IN THE DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
STATE OF MISSOURI

FILED

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DIRECTORS OFFICE
MO DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

DIVISION OF INSURANCE COMPANY REGULATION,	)	
PETITIONER,	)	
v.	)	**Case No.** 160325191C
AETNA INC., and HUMANA INC.,	)	
RESPONDENTS.	)	
Serve: Office of the President Aetna Inc. 151 Farmington Ave. Hartford, CT 06156	)	
Tim Farber, Counsel for Aetna Inc. Locke Lord LLP 111 South Wacker Dr. Chicago, IL 60606 TFarber@lockelord.com	)	
Office of the President Humana Inc. 500 West Main Street Louisville, KY 40202	)	
Registered Agent, Humana Inc. CSC – Lawyers Incorporating Svc. Co. 221 Bolivar St. Jefferson City, MO 65101	)	

REQUEST FOR HEARING

The Division of Insurance Company Regulation (hereinafter the "Division") of the Missouri Department of Insurance, Financial Institutions and Professional Registration

EXHIBIT
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(hereinafter the "Department"), by and through counsel, requests that John M. Huff, the Director of the aforementioned Department (hereinafter the "Director"), set this matter for hearing, issue a notice of hearing and enter an Order granting the following relief:

(1) If the Director finds that the acquisition violates the standards of section 382.095, RSMo, enter an order, pursuant to section 382.095.5, RSMo, "[r]equiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation," or "[d]enying the application of an acquired or acquiring insurer for a license to do business in this state;" and/or

(2) Such other relief as the Director deems just and appropriate.

STATEMENT OF FACTS

1. On October 15, 2015, the Department received a Form E preacquisition notification from Aetna Inc. ("Aetna") on Form E of 20 CSR 200-11.101, entitled "PRE-ACQUISITION NOTIFICATION FORM REGARDING THE POTENTIAL COMPETITIVE IMPACT OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING BUSINESS IN THIS STATE OR BY AN INVOLVED INSURER" (the "Form E Filing"), pursuant to the requirements of section 382.095.3, RSMo, effective August 28, 2015 (TAFP SCS for HCS for HB 50, 98th General Assembly 2015),[1] indicating an intention to acquire control of Humana Inc. ("Humana").

2. Both Aetna and Humana currently control multiple subsidiaries authorized to engage in the business of insurance in Missouri.

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

3. Market share information indicates that the acquisition "violates the standards of [section 382.095, RSMo]." Section 382.095.5, RSMo.

4. The factual and legal issues in this proceeding are governed by section 382.095, RSMo. Specifically, section 382.095.4, RSMo, provides as follows:

> (1) The director may enter an order under subsection 5 of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection 3 of this section.
>
> (2) In determining whether a proposed acquisition would violate the competitive standard of subdivision (1) of this subsection, the director shall consider the following:
>
> (a) Any acquisition covered under subsection 2 of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:
>
> a. If the market is highly concentrated and the involved insurers possess the following share of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more; or

> b. If the market is not highly concentrated and the involved insurers possess the following share of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

> A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are to be interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in subdivision (1) of this subsection. For the purpose of this subdivision, the insurer with the largest share of the market shall be deemed to be insurer A;

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection 2 of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in subdivision (1) of this subsection if:

a. There is a significant trend toward increased concentration in the market;

b. One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite seven percent or more increase in the market share; and

c. Another involved insurer's market is two percent or more.

(3) For the purposes of subdivision (2) of this subsection:

(a) The term "insurer" includes any company or group of companies under common management, ownership or control;

(b) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the director shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. 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, and the relevant geographical market is assumed to be this state;

(c) The burden of showing prima facie evidence of violation of the competitive standard rests upon the director.

(4) Even though an acquisition is not prima facie violative of the competitive standard under subdivision (2) of this subsection, the director may establish that the requisite anticompetitive effect exists based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect, based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(5) An order shall not be entered under subsection 5 of this section if:

(a) The 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) The 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.

5. For the purposes of section 382.095.4(2), RSMo, "[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...." Section 382.095.4(3)(b), RSMo.

6. For the purposes of section 382.095.4(2), RSMo, "[i]n the absence of sufficient information to the contrary, ... the relevant geographical market is assumed to be this state." Section 382.095.4(3)(b), RSMo.

7. The Director may determine the relevant product and geographical markets after giving "due consideration to, *among other things*, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition." Section 382.095.4(3)(b), RSMo (emphasis added).

8. Market share information indicates the existence of prima facie violations of the competitive standard of section 382.095.4(1), RSMo.

9. For example, county level market share information for Medicare Advantage plans offered to individuals in Missouri indicates the existence of prima facie violations of the competitive standard of section 382.095.4(1), RSMo.

10. Market share information indicates that "the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein...." Section 382.095.4(1), RSMo.

11. For example, county level market share information for Medicare Advantage plans offered to individuals in Missouri indicates that "the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein...." Section 382.095.4(1), RSMo.

REQUEST FOR HEARING

12. The Division respectfully requests that a hearing on the Form E Filing be held, a notice of hearing be issued pursuant to section 382.095.5, RSMo, and that the Director enter an Order as requested below.

REQUEST FOR RELIEF

The Division respectfully requests that the Director enter an Order granting the following relief:

(1) If the Director finds that the acquisition violates the standards of section 382.095, RSMo, enter an order, pursuant to section 382.095.5, RSMo, "[r]equiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation," or "[d]enying the application of an acquired or acquiring insurer for a license to do business in this state;" and/or

(2) Such other relief as the Director deems just and appropriate.

Respectfully submitted,

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