

09/15/93
DEPT. OF JUSTICE
PRESS CONFERENCE

1 DEPARTMENT OF JUSTICE

2
3 PRESS CONFERENCE

4 ATTORNEY GENERAL JANET RENO

5
6 Wednesday, September 15, 1993

7
8 9th & Constitution Avenue, N.W.

9 5th Floor Conference Room

10 Washington, D.C. 20530

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(10:35 a.m.)

ATTORNEY GENERAL JANET RENO

GENERAL RENO: We would like to welcome the First Lady to the Department of Justice. She is helping -- this is her first visit here, and I think it is wonderful that you as a lawyer have a chance to see where justice gets done in this district.

I would like to introduce Anne Bingaman, who is the Assistant Attorney General in charge of the Antitrust Division, who has been doing a wonderful job, and it is a special privilege to introduce the Chairman of the Federal Trade Commission, Janet Steiger. It is truly a pleasure to have her here, and it has been a pleasure to work with you.

We have Senator Howard Metzenbaum, who was the first person to talk to me about antitrust when I arrived in Washington back in those earlier days, and the first person I met in Congress, Chairman Jack Brooks. It is a privilege to have you here, Senator.

Americans want quality health care. Everywhere I have gone throughout this Nation in these last 6 months, the refrain was the same from people in every walk of life. To achieve that goal, to assist the President and Mrs. Clinton in this effort, we must make sure that we do

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1 our part in the Department of Justice to eliminate
2 excessive costs and delay in setting up an efficient,
3 effective health care system.

4 We have been asked by health care providers,
5 where would we stand under the antitrust laws? What can
6 we do, what can't we do? We are here today to announce an
7 antitrust policy statement to provide clear guidance to
8 health care providers. The policy statements issued
9 jointly by the Justice Department and the Federal Trade
10 Commission include a commitment for expedited business
11 review, the first time this has been done.

12 Requesters can expect an answer within 90 days
13 after submitting the necessary information as to their
14 particular situation and what can be done under the
15 antitrust laws. This will be important.

16 Take some of these examples. Three small
17 hospitals in Maine want to share the cost of a mobile CAT
18 scan machine. They have not done it, because they cannot
19 find out quickly whether the agreement would violate
20 antitrust laws. We want to give them the answer up front
21 so that they know where they stand.

22 Hospitals in another city want to know whether
23 they can get together to buy a medivac helicopter.
24 Hospitals in Ohio want to buy furniture together. We want
25 to let them know whether they can or can't under the

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1 antitrust laws in an expedited way that is fair to all
2 concerned.

3 Doctors in another State want to know whether
4 they can form a preferred provider organization to
5 contract directly with insurance companies. An accounting
6 firm in Atlanta isn't sure whether it can set up a deal
7 for acute care services.

8 The speed and extent to which health care reform
9 is carried out will depend on how quickly and how well the
10 Government is prepared to answer those questions, and that
11 is the reason we are here today, but that is not the only
12 effort we are undertaking in health care reform. The
13 President has asked for a larger review of health care
14 issues.

15 The Justice Department is currently evaluating
16 measures to increase the Federal power to fight fraud and
17 abuse, for example by strengthening anti-kick-back laws
18 and making heavy penalties against defrauding the
19 Government applicable to those who defraud the private
20 health care system as well. Those of us in law
21 enforcement plan to be an important part in the President
22 and Mrs. Clinton's effort to make sure that health care is
23 available and affordable for all Americans.

24 The First Lady and I are going to have to leave
25 early, so I want to make sure that she has an opportunity

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1 to be heard first.

2 It is a great privilege to have her here today.
3 I met her a little over a year ago, and to watch this lady
4 in action has been one of the great opportunities. She is
5 a person who is dedicated to this whole Nation and day-in
6 and day-out through these first months of this first year
7 she has truly demonstrated her commitment to America and
8 to health care reform. It is wonderful to have you here,
9 Mrs. Clinton.

10 (Applause.)

11 FIRST LADY HILLARY RODHAM CLINTON

12 MRS. CLINTON: Well, as Attorney General Reno
13 said, this is my first visit to the Justice Department, a
14 place that has always had a lot of personal and
15 professional meaning for me, and with whom I have had a
16 relationship through the years with various lawyers who
17 have had the privilege of serving here.

18 It is a particularly special occasion for me to
19 be here, and to know that Attorney General Reno is at the
20 helm, and to know how faithful and committed the many,
21 many people in this Department are to what the words above
22 the entry say.

23 I particularly want to thank Attorney General
24 Reno and her Department for their participation in our
25 health care reform effort. From the very beginning,

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1 lawyers from the Justice Department have been involved in
2 the work that has gone on to try to analyze the many, many
3 issues surrounding health care and come forward with
4 workable solutions.

5 I want to applaud the actions taken today by the
6 Department and the Federal Trade Commission in issuing
7 these guidelines. They are the result of a lot of hard
8 work by Anne Bingaman and Janet Steiger, by Senator
9 Metzenbaum and Congressman Jack Brooks, and their very
10 dedicated staffs.

11 These guidelines represent an important first
12 step for an industry that is facing rapid change. They
13 are a good example of what health care reform is all
14 about. They will help lower costs, maintain high quality,
15 and knock down the barriers to collaboration that
16 unfortunately are too common in our present system.

17 The Attorney General has spelled out what the
18 problem is. We have a complex and inefficient system that
19 keeps doctors and hospitals from spending their money
20 wisely and drives up the prices that consumers and the
21 Government have to pay. Over time, the actions we take
22 will turn this system the right side up.

23 Instead of requiring every hospital or doctor's
24 office to buy the same expensive piece of equipment, these
25 guidelines will allow them to share that equipment. They

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1 allow physicians to get together to control costs, and
2 they allow mergers that are competitive and save consumers
3 money.

4 I have learned many, many things about our
5 health care system in the past months, but one of the
6 first lessons that I learned came to me from traveling
7 around the country, when a member of a hospital board or a
8 physician or a hospital administrator would come and, with
9 real poignancy say, we want to help, but we cannot even
10 have a meeting to talk about how we could have one piece
11 of expensive equipment in our community instead of all of
12 us feeling compelled to buy one for ourselves because our
13 lawyers tell us we cannot cooperate.

14 This is not a problem that comes from the
15 Justice Department or the Federal Trade Commission or the
16 Senate or the House. This is a problem that comes from
17 the grassroots of people trying to do a better job to
18 deliver quality health care.

19 These actions are pro-competition, pro-
20 collaboration, and pro-consumer. The results over time
21 will achieve the following positive results: consumers
22 will pay less, equipment will not stand idle, it will be
23 used more frequently, hospitals will save money, the
24 pressure on physicians to order tests to pay for the
25 machinery that they bought in order to be competitive will

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1 stop, and the highest quality tests and the latest
2 technology will still be available, and I would argue more
3 readily available, to those who need them.

4 I also want to thank the Attorney General and
5 the Justice Department for their ongoing and accelerating
6 efforts to crack down on the problem of health care fraud
7 and abuse. As the Nation's health care bills have
8 mounted, consumers and businesses have paid a high price.
9 The crimes have grown more sophisticated and more
10 outrageous, and every time someone rips off the health
11 insurance system, the public, the private insurers, all of
12 us pay more.

13 Settlements like the ones the Department has
14 recently achieved on the West Coast, and the strong
15 measures that we will have more to say about next week
16 send a strong warning to those who would steal from the
17 American taxpayers and permit the kind of health care
18 fraud that has a damaging impact on all of us, no matter
19 who we are.

20 We intend to make it very clear, health care
21 fraud will not go unpunished. In a reformed health care
22 system there will no longer be any room for the kind of
23 games that for too long have permitted the kind of fraud
24 and abuse that we are cracking down on now.

25 This is a message we must send to every American

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1 who has health insurance and pays too much, and to every
2 American who does not know if they will be able to afford
3 their coverage next month or next year.

4 It's a great pleasure for me to stand here in
5 this department with this team that has been assembled to
6 take these steps on the road to getting health care costs
7 under control and providing health care security for every
8 American.

9 This is the kind of example of thoughtful,
10 careful work that leads to a positive result that will
11 translate into better health care for Americans in the
12 years to come.

13 Thank you very much.

14 (Applause.)

15 GENERAL RENO: The leader of the Antitrust
16 Division is Anne Bingaman, one of the most dedicated and
17 vigorous lawyers that I have met in Washington. It is a
18 true pleasure to have her on this team in the Department
19 of Justice.

20 She has been working with the really dedicated
21 people in that division, people who care so much about
22 antitrust enforcement. She is going to remain to answer
23 questions, but she might have a few words for us now.

24 Anne.

25 (Applause.)

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1 ASSISTANT ATTORNEY GENERAL ANNE K. BINGAMAN
2 IN CHARGE OF THE DEPARTMENT OF JUSTICE'S ANTITRUST DIVISION

3 MS. BINGAMAN: Let me just speak to you briefly,
4 because Chairman Steiger and I will remain to answer
5 detailed questions on the guidelines.

6 Let me just emphasize the extraordinary
7 cooperation and coordination and consultation that went on
8 jointly between the Federal Trade Commission and the
9 Department of Justice in developing and issuing its
10 guidelines. It is, I believe, almost unprecedented. It
11 has been a wonderful experience.

12 It is exactly the kind of responsible and
13 responsive Government that we need to have, because we
14 recognize -- the Federal Trade Commission recognizes and
15 the Department of Justice recognizes there is a problem
16 out there. People in small communities honestly didn't
17 know what the rules were.

18 As the First Lady said, you hear it over and
19 over again. The rules were there, but they were in
20 speeches and letters and business review advisories going
21 back over a 10-year period, so that if you were a partner
22 in a major New York or Washington law firm, you knew the
23 letter issued February 18, 1985 covered such-and-such, but
24 if you were somebody in Santa Fe, New Mexico, my home
25 town, you may not know there were such letters, and yet

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1 you had to give advice to your local hospital or your
2 local group of physicians as a lawyer, or if you're on a
3 hospital board, or a doctor trying to comply, you had to
4 understand what the rules were.

5 So this is an effort to clarify, to state in one
6 simple place what those rules are, and to commit to
7 ongoing review in order to provide responsible help to the
8 health care community throughout this country in a time of
9 enormous change which needs to occur, and we want to do
10 our part.

11 I want to thank Chairman Steiger and the Federal
12 Trade Commission so sincerely for their enormous help. It
13 has been a great pleasure working with them, and we look
14 forward to many months and years of cooperation.

15 Thank you.

16 (Applause.)

17 ATTORNEY GENERAL RENO: Chairman Steiger has set
18 an example for us all in terms of cooperative effort
19 between Government agencies that are concerned with the
20 same jurisdiction and the same subject matter. It has
21 been a wonderful opportunity for us to work with the
22 Commission and with Chairman Steiger, and it is a great
23 privilege to have her here today.

24 (Applause.)

25 FEDERAL TRADE COMMISSION CHAIRMAN JANET D. STEIGER

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1 CHAIRMAN STEIGER: Thank you. I also will be
2 brief, since we are going to take 20 questions afterwards.
3 But our thanks at the Commission for the leadership of the
4 First Lady, and the Attorney General, and, of course, Anne
5 Bingaman, for their assistance to us in this effort. And
6 we cannot leave out the Senator and the Chairman, who were
7 always resources for us in these efforts.

8 I just want to stress that the policy statements
9 do represent a collaborative effort by the two Federal
10 agencies who are entrusted with the responsibility for
11 antitrust enforcement. They also represent a bipartisan
12 effort. Sound antitrust laws is not a partisan matter.

13 The First Lady has noted that guidance is needed
14 in how the antitrust laws do apply to the field of health
15 care. Health care is vital not only to our physical
16 wellbeing as people, but to our economic wellbeing as a
17 country. And antitrust enforcement has historically played
18 a very important role in protecting competition in the
19 health-care markets, and in lowering the cost of health
20 care for consumers.

21 But antitrust is, as Anne Bingaman said, a very
22 complicated area of the law, particularly as it applies to
23 the field of health care. This complexity has given rise,
24 we believe, to the need to tell people with clarity what
25 kinds of activities are and are not permissible, so that

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1 legitimate conduct is not deterred, conduct that is
2 beneficial to consumers. That that conduct is not
3 deterred by a fear of antitrust enforcement that is not in
4 order.

5 We at FTC are very proud of our record in the
6 health-care area, of our record of challenging barriers to
7 the development of HMO's and other innovative health-care
8 delivery systems. And we are proud of our record of
9 attacking conspiracies to raise prices to consumers.
10 Sound antitrust enforcement efforts of this type should
11 and will continue. But at the same time it is important
12 to attest there are such as those we took today, to better
13 explain our enforcement intentions so that
14 misunderstandings about those intentions do not inhibit
15 activities that benefit consumers.

16 I owe a special debt of thanks to my colleagues
17 at the Federal Trade Commission, Commissioners Azcuenaga,
18 Starek, and Yao. And I must add a real special thanks are
19 due to Commissioners Yao, who is here with us today, and
20 Starek. They took the very heavy work in the organization
21 and coordination of our efforts at the FTC.

22 Thank you.

23 (Applause.)

24 ATTORNEY GENERAL RENO: Senator Howard
25 Metzenbaum is the distinguished Chairman of the Senate

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1 Judiciary Committee's subcommittee which deals with
2 antitrust issues. No person in Washington is more
3 concerned with the vigorous enforcement and fair
4 enforcement of the antitrust laws of this Nation, and we
5 are delighted that he cut short a meeting on the Hill to
6 be with us today.

7 Senator, welcome.

8 (Applause.)

9 SENATOR HOWARD METZENBAUM, DEMOCRAT, OHIO

10 SENATOR METZENBAUM: Jack, I hope you get the
11 message. Because it is a tremendous sense of excitement
12 that I feel that here are we two males, we, while these
13 four wonderful women provided leadership. Government has
14 changed in Washington and I am all for it, and I couldn't
15 be more pleased about it.

16 (Applause.)

17 SENATOR METZENBAUM: I am also excited about the
18 fact that we are going to solve a problem in the antitrust
19 field without changing one word, one comma, or one
20 semi-colon of the antitrust laws. And there is no need.
21 Our antitrust laws are not to blame for the high cost of
22 health care. They have protected consumers from price
23 fixing and gouging. In fact, the antitrust laws have
24 never blocked a pro-competitive health care deal.

25 We are here today to clear up confusion among

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1 doctors and hospitals about how these laws apply to them.
2 We want to end their uncertainty. If legitimate confusion
3 about antitrust has slowed down even one cost-cutting
4 merger or joint venture, that is one too many. These
5 policy guidelines are proof positive that we can make our
6 laws work to accommodate businesses when their concerns
7 have logic and merit.

8 I became convinced that the hospitals were
9 looking for clarity, not loopholes, when I chaired a
10 hearing on the subject last March. And I also attended a
11 hearing conducted by Senator Rockefeller where a
12 half-dozen Senators indicated their concerns about the
13 hospitals trying to work together in their local
14 communities, and saying what a great problem it was, that
15 we had to change the antitrust laws.

16 At that time I said we don't have to change the
17 antitrust laws; we can work this out. And this is the
18 culmination of those efforts, because it has been brought
19 about without changing the antitrust laws by bringing
20 about changed guidelines that spell out what can and can't
21 be done.

22 Together, we began to look for resolution after
23 those meetings. And thanks to the help of the American
24 Hospital Association, they took the extraordinary step of
25 writing the First Lady to win her support for antitrust

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1 guidelines for hospitals. I promised the AHA that I would
2 work with the Justice Department and the Federal Trade
3 Commission to come up with guidelines.

4 Today's announcement is a victory for consumers
5 that will speed health-care reform. These measures will
6 help end uncertainty about how the antitrust laws will
7 apply to hospital and physician deals, without creating
8 costly loopholes in those laws that could hurt consumers.
9 They will also help hospitals and doctors to understand
10 the difference between a joint ventures that cuts costs
11 and also benefits the public and a joint venture that is
12 likely to eliminate competition and drive up prices.

13 I hope that we will hear from others in the
14 medical profession who have voiced similar concerns and
15 fears. We can work these problems out together. And
16 thanks to the magnificent leadership of the First Lady,
17 the Attorney General, Janet Reno, and Anne Bingaman and
18 Janet Steiger, we are here today, and this is a victory
19 for the people of this country and I am so pleased to
20 participate in it.

21 Thank you.

22 (Applause.)

23 ATTORNEY GENERAL RENO: You all know Jack Brooks
24 as Chairman of the House Judiciary Committee. He is also
25 one of the most vigorous and most committed people to

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1 efforts of full and fair law enforcement at all levels of
2 anybody I have met in Washington, and it is a pleasure to
3 be with him here today.

4 Mr. Chairman.

5 (Applause.)

6 CONGRESSMAN JACK BROOKS, DEMOCRAT, TEXAS

7 REPRESENTATIVE BROOKS: Thank you very much. I
8 am the last speaker, you'll be happy to know.

9 (Laughter.)

10 REPRESENTATIVE BROOKS: With the appointed of
11 Attorney General Reno, and Assistant Attorney General
12 Bingaman to head up the antitrust division, I have great
13 expectations for competition policy. For 12 years
14 antitrust has languished and was viewed by those in
15 authority as the enemy, not as a guarantor of the small
16 business community and the American consumer.

17 But in the past few months this administration,
18 with the leadership of Anne Bingaman -- I call her Saint
19 Anne or the Coppertone Kid -- has reaffirmed its
20 commitment to our national competition policy, and today
21 is no exception.

22 As the Health-Care Task Force began its work in
23 earnest this spring, a number of health-care entities,
24 position groups, hospitals, pharmaceutical companies, came
25 seeking relief on the Hill from the antitrust laws. That

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1 is, to speak plainly, they came seeking antitrust
2 exemptions. At the Judiciary Committee we are used to
3 hearing such requests. Frankly, we don't believe in many
4 of them and use every effort we have to end the few
5 exemptions that exist now on the books. They are
6 unnecessary. They are harmful even to those who come
7 seeking.

8 At the same time, we must acknowledge that in
9 the health-care area antitrust uncertainties do exist and
10 need to be addressed in a cooperative manner between
11 enforcers and private parties. There is no substitute for
12 such cooperation. Adversarial legislation and litigation
13 should always be the last resort.

14 And very early in the health-care review
15 process, I met with Mrs. Hillary Rodham Clinton, our First
16 Lady, and discussed my deep-felt view that it was
17 imperative to avoid extreme steps in the antitrust area
18 because of the many unintended consequences that could
19 result in both the short and long term. She listened
20 carefully. She was well versed in the history of
21 importance of a strong antitrust policy in this country.
22 Hers was a nearly overwhelming task, and few would have
23 been up to it. She was.

24 I am very pleased today that the Clinton
25 administration has unveiled a plan, has chosen to reject

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1 the exemption route in favor of the clarification route.
2 Already in place, already working now, we are seeing the
3 benefits of such an approach in other critical and
4 strategic industries that are taking advantage of
5 prenotification and consultation for a variety of research
6 and development activities, and now for production joint
7 ventures.

8 I intend to do my share in moving the antitrust
9 section of the health package forward in the coming
10 months. What we are witnessing today as the unveiling of
11 health-care antitrust guidelines is simply good medical
12 technique, opting for preventive medicine rather than
13 radical surgery. And I would say that the two ladies
14 we've got here, these women are not tough -- they are not
15 tough. They are highly intelligent. They are dedicated.
16 They are compassionate. And for that we, in this country,
17 have a lot to be grateful.

18 I want to say I salute the First Lady and the
19 wonderful work of you, Janet, and your organization, and
20 the Justice Department. Thank you.

21 (Applause.)

22 ATTORNEY GENERAL RENO: Ms. Bingaman and
23 Chairman Steiger will now be available to answer your
24 questions.

25 QUESTION: I know that Senator Metzenbaum said

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1 that this does not change the antitrust law, but it is my
2 understanding that the White House says this is the first
3 piece of the antitrust package and that legislation is to
4 follow.

5 What legislation will be coming out after this?

6 MS. BINGAMAN: It is not my understanding that
7 there will be antitrust legislation as such. The
8 President's package is not part of what I call this
9 package -- at least in the guidelines. But it is my
10 understanding that there will not be antitrust exemptions
11 as legislation in the health care package. These
12 guidelines and policy statements and the very important
13 business review procedure which we commit to there on an
14 ongoing expedited basis. It is certainly, for everyone
15 who has a question, it is my understanding that that is
16 our approach.

17 QUESTION: It is my understanding that Magaziner
18 was saying that --

19 MS. BINGAMAN: About a week ago I heard people
20 say -- I can't address that. I just can't. And I told
21 you what I know, and I am doing the best I can at this
22 point.

23 QUESTION: Does this mean that the petition by
24 the drug industry will probably be rejected? And have
25 they asked for any exemptions?

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1 QUESTION: Can we have her repeat the question,
2 Anne?

3 MS. BINGAMAN: She said does this mean that the
4 exemption for the drug industry -- this is the
5 pharmaceutical manufacturers' request -- will be rejected?

6 QUESTION: Yes.

7 MS. BINGAMAN: We have that under advisement and
8 we expect to act it in the near future. But I would not
9 want to pinpoint it. It does not touch on it actually as
10 such. There is nothing in these policy statements that
11 directly address this -- any issue on that.

12 QUESTION: And can you say in what way -- can
13 you tell us in what way we are going to crack down or beef
14 up your efforts to go after fraud?

15 MS. BINGAMAN: The Civil Division is in charge
16 of fraud. We are the Antitrust Division. And the FTC and
17 the Bureau of Competition does antitrust enforcement.

18 QUESTION: I understand that, but they said, in
19 concert with this policy, these policy guidelines, there
20 would be a crackdown on fraud.

21 MS. BINGAMAN: I think you are aware of the San
22 Diego case and the very massive settlement involving
23 fraud. I think what is expected is more emphasis, more
24 looking for cases like that, and more focus on that, in
25 order to prevent high cost due to fraud. That is my

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1 understanding. But it is not my direct responsibility.

2 QUESTION: Ms. Bingaman, I have observed in the
3 past a lot of complaints in Washington about that the
4 Antitrust Division in the last 12 years has largely
5 ignored big corporations and big cases, and gone after the
6 small ones. I trust you are going to change that policy?

7 MS. BINGAMAN: Oh, I tell you the truth; we are
8 going to enforce the laws as best we can on the facts, as
9 they come before us, period. That is what we are going to
10 do.

11 CHAIRMAN STEIGER: I think we are all committed,
12 and I certainly have been and our Commission has been, in
13 the past four years, to vigorous enforcement of the
14 antitrust laws. And our record will speak for itself on
15 that point.

16 QUESTION: Can you tell us what happened to the
17 plan on the McCarren-Ferguson exemption for health
18 insurers?

19 MS. BINGAMAN: My understanding -- again, this
20 is not my bailiwick as such, and I think it is in the
21 health care plan, the draft of which is circulating -- is
22 that McCarren-Ferguson will be modified and limited for
23 health care insurers. As some of you may be aware, I
24 testified before Chairman Brooks' committee about June or
25 July on behalf of the administration. We favor limiting

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1 the scope of McCarren-Ferguson.

2 We did not testify on the particulars or a
3 particular bill, but we said that we believed the
4 McCarren-Ferguson exemption should be narrowed.

5 QUESTION: May I follow up? But you would need
6 legislation, would you not?

7 MS. BINGAMAN: Yes, yes. Oh, definitely. There
8 would have to be legislation for this. It is just that
9 the particular language -- the particular terms we have
10 not worked through yet.

11 QUESTION: Is that the only legislation
12 involving this? Or have you tried to answer that before?
13 Other than McCarren-Ferguson, are there any other aspects
14 of this that require legislation?

15 MS. BINGAMAN: To my understanding,
16 McCarren-Ferguson is what is affected in the antitrust
17 area. If there is anyone in the room here who has a
18 different understanding, I am not aware of that.

19 QUESTION: You have a 90-day review process.
20 What is it currently, or is there no system for review?

21 CHAIRMAN STEIGER: The Justice Department has,
22 in the past years, promised business review letters that
23 would be finished in 90 days. The Commission, until this
24 policy statement, has not had such a deadline system. And
25 we are now committed to 120 days, depending upon the

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1 subject matter response. And this is a new commitment for
2 the FTC.

3 MS. BINGAMAN: I might add, it is a new
4 commitment for the Justice Department, too, in that the
5 previous policy was best efforts to answer in 90 days. It
6 was not a binding, flat commitment. Secondly, the
7 previous policy, which still applies to all other
8 industries, is to answer such questions as we believe need
9 to be answered. We retain the discretion, if we think a
10 question is trivial, unimportant and simply not worthy of
11 our limited resources to invest the time, to simply say to
12 the lawyer asking: Take your best shot. We are not doing
13 that in health care.

14 So, for the Justice Department also, this is a
15 new commitment for the health care industry in that we
16 commit absolutely to answer any question within 90 days,
17 and we retain no discretion to not answer any request. We
18 will answer all requests in the interest of certainty and
19 clarity in this area.

20 QUESTION: What about retroactive cases? If
21 there is a merger pending, what are the guidelines? When
22 do they take effect? And what happens to mergers that are
23 now underway with regard to the FTC or Justice Department,
24 or any other agency?

25 CHAIRMAN STEIGER: They do not apply to pending

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1 cases.

2 QUESTION: If they are pending as of today?

3 CHAIRMAN STEIGER: That is right.

4 QUESTION: So all of these cases that are now in
5 the courts, will those have to be worked out?

6 CHAIRMAN STEIGER: If they are in litigation,
7 this does not apply.

8 MS. BINGAMAN: As a practical matter, though, I
9 might just amplify. I do not think either one of the
10 agencies views these statements as a change from current
11 policy. They are simply a synthesis of the multitude of
12 business review letters, consent decrees and so forth,
13 that it is an effort to simplify.

14 So, as a practical matter, although clearly the
15 chairman is exactly right, these are effective today, and
16 from this day forward. I am not aware that there would be
17 any practical significance to that.

18 CHAIRMAN STEIGER: I think that is an important
19 point, and I agree with it.

20 QUESTION: Just to clarify. You just said that
21 the 90-day review was new. Is that the only new thing?
22 Is that the only new provision?

23 MS. BINGAMAN: What else is new is the whole
24 concept. There are several new things here.

25 Number one, neither Agency has ever issued a set

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1 of guidelines in a specific industry. That alone is -- in
2 the antitrust world, somewhat earthshaking. We are doing
3 it because of the extreme change, the small markets and
4 what we view as the need for responsiveness. So that is
5 one change.

6 Second, there has never been a policy statement
7 -- certainly not by both Agencies. We have had the
8 business review procedure to particular instances to state
9 the Agency's enforcement intentions and to say this
10 particular transaction, on these facts, would not be
11 challenged by this Agency at this point. What we have
12 never had before is a statement applicable to an industry
13 of what we call antitrust safety zones in these
14 guidelines.

15 These guidelines set up -- they are in fact
16 current enforcement policy, so they are not a change, but
17 it has never been stated this way before. And for many
18 thousands of lawyers and health care professionals out
19 there, enforcement policy can seem like a black box. And
20 so the mere fact that setting out in so many words -- and
21 we call it an antitrust safety zone -- if you meet these
22 criteria, absent extraordinary circumstances, neither
23 Agency will challenge your conduct. And so that is new.

24 And then the third -- the time for the
25 commitment.

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1 CHAIRMAN STEIGER: I think it is important to
2 stress, as Anne did earlier, that people across this
3 country, hospital administrators and others who face
4 questions of a changing health care landscape, have a
5 place to go. They do not have to go back to see what
6 happened in the 1985 advisory panel from X or Y. We have
7 put it together for them. But it is a synthesis of
8 current enforcement policy. The very existence of this
9 document is new.

10 QUESTION: Just to follow up on that. In taking
11 this different approach here, didn't you say to yourselves
12 at some point in your policy formulation, Gee, we are
13 going down a new road here, and this might set a precedent
14 in other industries? And what bearing did that have on
15 your final decision?

16 MS. BINGAMAN: Certainly that is a concern.
17 Because everybody wants guidelines, and we have got real
18 work to do and we cannot write guidelines for every single
19 industry in America. We cannot spend all our time doing
20 that. It is an enormous devotion to resources to turn out
21 this document, to feel comfortable with it, and to state
22 publicly this is it. This is what we will and will not
23 do.

24 So, certainly, it was a major issue as to the
25 advisability of issuing industry-specific policy

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1 statements. But it was our judgment that in the
2 extraordinary circumstances the health care community
3 faces today, with massive restructuring, changes that are
4 being proposed, the crisis in cost for health care, the
5 enormous uncertainty that small local markets, thousands
6 of them with legitimate questions about what is and is not
7 permissible, all of those factors we thought made this
8 situation unique and worthy of special attention.

9 CHAIRMAN STEIGER: We do not see these
10 particulars anywhere else in the landscape that we are
11 looking at now.

12 QUESTION: Doesn't this legislation put at risk
13 those smaller fringe outfits like MRI's? Won't they end
14 up going out of business if bigger operators in town are
15 allowed to collaborate?

16 MS. BINGAMAN: I do not understand your
17 question. Could you repeat that?

18 QUESTION: What is the effect going to be on
19 some of the smaller operators in town that may not be able
20 to collaborate with a bigger hospital?

21 MS. BINGAMAN: All this does is state what
22 competition policy allows. And competition policy right
23 now, the matter of sharing of expensive equipment, allows
24 hospitals jointly to purchase a piece of equipment if they
25 could not utilize it effectively themselves. In other

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1 words, if there is no need in a town for two CAT scan
2 machines, there is only half demand by each hospital for
3 one CAT scan machine in a particular town, the fact is,
4 right now, it is permissible for hospitals to jointly
5 purchase a CAT scan machine and to jointly use it, because
6 it reduces the cost per transaction. And that is pro-
7 competitive and efficient.

8 But people do not understand that. They think
9 that it is an antitrust violation to even speak about
10 purchasing jointly a CAT scan or some other piece of
11 equipment, a helicopter or whatever you want to talk
12 about. And the purpose of these is to clarify the
13 instances in which it is permissible.

14 Now there are also instances in which it is not
15 permissible. So we have a safety zone, and then we have
16 the rule of reason analysis for instances that do not fall
17 into the safety zone, and then we have the backup business
18 review procedure for anyone in the country who wants to
19 ask us -- Here is my situation, can I or can I not do
20 this? -- and we will respond.

21 CHAIRMAN STEIGER: I would add that neither
22 Agency has ever challenged a joint venture on the purchase
23 of high-tech or expensive hospital machinery. It is
24 clearly within the -- as the guidelines indicate -- a
25 permissible activity and we do lay that out. But, in

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1 spite of the fact that there has never been a challenge,
2 we have been told there is this lingering uncertainty that
3 was chilling effective pro-competitive, pro-consumer
4 choices. And this is what is in the root of the policy.

5 QUESTION: Chairman Steiger, one of your
6 commissioners, Deborah Owen, dissented, and contended that
7 this is special interest antitrust exemption and that you
8 should do it, if you do it at all, through legislation,
9 not through unilateral actions such as this. Could you
10 speak to that point?

11 CHAIRMAN STEIGER: Well, I think Howard
12 Metzenbaum said it very clearly, these are not exemptions.
13 These are statements of current enforcement policy. They
14 are the type of guidance that I believe we do in this
15 particular extremely dynamic and very fractionalized -- in
16 the sense of markets -- industry. I do not think
17 legislation is needed. I do not think there are any
18 exemptions that we are talking about.

19 We are talking about laying out groundwork so
20 that people out across this country know what is clearly
21 permissible. So my answer is no.

22 MR. STERN: There are about three or four hands.
23 I think we will cut it off before we get too heated.

24 Over here.

25 QUESTION: You said that these are not legal

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1 exemptions. However, you noted that the FTC case which
2 started in 1989 is still in litigation would fall into the
3 safety zone created here. In light of that, would a case
4 like that be brought again? And, if not, will these
5 after-the-fact, de facto exemptions be antitrust?

6 CHAIRMAN STEIGER: I would note that -- you are
7 correct -- that publicly they indicate that the
8 statistical parameters on that fall in the safety zone. I
9 would only add that, were a case like that to come to bat,
10 we might still look at it to see if there were
11 extraordinary circumstances in an area in a case where we
12 would normally not or very rarely take an enforcement
13 area.

14 I cannot comment as to whether such
15 circumstances exist. We will decide it under section 7 of
16 the Clayton Act. But those challenges have been so rare.
17 And the rarity of them I think confirms our high degree of
18 comfort with this safety zone.

19 QUESTION: I am still not exactly clear. Are
20 these safety zones new or have they already existed but
21 there just never was a general statement explaining that?

22 CHAIRMAN STEIGER: They are a synthesis of our
23 experience -- the economic literature and our own
24 experience over time. There are two problems: a census
25 of 40 patients per day over a three-year period. Our

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1 experience reflect our experiences that these are probably
2 not competitive situations. They are not competitive
3 hospitals. They are not realizing the efficiencies, and
4 probably a merger -- most probably a merger in these areas
5 would not pose consumer injury or an antitrust problem.

6 QUESTION: So you are saying, I think, that you
7 are not creating any new safe harbors here, you are just
8 lighting them better and letting them come in faster?

9 CHAIRMAN STEIGER: We are basically synthesizing
10 what we know in this area to the best of our ability. And
11 there might be other measures that could be used.

12 QUESTION: In the example the assistant
13 secretary used about two hospitals sharing a CAT scan or
14 buying a CAT scan jointly, if those two hospitals then
15 decide to move to set price to use that CAT scan, would
16 you then challenge that?

17 MS. BINGAMAN: If the two hospitals do what?

18 QUESTION: Decide jointly to set the price for
19 the use of that CAT scan. Would that run afoul of the
20 antitrust laws?

21 MS. BINGAMAN: Under my understanding is that
22 under these guidelines they can jointly market. And I
23 believe that means they can jointly price. And so the
24 answer is no.

25 QUESTION: Well, how does that enhance

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1 competition if they can jointly market?

2 MS. BINGAMAN: That is what is going on right
3 now. It enhances competition this light. It keeps each
4 of them from separately buying a CAT scan. And it keeps
5 each of them from having to price it double, because in
6 order to recover fully on half as many procedures of a
7 given piece of extremely expensive equipment, honestly the
8 price has to be much, much higher than it would be if you
9 could cut it by usage.

10 And so if those two hospitals have the
11 equipment, there may be a hospital across town that has a
12 different piece of equipment that competes with it. In
13 other words, you can't look at these two hospitals in a
14 vacuum. In most metropolitan areas there are many, many
15 hospitals, and there can be many of these arrangements
16 going on. And you can have a joint venture here competing
17 with a joint venture there, or with a single hospital that
18 has a lot of procedures on its equipment.

19 QUESTION: Well, can't you separate joint
20 purchasing of equipment from joint pricing of the service?

21 MS. BINGAMAN: That could have been done. It
22 could have been done, but it was not.

23 CHAIRMAN STEIGER: I think the guides make it
24 clear that the same violations remain. Price fixing is
25 price fixing. I think that if you read the specific

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1 policy statement on this joint venture in purchasing it
2 does answer the question.

3 MR. STERN: We will take a last question from
4 the lady in orange.

5 QUESTION: What is the impact of these
6 guidelines on the HHS safe harbor provisions, or is there
7 any impact?

8 MS. BINGAMAN: I honestly cannot answer that. I
9 do not know. I am not aware of any. I would give you an
10 answer if I knew the answer, but I do not. I honestly
11 cannot.

12 MR. STERN: Thank you for coming.

13 (Whereupon, at 11:18 a.m., the press conference
14 was concluded.)
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