

July 17, 2002

The Honorable Herbert H. Kohl  
Chairman, Subcommittee on Antitrust  
Competition, and Business and Consumer Rights  
United States Senate, 308 Hart Building  
Washington, D.C. 20510

Dear Senator Kohl:

I would like to again thank you for your leadership and commitment to restoring competition and innovation to our healthcare system.

We have seen the May 9, 2002 letter that Tyco sent to you regarding my testimony, given before your Antitrust Subcommittee on April 30, 2002. Although Tyco's intention with its May 9 letter is not clear because it does not address the issue of the hearing (anti-competitive practices of certain GPOs and vendors), we feel that Tyco so distorted my testimony that we should respond for the record.

First, I would like to stress that everything that I stated as facts in my testimony is based on my company's experience. Any part of my testimony that was based on information gathered from outside sources, or was based on estimates, was described as such.

Most of Tyco's letter focuses on convincing you that its pulse oximeters are equivalent to Masimo's, but the record (nearly 50 clinical studies) is clear on this topic. Moreover, Masimo has always welcomed true side-by-side comparisons by anyone who desires to find out for themselves which technology is best. As a very well known anesthesiologist and researcher used to say; all you have to do is put the Masimo sensor on and compare it for yourself; it's that easy to see the difference.

But, regardless of the merits of our competitive debate (which the market should decide), Tyco has not provided any reason to exclude its competitors. Many clinicians are asking for Masimo, but cannot acquire the levels they want due to the 90%-95% compliance obligations the GPOs and Tyco-Nellcor have together created. That's the issue! The exclusion merely becomes more egregious when considered in light of Masimo's unprecedented performance. In free markets, such as AmeriNet hospitals, Masimo is selling very successfully. Neither Tyco-Nellcor nor GPOs who create sole source and bundling agreements with them can articulate a pro-public reason to support contracts that exclude competition.

Although we do not believe Tyco's letter is directed to the issue at hand, for your records, we have attached detailed documents, including Exhibit A, that address the serious misstatements contained in Tyco's letter of May 9. Again, we are not asking you to judge which product is better. What we seek are

changes to the GPO system, to allow caregivers to freely decide what products are better for their patients.

Best regards,

Joe E. Kiani  
Chief Executive Officer

Encl.

1. Exhibit A
2. Breakthrough Technology Notebook
3. Letter from Dr. Goldstein

Cc: Senator Mike Dewine  
Seth Bloom  
Peter Levitas