



## DEPARTMENT OF JUSTICE

Antitrust Division

**ANNE K. BINGAMAN**

*Assistant Attorney General*

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*Main Justice Building  
10th & Constitution Ave., N.W.  
Washington, D.C. 20530  
(202) 514-2401 / (202) 616-2645 (f)  
antitrust@justice.usdoj.gov (internet)  
<http://www.usdoj.gov> (World Wide Web)*

June 29, 1994

Jeffrey C. Paas, CPA  
Seeskin, Paas, Blackburn & Company  
P.O. Box 37959  
Cincinnati, Ohio 45222-0959

Dear Mr. Paas:

This letter responds to your request on behalf of Seeskin, Paas, Blackburn and Company ("SPB") for a statement, pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, of the Department's present enforcement intentions regarding SPB's proposal to compile, analyze, and publish data concerning prices charged by SPB's dental clients in the Cincinnati area.

We understand that SPB is a professional accounting corporation organized under the laws of Ohio and that a substantial portion of SPB's clients are dentists who practice in Southwestern Ohio, mainly in the Cincinnati area. Most of these dentists practice as solo practitioners. A few of these dentists practice in groups, with the largest group being four dentists. SPB represents general dentists and dentists in the following specialties: endodontists, oral surgeons, orthodontists, pediatric dentists and periodontists. You have estimated that SPB's dental clients represent five to ten percent of the dentists in the Cincinnati area and no greater percentage in any specialty. SPB's clients are not concentrated in any medical complex or section of the city.

According to your request, SPB and its dental clients perceive a need to have reliable statistical data available on how dental practices price various services that are provided to patients. SPB intends to publish information voluntarily provided and obtained through a questionnaire to be sent to SPB's dental clients. Each participating dentist would provide information on what they are currently charging for individual dental procedures. There would be an estimated 400 procedures covered in the questionnaire. SPB submits that a dental

practice would report only current list prices, not any discounts negotiated with dental plans or other third-party payers, and not future prices.

Within two months of receiving the data from the participating dentists, SPB would publish reports analyzing the data. These reports would enable each participating dental practice to compare its own list price for a given procedure to the high, low, and average list price of dentists in the same group.

In the DOJ/FTC Statement of Antitrust Enforcement Policy on Hospital Participation in Exchanges of Price and Cost Information (September 15, 1993), a safety zone was established for the exchange of historical aggregated data among hospitals if the exchange was managed by a third party. Although your request does not apply to a hospital exchange, the analysis contained therein can be applied to this exchange. While your proposal does not comply with the safety zone requirements, it does contain important safeguards against collusion or other conduct that would raise antitrust concern.

In particular, only five to ten percent of the dentists in the Cincinnati area will participate in the proposed exchange, which will be managed by a third party. Although current data will be reported to the third party, only historical data will be released to the dentists. Future prices and discounts from list prices will not be reported. The identities of the dentists and specific prices charged by any dentist will not be disclosed. The information will be aggregated, and no charge survey will be published for any speciality that contains less than five dentists.

After careful consideration of the information you have provided, and as supplemented by our independent inquiry, the Department presently does not intend to challenge SPB's proposed information exchange program on antitrust grounds. 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. An information exchange that facilitated collective action to increase prices would raise antitrust concerns.

This letter expresses the Department's current enforcement intention only. It applies only to the conduct described herein, and not to any other use by SPB of the information it acquires from the dentists. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in

the future if the actual operation of the SPB proposal proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. Section 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

Anne K. Bingaman  
Assistant Attorney General