

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA *et al.*,

Plaintiffs,

v.

CVS HEALTH CORPORATION

and

AETNA INC.,

Defendants.

Case No. 1:18-cv-02340-RJL

**SUPPLEMENT TO THE UNITED STATES' MOTION TO PRESENT
REBUTTAL TESTIMONY AND EVIDENCE**

The United States files this supplement to its Motion to Present Rebuttal Testimony in response to Amici's post-hearing briefs submitted on June 21.¹ Those briefs introduced new evidence not presented in the June 4–5 hearing. Like the material discussed in the United States' original motion,² the new material is inaccurate, unreliable, and—unless this motion is granted—the United States will similarly not have the opportunity to rebut it.

For example, the AMA offers an unpublished and unreported extension of a previously disclosed economics paper and argues that it provides a precise estimate of the value of WellCare's brand relative to Aetna's,³ when in fact the paper does not support that conclusion. Similarly, the AMA presents a chart to show that Aetna grew more than WellCare over time,

¹ See Dkt. Nos. 120–22.

² See Dkt. No. 116.

³ See Dkt. No. 120 at fn13.

from which they conclude that Aetna's brand is more valuable than WellCare's.⁴ But the chart, among other errors, excludes 2019 data—which would show WellCare's growth—and the brief neglects to explain that nearly all of Aetna's growth was due to a single acquisition rather than any competitive advantage conferred by the Aetna brand. This material is therefore not only new, but is also unreliable and misleading.

Because the United States has not had an opportunity to respond to the new materials introduced in the post-hearing briefs, these materials should be excluded from the record. In light of the Court's previous reluctance to exclude testimony,⁵ however, the United States extends its Motion to Present Rebuttal Testimony to cover the new materials introduced by amici and requests that the Court enter a scheduling order to resume the evidentiary hearing that took place on June 4–5.

Dated: June 25, 2019

Respectfully submitted,

/s/
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⁴ See Dkt. No. 120 at 4.

⁵ See Dkt. No. 90.

CERTIFICATE OF SERVICE

I, Jay D. Owen, hereby certify that on June 25, 2019, I caused a copy of the foregoing document to be served upon Plaintiffs State of California, State of Florida, State of Hawaii, State of Mississippi, State of Washington, and Defendants CVS Health Corporation and Aetna Inc., via the Court's CM/ECF system.

/s/

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