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Annual Report of the

FEDERAL TRADE

COMMISSION

1971

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Annual Report of the FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1971

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Letter of Transmittal

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the fifty-seventh Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended June 30, 1971.

By direction of the Commission.

MILES W. KIRKPATRICK,
Chairman.

THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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A YEAR IN REVIEW

The Federal Trade Commission's major reorganization plan with its effective date of July 1, 1970 -- heralded an extremely active and productive year for the agency.

The reorganization created a new framework for especially vigorous and efficient enforcement of the multiple statutes involving both consumer protection and antitrust that are administered by the FTC.

While mere numbers are not a precise measure of performance, they do reflect the Commission's rising determination to carry out its objective of assuring fair and free business competition as well as protecting the consumer.

For example, during fiscal year 1971, 318 investigations were approved for complaint action as compared with 243 in fiscal 1970. Even more significantly, there were 33 complaints issued during fiscal year 1971 in the area of antitrust and restraint of trade as compared with 24 during fiscal 1970 - a rise of over 37 percent. There was also a 66 percent hike in the number of cease and desist orders obtained in the area of competition - 30 in fiscal 1971 and 18 in 1970.

There was a similar increase in the number of Commission complaints issued during fiscal 1971 that involved violations of the Federal Trade Commission Act - 113 in 1971 as compared to 77 during fiscal 1970.

The total number of consumer protection complaints issued during the past year was 208 as compared to 217 in 1970. Complaints dealing with textile and fur matters declined during the year (96 in 1971; 141 in 1970), while there was an increase in Truth-in-Lending Act (29 in 1971; 2 in 1970) and Flammable Fabrics Act complaints (51 in 1971; 18 in 1970).

These increases in complaint actions were brought about in part by the work of the FTC's eleven regional offices which re-

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ceived additional authority and responsibility under the reorganization. For example, during the past fiscal year the regional offices were responsible for 59 of the investigations approved for complaint action or nearly 19 percent of the Commission total for the year.

While the remaining chapters in this Annual Report deal primarily with the specific activities and achievements of the Commission, some attention should be focused on a general overview of policy and other considerations that have influenced the work of the Commission during the past 12 months.

Consumer Protection

Last year the Commission devoted considerable attention to the formulation of guidelines and program planning criteria to govern resource allocation by each enforcement bureau. The goal has been to develop a means of determining which market problems and which segments of the economy are of the greatest significance in terms of consumer welfare, and to enable the Commission to allocate its resources in the light of this kind of information. In accordance with this goal, the Commission, through its Bureau of Consumer Protection, has made national television advertising an area of major resource allocation. This decision was based on the following factors:

- First, the sheer volume, intensity, immediacy, and impact of television advertising dictated that the agency responsible for its regulation enforce the laws vigorously.
- Second, the Commission was increasingly concerned that national television advertising was not providing useful and effective information.
- And finally, the Commission believed that it was imperative that a response be made to the rising tide of consumer indignation and exasperation about the alleged unfair and deceptive tactics of some advertisers tactics which if not challenged, would create an irresistible pressure on competitors to engage in similar practices.

Concurrent with the decision to concentrate on national television advertising, the Commission began to be concerned that the traditional cease and desist order may not be adequate relief in all cases. Consequently, the Commission began issuing complaints with proposed orders designed to probe more effective remedies, such as "corrective" advertising, affirmative disclosure of qualifying attributes, product sale bans, special limitations on advertising directed to children, and restitution.

A related concern with respect to advertising has been the failure of many advertisers to provide the consumer with adequate information relating to important characteristics of the advertised product. Such information may often be essential to a rational choice by consumers between and among competing brands. In an effort to remedy this situation, the Commission has instituted a number of rulemaking proceedings designed to explore the feasibility and desirability of issuing rules to require the disclosure of meaningful information concerning product qualities.

It was clear to the Commission that resources must also be directed to other market influences which may have a serious impact on consumers, particularly, those with low incomes. These consumers, whose options are often limited by the lack of credit and the sluggish competitive climate of the ghetto, are subjected to a wide range of deceptive practices, the net results of which are shoddy and defective merchandise sold at exorbitant prices. Considering the dimensions of the problem and recognizing the frequent futility of a case-by-case approach, the Commission has proposed trade regulation rules intended to challenge basic assumptions about the relationship between poverty-level consumers and retailer.

Competition

The preservation of free and fair competition in the marketplace is another means by which the consumer will in the long run best be assured the highest quality at the lowest price. The Commission - believing that a program of vigorous antitrust enforcement must be focused on those areas dictated by the dynamics of our economy -developed an antitrust program largely directed to

product markets in which the consumer holds a substantial stake.

Discharging the Commission's antitrust enforcement responsibility is the primary function of the FTC's Bureau of Competition. In addition to section 5 of the Federal Trade Commission Act, the Commission, through this Bureau, enforces sections of the amended Clayton Act dealing with price and promotional discrimination, exclusive dealing and tying arrangements, mergers, and interlocking directorates of competing corporations.

In order to achieve maximum effectiveness in today's complex business economy, increasingly greater emphasis is being placed upon economic analysis of the relationships between industry and market structure, conduct and competitive performance. Against this background, FTC enforcement priorities during the past year were given to matters involving -

- Restraints on price competition or suppression of the growth of competitors due to monopolistic conditions or behavior;
- Mergers of firms in already concentrated industries or in those showing significant trends toward concentration;
- Misuse of dominant market power where the purpose or effect is anti-competitive; Robinson-Patman Act violations on the part of power buyers, especially those in concentrated markets; and
- Other violations involving firms or industries of major economic significance.

In discharging enforcement responsibilities in these areas of concern, every effort is made first to evaluate specific situations in terms of economic and general priority criteria. Following this step, a decision is then made as to whether the necessary commitment of manpower and money for corrective action would be consistent with the FTC's overall public interest mission.

Economics

High market concentration has long been pointed to as a serious impediment to effective price competition. Yet, little of

substance has been done about this structural feature of markets. Antitrust policy continues to focus largely upon market practices in the determination of illegality. There seem to be two reasons for this: (1) Incomplete knowledge about the relationship between high concentration and market performance in several dimensions, not just that of price, creates uncertainty that reductions in high concentration will in fact improve overall performance; and (2) given this uncertainty, it is argued that prohibition of market behavior which purposely attempts to thwart the competitive process will suffice to make competition workable.

One Commission objective has been and will continue to be to pursue studies directed toward answering the following questions: (1) Is it possible to arrive at legally sufficient judgments about whether decreases in market concentration will lead to better performance? and (2) Will prosecution of market behavior considered to be illegal really encourage vigorous competition?

* * *

The solid increase in the Commission's activities during the past fiscal year was achieved despite the fact that the FTC operated for most of the year with staffing below its authorized manpower strength.

As noted earlier, the pages that follow describe in some detail the Commission's efforts to meet its mandate of protecting the consumer and keeping the competitive climate fair and free.

* * *

Miles W. Kirkpatrick became the 42nd Chairman of the Federal Trade Commission when he was sworn in on September 15, 1970. He had been nominated by President Nixon to be a Commissioner on August 11, 1970. He was confirmed by the Senate on August 24, 1970.

David S. Dennison, Jr. was sworn in as a Commissioner on October 19, 1970. He had been nominated by President Nixon on September 22, 1970. He was confirmed by the Senate on October 13, 1970.

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CONSUMER PROTECTION

The Commission reorganization brought all direct consumer-oriented activities under the new Bureau of Consumer Protection. The Bureau's responsibility extends not only to the traditional enforcement of consumer protection statutes but also to the development of broadly-based trade regulation rules and industry guides, and to an ongoing consumer education program.

The personnel of the Bureau are assigned to a number of operating Divisions, each of which bears primary responsibility for a particular aspect of the overall consumer protection effort at the Commission. Always, however, close liaison and cooperation among the Divisions is maintained since all share the same goals of insuring a free and fair marketplace.

Industry Guidance

This Division is charged with carrying out a frontal attack on deceptive practices found to exist not merely among one or a few companies, but throughout an entire industry or across industry lines. The Commission has frequently noted the expedience, economy, and particularly the fairness of dealing at once with all firms engaged in a questionable practice, rather than singling out one violator for corrective action while his competitors continue unfettered in the same practices for which he is being held liable.

The work of the Division falls primarily into two major categories: Trade Regulation Rule and Industry Guides.

Industry Guides are interpretations by the Commission of the laws it administers. They represent advance statements to business as to the position likely to be taken by the Commission in the event of litigation over the subject matter covered. Generally, Guides constitute an attempt to head off such litigation in advance by laying down ground rules relating to practices which may result in corrective action by the Commission. Where such action is undertaken, however, it remains the staff's obligation to

prove that the specific practice engaged in by the charged company was unfair or deceptive, since a Guide does not constitute an advance finding of that fact but is merely an advisory interpretation.

Trade Regulation Rules, on the other hand, are legally binding upon all parties within the intended scope of the stated principles. Issued only after full open hearings at which all interested parties are given an opportunity to participate, a Rule is always based on a finding by the Commission that the practices in question are inherently unfair or deceptive when engaged in contrary to the Rule's provisions.

During the past fiscal year, several new Rules and Guides were issued by the Commission while a variety of others continued to receive attention at varying stages of preparation. Many of these are of great importance to the consumer, either because of the nature of the problem attacked, or because of the manner chosen to achieve the desired result, or both.

One such action, a Trade Regulation Rule relating to Incandescent Lamps (light bulbs), was taken because the Commission determined that, contrary to the belief held by most consumers, light bulbs of the same wattage level may be marketed with different rated lives as well as varying amounts of actual light output. In order to permit consumers to balance greater light output against longer life, the new Rule requires the disclosure of this information on the bulbs or their packages.

Another Trade Regulation Rule adopted during the year seeks to aid the consumer who wants to take advantage of an advertised special at a supermarket. The new Rule requires stores to maintain an adequate stock of all such products, and to make them readily and conspicuously available at or below the advertised price.

Other important Rules are still in a preliminary stage.

For example, consumer awareness of the octane number of a gasoline is important since octane requirements vary from one make or model of automobile to another. Knowing the precise octane level of a given fuel would enable the consumer to select one which meets his car's requirements, while avoiding unnecessarily high octane and, therefore, more expensive gasoline. Thus, the Commission has issued a Rule requiring such ratings to be posted on gasoline pumps.

The Commission also proposed and accordingly held public hearings on, a Rule providing for a three-day "cooling-off" period for all door-to-door sales. This would, among other provisions, allow the consumer who has made a hasty agreement at the instance of some high-pressure salesman to reconsider and cancel, if desired.

A Rule was also proposed last year which would preserve a buyer's claims and defenses against the seller or lessor of a consumer product or service even if the contract, promissory note, or other instrument of indebtedness is assigned to a third party, e.g., a finance company.

Consumer complaints about computerized billing for charge accounts prompted a proposed Rule which would require the suspension of dunning statements where a consumer has complained, pending an investigation and report on the dispute by the creditor.

The Rule would also require creditors to advise account holders in detail whenever they furnish adverse credit information to others.

Other proposed Rules still in early stages of development involve such diverse subjects as pricing of automobiles, negative option sales plans (book and record clubs), power output ratings for home entertainment systems, care labeling of textile products, and the advertising of pesticides.

The Division also proposed or issued Guides for wigs, watches, feather and down products, wall paneling, home furnishings, and private vocational and home study schools. Additionally, much work has been done by the Division on subjects expected to surface as proposed Rules or Guides during fiscal 1972, as the Commission's rulemaking activity gathers still greater momentum.

Food & Drug Advertising

This Division is responsible for regulating national advertising practices. During the past year, the Division initiated a variety of innovative approaches in its attempt to bring more effective regulation to those practices.

In response to the 1970 Commission directive to the staff indicating that "the Commission is receptive to novel and imagina-

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tive provisions in orders seeking to remedy alleged violation," the Division began to seek remedies which would not only stop past illegal practices, but which would also dispel residual consumer deception, and help restore competition to the level which prevailed before unfair practices or deceptions improperly influenced the market. Corrective advertising was perhaps the most noted remedy proposed by the Division.

A second example of the use of innovative remedies was the staff's proposed application of the doctrine of affirmative disclosure. The staff's position in one complaint, for example, was that a product's potential harm to health or property must be clearly displayed in advertising for that product, and that if it is shown that such a disclosure is insufficient to adequately warn consumers, a total product ban should be sought.

These remedies, as well as traditional "cease and desist" remedies, were sought in cases involving several types of advertising claims. In the food and beverage area, special attention was focused on questionable nutritional and weight reduction claims. For example, action was taken against the manufacturers of two fruit drinks, a large manufacturer of bakery goods, and a candy company, alleging the nutritional claims addressed to children by these companies were false and misleading.

In a variety of other recent cases, the Division tackled alleged deceptive practices in sweepstakes and contests, claiming misrepresentations in both the methods used in awarding prizes and the quantity and value of the prizes awarded.

Because of recent, widespread concern with the effect of commercial products on the environment, advertising based on claims of beneficial environmental effects were subjected to intensive scrutiny. These environmental issues included anti-pollution claims for gasoline which were challenged by the staff as false. While the environmental effect of detergents was being dealt with by a Trade Regulation Rule proceeding, the staff challenged claims by several detergent manufacturers that their enzyme detergents could remove stains of any nature. Consent orders were obtained from the companies prohibiting undue claims of efficacy.

Products' impact on the health of the consumer and his property have, of course, also received much attention. In one Commission proceeding, the proposed order would prevent an antifreeze manufacturer from disseminating any future advertising which does not warn customers that the product can cause damage to the cooling system of their car. The Commission also advised Congress that as a result of a staff recommendation, it intended to issue complaints against the six major cigarette advertisers, alleging that the failure of the companies to include a clear and conspicuous disclosure of the health hazards of cigarette smoking in their advertisements constituted a violation of the FTC Act.

Perhaps the most significant action of the year was the adoption of the Advertising Substantiation Program. Under this program, the Commission announced plans to select numerous important industries each year, and to require major advertisers in those industries to submit whatever documentation they have to substantiate those aspects of their advertising which constitute measurable claims of safety, performance, efficacy, quality, and comparative price. To implement this program immediately, the staff prepared Orders to File Special Reports for issuance to domestic and foreign automobile manufacturers, with the response to those reports (aside from trade secrets) available to the public. Thus, for the first time, the consumer will be able to evaluate the support for some of the advertising claims of major companies.

Another step towards more realistic regulation of advertising by the Division in the past fiscal year was the announcement of informational hearings to explore modern advertising techniques and the impact of advertising - particularly television advertising. A need for such hearings was felt during the investigation and evaluation of toy advertising addressed to children. Eventually, it was recognized that the Commission was in need of information not only about the impact of advertising on children, but oil adults as well. With the new techniques of persuasion available through the visual media, the Commission felt that a thorough understanding of the impact of modern advertising on the public was essential for a realistic and consistent system of regulation.

General Litigation

This Division is charged with prohibiting a great variety of unfair or deceptive practices in commerce. During the past year, great effort was devoted to proceedings against false and misleading trade practices involving self-education and franchise opportunities.

One form of "business opportunity" promotion involves multi-level distributorships, which are a form of "pyramid selling." This variation of conventional franchising involves the recruitment of multiple levels of distributors for a product to such an extent that the number of prospects inevitably is exhausted. In connection with this enforcement effort, several complaints were issued, and, in some instances, the challenged firms agreed to the entry of consent orders that would prevent them from using this type of distribution system and would allow prospective participants a 90-day "cooling-off" period in which to reconsider their investment.

With regard to franchise sales, there were a number of investigations of firms which allegedly utilized advertising exaggerating profit potentials and the general business success that a purchaser of a franchise might expect. This activity was directed toward developing an appropriate enforcement mechanism to deal with the hundreds of franchise sellers in the country. Close liaison was also maintained with the Securities and Exchange Commission, Congress, and other government agencies in connection with their interest in franchising.

Private schools, too, received attention. Several proceedings were conducted to determine whether an order should issue to prevent schools from using alleged deception to sell various types of courses, including dancing lessons.

Besides protecting those consumers who want to improve their social and economic status, the Division also worked to prevent the use of deceptive tactics in the sale of products to consumers by large national firms. Typical of this effort were the complaints issued and orders entered against large national sellers of magazines and encyclopedias.

Bogus contests, bait and switch selling, misrepresentation of guarantees, failure to offer a refund for a discontinued magazine,

and exaggeration of the value to be derived from home improvements were also investigated and challenged.

An investigation was also made of large national firms that are engaged in the preparation of income tax forms for the public. This investigation was related to possible misrepresentation of the nature of guarantees provided by these firms and their undisclosed use of information secured from the taxpayer for non-tax purposes such as the sale of loans, mutual funds, and insurance. Enforcement efforts in this area were directed toward requiring these firms to disclose their use of such information and to secure the taxpayers consent to such use.

Special Projects

During the year, enforcement of the Truth in Lending Act reached maximum proportions. Previously, the staff had placed major emphasis on creditor education and voluntary compliance, as many creditors had never before been subject to Federal regulation.

During fiscal year 1971, the second year of this Division's enforcement of the Truth in Lending Act, the staffs creditor education and interpretive efforts were balanced with increased emphasis upon enforcement through formal action, with a number of resulting significant complaints and consent orders.

To measure the effectiveness of the Truth in Lending enforcement program, the staff undertook one of the Commission's most comprehensive surveys of compliance on a national basis. A statistically valid sample of those extending consumer credit was developed, hundreds of creditors contacted, actual copies of installment contracts examined, figures and computations checked, and the results analyzed and reported.

Among the new responsibilities during this year in the field of consumer credit regulation was the enforcement of an amendment of the Truth in Lending Act prohibiting the mailing of unsolicited credit cards and limiting the liability for unauthorized use of lost or stolen cards. Partly because of previous Commission efforts in

this area, a high degree of compliance appears to have been achieved early in the life of this amendment.

During the year, the Fair Credit Reporting Act, effective April 25, 1971, became an additional enforcement responsibility of the FTC. The law gives consumers the right to access to information in their credit files, and gives them the means for correcting erroneous information. In addition to the rendering of informal staff advice, and the publication of an extensive staff discussion pamphlet to aid in obtaining compliance, the Commission issued procedural rules for administration of this legislation.

Further implementation of the Fair Packaging and Labeling Act during the fiscal year 1971 included issuance of regulations governing the marking of specialty packaging involving such commodities as camera film, chamois, Christmas decorations and variety and combination packages. In addition, the Commission, in a joint effort with the Food and Drug Administration, developed and issued final regulations implementing that portion of the discretionary section of the Act covering retail sale price representations involving "cents-off" and "economy size" claims.

Surveys of packaging on the retail market shelves continued with emphasis on such factors as the new requirements for net weight on bar soap and proper markings on certain seasonal commodities. As the "grace" period for disposal of non-complying packaged inventory is surmounted, emphasis on enforcement has shifted from an educational and notification of non-compliance concept, to one of insistence on immediate and complete compliance. While there were many requests for guidance and interpretations from industry, cooperation in the form of immediate voluntary compliance by the majority of industry has been the highlight of the packaging program.

Textile and Furs

This Division is responsible for enforcing the Flammable Fabrics Act, Wool Products Labeling Act, Textile Fiber Products Identification Act and the Fur Products Labeling Act, to keep flammable

fabrics, misbranded textiles and furs and non-complying products out of the marketplace.

The administration of these Acts involves both voluntary and formal enforcement proceedings. There are very few consumer complaints received in this Division and, therefore, the ongoing work of the Division is obtained through the inspections and investigations made by the Commission's Consumer Protection Specialists located in FTC Regional Offices throughout the country. The Bureau of Customs helps the Commission by screening imports under all of the above-mentioned Acts.

In administering the Flammable Fabrics Act the emphasis is on prompt information to the consumer. The Office of Public Information working closely with the Division to protect the consumer normally will issue news releases providing information of possible dangers. News releases arc sent not only to the known persons who may be affected by the fabric or product, but to approximately 3,500 newspapers throughout the country. Fire marshals in all 50 States also receive the releases. The fire marshals have been of tremendous assistance in obtaining local publicity concerning flammable fabrics and in aiding in the removal of such products from the market. Concurrently, there is coordination with those responsible for the prompt removal of dangerous products, fabrics or materials from the marketplace.

Specific activities within the fiscal year included not only regular flammable fabrics investigations, but also investigations into the flammability of decorative feather trim and plastic film, as well as two court seizures of dangerously flammable products.

In cooperation with the Food and Drug Administration and the National Bureau of Standards, the Commission gathered information concerning injuries and deaths resulting from flammable textiles. This information will help in the development of statistics for future new or amended flammability standards.

As a result of liaison with the Bureau of Customs and because of increased FTC publicity about flammable fabrics, the Commission was able to pretest a number of products prior to importation into the United States. Products that were found to be dangerously flammable were subsequently barred from the country.

During the year, informal negotiations were started with officials of manufacturing industries in both Japan and Switzer-

land in an attempt to obtain their cooperation in preventing the importation into the United States of dangerously flammable products subject to the Flammable Fabrics Act.

On April 16, 1971, a Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70) applicable to carpets and rugs of a dimension larger than 24 square feet became effective. The Commission's inspection and enforcement duties under the Flammable Fabrics Act were extended to carpets and rugs as a result of that standard.

Due to the already increased volume of activity in the Commission's laboratory, and the expected additional increase due to the new standards of flammability in categories not presently covered under the Flammable Fabrics Act, the Commission approved additional technicians and an enlargement of the laboratory's physical facilities.

As part of the Division's administration of the Wool Products Labeling Act, a survey was initiated to determine the extent to which reworked fibers are being used in wool products and if such products are properly labeled.

The Commission, in administering the Textile Fiber Products Identification Act through this Division, is charged with establishing generic names for manufactured textile fibers. During fiscal year 1971, a number of applications to establish generic names for new or different textile fibers were received and evaluated by the staff.

In an effort to obtain more efficient enforcement of the Fur Products Labeling Act in the area of dyeing or color altering of furs, a regulation was issued which requires that fur pelts used in garments be stamped to indicate whether they are artificially colored or natural. A special investigation of fur garment manufacturers was made during the fiscal year concerning the practices of certain concerns alleged to be labeling dyed fur products as natural. In instances where violations of the Fur Products Labeling Act were found, formal Commission action was undertaken.

Consumer Education

This Division develops and implements programs to increase consumer competence and to make services of the Commission more readily available to consumers.

During the year, pilot projects were started with the help of the professional persons who, as leaders of consumer organizations, Commission's Regional Offices to train professional and para-professional persons who, as leaders of consumer organizations, can exert a "multiplier effect" for dissemination of information about FTC programs and ways of protecting consumers against deceptive and unfair trade practices.

Arrangements were made to start such programs through consumer leaders in farm and labor organizations, civic associations, and community action groups, as well as through the school system. By year's end, consumer education material was being furnished to over 600 teachers and leaders of consumer education, with over 4,000 items being distributed per month. New printed and audio-visual material was being developed month by month, with special emphasis on needs of military personnel, youths, the aged, low-income and disadvantaged consumers.

The Division also worked to develop state and local cooperation among governmental agencies with consumer protection responsibilities. In accordance with Commission recommendation, six states during the year enacted laws similar to the FTC Act to prevent deceptive and unfair trade practices, bringing to 36 the number of states having such legislation.

Consumer protection at state and local level was furthered by the Division's supplying responsible officials with information to encourage and aid them in taking action to combat fraudulent, deceptive and unfair trade practices. This included FTC advice and expertise in the identification and handling of local consumer problems, and the development of adequate legislation and procedures to cope with such problems.

The Commission also spearheaded the formation of Consumer Protection Coordinating Committees in major metropolitan areas. (See Chapter V, Regional Operations.)

During the latter part of the fiscal year, the Division began to explore the possibility of establishing a Consumer Fraud Clearing-

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house to help federal, state and local law enforcement agencies identify and correlate their efforts in combating fraudulent, deceptive and unfair trade practices. This is in accord with the proposal contained in President Nixon's February 1971 Consumer Message to Congress. Under this proposal the Commission might become a central clearinghouse and repository for exchange of consumer protection law enforcement information on a nationwide basis.

Scientific Opinions

This Division provides scientific facts and opinions to all of the Commission's operating Bureaus and is responsible for the FTC's Tobacco Testing and Research Laboratory.

Since many of the matters referred to this Division require the latest opinions of the scientific community on advertising claims made for foods, over-the-counter drugs, devices, cosmetics and other consumer goods, the Division's staff, trained in science disciplines, conferred with experts and attended scientific and medical meetings to obtain the latest information and expert opinions. The staff assisted the Commission's legal staff in preparing for hearings involving scientific questions and secured the services of expert witnesses. The Division also made arrangements for valid scientific studies to resolve scientific issues.

During the fiscal year, the Division studied the safety of enzyme-detergents; weight reducing products and devices, hearing aid devices; evaluation of research data for mouthwashes; nutrition for breakfast cereals, "diet" foods and drinks, margarine and vegetable oils; sunburn remedies; cosmetics; analgesics; disinfectants; smoking and health; anti-leak antifreeze products for automobiles; safety performance standards for electronic products (e.g., microwave ovens); hazards of sauna and steam baths; air and water purifiers; razor blades and battery additives, to name a few.

Keeping abreast of the activities of other government agencies whose functions bear on those of the Commission, the Division participated in the Commission's monthly liaison meeting with the Food and Drug Administration, and maintained an active liaison

with the Safety Panel of the Subcommittee on Pesticides, President's Cabinet Committee on the Environment. The Division also participated in establishing a regular liaison between FTC and the Environmental Protection Agency. Similar liaison was established with the National Bureau of Standards, the Bureau of Radiological Health (HEW), different bureaus of USDA, and the Naval Research Laboratory.

The Commission's Tobacco Testing and Research Laboratory continued the testing of all domestic varieties of cigarettes for "tar" and nicotine content. This is the only government laboratory that tests cigarettes exclusively and is one of two such laboratories in this country. During the fiscal year, 125 brands and types were tested, which involved the smoking of some 300,000 cigarettes. Reports of the results of these tests are made available to the Congress and the public.

Compliance

This Division enforces the more than 7,500 Commission cease and desist orders issued to prevent false, misleading and deceptive trade practices under the Federal Trade Commission Act; Truth in Lending Act; Wool Products Labeling Act; Fur Products Labeling Act and Textile Fiber Products Identification Act. Investigations by the Division to determine whether respondents are complying with the mandates of an order start in many different ways. The Commission may have been dissatisfied with respondent's initial effort to demonstrate compliance or respondent may not have submitted a compliance report as required by tile Commission's order; alleged violations are also brought to the Division's attention by consumer complaints, congressional inquiries, or competitors of the respondent. During the past year, the Division began to survey many orders issued during the 1960's to determine the degree of present compliance.

The Federal Trade Commission Act provides for a civil penalty of up to $5,000 for each violation of a Commission order. When investigation of respondent's practices discloses violations, the Division prepares the necessary pleadings for certification to the

Attorney General, who is requested to bring suit for the recovery of money penalties. Twelve cases are currently in various stages of litigation in United States courts around the nation.

COMPETITION

The Bureau of Competition is charged by the Commission with the responsibility for enforcement of the Federal Trade Commission Act, the Clayton Act and the Robinson-Patman Act, all of which seek to preserve the Nation's competitive market structure and economic performance.

In the 1970 reorganization of the Commission, changes were made in the Bureau from a division structured along statutory lines to a structure permitting greater flexibility at the management level and a broader use of staff expertise. As a result, during the past year there was a greater emphasis on industry structure and behavior with primary responsibility for a given industry, when appropriate, vested in a designated assistant director. The reorganization also permitted a greater use of manpower in assigning cases to the professional staff, in addition to providing the Commission's attorneys with greater experience and increased effectiveness.

The FTC's enforcement goals continue to be those established by Congress when first creating the agency, that is, the prevention and elimination of monopolistic practices and restraints of trade in their incipiency. In the pursuit of these goals, the Bureau of Competition's overriding objective is to maintain and, where necessary, open up competitive opportunities for all business firms, large and small.

General Activity

During the past fiscal year, the Bureau expended substantial effort in the complicated area of distribution of products. Territorial restrictions in the large soft drink industry, for example, were challenged, and restraints of trade in the sale of bus tires, which threatened to spread to truck and even passenger car fleets, were corrected. Other cases, focusing on the leverage exerted by the

"power-buyer" and others on the conduct of dominant marketers, were in the process of development at the year's close.

In the merger area last year, the Bureau's work continued unabated, with 10 adjudicative cases challenging particular transactions. The Bureau continued its enforcement of the Robinson-Patman Act in keeping with its objective of initiating meaningful and economically significant discrimination cases.

Complaints

During the fiscal year, the Commission issued 33 restraint of trade complaints: 10 involved charges of price discriminations (Robinson-Patman Act), 19 involved unfair practices (section 5, Federal Trade Commission Act);,and 9 involved mergers or acquisitions (section 7, Clayton Act). Some cases involved charges under more than one statute.

During fiscal year 1971, the Bureau received 1,827 applications for complaint. Of these complaints, 193 were the subject of preliminary investigation. As a result of analysis of both the preliminary investigations and some applications which on their face were considered serious, 144 more extensive formal investigations were begun.

The petroleum, milk, bread, and energy industries all received attention during the year as did such specialized problems as franchising and reciprocity, all with an eye toward the development of sufficient, reliable data that would permit the Commission to determine what action should be taken.

The several merger guidelines previously issued continued in effect, and consideration was given to new guidelines for other industries where concentration and merger activity indicate that such direction would be useful.

The Robinson-Patman cases included such industries as wearing apparel, prescription and proprietary drug products, surgical and medical apparatus, sugar, and radio equipment.

The section 5, FTC Act, complaints included the following industries: hi-fidelity components, dictating equipment, consumer electronic products, home cleaners, toiletries, perfume and cosmetics, grocery store products, watches, dairy products, guns,

well construction materials, beer, and ladies garments. These cases involved issues of resale price maintenance, restrictions on sales of repair parts, exclusive dealing and tying arrangements, full line forcing, misrepresentations, unreasonable territorial and customer restrictions, receipt of discriminatory promotional allowances, boycott, sales below cost, coercion, monopoly, and illegal consignment.

The Bureau also started a broad scale inquiry into the effectiveness of past Robinson-Patman orders.

In the merger area, the complaints issued involved rope, automotive parts, fresh fruits and vegetables, canned and frozen seafood, truck and trailer bodies, plywood, insurance and drugs.

Final Orders

There were a number of significant final orders issued in the merger area in fiscal year 1971. In OKC Corporation, a final order required the divestiture of a ready-mix concrete company. This matter was one of a series of complaints brought in the cement industry involving forward vertical integration, and is particularly significant because it is the second time that the Commission obtained an injunction under the All Writs Act prohibiting the breaking up of the acquired company until the matter could be fully adjudicated. This case is now being appealed by the respondent.

The Commission's final order requiring the divestiture by Kennecott Copper Corporation of Peabody Coal Company marks the Commission's first section 7 case in the coal industry. This matter is on appeal by respondent. The last final order which the Commission issued in fiscal 1971 was against The Stanley Works Co. which required the divestiture of the acquired Amerock Corporation.

Compliance

The last step in the Bureau's litigation activity is to obtain compliance with final orders. This involves obtaining and pro-

cessing initial reports of compliance, and frequently undertaking compliance investigations to determine whether the orders are being complied with by the parties. In the section 7 area, compliance activity includes enforcement of the required divestitures as well as the handling of requests to make acquisitions under the orders issued.

In the event it is determined that an order has been violated, a civil penalty action is instituted by certification of the facts to the Department of Justice, which in turn files a case in an appropriate district court.

Two new cases were filed during fiscal year 1971: U.S. v. Ancorp. alleging inducement of allowances violative of section 5 of the FTC Act, and U.S. v. Beatrice Foods Company, involving the acquisition by Beatrice of an interest in dairies without prior Commission approval.

Two civil penalty cases were successfully concluded during the year. Respondent ABC Vending Company was charged with failing to divest theater concessions as required by an FTC order. The matter was settled with respondent paying penalties of $200,000 and agreeing to divest the designated properties. The other matter concerned joint advertising by Frito-Lay and Pepsi Co. which was concluded with the simultaneous filing of a complaint and entry of a judgment in the amount of $15,000. Two other civil penalty cases are under review at the Department of Justice following Commission certification of the facts.

USDA Liaison

To avoid unnecessary duplication of efforts by the two agencies, the Bureau conducts and maintains liaison activities for the Commission with the Packers & Stockyards Division of the U.S. Department of Agriculture, which has related responsibilities with respect to meat Packers.

Accounting

During fiscal 1971, accountants in the Bureau furnished

accounting services in connection with 17 price discrimination and discriminatory allowances cases, 16 anti-merger cases and 16 cases involving unfair methods of competition and deceptive practices. Accounting services were also furnished in connection with the conglomerate merger studies by the Bureau of Economics.

The Bureau accountants also compiled and prepared for publication the Report of the Federal Trade Commission on Rates of Return in Selected Manufacturing Industries 1960-1969, and preliminary work was done on the report for 1961-1970. This report is used by other government agencies, economists, universities and by private industry in studies of various companies and industries.

* * *

The Bureau of Competition is convinced that vigorous enforcement of the antitrust laws is essential to the vitality and proper functioning of the free enterprise system. Litigation is basic to vigorous enforcement and, in the Bureau's view, must be emphasized if the Commission is to carry out its responsibilities effectively. Complaints and litigation in the restraint of trade area significantly increased since the Commission's reorganization, and it is felt that this trend will continue.

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ECONOMICS

Among the Commission's major tools for consumer protection and anti-monopoly action is the economic reporting of facts coupled with well-reasoned economic analysis. In creating the Federal Trade Commission, Congress intended that the economic fact-finding and reporting functions of the Commission be used as a principal means of curbing monopoly power.

Economic Studies and Reports

Fiscal year 1971 brought a change in emphasis to the Bureau's study program. In previous years, the greatest emphasis was placed on merger activity studies, both for individual industries and for the economy as a whole. This emphasis was a reflection of the continuing increase in merger activity which took place during the late 1960's. Merger activity reached an all-time high during 1969, representing the peak of what may be described as the third great merger movement.

In 1970, merger activity declined sharply in all major sectors of the economy. With this decline, there was less urgency connected with studies of merger activity, and more opportunity to develop a study program focusing on existing market concentration.

Many major American industries are highly concentrated and have been so for years. Appendix IV-1, Page 34, indicates that the proportion of manufacturing industries which can be called concentrated (where four firms account for 50 percent or more of sales) is substantial. Many feel high concentration presents serious competitive problems which are beyond the effective reach of merger policy. The Bureau's future study program will examine whether the dominance of a few firms in an industry is associated with desirable or undesirable performance. Where the latter appears to be the case, concrete remedies will be offered to the Commission.

A large part of the Bureau's resources during fiscal 1971 was devoted to study plans for extensive analyses of concentrated industries. While this effort has not yet resulted in finished studies of these industries, it has laid the groundwork for future publications which should be of significant value.

Statistical Reports

During 1971 two annual statistical reports on merger activity were issued. Entitled Current Trends in Merger Activity, 1970 and Large Mergers in Manufacturing and Mining 1948-1970, they serve as standard statistical sources for researchers in the merger field.

As noted earlier, recorded merger activity declined sharply in all major sectors of the economy during 1970. As in previous years, the largest number of acquisitions were recorded in the manufacturing area. In manufacturing and mining combined, the number of acquisitions declined from 2,307 in 1969 to 1,344 in 1970. (Appendix IV-2, page 35.) Assets acquired fell even more sharply from $11.0 billion in 1969 to $5.4 billion in 1970.

The second most important area of merger activity was in the services sector. The decline of mergers in services was more moderate than in manufacturing. As a result, this area's relative contribution to overall merger activity continued to grow in 1970.

One of the most striking changes in the pattern of merger activity during 1970 involved acquisitions of very large firms. In 1969, three manufacturing firms, each with over $1 billion in assets, were acquired. In 1970, the largest independent manufacturing firms with assets over $100 million that were acquired declined from 19 to 7. (A total of 11 manufacturing firms with assets over $100 million were acquired, but four of these were spin-offs from existing firms.)

Economic Reports

In fiscal year 1971, two staff economic reports were completed and cleared for publication.

The first, The Quality of Data as a Factor in Analyses of Structure-Performance Relationships, illustrates the serious problems created by the lack of detailed, publicly available information about large firms. Diversified firms do not generally report sales or profits on a divisional basis. As a result, the FTC's ability to determine the effect of market concentration and other structural variables on various measures of performance is severely handicapped.

This economic report highlights the problem by testing a basic structure-performance hypothesis using two sets of data-one derived from published sources, the other based on detailed product information gathered by the Federal Trade Commission in 1950 for the 1,000 largest manufacturing companies.

The results, for a sample of food manufacturing firms, show that publicly available data do not provide an adequate picture of structure-performance relationships. Not only did the published data have poorer explanatory value, but it actually misspecified some relations.

The study found that:

- Reliance on public sources for data may result in an understatement of the effect of market concentration on the profitability of firms.
- Public sources do not permit a measure of the direct and independent influence of individual firm market share on profitability; and
- Public sources may result in an overstatement of the importance of absolute firm size and diversification on profitability.

The findings of this report underline the need for better and more detailed corporate information to help investors, researchers, and policymakers.

The second staff report, Economic Report - Discount Food Pricing in Washington, D.C, resulted from an August, 1970 decision by all leading food chains in the Washington, D.C., Metropolitan area to "go discount." The report analyzes the facts and events leading to the shift to discounting, the economic consequences of the new pricing policies, and the validity of consumer complaints stemming from them.

During fiscal year 1971, five reports analyzing various aspects of the automobile insurance industry were also published. These reports were prepared by consultants to the Bureau of Economics and were published by the Department of Transportation. The focus of the reports was upon the "high-risk" automobile insurance market, examining characteristics of drivers who find difficulty in obtaining insurance, price and availability problems confronting such drivers, and institutional arrangements such as assigned risk plans developed to serve the high-risk market.

The titles of the reports are:

- The Price and Availability of Automobile Liability Insurance in the Nonstandard Market.
- Price Variability in the Automobile Insurance Market.
- An Analysis of Complaints in Selected Automobile Insurance Markets.
- A Study of Assigned Risk Plans. Insolvencies Among Automobile Insurers,

Copies of these reports may be obtained from the Government Printing Office.

Major Concentrated Industries

A substantial amount of research and planning during the year was devoted to extensive studies of major concentrated industries to be conducted in subsequent years. A tentative list of industries to be studied includes prescription drugs, electrical machinery, the energy sector, and autos. These industries are large and of vital importance to the economy. At the same time, their concentrated structures raise serious questions as to the effectiveness of competitive performance. The essential tasks of the studies will be to gain a better understanding of how each industry functions in a competitive sense, what deficiencies in performance are evident, and what policy approaches may yield future improvements.

In addition to existing competitive problems, structural and technological trends in some of the concentrated industries are also of interest. The energy sector is a complex of industries

including coal petroleum, natural gas, and atomic power. Technological changes may have resulted in a greater degree of substitutability among various fuels in some end uses. This is a factor which could stimulate competition. At the same time, recent mergers between coal and petroleum companies may have served to diminish interfuel competition. A study is underway to determine market boundaries and the degree of concentration in energy, taking into account these diverse trends. A broader study will evaluate the overall structure, conduct, and performance of the energy sector in the light of recent changes.

The concentrated industry studies should serve a dual function - contribute to the FTC's understanding of structure-performance relationships in major industries, and provide a guide to the effectiveness of present antitrust policies and the possible need for new policies to improve competitive performance.

Economic Evidence

The Bureau's Economic Evidence staff, during the past fiscal year, played an active role in well over 100 investigations, most of which concerned the effects on competition of proposed or consummated acquisitions and mergers.

The Pre-merger Notification Program completed its second full year of operation. Under this program all corporations subject to FTC jurisdiction and having total assets of $250 million or more are required to file a special report whenever an acquisition of a firm with $10 million or more in total assets is made. The acquisition itself may be either of assets or of 10 percent or more of the voting stock. A special report may also be required, at the discretion of the Commission, when a firm with less than $250 million in total assets merges with another firm, resulting in a corporation with assets of $250 million or more. During fiscal 1971, special reports were received concerning 92 mergers or acquisitions, of which 9 were cleared to the Department of Justice and 8 were cancelled. Of the remaining 75, there was further investigation by the FTC into approximately 29 mergers, of which 14 resulted in the opening of a formal investigation file.

Special reports were also retroactively obtained from all acquired companies or their successors from the date of the

inception of the program and are now being routinely required from all firms which are acquired under the program. Not only are the special reports received under the Pre-merger Notification Program invaluable as a screening tool for discerning possible violations of section 7 of the Clayton Act, but they are also being processed to yield useful information relating to the economic impact of large mergers on individual industries and in evaluating trends in mergers and acquisitions involving large corporations.

Another important activity which received increased attention during the past year and will continue at an increased commitment in fiscal year 1972, is a review of the FTC's enforcement efforts. Three studies underway in this regard are: (1) a pilot study of a sample of Robinson-Patman orders to determine the degree of compliance and of effectiveness in maintaining competition; (2) an investigation of orders in merger actions to determine the consequences of relief; (3) a study of the dairy industry with a view toward advising the Commission about the continuance of merger orders against some large dairy concerns. The results of these studies will help the Commission to allocate its enforcement dollars so as to provide the maximum social benefit.

Financial Statistics

The Bureau's Financial Statistics Division designs and maintains on a current basis statistical cross sections (probability samples) of corporate enterprises; it collects, analyzes, and summarizes periodically uniform and confidential reports from these enterprises; it estimates national aggregates based on these reports; and it compiles the Quarterly Financial Report for Manufacturing Corporations (QFR) in which, for selected industry groups and assets sizes, are published statements of income and retained earnings, balance sheets, profit rates (rates of return), and related financial and operating statistics.

Four issues of the QFR were published during the year. For the first time, multi-billion-dollar enterprises accounted for more than half the total assets of all manufacturing corporations. (See Appendix IV-3, page 36.) Appendix IV-3 also gives the relative importance, classified by asset size, of all manufacturing corporations in the first quarter of calendar year 1971.

Profit rates (rates of return) in the fourth quarter of 1970 reached the lowest level since the first quarter of 1961. Profit rates of all manufacturing corporations on stockholders' equity and sales, both before and after taxes, for each quarter in the 1961-1971 period are given in Appendix IV-4, page 37. This table shows the quarter-by-quarter profit rates from the first quarter 1961 through to the second quarter 1966 peak to the fourth quarter 1970 through, and the profit rates for the first two quarters in 1971.

APPENDIX IV-4

Distribution of Manufacturing Industries by 4-Firm Concentration - Ratio Quartiles, 1966

Concentration quartile (percent)	Number Of industries		Value of shipments	
	No.	Percent	$Billions	Percent
75 - 100	33	9	66	14
50 - 74	90	24	89	19
25 - 49	154	40	189	40
0 - 24	105	27	124	27
Total	382	100	468	100

Note: The manufacturing section is composed of 417 industry categories. Excluded from the above tabulation are: 15 industry categories composed of products "not elsewhere classified" within major industry groups; 18 local or small regional market industries; and the newspaper and periodical industries. The Census did not publish 1966 concentration ratios for 29 industries. For these 29 industries, 1963 concentration ratios were used.

Source: Annual Survey of Manufacturers: 1966, Value-of-Shipment Concentration Ratios by Industry, U.S. Bureau of the Census. See also, Studies by the Staff of the Cabinet Committee on Price Stability, January 1969, p. 57.

Appendix IV-2

MANUFACTURING AND MINING FIRMS ACQUIRED
1948 - 1970

EXHIBIT - TEXT NOT AVAILABLE - SEE IMAGE

APPENDIX IV-3

Composition of the QFR Sample, by Total Assets,
1st Quarter 1971

Asset size	Total assets of all manufacturing corporations: Million dollars	Total assets of all manufacturing corporations: Per cent[1]	Number of manufacturing corporations in QFR sample
$1,000 million and over	296,610	51	111
$250 million to $1,000 million	108,155	19	222
$100 million to $250 million	47,820	8	309
$100 million and over	452,585	77	642
$50 million to $100 million	25,523	4	368
$25 million to $50 million	19,631	3	539
$10 million to $25 million	9,379	3	1,191
$10 million and over	517,018	88	2,740
$5 million to $10 million	12,527	2 }	
$1 million to $5 million	28,063	5 }	6,925
Under $1 million	26,645	5 }	
All asset sizes	584,253	100	9,665

[1] Figures are rounded and will not necessarily add to totals.

SOURCE: Division of Financial Statistics, Federal Trade Commission, Quarterly Financial Report for Manufacturing Corporations, first quarter 1971, p. 61.

APPENDIX IV-4

Profit Rates of All Manufacturing Corporations 1961 - 1971

EXHIBIT - TEXT NOT AVAILABLE - SEE IMAGE

Chapter V

REGIONAL OPERATIONS

Reorganization and Responsibilities

A major goal of the Commission's reorganization was to increase the participation of the regional personnel in the overall FTC law-enforcement efforts. Regional Office activities are carried on in coordination with those of the Commission's Bureaus of Competition and Consumer Protection, and under the policy guidance of the Commission, the Office of Policy Planning and Evaluation, and the Executive Director.

The Commission's Regional Offices were authorized to initiate preliminary investigations into regional matters. In addition, they can issue and accept returns on subpoenas; conduct investigational hearings; prepare, negotiate and submit to the Commission consent settlement agreements designed to halt unlawful practices; submit to the Commission proposed complaints initiating administrative litigation; and serve as counsel in support of complaints in such litigation.

The Regional Offices, during the past year, acted as investigative arms for the FTC's operating bureaus, assumed expanded responsibility for enforcement of the Truth in Lending and Fair Packaging and Labeling Acts, and were in the forefront of the Commission's greatly increased liaison and coordination with other governmental and private consumer protection and education agencies and groups.

A change in the concept of staffing the Regional Offices was implemented concurrently with the expansion of their responsibilities and authorities.

To supplement the attorneys and clerical personnel, who traditionally staffed the Regional Offices, a new professional category was created - the Consumer Protection Specialist. A program of selection, hiring and training was launched last year, and experience has proved the wisdom of the decision. The Con-

sumer Protection Specialists do much of the work involved in business and consumer education, textile and fur and truth-in-lending inspections and investigations, and federal-state coordination.

Coordinating Programs

The Regional Offices are deeply involved in the Commission's program of coordinating the law-enforcement efforts of Federal, state and local agencies having consumer protection authority. This coordination is achieved through the so-called "Consumer Protection Coordinating Committees" now organized and functioning in seven major metropolitan areas - Chicago, Boston, Detroit, Los Angeles, New York, Philadelphia and San Francisco. Representatives of consumer-oriented agencies from all levels of government meet regularly as a committee to discuss problems, plan programs, and exchange information. In addition, all use a computerized data processing system to record, analyze, and report upon complaints they receive. All have set up systems for forwarding to proper agencies complaints received by any member, and several have also established one-stop complaint services under which consumers are invited to submit all complaints to one office. These complaints are then forwarded to the agencies best able to handle them.

The data processing print-outs, made for the use of all Committee members, disclose patterns of violations, types of practices, types of business and localities in which various violations occur, individual business firms involved, and other information useful for planning coordinated consumer protection activities.

The FTC's Regional Offices provide the staffing and computer service for these Committees.

In Chicago and New Orleans, the Commission, through its Regional Offices in those cities, has also organized "Consumer Advisory Boards," whose memberships represent such groups as the local Better Business Bureaus, bar associations, labor unions, chambers of commerce, retailers associations, Congress of Racial Equality, League of Women Voters, Urban League, legal aid

agencies, boards of education, university departments, consumer organizations, and many others. These boards are sources of information concerning consumer problems, desires and attitudes, and serve as channels through which information can economically be passed to large groups of consumers.

Other Regional Offices maintain similar types of relationships with such groups in their areas, although without the existence of formally organized committees and boards.

Public Hearings

On occasion, the Regional Offices will hold public hearings on pressing problems affecting a specific geographical jurisdiction. For example, during the past fiscal year the Cleveland Regional Office held more than three weeks of consumer hearings in that city's middle and lower economic areas. The results were published by the Commission and provide considerable insight into problems facing Cleveland consumers.

Often, too, Regional Offices will host hearings related to Trade Regulation Rules proposed by the Commission. Such hearings supplement the record developed in Washington. During the past year, for example, both the New York and Chicago Regional Offices held proposed Trade Rule hearings.

A major factor contributing to the Commission's increased complaint action during fiscal year 1971 was the work of the Regional Offices. Appendix V-1 on page 42 gives the caseload, statistics.

The Regional Offices' ability to meet the challenge of their new responsibilities during the past year affirms the soundness of the Commission's decision to give them full partnership in its law enforcement effort.

APPENDIX V-1

FTC REGIONAL OFFICE CASELOAD STATISTICS FOR FY 1971

Cases Submitted by Regional Offices	59*
Cases Transferred by Headquarters to Regional Offices	30
Total	89

Cases Settled by Cease-and-Desist Orders	35
Cases in Consent Settlement Negotiations	49
Cases in Litigation	5
Total	89

* 18.6 percent of the Commission's total complaint action for FY 1971

Chapter VI

HEARING EXAMINERS

Hearing examiners sit as administrative trial judges to hear and initially decide contested cases involving alleged violations of the laws administered by the Commission. The caseload in fiscal year 1971 increased by eighteen percent over that of the previous year. The 11 hearing examiners also devoted nearly 50 percent more time to evidentiary hearings and prehearing conferences than they had the year before.

Appendix VI-1 on page 44 gives the hearing examiners' workload comparison for the fiscal years 1970 and 1971.

The hearing examiners also continued to provide adjudicative services to a variety of other government agencies. In addition to adjudicating Commission cases, the hearing examiners spent nearly 275 days hearing cases for eight other Federal agencies and sitting as Special Masters for United States Courts of Appeals.

APPENDIX VI-1

WORKLOAD OF FTC HEARING EXAMINERS
Fiscal Years 1970 & 1971

	Fiscal Year 1970	Fiscal Year 1971
Complaints		
On Hand at Beginning of Year	27	38
Received	34	34
Remanded	5	6
Total	66	78
Dispositions		
Litigated	17	19
Other	11	12
Total	28	31
On Hand at End of Year	38	47
Hearing Days		
Evidentiary Hearings	186	331
Prehearing Conferences	92	83
Total	278	414
Number of Hearing Examiners	11	11

GENERAL COUNSEL

The General Counsel's Office advises the Commission and its operating bureaus on legal, policy and procedural matters that cover the spectrum of consumer protection, antitrust and administrative law. The majority of the General Counsel's assignments relate to Commission requests for advice on a broad range of questions of law or policy.

The Office also handles requests for advisory opinions, requests for access to documents in the agency's files, and motions to limit or quash subpoenas. During fiscal year 1971, the staff processed and sent to the Commission some 67 advisory opinion matters. In addition, the Office handled over 150 requests for staff level advice.

In addition to its advisory responsibilities, the General Counsel also represents the Commission on review of cease and desist orders in the Courts of Appeals, and assists the Department of justice in preparing and arguing collateral cases in the United States District Courts and Courts of Appeals.

Because of the complexity of FTC cases, the Solicitor General utilizes the General Counsel's assistance in Commission matters before the United States Supreme Court.

During fiscal year 1971, the Office handled 97 cases. Litigation was completed in 44 cases - 9 involving deceptive practices, 3 involving restraint of trade, 10 concerning proceedings for enforcement of Commission subpoenas or other compulsory process, and 22 concerning collateral matters such as suits against the Commission for declaratory judgment and injunctive relief. As of June 30, 1971, 53 cases were pending in the Supreme Court and the various courts of appeals and district courts. (See Appendix VII-1, page 47.)

In addition to its advisory and litigation functions, the General Counsel's Office prepared and submitted to the Commission reports on 93 bills which were pending in Congress, as well as

reports and comments on legislative proposals and bills prepared by other Federal agencies. Frequent conferences were held with Congressmen and other agencies to assist them in preparing bills and to give them the Commission's views. The Office also helped draft statements for the Chairman and key staff members who testified before congressional committees. Committee appearances were made concerning legislation dealing with:

- Amendments to the Federal Trade Commission Act that would strengthen its enforcement machinery.
- "Truth in Warranties" or bills which would require complete disclosure of warranty terms and conditions.
- Amendments to the Flammable Fabrics Act which would require premarketing testing of potentially dangerous fabrics and increase penalties for violations of that Act.
- Consumer protection bills including both proposals which would expand the responsibilities of the Federal Trade Commission, and those which would create a new agency for consumer protection matters.
- Required labeling of textile products to include cleaning instructions.
- The elimination of combination gas-electric utility companies.
- Means to promote greater safety in the design of motor vehicles.
- Amendments to the patent laws in the field of patent misuse.
- The acquisition by oil companies of competing energy sources.

APPENDIX VII-1

FTC CASES IN THE COURTS

This Appendix summarizes the significant Federal Trade Commission cases handled by the Office of the General Counsel in the courts during fiscal year 1971, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

The most significant restraint of trade decisions in fiscal year 1971 involved violations of section 5 of the Federal Trade Commission Act. In The Sperry & Hutchinson Company v. Federal Trade Commission, 432 F.2nd 146 (5th Cir. 1970), cert. granted, 401 U.S. 992 (1971), the Fifth Circuit (New Orleans) set aside the Commission's order prohibiting certain restrictive practices which the Commission found had suppressed and limited the business of redeeming and exchanging trading stamps for consumers. The court held that the practices challenged by the Commission did not violate the "spirit" of the antitrust laws because such practices when full-blown would not bear "the characteristics of recognized antitrust violations." In the court's view the Commission's order would restructure the trading stamp industry so as to eliminate legitimate competitive distinctions between the various trading stamps.

The dissenting opinion declared that the majority's interpretation of section 5 was too narrow in that it unduly limited the Commission's power to act against practices which were undesirable or inimical to the public interest and to protect businessmen and consumers from unreasonable restraint of trade. The Commission's petition for certiorari has been granted and the case is now pending in the Supreme Court.

In L. G. Balfour Co. (D. 8435), the Seventh Circuit (Chicago), holding section 5 to be a flexible and remedial statute containing a broad standard to prohibit practices that run counter to the public policy declared in the Sherman and Clayton Acts, affirmed the Commission's finding that Balfour, in violation of section 5, had monopolized the national college fraternity insignia products market and had engaged in unfair acts and practices in maintaining and fostering its monopoly, including the secret operation of a "competitor." The court also upheld the Commission's finding that certain term purchase agreements used in connection with the sale of high school class rings had the effect of unreasonably restricting competition in violation of section 5. The court affirmed and enforced the Commission's order requiring the termination of all existing contracts between Balfour and fraternities establishing limits on the duration and nature of future contracts, and prohibiting sales by Balfour to certain fraternities for a period of 5 years. In addition, the court sustained the Commission's determination as to the nature of the relevant market monopolized by Balfour and the Commission's power to order divestiture in a section 5 case in order to restore competition.

There were two important section 5 restraint of trade cases pending in courts of appeals at the close of the fiscal year: Golden Grain Macaroni Co. (D. 8737), in the Ninth Circuit (San Francisco), involves a Commission determination that a series of acquisitions of stock and assets of competitors violated section 5 (although such practices were found not to constitute an attempt to monopolize as charged in the complaint). The Commission has ordered divestiture of the acquired stock and assets. And, in National Association of Women's and Children's Apparel Salesmen (D. 8691), in the Fifth Circuit (New Orleans), review is sought of the Commission's finding that respondents violated section 5 by using certain restrictive practices in connection with the conduct and operation of trade shows.

In the area of discriminatory pricing practices under the Robinson-Patman Act in fiscal 1971, the Sixth Circuit (Cincinnati) in The Kroger Co. (D. 8663) upheld the Commission's finding that Kroger knowingly induced and received discriminatory prices from its supplier, Beatrice Foods Co., in violation of section 2(f), notwithstanding the Commission's further finding that Beatrice itself

had not violated section 2(a) because it granted the lower discriminatory prices in good faith to meet the equally low prices of a competitor as permitted by section 2(b). The court sustained the Commission's finding that Kroger, by misrepresenting the nature of competitive offers it received, was thus precluded from receiving any benefit from Beatrice's successful section 2(b) "good faith' defense. Kroger has petitioned the Supreme Court for a writ of certiorari

Colonial Stores (D. 8768), pending in the Fifth Circuit (New Orleans), involves the question of whether a chain store buyer that induces and receives discriminatory advertising allowances prohibited by section 2(d) may, in order to avoid violating section 5, rely solely upon a representation printed on its contract form to the effect that the supplier makes available proportionally equal allowances to all the buyer's competitors.

In National Biscuit Co. (D. 5013), pending before the Commission on remand from the Fifth Circuit (New Orleans), a hearing, as required by the court, has been held before a hearing examiner on the question of whether an order, issued in 1944 in a section 2(a) discriminatory pricing case pursuant to a stipulation of facts, was a consent order."

In the field of illegal mergers (section 7 of the Clayton Act), the most significant court action in fiscal year 1971 occurred in OKC Corp. (D. 8802). In that case, the Commission successfully sought a preliminary injunction from the Fifth Circuit (New Orleans) under the "All Writs" Act. The court's order prohibited OKC, a cement producer, from selling the ready-mix business or other assets of the acquired company, Jahncke Service, Inc., and from making material changes in the business organization and structure of Jahncke pending final disposition of the Commission's administrative complaint challenging the acquisition. Later, the injunction was modified, pursuant to the Commission's request, to require OKC to restore unified management and operation of Jahncke and to maintain necessary accounting systems and records pending the outcome of the case.

Following the Commission's issuance of its order of divestiture in OKC Corp., petition for review was filed in the Tenth Circuit (Denver). At issue is the Commission's power under section 7 to order complete divestiture of an acquired company when the

challenged merger has been found unlawful only as to one line of commerce in which the acquired company is engaged.

In Abex Corporation (D. 8622) and The Seeburg Corporation (D. 7622), the Supreme Court denied petitions for certiorari to review decisions by the Sixth Circuit (Cincinnati) favorable to the Commission. In both cases, the petitioners sought to challenge the Commission's power in merger cases to ban future acquisitions in the same line of commerce for a 10-year period. In Seeburg, the Commission also successfully secured an injunction from the Sixth Circuit enjoining The Seeburg Corporation, pending divestiture, from dismissing the incumbent management of the acquired company, and requiring the maintenance of a specified amount of working capital therein to ensure its competitive viability.

Some very important merger cases were briefed and argued in appellate courts in fiscal 1971: The Bendix Corporation (D. 8739), a conglomerate case submitted for decision before the Sixth Circuit (Cincinnati), involves the novel "toehold" theory. The Commission found that the acquisition of Fram Corporation (Fram), a leading manufacturer of automotive filters, by Bendix Corporation (Bendix), a larger diversified manufacturer of automotive, aerospace and other products, constituted a section 7 violation. The Commission reasoned that Bendix, a substantial potential entrant by acquisition into the replacement market for automotive filters, acted unlawfully by entering that industry by a leading-firm acquisition instead of by a small-firm or "toehold" acquisition. Bendix's challenge is based on its claim that the Commission arbitrarily reversed the hearing examiner's decision dismissing the complaint. Bendix also contends that the "toehold" theory was neither pleaded nor litigated and that it is an unwarranted expansion of section 7.

Mississippi River Corporation (D. 8657) was briefed and argued before the Eighth Circuit (St. Louis). That case involved acquisitions of leading ready-mix concrete firms in three metropolitan markets by Mississippi River Corporation (Mississippi), a substantial firm engaged in the production and transmission of natural gas and in the management of the Missouri Pacific Railroad. These acquisitions, which were made before Mississippi's operation of a new portland cement plant, were found unlawful on the ground that they resulted in substantial foreclosure in the sale of portland

cement in the Memphis, Kansas City and Cincinnati metropolitan markets. Mississippi has challenged the Commission's decision on the grounds (1) that these acquisitions enable it to enter concentrated markets successfully, thus having pro-competitive effects; (2) that a key witness was denied the right to counsel; and (3) that the Commission's "Mississippi River treatment," whereby sensitive customer and sales information in the case obtained from competitors was turned over for purposes of confidentiality to an independent accounting firm for compilation, and to which evidence Mississippi was refused direct access, constituted a denial of due process by depriving Mississippi of its right to adequately cross-examine. The Eighth Circuit has directed reargument of the case.

Other pending merger cases include: United States Steel Corp. (D. 8655) in the Sixth Circuit (Cincinnati), on remand to the Commission for further consideration of respondent's "failing company" defense in light of the Supreme Court's Citizens Publishing Co. decision. In fiscal year 1971, the court clarified its mandate, thus in effect sustaining the Commission's position that post-acquisition evidence need not be considered in determining whether the acquired company's prospects for surviving bankruptcy or similar proceedings were "dim or nonexistent." The pending Kennecott Copper Corporation case (D. 8765) in the District of Columbia Circuit is a conglomerate merger case of far-reaching significance involving the future enforcement of section 7 in the energy field.

DECEPTIVE PRACTICE CASES

The Supreme Court denied certiorari in two "door-to-door" selling cases in fiscal 1971, both decided in fiscal year 1970 in the Commission's favor. In All-State Industries of North Carolina, Inc. (D. 8738), the Fourth Circuit (Richmond) had affirmed the Commission's findings and order involving deceptive sales methods employed by a company engaged in the installment of aluminum siding and other products. In P.F. Collier & Son Corp., P.R. Collier, Inc., and Crowell Collier and MacMillan, Inc. (D. 7751), the Sixth Circuit (Cincinnati) had upheld the Commission's order involving sales of encyclopedias.

Two significant deceptive practice cases were decided this year in courts of appeals, both upholding the Commission. In Leon A. Tashof (d/b/a New York Jewelry Co.) (D. 8714), an important "pilot" case involving misrepresentations as to prices and the extension of credit terms in the framework of "ghetto" merchandising, the District of Columbia Circuit affirmed the Commission's findings and order. One of the company's principal contentions, rejected by the court, was that the Commission had exceeded its authority in requiring it to conduct a "statistically significant survey" to establish that the prevailing market price of any item of merchandise is substantially higher than the company's price before advertising the sale of that item at a "discount." In Windsor Distributing Company (D. 8773), the Third Circuit (Philadelphia) affirmed and directed enforcement of the Commission's order. The order requires the company, inter alia to inform all prospective customers orally and in writing in all contracts that the contract may be cancelled for any reason by the customer by notifying the company in writing within three days from the date of execution (so-called "three-day cooling-off period"). The order also provides that no contract is complete and final unless and until the company has performed its obligations thereunder to the satisfaction of the customer and has obtained a signed statement from the customer indicating his satisfaction.

With regard to deceptive advertising of foods, drugs, devices, and cosmetics under section 12 of the Federal Trade Commission Act, the United States District Court for the Eastern District of California, after the Commission's application, entered a temporary injunction in Medi-Hair International (File 712 3329) requiring the company, inter alia, to disclose affirmatively that its hair replacement system involves a surgical procedure with attendant risks of pain, infection, skin disease and scarring. The injunction further requires Medi-Hair to disclose additional medical risks and affords customers a "three-day cooling-off period" within which to rescind a contract for treatment.

Pending deceptive practice cases in courts of appeals at the close of the fiscal year included: Arthur Murray Studio of Washington, Inc., Bethesda, Inc., and Silver Spring, Inc. (Docket 8776). This case,, pending in the Fifth Circuit (New Orleans), involves primarily the authority of the Commission to include in

its order a limitation preventing these dance studios from entering into agreements for dance instructions obligating any individual to pay a total amount which at any one time exceeds $1,500. Other pending cases: Star Office Supply Co. (D. 8749) in the Second Circuit (New York), involving misrepresentations in connection with the sale of office stationery; Universal Electronics Corp. (D. 8815) in the Eighth Circuit (St. Louis), involving misrepresentations on the part of a distributor of radio and TV tube testing machines and supplies in the sale of franchised dealerships; Marco Sales Company (D. 8770) in the Second Circuit (New York), involving the sale or distribution of merchandise by means of "pushcards" or other games of chance.

In addition to the above, a petition for review filed by S.O.U.P., Inc. (Students Opposing Unfair Practices) was pending in the District of Columbia Circuit at the close of fiscal 1971. S.O.U.P. is challenging a Commission order accepting a consent decree in an adjudicative proceeding involving Campbell Soup Company (C-1741), and also the Commission's refusal to grant S.O.U.P. full rights to intervene in the agency action. The court has denied a motion filed by S.O.U.P. for leave to proceed in forma pauperis.

SUITS FOR ENFORCEMENT BROUGHT BY THE COMMISSION

During fiscal 1971, the Commission brought two actions pursuant to section 6 of the Flammable Fabrics Act for the seizure and confiscation of articles of clothing which the Commission had reason to believe were dangerously flammable. In Approximately 500 Dozen Flammable Chenille Berets, More or Less (M. Grossman & Son, Inc., et al.) (File 712 3172), the United States District Court of the District of New Jersey granted summary judgment to the claimant of the goods on the ground that the existing flammability standards under the statute were not applicable to berets. The Commission has appealed the decision and the district court has entered an order prohibiting the sale or distribution of the berets pending appeal. In Approximately 1499 Dozen Flammable Sheer Nylon Scarves, More or Less (Berkshire

Handkerchief Co., Inc.) (File 712 3263), complaint for seizure was filed in the United States District Court for the Southern District of New York, a warrant for the arrest of the goods was issued, and the goods were seized by the United States Marshal. The claimant of the goods thereafter filed its answer, and further proceedings were pending at the close of the fiscal year.

In fiscal 1971, the Commission requested the Department of Justice to initiate judicial proceedings to enforce five subpoenas, and there was other court activity involving cases that were pending at the start of the year.

Final orders enforcing Commission subpoenas were issued by the United States District Court for the Northern District of Illinois in Sirles & Son Realty Co., Inc. (File 712 3023), and A & R Agency, Inc. (D. 8716), and by the United States District Court for the Eastern District of Missouri in Tube-O-Matic Electronics Corp. et al. (Merton J. Ginsberg) (File 702 3163).

In The Great Atlantic and Pacific Tea Co., Inc. (Melvin W. Alldredge) (File 691 0079), the United States District Court for the District of Columbia ordered enforcement of part of the specification of the subpoena with which respondent had refused to comply, but did so without prejudice to enforcement of the entire specification following the reception and examination of the return as ordered.

In Foremost-McKesson, Inc. and William W. Morrison (D. 7475, File 691 0009), the United States District Court for the Northern District of California directed enforcement of the Commission's subpoena. A separate declaratory judgment and injunction action brought by respondents is expected to be dismissed shortly.

In Southern Cross Discount Co., Inc. (Emmanuel Gladstone) (File 682 3401), an appeal was taken to the Fifth Circuit (New Orleans) from the order of the United States District Court for the Northern District of Georgia holding respondent in criminal contempt for failure to obey the court's order enforcing a Commission subpoena. The district court issued an order staying all proceedings pending appeal. Briefs have been filed and the case is awaiting argument.

In Harry Stroiman, d/b/a Empire Builders Company (File 662 3513), defendant appealed to the Eighth Circuit (St. Louis) from

an order of the United States District Court for the Southern District of Iowa adjudging defendant in civil contempt for failure to comply with the court's order enforcing a Commission subpoena. The court of appeals dismissed the appeal as moot in view of defendant's full compliance with the subpoena.

Awaiting decision at the close of fiscal 1971 was the subpoena enforcement proceeding Gibson Products Company (H. R. Gibson, Sr., H. R. Gibson, Jr., G. P. Gibson) (File 691 0058), in the United States District Court for the Northern District of Texas.

In addition to subpoena matters, there were two court actions in fiscal 1971 to obtain compliance with Commission section 6(b) orders calling for the filing of special reports: Litton Industries Inc. (File 691 0629), in the United States District Court for the Central District of California, and Triple A Specialty Co. (File 99-103) in the United States District Court for the Northern District of Illinois. in Litton, three days of hearings have been held with a fourth hearing scheduled after the close of the fiscal year. Respondent, after suit was filed, complied with the Commission's order in Triple A Specialty, and the question of the assessment of penalties was pending at the close of the fiscal year.

Two cases to enforce section 6(b) orders that were pending at the beginning of the year, Chicago Casket Co. (File 3944-280) in the United States District Court for the Northern District of Illinois, and Victor Gloves, Inc. (File 23-44-515) in the United States District Court for the Southern District of New York, were concluded after respondents complied with the Commission's order.

COLLATERAL SUITS AGAINST THE COMMISSION FOR INJUNCTIVE AND OTHER RELIEF

For the past several years, the Commission has been faced with increasing numbers of collateral suits in federal courts for injunctive, declaratory judgment and for other relief. In fiscal 1971, the Commission was involved in defending approximately thirty such actions.

In Sterling Drug, Inc. (D. 8600), plaintiff requested the United States District Court of the District of Columbia to require the

Commission to grant access to various documents in the Commission's files alleged to be relevant and material to plaintiff in its defense of a Commission section 7 proceeding against it or, in the alternative, to enjoin the Commission from continuing the administrative proceeding until the documents were made available. The action was based upon the Administrative Procedure Act and the Freedom of Information Act. The district court granted summary judgment in favor of the Commission holding (1) that it lacked jurisdiction to interfere with the Commission's administrative proceeding, and (2) that the documents requested by plaintiff were exempted under the Freedom of Information Act.

The case has been fully briefed and argued on appeal to the District of Columbia Circuit, whose decision was awaited at the close of the year.

A complaint for declaratory judgment and injunctive relief filed in Missouri Portland Cement Co. (D. 8783) seeks an order from the United States District Court for the District of Columbia enjoining the Commission from conducting its pending administrative proceeding under section 7 and from withholding certain agency records. A subsequent effort by plaintiff to depose several present and former Commission employees was barred by a protective order entered by the court.

In Maremont Corp. (D. 8763), the Seventh Circuit (Chicago) affirmed the dismissal by the United States District Court for the Northern District of Illinois of Maremont's complaint for declaratory judgment and injunctive relief on the ground of failure to exhaust administrative remedies. Maremont had alleged that the conduct of the Commission's administrative proceeding under section 7 was depriving the company of various statutory and constitutional rights.

In Bristol-Myers Co. (Trade Reg. Rule 215-14), the company sought to enjoin the Commission from continuing a pending analgesic rulemaking proceeding on jurisdictional grounds, and to compel the Commission to produce certain documents from its files under the Freedom of Information Act. The Supreme Court denied Bristol-Myers' petition for writ of certiorari from the District of Columbia Circuit which upheld the dismissal by the United States District Court for the District of Columbia of the jurisdictional question as premature. The appellate court over-

turned the district court's holding that the documents need not be produced, and remanded the case for further consideration. Some of the documents in question have now been produced and litigation is pending in the district court as to the remainder.

In Lever Brothers Co. (Trade Reg. Rule 215-32), in which Colgate-Palmolive Company, The Proctor and Gamble Company, and the Soap and Detergent Association intervened, the United States District Court for the District of Maine granted the Commission's motion to dismiss a complaint seeking to enjoin the Commission from continuing a pending rulemaking proceeding concerning the labeling and advertising of synthetic detergents. Lack of jurisdiction in the Commission to conduct such a proceeding was alleged. Following denial by the United States Court of Appeals for the First Circuit (Boston) of an injunction pending appeal, plaintiffs' appeal to that court was dismissed pursuant to stipulation of the parties.

In National Petroleum Refiners Association (Trade Reg. Rule 215-21), the association and numerous petroleum refiners and marketers challenged the validity of the Federal Trade Commission's Trade Regulation Rule relative to requiring the Posting of Octane Ratings of Gasoline on Dispensing Pumps, including the Commission's jurisdiction to issue such a rule. The action was instituted in the United States District Court for the Southern District of Texas, but, on motion of the Commission, the action was transferred to the United States District Court for the District of Columbia, where it was pending at the close of fiscal year 1971.

In American Brands, Inc. (D. 8799), the United States District Court for the District of Columbia granted the Commission's motion to dismiss an action charging that the Commission has prejudged its administrative complaint and engaged in unlawful ex parte communications, and requesting the court to enjoin the Commission from continuing to prosecute its administrative proceeding. The case has been appealed to the District of Columbia Circuit.

In Koppers Co. (D. 8755), the United States District Court for the Eastern District of Virginia dismissed plaintiff's complaint seeking to enjoin a Commission section 5 proceeding, and alleging that certain interlocutory rulings in that proceeding had deprived it of needed discovery.

In Jewel Companies, Inc., et al. (Docket 8786-8790), plaintiffs had requested the United States District Court for the Northern District of Illinois to enjoin the Commission from prosecuting administrative complaints against them charging violations of section 2(c) of the Clayton Act. Plaintiffs had alleged (1) that the Commission's complaints did not state a cause of action; (2) that one of the Commissioners misconstrued his discretionary power in issuing the complaints by failing to consider the "public interest factors;" (3) that the Commission's failure to make a "public interest" finding invalidated the complaints; and (4) that exclusive jurisdiction to proceed in these matters was vested in the Secretary of Agriculture. Following the district court's denial of the Commission's motion to dismiss, the Seventh Circuit (Chicago) reversed the district court's holding as to contentions 1, 3 and 4, but held that the lower court had jurisdiction to pass upon contention number 2, and the case was remanded to the lower court for that purpose. Following authorization from the district court, the Commission subsequently reconsidered its decision to issue the complaints and found their issuance to be in the public interest. Plaintiffs' motion for summary judgment and the Commission's motion to dismiss for mootness were pending decision in the district court at the close of the year.

In Union Carbide Corp. (D. 8811) plaintiff, alleging violations by the Commission of its Rules of Practice, requested the United States District Court for the District of Columbia to enjoin the holding of hearings on the administrative complaint until the Commission takes certain designated action in that proceeding.

In L. G. Balfour Co. (D. 8435) in the United States District Court for the Eastern District of Virginia, Balfour alleges that the Commission's final order in its administrative proceeding was based in part on evidentiary matters going beyond the time period stipulated to by the parties in settling an earlier suit by Balfour in that court. This action was being conducted contemporaneously with Balfour's appeal from the merits of the Commission's section 5 decision which was pending in the Seventh Circuit (Chicago). Since the Seventh Circuit decided that case in fiscal 1971 in favor of the Commission, the district court matter is expected to be disposed of shortly.

The complaint in United Steelworkers of America, AFL-CIO (D. 8765), filed in the United States District Court for the District

of Columbia, a companion suit to one filed in the District of Columbia Circuit, seeks injunctive relief against the Commission for denying the Union's motion to intervene as a party. The district court stayed further proceedings pending the outcome of the action in the court of appeals. In the court of appeals case, plaintiff appealed from the Commission's denial of its application to intervene as a party. Following the Commission's entry of divestiture order in D. 8765 against Kennecott Copper Corporation, the Union moved for leave to withdraw its petition for review which the court of appeals granted. The district court case is scheduled for a calendar call in September 1971.

The complaint in Genuine Parts Co. (File 671 0673), in the United States District Court for the Northern District of Georgia, sought an injunction against the enforcement of a Commission section 6(b) order requiring the filing of a special report. Plaintiff also sought a declaratory judgment to the effect that the order was harassing, oppressive and unreasonable and, therefore, in violation of plaintiff's constitutional rights.

The Commission filed a counterclaim seeking enforcement of its order and moved for summary judgment. The court directed enforcement of substantially all of the Commission's order. A decision is being awaited on the pending appeal in the Fifth Circuit (New Orleans).

In Carpetland, Inc. (File 712 3228), the United States District Court for the Southern District of Ohio was requested to declare that Carpetland, Inc., was not required to comply with a Commission subpoena. Following the expiration of an ex parte temporary restraining order by the court, plaintiff agreed to furnish the documents in question and the court action was voluntarily dismissed.

In William H. Rodgers, Jr., a case now pending in the United States District Court for the Western District of Washington, plaintiff requests that the court direct the Commission to investigate certain activities alleged by plaintiff to constitute unfair trade practices, and that the court declare the alleged practices to be violative of the Federal Trade Commission Act and the Sherman Act. The Commission has moved to dismiss.

In Orlan A. Saucke, the United States District Court for the Northern District of Georgia has been petitioned to require the

Commission to seize all records and documents from various credit bureaus and their related businesses, purportedly under the Fair Credit Reporting Act.

In Sydney N. Floersheim (D. 8721), the complaint in the United States District Court for the District of Columbia seeks a declaratory judgment to the effect that certain "debt collection" forms submitted to the Commission for approval, but thereafter rejected, are in fact lawful and in compliance with the Commission's order to cease and desist. Floersheim also seeks a stay of civil penalty proceedings during pendency of the litigation. The case is awaiting decision following a hearing on the Commission's motion to dismiss and cross-motions for summary judgment.

In The Franklin Mint, Inc. (File 705 8129), the United States Court for the Eastern District of Pennsylvania was requested to declare that plaintiff's method of mixing and distributing game pieces in connection with a marketing program did not violate the Commission's Trade Regulation Rule relating to Games of Chance in the Food Retailing and Gasoline Industries, and to enjoin the Commission from proceeding against plaintiff in this regard. Following pleadings and hearing on the matter, the court action was dismissed pursuant to stipulation of the parties.

In The Credit Bureau of Greater Charleston, Inc. (File 99-116), the United States District Court for the District of South Carolina has been requested to issue a declaratory order permitting petitioner to provide certain consumer credit reports under circumstances not otherwise allowable under section 604 of the Fair Credit Reporting Act.

Three other actions instituted against the Commission (and the Board of Governors of the Federal Reserve System) challenged the validity of portions of Regulation Z promulgated under the Truth in Lending Act (N.C. Freed Co. and International Roofing Corp. (File 99-90) in the United States District Court for the Western District of New York; and Gardner and North Roofing and Siding Corp. and Surfa Shield Corp. (File 99-89) in the United States District Court for the District of Columbia), or challenged the validity of an interpretation of a portion of Regulation Z (Continental Oil Co. [99-96] in the United States District Court for the District of Delaware).

The courts were requested to declare the regulations or interpretations invalid and to enjoin enforcement thereof. In Continental Oil, the court granted the Commission's and Board of Governor's motion for summary judgment, and no appeal was taken. The district court in Gardner and North Roofing also granted summary judgment in favor of the Commission and the Board of Governors. That case has been appealed to the Court of Appeals for the District of Columbia. Briefs have been filed and the matter is awaiting hearing. The Freed case is still pending in the District Court.

Chapter VIII

POLICY PLANNING AND EVALUATION

The Office of Policy Planning and Evaluation is a newly formed unit of the Commission created as a result of the Commission's July 1970 internal reorganization. The Office's primary mission is to suggest both long- and short-range alternative courses of action to the Commission, and to evaluate new program and investigational proposals against such alternatives.

In meeting this charge, the Office works closely with the operating Bureaus, the Office of the Executive Director, as well as the Chairman and the individual Commissioners.

During the first year of its operations, the Office took significant steps along several fronts to establish ongoing policy planning mechanisms for the Commission including a continuing computerized data bank on FTC regulatory activity showing professional manpower resources costs on individual matters. When completed, the data will be grouped for each matter according to such important planning elements as:

- Industry and product category involved.
- Type of business practice and transaction addressed.
- Size and relative market significance of the entities involved.
- Economic significance and geographic dimensions of affected markets.
- Relevant statutory provisions.
- Special consumer effects, if any, according to demographic factors, and
- Status within the agency.

In the very near future, this "policy planning inventory" will very likely become the nucleus of a total management information system for the Commission.

Substantial progress was also made in developing a program to compare the Commission's resource commitment patterns with objective extrinsic estimates of the economic and consumer importance of the product or service area involved. This program will enable the Commission to make preliminary judgments and determinations of the amount of resources it wishes to spend in product or industry categories under its jurisdiction. When fully developed, the program will consist of a formal set of systematic resource allocation criteria which will be applied to the various industry and product areas falling within the responsibility of the Commission.

In the antitrust area, such criteria will include elements such as:

- Degree of concentration and concentration trends;
- Rate of merger activity;
- Profitability in relation to applicable normative standards; and
- The absolute size and extent of diversification of firms within given industry and product lines.

In the consumer protection area, the criteria will include;

- The relative importance of products in terms of the proportion of consumer retail spending involved;
- The numbers of consumers affected;
- Advertising intensity relative to total sales of the product;
- The prevalence of consumer complaints; and
- The existence of health and safety factors.

Last year, the Office also worked on priority guidelines to assist the staff in opening and closing investigations as well as recommending complaints. The first such guidelines were for the Regional Offices and were developed in part on recommendations submitted by the operating Bureaus and the Regional Offices.

Because the Office of Policy Planning and Evaluation uses social science and other behavioral prospectives in making resource, judgments in the consumer protection area, the staff met at length during the year with a number of leading academic consumer behavior experts. These meetings explored the extent to which

existing techniques and empirical findings in the consumer behavior field can assist the Commission to better understand and measure those market factors which concern and have impact on the consumer.

Two projects aimed at developing more systematic enforcement approaches in the antitrust field were also completed. A computer run was developed that identifies, on a systematic product-by-product basis, the potential for reciprocal dealing among the largest multi-product firms in the U.S. economy. The results of this effort are now being analyzed in order to learn what value they will have in overall planning efforts.

In addition, a cooperative program with the Bureaus of Economics and Competition was directed toward better ways to analyze data received as a result of the Commission's Pre-merger Notification Program - a program which requires compulsory reporting of relevant economic information for acquisitions involving large firms.

The Office staff also spent a great deal of effort during the past year on a number of important and very specific evaluation projects. For example, the Office, in cooperation with the Bureaus of Economics and Competition, planned and structured the Commission's investigation of possible unlawful activity in the reporting and estimating of natural gas reserves, and the study of competitive conditions in the energy sector of our economy. These were adopted by the Commission and are currently under way.

In addition, numerous other specific evaluation projects were referred by the Commission to the Office for analysis and recommendations in the antitrust area, the consumer protection area, and with regard to Commission policies and procedures.

FUNDS AVAILABLE TO THE COMMISSION DURING FISCAL YEAR 1971

For fiscal year 1971, funds totaling $22,490,000 were available to the Commission. Public Law 91-556 authorized $20,500,000; and Public Law 91-665 provided $250,000. Also, Title II of Public Law 92-18 authorized $1,740,000 for recent pay raises. The Commission's adjusted obligational authority for fiscal 1971 was $22,470,268, which reflects a transfer of $19,732 to the General Services Administration for space rental.

Obligations by Activities for Fiscal Year 1971

1. Maintaining competition:	
Investigation and Litigation	$ 5,955,432
Economic and financial reports	890,720
Trade Regulation and industry guides	5,449
General activities and special projects	747,085
Total - Maintaining competition	7,598,686
2. Consumer protection:	
Investigation and litigation	7,604,487
Consumer credit enforcement	2,130,418
Fair packaging and labeling	222,976
Flammable fabrics, textile, wool, and fur enforcement	1,820,697
Trade regulation rules and industry guides	580,187
General activities and special projects	220,885
Total - Consumer protection	12,579,650
3. Executive direction and policy planning	904,471
4. Administrative management	1,387,461
Total obligations - Fiscal Year 1971	$22,470,268

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