



The Antitrust Analysis of IPAs

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FTC Hearings on Health Care

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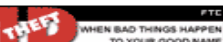




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<ul style="list-style-type: none"> FOR CONSUMERS FOR BUSINESS NEWSROOM FORMAL ACTIONS ANTITRUST RESOURCES CONGRESSIONAL RESOURCES ECONOMIC RESOURCES LEGAL RESOURCES <p style="text-align: center; font-weight: bold; margin-top: 10px;">Hot Topics</p> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> INFORMATION FLOWS <small>June 18, 2003</small> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">  </div> <div style="border: 1px solid black; padding: 2px;">  </div>	<p>For Release: June 17, 2003 FTC Testifies on Consumer Access to Generic Pharmaceuticals</p> <p><i>2002 Commission 'Study of Generic Drug Entry Prior to Patent Expiration' Presented</i></p> <p>Testifying on behalf of the Federal Trade Commission today before the U.S. Senate Judiciary Committee, Chairman Timothy J. Muris provided the FTC's perspective on current marketplace issues involving consumer access to generic pharmaceuticals. More...</p> <hr/> <p>For Release: June 17, 2003 FTC Joins International Law Enforcers in Announcing Newly Developed Cross-Border Fraud Guidelines</p> <p><i>Guidelines Will Enhance Global Efforts to Combat Growing Cross-border Fraud</i></p> <p>Joined at Federal Trade Commission headquarters in Washington, DC, today by Herwig Schlögl, Deputy Secretary General of the Organisation for Economic Cooperation and Development (OECD) and FTC Chairman Timothy J. Muris, FTC Commissioner Mozelle W. Thompson, Chair of the OECD's Committee on Consumer Policy, announced new Guidelines that outline a framework for international cooperation in the effort to combat the growing problem of cross-border fraud. More...</p> <hr/> <p>Media Advisory: June 16, 2003 The Federal Trade Commission will host a workshop, "Information Flows: The Costs and Benefits to Consumers and Businesses of the Collection and Use of Consumer Information," on Wednesday, June 18, 2003 from 8:30 a.m. to 5:15 p.m. EDT in the FTC Conference Center at 601 New Jersey Avenue, N.W., Washington, DC.</p> <hr/> <p style="text-align: right;">Last Updated: Tuesday, June 17, 2003 12:13 PM</p>	<p style="text-align: center; font-weight: bold; margin-bottom: 5px;">View the FTC's PRIVACY POLICY</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">PRIVACY INITIATIVES</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">JOBS AT THE FTC</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">EARLY TERMINATIONS</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">CONFERENCES & WORKSHOPS</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">HEARINGS</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">RELATED SITES</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">FTC Merger Best Practices</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">FTC/DOJ Hearings on the Implications of Competition and Patent Law and Policy</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">FTC/DOJ Hearings on Health Care and Competition Law and Policy</p> <p style="text-align: center; font-weight: bold; margin-bottom: 5px;">E-CONSUMER.GOV</p> <div style="background-color: #c00000; color: white; text-align: center; font-weight: bold; padding: 5px; margin-bottom: 5px;"> CONSUMER ALERT: Bogus July 1 Email Exposed </div>

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Health Care Antitrust Issues

- [Statements of Antitrust Enforcement Policy in Health Care](#)
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The Purpose of Antitrust Law

- Prevent private business practices that unreasonably restrain competition
- For the benefit of consumers:
 - Lower prices
 - Better quality products and services
 - Increased choice, selection, convenience, and innovation

The Statutory Provisions

- Sherman Act (1890)
 - Section 1 -- prohibits “every contract, combination . . . or conspiracy in restraint of trade”
 - Section 2 -- makes it unlawful for a company to “monopolize, or attempt to monopolize, or combine or conspire . . . to monopolize” trade
- Federal Trade Commission Act (1914)
 - Section 5 -- prohibits “unfair methods of competition”

Antitrust Concerns Related to Physician Collective Negotiations

1. The Cartel Problem

Agreements among otherwise competing physicians on price, or collective refusals to deal, without integrating the members' activities

- Financial integration
- Clinical integration

2. The Monopoly Problem

Integrated, but with substantial market power

Arizona v. Maricopa County Medical Society (1982)

- Supreme Court made clear that physicians in independent practices are supposed to compete
- When they don't, by collectively setting the prices at which they sell their individual physician services, they can be guilty of illegal price fixing

Maricopa

“The agreement under attack is an agreement among hundreds of doctors concerning the price at which each will offer his own services to a substantial number of consumers . . . [T]he fee agreements . . . are among independent competing entrepreneurs. They fit squarely into the horizontal price-fixing mold.” (pp. 356-57)

Maricopa & Financial Integration

- To avoid condemnation as an illegal price-fixing conspiracy, the Supreme Court said, the agreement needs to be:

“ . . . analogous to partnerships or other joint arrangements in which persons who would otherwise be competitors pool their capital and share risks of loss as well as the opportunities for profit.” (p. 356)

Financial Integration

- Some examples:
 - Capitation
 - Percentage of premium or revenue
 - Withholds
 - Global fees or all-inclusive case rates
- Financial integration is not an end in itself
- The goal is to create a meaningful prospect of:
 - Improving efficiency in the delivery of care
 - Reducing costs
 - Better managing utilization, or
 - Improving the quality of care

Clinical Integration

- An active and on-going program to evaluate and modify the practice patterns of physicians and create a high degree of interdependence and cooperation to control costs and ensure quality
- The goal is to create a meaningful prospect of:
 - Improving efficiency in the delivery of care
 - Reducing costs
 - Better managing utilization, or
 - Improving the quality of care
- Even if there is some “clinical integration,” any price agreement must be reasonably necessary to realize the efficiency goals

Some Recent Trends?

- Larger physician groups
- Often aligned with hospitals
- Reliance on agents
- Movement away from narrow HMOs to broader panel, less restrictive PPOs