Bureau of Competrtion
FEDERAL TRADE COMMISSION
Public Rctcrence B-a-ch WASHINGTON. DC ~~

May 22, 1984

Re: Request for Staff Advisory Opinion.
Kltsap Physicians Service

Dear ME, Kopit:

We have reviewed the points you raise in your letter of May 1,
and find that they do not lead us to a different conclusion con-cerning our ability ta issue a staff advisory opinion concerning KpSts proposed policy. We do wish, however. to underscore certain points included in our earlier letter, which may help to explain our decision.

First, while we were unable to cooclude in.our narch 26
letter that the po1ic:y proposed by KPS was lawful, we expressly noted that we were not concluding that the policy would violate the antitrust laws. Rather, we pointed out that such a policy, while clearly having the effect of excluding new physicians from KPS and, depending upon KPS's market power, possibly having the effect of discouraging or precluding new entry by physicians to the area, nevertheless must be analyzed for both its procompeti-tive and anticompetitive effects under the rule of reason. In your current letter you raise several points regarding the likely

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@ made in the context of an advisory opinion, but rather requires a

more comprehensive factual inquiry as part of .a full-blown rule of reason analysis of the policy.

Similarly, we believe that an assessment of the market power, if any, of KPS -- a firm that your information shows has a 25%

market share overall, and which we estimate covers approximately
33% of the privately insured population; a firm which a federal district court recently concluded to be the area's ndominant

(slip ope at 231,

I hope that this explanation helps to clarify for you the
reasons that we were unable to provide you with a favorable staff advisory opinion concerning KPS" proposed policy.

In addition I would like to clarify an apparent misinterpre- .tation of our letter of March 26. Your letter of May 1 states (at

If I can be of further assistance to you, please let me know.

Sincerely,

Assistant Director

Blue Cross v. Kitsap Physicians Service, 1982-1 Trade @ gs. (CCH) 64,588 at 73,205 (W.D. Wash. 1981).
Hyde v. Jefferson Parish Hospital District No. 2,