DEPARTMENT OF JUSTICE

DOJ/FTC Hearings on Health Care and Competition Law and Policy

Introductory Remarks

"A Tale of Two Cities"

DEBORAH PLATT MAJORAS
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice

Federal Trade Commission Conference Center
Washington, D.C.

February 28, 2003

Good morning, and welcome to the third day of the Joint Department of Justice / Federal Trade Commission Health Care Hearings. My name is Deborah Majoras, and I am a Deputy Assistant Attorney General in the Department of Justice, Antitrust Division. This morning, we are going to examine in detail the performance of the health care marketplace in Boston, Massachusetts. Now, as you know, we had planned to also examine the Little Rock, Arkansas market today, thus generating – with apologies to Charles Dickens – our title, "A Tale Of Two Cities." Our friends in Little Rock, however, have been iced in by the rather harsh winter that we are all experiencing, and we are working to reschedule that session. While I doubt that today's session will be as melodramatic as its eponym ("the best of times, the worst of times"), I believe it provides a useful lens within which to examine issues in health care competition law and policy.

Boston and Little Rock represent two different points on the spectrum of health care marketplaces in the United States. We selected these two cities not because they are endpoints on the spectrum, or because they are necessarily typical or a typical of metropolitan health care markets. Rather, we selected these cities for discussion to provide a "real world" frame of reference for the more narrowly targeted sessions that we will hold in the next several months. Naturally, many future sessions will feature close-up examinations of various sectors of the market – hospitals, health plans, physicians, and others. But today's session (and our rescheduled session) allows us to discuss issues in these sectors within the context of the Boston and Little Rock marketplaces, permitting us to explore how the various components interact and interrelate with each other in two markets.

Antitrust analysis is highly fact-specific. And as much as we can all agree on that, we must constantly remind ourselves of it, lest we get hijacked by naked theory. We cannot appropriately enforce the federal antitrust laws – or even advocate or set sound competition policy – if we do not carefully examine the facts presented by the markets at issue. So, as we begin these Joint Hearings, we thought it appropriate to hold a comprehensive discussion of current market conditions in two markets. As we explore the full range of market facts and perspectives in Boston and Little Rock, including the cost, quality, and price of the care rendered, the degree of market concentration among providers and payors, and the impact of market consolidation on the performance of the payor and provider markets, we hope we can all gain some insight into market performance.

While the panelists themselves have decided what market facts they think are important to the discussion, I will say that we are particularly interested in hearing the panelists' perspectives on whether competition is working or not in their particular market; their assessments of quality and price trends in the market; their views on consolidation among health care providers and payors in these two markets, and what impact, if any, that has had on cost, quality, and prices; and their thoughts on how they believe enforcement of the federal antitrust laws, as well as regulatory requirements, contribute (or not) to the delivery of better quality and lower prices for health care in their markets.

There are specific market characteristics in the two cities that we anticipate discussing. (By the way, when I talk about market characteristics, you should not be concerned that our minds are set that these are the facts for purposes of future investigations. And, obviously, when I use the term "market," I am using it loosely, not to signify a properly defined antitrust market.)

First, in Boston, HMO penetration, which is about 50%, ranks among the highest in the country. Still, several larger HMOs have encountered financial problems, and there has been some shift away from HMO health coverage. HMO penetration is far less in Little Rock. Understanding these developments may assist us in understanding the roles that HMOs, traditional health insurance coverage, and self-insurance play and how we should define health care coverage markets.

Another market characteristic to consider is that, in Little Rock, there have been indications that the expansion of specialty hospital services has threatened to reduce the revenues of general acute care hospitals. Understanding how the opening of a single specialty hospital impacts the revenues of general acute care hospitals, and how they deal with this potential revenue loss, helps us to understand how competition among these hospitals develops. We are also interested in what underlying factors help drive the development of single specialty hospitals, whether or not the specialized hospitals have enhanced the quality of care, and whether this trend toward specialized hospitals differs in significant ways from earlier moves to specialized hospitals for children, rehabilitation, and psychiatry.

A third characteristic of particular interest, which may differentiate the Boston and Little Rock marketplaces, is that in Little Rock, an alliance between Arkansas Blue Cross Blue Shield and Baptist Health System has existed for several years. In Boston, on the other hand, hospitals have generally negotiated with the payors in more arms-length terms. Understanding the competitive impact of alliances between multiple providers, and between providers and payors helps us to understand how such alliances may affect the market power of their members, and whether they may produce anticompetitive results in the form of higher prices or lower quality.

Another market fact to consider is that Arkansas Blue Cross Blue Shield has a significant share of the health care coverage market in Little Rock. In subsequent hearings, we will consider a wide range of concerns relating to the possible market problems that could result from a single third-party payor achieving market power as a purchaser of health care services.

Finally, in Boston, several large hospitals have consolidated, which provides the foundation for several issues we will be considering later in more depth. Parties proposing hospital mergers frequently indicate that they anticipate considerable efficiencies from the merger, which will benefit consumers. In later hearings we will look at consummated hospital consolidations to assess whether the merged entities achieved the efficiencies they claimed, the extent to which to merged entities have actually consolidated administrative and clinical operations, and whether the merged entities have been able to exert market power and raise prices. We will also try to evaluate whether patient-flow data or "critical loss" determinations made pre-merger have provided a useful basis for predicting the post-merger behavior of hospitals in either the short or the long-run, and to what extent "critical loss" computations determine the magnitude of post-merger price increases. Similarly, we will also consider how effective payors are at steering patients to alternative hospitals in response to an unacceptable post-merger price increase, and what other strategies third-party payors can use, post-merger, to resist price increases.

All of these issues will be addressed more generally in later sessions. But addressing them here today through a narrow lens should help anchor those later discussions.

Just a few words on the format for today's session. We will present for you a panel of five participants in, or observers of, the Boston health care marketplace. Each of those panelists will speak for about 10 minutes and give us their perspectives on the market. Both before and after all of the panelists have given us their individual perspectives, academic experts will provide background on market dynamics and thus frame the issues for us. We will then have a moderated panel discussion with two moderators. We expect to end the session today at 12:30.

I would like to thank our panelists and academic experts for their participation today; we greatly appreciate your taking the time to be with us today.

With that, let me thank you for your attention and turn things over to the moderators.