

On behalf of the thousands of innovators and entrepreneurs in the medical device community, including over 200 dues-paying members who develop and manufacture medical devices, diagnostic products, and health care information systems, I urge the Antitrust Modernization Committee to study the anticompetitive contracting practices of certain hospital group purchasing organizations (GPOs) and certain dominant suppliers.

Small businesses and entrepreneurs in the medical device industry share a growing concern that the relaxation of the antitrust laws, the promulgation of safe harbors in Medicare's anti-kickback provisions for group purchasing organizations ("GPOs"), and the concomitant concentration of market power in two dominant GPOs have combined to significantly reduce competition, stifle innovation and create unforeseen barriers to market entry for small to medium-sized manufacturers in the health care industry. The unintended impact of these policy changes and unchecked consolidation in GPO market concentration has led to the competitive harm of small business entrepreneurs and compromises on the safety and health of the nation's health care workers and their patients.

Specific contracting practices that are of concern include:

- bundling of unrelated products;
- bundling of companies;
- long term, sole-source contracts;
- charging excessive fees; and
- requiring participation in other business ventures

Certain GPOs working in concert with certain dominant manufacturers are able to utilize these contracting practices to exclude equally efficient rivals who lack product breadth. MDMA urges this Commission to study both the practices of the GPOs as well as the dominant manufacturers. Without greater oversight and enforcement in this area, innovation will be stifled, health care costs will rise and patients will be harmed.

Attached please find two reports authored by Professor Einer Elhauge on this issue.

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