111 South Wacker Drive
Chicago, IL 60606
Telephone: 312-443-0700
Fax: 312-443-0336
www.lockelord.com

Steven T. Whitmer
Direct Telephone: 312-443-1869
Direct Fax: 312-896-6569
swhitmer@lockelord.com

July 3, 2018

**VIA ELECTRONIC MAIL**

The Honorable Commissioner Dave Jones
California Department of Insurance
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

**Re: The Proposed Acquisition of Aetna Inc. by CVS Health Corporation**

Dear Commissioner Jones:

We are writing to provide the additional information requested by the California Department of Insurance ("CDI") during the June 19, 2018 hearing in the captioned matter. Attached as Exhibit A is a report that addresses the competition issues raised during the hearing. In addition, below are the collective responses of CVS Health Corporation ("CVS Health") and Aetna Inc. ("Aetna") to the three categories of information requested by CDI. Please note that CVS Health and Aetna are conducting integration planning and continuing to develop their post-merger plans.

**Category 1: Identification Of Additional Savings Beyond The $750 Million In Annual Recurring Savings.**

**Response:** The CVS Health combined company financial projections in the SEC Form S-4 reflect estimated synergies of $750 million by the second full year following completion of the merger (which is assumed to be completed in the second half of 2018 for purposes of calculating the estimated synergies), which increase by 5 percent per year thereafter. The shorter-term benefits will include substantial savings in the form of medical cost reductions from improved care management and optimizing the sites of care, as well as aligning the two companies' drug formularies.

Over the longer term (within three-five years), the transaction is expected to result in further reductions in medical costs through the integration of our assets and creation of new products, services, and innovations. One of the most significant opportunities for obtaining those savings is through the improved chronic care management that CVS Health will be able to provide as a

result of the proposed transaction. Patients with at least one chronic condition, such as diabetes, heart disease, or cancer, account for more than 80 percent of all hospital admissions and more than 90 percent of all prescriptions filled.[1] The combined company will be able to better manage medical costs for chronic patients by providing them: (1) greater access to care through convenient, lower-cost sites of care; (2) increased patient engagement (at the pharmacy, at a walk-in clinic, or at home) to supplement physician office visits; (3) better coordination of care across providers, including physicians and pharmacists; and (4) post-discharge support to increase medication adherence and reduce hospital readmissions.

The merger is also expected to create significant opportunities to increase the combined company's operating efficiency by simplifying processes and projected administrative and other cost synergies. Aetna estimated these could be $2.4 billion per year by the fifth full year following completion of the merger. These savings will further drive efficiencies and cost savings for consumers and customers.[2]

The combined company also will lower medical costs through optimizing the site of care, when appropriate, to lower-cost and more convenient sites, including by reducing emergency department visits through the use of retail walk-in clinics, such as MinuteClinics, and shifting infusion services from more expensive outpatient hospital settings to patients' homes through the use of home infusion providers, such as Coram. The expected improvement in health outcomes and reduction in spending will inure to the benefit of the combined company's members and the health care system overall.

Additional savings will also occur as a result from items discussed in response to Category 2 below.

**<u>Category 2</u>: Identification Of The Portion Of The $750 Million In Annual Recurring Savings To Be Allocated To Reduction Of Premiums.**

**Response:** CVS Health expects consumers in California and elsewhere to benefit substantially from the proposed transaction, including through lower costs. Consumers will benefit from the synergies that are expected to result from the transaction. As discussed above, CVS Health projects that it will achieve approximately $750 million in annual recurring savings shortly after closing the transaction. CVS Health further expects to reduce medical costs by improving chronic care management and shifting care to lower-cost and more convenient sites, which will inure to the benefit of consumers. In addition, the combined company's ability to reduce medical and pharmacy costs – through, for example, earlier and more effective medical

---

[1] *See* Testimony of Thomas M. Moriarty, EVP, Chief Policy and External Affairs Officer, and General Counsel, CVS Health, Hearing on "Competition in the Pharmaceutical Supply Chain: the Proposed Merger of CVS Health and Aetna," before Subcommittee on Regulatory Reform, Commercial and Antitrust Law of U.S. House of Rep. Committee on the Judiciary, Feb. 27, 2018, at 2, https://judiciary.house.gov/wp-content/uploads/2018/02/Moriarty-REVISED-Testimony.pdf.

[2] SEC Form S-4, Jan. 4, 2018, at 101-102, https://www.sec.gov/Archives/edgar/data/64803/000119312518002957/d482402ds4.htm.

interventions and increased medication adherence – will lead to lower health care costs and trend.

Together, the combined company's unique ability to manage patients' health will not only drive health care innovation and improve patient outcomes, but will also favorably impact health premiums and thereby reduce consumer costs. Prior to closing the transaction, CVS Health has not created a budget for how these savings will be allocated to premiums versus other line items, such as capital investments in innovations. CVS Health notes, however, the substantial premium reductions reported by UnitedHealth Group's OptumRx from integrating medical and pharmacy benefits. This integration reportedly generated overall savings of $11-16 per member per month.[3] Applying those results to the combined CVS Health-Aetna would yield hundreds of millions of dollars in medical cost savings, which could be passed on to consumers in the form of lower health premiums. CVS Health expects that its investments in creating new products and services through the integration of its pharmacies, clinics, and infusion services will generate additional savings and improve patients' health and wellness.

CVS Health expects patients to see numerous benefits from the new patient interactions the combined company will be able to offer. Among those consumer benefits are: (1) greater access to health care through more convenient, lower-cost sites of care, including walk-in clinics and home infusions; (2) better coordination of care across providers, including physicians and pharmacists, particularly for patients with chronic conditions; and (3) post-discharge support by pharmacists and other providers to increase medication adherence and reduce hospital readmissions. Together, these increased patient interactions will help eliminate gaps in health care, increase medication adherence, and more effectively treat members with chronic conditions, thereby lowering medical costs for consumers.

**Category 3: Identification Of Value Of CVS Health Rebates.**

**Response:** CVS Health passes along more than 90 percent of rebates overall to its clients, with many clients receiving 100 percent of these rebates. CVS Health makes a variety of PBM solutions available to help further drive down drug trend for its PBM clients and drug costs for the patients they support. The company's Point of Sale (POS) rebate offering allows the value of negotiated rebates on branded drugs to be passed on directly to patients when they fill their prescriptions and the savings from this program can be significant.

In 2017, despite manufacturer brand list price increases on drugs near 10 percent, CVS Health's PBM reduced the drug trend for its commercial clients to the lowest level in five years, keeping drug price growth at a minimal 0.2 percent. In fact, 42 percent of CVS Caremark commercial clients spent less on their pharmacy benefit plan in 2017 than they had in 2016. CVS Caremark helped members reduce monthly out-of-pocket costs and improve adherence to its highest level

[3] *See* OptumRx – Measuring the Financial Advantage, White Paper (2017), https://www.optum.com/resources/library/measuring_the_financial_advantage.html.

in seven years in key categories such as diabetes, hypertension, and hyperlipidemia.[4] Aetna and CVS Health believe that consumers should benefit from discounts and rebates negotiated with drug manufacturers.

Our core PBM strategies – creating competition between drug manufacturers, maximizing the use of low-cost generics and other formulary management, and effectively negotiating discounts and rebates – continue to be an important part of reducing drug trend (the measure of growth in prescription spending per member per month) for our payor clients and keeping drugs more affordable for PBM members. Our latest Drug Trend Report[5] shows that great progress is being made. For example:

- In 2017, our strategies helped protect clients from drug manufacturer price increases of almost 10 percent, keeping cost growth per unit nearly flat and trend to the lowest level in five years.

- For chronic conditions, such as diabetes, high blood pressure, and high cholesterol, our plan designs connected patients to lower-cost options that ultimately helped improve adherence to medications by as much as 1.8 percentage points.

- Forty-two percent of CVS Caremark clients had negative trend, meaning they spent less in 2017 on prescription drugs than in 2016.

- Nearly 90 percent of our PBM plan members spent less than $300 out-of-pocket for their prescription medicines last year.

CVS Health is taking a leadership role in developing programs and initiatives to help consumers save money on their overall prescription drug costs and stay adherent to the medicines they need. And while this initiative signals progress, the company remains committed to doing even more across the enterprise to help patients on their path to better health.

Please see the website cited below for additional information and illustrations regarding rebates.[6]

* * *

[4] Prescription drug trend is the measure of growth in prescription spending per member per month. Trend calculations take into account the effects of drug price, drug utilization, and the mix of branded versus generic drugs, as well as the positive effect of negotiated rebates on overall trend. The 2017 trend performance is based on a cohort of CVS Health PBM commercial clients, employers, and health plans.

[5] https://cvshealth.com/newsroom/press-releases/cvs-health-kept-drug-price-growth-nearly-flat-and-improved-medication.

[6] https://payorsolutions.cvshealth.com/insights/consumer-transparency.

We trust that this letter is responsive to the information requested during the June 19, 2018 hearing. But please let us know if any additional information is needed. We thank you for your consideration of this matter.

Sincerely,

LOCKE LORD LLP

Steven T. Whitmer

# Exhibit A

# Response to Competition Issues by CVS Health Corporation and Aetna Inc.

On behalf of CVS Health Corporation (CVS) and Aetna Inc. (Aetna), thank you for providing us the opportunity to respond to the information presented by the academic witnesses at the June 19, 2018 hearing held by the California Department of Insurance (CDI). As discussed during the hearing, this merger presents great opportunities—not just for CVS and Aetna, but also for consumers throughout California and across the country.

CDI convened its hearing to review the following topics, among others:

1. The effect of the proposed merger on competition in the California health coverage market;
2. The effect of the proposed merger on consumer premiums and out-of-pocket health care costs;
3. The effect of the proposed merger on provider and facility network contracting and on consumer choice of, and access to, providers;
4. The effect of the proposed merger on network design, including the ability of consumers to continue to receive care from their current providers on an in-network basis;
5. The efficiencies, if any, expected from the proposed merger, and their implications for the cost and quality of care delivered to consumers; and
6. The competitive effects of a vertical merger in the health insurance, retail pharmacy, and Pharmacy Benefit Manager (PBM) markets, including barriers to entry by competitors, elimination of Aetna as a potential PBM competitor, and effects on network and PBM service contracting by competitors, on competitor PBM data utilization, and on pharmaceutical costs borne by insurance consumers?

This letter corrects some of the inconsistencies or inaccuracies raised by other parties on these topics.

**The Merger Will Benefit Consumers Substantially By Lowering Costs, Improving Quality of Care, and Making Care More Convenient.**

Consumers in California and elsewhere will benefit substantially from the proposed combination, including through lower medical costs, more convenient care, and enhanced products and services. Combining CVS and Aetna will create a new, open health care model that will help consumers improve their health and simplify their health care experience. First, the new model will put consumers at the center of their care, providing them the information and resources they need to better manage their own health and access care in more convenient community settings at an affordable price. Second, the new model will focus on prevention, chronic conditions, and primary care; it will engage patients at the pharmacy and elsewhere in their communities, earlier and more often, to help prevent and manage illness more effectively. Third, the combined CVS-Aetna will be better able to address the rising costs and fragmentation of care that plague the current health care system.

A key driver of consumer benefits from the merger is the ability to combine CVS's pharmacy data and expertise with Aetna's medical data and expertise. By enhancing access to data and improving the use of predictive analytics, the combined company will create targeted interactions with patients that will provide:

(1) greater access to health care through convenient, lower-cost sites of care, including walk-in clinics and home infusions;
(2) better coordination of care across providers, including physicians and pharmacists, particularly for patients with chronic conditions; and

(3) post-discharge support by pharmacists and other providers to increase medication adherence and reduce hospital readmissions.

Together, these increased patient interactions will help eliminate gaps in health care, increase medication adherence, and more effectively treat members with chronic conditions, thereby lowering medical costs for consumers.

Consumers will also benefit from the synergies that the parties expect to result from the merger. CVS projects that it will achieve about $750 million in annual recurring savings. These savings will include lower costs resulting from combining the two companies' operations in the PBM and Medicare areas, aligning the companies' drug formularies, and streamlining redundant corporate functions. Over the longer-term – three to five years post-closing – CVS expects to achieve substantial additional savings in the form of medical cost reductions from improved care management and optimizing the site of care to make better use of lower-cost, more convenient sites when appropriate.

**The Vertical Integration from the Combination Will Not Lessen Competition in Any Market.**

Opposing witnesses raised concerns about the vertical integration of the CVS and Aetna businesses, businesses that do not compete with each other in any market today. The AMA-sponsored witnesses' concerns are premised on assertions about market dominance that were unsupported by any evidence and are contradicted by commercial realities and actual market data. In fact, neither CVS nor Aetna is dominant in any area of its business, and the combined company will continue to have strong commercial incentives to win and maintain the business of competing health plans and consumers alike.

These unsupported allegations about harm in the PBM, pharmacy, and insurance areas should be discounted. CDI's focus should instead be on the facts. As discussed below, the facts show that CVS is not a "dominant" PBM or pharmacy, that Aetna is not "dominant" in health insurance, and that the combined firm will have every need and incentive to compete vigorously to the benefit of consumers in all markets.

Despite the witnesses' stated beliefs that the PBM industry is not competitive, a look at the PBMs serving the top 10 health plans in California shows just how competitive the PBM area is, with 8 different PBMs serving the following 10 accounts:

**PBMs for Top Health Plans in California**[1]

| Rank | Health Plan | Enrollment | PBM |
|---|---|---|---|
| 1 | Anthem | 8,632,657 | ESI |
| 2 | Kaiser Foundation | 8,603,597 | Kaiser |
| 3 | Blue Shield of California | 3,833,307 | Caremark |
| 4 | UnitedHealth (including CalPERS) | 3,154,183 | OptumRx |
| 5 | Centene/Health Net | 2,465,445 | Caremark |
| 6 | Aetna | 2,239,431 | Caremark |
| 7 | Local Initiative Health for LA County | 2,135,218 | Navitus |
| 8 | Inland Empire Health Plan | 1,418,554 | Argus |
| 9 | Cigna | 1,408,853 | Cigna |
| 10 | Orange County Health Authority | 791,241 | MedImpact |

Although an AMA-sponsored witness asserted that "smaller PBMs . . . are not good options,"[2] the data plainly contradict that claim. In California alone, PBMs such as Navitus, Argus, and MedImpact currently serve and presumably are good options for even the largest of customers. The commercial reality faced by CVS is as the FTC has described it: "a competitive market for PBM services characterized by numerous, vigorous competitors who are expanding and winning business from traditional market leaders."[3] To that point, over just the past year, CVS has lost business to more than ten different PBM competitors.

With respect to pharmacy competition, the opposing witness testimony is not accurate. One witness argued that the combination "will further strengthen the already dominant position of CVS in the pharmacy market."[4] However, CVS's share of retail pharmacy stores in California is 21.3% and nationally is 16.2%. Health plans have many viable pharmacy options, as demonstrated by the fact that those plans can, and do, assemble retail pharmacy networks that exclude CVS. For example, in 2017, CVS was made a non-preferred pharmacy in the majority of the largest Part D plans.[5] Even Caremark largely relies on other retail pharmacies, which accounted for a majority of its retail commercial prescription claims last year. The assertion that "once a health insurer has contracted with a particular PBM, subscribers are limited to the affiliated pharmacy services"[6] is contrary to fact.

[1] Enrollment data from Mark Farrah Associates (as of third quarter 2017); identity of PBMs from CVS internal information.

[2] Diana Moss, Hearing Tr. at 147.

[3] Statement of the Federal Trade Commission Concerning the Proposed Acquisition of Medco Health Solutions by Express Scripts, Inc., at 2 (Apr. 2, 2012), https://www.ftc.gov/public-statements/2012/04/statement-federal-trade-commission-concerning-proposed-acquisition-medco.

[4] Written Testimony of Neeraj Sood, at 13, CDIx091.

[5] Drug Channels Institute, Walgreen's Plays to Win: Our Exclusive Analysis of 2017's Part D Preferred Pharmacy Networks (Oct. 25, 2016) (CVS preferred in only one SilverScript and one Magellan plan among 17 major Part D plans), https://www.drugchannels.net/2016/10/walgreens-plays-to-win-our-exclusive.html.

[6] Written Testimony of American Antitrust Institute, at 5, CDIx100.

Another witness expressed concern that the CVS-Aetna combination "might . . . [r]educe reimbursement to competing pharmacies,"[7] including independent pharmacies. There is no data presented to support that concern. The actual data show Caremark reimburses independent pharmacies at higher levels than CVS retail pharmacies. A recent study published by the State of Ohio found just that: "In the aggregate, CVS paid independent pharmacies more than they paid CVS pharmacies."[8] The difference was 3.6% for branded drugs and 3.4% for generics[9] – not trivial numbers, given the low margins for retail pharmacies. The same witness raised concerns about CVS's alleged market power and threatened harm to independent pharmacies in Anchorage, Alaska, where the witness claimed that Aetna has 50% of some health insurance market that the witness did not define.[10] Here, too, the facts show why there is no basis for concern about the combined company being able to foreclose independent pharmacies – assuming it even had an interest in doing so. CVS operates only three pharmacies in the entire state of Alaska.[11] CVS's share of stores in Anchorage is only 6%.[12]

The reality in the pharmacy area is far closer to the description offered by another AMA-sponsored witness: "[r]etail pharmacies face mounting competition from mass merchandisers (e.g. discount stores, supercenters and warehouse clubs), mail-order prescription providers, online pharmacies, convenience stores, wholesalers (e.g. Costco) and other health clinics (e.g., urgent care centers)."[13] There are more than 60,000 retail pharmacies in the United States to choose from, in a highly competitive industry with many options.[14] And this does not even count the potential disruption by online pharmacies in the wake of Amazon's June 28 announcement that it is buying online pharmacy PillPack.

On the insurance side, Aetna's health insurance share nationally is 8%, while its share in California is less than 6%.[15] Anthem and Kaiser, with 22% shares each, are almost four times larger than Aetna in California.[16] Kaiser has its own internal PBM and Anthem is developing one, casting further doubt on the vertical foreclosure concerns raised. Aetna's relatively small share – both nationally and in California – presumably underlies one of the witness's observation about the likelihood of CVS successfully increasing the cost of PBM services to insurers other than Aetna: "Although Aetna is the third largest insurer in the United States, foreclosure may be a risky strategy, as it involves not aggressively bidding for a large fraction of the market."[17]

The commercial realities undermine the vertical theories of harm presented by the opposition witnesses at the hearing. An increase in the prices to health plans for PBM or pharmacy services would fail. As the

[7] Presentation of Neeraj Sood, at CDIx039.

[8] Ohio Department of Medicaid, Report on MCP Pharmacy Benefit Manager Performance, at 5 (June 15, 2018), http://www.healthtransformation.ohio.gov/Portals/0/Press%20Releases/PBM%20HDS%20Final%20Report%20Executive%20Summary.pdf?ver=2018-06-21-114617-170.

[9] *Id.*

[10] Neeraj Sood, Hearing Tr. at 134.

[11] https://www.cvs.com/store-locator/cvs-pharmacy-locations/Alaska.

[12] Store counts and shares for Anchorage metropolitan area based on internal CVS competitor tracking database.

[13] Written Testimony of Lawton R. Burns, at 13, CDIx138.

[14] https://www.humana.com/individual-and-family-support/tools/network-providers/pharmacies.

[15] Shares are based on Mark Farrah Associates data on commercial, Medicare, and Medicaid enrollment (as of fourth quarter 2017).

[16] *Id.*

[17] Written Testimony of Amanda Starc, at 10, CDIx115.

data show, health plans that compete against Aetna have a number of very good alternatives to CVS for those services. And, given Aetna's small health insurance share, Aetna would likely capture only a small portion of any members switching away from rival health plans, in the unlikely event CVS were able to increase another health plan's costs.

**Post-merger, CVS Will Continue to Have Strong Commercial Incentives to Win Health Plan Business.**

Following its combination with Aetna, CVS will continue its long-standing efforts to win and maintain the PBM business of health plans and other insurers, including those that may compete with Aetna. CVS has strong commercial incentives post-merger to maintain and grow its health plan business, which accounts for a substantial portion of its revenue that it cannot afford to lose. After acquiring Aetna, CVS will continue to serve its Part D and other health plan clients as it does today – with the objective of providing competitive pricing, exceptional service, and innovative solutions.[18]

CVS/Aetna will not be the first combination of a health plan and a PBM. As the Commissioner noted during the hearing, "We have an example in United and Optum of a vertically integrated health insurer and health plan with a PBM."[19] Per an AMA-sponsored witness, the UnitedHealth/OptumRx combination has been a success: "United Healthcare and Optum have kept the doors open. They will deal with all comers. They have not gone to a[n] … exclusivity model."[20] CVS will do the same. Although one witness attempted to distinguish OptumRx on the basis that it is a "small" PBM unlike Express Scripts and CVS, the data show OptumRx is in fact nearly the same size as Express Scripts and CVS Caremark.[21]

CVS expects health plans in California and elsewhere to benefit from the proposed merger. The merger will combine the convenience, community presence, and pharmacy expertise of CVS with Aetna's health plans, analytics capabilities, and extensive network of health care providers, allowing the combined company to bring enhanced and innovative products and services to its health plan clients. CVS has testified to Congress about its intention to make its offerings "available, in an 'open source' environment, to all our business, labor, and public and private health plan clients" just as it does today.[22]

CVS's existing vertical relationships in the Part D area provide a preview of how health plans can and will benefit from the proposed merger. Caremark currently provides PBM services to various health

[18] *See* CVS Health, CVS Health Corporation to Acquire Aetna Inc., Transcript of Joint Conference Call, at 4 (Dec. 4, 2017) (comments of Larry J. Merlo, President & CEO, CVS Health Corp.) ("[T]his transaction will not, in any way, diminish the strong relationships CVS and Aetna have with our clients and their health care partners, nor will it reduce the value that we both create for them every day. CVS has a long history of developing solutions that deliver on the cost quality access goals of our partners, and we see no reason for that not to continue into the future."), http://otp.investis.com/clients/us/cvs_caremark1/SEC/sec-show.aspx?Type=html&FilingId=12415274&CIK=0000064803&Index=10000.

[19] Commissioner Jones, Hearing Tr. at 170.

[20] Diana Moss, Hearing Tr. at 170-71.

[21] *Id.*; *see* Adam Fein, Drug Channels Institute, The 2018 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers (Feb. 2018).

[22] Testimony of Thomas M. Moriarty, EVP, Chief Policy and External Affairs Officer, and General Counsel, CVS Health, Hearing on "Competition in the Pharmaceutical Supply Chain: the Proposed Merger of CVS Health and Aetna," before Subcommittee on Regulatory Reform, Commercial and Antitrust Law of U.S. House of Rep. Committee on the Judiciary, at 6-7 (Feb. 27, 2018), https://judiciary.house.gov/wp-content/uploads/2018/02/Moriarty-REVISED-Testimony.pdf.

plans providing Part D plans. Those health plans compete with CVS's Part D business, SilverScript. Yet, those health plans chose, and continue to use, Caremark as their PBM because of Caremark's competitive product and service offerings. Far from "harming" these customers, Caremark's health plan clients have outperformed the overall marketplace in terms of Part D enrollment growth.[23] In terms of service quality, more than 80% of Medicare lives served by Caremark's PBM are in four-star or five-star plans – the highest of any PBM serving Medicare Part D.[24] In short, Caremark is helping its health plan clients (including competitors to SilverScript) to be more competitive in the marketplace today, and this will continue – the addition of Aetna's Part D plans will not change this dynamic.

**The Combination Will Not Lessen Competition in Medicare Part D.**

We are equally concerned with the data presented at the hearing related to the Part D area. Concerns about anticompetitive effects cited to two sets of evidence that, when properly viewed, in fact contradict the AMA-sponsored witnesses' conclusions. The first was the concentration levels for Part D nationally and in California, both of which confirmed that the marketplace is not highly concentrated using the Herfindahl-Hirschman Index (HHI) calculations.[25] Regardless, market shares and concentration levels are only the beginning point for any meaningful antitrust analysis. Yet at the hearing the AMA and its sponsored witnesses presented market share calculations as virtually the entire analysis, ignoring significant evidence that Part D markets are and will remain highly competitive. The second set of evidence on average monthly Part D premiums showed that, since 2010, those premiums have been largely flat – an impressive feat given the repeated and significant price increases by drug manufacturers, the introduction of many new and more expensive drugs, and increased drug utilization.[26] In fact, the Centers for Medicare & Medicaid Services (CMS) data show that Part D premiums in a region are not correlated with the shares of Part D plans in that region.[27]

In addition, when one looks deeper into the evidence, it becomes clear that CVS's proposed acquisition of Aetna will not lessen the substantial competition that exists in Medicare Part D. The combined company will continue to face competition from six national firms (assuming both the CVS/Aetna and Cigna/Express Scripts transactions are completed) competing in every Part D region established by CMS (including California), several Part D firms with regional strengths, and sponsors of Medicare Advantage Part D (MAPD) plans. In California, there are currently 10 competitors offering 25 plans for seniors to choose among. A marketplace with so many competitors and options for seniors does not lack competition.

[23] *See* Jon Roberts, Meeting the Health Care Challenges of Tomorrow, CVS Health 2016 Analyst Day, at 13 (Dec. 15, 2016), http://investors.cvshealth.com/~/media/Files/C/CVS-IR-v3/documents/12-15-2016/2016-analyst-day-jon-roberts-presentation.pdf.

[24] *See* Testimony of Thomas M. Moriarty, EVP, Chief Policy and External Affairs Officer, and General Counsel, CVS Health, Hearing on "Competition in the Pharmaceutical Supply Chain: the Proposed Merger of CVS Health and Aetna," before Subcommittee on Regulatory Reform, Commercial and Antitrust Law of U.S. House of Rep. Committee on the Judiciary, at 7 (Feb. 27, 2018), https://judiciary.house.gov/wp-content/uploads/2018/02/Moriarty-REVISED-Testimony.pdf.

[25] Written Testimony of Richard M. Scheffler, at 5-9, CDIx073-CDIx077.

[26] *Id.* at 2, CDIx070.

[27] Analysis of CMS Part D premium and enrollment data.

### 1. Eight National Part D Firms Compete in Every CMS Region.

What was not discussed in the testimony presented by the opposition witnesses is that there are eight national, Fortune 200 firms marketing Part D plans in every CMS region, covering all fifty states and the District of Columbia. In addition to CVS and Aetna, national Part D firms include Cigna, Express Scripts, Humana, Rite Aid, UnitedHealth, and WellCare. These participants are large, well-funded, sophisticated firms that compete vigorously to serve the rapidly growing senior population. These national players create a highly competitive and commoditized environment for Part D plans. It is hard to find a marketplace in the health care sector (or almost any sector) with so many significant companies in every geographic market.

### 2. Several Strong Regional Players Compete in Part D.

Post-merger, the combined company will face significant, additional competition from several Part D players with regional strengths. Those competitors include Anthem, Health Care Service Corporation (HCSC), other Blue Cross Blue Shield (BCBS) plans such as Blue Shield of California, and Magellan. Magellan offers Part D plans in 20 regions, while Anthem is present in 11 CMS regions, including California.

### 3. Medicare Plan Finder Facilitates Part D Competition.

The vigorous competition in Part D is facilitated by Medicare's Plan Finder website, which allows beneficiaries to compare premiums, deductibles, and other attributes of competing Part D and MAPD plans.[28] With Plan Finder, pricing, quality (measured by Medicare star ratings), and benefit design are fully transparent to Medicare beneficiaries. During each year's annual open enrollment period, seniors can use the site to compare plans and switch to another plan with more favorable attributes. In California, seniors seeking standalone Part D coverage can use Plan Finder to choose among 10 providers and 25 plans available to them in the state (listed in the table below).

[28] Medicare Plan Finder, https://www.medicare.gov/find-a-plan/questions/home.aspx.

| Company | # of Plans | Plan Name |
|---|---|---|
| Aetna | 3 | • Aetna Medicare Rx Select<br>• Aetna Medicare Rx Saver<br>• First Health Part D Value Plus |
| Anthem | 3 | • Anthem Blue Cross MedicareRx Standard<br>• Anthem Blue Cross MedicareRx Plus<br>• Anthem Blue Cross MedicareRx Gold |
| Blue Shield of California | 2 | • Blue Shield Rx Plus<br>• Blue Shield Rx Enhanced |
| CIGNA | 2 | • Cigna-HealthSpring Rx Secure<br>• Cigna-HealthSpring Rx Secure-Extra |
| CVS Health | 2 | • SilverScript Choice<br>• SilverScript Plus |
| Express Scripts | 3 | • Express Scripts Medicare - Saver<br>• Express Scripts Medicare - Value<br>• Express Scripts Medicare – Choice |
| Humana | 3 | • Humana Walmart Rx Plan<br>• Humana Preferred Rx Plan<br>• Humana Enhanced |
| Rite Aid | 1 | • EnvisionRxPlus |
| United | 4 | • AARP MedicareRx Walgreens<br>• AARP MedicareRx Saver Plus<br>• AARP MedicareRx Preferred<br>• Symphonix Value Rx |
| WellCare | 2 | • WellCare Classic<br>• WellCare Extra |

**4. MAPD Provides Even More Competition.**

There is ample competition among Part D firms. But in addition to the many national and regional Part D firms, not raised at the hearing was the fact that CVS and Aetna face competition from sponsors of MAPD plans. One witness asserted that "the [Part D] and the Medicare Advantage markets are separate markets due to the lack of plan switching across the markets."[29] However, CMS data recording switches between Part D and MAPD plans confirm that this assertion is incorrect. Over the last three years, MAPD plans account for large amounts of business won and lost by CVS's Part D plans. More than half of CVS's Part D enrollment losses were to MAPD plans during this time period. In addition, CVS's new enrollment from MAPD also exceeded the amount of new enrollment from Aetna and all other Part D competitors, except United and Humana.

When accounting for all Part D competition (including MAPD), the combined firm's share is 21.8% nationally and only 16.6% in California. We are unaware of any merger being found to harm competition in a market with more than 10 competitors and a combined share under 20%.

[29] Amanda Starc, Hearing Tr. at 102-03.

**California (Region 32) Part D Shares**[30]

| Competitor | Part D Share | Part D+MAPD Share |
|---|---|---|
| United | 27.7% | 21.8% |
| CVS | 25.2% | 12.0% |
| Humana | 21.4% | 11.7% |
| Aetna | 8.7% | 4.6% |
| Anthem | 5.5% | 5.0% |
| WellCare | 4.2% | 2.6% |
| Express Scripts | 3.6% | 1.7% |
| Blue Shield of California | 2.1% | 4.1% |
| Rite Aid | 0.8% | 0.4% |
| Cigna | 0.5% | 0.2% |
| Other | 0.3% | 35.9% |

**Conclusion**

In light of the above, we are deeply troubled by the conclusory testimony presented regarding the likely competitive effects of the proposed combination. The testimony is not only unsupported by rigorous analysis or evidence, but it is directly contradicted by the facts. Publicly-available data and actual market experience show that the combination of CVS and Aetna will not lessen competition in any market. Instead, it will result in substantial benefits to consumers in California and across the country, and is a step toward creating a new business model that can help fix the broken status quo of today's health care system.

Thank you again for this opportunity to correct CDI's record.

[30] Based on April 2018 CMS plan enrollment data.