Leemore Dafny – Oral Remarks – 9/21/2015

Thank you, Chairman Lee, Ranking Member Klobuchar, and members of the Subcommittee, for the opportunity to testify today on consolidation in the health insurance industry.

I am a Professor of Strategy at the Kellogg School of Management. I study competition in healthcare markets using data-driven economic analysis. I previously served as Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission.

We are here today because Americans are concerned about the steep price of buying health insurance. Even as their premiums rise, they face increases in deductibles and copayments. More than a decade ago, I began studying whether a lack of competition in the health insurance industry contributes to higher premiums. It does. We are paying a premium on our premiums because of limited competition. My most conservative estimate would place that extra premium at over $200 per person per year.

The question before us today is whether more consolidation is likely to benefit consumers in the future. To inform that discussion, I will describe what we know about consolidation in the past, why those conclusions remain relevant, and what would increase the likelihood that any future consolidation benefits the public.

First, what do we know? We know less than we should, because public data are limited and cover only subsets of the industry. We know that the market for full medical insurance would be deemed highly concentrated in 38 states according to the threshold defined by the DOJ and the FTC. We know that 37 percent of Medicare beneficiaries live in counties where the Medicare Advantage market would be deemed highly concentrated. Concentration in both of these industries has been rising in recent years.

The best available evidence on the impact of consolidation comes from what are known as “event studies” or “merger retrospectives.” My colleagues and I studied such an event -- the 1999 merger between Aetna and Prudential. We examined the impact of the merger on premiums for large employers in 139 different geographic markets. Where Aetna and Prudential had the greatest overlap, we found the largest reductions in healthcare employment and wages. We would have expected premiums to go down in these areas, but the opposite was true. Put simply, the merger led to reduced payments to providers, but the cost savings were not passed through.

And it wasn't just Aetna and Prudential raising premiums. Their rivals raised premiums as well, and premiums didn't recede even after Aetna lost significant market share.

There was a bright spot, though, and that was in Texas, where the Department of Justice required the merging parties to divest plans. There were no significant merger effects on providers or premiums in those markets.

Other researchers have also found that payer mergers lead to higher premiums. And - there is no evidence that mergers have led to improved quality or more innovation.

That was then, some might say, and this is now. Insurers now face minimum medical loss ratio regulations, and must spend at least 80 or 85 cents out of every dollar collected (net of taxes and fees) on medical claims and quality improvement. Despite what you may hear, this regulation does not provide a substitute for competition. First, the MLR regulation does not pertain to self-insured plans, which include more than half of privately-insured lives. Second, in a truly competitive market, insurers also compete on non-financial dimensions, such as the quality of provider networks and chronic disease management programs. And third, what happens if the regulation is eventually repealed?

Certain mergers may yield efficiencies from economies of scale or other sources. That is not different today than it was in years past. Consumers are likelier to benefit from efficiencies where there is a market imperative to pass savings along. In light of the consolidation that has already taken place, however, the market imperative is now weaker and consolidation could jeopardize it further.

In sum, evidence from the past should not be discounted when evaluating proposed consolidations. I would caution that consolidation that occurs now is unlikely to be undone if it later proves anticompetitive. History also suggests that vigorous competition by new entrants is unlikely to arise and offset such effects.

The Department of Justice will evaluate the mergers we've just heard about and determine if the deals violate antitrust laws and follow through accordingly. Whether mergers are in the public interest and whether they violate antitrust law are two different issues. To serve the public best, I advise that you not only *ask* tough questions of the health insurance industry, but *demand* greater transparency and consider regulations to require it. With comprehensive data in hand, policymakers and regulators will be able to monitor market developments and to intervene, if necessary, based on better and more timely information. And researchers such as myself will be able to provide stronger guidance regarding the likely effects of consolidation.