States District Court for the Western District of Virginia.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* in connection with the Greenwood Chemical Company Superfund (''Site''), located in Albermarle County, Virginia.

The consent decrees that were lodged would resolve the United States' claims against two of the four defendants. One defendant, High Point Chemical Corporation, will pay $4 million to settle claims against it. The second defendant, Clarence Hustrulid, will pay $100,000 to resolve claims against him. In both cases, 90% of the money will be paid to the United States and the remaining 10% to the Commonwealth of Virginia, which is a co-plaintiff in the case.

The consent decrees include covenants not to sue by the United States under sections 106 and 107 of CERCLA, and under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period for thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be sent to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Greenwood Chemical Company*, D.J. Ref. 90–11–2–679. Commenters may request an opportunity for a public hearing in the affected area, in accordance with section 7003(d) of RCRA.

The proposed consent decrees may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Rd., SW, Suite One, Roanoke, VA 24011; at US EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement, Section Environment and Natural Resources Division.

[FR Doc. 99–21366 Filed 8–17–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 3–99CV1398–H]

United States of America, and the State of Texas v. Aetna Inc. and The Prudential Insurance Company of America Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Texas (Dallas Division) in *United States of America and the State of Texas* v. *Aetna Inc. and The Prudential Insurance Company of America,* Civil Action No. 3–99CV1398–H. On June 21, 1999, the United States and the State of Texas filed a Complaint to enjoin defendant Aetna's proposed acquisition of certain health insurance-related assets of the Prudential Insurance Company of America, an acquisition which would have violated section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed with the Complaint requires Aetna to divest its interests in NYLCare Health Plans of the Gulf Coast, Inc. and NYLCare Health Plans of the Southwest, Inc., providers of health insurance in the Houston and Dallas areas, respectively. Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Suite 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the Northern District of Texas (Dallas Division).

Public comment on the proposed Final Judgment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Krush, Chief, Healthcare Task Force, 325 Seventh Street, NW, Room 404, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: (202) 307–5799).

Constance Robinson,

Director of Operation & Merger Enforcement.

United States District Court for the Northern District of Texas (Dallas Division)

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue is proper in this Court.

(2) The proposed Final Judgment attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the plaintiffs have not withdrawn their consent, which they may do at any time before entry of the proposed Final Judgment by serving notice thereof on all other parties and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event the plaintiffs withdraw their consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this

Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted,

Dated: June 21, 1999.

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW., Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile: (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW., Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and the Prudential Insurance Company of America, Defendants.

Hold Separate Stipulation and Order

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Aetna'' means defendant Aetna Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

B. ''NYLCare-Gulf Coast'' means NYLCare Health Plans of the Gulf Coast, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Houston, Brazoria, Galveston, Austin, San Antonio, and Corpus Christi, Texas.

C. ''NYLCare-Southwest'' means NYLCare Health Plans of the Southwest, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview, and Amarillo.

D. ''Prudential'' means defendant The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

II. Objectives

A. The proposed Final Judgment filed in this case is meant to ensure Aetna's prompt divestiture of NYLCare-Gulf Coast and NYLCare-Southwest for the purpose of maintaining viable competitors in the sale of HMO and HMO-based POS plans and the purchase of physician services, and to remedy the effects that the United States and the State of Texas allege would otherwise result from Aetna's proposed acquisition of Prudential's health care assets.

B. This Hold Separate Stipulation and Order is intended to ensure, prior to such divestiture, that NYLCare-Gulf Coast and NYLCare-Southwest, which are being divested, be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Aetna shall immediately begin to take all steps necessary to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. Aetna shall not coordinate the pricing, marketing, or sale of health care services from NYLCare-Gulf Coast and NYLCare-Southwest with the pricing, marketing, or sale of health care services by Aetna. Within twenty-five (25) calendar days of the filing of the Complaint in this matter, Aetna will comply and inform plaintiffs of the steps taken to comply with this provision.

B. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, ongoing, economically viable, and active competitors, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture required by the Final Judgment has been accomplished. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiffs' approval, subject to Section IV.C, or from outside the company.

2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.

3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.

4. Aetna will create a separate and independent patient management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.

5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

6. Aetna will create a separate and independent network operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

8. Pursuant to transition services agreements approved by plaintiffs, subject to Section IV.C, Aetna will provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order.

C. Aetna shall take all steps necessary to ensure that the management of NYLCare-Gulf Coast and NYLCare-Southwest will not be influenced by Aetna except as necessary to meet

Aetna's obligations as described below, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with NYLCare-Gulf Coast and NYLCare-Southwest will be kept separate and apart from the operations of Aetna. Aetna's influence over NYLCare-Gulf Coast and NYLCare-Southwest shall be limited to that necessary to carry out Aetna's obligations under this Hold Separate Stipulation and Order, the Final Judgment, and any applicable regulatory requirements, including all reserve or capital requirements. Aetna may receive aggregate historical financial information (excluding rate or pricing information) relating to NYLCare-Gulf Coast and NYLCare-Southwest to the extent necessary to allow Aetna to prepare financial reports, tax returns, personnel reports, regulatory filings, and other necessary or legally required reports.

D. Aetna shall maintain at either current levels or at the highest levels approved during the year prior to Aetna's acquisition of NYLCare-Gulf Coast and NYLCare-Southwest, whichever are higher, promotional, advertising, sales, technical assistance, marketing, and merchandising support for NYLCare-Gulf Coast and NYLCare-Southwest, but in any event at levels sufficient to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are economically viable businesses.

E. Aetna shall provide and maintain all required reserves and sufficient working capital to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

F. Aetna shall provide and maintain sufficient lines and sources of credit to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

G. Aetna shall not take any action to consummate the proposed acquisition of Prudential's health care business pursuant to the Asset Transfer and Acquisition Agreement, dated as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such time as the plaintiffs in their sole discretion, subject to Section IV.C, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors and that Aetna has complied with this Hold Separate Stipulation and Order, or until the divestitures required by the Final Judgment are complete.

H. Aetna shall not, except in the ordinary course of business, or as otherwise permitted under this Hold Separate Stipulation and Order, or as part of a divestiture approved by the plaintiffs in their sole discretion, subject to Section IV.C, remove, sell, lease, assign, transfer, pledge as collateral for loans, or otherwise dispose of, any asset, tangible or intangible, of NYLCare-Gulf Coast and NYLCare-Southwest.

I. Aetna shall maintain, in accordance with sound accounting principles, separate, true, accurate, and complete financial ledgers, books, and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit, and loss of NYLCare-Gulf Coast and NYLCare-Southwest.

J. Until such time as NYLCare-Gulf Coast and NYLCare-Southwest are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Aetna shall not hire, transfer, terminate, or alter, to the detriment of any employee, any current employment or salary agreement for any employee who on the date of the signing of this Hold Separate Stipulation and Order is employed at NYLCare-Gulf Coast or NYLCare-Southwest.

K. Aetna may retain an independent consultant (the ''Consultant'') to monitor the operations of NYLCare-Gulf Coast and NYLCare-Southwest until the divestiture(s) required by the Final Judgment has been accomplished. The Consultant shall have no role in the management of NYLCare-Gulf Coast and NYLCare-Southwest, but shall be given reasonable access to files, data, reports, and other information regarding the operations of NYLCare-Gulf Coast and NYLCare-Southwest. The Consultant's sole responsibility will be to report at least monthly to Aetna's Director of Internal Audit, stating the Consultant's opinion on the question whether NYLCare-Gulf Coast and NYLCare-Southwest are being managed in accordance with applicable law, consistent with prudent underwriting and other industry standards, and consistent with the fiduciary duties of its management. If the Consultant's opinion on this question is anything other than an unqualified ''yes,'' the Consultant shall submit a written report stating the basis for its opinion to the Director of Internal Audit, with a copy to the plaintiffs. The Consultant shall not transmit to Aetna any information that Aetna is prohibited from receiving under paragraph III.C of this Hold Separate Stipulation and Order. After receiving the Consultant's written report, and with the consent of the plaintiffs in their sole discretion, subject to Section IV.C, Aetna may take appropriate corrective action.

IV. Other Provisions

A. Aetna shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to a suitable purchaser.

B. Prudential shall take no action that would hinder or obstruct Aetna's ability or efforts to comply with this Hold Separate Stipulation and Order.

C. In the event plaintiffs are unable to agree on a course of action regarding any item within their discretion in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to that course of action.

D. With the consent of the plaintiffs, in their sole discretion, subject to Section IV.C, Aetna may exclude certain NYLCare-Gulf Coast and NYLCare-Southwest assets from this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW, Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW, Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

It Is So Ordered.

Dated _____, 1999.

_____

United States District Judge.

C. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

For Plaintiff, United States of America.

Paul J. O'Donnell,

Massachusetts Bar #547125, U.S. Department of Justice, Antitrust Division, Health Care Task Force, 325 Seventh Street, NW, Suite 400, Washington, DC 20530; Tel: (202) 616–5933, Facsimile: (202) 514–1517.

For Plaintiff, State of Texas.

Mark Tobey,

State Bar No. 20082960, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711–2548; Tel: (512) 463–2185, Facsimile (512) 320–0975.

For Defendant, Aetna Inc.

Robert E. Bloch,

D.C. Bar #175927, Mayer, Brown & Platt, 1909 K Street, NW, Washington, DC 20006; Tel: (202) 263–3203, Facsimile: (202) 263–3300.

For Defendant, The Prudential Insurance Company of America.

Michael L. Weiner,

New York Bar #MW0294, Skadden, Arps, Slate, Meagher & Flom, LLP, 919 Third Avenue, New York, NY 10022; Tel: (212) 735–2632, Facsimile: (212) 451–7446.

[Civil Action No. 3–99CV 1398–H]

United States of America, and the State of Texas, Plaintiff, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Revised Final Judgment

Whereas, plaintiffs, the United States of America and the State of Texas, filed a Complaint in this action on June 21, 1999, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Revised Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Revised Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Revised Final Judgment pending its approval by the Court;

And whereas, plaintiffs intend to preserve competition by requiring Aetna to divest its interests in the Houston operations of NYLCare Health Plans of the Gulf Coast, Inc., and the Dallas operations of NYLCare Health Plans of the Southwest, Inc., consisting of, among other assets, approximately two hundred sixty thousand (260,000) and one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS enrollees, respectively;

And whereas, plaintiffs require defendants to make the divestitures for the purpose of establishing a viable competitor in the development, marketing, and sale of HMO and HMO-based POS health plans in the Houston and Dallas areas;

And whereas, plaintiffs require defendants to make the divestitures for the purpose of redressing the effects that the United States and the State of Texas allege would otherwise result from Aetna's proposed acquisition of Prudential's health care assets, including the ability to depress physicians' reimbursement rates in Houston and Dallas, which is likely to lead to a reduction in quantity or a degradation in the quality of physician services provided to patients in those areas;

And whereas, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Revised Final Judgment:

A. ''Aetna'' means Aetna, Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and its directors, officers, managers, agents, and employees.

B. ''Dallas'' means the entire service area of NYLCare-Southwest including, but not limited to, the following Texas counties: Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

C. ''Excluded Assets'' means those businesses of NYLCare-Gulf Coast and NYLCare-Southwest that need not be divested, which consist of: (1) All Medicare HMO plans; (2) commercial HMO and HMO-based POS accounts not located in Houston or Dallas; (3) provider network rental arrangements for PPO plans; and (4) administrative services contracts with self-funded plans.

D. ''Houston'' means the following Texas counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

E. ''NYCare-Gulf Coast'' means NYLCare Health Plans of the Gulf Coast, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Central and Southeastern Texas, excepting the Excluded Assets, and includes:

1. All tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO and HMO-based POS plans, all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Houston, all customer lists and credit records; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Houston or Dallas;

2. All intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licenses.

F. ''NYLCare-Southwest'' means NYLCare Health Plans of the Southwest, Inc., a wholly owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview and Amarillo, excepting the Excluded Assets, and includes:

1. All tangible assets necessary to compete in the sale or administration of HMO and HMO-based POS plans; all personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, facilities, and other tangible property or improvements used in the sale or administration of HMO

and HMO-based POS plans; all licenses, permits, and authorizations issued by any governmental organization relating to HMO and HMO-based POS plans; contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees; all other contracts, agreements, leases, commitments, and understandings pertaining to HMO and HMO-based POS plans; all contracts with accounts located in Dallas; all customer lists and credit records,; and all other records maintained in connection with the sale and administration of HMO and HMO-based POS plans in Dallas or Houston;

2. All intangible assets relating to the sale or administration of HMO and HMO-based POS plans, including but not limited to any licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, programs, and all manuals and technical information provided to employees, customers, suppliers, agents, or licenses.

G. ''Prudential'' means The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

III. Applicability

A. The provisions of this Revised Final Judgment apply to Aetna and Prudential and to all other persons in active concert or participation with any of them who shall have received actual notice of this Revised Final Judgment by personal service or otherwise.

B. Aetna shall require, as a condition of the sale or other disposition of NYLCare-Gulf Coast and NYLCare-Southwest, that the acquirer agree to be bound by the provisions of this Revised Final Judgment.

IV. Divestiture

A. Aetna is hereby ordered and directed in accordance with the terms of this Revised Final Judgment to divest its interests in NYLCare-Gulf Coast and NYLCare-Southwest, excepting only the Excluded Assets, to an acquirer(s) acceptable to the plaintiffs, in their sole discretion, subject to Section XII.

B. Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hunded sixty seven thousand (167,000) commerically insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestiture of the two NYLCare entities. Aetna may include related PPO business as a part of the sale of the NYLCare entities, and the actual number of such PPO enrollees as of the date of signing of the definitive purchase and sale agreement(s) of the divestiture of the NYLCare entities will be taken into account in determining Aetna's compliance with the membership targets described herein.

C. Aetna shall use its best efforts to accomplish the divestitures as expeditiously as possible and will accelerate the timetable for executing the definitive purchase and sale agreement(s) for the divestiture of the NYLCare entities to a target date of October 1, 1999. In any event, Aetna shall execute definitive purchase and sale agreement(s) and shall file all required applications for regulatory approval within one-hundred and twenty (120) calendar days after June 21, 1999. Aetna shall complete the divestitures within five (5) business days after it receives all necessary regulatory approvals for divestiture of NYLCare-Gulf Coast and NYLCare-Southwest and the acquisition of Prudential, or five (5) business days after notice of the entry of this Revised Final Judgment by the Court, whichever is later.

D. The plaintiffs, in their sole discretion, subject to Section XII, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days. If a further extension is required to obtain necessary regulatory approvals, the plaintiffs, in their sole discretion, subject to Section XII, may grant the time necessary to obtain such approvals.

E. In accomplishing the divestitures ordered by this Revised Final Judgment, Aetna promptly shall make known, by usual and customary means, the availability for purchase of NYLCare-Gulf Coast and NYLCare-Southwest. Aetna shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Revised Final Judgment and shall provide such person with a copy of this Revised Final Judgment. Aetna shall also offer to furnish to all prospective purchasers, subject to reasonable confidentiality assurances, all information regarding NYLCare-Gulf Coast and NYLCare-Southwest customarily provided in a due diligence process, except information subject to the attorney-client privilege or the attorney work-product privilege. Aetna shall make available such non-privileged information to the United States and the State of Texas at the same time that such information is made available to prospective purchasers.

F. Aetna shall permit prospective purchasers to have reasonable access to all NYLCare-Gulf Coast's and NYLCare-Southwest personnel, physical facilities, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

G. Aetna shall not take any action that will impede in any way the operation of NYLCare-Gulf Coast and NYLCare-Southwest; shall immediately cease all actions directed at the integration of NYLCare-Gulf Coast and NYLCare-Southwest into Aetna.

H. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, on-going, economically viable, and active competitors until completion of the divestitures ordered by this Revised Final Judgment, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiff's approval, subject to Section XII, or from outside the company.

2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.

3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.

4. Aetna will create a separate and independent management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.

5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

6. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.

8. Pursuant to transition services agreements approved by plaintiffs, subject to Section XII, Aetna will

provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under Section III.E of the Revised Hold Separate Stipulation and Order entered earlier.

9. Aetna will provide any additional transitional services requested by the management of NYLCare-Gulf Coast and/or NYLCare-Southwest in order to maintain the membership targets described in Section IV.B. Such additional services may include, but not be limited to, funding of service quality guarantees, subject to the approval of the plaintiffs in their sole discretion, pursuant to Section XII.

10. Aetna will fund an incentive pool of at least $500,000, which will be available to management of the NYLCare entities if they meet the membership targets described in Section IV.B as of the closing date for the sale of the NYLCare entities.

I. Aetna shall not take any action to consummate the proposed acquisition of Prudential's heath care business pursuant to the Asset Transfer and Acquisition Agreement, date as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such time as plaintiffs, to their sole satisfaction, subject to Section XII, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors, that Aetna has complied with the terms of the Revised Hold Separate Stipulation and Order entered previously, or until the divestitures required by this Revised Final Judgment are complete.

J. Aetna shall request that the NYLCare entities provide the plaintiffs with bi-weekly reports on total membership of the entities until the divestitures required by this Revised Final Judgment are complete.

K. Unless the plaintiffs, in their sole discretion, subject to Section XII, consent in writing, the divestitures pursuant to Section IV (or by trustee appointed pursuant to Section V) shall include the entire NYLCare-Gulf Coast and NYLCare-Southwest businesses, excepting only the Excluded Assets, operated pursuant to the Revised Hold Separate Stipulation and Order entered previously in this proceeding, and shall be accomplished by selling or otherwise conveying NYLCare-Gulf Coast and NYLCare-Southwest to a purchaser(s) in such a way as to satisfy the plaintiffs in their sole discretion, subject to Section XII, that NYLCare-Gulf Coast and NYLCare-Southwest can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the sale of HMO and HMO-based POS plans. These divestitures may be made to one or more purchasers provided that in each instance it is demonstrated to the sole satisfaction of the plaintiffs, subject to Section XII, that the acquirer(s) will remain viable competitors. The divestitures, whether pursuant to Section IV or Section V, shall be made to a purchaser(s) for whom it is demonstrated to the plaintiffs' sole satisfaction, subject to Section XII: (1) Has the capability and intent of competing effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston; (2) has the managerial, operational, and financial capability to compete effectively in the sale of HMO and HMO-based POS plans in Houston and Dallas; and (3) is not restrained through any agreement with Aetna or otherwise in its ability to compete effectively in the sale of HMO and HMO-based POS plans in Dallas and Houston.

L. For a period of one year from the date of the completion of the divestiture, Aetna shall not hire or solicit to hire any individual who, on the date of the divestiture, was an employee of NYLCare-Gulf Coast and NYLCare-Southwest, unless such individual has (1) a written offer of employment from a third party for a like position, or (2) a written notice from the acquirer of NYLCare-Gulf Coast or NYLCare-Southwest, stating that the company does not intend to continue to employ the individual in a like position.

V. Appointment of Trustee

A. In the event that Aetna has not divested NYLCare-Gulf Coast and NYLCare-Southwest within the time specified in Section IV, the Court shall appoint, on application of the plaintiffs, a trustee selected by the plaintiffs in their sole discretion, subject to Section XII, to effect the required divestitures.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell NYLCare-Gulf Coast and NYLCare-Southwest, as described in Sections II.E and II.F. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C, the trustee shall have the power and authority to hire, at the cost and expense of Aetna, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the plaintiffs in their sole discretion, subject to Section XII, shall have the power and authority to require Aetna to sell NYLCare's PPO business in Houston and Dallas if the plaintiffs, in the exercise of their sole discretion, subject to Section XII, determine that such a sale is necessary for the preservation of competition, and shall have such other power and authority at this Court shall deem appropriate. Aetna shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Aetna must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Aetna, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Aetna and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Aetna shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Aetna shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence

process as the trustee may reasonably request, subject to customary confidentiality assurances. Aetna shall permit prospective purchasers of NYLCare-Gulf Coast and NYLCare-Southwest to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Revised Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Revised Final Judgment, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for *in camera* review. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports may be filed under seal for *in camera* review. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs, subject to Section XII.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Revised Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Section IV or Section V, Aetna or the trustee, whichever is then responsible for effecting the divestitures, shall notify the United States and the State of Texas of the proposed divestitures. If the trustee is responsible, it shall similarly notify Aetna. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the subject of the binding contract, together with full details of same. Within ten (10) calendar days of their receipt of such notice, the United States or the State of Texas may request from Aetna, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestitures and the proposed purchaser. Aetna and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calender days after receipt of the notice or within twenty (20) calender days after the plaintiffs have been provided the additional information requested from Aetna, the trustee, the proposed purchaser, and any third party, whichever is later, the plaintiffs, in their sole discretion, subject to Section XII, shall provide written notice to Aetna and the trustee, if there is one, stating whether it objects to the proposed divestitures. If the plaintiffs provide written notice to Aetna and the trustee that they do not object, then the divestitures may be consummated, subject only to Aetna's limited right to object to the sale under Section V.B. Absent written notice that the plaintiffs do not object to the proposed purchaser or upon objection by the plaintiffs, such divestitures proposed under Section IV or Section V may not be consummated. Upon objection by Aetna under Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty-five (25) calendar days of the June 21, 1999 filing of the original Hold Separate Order and Stipulation in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or Section V, Aetna shall deliver to the United States and the State of Texas an affidavit as to the fact and manner of compliance with Section IV or Section V. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Aetna has made to solicit a buyer for NYLCare-Gulf Coast and NYLCare-Southwest and to provide required information to prospective purchasers including the limitations, if any, on such information.

B. Within twenty-five (25) calendar days of the June 21, 1999 filing of the original Hold Separate Order and Stipulation in this matter. Aetna shall deliver to the United States and the State of Texas an affidavit that describes in detail all actions Aetna has taken and all steps Aetna has implemented on an on-going basis to preserve NYLCare-Gulf Coast and NYLCare-Southwest pursuant to Section VIII and the Revised Hold Separate Stipulation and Order previously entered by this Court. The affidavit also shall describe, but not be limited to, Aetna's efforts to maintain and operate NYLCare-Gulf Coast and NYLCare-Southwest as active competitors, and the plans and timetable for Aetna's integration of Prudential's healthcare assets. Aetna shall deliver to the United States and the State of Texas an affidavit describing any changes to the efforts and actions outlined in Aetna's earlier affidavit(s) filed pursuant to this Section VII.B within fifteen (15) calendar days after such change is implemented.

C. Until one year after the divestitures required by this Revised Final Judgment have been completed, Aetna shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

VIII. Hold Separate Order

Until the divestitures required by this Revised Final Judgment have been accomplished, Aetna shall take all steps necessary to comply with Section IV and the Revised Hold Separate Stipulation and Order entered by this Court, to preserve the assets of NYLCare-Gulf Coast and NYLCare-Southwest, and to ensure that NYLCare-Gulf Coast and NYLCare-Southwest remain viable competitors in the sale of HMO and HMO-based POS plans in Dallas and Houston. Defendants shall take no action that would jeopardize the

divestitures of NYLCare-Gulf Coast and NYLCare-Southwest.

IX. Financing

Aetna is ordered and directed not to finance all or any part of any purchase by an acquirer(s) made pursuant to Section IV or Section V.

X. Compliance Inspection

For the purpose of determining or securing compliance with this Revised Final Judgment or for determining whether this Revised Final Judgment should be modified or terminated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division, or the State of Texas, upon written request by the Texas Attorney General, and on reasonable notice to Aetna made to its principal offices, shall be permitted:

1. Access during Aetna's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, including computerized records, in the possession or under the control of Aetna, which may have counsel present, relating to any matters contained in this Revised Final Judgment and the Revised Hold Separate Stipulation and Order;

2. Subject to the reasonable convenience of Aetna and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General of the United States, the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Texas, made to Aetna's principal offices, Aetna shall submit such written reports, under oath if required, with respect to any matter contained in this Revised Final Judgment and the Revised Hold Separate Stipulation and Order entered earlier by this Court.

C. No information or documents obtained by the means provided in Section VII or Section X shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Texas, except in the course of legal proceedings to which the United States or the State of Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Revised Final Judgment, or as otherwise required by law.

D. If at any time Aetna furnishes to the United States or the State of Texas information or documents, Aetna represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Aetna marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States or the State of Texas shall give ten (10) calendar days' notice to Aetna prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Aetna is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Revised Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Revised Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Miscellaneous

In the event plaintiffs are unable to agree on a course of action regarding Sections IV.A, IV.D, IV.H, IV.I, IV.K, V.A, V.B, V.F, and VI in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to the course of action.

XIII. Termination

Unless this Court grants an extension, this Revised Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Revised Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge.

[Civil Action No.: 3–99CV1398–H]

United States of America, and the State of Texas, Plaintiffs, v. Aetna Inc., and The Prudential Insurance Company of America, Defendants.

Revised Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C 16(b)–(h), the United States submits this Competitive Impact Statement to assist the Court in assessing the proposed Revised Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on June 21, 1999, alleging that the proposed acquisition by Aetna Inc. (''Aetna'') of The Prudential Insurance Company of America's (''Prudential'') health care business would violate Section 7 of the Clayton Act (''Section 7''), 15 U.S.C. 18. The State of Texas, by and through its Attorney General, is co-plaintiff with the United States in this action.

The Complaint alleges that Aetna and Prudential compete head-to-head in the sale of health maintenance organization (''HMO'') and HMO-based point-of-service (''HMO–POS'') health plans in Houston and Dallas, Texas; that such competition has benefited consumers by keeping prices low and quality high; and that the proposed acquisition would end such competition and give Aetna sufficient market power to increase prices or reduce quality in the sale of HMO and HMO–POS plans in these geographic areas (Complaint ¶ 26.) The Complaint also alleges that the acquisition would enable Aetna to unduly depress physicians' reimbursement rates in Houston and Dallas, resulting in a reduction of quantity or a degradation in quality of physicians' services in these area. (Complaint ¶ 33.)

When the Complaint was filed, the plaintiffs also filed a proposed settlement that would permit Aetna to complete its acquisition of Prudential but would require divestitures of certain assets sufficient to preserve competition in the sale of HMO and HMO–POS plans and the purchase of physicians' services in Houston and Dallas. This settlement consisted of a proposed Final Judgment, Hold Separate Stipulation and Order, and Stipulation. To further clarify certain aspects of the proposed Final Judgment, on August 4, 1999, the parties made a joint motion to the Court for entry of a Revised Hold Separate Stipulation and Order, as well as a joint motion to file a Revised Final Judgment and Revised Stipulation.

The proposed Revised Final Judgment requires Aetna to divest its interests in the Houston-area commercial HMO and HMO–POS businesses of NYLCare Health Plans of the Gulf Coast, Inc. (''NYLCare-Gulf Coast''), a previously acquired health plan serving Houston and other areas in south and central Texas, and the commercial HMO and

HMO–POS businesses of NYLCare Health Plans of the Southwest, Inc. (''NYLCare-Southwest''), a previously acquired health plan serving the Dallas area. If Aetna does not complete the divestitures within the time frame established in the proposed Revised Final Judgment, a trustee appointed by the Court will be empowered to sell NYLCare-Gulf Coast and NYLCare-Southwest. If the assets are not sold within six (6) months after the appointment of the trustee, the Court shall enter such orders as it shall deem appropriate to carry out the purpose of the trust. (Revised Final Judgment ¶ V.A., F.)

The Revised Hold Separate Stipulation and Order ensure that NYLCare-Gulf Coast and NYLCare-Southwest function as independent, economically viable, ongoing business concerns and that competition is maintained prior to the divestitures. It requires Aetna to immediately take steps to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors until the completion of the divestitures ordered by the Revised Final Judgment, with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. In addition, Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestiture of the two NYLCare entities. Until the plaintiffs, in their sole discretion, determine the NYLCare-Gulf Coast and NYLCare-Southwest can function as effective competitors, Aetna may not take any action to consummate the proposed acquisition of Prudential. (Revised Final Judgment ¶ IV,I.)

The United States, the State of Texas, and the defendants have stipulated that the proposed Revised Final Judgment may be entered after compliance with the APPA. Entry of the proposed Revised Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Revised Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

Aetna is a Connecticut corporation providing health and retirement benefits and financial services with its principal place of business in Hartford, Connecticut. Through its wholly owned subsidiary, Aetna U.S. Healthcare, Aetna offers an array of health insurance products, including indemnity (''fee-for-service''), preferred provider organization (''PPO''), POS, and HMO plans. Aetna also purchases physicians' services for its health plan members, which it offers to members through Aetna's health plans. In 1998, Aetna U.S. Healthcare reported revenues of over $14 billion and was the largest health insurance company in the country, providing health care benefits to approximately 15.8 million people in 50 states and the District of Columbia.

Prudential is a New Jersey mutual life insurance company with its principal place of business in Newark, New Jersey. Like Aetna, Prudential offers indemnity, PPO, POS, and HMO plans and also buys physicians' services, which it offers to its enrollees through Prudential's health plans. In 1998, Prudential HealthCare reported total revenues of approximately $7.5 billion and was the nation's ninth largest health insurance company, serving approximately 4.9 million health insurance beneficiaries in 28 states and the District of Columbia.

B. Description of the Events Giving Rise to the Alleged Violations

Aetna and Aetna Life Insurance Company, a wholly owned subsidiary of Aetna, entered into an Asset Transfer and Acquisition Agreement (''Agreement'') dated December 9, 1998, with Prudential and PRUCO, Inc., a wholly owned subsidiary of Prudential. Under the terms of the Agreement, Aetna would acquire substantially all of Prudential's assets related to issuing, selling, and administering group medical, dental indemnity, and managed care plans, including HMO and HMO–POS plans. The purchase price stated in the Agreement is $1 billion, consisting of $465 million in cash, $500 million in three-year promissory notes, $15 million in cash payable under a Coinsurance Agreement, and $20 million in cash to be paid under a Risk-Sharing Agreement.

C. Anticompetitive Effects of the Proposed Acquisition

1. The Sale of HMO and HMO–POS Plans

Aetna's proposed acquisition of Prudential would be likely to substantially lessen competition in the sale of HMO and HMO–POS plans in Houston and Dallas, Texas, in violation of Section 7.

a. Product Market

Managed care companies, such as Aetna and Prudential, contract with employers and other group purchasers to provide health insurance services or to administer health care coverage to employees and other group members. There are a variety of managed care products available to employers and other group purchasers which provide health care services at an agreed-upon rate, subject to certain utilization review and management requirements. These products, which include HMO, PPO, and POS plans, have become increasingly popular options for employers, largely because of the managed care companies' ability to obtain competitive rates from health care providers and to control utilization of health care services.

As the Complaint alleges, HMO and HMO–POS products differ from PPO or indemnity plans in terms of benefit design, cost, and other factors. (Complaint ¶ 15.) For example, HMOs provide superior preventative care benefits, but they place limits on treatment options and generally require use of a primary care physician ''gatekeeper.'' PPO plans, which do not require enrollees to go through a ''gatekeeper'' and do not emphasize preventative care, are generally more expensive than HMOs. POS plans can be based on either an HMO or PPO network and fall between HMO and PPO plans in terms of access and cost. That is, POS plans offer patients more flexibility at a higher cost relative to HMOs. In general, then, PPOs and indemnity options are more expensive, provide better benefits with respect to coverage when ill, and allow greater access to providers. In contrast, HMO and HMO-based POS options are generally less expensive, provide better benefits with respect to health maintenance or preventaive care, place greater limits on treatment, and restrict access to providers. (*Id.*)

Not only do these plans in fact differ by cost and benefit configuration, they are perceived as different by purchasers; neither employers nor employees view PPO plans as adequate substitutes for HMO or HMO–POS plans. Instead, they

view them as distinct products, meeting different needs and appealing to different types of enrollees. Indeed, enrollees who leave an HMO disproportionately select another HMO (or HMO–POS), not a PPO, for their next health care benefit plan. (Complaint ¶ 17.)

Moreover, analyses of the data obtained from the parties and from other plans strongly indicate that consumers—employers and employees—view HMO and HMO–POS plans as distinct from other health plans and that PPO or indemnity plans are not thought to be ready substitutes for HMO and HMO–POS plans. These analyses demonstrate that the elasticity of demand for HMO and HMO–POS plans is sufficiently low that a small but significant price increase for all HMO and HMO–POS plans would be profitable because consumers would not shift to PPO and indemnity plans in sufficient numbers to render such an increase unprofitable.

Together with consistent evidence from numerous witnesses interviewed, these analyses support the conclusion that HMO and HMO–POS plans constitute the relevant product for analysis of the proposed transaction. (Complaint ¶ 18.)

b. Geographic Markets

Virtually all managed care companies establish provider networks in the areas where employees work and live, and they compete on the basis of these local provider networks. The relevant geographic markets in which HMO and HMO–POS plans compete are thus generally no larger than the local areas within which HMO and HMO–POS enrollees demand access to providers. More specifically, a small but significant increase in the price of HMO and HMO–POS plans would not cause a sufficient number of customers to switch to health plans outside of these regions to make such a price increase unprofitable. For this reason, the Department's analysis focused on MSAs in and around Houston and Dallas as the relevant geographic markets. (Complaint ¶ 20.)

c. Competitive Effects

Aetna and Prudential are among each other's principal competitors in the sale of HMO and HMO–POS plans in Houston and Dallas, and employers currently view them as close substitutes based on product design and quality. Maintaining Prudential as a competitor to Aetna in Houston and Dallas has become particularly important since Aetna's 1998 acquisition of NYLCare, a transaction that propelled Aetna's HMO and HMO–POS market share from 13% to 44% in Houston and from 11% to 26% in Dallas. (Complaint ¶ 22.) The proposed acquisition of Prudential would further enhance Aetna's position by eliminating competition between the two companies, giving Aetna market shares of 63% in Houston and 42% in Dallas. (*Id.*)

As the Complaint alleges, potential or current competitors will not be able to constrain Aetna's exercise of its post-merger market power in the defined geographic markets. (Complaint ¶ 25). Effective new entry for a HMO or HMO–POS plan in Houston or Dallas typically takes two to three years and costs approximately $50 million. (Complaint ¶ 23.) In such an environment, *de novo* entry is unlikely to defeat a price increase over the short term. (*Id.*) Furthermore, companies currently offering PPO or indemnity plans are unlikely to shift their resources to provide HMO or HMO–POS plans in Houston or Dallas in the event of a small but significant price increase. A number of managed care providers have stated during interviews that such a shift would be difficult, expensive, and time consuming, and that they would not enter the HMO or HMO–POS markets even if Aetna were to raise its prices a ''small but significant amount.'' (Merger Guidelines ¶ 1.11.) Finally, managed care companies that presently offer HMO or HMO–POS plans in Houston and Dallas are unlikely to be able to expand or reposition themselves sufficiently to restrain anticompetitive behavior by Aetna in either area following the transaction. (Complaint ¶ 24.) Not only would these companies face some of the costs and difficulties of a new entrant, they would be unable to contend successfully with Aetna's advantages in national reputation, quality accreditation, product array, and provider network (*Id.*) It is therefore unlikely that either new entry or expansion by competitors could counteract a post-merger price increase. (Complaint ¶ 25.)

For all of these reasons, the proposed transaction would enable the merged entity to increase prices or reduce the quality of HMO and HMO–POS plans available to consumers in these areas, in violation of Section 7.

2. The Purchase of Physicians' Services

As alleged in the Complaint, Aetna's acquisition of Prudential will also consolidate its purchasing power over physicians' services in Houston and Dallas, enabling the merged entity to unduly reduce the rates paid for those services. 5

a. Product Market

Physician's services are those medical services provided and sold by physicians, and the only purchasers are individual patients or the commercial and government health insurers that purchase their services on behalf of individual patients. (Complaint ¶ 27.) As a result, physicians cannot seek other purchasers in the event of a small but significant decrease in the prices paid by these buyers. (*Id.*) Nor will such a price decrease cause physicians to stop providing their services or shift towards other activities in numbers sufficient to make such a price reduction unprofitable. (*Id.*) Physicians' services thus constitute the relevant product market within which to assess the likely effect of Aetna's acquisition of Prudential. (*Id.*)

b. Geographic Markets

The geographic markets for the purchase and sale of physicians' services are localized. In Houston and Dallas, as elsewhere, patients seeking medical care generally prefer to have access to treatment close to where they work or live. As a result, commercial and government health insurers—the primary purchasers of physicians' services—seek to have in their provider networks physicians whose offices are convenient to where their enrollees work or live. (Complaint ¶ 19.) Consequently, physicians could not shift their services towards purchasers outside of these areas in numbers sufficient to make a price paid to physicians practicing in Houston or Dallas.

Furthermore, an established physician who has invested time and expense in building a practice in Houston or Dallas (or any other locale) would incur considerable costs in moving his or her practice to a new geographic area, including the substantial costs of building new relationships with hospitals, other physicians, employees, and patients in the new area. (Complaint ¶ 28.) For these reasons, a small but significant decrease in the prices paid to physicians practicing in Houston or Dallas would not cause physicians to relocate their practices in numbers sufficient to make such a price reduction unprofitable. (Complaint ¶ 29).

For all of these reasons, the MSAs in and around Houston and Dallas constitute the relevant geographic markets. (*Id.*; Merger Guidelines ¶ 1.21.)

c. Competitive Effects

In Houston and Dallas, as elsewhere, the contract terms a physician can

obtain from a managed care company such as Aetna or Prudential depend on the physician's ability to terminate, or to credibly threaten to terminate, his or her relationship if the company demands unfavorable contract terms. (Complaint ¶ 30). Since physician's services, unlike certain tangible products, cannot be stored until the physician finds a more acceptable buyer, failing to replace lost business expeditiously imposes an irrevocable loss of revenue upon a physician. Consequently, a physician's ability to terminate, or credibly threaten to terminate, a provider relationship depends on his or her ability to make up that lost business promptly. (*Id.*)

Physicians, however, generally have only a limited ability to encourage patients to switch health care plans or providers. (Complaint ¶ 31.) To retain a patient after terminating a plan requires the physician to convince the patient either to switch to another employer-sponsored plan in which the physician participates (which might not be an option) or to pay considerably higher out-of-pocket costs, either in the form of increased copayments for use of an out-of-network physician (if allowed) or by absorbing the total cost of the physicians' services as unreimbursed medical expenses. As a result, a physician who discontinues his or her relationship with Aetna could expect to lose a significant share of his or her Aetna patients.

A physician's ability to replace, in a timely manner, such lost business is significantly diminished when a large number of patients need to be replaced. (Complaint ¶ 32.) Because of Aetna's all products clause''—which requires a physician to participate in all of Aetna's health plans if he or she participates in any Aetna plan—a physician would lose patients from all Aetna plans if he or she rejects the rates or other terms of any one Aetna plan. Thus, the cost of replacing Aetna patients will be greater when Aetna plans collectively account for a larger share of a physician's total revenue.

Furthermore, the ability to replace a given number of Aetna patients is diminished when a physician's non-Aetna sources of patients are more limited. Consequently, the cost of replacing Aetna patients will be greater the larger Aetna's share of all patients in a locality.

Aetna's proposed acquisition of Prudential, following its recent acquisition of NYLCare, will give it control over both a large share of the revenue of a substantial number of physicians in Houston and Dallas and a large share of all patients in those areas. (Complaint ¶ 33.) In light of the limited ability of physicians to encourage patient switching, a significantly larger number of physicians' in Houston and Dallas would be unable to reject Aetna's demands for more adverse contract terms if Aetna were allowed to acquire Prudential. (*Id.*) The proposed acquisition thus would give Aetna the ability to unduly depress physician reimbursement rates in Houston and Dallas, likely leading to a reduction in quantity or degradation in the quality of physicians' services. (*Id.; see also* Merger Guidelines ¶ 0.1.)

III. Explanation of the Proposed Revised Final Judgment

The proposed Revised Final Judgment orders and directs Aetna to divest its interests in the Houston operations of NYLCare-Gulf Coast and the Dallas operations of NYLCare-Southwest, consisting of, among other assets, approximately 260,000 and 167,000 commercially insured HMO and HMO–POS enrollees in Houston and Dallas, respectively. 6 (Revised Final Judgment ¶ II.E, F.)

The provisions of the proposed Revised Final Judgment are designed to eliminate the two anticompetitive effects of the proposed acquisition. First, the divestitures will preserve competition and protect consumers from higher prices for HMO and HMO–POS plans by establishing a new, independent, and economically viable competitor—or by significantly strengthening the existing competitors—in the development, marketing, and sale of HMO and HMO–POS plans in the Houston and Dallas areas. Second, the divestitures will prevent the consolidation of purchasing power over physicians' services in Houston and Dallas and thereby deny Aetna the ability to unduly depress physician reimbursement rates.

In order to meet these two objectives, the proposed Revised Final Jugdment requires that Aetna promptly make NYLCare-Gulf Coast and NYLCare-Southwest available for purchase. (Revised Final Judgment ¶ IV.A.) Aetna must give all prospective purchasers reasonable access to all NYLCare-Gulf Coast's and NYLCare-Southwest's personnel, physical facilities, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. (Revised Final Judgment ¶ IV.F.) At the same time, Aetna must immediately cease all actions directed at the integration of NYLCare-Gulf Coast and NYLCare-Southwest into Aetna and must take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, on-going, economically viable, and active competitors until completion of the divestitures ordered by the Revised Final Judgment. (Revised Final Judgment ¶ IV.G, H.) Such steps must include the appointment of experienced senior management to run NYLCare-Gulf Coast and NYLCare-Southwest until the divestitures required by the Final Judgment have been accomplished, as well as the creation of a separate and independent sales organization, provider relations organization, patient management/quality management organization, commercial operations organization, network operations organization, and underwriting organization. (Revised Final Judgment ¶ IV.H.1–7.) To maintain the viability of the NYLCare entities, Aetna is also required to provide certain support services (i.e., legal, financial, actuarial, software, and computer operations support) to NYLCare-Gulf Coast and NYLCare-Southwest until the divestitures are completed. (Revised Final Judgment ¶ IV.H.8, 9.)

Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty-seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement for the divestitures of the two NYLCare entities. (Revised Final Judgment ¶ IV.B.) Aetna is required to use its best efforts to accomplish the divestiture as expeditiously as possible and will accelerate the timetable for executing the definitive purchase and sale agreement(s) for the divestiture of the NYLCare entities to a target date of October 1, 1999. (Revised Final Judgment ¶ IV.C.) In addition, Aetna will request that the NYLCare entities provide bi-weekly reports on total enrollment to the plaintiffs until the divestitures are complete. (Revised Final Judgment ¶ IV.J.) Aetna will also fund an incentive pool of at least $500,000, which will be available to the management of the NYLCare entities if they meet the membership targets described above as of the closing date for the sale of the entities. (Revised Final Judgment ¶ IV.H.10.)

Finally, Aetna may offer PPO related business as part of the sale of the NYLCare entities. (Revised Final Judgment IV.B.) The actual number of such PPO enrollees as of the signing date of the definitive purchase and sale

agreement for the divestitures of the NYLCare entities will be taken into account in determining compliance with the membership targets described in Section IV.B of the proposed Revised Final Judgment. (*Id.*) This last provision in no way lessens Aetna's obligation to divest itself of all of the assets of NYLCare-Gulf Coast and NYLCare-Southwest, excepting only the Excluded Assets.

The proposed Revised Final Judgment prohibits Aetna from taking any action to consummate the proposed acquisition until such time as plaintiffs, in their sole discretion, are satisfied that NYLCare-Gulf Coast and NYLCare-Southwest are independent and viable competitors and that Aetna has complied with the terms of the Revised Hold Separate Stipulation and Order or until the divestitures required by this Revised Final Judgment are completed. (Revised Final Judgment ¶ IV.I.) The divestitures must be accomplished by selling or conveying NYLCare-Gulf Coast and NYLCare-Southwest to a purchaser(s) in such a way as to satisfy the plaintiffs, in their sole discretion, that the entities conveyed can and will be used by the purchaser(s) as part of a viable, ongoing business engaged in the sale of HMO and HMO–POS plans in Houston and Dallas. (Revised Final Judgment ¶ IV.K.) The divestitures may be made to one or more purchasers provided that in each instance it is demonstrated, to the sole satisfaction of the plaintiffs, that the acquirer(s) will remain viable competitors. (*Id.*) The divestitures must be made to a purchaser(s) which is shown, to the plaintiffs' sole satisfaction, to have (1) the capability and intent of competing effectively in the sale of HMO and HMO–POS plans in Houston and Dallas, (2) the managerial, operational, and financial capability to complete effectively in the sale of HMO and HMO–POS plans in Houston and Dallas, and (3) no limitation, through any agreement with Aetna or otherwise, in its ability to compete effectively in the sale of HMO and HMO–POS plans in Houston and Dallas. (*Id.*)

Aetna must file all required applications for regulatory approval of the divestitures within one-hundred twenty (120) calender days after June 21, 1999, the date on which the original proposed Final Judgment was filed, and must complete the divestitures within five (5) business days after it receives all necessary regulatory approvals, or five (5) business days after the notice of the entry of this Revised Final Judgment by the Court, whichever is later. (Revised Final Judgment ¶ IV.C.) The plaintiffs may extend the time period for the divestitures by no more than sixty (60) calendar days and may, in their sole discretion, grant any further time extension needed by Aetna to obtain regulatory approval of the divestitures. (Revised Final Judgment ¶ IV.D.)

If Aetna cannot accomplish these divestitures within the above-described period, the proposed Revised Final Judgment provides that, upon application by the plaintiffs, the Court will appoint a trustee to effect the divestitures. (Revised Final Judgment ¶ V.A.) After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. (Revised Final Judgment ¶ V.E.) If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, including, if necessary, extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs. (Revised Final Judgment ¶ V.F.)

The proposed Revised Final Judgment also requires Aetna to deliver affidavits to plaintiffs as to the fact and manner of its compliance with the Revised Final Judgment within twenty-five (25) calendar days of the Court's June 21, 1999 entry of the original Hold Separate Order and Stipulation, and every thirty (30) calendar days thereafter, until divestitures have been completed, (Revised Final Judgment ¶ VII.A.) Aetna must also submit, within twenty-five (25) calendar days of the Court's entry of the original Hold Separate Order and Stipulation, an affidavit that describes in detail all actions Aetna has taken and all steps Aetna has implemented on an on-going basis to preserve NYLCare-Gulf Coast and NYLCare-Southwest, describing Aetna's efforts to maintain and operate NYLCare-Gulf Coast and NYLCare-Southwest as active competitors, and the plans and timetable for Aetna's integration of Prudential's health care assets. (Revised Final Judgment ¶ VII.B.)

The relief sought has been tailored to safeguard Houston and Dallas consumers from an increase in price or a reduction in quality of HMO and HMO–POS products. The relief sought also ensures that physicians in these markets will be protected from an undue depression of reimbursement rates, which could have led to a reduction in the quantity or a degradation in the quality of physicians' services.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Revised Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Revised Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Aetna or Prudential.

V. Procedures Available for Modification of the Proposed Revised Final Judgment

The parties have stipulated that the proposed Revised Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiffs have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Revised Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Revised Final Judgment within which any person may submit to the United States written comments regarding the proposed Revised Final Judgment. Any person should comment within sixty (60) days of the date this Competitive Impact Statement is published in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Revised Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Gail Kursh, Chief, Health Care Task Force, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 400, Washington, D.C. 20530. The proposed Revised Final Judgment provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Revised Final Judgment.

VI. Alternatives to the Proposed Revised Final Judgment

The Department considered, as an alternative to the proposed Revised Final Judgment, a full trial on the merits of the Complaint against the defendants. The Department is satisfied, however, that the divestitures of the assets and other relief contained in the proposed Revised Final Judgment will preserve viable competition in the sale of HMO and HMO–POS products and in the purchase of physicians' services in Houston and Dallas, Texas that otherwise would be affected adversely by the acquisition. Thus, the proposed Revised Final Judgment would achieve the relief the Department would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Revised Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determined whether entry of the proposed Revised Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; [and]

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. § 16(e).

As the United States Court of Appeals for the District of Columbia Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995). In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 7 Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *MidAmerica Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d. 456, 462 (9th Cir. 1988) (*citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th cir. 1981)); *see also Microsoft*,, 56 F.3d. at 1460–62.

The law requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.8

A proposed final judgment, therefore, need not eliminate every anticompetitive effect of a particular practice, nor guarantee free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability: ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' ''9

The proposed Revised Final Judgment here offers strong and effective relief that fully addresses the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents of the type described in Section 2(b) of the APPA, 15 U.S.C. § 16(b), that were considered by the United States in formulating the proposed Revised Final Judgment. Consequently, none are filed herewith.

Dated: August 3, 1999.

Respectfully submitted,

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Initiative Consortium

Notice is hereby given that, on January 26, 1999, pursuant to Section 6(a) of the Naitonal cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''The Act''), Health Information Initiative Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing its intention to disband. Specifically, as of November 30, 1998, said project was completed and the consortium and its steering committee have disbanded. The participation Agreement, which formed the basis for all authority and action by the consortium, is no longer in effect. Accordingly, The Koop Foundation Incorporated (KFI), as convener, has no further legal authority to act with respect to this project and has no ownership in any product of the project. KFI will continue to maintain its books and records relating to its activities and responsibilities as convener. KFI will respond to any questions concerning its responsibilities under the Participating Agreement. KFI is aware of no legal authority which would assign to KFI any present or future rights, duties or responsibilities with respect to any aspect of this project.

On March 30, 1995, Health Information Initiative Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section