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September 23, 2016

Mark T. Bertolini
Chairman & CEO
Aetna
151 Farmington Avenue
Hartford, CT 06156

Dear Mr. Bertolini:

On September 8, 2016, we wrote to you regarding Aetna's recent decision to leave eleven Affordable Care Act (ACA) public exchanges (the "exchanges") next year. In that letter, we asked detailed questions related to several pieces of public evidence suggesting that Aetna's decision to abandon the exchanges may have been motivated by the Justice Department's decision to enforce federal antitrust law against its proposed $37 billion merger with Humana. Yet your one-and-a-half page response that accused us of making "unfounded accusations" failed to answer any of our actual questions. We are therefore writing to reiterate our concerns and renew our request for the information we requested in our September 8th letter.

In your response to our letter, you stated that Aetna's decision to drop out of the exchanges was "based on . . . marketplace reality." However, your response ignored the questions asked in the letter about our primary concern: Aetna's risky bet that the Justice Department would not delay the proposed merger with Humana, and whether Aetna's decisions about conditions of the merger with Humana were significant contributors to its problems and the need to drop out of the exchanges.[1]

This concern has a real, meaningful impact on consumers. For example, in Florida, Aetna insured more than 215,000 people through the exchanges. In order for the exchanges to continue to work as intended to provide quality and affordable health coverage, insurance companies must compete with one another — working to provide better, more accessible, quality healthcare at a lower cost. Although we believe that the ACA will continue to ensure access to quality, affordable coverage to millions of Americans with or without Aetna's participation, our concern for the consumer has motivated our continued interest in the details of Aetna's decision.

We noted in particular that despite the serious legal risk that this merger would not be approved, Aetna nonetheless pursued it anyway, and also agreed to pay Humana a significant break-up fee of $1 billion in the event that the acquisition was not completed by December 31, 2016.[2] Furthermore, we noted that in a July 5, 2016 letter to the Justice Department, you described the

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[1] Letter to Mark Bertolini, Aetna, CEO, from Sens. Warren, Sanders, Markey, Brown, and Nelson (Sep. 8, 2016).

[2] *See* Aetna, 2015 Aetna Annual Report, Financial Report to Shareholders (Form 10-K), at 45; Compl. at 7.

imposition of this $1 billion penalty — and other costs imposed by the merger, which Aetna voluntarily agreed to pay in the event that its risky merger was blocked — as a key factor that would cause the company to withdraw from the exchanges. You wrote:

> Should the deal be blocked, the challenges will be exacerbated as we are facing significant unrecoverable costs, including carrying costs of the debt required to finance the deal . . . significant unrecoverable transaction and integration costs . . . plus a . . . breakup fee and . . . litigation expenses if the DOJ sues to enjoin the transaction.

Our September 8th letter included a number of questions about the nature of Aetna's "unrecoverable costs" and asked why, despite the risks to shareholders and to insured customers, Aetna included them as a condition of the Humana merger deal. Your response did not address a single one of those questions.

Table 1 sets forth our questions and your responses. As noted below, your response left every one of our 12 questions unanswered. We are disappointed by your failure to respond in a meaningful way. Your lack of cooperation does not mollify our concern that Aetna appears to be attempting to force the Justice Department into approving its controversial merger by threatening access to coverage for millions of Americans.

What follows are the questions that we posed in our September 8th letter, which remain unanswered. Please provide us with answers to these requests no later than September 30, 2016.

Table 1: Aetna's Responses to Questions in September 8th Letter

Question	Response
1. What exact costs will Aetna incur now that the Justice Department has challenged the merger?	No response.
2. What costs will Aetna incur if the merger is ultimately blocked?	No response.
3. Why did Aetna agree to a deal that included a $1 billion break-up fee?	No response.
4. When the company agreed to this condition, did Aetna conduct an internal assessment of the risk of a DOJ challenge?	No response.
5. When Aetna agreed to pay this fee, was Aetna aware that it would endanger participation in the ACA exchanges?	No response.

6. What steps did Aetna take, prior to July 2016, to mitigate the risk that the Justice Department would challenge or successfully block its proposed acquisition of Humana?	No response.
7. When did Aetna first determine that its participation in the public exchanges would be contingent upon federal government approval of its proposed acquisition of Humana?	No response.
8. When did Aetna first inform investors that its participation in the public exchanges would be contingent upon federal government approval of its proposed acquisition of Humana? What other risks did the company disclose to investors?	No response.
9. What criteria did Aetna use in determining the states from which to withdraw in 2016?	No response.
10. During Aetna's April 29, 2016, Q1 2016 earnings call, Aetna said that it had a "very good cost structure" in states in which it had experienced growth in its ACA exchange population, including Florida, Georgia, and North Carolina. Why is Aetna withdrawing from states in which it had a "very good cost structure" or where Aetna has performed well in the past?	No response.
11. How many enrollees have contacted Aetna over its decision to withdraw from the ACA exchanges?	No response.
12. What materials and resources is Aetna making available to assist consumers in selecting new health insurance coverage?	No response.

Sincerely,

Elizabeth Warren
United States Senator

Bernard Sanders
United States Senator

Edward J. Markey
United States Senator

Sherrod Brown
United States Senator

Bill Nelson
United States Senator