



U.S. & Plaintiff States

v.

Aetna Inc. & Humana Inc.

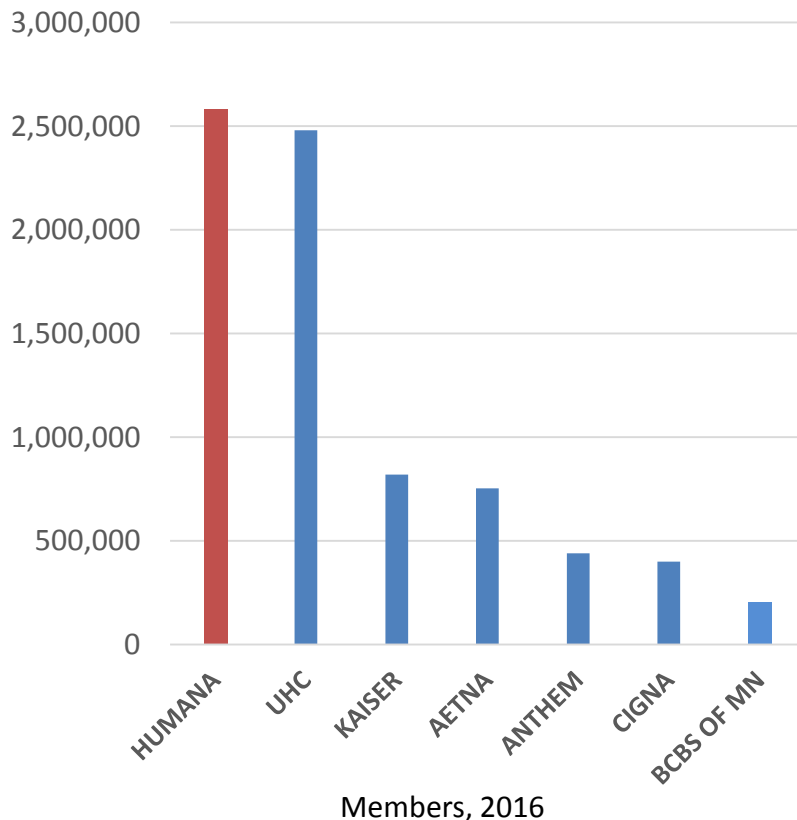
Plaintiffs' Opening Statement

Competition between Aetna and Humana for Medicare Advantage consumers is important and worth preserving

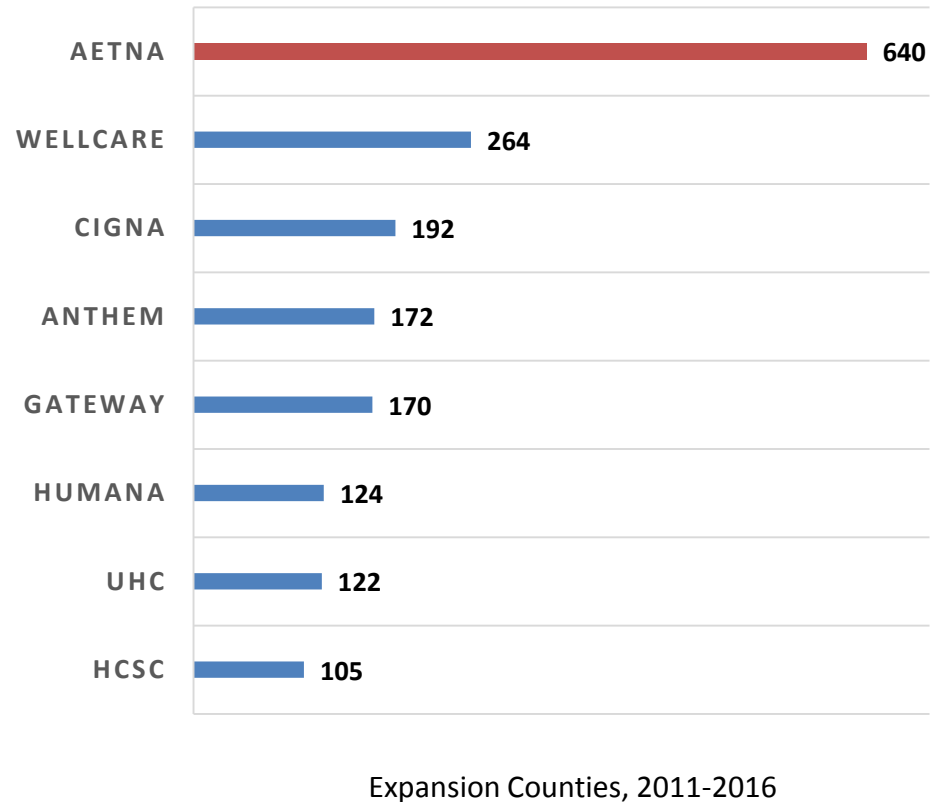


This merger would combine two of the leading Medicare Advantage insurers in the country

Humana is the largest.

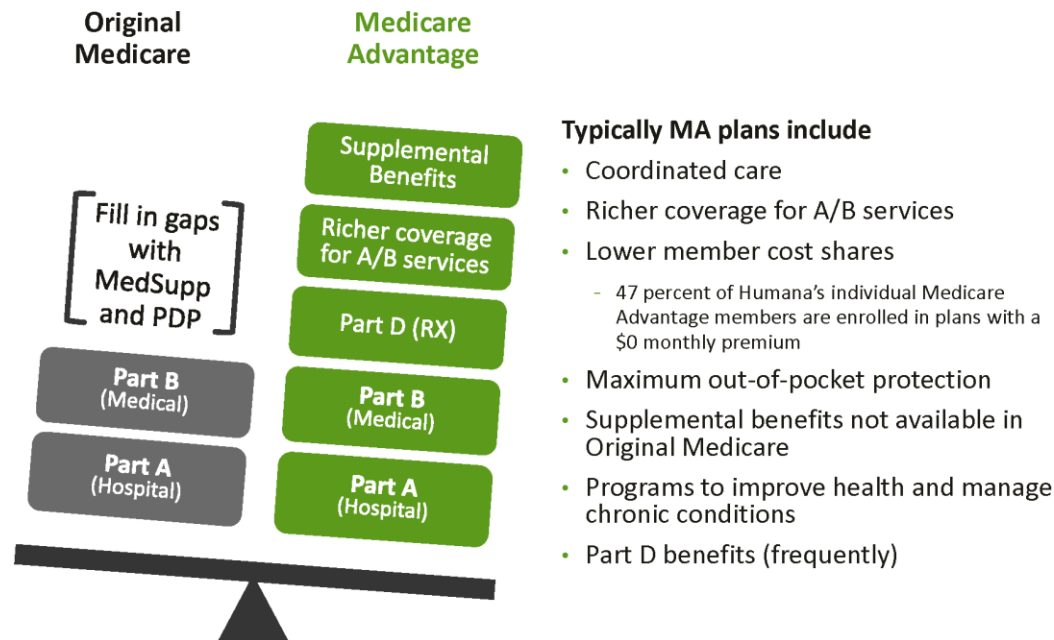


Aetna is the fastest-growing.



The sale of Medicare Advantage is a relevant product market

Medicare Advantage: Better benefits, lower costs



Humana

6

“**Reasonable** interchangeability” is different from “**functional** interchangeability”

“The outer boundaries of a product market are determined by the **reasonable interchangeability** of use or the cross-elasticity of demand between the product itself and substitutes for it.”

Brown Shoe Co. v. United States,
370 U.S. 294, 325 (1962)

“**[F]unctional interchangeability** should not end the Court’s analysis.”

FTC v. Staples, Inc.,
970 F. Supp. 1066, 1074 (D.D.C. 1997)

Seniors first choose the product segment that is best for them



Original Medicare

includes Part A (Hospital Insurance) and/or Part B (Medical Insurance)

- Medicare provides this coverage directly.
- You have your choice of doctors, hospitals, and other providers that accept Medicare.
- Generally, you or your supplemental coverage pay **deductibles** and **coinsurance**.
- You usually pay a monthly **premium** for Part B.

Section 1—Learn How Medicare Works | 17

What are my Medicare coverage choices?

There are 2 main choices for how you get your Medicare coverage. Use these steps to help you decide.

Step 1: Decide how you want to get your coverage.

Original Medicare

includes Part A (Hospital Insurance) and/or Part B (Medical Insurance)

- Medicare provides this coverage directly.
- You have your choice of doctors, hospitals, and other providers that accept Medicare.
- Generally, you or your supplemental coverage pay **deductibles** and **coinsurance**.
- You usually pay a monthly **premium** for Part B.

See pages 63–66.

Step 2: Decide if you want prescription drug coverage (Part D).

- If you want drug coverage, you must join a Medicare Prescription Drug Plan. You usually pay a monthly premium.
- These plans are run by private companies approved by Medicare.

See pages 85–96.

Step 3: Decide if you want supplemental coverage.

- You may want to get coverage that fills gaps in Original Medicare. You can choose to buy a Medicare Supplement Insurance (Medigap) policy from a private company.
- Costs vary by policy and company.
- Employers/unions may offer similar coverage.

See pages 81–84.

or

Medicare Advantage

(Part C) includes BOTH Part A (Hospital Insurance) and Part B (Medical Insurance)

- Private insurance companies approved by Medicare provide this coverage.
- In most plans, you need to use plan doctors, hospitals, and other providers or you may pay more or all of the costs.
- You may pay a monthly premium (in addition to your Part B premium), deductible, **copayments**, or coinsurance for covered services.
- Costs, extra coverage, and rules vary by plan.

See pages 67–80.

Step 2: Decide if you want prescription drug coverage (Part D).

- If you want drug coverage, and it's offered by your Medicare Advantage Plan, in most cases, you must get it through your plan.
- In some types of plans that don't offer drug coverage, you can join a Medicare Prescription Drug Plan.

See pages 85–96.

Note: If you join a Medicare Advantage Plan, you can't use Medicare Supplement Insurance (Medigap) to pay for out-of-pocket costs you have in the Medicare Advantage Plan. If you already have a Medicare Advantage Plan, you can't be sold a Medigap policy. You can generally only use a Medigap policy if you disenroll from your Medicare Advantage Plan and return to Original Medicare. See page 84.

In addition to the options listed above, you may be able to join other types of Medicare health plans. See pages 79–80. Some people may have other coverage like employer or union, Medicaid, TRICARE, or veterans' benefits. See pages 94–96.

Medicare Advantage

(Part C) includes BOTH Part A (Hospital Insurance) and Part B (Medical Insurance)

- Private insurance companies approved by Medicare provide this coverage.
- In most plans, you need to use plan doctors, hospitals, and other providers or you may pay more or all of the costs.
- You may pay a monthly premium (in addition to your Part B premium), deductible, **copayments**, or coinsurance for covered services.
- Costs, extra coverage, and rules vary by plan.

The availability of multiple choices does not mean that every option is a competitive constraint

“[E]ven though it is true that other beverages quench thirst,” carbonated soft drinks are an “appropriate ‘line of commerce’ for measuring the probable effects” of a merger between Coca-Cola and Dr. Pepper.



FTC v. Coca-Cola,
641 F. Supp. 1128,
1132-33 (D.D.C. 1986),
vacated as moot,
829 F.2d 191
(D.C. Cir. 1987)



“All tax preparation methods provide taxpayers with a means to perform the task of completing a tax return, but each method is starkly different.”

U.S. v. H&R Block, Inc.,
833 F. Supp. 2d 36, 54 (D.D.C. 2011)

Courts look to two main types of evidence: “Practical indicia” and economic experts

<i>Brown Shoe</i> “Practical Indicia”	Industry or public recognition of the market as a separate economic entity
	Product’s characteristics and uses
	Unique production facilities
	Distinct customers
	Distinct prices
	Sensitivity to price changes
	Specialized vendors

See *Brown Shoe*, 370 U.S. at 325.

Medicare Advantage has distinct characteristics

		Medicare Advantage	Original Medicare (with or without supplemental insurance)		
			Parts A & B Only	Parts A & B with Medigap	Parts A & B with Part D
Basic benefits	Medical benefits of Parts A & B	✓	✓	✓	✓
	Visit any medical provider	✗	✓	✓	✓
	Out-of-pocket cap on medical costs	✓	✗	✓	✗
	Care management & coordination	✓	✗	✗	✗
	Star ratings	✓	✗	✗	✓
	Single customer-service hotline	✓	✓	✗	✗
	Private insurer branding	✓	✗	✓	✓
Additional benefits offered by most plans	Outpatient prescription drug coverage	✓	✗	✗	✓
	Dental coverage	✓	✗	✗	✗
	Vision coverage	✓	✗	✗	✗
	Hearing coverage	✓	✗	✗	✗
	Wellness benefits	✓	✗	✗	✗
	Other benefits	✓	✗	✗	✗

Ex. 7, Expert Report of Aviv Nevo, Ph.D. (Oct. 21, 2016)

Aetna and Humana recognize the differences and organize their businesses around them

Med Supp States by Tier + Commentary

From:

"Kilchen, Deirdre C" <kilchend@aetna.com>

To:

"Schild, Molly A" <mschildm@aetna.com>

Cc:

"Kilchen, Deirdre C" <kilchend@aetna.com>, "Woodridge, Tyree S" <ty.woodridge@aetna.com>

Date:

Mon, 22 Sep 2014 20:22:08 +0000

Attachments:

Geography Data Request Template - Med Supp State Tiering added.xlsx (44.35 kB)

Good afternoon Molly,

I have attached the states by tier into the *geography-members by state* tab per your suggestion. The states are tiered 1-3 and color coded accordingly. The key for this tiered approach is found below:

Tier 1 – These are the primary states we focus on competitively and where we see the majority of our growth and membership.

Tier 2 – These states have a combination of small senior populations and a more challenging regulatory environment.

Tier 3 – Tier 3 states are difficult regulatory environments that we are in considering for select partnership opportunities.

There are several factors to take into consideration when looking across all Medicare products and comparing them in this manner, particularly when lining MA and Med Supp up side-by-side in this exercise. As we have discussed, the products are apples and oranges. Outlined a few of the factors that must be considered when our consultants analyze the information we are providing:

1. MA is not everywhere and tends to be found in concentrated areas that are urban in nature, whereas Med Supp (when approved) is state-wide and tends to be a product most prominently sold in rural areas.

“when lining MA and Med Supp up side-by side . . . the products are apples and oranges”

Please let me know if you have any questions about either the tiered states or the 6 bullets listed above.

Thank you!
Deirdre

Deirdre Kilchen
Chief of Staff
Medicare Supplement

kilchend@aetna.com
615.875.5034 T
800 Criscent Centro Drive
Franklin, TN 37067

aetna

Confidential Pursuant to 15 USC 18a(h)

AET-P002-0001662017

Aetna and Humana recognize the differences and organize their businesses around them

“They run on different platforms. They have dedicated teams, a dedicated leader. You know, they’re different – their business models are different.”

- **Fran Soistman**

Head of Government Business at Aetna

Q. And what do you mean when you said you've kept your Medicare Advantage and Med Supp business separated?

A. Operationally.

They run on different platforms. They have dedicated teams, a dedicated leader.

You know, they're different -- their business models are different.

Q. Do they report financial performance differently?

A. There are subtle differences, sure. Yeah, there are some subtle differences.

Q. When you said that you don't intentionally try to move people from your Med Supp program to your Medicare Advantage program, why is that Aetna's position?

A. Well, we view that most of these members have a relationship with a broker agent, and the broker agent represents the interests of the beneficiary.

Soistman dep. at 251:6-13 (Oct. 13, 2016)

Aetna and Humana's competitive energy focuses on other Medicare Advantage insurers

Quality health plans & benefits
Healthier living
Financial well-being
Intelligent solutions

aetnaSM

Medicare D
March 2015

Nancy Coccozza and Team

IVL Medicare AEP: Competitive Analysis

IN 2015 AEP, Aetna ranked 2nd in growth among our top competitors; Humana took market share lead away from United

HUMANA
Guidance when you need it most

- Captured 38% of newly eligibles (21% market share); availability to 85% of beneficiaries
- Vast improvement in STAR ratings; 92% of members in 4+ Star plans
- Expanded provider relationships through acquisition and exclusive relationships


UnitedHealth Group

- Continued network reductions and market exits
- Star ratings performance relatively flat year-over-year
- #2 with 19% share

 Cigna

- Added 30k enrollees partly due to HealthSpring products
- Improved Star performance; 5 star option in FL

Anthem.
BlueCross

- Continued poor Star rating performance
- Increased premiums in most markets

Key Trends

Slightly lower growth than last two years

- Overall MA enrollment over 16 million (30% of Medicare beneficiaries)*
- Industry growth of 4.4% below trend of 5% in 2014 and 2013
- Product exits impacted 5% of MA enrollees or 575k vs. 550k in 2014
- **11.5% of MA enrollees (~2M) in dual eligible programs**

Competitors continue to move toward leaner products

- Value added benefits reduced by ~15%
- Out of pocket costs increased by 5% compared to 10% in 2014

Premiums increased and enrollment in premium products grew

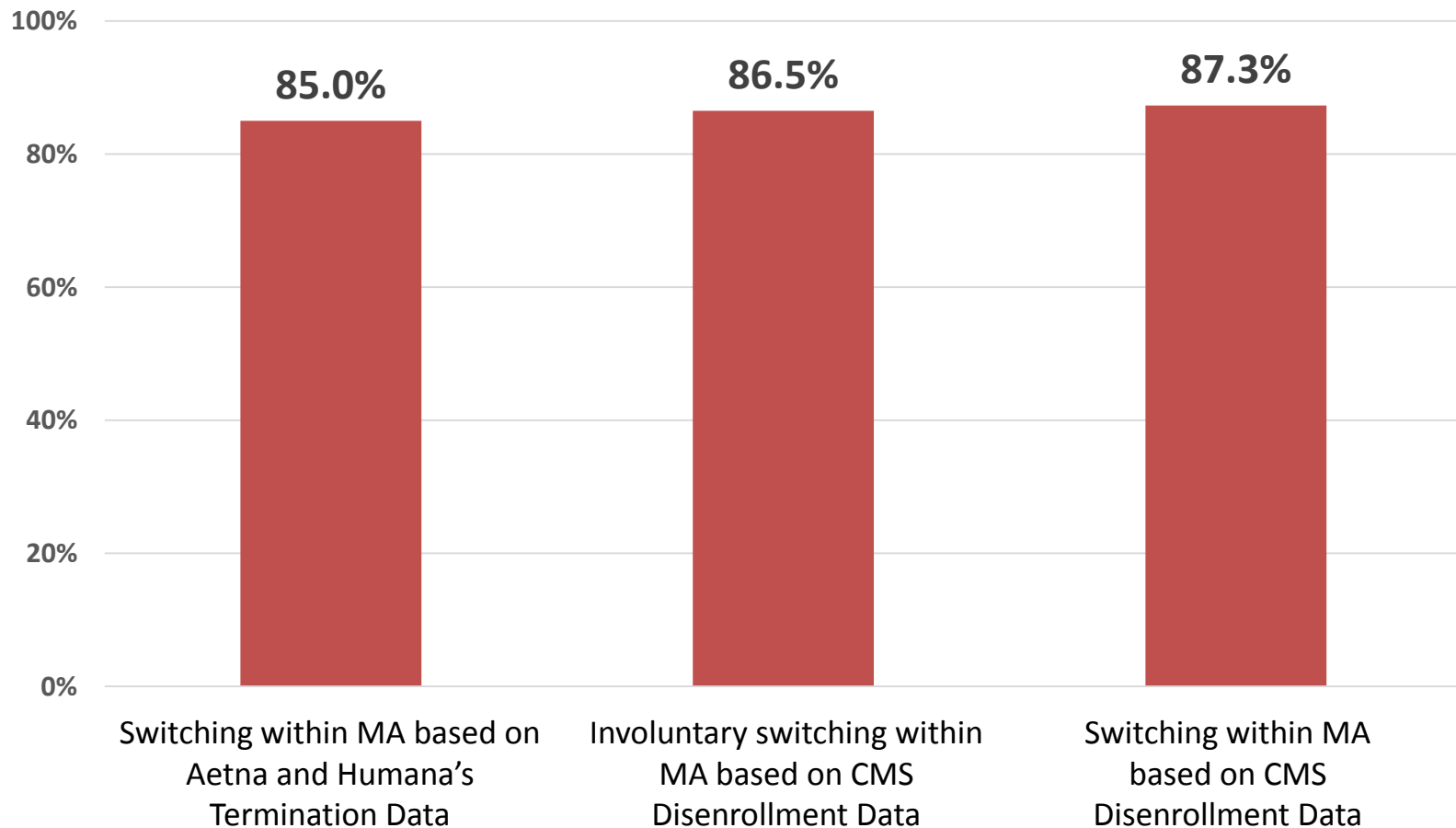
- **44% of enrollees in zero premium plans**, down from 56% in 2014
- Average monthly premium rising 20% to \$41

*CMS Fact Sheet: Fact Sheet: Moving Medicare Advantage and Part D Forward 2/20/2015

March 2015 OC Meeting: Confidential

Aetna Inc. 3

Seniors do not treat Medicare Advantage as being “reasonably interchangeable” with Original Medicare



Econometric evidence consistently finds that the sale of Medicare Advantage is a relevant product market

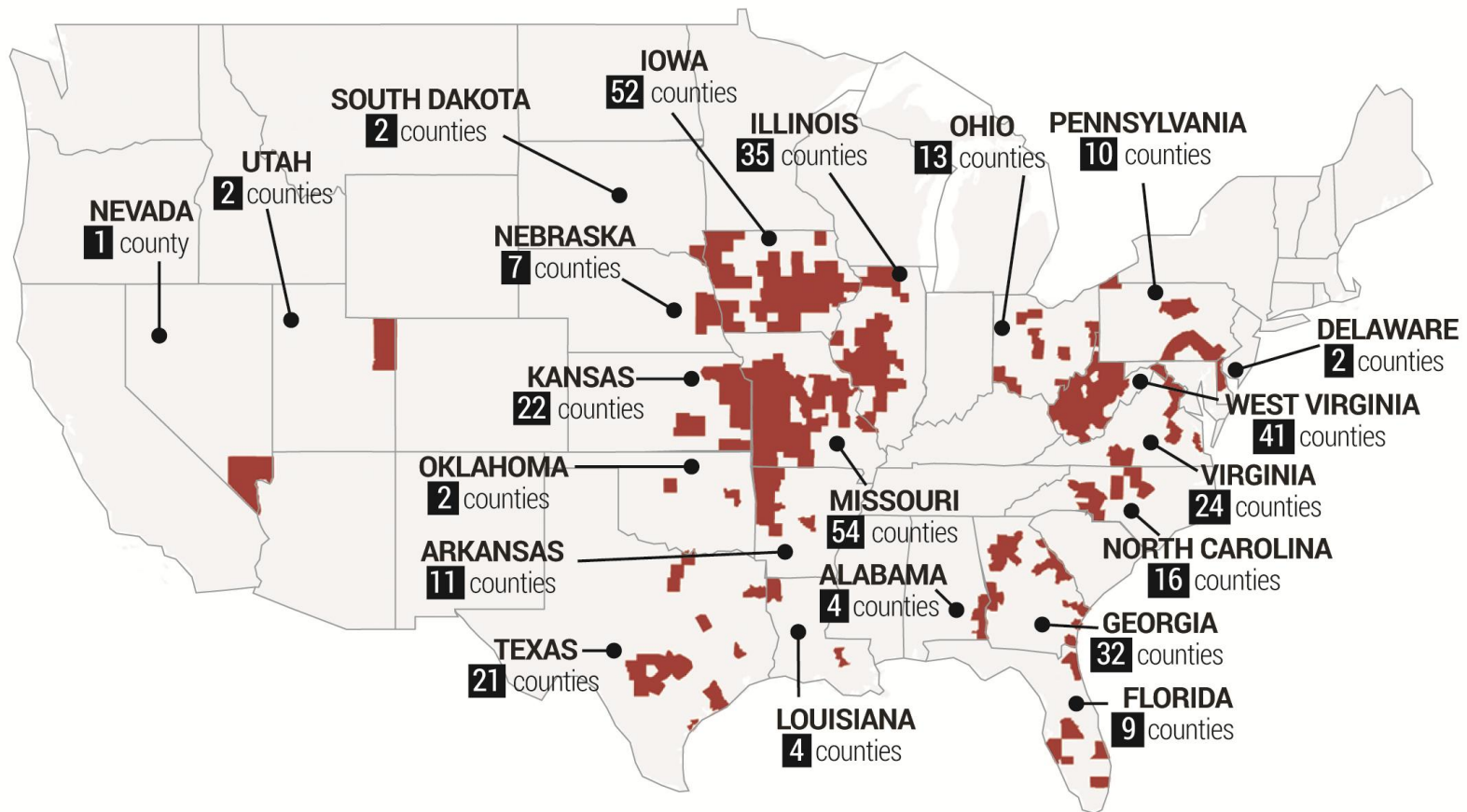
Percentage of Complaint Counties Passing the Hypothetical Monopolist Test	
Using Prof. Nevo's preferred demand estimate	100%
Using eight of Mr. Orszag's preferred demand estimates	98%
	99%
	99%
	99%
	99%
	96%
	99%
	99%
	99%

Ex. 14, Expert Report of Aviv Nevo, Ph.D. (Oct. 21, 2016);
Ex. 3, Supplemental and Rebuttal Report of Aviv Nevo, Ph.D. (Nov. 11, 2016)

Aetna and Humana are close competitors

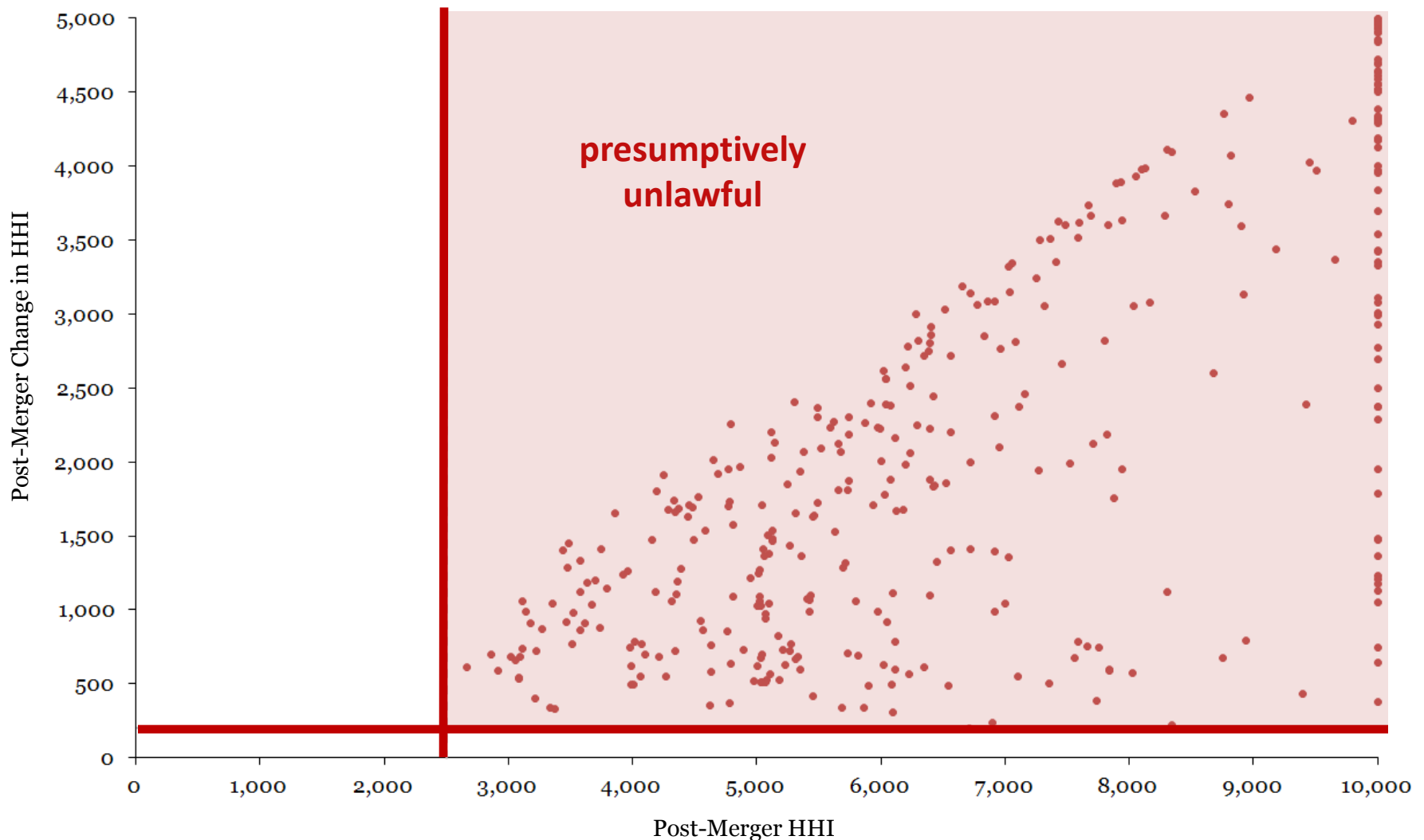


Over 1.6 million seniors are enrolled in Medicare Advantage in these counties

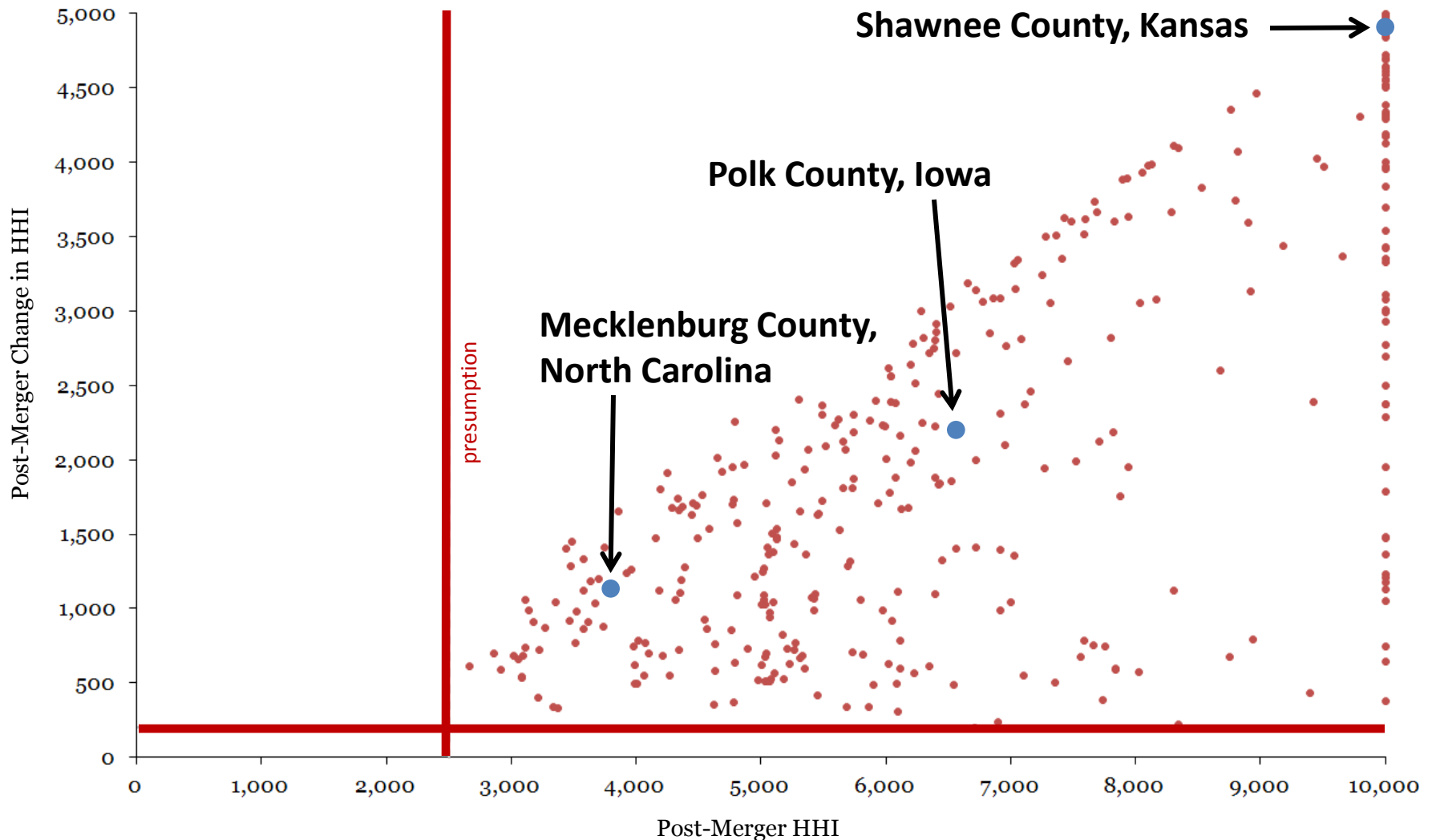


Over 970,000 of them are enrolled in an Aetna or Humana Medicare Advantage plan.

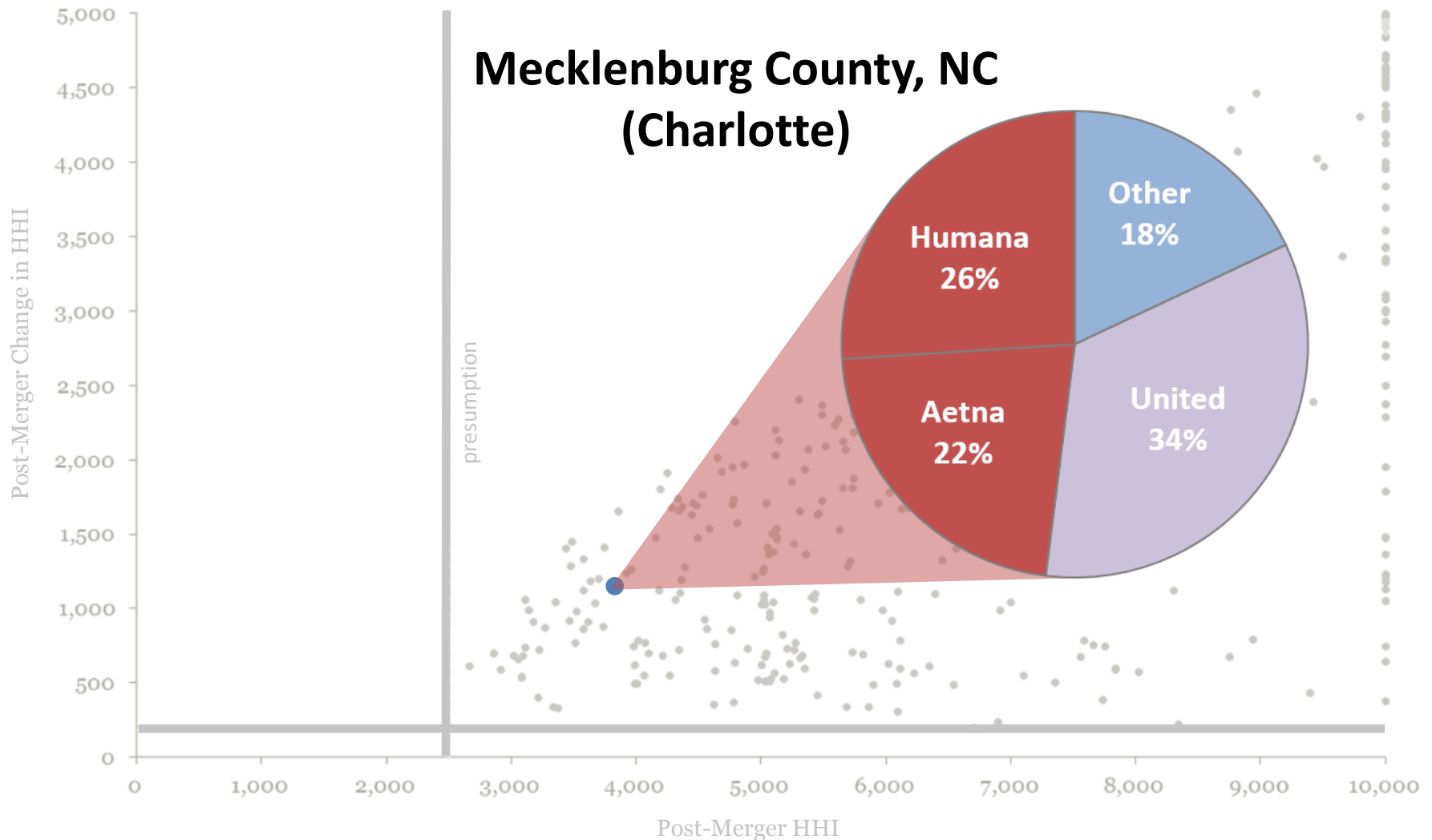
The merger is presumptively unlawful in all 364 counties



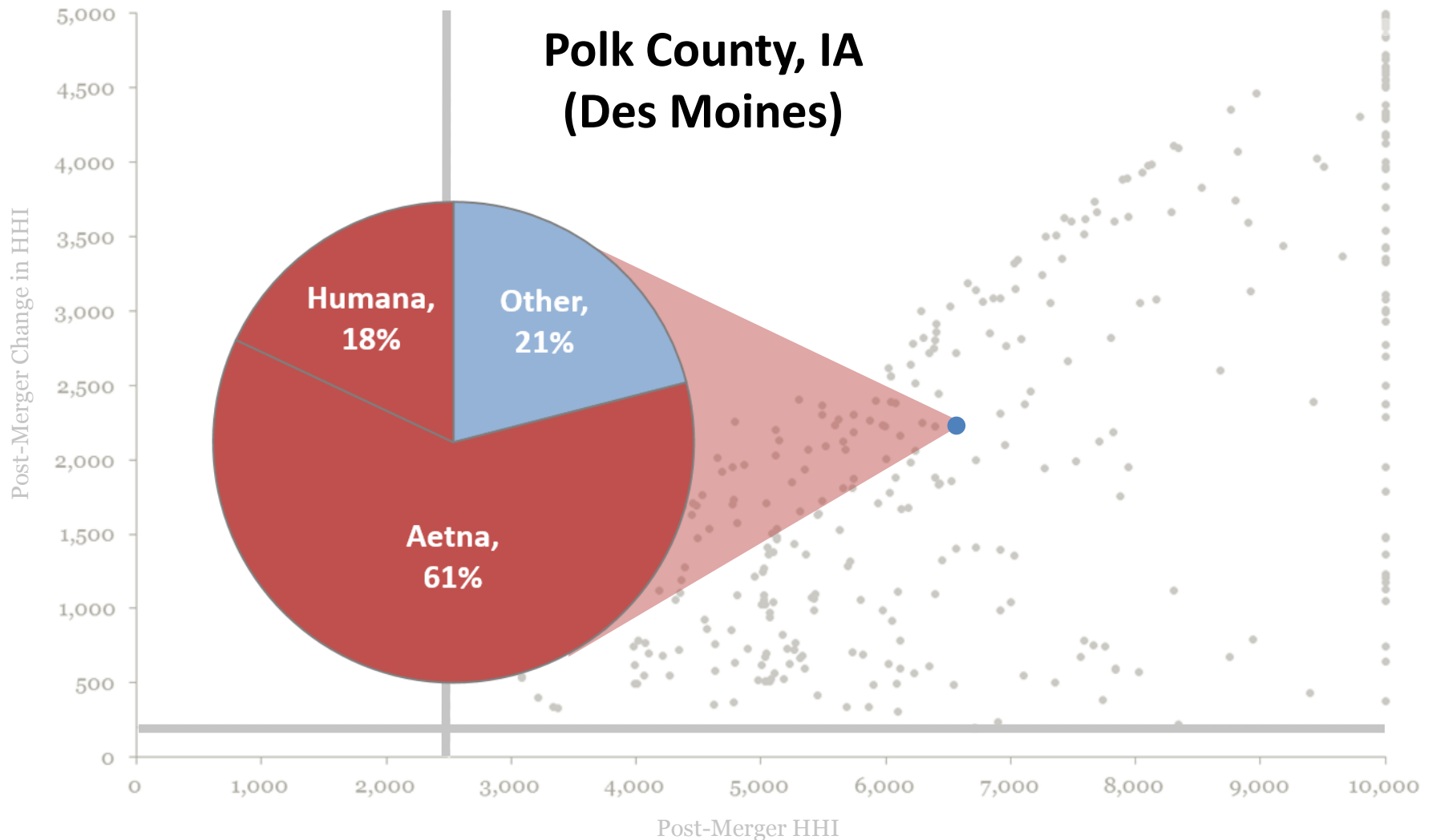
The merger is presumptively unlawful in all 364 counties



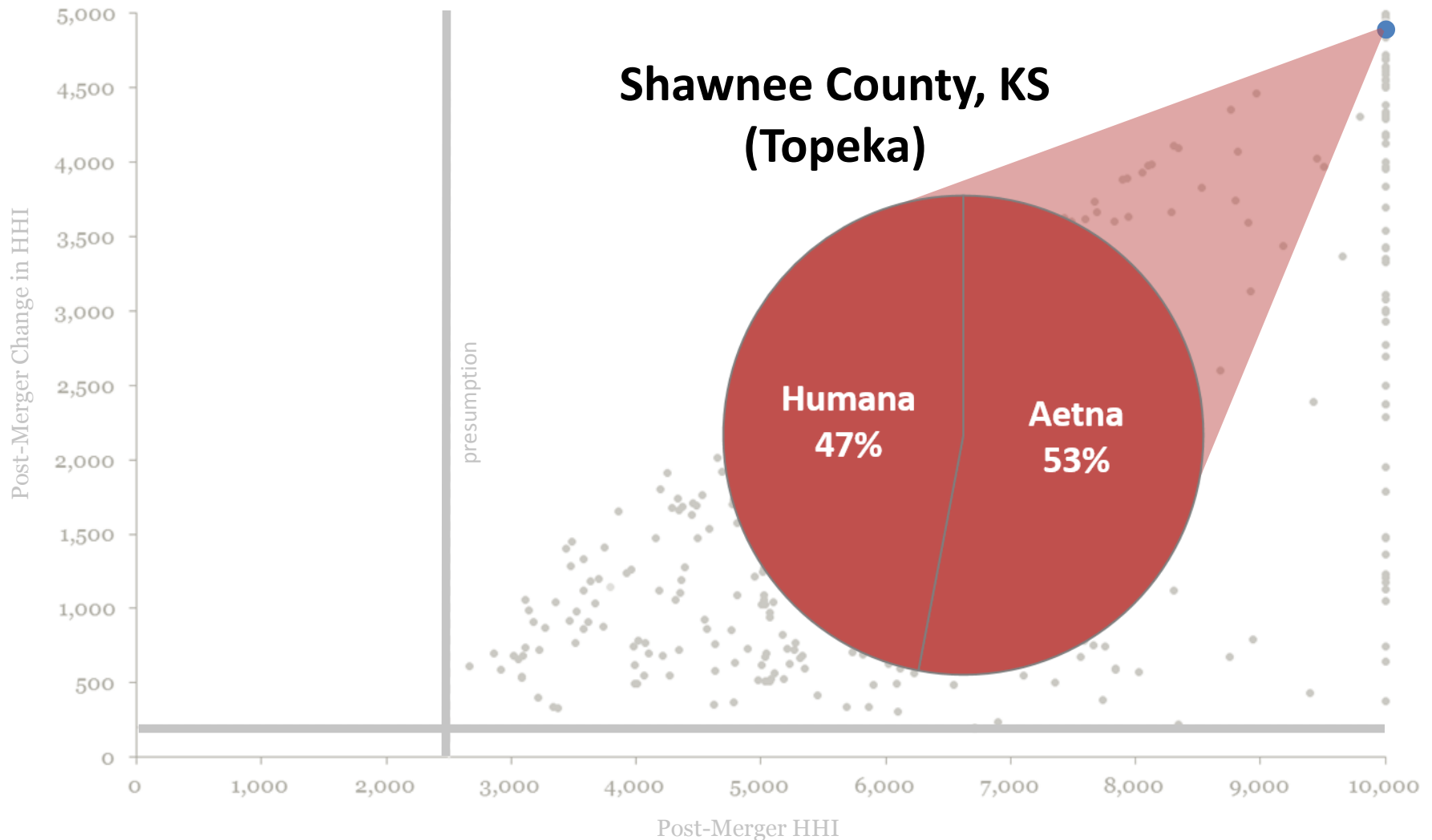
The merger is presumptively unlawful in all 364 counties



The merger is presumptively unlawful in all 364 counties

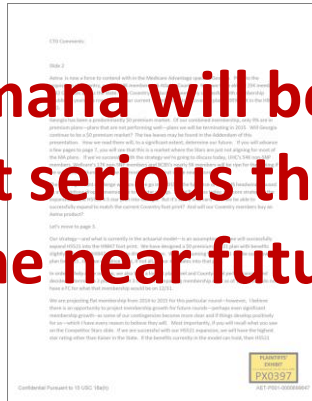


The merger is presumptively unlawful in all 364 counties



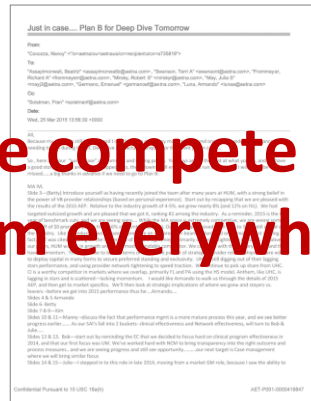
Aetna and Humana are close competitors

“Humana will be our most serious threat in the near future”



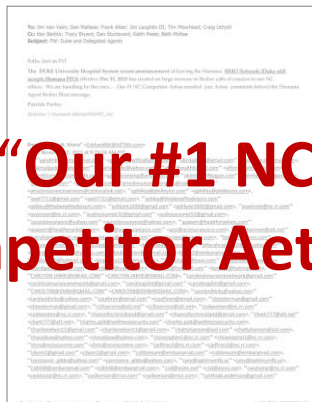
- Cindy Follmer,
Medicare General Manager at Aetna
PX0397, at 1 (Mar. 28, 2014)

“We compete with them everywhere”



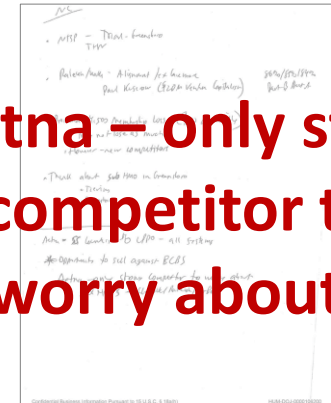
- Nancy Cocozza,
Head of Medicare Business at Aetna
PX0007, at 1 (Mar. 25, 2015)

“Our #1 NC Competitor Aetna”



- Patrick Farley,
Sales Director at Humana
PX0050, at 3 (Nov. 2, 2015)

“Aetna — only strong competitor to worry about”



- Kevin Meriwether
Southeast Division Leader at Humana
PX0512, at 9 (undated)

“Humana and Aetna dominate the Kansas City market”



- Humana “1st Look”
Competitor Analysis
PX0455, at 67 (Aug. 24, 2015)

The merger would create over \$500 million of annual harm to seniors and taxpayers

\$358 million in annual harm to seniors

Higher prices

**Lower benefits and
quality**

\$145 million in annual harm to taxpayers

**Higher CMS payments to
Medicare Advantage insurers**

The proposed divestiture is risky and would not remedy the harm



Aetna and Humana are not selling the assets that are necessary to compete effectively

Molina Would Not Receive:	
A business with tens of thousands of provider contracts	✗
The infrastructure of an ongoing business	✗
A recognized brand name	✗
An existing broker network	✗
Employees, including experienced Medicare actuaries and sales staff	✗
A business with value-based contracts with providers	✗
Physical locations, including sales office and Humana Guidance Centers	✗

Who is Molina?

“For the past 35 years, Molina has been focused on the Medicaid population.”

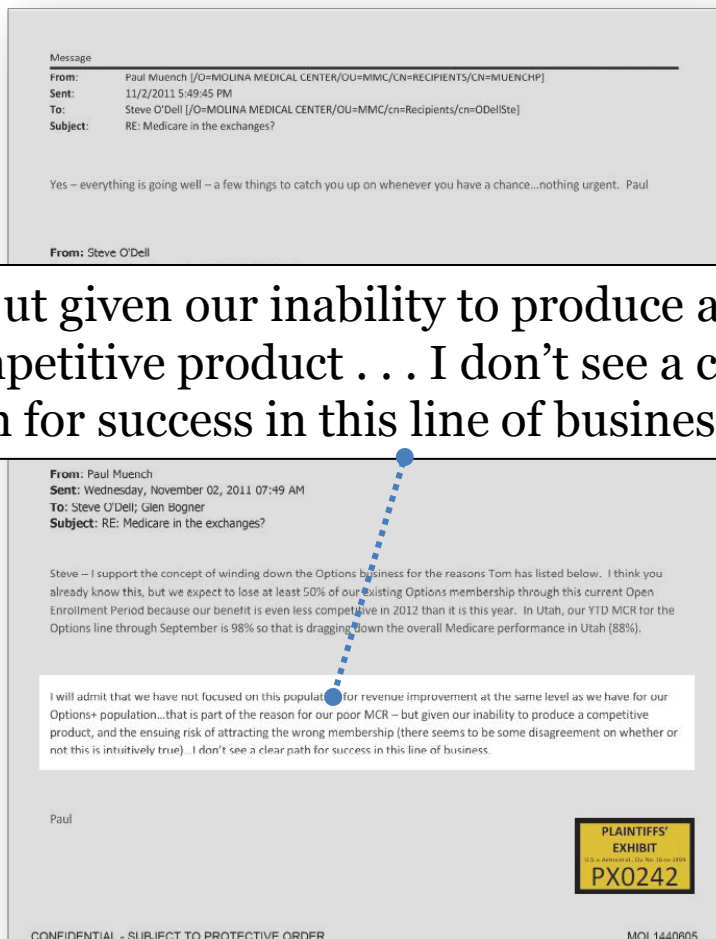
“You have probably received numerous inquiries for your Medicare and commercial business, but not Medicaid. This is where Molina can help.”

- John Molina

Chief Financial Officer at Molina Healthcare



Molina has a record of failure in Medicare Advantage



Molina is a trivial participant in individual Medicare Advantage

Humana

Over

2.5 million

members

Aetna

Over

700,000

members

Molina

424

members

The risk of the proposed divestiture will fall on seniors

Message

From: RICHARD SCHAPIRO [mailto:rmssch@me.com]
Sent: 7/1/2016 10:41:55 PM
To: J. Mario Molina M.D. [/O=MOLINA MEDICAL CENTER/OU=MMC/cn=Recipients/cn=MARIO]
Subject: Re: Divestitures

Will said grasshopper.

I don't think Dale and I had such different points of view. I agree that Medicare is the new growth engine. 10,000 people a day are turning 65. He was speaking more to the tactics of getting the inside track. I'm more focused on not owning it all because it's way too much money for us. I'd feel more comfortable with something bite sized that wouldn't require a huge financing. We both agree that we don't have the internal talent to run it.

Dick Schapiro

“The image that comes to my mind is the dog chasing the car and we are the dog. What happens if we catch it?”

>>> On Fri, 1 Jul 2016, at 1:22 PM, J. Mario Molina M.D. <[mailto:mario.molina@molinahealthcare.com]> wrote:

>>> I guess it depends on if it is a mini cooper or a subaru.

>>> -----Original Message-----

>>> From: RICHARD SCHAPIRO [mailto:rmssch@me.com]

>>> Sent: Friday, July 01, 2016 3:19 PM

>>> To: Julei Molina; J. Mario Molina M.D.; Runna Rouse

>>> Subject: Divestitures

>>> The image that comes to my mind here is the dog chasing the car and we are the dog. What happens if we catch it?

>>> Dick Schapiro

>>>

>>>

>>>

>>> IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

>>

PLAINTIFFS'
EXHIBIT
PX0086

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MOL0085251

PX0086, at 1 (July 1, 2016)

Lots to do. Good luck.

Dick

Dick Schapiro

Sender: John Molina </O=MOLINA MEDICAL CENTER/OU=MMC/CN=RECIPIENTS/CN=MOLINAJ>
Sent: Thursday, June 30, 2016 11:25:54 AM
Recipient: Dale Wolf <[mailto:dale.wolf@molinahealthcare.com]>
Cc: J. Mario Molina M.D. <[mailto:Mario@MolinaHealthCare.Com]>
Subject: RE: Aetna/Humana

“this is a very different business from what we do, including commercial marketing, pricing, contracting, etc.”

I can imagine the analysts also resetting the baseline.

Second, from a process view, I don't understand how Aetna can sign a definitive agreement to sell assets that it doesn't own, particularly since they don't have agreement from DOJ on their plan. Both Aetna and Humana will be signing the document and closing will be contingent on their transaction closing.

Third, this is a very different business from what we do, including commercial marketing, pricing, contracting, etc.. Unless we can acquire some talent as part of the deal, I think we are woefully under-resourced to be able to take this on. Agree wholeheartedly. Our medical management team (at Corporate) has a great deal of experience with MA-PD business, as many have worked at Health Care Partners and other MA plans in the past. I did reach out to Maria Fitzpatrick and she has responded. Ironically, she was a consultant for CUP, the plan we bought last year in Washington. I think our poor performance on our current SNP business provides ample evidence that we need to beef up Medicare resources.

Thanks for the update. Will wait to hear more.

Dale

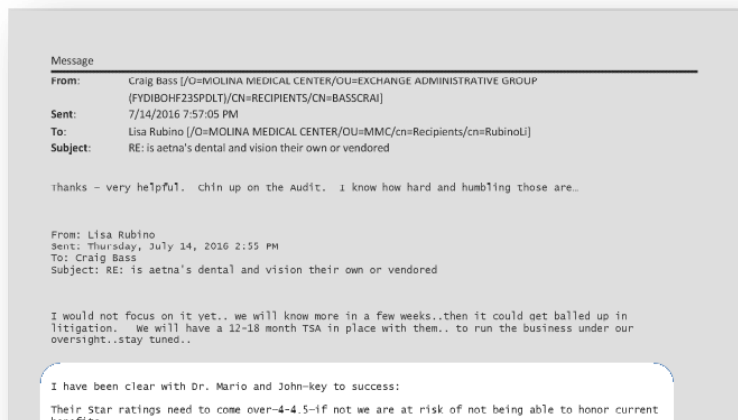
PLAINTIFFS'
EXHIBIT
PX0083

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

MOL0008373

PX0083, at 1 (June 30, 2016)

The risk of the proposed divestiture will fall on seniors



I have been clear with Dr. Mario and John-key to success:

Their Star ratings need to come over-4-4.5-if not we are at risk of not being able to honor current benefits

Their network needs to be replicated.. lose key providers and we will lose members in droves

Sales and market engine-8 week selling period

GA and broker network..

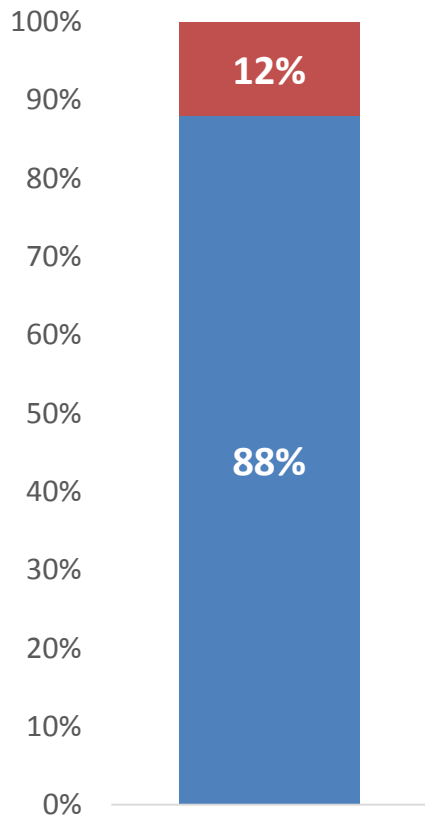
Then the basics in ops and CM.. big fricken lift..

The sale of insurance on the public exchanges is a relevant product market



Market definition is not seriously disputed

Percentage of public exchange enrollees in the
Complaint counties that qualify for a subsidy



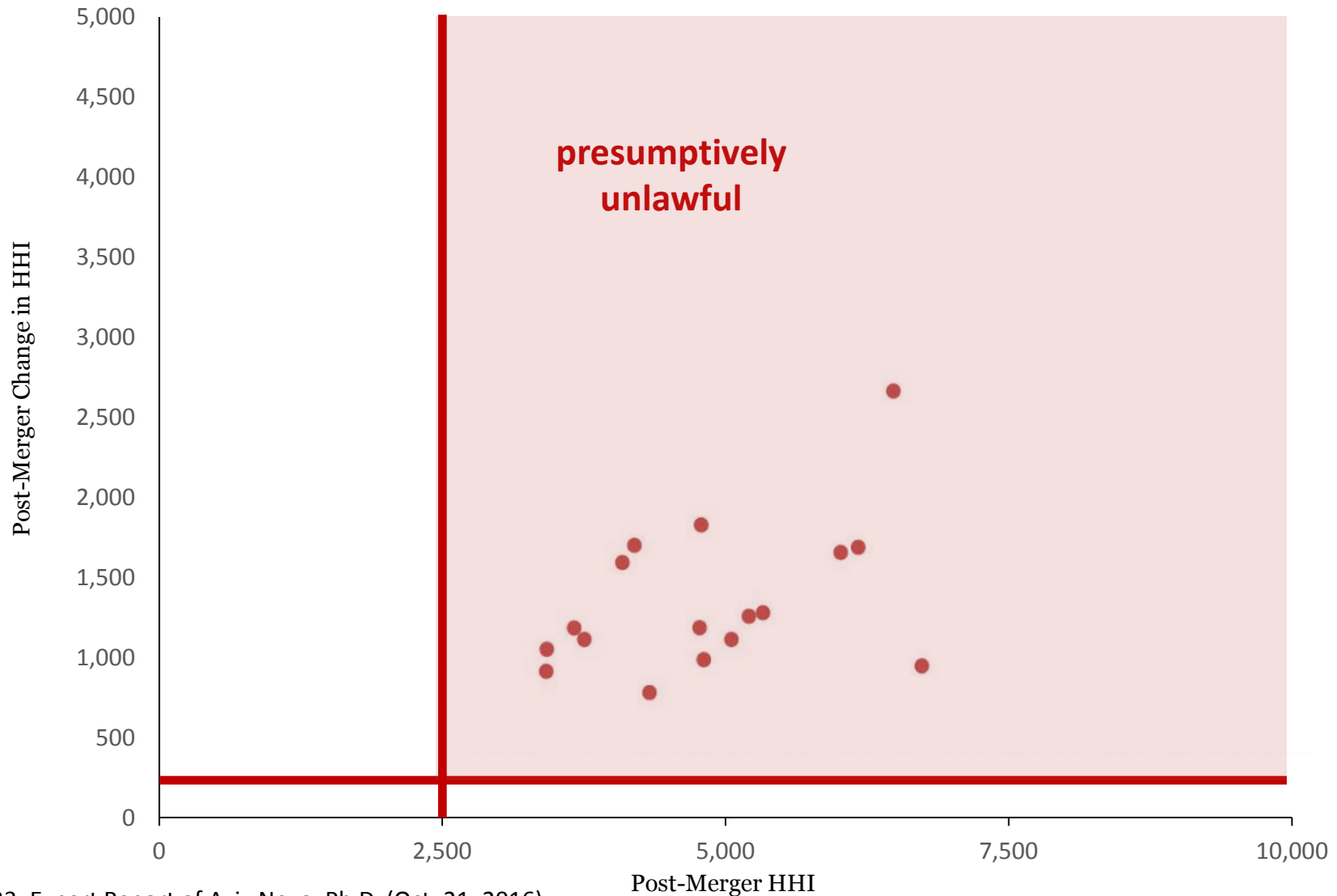
Qualifying Enrollees =
88%

Average Subsidy =
77% of premiums

Aetna and Humana are close competitors on the public exchanges



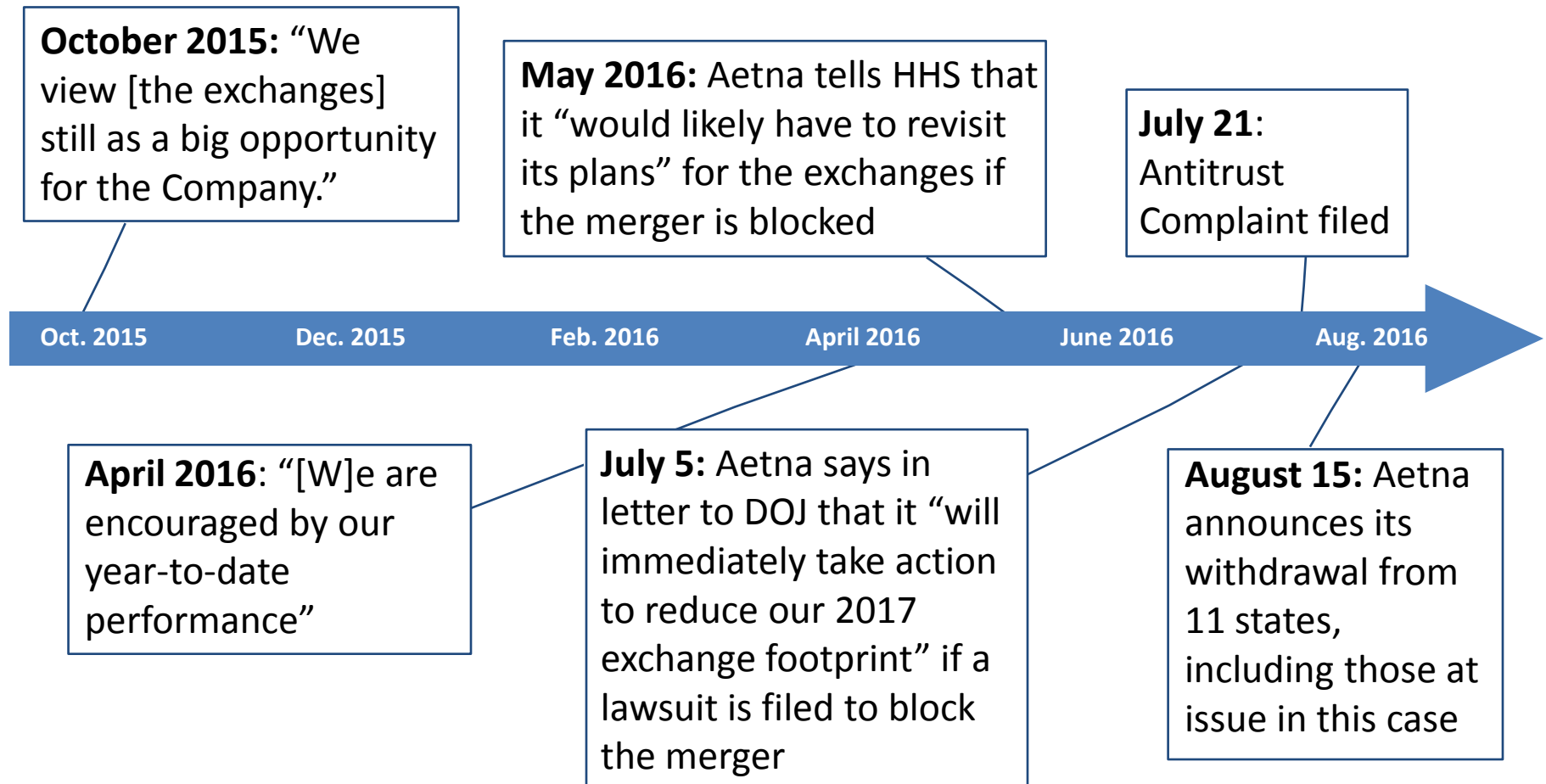
The merger is presumptively unlawful in all 17 counties



Aetna's withdrawal from the exchanges should not be credited



Aetna's withdrawal from the exchanges should not be credited



Aetna's withdrawal from the exchanges should not be credited

Day 1 Post-Complaint

RE: qbr sga

From:
"Stelben, John J" <jj@etna/ou=exchange administrative group (fydibohf23sptt)/cn=recipients/cn=a627612>
To:
"Solstman, Fran" <solstmanf@aetna.com>

From: Solstman, Fran
Sent: Friday, July 22, 2016 4:25 PM
To: Stelben, John J
Subject: Re: qbr sga

By the way, all bets are off on Florida and every other state given the DOJ rejected our transaction. We will need to renegotiate the Form A's should we win our case in Court.

Day 2 Post-Complaint

Re: Exchanges

From:
"Lynch, Karen S (Rohan)" <lynchks@aetna.com>

Sat, 23 Jul 2016 16:32:13 +0000

Agree. Want to make sure we stay connected w Tom and Shawn relative to DOJ and financials as we go thru the details. We always have Jim at these discussions so we weigh the state politics w CMS issues. I like to make sure we have varying perspectives so we get to the best answer. Wanted to be inclusive and you bring good perspectives. I know schedules are crazy and I know MTB wants a recommendation in short order. We also are up against some filing deadlines so I want to push us thru the decision making process quickly and make sure we are all on same notes and facts as we get ready for committee call. Will make sure we touch base w you.

Day 3 Post-Complaint

Re: Updated grid and draft exec summary

From:
"Lynch, Karen S (Rohan)" <lynchks@aetna.com>
To:
"Mayhew, Jonathan E" <mayhewj@aetna.com>
Date:

Sent from my iPad
On Jul 24, 2016, at 7:41 AM, Mayhew, Jonathan E <Mayhewj@aetna.com> wrote:
I was told to be careful about putting any of that in writing. I will have the attorney client privilege ccd by tomorrow.
Jonathan Mayhew
On Jul 24, 2016, at 7:35 AM, Lynch, Karen S (Rohan) <lynchks@aetna.com> wrote:

By the way, all bets are off on Florida and every other state given the DOJ rejected our transaction.

Most of this is a business decision except where DOJ has been explicit about the exchange markets. There we have no choice.

Aetna
Solstmanf@aetna.com

On Jul 22, 2016, at 3:51 PM, Stelben, John J <StelbenJ@AETNA.com> wrote:
We have to stay on in FL per Form A. There may be a few others we stay on to go away. I talked to Peter as mayhew has been working a stack ranking.
I think a lot of this work is really probably done since the code set covered under our rate and pricing. We assure you

> On Jul 23, 2016, at 12:14 PM, Kelmar, Steven B <KelmarS@aetna.com> wrote:
>
> Most of this is a business decision except where DOJ has been explicit about the exchange markets. There we have no choice.
> The Steve
>
>> On Jul 23, 2016, at 10:41 AM, Lynch, Karen S (Rohan) <LynchKS@aetna.com> wrote:
>>
>> Ok. Thank you. Will let you know when they are so if you want to join us you're more than welcome to. As we get towards the

Sent from my iPad
On Jul 24, 2016, at 6:42 AM, Mayhew, Jonathan E <Mayhewj@aetna.com> wrote:
Here is a draft. We will have an updated version by tonight with the first pass at states for reduction. As of now the list looks like: reduction in all off only states; cancel participation in TX, PA, IL, KY, AZ. No new expansion; we are still working on which other countries we can make a service area reduction in.
If you would like to discuss let me know.

Does this include the 17 places in the DOJ complaint.

I was told to be careful about putting any of that in writing. I will have the attorney client privilege ccd by tomorrow.

You may want to invite Cowhey and Theresa as they still as CB.
Fran, I understand the importance. We need to do what we have to but, Peter and Bruce are overworked, Peter's family is leaving on vacation this weekend without him I believe and he is out part of next week. I just want to be organized and not have certain people grind and cycle and recreate the wheel all weekend.
You can sense my frustration as the past few weeks have been more grueling than usual.

and with everyone's input. There are tight deadlines and I want to be sure we consider all issues before we make final calls. Fran and his team are working diligently to pull together data which we can discuss as we move forward.
>>>> Thanks in advance for your flexibility.
>>>> Karen
>>>>
>>>> Sent from my iPad

<Consumer_IVL Strategic Options - 2017 Footprint.pptx>

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PLAINTIFFS' EXHIBIT
PX0121
AET-LIT002-000070

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PLAINTIFFS' EXHIBIT
PX0125
AET-LIT011-0001789482

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

PLAINTIFFS' EXHIBIT
PX0127
AET-LIT002-0000667287

PX0121 (July 22, 2016)

PX0125 (July 23, 2016)

PX0127 (July 24, 2016)

This merger is not about providing better insurance products to consumers

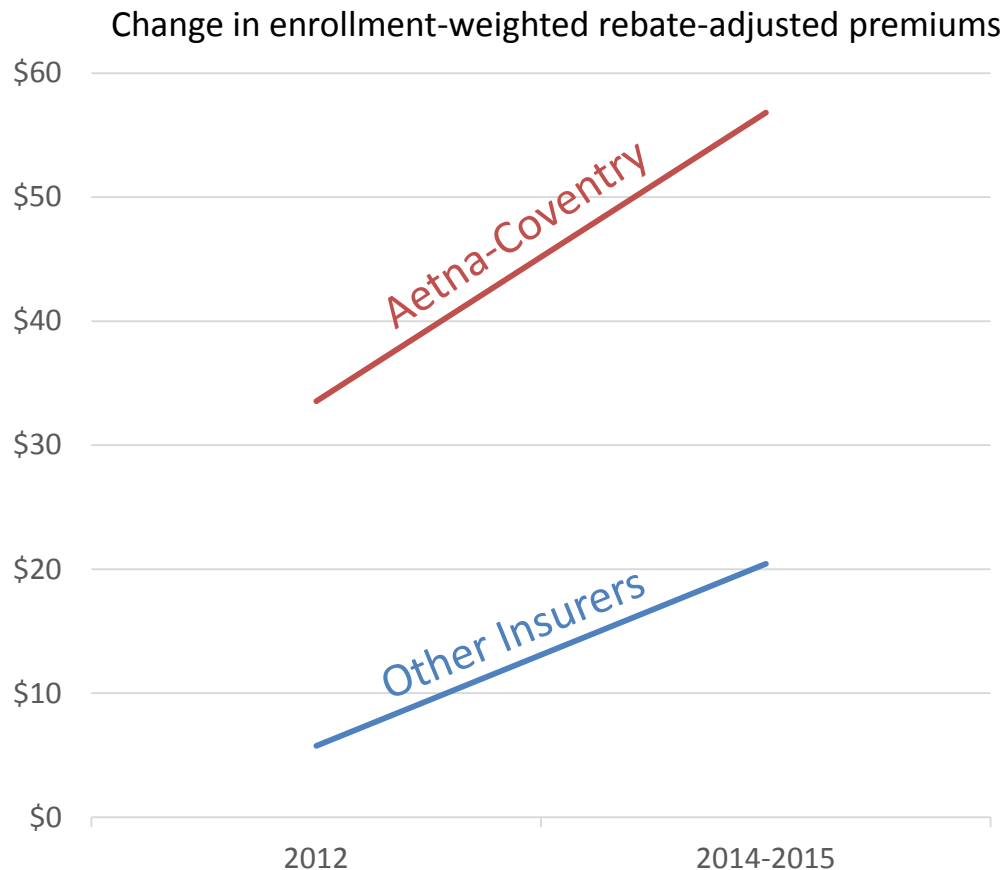
“[A]nticompetitive effects in one market [cannot] be justified by procompetitive consequences in another.”

U.S. v. Philadelphia Nat’l Bank,
374 U.S. 321, 370 (1963)

“The court is not aware of any case, and Defendants have cited none, where the merging parties have successfully rebutted the government's *prima facie* case on the strength of the efficiencies.”

FTC v. Sysco Co.,
113 F. Supp. 3d 1, 82 (D.D.C. 2015)

This merger is not about providing better insurance products to consumers



Despite efficiency claims before Aetna's merger with Coventry, prices **went up** relative to other insurers.



U.S. & Plaintiff States

v.

Aetna Inc. & Humana Inc.