

DIGEST OF BUSINESS REVIEWS

1994

94-1 Insurance Services Office, Inc. 1/25/94

Insurance Information exchange

Facts: The Insurance Services Office proposed to develop and market a computer database that could be loaded, via diskette, onto a personal computer and would enable a user to compare the premiums being charged by different insurers in a state for personal automobile and homeowners insurance, taking into account various risk-dependant surcharges and discounts. The product would include premium data for these lines of insurance only for states in which insurance rates are subject to regulation.

Response: The Department would be concerned about the anticompetitive impact on insurance rates of the creation of this database, but in light of the limited antitrust exemption provided by the McCarran-Ferguson Act for the business of insurance, and this product's apparent satisfaction of the prerequisites established by the Act for such exemption, the Department has no present intention to challenge the proposal.

94-2 Association of Independent Television Stations 1/25/94

Television Standards Program

Facts: Following enactment of the "Television Program Improvement Act of 1990," which granted a three-year antitrust exemption for persons in the television industry to develop and disseminate voluntary guidelines concerning television violence, INTV, a trade association whose members are independent television stations, adopted voluntary program policy guidelines with respect to violence in telecast materials and a set of viewer advisory messages that can be aired with programs containing violent material. Although the exemption has expired, INTV would like to continue and expand its efforts to address television violence and to educate its members on this issue.

Response: INTV's activities may be likened to traditional industry standard-setting efforts that do not necessarily restrain competition and may have procompetitive benefits. The Department has no present intention to challenge the proposal.

94-3 National Association of Credit Management 2/15/94

Credit Services Information Exchange

Facts: NACM intends to create a centralized clearinghouse for the exchange of information concerning "problem accounts" among businesses in the leasing

industry.

The information would be limited to credit history information that will assist members in implementing unilateral credit policies, as opposed to the exchange of information concerning the terms or conditions under which members do business with customers.

Response: The information exchange should serve the procompetitive goal of reducing the cost and improving the quality of information about debtors for the leasing industry participants. The Department has no present intention to challenge the proposal.

94-4 Bay Area Business Group on Health 2/18/94

Health Care
Medical Services

Group Purchasing

Facts: The Bay Area Business Group on Health (BBGH) proposed forming a buyer's network to solicit bids from several HMOs on two standard benefit plans, and to negotiate prices. Sixteen California companies expressed interest in joining BBGH. Participating companies were free to negotiate independently of the group with HMOs not dealing with or approved by the group.

Response: A substantial majority of all potential HMO customers will not be represented by BBGH. Although some current BBGH members are direct competitors, the members' costs of purchasing HMO health benefits account for only a small percentage of the selling price of the products and services they provide. BBGH has the potential to create efficiencies in the delivery of HMO services that could result in lower health care costs. The Department has no present intention to challenge the proposal.

94-5 New Jersey Hospital Association

2/18/94

Health Care
Hospital Services

Information Exchange
Price/Fee Review

Facts: The New Jersey Hospital Association proposed that it produce a survey and report of employee wages and salaries paid by hospitals in New Jersey. The survey and report would be compiled and published by an independent third party, set forth information solely on an aggregated basis and in a manner so that the responses of individual hospitals or hospital chains were not detectable, and contain information that was at least three months old.

Response: The proposal is consistent with the policy statement issued jointly by the Department and the Federal Trade Commission on September 15, 1993, setting forth an antitrust safety zone describing information exchanges that will not be challenged under the antitrust laws, absent extraordinary circumstances. The Department has no present intention to challenge the proposal.

94-6 National Telecommunications Data Exchange, Inc. 3/8/94

Telecommunications
Credit Services

Information Exchange

Facts: NTDE, a corporation founded by eight long-distance telephone carriers, intends to provide (through a third-party data vendor) a form of credit data exchange service to its members. NTDE's members will report to the retained data vendor all closed business accounts with uncollected balances in excess of \$100. Members reviewing applications for new business service can then query the data base and determine whether the applicant has defaulted on its obligations to another member carrier. The identities of members supplying or requesting information will not be disclosed, no other information will be exchanged, and all decisions concerning what to do with the information obtained will be unilateral.

Response: To the extent that the information exchange allows NTDE members to better evaluate credit risk and/or increases their ability to collect monies owed them, it will have a procompetitive effect. The Department has no present intention to challenge the proposal.

94-7 Houston Health Care Coalition

3/23/94

Health Care
Medical Services

Group Purchasing

Facts: The Houston Health Care Coalition (HHCC) proposed that it form a Group Purchasing Association to contract with health care providers to deliver health care services to HHCC members' employees and their dependents in a 13-county area surrounding Houston at predetermined rates. Not all HHCC members will choose to

become members of the Association; those members who are also providers will be in an "associate member" category and will not be permitted to vote on any matters involving the Association's activities, be represented on the Board of Trustees, or take part in decisions involving reimbursement rates. An independent consultant will compile data from providers regarding the costs associated with various Diagnostic Related Groups ("DRGs"), and will survey average historical costs for various procedures at approximately 65 health care facilities in the area to assemble a data base of prevailing charges for those DRGs available for program coverage. No provider will have access to the data submitted by any other provider, and only Association members will have access to the data or the study. The schedule of reimbursement rates thus compiled by the Association will be distributed to providers so they may decide whether to contract with the Association.

Response: No more than 20 percent of any health care specialist-physician providers in any relevant market in which the Association operates will be associate members. This limitation on specialty provider participation will significantly reduce any risk of provider collusion. No provider that is also an associate member may take part in negotiating reimbursement rates or setting those rates on the Association's behalf. Also, providers will not have access to any specific cost data obtained by the Association from any other providers. The Association has the potential to create efficiencies in delivering health care services that could result in lower health care costs. Finally, members are free to deal with or approach any providers individually, including providers who contract with the Association. The Department has no present intention to challenge the proposal.

94-8 Automobile Transport Fleet
Affiliation

4/19/94

Transportation Services

Group Purchasing
Information Exchange
Joint Venture
Transportation Cooperative

Facts: ATFA, an entity created by eight regional automobile transport firms, would serve as a marketer and coordinator of the firms' efforts to obtain additional business in the transporting of new and used automobiles, and would act as a common purchasing agent for certain items (e.g., trucks, tires, and insurance) used by its members. ATFA would be able to offer potential customers nationwide automobile transport services by assembling bids solicited from its regional members into a single offer, and would act as a single point of contact for any such bid or contract received. Members would remain free to compete with ATFA for any business that ATFA seeks, and in all other respects would continue to act independently.

Response: ATFA has the potential to increase competition in the transport of new cars, to enhance efficiency and lower costs in the transport of used automobiles, and any ATFA action as a common purchasing agent for its members is unlikely to have any anticompetitive effect inasmuch as its purchases would constitute a small percentage of the total sales of such items. The Department has no present intention to challenge the proposal.

94-9 Fuel Cell Commercialization Group 4/20/94

Generators/Turbines/Fuel Cells Joint Venture

Facts: FCCG is a cooperative research and development venture comprised of 37 companies, including electric and gas utilities, municipal utilities, municipalities, regional utility organizations, and independent power producers. FCCG proposes to assist Energy Resource Corporation, a manufacturer of molten carbonate fuel cells ("MFCs"), to overcome the technical and economic barriers to commercial use of MFCs as a source of clean and reliable electric power. FCCG's members do not generally compete for residential or commercial customers and remain free to participate in other fuel development projects, while FCCG will itself remain open to other members.

Response: FCCG's commercialization program may facilitate research and development of MFC power plants, and is not likely to facilitate price fixing or otherwise reduce competition among its members in the sale of electricity. The Department has no present intention to challenge the proposal.

94-10 Hotel Employees and Restaurant 5/20/94
 Employees International Union
 Welfare Fund

Health Care Information Exchange
Medical Services Physician Network Joint Venture

Facts: The Union proposed to provide a one-time historical claims report to the preferred provider organization (PPO) with which it contracts to provide health care services to its members. The report would compare the amounts the union actually paid for each procedure to each PPO physician between 9/1/91 and 8/31/92 with the amount the physician would have received under the Resource-Based Relative Value Scale fee schedule it has developed in order to help each physician make an informed decision as to whether or not to accept the RBRVS fee schedule for future services.

Response: The limited information exchange has the potential to enable individual physicians to make more informed decisions about selling their services to the Welfare Fund and make health care available to more employees at a reasonable cost. The PPO agreed with the Union not to disclose to any physician another physician's payments. The Department has no present intention to challenge the proposal.

Health Care
Dental Services

Information Exchange
Price/Fee Review

Facts: Seeskin, Paas, Blackburn & Company (SPB), an accounting firm representing 5-10 percent of dentists in the Cincinnati, Ohio area, proposed to collect price information from its dental clients on approximately 400 procedures and publish a report showing the high, low, and average price for a given procedure, citing a need for the firm and the dentists to have reliable statistical data on prices for various services provided to patients. The data collected would be historical, identity of dentists in the program would not be disclosed, no prices would be included for any specialty containing fewer than five dentists, and price information would be collected from only 5-10 percent of the dentists in the market. In addition, no discounts from list price would be reported.

Response: The Department would be concerned if the effect of the proposed conduct were to increase the likelihood that participating dentists would successfully collude, expressly or tacitly, on prices. However, the proposal contains sufficient safeguards against collusion or other conduct that would raise antitrust concern. The Department has no present intention to challenge the proposal.

Engines

Information Exchange
Negotiated Rulemaking

Facts: PPEMA, a trade association that represents manufacturers of small gasoline powered chain saws, string trimmers, blowers, etc., as well as the engines for such equipment, proposes to participate in an EPA negotiated rulemaking proceeding to establish emissions standards for small, nonroad engines. In the course of their participation in this proceeding, PPEMA members will share information concerning existing and future nonroad engine technologies. To the extent that this requires consideration of confidential business information pertaining to new technologies or the costs of potential emissions control strategies or technologies, PPEMA will collect the information from its individual members, aggregate it, and disclose only the aggregated data to its members and the EPA.

Response: Steps taken by the PPEMA and the EPA should significantly reduce the risk that actions by PPEMA members outside of the regulatory process would violate the antitrust laws. The Department has no present intention to challenge the proposal.

94-15 Collaborative Provider
Organization, Inc.

7/6/94

Health Care
Medical Services
Hospital Services

Joint Venture
Physician Network Joint Venture
Multiprovider Network

Facts: Des Moines General Hospital and 177 physicians in south-central Iowa proposed to form a PHO to offer a health care plan to business owners seeking new ways to cover their workers' medical needs in a 25 county area. The providers would contract with payers at capitated (per subscriber) rates or discounted fee for service rates with a 20 percent withhold. The members of the Collaborative Provider Organization (CPO) will share risk via both capitation and a withhold of discounted fee for service rates. CPO members will not be directly involved in setting fees, but will retain a third party administrator who will survey CPO members and compile aggregate fee data to be used in negotiating contracts for health care services. In the most populous county, less than 20 percent of all licensed physicians will join CPO, including less than 20 percent of all primary care physicians. In 18 of 30 identified specialties, membership will also be less than 20 percent, but in 12 specialty areas membership would exceed 20 percent. No CPO member will have access to another member's fees, pricing data, or other financial information.

Response: CPO appears to be a bona fide joint venture in which the participating physician members will share substantial financial risk by participating in capitated contracting arrangements or offering discounted fee-for-service rates, with a substantial withhold that is payable to physicians only if cost containment goals are met. The proposal will provide an additional alternative health care delivery system and could increase competition and lower health care costs for consumers. The Department has no present intention to challenge the proposal.

94-16 Compensation Practices Committee 8/24/94

Salaries/Compensation
Securities

Information Exchange

Facts: The Committee, composed of securities brokers, a professor of business, and an investor advocate, proposes to ascertain and disseminate information throughout the securities industry about the best broker compensation practices that can be utilized by individual brokerage firms to eliminate or reduce conflicts of interest between brokers and their customers. There is no agreement among any segment of the brokerage industry to adopt any of the Committee's recommendations. The subject of compensation levels for broker commissions or fees charged to customers is beyond the scope of the Committee's goals and will not be discussed at any meeting or hearing, or in any published report.

Response: The proposed conduct does not appear to raise risks to competition, and any reduction in the utilization of broker compensation practices that raise real or perceived conflicts of interest between brokers and their customers could have a procompetitive effect. The Department has no present intention to challenge the proposal.

94-17 Preferred Podiatric Network, Inc. 9/14/94

Health Care
Medical Services

Joint Venture
Messenger Model

Facts: A subsidiary of the New York State Podiatric Medical Association proposed to act as an intermediary to facilitate communication between managed care plans and non-integrated groups of podiatrists (members of the Association) who desire to enroll as providers in such plans. The Network would not negotiate fees on behalf of its members, and only at the specific written request of payers may the Network negotiate certain non-price matters.

Response: Fee information would not be shared with or among members. The Network would be a bona fide intermediary, would not negotiate fees for competing podiatrists, and each podiatrist would independently accept or reject any contract offer. The Network is non-exclusive and should not impede the participation of its members as podiatric providers in other managed care networks. The Department has no present intention to challenge the proposal.

Mortgage Loans

Information Exchange

Facts: MARI proposes to establish the Mortgage Industry Data Exchange ("MIDEX"), an information clearinghouse that will contain information about non-public incidents involving fraud, material misrepresentation, and other serious misconduct by real estate and mortgage industry parties that participate in originating, insuring, selling, or servicing mortgage loans. MIDEX will be open to subscribership by any mortgage originator, insurer, servicer, purchaser, or other mortgage industry participant. The information will be exchanged on a blind basis through a third-party vendor, and both reporting and receiving subscribers will make independent decisions about how they should deal with reported parties, without knowledge of the decisions of other subscribers.

Response: The proposed program should not have any anticompetitive effects and, to the extent that the information exchanged reduces industry and consumer losses attributable to fraud, material misrepresentation, or other improper conduct, it will have a procompetitive effect. The Department has no present intention to challenge the proposal.

Health Care
Chiropractic Services

Joint Venture
Physician Network Joint Venture

Facts: The International Chiropractor's Association of California (ICAC),
a
nonprofit chiropractor's association, proposed to form a for-profit network of
its
members statewide that would contract with third-party payers, limiting
membership to
no more than 50 percent of the chiropractors in any relevant geographic market.
The
network will negotiate maximum fee for service rates with each of its
network-user
clients. Members will not charge more than the negotiated rate, and must
charge their
usual rates if those are lower than the network rate. The network will monitor
utilization patterns and will drop providers whom it deems to be over-utilizers.

Response: The group will be a bona fide joint venture in which the
participating chiropractors will assume significant financial risk by
participating in fee
withhold arrangements and a risk pool. Absent the overall network's efficient
operation, all or part of the risk pool will not be available to the
participating
chiropractors for distribution. Further, ICAC will be genuinely non-exclusive
and will
be but one of several competing chiropractic networks. Since potential users of
ICAC
need only a small number of chiropractors, if ICAC attempted to demand
noncompetitive terms, alternative chiropractors with the ability and incentive
to
supplant ICAC on competitive terms would be available to users. The Department
has
no present intention to challenge the proposal.

Health Care
Medical Services

Joint Venture
Physician Network Joint Venture

Facts: Over 100 of the 276 physicians in south-central Kentucky proposed to form a provider network, Physician Care, Inc. (PCI), to offer services to self-insured employers and other third-party payers in the area. Care will be provided using either capitated or discounted fee for service rates with a 20 percent withhold. PCI will establish utilization standards and other measures to help contain health care costs.

Response: This non-exclusive venture will provide alternative health care services to consumers, and its members will share significant financial risk. The proposed network will have as much as 37 percent of primary care physicians in some local markets and a higher percentage of some specialties but, in the largely rural areas where this network will operate, those percentages appear to be necessary to provide adequate coverage for enrollees. No PCI member will have access to another member's fees, pricing data or other financial information. The Department has no present intention to challenge the proposal.

94-21 Pulmonary Associates, Ltd./ 10/31/94
Albuquerque Pulmonary
Consultants P.A.

Health Care Acquisition/Merger
Medical Services

Facts: Two pulmonary specialist physician groups in Albuquerque, New Mexico, each employing five doctors, four full time and one part time, proposed to merge. The combined firm, with 8 full time and 2 part time doctors, would be competing against at least 100 other physicians offering similar services in the area.

Response: Because board-certified pulmonologists are not the exclusive providers of the services they provide, but face competition in these services from general surgeons, cardiac surgeons, thoracic surgeons and internists as well as family physicians; because HMOs and other third-party payers in the area currently employ, contract with, or reimburse many non-pulmonologists for the same type of services provided by pulmonologists; and because staff privileges at area hospitals are extended to many non-pulmonologists to perform these services, it appears that the new firm would not be able to exercise market power. The Department has no present intention to challenge the proposal.

94-22 Burley Stabilization Corp./ 11/14/94
Burley Tobacco Growers Ass'n/
Flue-Cured Tobacco Cooperative
Stabilization Corp.

Tobacco Agricultural Cooperative

Facts: Three separate tobacco cooperatives have unilaterally decided to sell their tobacco holdings to domestic cigarette manufacturers. Each cooperative will negotiate with each of the manufacturers separately to establish a price for their respective inventories. Each cooperative also has determined unilaterally that it will be necessary to sell the tobacco to the cigarette manufacturers at the same price to each.

Response: Absent any evidence that these decisions are the result of any agreements among cigarette manufacturers, but rather result from independent determinations by the cooperatives that such decisions are in the best interests of their members, the Department has no present intention to challenge the proposals.

94-23 Chicagoland Radiological Network 12/8/94

Health Care Joint Venture
Medical Services Physician Network Joint Venture

Facts: A group of radiologists, the Chicagoland Radiological Network (CRN), proposed to offer prepaid radiological services on capitated and discounted fee

for
service (with a substantial withhold) bases to third party payers and
self-insured
employers in an eight-county area in and around Chicago. Membership would
include
about 25 percent of the more than 780 radiologists in the Chicago area, and is
not
expected to exceed that level in any relevant local market within that area.

Response: The group is assuming significant financial risk through
capitation
and withholds on fee for service payments. It has developed safeguards to
address
concerns regarding the sharing of price information when using fee for service
contracts. Each CRN physician will be expressly prohibited from disclosing any
information regarding usual and customary charges or the charges he/she has
agreed to
accept under any managed care arrangement to any other CRN physician, and CRN
will not develop a fee schedule. Rather, each physician will receive the lesser
of his
usual and customary charges or the payer's fee schedule, less at least 20
percent to be
distributed only if cost control goals are met. In addition, other radiological
groups,
and at least one other radiological network, are competing in the area. The
network
will provide cost savings to payers by educating referring physicians on more
effective
utilization of radiologist services. The Department has no present intention to
challenge the proposal.