United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 30, 2002

The Honorable Timothy Muris
Chairman, Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

The Honorable Charles James
Assistant Attorney General
Antitrust Division
United States Department of Justice,
9th Street and Pennsylvania Avenue, NW
Washington, DC 20530

Dear Chairman Muris and Assistant Attorney General James:

The Subcommittee on Antitrust, Competition, and Business and Consumer Rights has been investigating the competitive effects of hospital group purchasing and is today conducting a hearing on this issue. Our inquiry has focused on the effect of hospital group purchasing organizations ("GPOs") on smaller and competitive medical equipment manufacturers and pharmaceutical companies seeking to sell their devices, equipment, drugs and supplies to hospitals. Many smaller and start-up medical device and equipment manufacturers have asserted that GPO contracting practices effectively foreclose them from the market. The contracting practices alleged include sole source contracts, long-term contracts with suppliers, requiring high commitment levels from hospitals in order to be eligible for GPO-negotiated discounts, and the bundling of different products so that hospitals much purchase the bulk of their supplies off a list of bundled products in order to qualify for the discount for any one product. Smaller manufacturers allege that the incumbent suppliers, in concert with the GPOs, utilize these contracting practices to eliminate competition and entrench the dominant position of the incumbent suppliers.

In addition to these concerns, it is clear that the GPO market consolidated significantly in recent years. Where once many small and regional groups were responsible for most hospital group buying, today the industry is highly concentrated, with two GPOs – Premier and Novation – responsible for medical devices and equipment contracts for almost 60% of the nation's not-for-profit hospital beds. Some smaller medical device and equipment manufacturers believe that this level of market share has made it essential to obtain contracts with these two GPOs in order to have a viable business plan.

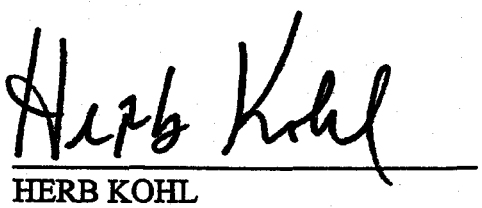
In light of this consolidation and of the allegations of anti-competitive behavior by the

large GPOs, we ask that the Department of Justice and FTC re-examine their Health Care Guidelines as to this issue. Specifically we request that the agencies re-examine Statement 7 of their Antitrust Enforcement Policy in Health Care, which declare an "antitrust safety zone" making protecting joint purchasing arrangements among health care providers from antitrust challenge under the circumstances described therein. We request that the agencies carefully and thoroughly examine these Guidelines to determine if any revisions are now needed in light of current market conditions and the changes in the hospital group purchasing marketplace in the last decade since the Guidelines were adopted. This review should examine whether any modifications are necessary in the "antitrust safety zone" so that these Guidelines better serve the interests of competition and consumers. In this connection, we request that the FTC undertake a study and economic analysis of hospital group purchasing including an inquiry into whether the current functioning of the marketplace under the Guidelines' antitrust safety zone has caused, or has the potential to cause, injury to competition among medical device and equipment manufacturers.

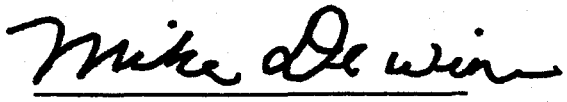
We recognize that group purchasing by hospitals has the potential to create efficiencies and reduce health care costs by permitting small and large hospitals to band together and gain greater bargaining power with suppliers; to the extent that such cost savings exist, we would like to preserve and enhance them. We are concerned, however, about the allegations regarding contracting practices of the large GPOs, and by the consolidation in this industry throughout the last decade. To the degree that such market circumstances have harmed competition in the medical device and equipment marketplace we may run the risk of diminishing the medical innovation so essential to modern health care. We therefore believe that it is now time for the FTC and Justice Department to study this issue and to re-examine its Guidelines to ensure they continue to serve the interests of ensuring a vigorously competitive medical equipment marketplace as well as a cost-effective market for medical supplies overall.

Thank you for your attention to this matter.

Very respectfully yours,



HERB KOHL
Chairman, Subcommittee on
Antitrust, Competition, and
Business and Consumer Rights



MIKE DeWINE
Ranking Member, Subcommittee on
Antitrust, Competition, and Business
and Consumer Rights