

**ANTITRUST COALITION FOR CONSUMER CHOICE
IN HEALTH CARE**

1150 17th St., N.W.
Suite 601
Washington, D.C. 20036

September 30, 2002

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

**Re: Comments Regarding Competition Law and Policy &
Health Care**

Dear Mr. Clark:

The Antitrust Coalition for Consumer Choice in Health Care (ACCC-HC) is a diverse group of employers, health plans, hospitals, providers, and others involved in the purchase, management, and delivery of health care services. ACCC-HC members are dedicated to the preservation and promotion of competition in health care markets through strong antitrust enforcement.

The ACCC-HC applauds the recent enforcement actions undertaken by the Federal Trade Commission ("FTC") with respect to anticompetitive conduct by physicians, and is pleased that Chairman Muris has announced that the Commission will be devoting significant attention to the health care sector.

Some physician groups, including the American Medical Association ("AMA"), have argued that special antitrust rules should apply to physicians so that they may negotiate collectively with health plans – conduct that under existing antitrust law would be condemned as *per se* illegal. Legislation that would provide this special treatment, H.R. 3897, has been introduced in Congress. Proponents of special antitrust rules for doctors assert that such treatment is necessary to "level the playing field" with health plans that they claim have monopsony power.

The AMA raised these issues at the FTC Workshop on Health Care Competition Law and Policy that was held on September 9-10. Catherine Hanson submitted testimony on behalf of the AMA arguing that joint negotiations by unintegrated groups of physicians – which would be condemned as *per se* illegal

under traditional antitrust analysis – should be judged under the more lenient rule of reason. Dr. Donald Palmisano, President-Elect of the AMA, submitted separate testimony citing an AMA-funded study that purported to show that many health care markets are dominated by a few companies with significant market power.

The AMA's analysis of health plans market power is flawed for many reasons, and its proposed changes to the antitrust laws would result in higher costs, fewer choices, and less access for consumers. Enclosed for the Commission's consideration are the following materials addressing these issues:

- Letter from ACCC-HC to Congress opposing H.R.3897.
- Charles River Associates, "Competition in Health Insurance and Physician Markets: A Review of "Competition in Health Insurance: A Comprehensive Study of US markets" by the American Medical Association, April 2002.
- "Why Physician Cartels Do Not Need a "Fresh Look" – a Response to the AMA's Testimony at the FTC Health Care Competition Workshop

ACCC-HC appreciates this opportunity to provide comments to the FTC on these important issues.

Sincerely,

Robert F. Leibenluft
Counsel to ACCC-HC