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May 13, 2020

By Electronic Delivery

Hon. Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Hon. Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Senators Warren and Blumenthal:

We are writing in response to your letter of April 27, 2020 regarding Cardinal Health, Inc.'s ("Cardinal Health" or "the Company") efforts to assist hospitals and other healthcare providers responding to the unprecedented issues presented by the COVID-19 pandemic.

Headquartered in Dublin, Ohio, Cardinal Health is an integrated healthcare services company, delivering products and logistics support to healthcare providers worldwide. Cardinal Health's approximately 49,000 employees leverage nearly 100 years of experience to help connect patients, providers, payers, pharmacists, and manufacturers.

In response to the extraordinary public health challenges caused by COVID-19, Cardinal Health is intensifying its efforts as a global manufacturer and distributor of medical products and supplies to ensure that critical medicines and supplies, particularly Personal Protective Equipment ("PPE") and related products, reach healthcare providers who need them so they can safely serve the patients who depend on them. We also are working to effectively source PPE products, as well as non-PPE products, that have seen and will continue to see increased demand.

Cardinal Health is partnering in a variety of ways with many groups working to address pandemic supply needs. We are collaborating with the federal government, state and local officials, and nonprofits. We also are working with supply chain partners, including our customers, who are hospitals and other healthcare providers, and suppliers, trade groups, other distributors, and leading experts to both make and acquire more needed products and distribute them faster. Some of these efforts include:

- Collaborating with Battelle to provide a new end-to-end solution for collecting, decontaminating and returning N95 respirator masks;
- Partnering with diagnostic manufacturers to distribute 10 COVID-19 assays to

support molecular, rapid antigen and serological testing nationally;

- Working with alternative supplier partners to develop and test alternative swabs as a potential back-up specimen collection option for standard swabs;
- Distributing manufacturers' industrial N95 mask options, which the U.S. Food and Drug Administration ("FDA") recently authorized for use in healthcare settings; and
- Participating in a new coalition dedicated to exploring innovative solutions for products in chronic shortage.

As part of Cardinal Health's broader pandemic response effort, the Company and several other industry partners in the U.S. medical distribution and operations supply chain are coordinating with the Federal Emergency Management Agency ("FEMA") to address critical supply shortages through a program known as "Project Airbridge." Authorized under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.*, Project Airbridge helps industry actors rapidly provide critical PPE items that are currently in short supply to locations where they are needed most, including to hospitals and other healthcare providers.

Under the terms of the program, FEMA, or the U.S. Department of Health and Human Services ("HHS") working in coordination with FEMA, transports via commercial air freight PPE or other medical supplies sourced by the distributors, who then distribute those supplies within the United States. The U.S. government has not provided Cardinal Health with any product in connection with Project Airbridge; instead, Project Airbridge expedites the transport of product owned or ordered by Cardinal Health overseas that would otherwise be transported via sea freight. Cardinal Health has agreed to distribute at least 50% of the PPE transported through Project Airbridge, or the equivalent of those products, to Cardinal Health customers in priority geographies specified by FEMA.

We appreciate the opportunity to provide additional information on our role in Project Airbridge in response to your letter. To the extent additional information relevant to your letter comes to our attention, we may supplement these responses as appropriate.

1. How was your company selected as a participant in Project Air Bridge?

FEMA selected six distributors to participate in Project Airbridge. These six distributors cover approximately 90% of the existing supply chain for hospital and other clinical settings in the United States.

2. What specific contracts or agreements are in place between you and federal government entities regarding Project Air Bridge? With what agencies has your company signed these agreements?

Cardinal Health's participation in Project Airbridge is governed by a Memorandum of Agreement ("MOA") entered into by Cardinal Health, FEMA, and the Department of Homeland Security ("DHS"). In addition, the Department of Justice ("DOJ") has issued

a Business Review Letter governing the distributors' participation in the project. We have enclosed the MOA and Business Review Letter as attachments to this response.

3. How do you receive medical supplies and PPE from Project Air Bridge? What costs do you pay for the federal government's transport of these items, and how does it compare to your typical costs for obtaining items from suppliers?

As explained further above, Project Airbridge expedites the transport of certain PPE products that Cardinal Health owns or has ordered from overseas suppliers. Under the terms of the MOA, the U.S. government bears the costs of transporting the PPE by commercial air freight. Cardinal Health bears the responsibility to transport the product to the overseas airfield for transport and to transport the product from its arrival destination in the United States to Cardinal Health distribution centers and ultimately customers. Cardinal Health also bears the risk of loss or damage to the PPE during shipment or prior to delivery to Cardinal Health. No payment is exchanged between the U.S. government or Cardinal Health as part of Project Airbridge. Cardinal Health benefits in the form of government-funded expedited air freight in lieu of the much slower sea freight option that Cardinal Health otherwise would have utilized, which allows product to get to hospitals and other healthcare providers on an expedited basis. In exchange, Cardinal Health bears responsibility and some costs in connection with the transport of product that it would not otherwise have incurred.

4. How has your company distributed medical supplies and PPE?

a. How is your company or the government determining which half of supplies will be distributed to hotspots, and which half will instead be fed into the "normal supply chain"? For example, are medical supplies being divided into halves by number of unit? Cost? Is each category of medical product being divided separately?

Once the product arrives at Cardinal Health's distribution centers, it is aggregated with existing supply and distributed through Cardinal Health's normal supply chain based on number of units. Aggregating the supply in this manner allows Cardinal Health to quickly and more efficiently move inventory to areas of greatest need. As noted above, in accordance with the terms of the MOA, Cardinal Health has agreed to distribute PPE comprised of the same or equivalent products as, and equal to at least 50% of, the PPE transported through Project Airbridge to Cardinal Health customers in priority locations specified by FEMA. Determinations are based on individual products.

b. Have you been provided with instructions to distribute supplies to COVID-19 "hotspots"? Please provide any lists of hotspots that have been provided to you, as well as any relevant dates for which those lists were current.

Areas of prioritization are identified and updated by FEMA. We respectfully request that you seek that information directly from FEMA.

- c. **How is your company distributing the supplies that are fed into its “normal supply chain”? Are these supplies going to orders that were placed before the initiation of Project Air Bridge? Are they going to existing customers under renegotiated terms? Are they auctioned to the highest bidder? Please describe your company’s practices in as much detail as possible.**

As part of its comprehensive effort to expedite distribution of product to areas in greatest need, Cardinal Health has instituted controls applicable to all of its PPE products, including product transported by Project Airbridge. This system prioritizes distribution of products across regions guided by information provided by FEMA, as well as historical demand patterns.

Within each geographic region, product is deployed to Cardinal Health’s distribution network for delivery to various local care settings, such as hospitals and other acute care facilities, proportionally based on their historic purchasing patterns. Customers continue to purchase products under their existing contracts as well as other standard purchasing methods. Under this system, at least 50% of the same or equivalent product transported by Project Airbridge is distributed to Cardinal Health customers in FEMA-designated priority geographies. Cardinal Health has not sold any product via auction.

5. **Please provide a full accounting of the distribution of all medical supplies and equipment that you have been provided via Project Air Bridge, including a list of all COVID-19-related supplies and PPE you have received, the quantity of each item, and information on where this quantity has been distributed, including a list of how much each recipient (states, localities, and tribal governments, hospitals or medical systems, or other third-parties) has received.**

The U.S. government has not provided Cardinal Health with any product in connection with Project Airbridge; as noted above, Project Airbridge expedites transport of product owned or ordered by Cardinal Health from overseas suppliers.

As part of our compliance with Project Airbridge requirements, Cardinal Health provides FEMA a record of our participatory flights and product deliveries. We respectfully request that you seek any additional information directly from FEMA.

6. **How do you determine selling prices for medical equipment and PPE that you have obtained via Project Air Bridge?**

What restrictions, if any, dictate your ability to set prices on medical supplies distributed via Project Air Bridge? One report says that your company is required to charge “reasonable” prices. Please describe any such requirements in detail. How is the government monitoring and enforcing compliance with such requirements?

Under the terms of the MOA, Cardinal has agreed to distribute the Cardinal product transported via Project Airbridge pursuant to pricing terms defined in Section IV(B)(6) of the MOA. Customers continue to purchase products under their existing contracts as well

as other standard purchasing methods. Under this system, at least 50% of the same or equivalent product transported by Project Airbridge is distributed to Cardinal Health customers in FEMA-designated priority geographies.

7. **Please provide a full accounting of the cost and pricing of all medical supplies and equipment that you have been provided via Project Air Bridge, including a list of (1) average cost to obtain each type of supply or equipment, (2) your average selling prices for each type of supply or equipment, and (3) your average selling price for each pieces of supply or equipment for each major recipient (states, localities, and tribal governments, hospitals or medical systems, or other third-parties).**

Cardinal Health's cost to obtain PPE product, including product transported by Project Airbridge, is generally governed by its contracts with its suppliers and is sold and distributed to its customers under the terms of its contractual arrangements with each customer. Cardinal Health's pricing data is confidential business information.

8. **Is your company entrusted with distributing pre-existing orders of supplies that are seized by FEMA? Has it been given any directives on how to distribute these supplies?**

Cardinal Health is not aware of orders that have been seized by FEMA, nor has it knowingly distributed any product seized by FEMA.

* * *

Thank you for the opportunity to provide this response. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Rebecca McGrath
Vice President
Government Relations and Public Policy

Enclosure.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY (DHS/FEMA)
AND
CARDINAL HEALTH 200, LLC**

I. Parties:

The parties to this Agreement are the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) and Cardinal Health 200, LLC ("Company").

II. Authority:

This Agreement is authorized under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.

III. Purpose:

This Agreement sets forth the terms by which DHS/FEMA (or, with DHS/FEMA's coordination, the U.S. Department of Health and Human Services (HHS)) will transport Personal Protective Equipment or other medical supplies (hereinafter "PPE") on behalf of Company. The effort underlying this agreement is intended to facilitate the ability of Company to rapidly provide critical PPE items that are currently in short supply to locations where it is needed most, including end users such as hospitals, and state and local governments. In consideration of DHS/FEMA's agreement to transport PPE at the Government's expense (the "Transported PPE"), Company agrees to distribute, in accordance with their responsibilities set forth below, PPE comprised of the same or equivalent products as, and equal to a minimum of 50% of, the total Transported PPE to DHS/FEMA designated locations specified in Attachment A. Each party will cooperate to carry out its respective responsibilities under this Agreement.

IV. Responsibilities:

A. DHS/FEMA Responsibilities:

1. DHS/FEMA (or HHS) will transport, by air, PPE owned or ordered by Company to the United States from the locations identified in Attachment A. The parties may amend the list of locations specified in Attachment A at any time by mutual agreement in writing, including by email.
2. DHS/FEMA (or HHS) will use existing authority to arrange air transportation and related services to facilitate the movement of the goods to include temporary warehousing, packaging, and regulatory clearances for the Transported PPE.
3. DHS/FEMA (or HHS) will deliver the shipments to the locations designated in Attachment A.

B. Company Responsibilities:

1. Company agrees to use commercially reasonable efforts to assist DHS/FEMA (or HHS) at point of origin and point of destination to facilitate the shipment of Transported PPE.
2. Company agrees to provide a reasonable estimate of the value of the shipment at least 48 hours prior to the shipment for purposes of arranging service with a transportation service provider.
3. Company agrees that upon receipt of the Transported PPE shipment in the United States, Company will distribute PPE comprised of the same or equivalent products as, and equal to at least 50% of, the Transported PPE (the "FEMA-Directed PPE") to Company existing customers in the locations specified in Attachment B, which DHS/FEMA and HHS have determined have the most pressing need. For avoidance of doubt, any sales of such PPE directly to FEMA shall not be deemed to be distribution to the locations specified in Attachment B. DHS/FEMA reserves the right to amend the list of locations specified in Attachment B at any time.
4. Company agrees to confirm distribution of the FEMA-Directed PPE to the locations specified in Attachment B via an email to FEMA containing a report on the locations, name of recipient healthcare facilities, and amount of PPE per healthcare facility.
5. Company agrees to take possession of the Transported PPE shipped at Government's expense at the point of arrival (*i.e.*, the airport). The point(s) of arrival is set forth in Attachment A.
6. Company agrees to distribute the FEMA-Directed PPE to its customers at a reasonable price (*i.e.*, the price that a prudent and competent buyer would be willing to pay given available data on market conditions), and provided, however, that this section IV.B.6. shall not require Company to sell the FEMA-Directed PPE to its customers for less than the contractual price established between Company and its customers in the ordinary course of business.

V. Points of Contact: All notices or other written communication related to this MOA shall be in writing and shall be deemed to have been given by the notifying party if delivered by hand, electronic media (with confirmed receipt) or mailed by an overnight delivery service, to the receiving party's below identified contractual representative:

Cardinal Health	DHS/FEMA
Name: Redacted-PII	Name: Redacted-PII
Address: Redacted-PII	Address: DHS/FEMA Redacted-PII
Telephone: Redacted-PII	Telephone: Redacted-PII

Email: Redacted-PII	Email: Redacted-PII
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Company	DHS/FEMA
Name:	Name: Redacted-PII
Address:	Address: DHS/FEMA Redacted-PII
Telephone:	Telephone: Redacted-PII
Email:	Email: Redacted-PII

VI. Other Provisions:

A. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of DHS/FEMA or Company. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

B. This agreement with Company is not contingent upon, or made on the expectation of, any agreement between the U.S. and any other private company. Moreover, Company will comply with the agreement without regard to the participation or non-participation in the program, or the terms thereof, of any other private company.

C. **Risk of Loss.** All PPE furnished, loaned or bailed by Company to DHS/FEMA or HHS, or otherwise acquired by DHS/FEMA or HHS for the performance of this MOA are the property of Company. DHS/FEMA shall not charge Company for any storage, maintenance or return of any PPE, except in the circumstance that FEMA must store the shipment due to Company failure to timely take possession of the shipment at the point of destination. Except as provided for in writing, Company shall bear all risk of loss for all such PPE in DHS/FEMA's possession or for which DHS/FEMA is responsible, and DHS/FEMA will not be liable for any loss or damage to the PPE during shipment, occurring prior to delivery of the PPE to Company, or resulting from improper packing and marking, improper loading, stowing, trimming, blocking, and/or bracing of the shipment.

D. This Agreement is between DHS/FEMA and Company and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity, onto any third person or party (public or private) against the United States, its agencies, its officers or employees, or any person; or against Company, its officers or employees, or any other person.

E. This Agreement is not a fiscal or funds obligation document. Any services, equipment or personnel provided to DHS/FEMA to accomplish the goals anticipated under this agreement are done so without expectation of reimbursement or the payment of fees related to the provision of such services, equipment, or personnel, unless otherwise agreed. Any specific work or activity that involves the transfer of funds, services, or property among the parties will require execution of a separate agreement and will be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory or other legal authority. This Agreement does not provide such authority. Company agrees that it has no expectation of payment from FEMA and agrees to waive any claim for compensation of any kind from FEMA or any payment from FEMA in relation to FEMA's transportation of Company's PPE.

F. This Agreement, upon execution, contains the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter.

VII. Effective Date:

The terms of this Agreement will become effective upon the signature of both parties.

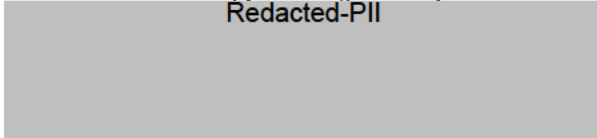
VIII. Modification:

This Agreement may be modified upon the mutual, written consent of the parties.

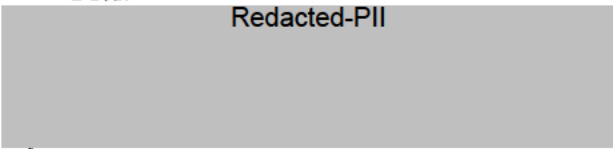
IX. Termination:

The terms of this Agreement, as modified with the consent of both parties, will remain in effect until Company has confirmed the delivery information for the PPE as specified in Section IV.B.4. The Agreement may be extended by mutual written agreement of the parties. Either party upon 5 days' written notice to the other party may, without cause, terminate this Agreement.

X. Approved by: 
Redacted-PII


Director, Operations Division, Office of Response
Federal Emergency Management Agency
Date:

Redacted-PII


Cardinal Health 200, LLC
Date: March 29, 2020



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

MAKAN DELRAHIM
Assistant Attorney General

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April 04, 2020

Lori A. Schechter
Executive Vice President, Chief Legal
Officer, and General Counsel
McKesson Corporation
6535 N. State Highway 161
Irving, TX 75039

Jessica L. Mayer
Executive Vice President, Chief Legal
and Compliance Officer
Cardinal Health, Inc.

Michael S. Ettinger
Senior Vice President, Corporate &
Legal Affairs and Chief of Staff
Henry Schein, Inc.

Nicholas J. Pace
Executive Vice President, General
Counsel & Corporate Secretary
Owens & Minor, Inc.

Alex Liberman
General Counsel
Medline Industries, Inc.

Re: McKesson Corporation, Owens & Minor, Inc., Cardinal Health, Inc.,
Medline Industries, Inc., and Henry Schein, Inc. Business Review Request
Pursuant to COVID-19 Expedited Procedure

Dear Ms. Schechter, Ms. Mayer & Messrs. Ettinger, Liberman, and Pace:

This letter responds to your request on behalf of McKesson Corporation, Owens & Minor, Inc., Cardinal Health, Inc., Medline Industries, Inc., and Henry Schein, Inc. (together the “Requesting Parties”) for the issuance of a business review letter under the Department of Justice’s (the “Department”) Business Review Procedure, 28 C.F.R. §50.6. Specifically, the Department understands that the Requesting Parties’ request is made under the expedited, temporary review procedure as detailed in the Joint Antitrust Statement Regarding COVID-19 (the “Joint Statement”) dated March 2020.¹ As indicated

¹ Dep’t of Justice & Fed. Trade Comm., Joint Antitrust Statement Regarding COVID-19 (Mar. 2020), <https://www.justice.gov/atr/joint-antitrust-statement-regarding-covid-19> [hereinafter Joint Statement].

in the Joint Statement, the Department's statement of its current enforcement intentions as set out in this letter will be in effect for one year from the date of this letter. The Requesting Parties may subsequently request, using this expedited, temporary procedure, that the Department reiterate its current enforcement intentions, if further time is necessary to respond to the unprecedented COVID-19 pandemic and its aftermath.

You have requested a statement of the Department's current antitrust enforcement intentions with respect to your efforts to expedite and increase manufacturing, sourcing, and distribution of personal-protective equipment ("PPE") — including masks, gowns, gloves, and other equipment intended to help protect first responders and other members of the medical community against Coronavirus-related infection, as well as medication to treat COVID-19 patients ("Proposed Conduct").² The Department understands that the Proposed Conduct relates to the Requesting Parties' response to the unprecedented COVID-19 pandemic and its aftermath and is "focused on, and limited to, facilitating the government's efforts to guide PPE and medications to the places they are needed most."³ The Department likewise understands that the Requesting Parties are responding cooperatively to requests from the U.S. Government, as part of a collaborative process with government personnel and consultants, in which the Department's Antitrust Division is regularly involved.⁴ Based on the information and representations you provided, the direct and continuing observations of Antitrust Division personnel, and after an expedited review, the Department presently does not intend to challenge the Requesting Parties' efforts to expedite and increase manufacturing, sourcing, and distribution of PPE and medications for the reasons explained below.

I. Background

The Requesting Parties are U.S. healthcare distributors of PPE and medications.⁵ PPE includes masks, gowns, gloves, and other equipment designed to protect against infection. Recognizing challenges presented by the pandemic to global PPE supply, U.S. Government agencies, including the Federal Emergency Management Agency ("FEMA") and the Department of Health and Human Services ("HHS"), have asked the Requesting Parties and other distributors to use their industry expertise and contacts to address PPE supply chain shortages, in addition to applying their expertise to evaluate potential laboratory and medication supply issues.

² Letter from Lori A. Schechter, McKesson Corp., Jessica L. Mayer, Cardinal Health, Inc., Michael S. Ettinger, Henry Schein, Inc., Alex Liberman, Medline Indus., Inc., & Nicholas J. Pace, Owens & Minor, Inc., to the Honorable Makan Delrahim, Assistant Attorney General for Antitrust, U.S. Dep't of Justice (Mar. 30, 2020) [hereinafter Request Letter].

³ *Id.* at 2.

⁴ The Department understands that some aspects of the proposed conduct already have been underway to facilitate the delivery of critical equipment into the United States. Although the Department typically does not review ongoing conduct, given the President's declaration of a national emergency and the current exigencies, I have determined that in these circumstances it is appropriate to consider the request.

⁵ We understand medications to also include oxygen used for medical purposes.

