No. 16-2492

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs-Appellants,

v.

ADVOCATE HEALTH CARE NETWORK, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
Case No. 1:15-cv-11473
Hon. Jorge L. Alonso, presiding

APPELLEES' CIRCUIT RULE 30(e) SUPPLEMENTAL APPENDIX

(*Public Version*)

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2016, I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 1, 2016

/s/ Daniel J. Delaney
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Table 8: Hospital Admission Shares within NorthShore's 51 ZIP Code Service Area
(January 2014 - June 2015)

Hospital	Total Admissions	Admission Share
Advocate Total	**14,056**	**22.1%**
Advocate Condell Medical Center	4,357	6.9%
Advocate Good Shepherd Hospital	962	1.5%
Advocate Illinois Masonic Medical Center	1,632	2.6%
Advocate Lutheran General Hospital	6,852	10.8%
Other Advocate Hospitals	253	0.4%
NorthShore Total	**16,750**	**26.3%**
NorthShore Univ HS Evanston Hospital	7,465	11.7%
NorthShore Univ HS Glenbrook Hospital	3,301	5.2%
NorthShore Univ HS Highland Park Hospital	3,716	5.8%
NorthShore Univ HS Skokie Hospital	2,268	3.6%
Amita Health Total	**1,186**	**1.9%**
Adventist Bolingbrook Hospital	11	0.0%
Adventist GlenOaks Hospital	20	0.0%
Adventist Hinsdale Hospital	95	0.1%
Adventist La Grange Memorial Hospital	16	0.0%
Alexian Brothers Medical Center	564	0.9%
St. Alexius Medical Center	480	0.8%
Ann & Robert H. Lurie Children's Hospital of Chicago	**1,318**	**2.1%**
CHS Total	**2,628**	**4.1%**
Vista Medical Center East	2,621	4.1%
Vista Medical Center West	0	0.0%
Other CHS Hospitals	7	0.0%
Northwest Community Hospital	**4,624**	**7.3%**
Northwestern Memorial Healthcare Total	**8,931**	**14.0%**
Northwestern Lake Forest Hospital	2,704	4.3%
Northwestern Memorial Hospital	6,135	9.6%
Other Northwestern Memorial Healthcare Hospitals	92	0.1%
Presence Total	**4,356**	**6.9%**
Presence Resurrection Medical Center	1,216	1.9%
Presence Saint Francis Hospital	1,786	2.8%
Presence Saint Joseph Hospital - Chicago	979	1.5%
Presence Saints Mary and Elizabeth Medical Center	346	0.5%
Other Presence Hospitals	29	0.0%
Rush University Medical Center Total	**1,438**	**2.3%**
Rush University Medical Center	1,365	2.1%
Other Rush University Medical Center Hospitals	73	0.1%
Swedish Covenant Hospital	**3,189**	**5.0%**
Tenet Total	**1,574**	**2.5%**
Weiss Memorial Hospital	1,325	2.1%
West Suburban Medical Center	138	0.2%
Other Tenet Hospitals	111	0.2%
Trinity Total	**496**	**0.8%**
Loyola Gottlieb Memorial Hospital	60	0.1%
Loyola University Medical Center	385	0.6%
Other Trinity Hospitals	51	0.1%
University of Chicago Medical Center	**832**	**1.3%**
University of Illinois Medical Center at Chicago	**614**	**1.0%**
Other Hospitals	**1,588**	**2.5%**
Total	**63,580**	**100.0%**
HHI, Pre-merger		**1,545**
HHI, Post-merger		**2,710**
HHI, Change		**1,165**

Notes:
[1] Analysis limited to patients with commercial insurance residing in NorthShore's 51 ZIP code service area and excludes non-general acute care (GAC) services (*i.e.,* excludes newborns and services related to behavioral health, substance abuse, and rehabilitation). Analysis also excludes admissions with invalid patient ZIP codes, services with invalid and ungroupable DRGs, and transfers. This accounts for 63,580 admissions.
[2] ZIP codes in NorthShore's 51 ZIP code service area are: 60004 60005 60015 60016 60022 60025 60026 60029 60030 60031 60035 60037 60040 60043 60044 60045 60047 60048 60053 60056 60060 60061 60062 60064 60065 60069 60070 60073 60076 60077 60082 60085 60087 60089 60090 60091 60093 60201 60202 60203 60625 60626 60631 60640 60641 60645 60646 60659 60660 60712 60714.
[3] The table reports hospitals with a 1% share and hospitals listed in Paragraph 21 of the January 11, 2016 NorthShore response to the FTC complaint.

Sources:
[1] CID_ DD_2008_Q2_2014_ver2_noq.txt
[2] CID_DD_06_2014_06_2015_ver2.txt
[3] American Hospital Association.
[4] PX05095.
[5] CMS DRG data.
[6] 2016 01 11 ECF No 37 Defendant NorthShore Answer to Complaint.pdf

Table 9: Hospital-level Diversion Ratio Estimates
(January 2014 - June 2015)

		Diversion from:									
		Advocate					NorthShore				
Diversion to Hospital:	Total Admissions	Condell	Good Shepherd	Illinois Masonic	Lutheran General	All 4 Advocate	Evanston	Glenbrook	Highland Park	Skokie	All 4 NorthShore
Adventist Bolingbrook Hospital (Amita Health)	3,511	0.0%	0.0%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
Adventist GlenOaks Hospital (Amita Health)	1,426	0.0%	0.2%	0.1%	0.3%	0.2%	0.1%	0.1%	0.0%	0.2%	0.1%
Adventist Hinsdale Hospital (Amita Health)	7,995	0.3%	0.5%	0.6%	1.0%	0.7%	0.4%	0.4%	0.3%	0.4%	0.4%
Adventist La Grange Memorial Hospital (Amita Health)	4,462	0.1%	0.1%	0.3%	0.2%	0.2%	0.1%	0.1%	0.0%	0.1%	0.1%
Advocate Condell Medical Center	3,643						2.7%	3.8%	11.4%	2.2%	4.7%
Advocate Good Shepherd Hospital	3,924						0.8%	1.2%	2.4%	0.9%	1.3%
Advocate Illinois Masonic Medical Center	2,701						1.7%	0.7%	0.4%	1.2%	1.2%
Advocate Lutheran General Hospital	7,604						10.2%	19.1%	6.9%	14.5%	11.8%
Advocate Sherman Hospital	7,219						0.3%	0.7%	0.4%	0.4%	0.4%
Alexian Brothers Medical Center (Amita Health)	3,767	0.8%	2.5%	0.5%	3.0%	2.0%	0.7%	1.5%	0.7%	1.0%	0.9%
Ann & Robert H. Lurie Children's Hospital of Chicago	5,530	3.1%	3.1%	3.8%	2.5%	3.0%	4.7%	6.7%	4.2%	3.7%	4.8%
Centegra Hospital - McHenry	3,979	5.1%	23.5%	0.2%	1.6%	6.9%	0.4%	0.6%	1.4%	0.6%	0.7%
Centegra Hospital - Woodstock	1,765	0.5%	7.5%	0.1%	0.7%	2.1%	0.1%	0.2%	0.2%	0.1%	0.1%
Loyola Gottlieb Memorial Hospital (Trinity)	2,277	0.1%	0.1%	0.8%	1.2%	0.6%	0.2%	0.3%	0.1%	0.5%	0.3%
Loyola University Medical Center (Trinity)	8,245	0.8%	2.0%	1.7%	2.7%	2.0%	1.0%	2.0%	0.7%	1.6%	1.2%
NorthShore Univ HS Evanston Hospital	8,913	6.4%	2.7%	4.2%	9.3%	6.5%					
NorthShore Univ HS Glenbrook Hospital	3,893	3.7%	1.7%	0.7%	6.0%	3.8%					
NorthShore Univ HS Highland Park Hospital	4,435	13.9%	3.8%	0.5%	2.9%	5.0%					
NorthShore Univ HS Skokie Hospital	2,872	1.9%	0.9%	0.9%	3.8%	2.3%					
Northwest Community Hospital	8,658	5.4%	14.6%	0.9%	12.5%	9.7%	4.7%	12.9%	9.1%	3.8%	7.1%
Northwestern Lake Forest Hospital	3,762	21.3%	3.8%	0.2%	2.0%	6.1%	3.6%	4.2%	18.5%	3.4%	7.0%
Northwestern Memorial Hospital	32,794	7.2%	7.5%	28.2%	11.2%	12.2%	29.2%	13.3%	17.7%	13.1%	21.3%
Presence Resurrection Medical Center	3,949	0.6%	0.3%	2.6%	10.5%	5.1%	2.2%	2.9%	0.9%	3.8%	2.3%
Presence Saint Francis Hospital	2,191	0.3%	0.1%	1.7%	1.4%	0.9%	9.9%	3.5%	1.3%	10.2%	6.8%
Presence Saint Joseph Hospital - Chicago	3,449	0.4%	0.3%	6.0%	1.4%	1.6%	2.8%	1.7%	0.5%	2.5%	2.0%
Presence Saints Mary and Elizabeth Medical Center	3,096	0.1%	0.1%	3.8%	0.7%	0.9%	0.6%	0.4%	0.2%	1.2%	0.6%
Rush University Medical Center	12,724	2.7%	4.2%	5.3%	3.9%	4.0%	3.7%	6.5%	3.1%	10.1%	5.0%
St. Alexius Medical Center (Amita Health)	4,643	1.1%	8.4%	0.5%	2.7%	3.3%	0.8%	1.3%	1.2%	0.8%	1.0%
Swedish Covenant Hospital	5,042	0.4%	0.2%	7.6%	3.4%	2.7%	6.4%	2.0%	0.9%	6.5%	4.4%
University of Chicago Medical Center	8,477	1.6%	2.3%	2.6%	2.2%	2.2%	2.9%	4.9%	3.4%	2.9%	3.4%
University of Illinois Medical Center at Chicago	10,585	1.1%	1.0%	4.2%	1.2%	1.6%	1.5%	1.0%	0.5%	1.7%	1.2%
Vista Medical Center East (CHS)	4,159	17.3%	1.4%	0.2%	0.9%	4.3%	1.7%	1.4%	10.2%	1.2%	3.5%
Vista Medical Center West (CHS)	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Weiss Memorial Hospital (Tenet)	2,012	0.1%	0.1%	2.7%	0.4%	0.6%	1.1%	1.2%	0.2%	2.2%	1.1%
West Suburban Medical Center (Tenet)	4,768	0.1%	0.1%	1.8%	0.6%	0.6%	0.5%	0.1%	0.1%	0.3%	0.3%
Other Hospitals	129,660	3.8%	7.0%	17.2%	9.8%	9.1%	4.9%	5.4%	2.7%	8.6%	5.0%

Notes:
[1] Analysis limited to patients with commercial insurance (patients with payer type "HMO" are excluded) residing in the Chicago 6-county area and excludes non-general acute care (GAC) services (*i.e.,* excludes newborns and services related to behavioral health, substance abuse, and rehabilitation). Analysis also excludes admissions with invalid patient ZIP codes, services with invalid and ungroupable DRGs, and transfers. This results in 328,130 admissions.
[2] Each diversion represents the fraction of patients admitted to a given hospital that would switch to an alternative hospital if the selected hospital, and all co-owned hospitals, were no longer available.
[3] Each diversion ratio is calculated using a semiparametric hospital choice model. Hospital preferences are assumed to vary by patient group, where admissions are grouped using the following characteristics: patient location (county, zip code), admission type (major diagnostic category, medical-surgical indicator, DRG weight quartile, DRG), and patient demographics (age, sex). An iterative procedure is used to allocate patients into groups subject to a minimum group size of 25 admissions.
[4] The table reports hospitals listed in Table 4. All remaining hospitals are combined. System names not included in the hospital name are reported in parentheses.

Sources:
[1] "CID_ DD_2008_Q2_2014_ver2_noq.txt"
[2] "CID_DD_06_2014_06_2015_ver2.txt"
[3] American Hospital Association.
[4] CMS DRG data.

09:20:36 and east Texas. And then prior to that, I was with Anthem/
09:20:43 Blue Cross Blue Shield, which I had responsibilities for
09:20:46 Colorado and Utah.
09:20:48 Q. So in total, Ms. Beck, how long have you spent in your
09:20:51 career doing network contracting?
09:20:53 A. Probably over 30 years.
09:20:59 Q. Now, Ms. Beck, does United Healthcare have a position on
09:21:05 the merger between Advocate and NorthShore?
09:21:08 A. Yes.
09:21:08 Q. And at a high level, what is United's position on the
09:21:15 merger?
09:21:16 A. We support the merger.
09:21:18 Q. How will the merger impact the total cost of care for
09:21:22 United members?
09:21:23 A. We believe that NorthShore joining with Advocate Health
09:21:27 will improve the total cost of care by -- by applying the
09:21:38 population health management program and clinical integration
09:21:42 quality measures that Advocate Health Care has established.
09:21:45 Q. When you say improve the total cost of care, do you mean
09:21:48 lower the total cost of care?
09:21:51 A. Yes.
09:21:51 Q. And how will the merger impact the quality of care for
09:21:54 United's members here in Chicago?
09:21:57 A. I believe it would improve it.
09:21:58 Q. And, Ms. Beck, if the FTC and the Illinois AG are

guidelines.
Q. And so can those guidelines influence whether a service is provided either on the inpatient side or on the outpatient side?
A. Yes.
Q. Ms. Beck, are you familiar with the term "destination hospital"?
A. The only thing that comes to mind is when patients purchase services outside of the United States, and they can recover on a beach.
Q. Have you ever used this term in reference -- or heard this term in reference to any hospitals in the Chicago area?
A. No.
Q. Ms. Beck, are you familiar with Northwestern Memorial Hospital?
A. Yes.
Q. Do you believe Northwestern Memorial competes with NorthShore University HealthSystem?
A. Yes.
Q. How would you describe the competition between NorthShore and Northwestern?
A. Well, once I got to the market, some of my staff, who have lived and worked here for many years, said there was a long history between those two organizations and that they compete very closely.

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10:45:16 MSA or the Chicago marketplace -- from a health insurance
10:45:21 perspective the Chicago marketplace -- where the density of
10:45:25 membership that we were targeting for the Aetna Whole Health
10:45:29 product resides.
10:45:30 Q. And is this map typically used in business development and
10:45:34 product design by the Accountable Care Solutions team?
10:45:36 A. This is a map that we prepare for -- in all our strategic
10:45:41 documentation.
10:45:41 Q. Why does Aetna focus on the counties shown in this map?
10:45:46 A. As I stated in my previous answer, this is the density of
10:45:50 membership that we wanted to attract in the purchaser segments
10:45:54 we were targeting.
10:45:56 Q. Ms. Nettesheim, have you ever heard of Chicago referred to
10:46:02 as a commuter market?
10:46:04 A. I have. And, in fact, I often use the term a commuter
10:46:09 market. And by that I mean, the commuter is the worker who
10:46:12 lives in one place and works in another and often receives
10:46:17 services at both locations.
10:46:19 In the Chicagoland marketplace, some of our
10:46:22 preliminary analysis that we completed showed that there was
10:46:25 up to a 40-mile difference between where people lived and
10:46:30 worked, and utilized services at both ends.
10:46:33 Q. And by the 40-mile difference, does that mean that they
10:46:35 would be willing to travel 40 miles to receive that care
10:46:37 potentially?

10:46:38 A. I can't say it's that they're willing to travel to receive
10:46:42 the care. But from our perspective, they receive care where
10:46:49 it's convenient for them to receive care, so whether that's
10:46:51 work or home.
10:46:52 Q. Turning back to the slide 6 here. Why are the certain
10:46:57 providers identified on this slide?
10:46:59 A. There are specific providers that were pulled out on this
10:47:04 slide as potential of creating some type of marketable and
10:47:13 adequate network to place Aetna Whole Health products on.
10:47:17 Q. And I notice there's a line, others, with 54 percent.
10:47:22 What does that refer to?
10:47:23 A. Those are literally all of the other health systems or
10:47:29 provider systems that are in the marketplace that were not
10:47:33 listed specifically above.
10:47:35 Q. In your 15 years in the Chicagoland health care market,
10:47:39 have you ever heard a Chicago hospital referred to as a
10:47:42 destination hospital?
10:47:43 A. I have not heard of a specific Chicago hospital referred
10:47:48 to as a destination hospital. In -- from my perspective, a
10:47:53 destination hospital, where I've heard that used before, is
10:47:57 Cleveland Clinic or Mayo. From a national perspective, those
10:48:01 are the names that are tossed around.
10:48:03 Q. When designing products, has the Aetna Accountable Care
10:48:09 Solutions team focused exclusively on the northern Cook County
10:48:12 area?

11:14:26 other, in particular with data sharing.
11:14:29 Q. So just to clarify there, as far as you know, there's no
11:14:34 ability to share clinical data across these different separate
11:14:38 providers?
11:14:38 A. Correct.
11:14:39 Q. Would a merged entity of Advocate and NorthShore have the
11:14:43 potential to more effectively coordinate the patient care?
11:14:47 A. There is an opportunity to more effectively coordinate the
11:14:52 patient care and create a -- for this particular network and
11:14:55 this particular product -- to create more of a seamless
11:14:57 experience for consumers who are purchasing this product.
11:15:00 Q. I'd like to talk now about opportunities for clinical
11:15:05 efficiencies and lower costs that may result from a
11:15:08 partnership between Aetna and a merged Advocate-NorthShore.
11:15:14 With respect to ACS products, does Aetna prefer to
11:15:21 partner with many or fewer providers?
11:15:23 A. So, again, I'll give my answer based on experience.
11:15:27 At a national level and in other markets, simply put,
11:15:31 from a business perspective, it's easier to work with one
11:15:34 organization and one contracted entity to manage populations
11:15:39 and create a seamless consumer experience, and also to, for
11:15:45 lack of a better term, just work on improvements in the
11:15:48 medical cost infrastructure.
11:15:50 So when we talk about clinical efficiencies, that is
11:15:54 literally diving into the weeds and the details of total

11:15:57 1 medical cost to understand where we can take out current
11:16:02 2 waste, where we can improve not only the experience but
11:16:07 3 improve operationally how care is delivered to lower the price
11:16:12 4 point. So working with one entity is simpler.
11:16:17 5 Q. As CEO of Aetna Accountable Care Solutions, are there ways
11:16:22 6 that the merged Advocate-NorthShore system could help deliver
11:16:26 7 on those opportunities?
11:16:27 8 A. Could you ask that again?
11:16:28 9 Q. Sure.
11:16:29 10 As CEO of Accountable Care Solutions, are there ways
11:16:33 11 that the merged Advocate-NorthShore system would assist Aetna
11:16:36 12 in delivering on those issues?
11:16:38 13 A. In the ways I just stated. I think the -- what I didn't
11:16:43 14 articulate earlier is that the one governance and one -- the
11:16:47 15 potential of one governance structure and one management
11:16:52 16 approach of population health management could help bring this
11:16:57 17 product differentiation to the consumers.
11:17:00 18 Q. How, if at all, would the merger impact the delivery of
11:17:04 19 care from a clinical efficiency standpoint?
11:17:10 20 A. Yeah, I was -- I'll just qualify that by saying I'll talk
11:17:13 21 about the population health management aspects of that.
11:17:18 22 So, again, the one governance structure, one
11:17:23 23 management approach -- and when I say management approach,
11:17:25 24 it's the management of populations. So that is an analytic
11:17:32 25 view; that is a care protocol view; that is a service view,

11:17:43 meaning how do we service customer -- think of it as customer
11:17:44 service; how do we service the members -- has the potential of
11:17:47 being combined.
11:17:47 Q. Based on your experiences, do clinical efficiencies lead
11:17:51 to a lower total medical cost?
11:17:54 A. Yes. Based on my experience, when I say clinical
11:17:58 efficiencies, that equates to a lower total medical cost.
11:18:02 Q. And would a -- ultimately would a lower total medical cost
11:18:06 be a benefit to Aetna's members?
11:18:08 A. Ultimately it would. Remember that we -- I talked earlier
11:18:14 about discounting current fee-for-service models. To create a
11:18:19 truly sustainable business model using population health
11:18:24 management, it is about finding ways to lower the total
11:18:28 medical cost without simply discounting services and using an
11:18:32 old fee-for-service model.
11:18:34 Q. Contrasted with -- or strike that.
11:18:41 Are there any opportunities with respect to these
11:18:43 clinical efficiencies that are lost under the current Whole
11:18:48 Health structure?
11:18:49 A. I can't say that they're necessarily lost. But we are
11:18:53 certainly working with two -- in this case it would be two
11:18:56 separate entities and driving two separate processes to
11:19:01 understand total medical cost. So, in essence, even though
11:19:04 it's one product, we're managing -- separately managing two
11:19:08 populations under that one product.

11:19:11 Q. And does that make it more difficult?
11:19:20 A. So I've talked about Aetna's perspective. I do want to
11:19:24 make sure that I talk about just the consumer or the member's
11:19:28 experience.
11:19:30 Our goal is to create a seamless experience for each
11:19:34 consumer or member who is utilizing health care services in
11:19:39 these products. Remember, if we think about the triple aim,
11:19:44 one of the tenets or the legs of the triple aim is enhanced
11:19:49 patient or member experience. And so to create an enhanced
11:19:53 and seamless experience, it's very bumpy right now. And
11:19:59 bumpy -- I use that loosely, but a consumer is bounced
11:20:03 potentially between health care systems or population health
11:20:07 management models.
11:20:08 Q. And as CEO of Accountable Care Solutions and based on your
11:20:11 experiences, would a merged NorthShore and Advocate have the
11:20:15 opportunity to better deliver on this differentiated
11:20:18 product --
11:20:18 A. I can't --
11:20:19 Q. -- experience?
11:20:20 A. I would say that the opportunity exists. And what I can
11:20:25 tell you is we have experience with a few other partners, not
11:20:30 in the Chicagoland area, but I can give you an example of one
11:20:34 in Phoenix with Banner Health where we do go to market with
11:20:40 one single integrated delivery system; and we do work with
11:20:46 them in one population health management model under an Aetna

11:20:49 Whole Health product. And the marketplace receives this very
11:20:52 well. So the feedback we receive from brokers and consultants
11:20:56 and even based on our membership that's in these products is
11:20:59 very strong.
11:21:00 Q. Great. And based on your experience as a CEO, along with
11:21:03 your team's analysis and feedback from brokers and employee
11:21:07 benefit consultants, would a NorthShore-Advocate merged
11:21:10 product be marketable across the six- or seven-county area?
11:21:13 A. Yes, it would be marketable.
11:21:15 Q. And that's marketable to all three consumer segments?
11:21:18 A. That is. And that's based on -- that's based on
11:21:20 information we received in different combinations and
11:21:25 permutations that we asked about during our initial survey
11:21:29 process and in our review of network adequacy.
11:21:33 Q. Thank you, Ms. Nettesheim.
11:21:35 MR. PULLOS: I have no further questions at this
11:21:36 time.
11:21:36 THE COURT: All right, Mr. Pugh, whenever you are
11:21:46 ready.
11:21:47 MR. PUGH: Good morning, Your Honor.
11:21:47 CROSS-EXAMINATION
11:21:49 BY MR. PUGH:
11:21:49 Q. Good morning, Ms. Nettesheim. We have not met before
11:21:53 today, correct?
11:21:54 A. That is correct. You may have been on a phone call with

SEALED MATERIAL OMITTED FROM PUBLIC APPENDIX

SEALED MATERIAL OMITTED FROM PUBLIC APPENDIX

[redacted]

Q. What do you mean by a wide reach and capability in the marketplace?

A. Well, we believe these are several of the largest systems in our geography, and our ability to serve consumers -- we are a consumer-governed health plan, so this would help us reach more consumers.

Q. Do you believe that an Advocate/NorthShore product would be attractive to a wide range of employers?

A. Individuals and employers, yes.

Q. And within the employer segment, would that include potential large group employers?

A. Yes.

Q. You mentioned Land of Lincoln's geography. What is Land of Lincoln's geography?

A. Land of Lincoln operates throughout the entire state of Illinois currently.

Q. Has Land of Lincoln's position on the merger changed since this letter was submitted on

October 16, 2014?

A. No.

Q. I would like to direct your attention to the first paragraph, and it begins with I am writing this letter to voice Land of Lincoln Mutual Health Insurance Company's support for the potential merger between Northshore University HealthSystem and Advocate Health Care.

Do you agree with that sentence today?

A. Yes.

Q. The first paragraph goes on. The combination of these two important health care institutions would result in the opportunity to advance the delivery of high-quality affordable health care in the Illinois marketplace and would provide additional opportunities for innovation and competition in this marketplace which ultimately benefits all consumers.

Do you agree with that statement?

A. Yes.

Q. Could you explain what you meant by the merger would result in the opportunity to advance the delivery of high-quality affordable health care in the Illinois marketplace?

November 9, 2015

Lee B. Sacks, M.D.
Executive Vice President, Chief Medical Officer
Advocate Health Care
Chief Executive Officer, Advocate Physician Partners
3075 Highland Parkway, Suite 600
Downers Grove, IL 60515

Dear Dr. Sacks,

As you know, Aon is the largest operator of private health care exchanges in the US. As we continue to build our set of solutions, we are interested in expanding the carrier lineup that we offer to include select hospital systems and physician groups. As part of this strategy, we would include more narrow networks that would incorporate these hospitals and physician groups. We believe by doing so, we will be able to better serve our corporate clients and their employees.

For this strategy to be successful, we seek to include hospital systems and physician groups that meet the following criteria:

1. Sufficient geographic reach so that the plan could be attractive to a critical mass of employees, per employer, throughout the Chicagoland area
2. Price competitiveness such that enrollees would be drawn to the plan versus a broader network alternative
3. Brand awareness and reputation such that enrollees will be familiar with the participating providers

While Advocate, stand-alone, is a terrific system, as is North Shore, it is only, when combined, we feel the above criteria are really met. We know that you have recently launched a low-priced narrow network solution for the public exchanges, and we believe that once you merge with North Shore, we would have an attractive and marketable product for our exchange, assuming it is similarly priced.

We would be pleased to discuss this further with you as you continue to plan for the merger and hope we are able to offer an Advocate and North Shore narrow network solutions in the near term.

Best regards,

Matthew Levin
EVP & Head of Global Strategy
Aon plc

Aon
200 East Randolph Street | Chicago, IL 60601

Horizontal Merger Guidelines

U.S. Department of Justice

and the

Federal Trade Commission

Issued: August 19, 2010

Defining a market broadly to include relatively distant product or geographic substitutes can lead to misleading market shares. This is because the competitive significance of distant substitutes is unlikely to be commensurate with their shares in a broad market. Although excluding more distant substitutes from the market inevitably understates their competitive significance to some degree, doing so often provides a more accurate indicator of the competitive effects of the merger than would the alternative of including them and overstating their competitive significance as proportional to their shares in an expanded market.

> *Example 4:* Firms A and B, sellers of two leading brands of motorcycles, propose to merge. If Brand A motorcycle prices were to rise, some buyers would substitute to Brand B, and some others would substitute to cars. However, motorcycle buyers see Brand B motorcycles as much more similar to Brand A motorcycles than are cars. Far more cars are sold than motorcycles. Evaluating shares in a market that includes cars would greatly underestimate the competitive significance of Brand B motorcycles in constraining Brand A's prices and greatly overestimate the significance of cars.

Market shares of different products in narrowly defined markets are more likely to capture the relative competitive significance of these products, and often more accurately reflect competition between close substitutes. As a result, properly defined antitrust markets often exclude some substitutes to which some customers might turn in the face of a price increase even if such substitutes provide alternatives for those customers. However, a group of products is too narrow to constitute a relevant market if competition from products outside that group is so ample that even the complete elimination of competition within the group would not significantly harm either direct customers or downstream consumers. The hypothetical monopolist test (see Section 4.1.1) is designed to ensure that candidate markets are not overly narrow in this respect.

The Agencies implement these principles of market definition flexibly when evaluating different possible candidate markets. Relevant antitrust markets defined according to the hypothetical monopolist test are not always intuitive and may not align with how industry members use the term "market."

Section 4.1 describes the principles that apply to product market definition, and gives guidance on how the Agencies most often apply those principles. Section 4.2 describes how the same principles apply to geographic market definition. Although discussed separately for simplicity of exposition, the principles described in Sections 4.1 and 4.2 are combined to define a relevant market, which has both a product and a geographic dimension. In particular, the hypothetical monopolist test is applied to a group of products together with a geographic region to determine a relevant market.

4.1 Product Market Definition

When a product sold by one merging firm (Product A) competes against one or more products sold by the other merging firm, the Agencies define a relevant product market around Product A to evaluate the importance of that competition. Such a relevant product market consists of a group of substitute products including Product A. Multiple relevant product markets may thus be identified.

4.1.1 The Hypothetical Monopolist Test

The Agencies employ the hypothetical monopolist test to evaluate whether groups of products in candidate markets are sufficiently broad to constitute relevant antitrust markets. The Agencies use the

hypothetical monopolist test to identify a set of products that are reasonably interchangeable with a product sold by one of the merging firms.

The hypothetical monopolist test requires that a product market contain enough substitute products so that it could be subject to post-merger exercise of market power significantly exceeding that existing absent the merger. Specifically, the test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ("hypothetical monopolist") likely would impose at least a small but significant and non-transitory increase in price ("SSNIP") on at least one product in the market, including at least one product sold by one of the merging firms.[4] For the purpose of analyzing this issue, the terms of sale of products outside the candidate market are held constant. The SSNIP is employed solely as a methodological tool for performing the hypothetical monopolist test; it is not a tolerance level for price increases resulting from a merger.

Groups of products may satisfy the hypothetical monopolist test without including the full range of substitutes from which customers choose. The hypothetical monopolist test may identify a group of products as a relevant market even if customers would substitute significantly to products outside that group in response to a price increase.

> *Example 5:* Products A and B are being tested as a candidate market. Each sells for $100, has an incremental cost of $60, and sells 1200 units. For every dollar increase in the price of Product A, for any given price of Product B, Product A loses twenty units of sales to products outside the candidate market and ten units of sales to Product B, and likewise for Product B. Under these conditions, economic analysis shows that a hypothetical profit-maximizing monopolist controlling Products A and B would raise both of their prices by ten percent, to $110. Therefore, Products A and B satisfy the hypothetical monopolist test using a five percent SSNIP, and indeed for any SSNIP size up to ten percent. This is true even though two-thirds of the sales lost by one product when it raises its price are diverted to products outside the relevant market.

When applying the hypothetical monopolist test to define a market around a product offered by one of the merging firms, if the market includes a second product, the Agencies will normally also include a third product if that third product is a closer substitute for the first product than is the second product. The third product is a closer substitute if, in response to a SSNIP on the first product, greater revenues are diverted to the third product than to the second product.

> *Example 6:* In Example 5, suppose that half of the unit sales lost by Product A when it raises its price are diverted to Product C, which also has a price of $100, while one-third are diverted to Product B. Product C is a closer substitute for Product A than is Product B. Thus Product C will normally be included in the relevant market, even though Products A and B together satisfy the hypothetical monopolist test.

The hypothetical monopolist test ensures that markets are not defined too narrowly, but it does not lead to a single relevant market. The Agencies may evaluate a merger in any relevant market

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[4] If the pricing incentives of the firms supplying the products in the candidate market differ substantially from those of the hypothetical monopolist, for reasons other than the latter's control over a larger group of substitutes, the Agencies may instead employ the concept of a hypothetical profit-maximizing cartel comprised of the firms (with all their products) that sell the products in the candidate market. This approach is most likely to be appropriate if the merging firms sell products outside the candidate market that significantly affect their pricing incentives for products in the candidate market. This could occur, for example, if the candidate market is one for durable equipment and the firms selling that equipment derive substantial net revenues from selling spare parts and service for that equipment.

satisfying the test, guided by the overarching principle that the purpose of defining the market and measuring market shares is to illuminate the evaluation of competitive effects. Because the relative competitive significance of more distant substitutes is apt to be overstated by their share of sales, when the Agencies rely on market shares and concentration, they usually do so in the smallest relevant market satisfying the hypothetical monopolist test.

> *Example 7:* In Example 4, including cars in the market will lead to misleadingly small market shares for motorcycle producers. Unless motorcycles fail the hypothetical monopolist test, the Agencies would not include cars in the market in analyzing this motorcycle merger.

4.1.2 Benchmark Prices and SSNIP Size

The Agencies apply the SSNIP starting from prices that would likely prevail absent the merger. If prices are not likely to change absent the merger, these benchmark prices can reasonably be taken to be the prices prevailing prior to the merger.[5] If prices are likely to change absent the merger, e.g., because of innovation or entry, the Agencies may use anticipated future prices as the benchmark for the test. If prices might fall absent the merger due to the breakdown of pre-merger coordination, the Agencies may use those lower prices as the benchmark for the test. In some cases, the techniques employed by the Agencies to implement the hypothetical monopolist test focus on the difference in incentives between pre-merger firms and the hypothetical monopolist and do not require specifying the benchmark prices.

The SSNIP is intended to represent a "small but significant" increase in the prices charged by firms in the candidate market for the value they contribute to the products or services used by customers. This properly directs attention to the effects of price changes commensurate with those that might result from a significant lessening of competition caused by the merger. This methodology is used because normally it is possible to quantify "small but significant" adverse price effects on customers and analyze their likely reactions, not because price effects are more important than non-price effects.

The Agencies most often use a SSNIP of five percent of the price paid by customers for the products or services to which the merging firms contribute value. However, what constitutes a "small but significant" increase in price, commensurate with a significant loss of competition caused by the merger, depends upon the nature of the industry and the merging firms' positions in it, and the Agencies may accordingly use a price increase that is larger or smaller than five percent. Where explicit or implicit prices for the firms' specific contribution to value can be identified with reasonable clarity, the Agencies may base the SSNIP on those prices.

> *Example 8:* In a merger between two oil pipelines, the SSNIP would be based on the price charged for transporting the oil, not on the price of the oil itself. If pipelines buy the oil at one end and sell it at the other, the price charged for transporting the oil is implicit, equal to the difference between the price paid for oil at the input end and the price charged for oil at the output end. The relevant product sold by the pipelines is better described as "pipeline transportation of oil from point A to point B" than as "oil at point B."

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[5] Market definition for the evaluation of non-merger antitrust concerns such as monopolization or facilitating practices will differ in this respect if the effects resulting from the conduct of concern are already occurring at the time of evaluation.

Example 9: In a merger between two firms that install computers purchased from third parties, the SSNIP would be based on their fees, not on the price of installed computers. If these firms purchase the computers and charge their customers one package price, the implicit installation fee is equal to the package charge to customers less the price of the computers.

Example 10: In Example 9, suppose that the prices paid by the merging firms to purchase computers are opaque, but account for at least ninety-five percent of the prices they charge for installed computers, with profits or implicit fees making up five percent of those prices at most. A five percent SSNIP on the total price paid by customers would at least double those fees or profits. Even if that would be unprofitable for a hypothetical monopolist, a significant increase in fees might well be profitable. If the SSNIP is based on the total price paid by customers, a lower percentage will be used.

4.1.3 Implementing the Hypothetical Monopolist Test

The hypothetical monopolist's incentive to raise prices depends both on the extent to which customers would likely substitute away from the products in the candidate market in response to such a price increase and on the profit margins earned on those products. The profit margin on incremental units is the difference between price and incremental cost on those units. The Agencies often estimate incremental costs, for example using merging parties' documents or data the merging parties use to make business decisions. Incremental cost is measured over the change in output that would be caused by the price increase under consideration.

In considering customers' likely responses to higher prices, the Agencies take into account any reasonably available and reliable evidence, including, but not limited to:

- how customers have shifted purchases in the past in response to relative changes in price or other terms and conditions;
- information from buyers, including surveys, concerning how they would respond to price changes;
- the conduct of industry participants, notably:
  - sellers' business decisions or business documents indicating sellers' informed beliefs concerning how customers would substitute among products in response to relative changes in price;
  - industry participants' behavior in tracking and responding to price changes by some or all rivals;
- objective information about product characteristics and the costs and delays of switching products, especially switching from products in the candidate market to products outside the candidate market;
- the percentage of sales lost by one product in the candidate market, when its price alone rises, that is recaptured by other products in the candidate market, with a higher recapture percentage making a price increase more profitable for the hypothetical monopolist;
- evidence from other industry participants, such as sellers of complementary products;

- legal or regulatory requirements; and

- the influence of downstream competition faced by customers in their output markets.

When the necessary data are available, the Agencies also may consider a "critical loss analysis" to assess the extent to which it corroborates inferences drawn from the evidence noted above. Critical loss analysis asks whether imposing at least a SSNIP on one or more products in a candidate market would raise or lower the hypothetical monopolist's profits. While this "breakeven" analysis differs from the profit-maximizing analysis called for by the hypothetical monopolist test in Section 4.1.1, merging parties sometimes present this type of analysis to the Agencies. A price increase raises profits on sales made at the higher price, but this will be offset to the extent customers substitute away from products in the candidate market. Critical loss analysis compares the magnitude of these two offsetting effects resulting from the price increase. The "critical loss" is defined as the number of lost unit sales that would leave profits unchanged. The "predicted loss" is defined as the number of unit sales that the hypothetical monopolist is predicted to lose due to the price increase. The price increase raises the hypothetical monopolist's profits if the predicted loss is less than the critical loss.

The Agencies consider all of the evidence of customer substitution noted above in assessing the predicted loss. The Agencies require that estimates of the predicted loss be consistent with that evidence, including the pre-merger margins of products in the candidate market used to calculate the critical loss. Unless the firms are engaging in coordinated interaction (see Section 7), high pre-merger margins normally indicate that each firm's product individually faces demand that is not highly sensitive to price.[6] Higher pre-merger margins thus indicate a smaller predicted loss as well as a smaller critical loss. The higher the pre-merger margin, the smaller the recapture percentage necessary for the candidate market to satisfy the hypothetical monopolist test.

Even when the evidence necessary to perform the hypothetical monopolist test quantitatively is not available, the conceptual framework of the test provides a useful methodological tool for gathering and analyzing evidence pertinent to customer substitution and to market definition. The Agencies follow the hypothetical monopolist test to the extent possible given the available evidence, bearing in mind that the ultimate goal of market definition is to help determine whether the merger may substantially lessen competition.

4.1.4 Product Market Definition with Targeted Customers

If a hypothetical monopolist could profitably target a subset of customers for price increases, the Agencies may identify relevant markets defined around those targeted customers, to whom a hypothetical monopolist would profitably and separately impose at least a SSNIP. Markets to serve targeted customers are also known as price discrimination markets. In practice, the Agencies identify price discrimination markets only where they believe there is a realistic prospect of an adverse competitive effect on a group of targeted customers.

> *Example 11:* Glass containers have many uses. In response to a price increase for glass containers, some users would substitute substantially to plastic or metal containers, but baby food manufacturers would not. If a

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[6] While margins are important for implementing the hypothetical monopolist test, high margins are not in themselves of antitrust concern.

hypothetical monopolist could price separately and limit arbitrage, baby food manufacturers would be vulnerable to a targeted increase in the price of glass containers. The Agencies could define a distinct market for glass containers used to package baby food.

The Agencies also often consider markets for targeted customers when prices are individually negotiated and suppliers have information about customers that would allow a hypothetical monopolist to identify customers that are likely to pay a higher price for the relevant product. If prices are negotiated individually with customers, the hypothetical monopolist test may suggest relevant markets that are as narrow as individual customers (see also Section 6.2 on bargaining and auctions). Nonetheless, the Agencies often define markets for groups of targeted customers, i.e., by type of customer, rather than by individual customer. By so doing, the Agencies are able to rely on aggregated market shares that can be more helpful in predicting the competitive effects of the merger.

4.2 Geographic Market Definition

The arena of competition affected by the merger may be geographically bounded if geography limits some customers' willingness or ability to substitute to some products, or some suppliers' willingness or ability to serve some customers. Both supplier and customer locations can affect this. The Agencies apply the principles of market definition described here and in Section 4.1 to define a relevant market with a geographic dimension as well as a product dimension.

The scope of geographic markets often depends on transportation costs. Other factors such as language, regulation, tariff and non-tariff trade barriers, custom and familiarity, reputation, and service availability may impede long-distance or international transactions. The competitive significance of foreign firms may be assessed at various exchange rates, especially if exchange rates have fluctuated in the recent past.

In the absence of price discrimination based on customer location, the Agencies normally define geographic markets based on the locations of suppliers, as explained in subsection 4.2.1. In other cases, notably if price discrimination based on customer location is feasible as is often the case when delivered pricing is commonly used in the industry, the Agencies may define geographic markets based on the locations of customers, as explained in subsection 4.2.2.

4.2.1 Geographic Markets Based on the Locations of Suppliers

Geographic markets based on the locations of suppliers encompass the region from which sales are made. Geographic markets of this type often apply when customers receive goods or services at suppliers' locations. Competitors in the market are firms with relevant production, sales, or service facilities in that region. Some customers who buy from these firms may be located outside the boundaries of the geographic market.

The hypothetical monopolist test requires that a hypothetical profit-maximizing firm that was the only present or future producer of the relevant product(s) located in the region would impose at least a SSNIP from at least one location, including at least one location of one of the merging firms. In this exercise the terms of sale for all products produced elsewhere are held constant. A single firm may operate in a number of different geographic markets, even for a single product.

Example 12: The merging parties both have manufacturing plants in City X. The relevant product is expensive to transport and suppliers price their products for pickup at their locations. Rival plants are some distance away in City Y. A hypothetical monopolist controlling all plants in City X could profitably impose a SSNIP at these plants. Competition from more distant plants would not defeat the price increase because supplies coming from more distant plants require expensive transportation. The relevant geographic market is defined around the plants in City X.

When the geographic market is defined based on supplier locations, sales made by suppliers located in the geographic market are counted, regardless of the location of the customer making the purchase.

In considering likely reactions of customers to price increases for the relevant product(s) imposed in a candidate geographic market, the Agencies consider any reasonably available and reliable evidence, including:

- how customers have shifted purchases in the past between different geographic locations in response to relative changes in price or other terms and conditions;
- the cost and difficulty of transporting the product (or the cost and difficulty of a customer traveling to a seller's location), in relation to its price;
- whether suppliers need a presence near customers to provide service or support;
- evidence on whether sellers base business decisions on the prospect of customers switching between geographic locations in response to relative changes in price or other competitive variables;
- the costs and delays of switching from suppliers in the candidate geographic market to suppliers outside the candidate geographic market; and
- the influence of downstream competition faced by customers in their output markets.

4.2.2 Geographic Markets Based on the Locations of Customers

When the hypothetical monopolist could discriminate based on customer location, the Agencies may define geographic markets based on the locations of targeted customers.[7] Geographic markets of this type often apply when suppliers deliver their products or services to customers' locations. Geographic markets of this type encompass the region into which sales are made. Competitors in the market are firms that sell to customers in the specified region. Some suppliers that sell into the relevant market may be located outside the boundaries of the geographic market.

The hypothetical monopolist test requires that a hypothetical profit-maximizing firm that was the only present or future seller of the relevant product(s) to customers in the region would impose at least a SSNIP on some customers in that region. A region forms a relevant geographic market if this price increase would not be defeated by substitution away from the relevant product or by arbitrage,

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[7] For customers operating in multiple locations, only those customer locations within the targeted zone are included in the market.