance.

F. Consideration of Beneficial Consequences of an Acquisition.

Section 382.095.4(5) calls for a consideration of certain benefits that can be achieved in some mergers. The statute provides that even if a proposed acquisition violates the competitive standards, an order shall not be entered if "(a) [t]he acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or (b) [t]he acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition." *Id.*

Aetna and Humana are each large companies. Neither Aetna nor Humana presented any evidence tying any specific percentage or amount of its projected efficiencies from the proposed acquisition to Missouri's health insurance markets. Gregory Martino, Assistant Vice President for Aetna Inc. in state government affairs, admitted that none of his testimony about the claimed nationwide benefits from the proposed acquisition applied specifically to Missouri.

Neither Aetna nor Humana presented sufficient evidence to demonstrate that the proposed acquisition would result in substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and neither Aetna nor Humana presented sufficient evidence to demonstrate that the public benefits of any such economies would exceed the public benefits which would arise from not lessening competition.

Neither Aetna nor Humana presented any evidence to demonstrate that the proposed acquisition would substantially increase the availability of insurance in Missouri and consequently failed to demonstrate that the public benefits of such an increase in the availability of insurance exceeded the public benefits that would arise from not lessening competition.

G. The Proposed Acquisition Violates Section 382.095's Competitive Standards.

Based on a careful consideration of the record and the law, the proposed acquisition violates the competitive standard of section 382.095.4(1), in Missouri's Comprehensive Individual Market, in Missouri's Comprehensive Small Group Market, in each of the 65 Individual Medicare Advantage county markets listed below, and in Missouri's Group Medicare Advantage Market, in that there is substantial evidence that the acquisition would lessen competition in these lines of insurance in light of Missouri's market concentration and the significant trend toward increased concentration in the Missouri market, the market share of the various participants in the market, the minimal volatility of the ranking of the market leaders, the small number of competitors and their dwindling numbers, the concentration in the market and its trend, and the barriers to entry into the market.

III. ORDER

The Director issues this Order under the authority of section 382.095, RSMo, and consistent with his responsibilities under Section 374.040.1, RSMo, to perform with justice and impartiality all duties imposed on him regulating the business of insurance and to do so "in such a manner as to be in the best interests of and protect the general public, policyholders, [and] insurance companies…."

With respect to the following lines of insurance, there was no substantial evidence that the effect of the proposed acquisition of Humana by Aetna would be to substantially lessen competition or tend to create a monopoly: all life insurance lines, all property and casualty insurance lines, large group employer comprehensive health coverage, mini-med plans for individuals, small group employers, and large group employers, small and large group expatriate plans, student health plans, government plans excluded by statute, and certain other health business not discussed below.

Based on the foregoing Findings of Fact and Conclusions of Law, should the acquisition of Humana Inc. by Aetna Inc. eventually be consummated, it is ORDERED pursuant to section 382.095.5(1), RSMo, that Aetna Inc. and all of its subsidiaries, and Humana Inc. and all of its subsidiaries, shall cease and desist from doing business throughout the State of Missouri with respect to the Comprehensive Individual, Comprehensive Small Group, and Group Medicare Advantage Markets as defined in this Order;

IT IS FURTHER ORDERED, should the acquisition of Humana Inc. by Aetna Inc. eventually be consummated, that Aetna Inc. and all of its subsidiaries, and Humana Inc. and all of its subsidiaries, shall cease and desist from doing business in the counties of Missouri identified in Findings of Fact ¶80 with respect to the Individual Medicare Advantage Markets as defined in this Order;

IT IS FURTHER ORDERED that this Order shall not become final until a subsequent Order of the Director finalizing this Order, which shall not be issued earlier than thirty (30) days after issuance of this Order, during which time, or other reasonable time to be set in a subsequent order, Aetna Inc. and/or Humana Inc. may submit a plan to remedy the anticompetitive impact of the acquisition;

IT IS FURTHER ORDERED that based upon such plan or other information submitted by Aetna Inc. and/or Humana Inc., the Director shall specify the conditions, if any, under the time period during which those few identified aspects of the acquisition causing a violation of the standards of section 382.095, RSMo, would be remedied and this Order vacated or modified.

So ordered this 24th day of May, 2016.

JOHN M. HUFF
DIRECTOR
Department of Insurance, Financial Institutions and
Professional Registration
State of Missouri

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by U.S. Mail, certified and postage prepaid, and courtesy copy by electronic mail, on this 24th day of May, 2016, to:

Charles W. Hatfield
Stinson Leonard Street LLP
230 W. McCarty Street
Jefferson City, MO 65101
chuck.hatfield@stinson.com

Steven T. Whitmer
Timothy S. Farber
Locke Lord LLP
111 South Wacker Dr.
Chicago, IL 60606
swhitmer@lockelord.com
tfarber@lockelord.com

Counsel for Aetna Inc.

Elena M. Coyle
Michael J. Homison
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036
elena.coyle@skadden.com
michael.homison@skadden.com

Counsel for Humana Inc.

Jay B. Angoff
Mehri & Skalet, PLLC
1250 Connecticut Ave., NW
Suite 300
Washington, DC 20036
jay.angoff@findjustice.com

Counsel for Division of Insurance Company Regulation

Hand-delivered and courtesy copy by electronic mail, to:

Kelly A. Hopper
Insurance Company Regulation Division
301 West High Street, Room 530
P.O. Box 690
Jefferson City, MO 65102
kelly.hopper@insurance.mo.gov

Counsel for Division of Insurance Company Regulation