

Congress of the United States
House of Representatives
Washington, DC 20515-5401

September 20, 2012

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue
Washington, DC 20580

Re: Public Comment, In the Matter of Cooperativa de Farmacias Puertorriqueñas (“Coopharma”), FTC File No. 101 0079

Dear Mr. Clark:

I write in response to the invitation for public comment on the Federal Trade Commission matter of Cooperativa De Farmacias Puertorriqueñas (“Coopharma”), published in the Federal Register on August 27, 2012.

I wrote to Chairman Leibowitz during the investigation phase of this matter to request that the FTC stay its investigation in order to provide the Puerto Rico government with an opportunity to amend its laws and regulations in order to implement the clear intent of the Puerto Rico Legislative Assembly to insulate cooperatives from federal antitrust scrutiny. Since the FTC has now entered into a proposed Consent Order with Coopharma without providing time for the Puerto Rico government to act, I respectfully urge the FTC to revise the consent order to allow for state regulatory oversight in lieu of the Consent Order, should appropriate laws and regulations be enacted.

In 2004, to encourage the growth of cooperatives, the Puerto Rico Legislative Assembly enacted Law 239, the General Cooperative Associations Act of Puerto Rico, “to stimulate activities of production and services by way of a cooperative structure governing [numerous] cooperatives.” 5 L.P.R.A. § 4381 et seq.

Coopharma is a cooperative of independently-owned pharmacies, established pursuant to Law 239, in order to furnish better pharmacy services to consumers in Puerto Rico. Since its inception, Coopharma has provided important benefits for its member pharmacies, Puerto Rico patients, and other market participants. Coopharma enables hundreds of independently-owned pharmacies to jointly purchase drugs and other supplies, engage in beneficial collaborative activities such as professional education and medical therapy management, and collectively raise the standard of care provided by pharmacists in Puerto Rico. These initiatives lower overall costs and improve care for consumers and provide important competitive alternatives in the market.

Most importantly, and pursuant to the direction provided by the Puerto Rico Legislative Assembly, Coopharma accomplishes these objectives through grassroots collaborative means, thereby empowering small businesses to take responsibility for, and demonstrate leadership in, their community. I believe that Coopharma fosters, rather than impedes, competition and that it has brought significant benefits to Puerto Rico residents, especially low-income residents who receive health coverage through the Island's Medicaid program, as well as consumers in rural and other medically underserved areas.

Puerto Rico's Legislative Assembly, in enacting Law 239, recognized the need to promote cooperative growth and to protect the autonomy of cooperatives in at least three ways:

- First, the Legislative Assembly granted cooperatives the power to “enter into any type of contract which is convenient or proper to achieve their ends and purposes.” 5 L.P.R.A. § 4511.
- Second, the Legislative Assembly encouraged third parties to work with cooperatives, and provided cooperatives with the authority to “establish that a contract be entered into to regulate the business or service relations between the interested parties.” 5 L.P.R.A. § 4512.
- Third, the Legislative Assembly intended to immunize actions of cooperatives from antitrust scrutiny by including language providing that no actions of cooperatives would be considered a restraint of trade, and therefore contracts negotiated and entered into by a cooperative on behalf of its members would not violate antitrust laws. Specifically, the statute states:

Cooperatives organized under this chapter shall not be considered to be conspiracies or cartels to restrict business, nor as illegal monopolies due to their contracts, business or activities; furthermore, they shall not be considered to have been organized for the purpose of reducing competition or of fixing prices arbitrarily, nor shall the contracts entered between the same and their members and other sponsors, nor other authorized contracts or contracts entered by virtue of this chapter, be interpreted as illegal restrictions of business and as parties to a conspiracy or cartel to carry out an improper or illegal purpose and act. 5 L.P.R.A. § 4516.

Law 239, as amended in 2008, established a regulatory scheme providing for all cooperatives to be regulated by a local government agency, Corporación Para La Supervisión y Seguro de Cooperativas de Puerto Rico (“COSSEC”). Under Law 239, cooperatives are subject to specific filing, reporting, and compliance requirements. Notably, COSSEC has expressed its understanding that it has the responsibility and authority to regulate the practices of health provider cooperatives, including Coopharma. All cooperative activities, including contracting processes, are subject to review by COSSEC.

I believe it is clear—and the Commission evidently does not dispute—that the Puerto Rico Legislative Assembly sought to immunize the actions of cooperatives from antitrust scrutiny. If the Commission believes the level of supervision by COSSEC was inadequate, it should provide COSSEC, which has extensive experience in these markets, the opportunity to revise its regulations. Should COSSEC adopt a process for review, approval and disapproval of Coopharma negotiations, the Commission should revise the Order to allow for this regulatory process to control Coopharma's negotiating and contracting activity.

I appreciate your consideration of these views.

Sincerely,

Pedro R. Pierluisi
Member of Congress