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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)**

UNITED STATES OF AMERICA, and the
STATE OF TEXAS,

Plaintiffs,

v.

AETNA, INC., and
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendants.

Civil Action No.:
3-99 CV 1398-H

Filed: June 21, 1999

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Texas, acting under the direction of the Texas Attorney General, bring this action to enjoin defendant Aetna, Inc. ("Aetna") from acquiring certain health insurance-related assets of its competitor, defendant The Prudential Insurance Company of America ("Prudential"), in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and alleges as follows:

1. Aetna is the largest health insurance company in the United States, providing health care benefits to approximately 15.8 million people in 50 states and the District of Columbia. Prudential is the ninth largest health insurance company in the nation, providing health care benefits to approximately 4.9 million people in 28 states and the District of Columbia.
2. Aetna and Prudential each offer a wide range of managed health insurance plans, including health maintenance organization ("HMO") plans and point of service ("POS") plans.

18. A small but significant increase in the price of HMO and HMO-POS products would not cause a sufficient number of customers to shift to other health insurance products to make such a price increase unprofitable. HMO and HMO-POS plans, therefore, are an appropriate relevant product market within which to assess the likely effects of the proposed acquisition.

B. Relevant Geographic Market

19. Patients seeking medical care generally prefer to receive treatment close to where they work or live, and many employers require managed care companies to offer a network that contains a certain number of health care providers within a specified distance of each employee's home. As a result, virtually all managed care companies establish provider networks in the localities where employees live and work, and they compete on the basis of their local provider networks. The relevant geographic markets in which HMO and HMO-POS health plans compete are thus no larger than the local areas within which managed care companies market their respective HMO and HMO-POS plans.

20. The relevant geographic markets for which relief is sought here are the United States Department of Commerce Metropolitan Statistical Areas ("MSAs") in and around Houston and Dallas, Texas. In Houston, the geographic market consists of an area no larger than the following counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. In Dallas, the geographic market consists of an area no larger than the following counties: Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant counties. A small but significant increase in the price of HMO and HMO-POS products in these two geographic areas would not cause a sufficient

number of customers to switch to health plans outside of these areas to make such a price increase unprofitable. The Houston and Dallas areas are, therefore, the relevant geographic markets within which to assess the likely effects of the proposed acquisition.

C. Concentration, Entry, and Expansion

21. Aetna and Prudential are among each other's principal competitors in the HMO and HMO-POS markets in Houston and Dallas, and are considered by employers to be close substitutes in their product attributes and quality.

22. In Houston, Aetna currently has 44% of the HMO and HMO-POS enrollees, and Prudential has 19%. (Aetna's share of HMO and HMO-POS enrollees increased from 13% to 44% with its purchase of NYLCare.) After the merger, Aetna will have 63%. In Dallas, Aetna currently has 26% of the HMO and HMO-POS enrollees, and Prudential has 16%. (Aetna's share of HMO and HMO-POS enrollees increased from 11% to 26% with the NYLCare transaction.) After the merger, Aetna will have 42%.

23. For managed care companies, the costs in time and money of setting up HMO and HMO-POS plans (e.g., licensing costs, network construction costs, and utilization management costs) are substantially higher than those required for setting up PPO or indemnity plans. Effective entry -- entry and growth to minimum viable scale -- for an HMO or HMO-POS plan in either Houston or Dallas typically takes two to three years and costs up to \$50 million. It is unlikely that de novo entry would defeat a price increase over the short term in these areas. It is also unlikely that a company that currently provides PPO or indemnity health insurance in either Dallas or Houston would shift its resources to provide an HMO or HMO-POS plan in either of