# 1988
# ANNUAL
# REPORT

U.S. FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

# Annual Report of the FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

September 30, 1988

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* From October 29, 1979 to May 13,1988.
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*** From June 18, 1988 to August 27, 1988.
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# LETTER OF TRANSMITTAL

May 16, 1990

The Honorable Dan Quayle
President of the Senate
United States Senate
Washington, D.C. 20510

The Honorable Thomas Foley
The Speaker of the House
House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-fourth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1988.

By direction of the Commission.

Janet D. Steiger
Chairman

FEDERAL TRADE COMMISSION
1988 ANNUAL REPORT

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The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general, the Commission's efforts are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

In fiscal year 1988, the Federal Trade Commission continued its commitment to carrying out its statutory responsibilities, embodied in consumer protection and antitrust laws to promote the welfare of consumers. In addition, the Commission advanced the policies underlying its Congressional mandate through cost-effective non-enforcement activities. The agency achieved significant accomplishments in many areas.

## MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In the merger enforcement area, the Bureau of Competition reviewed an increased number of transactions filed pursuant to the Premerger Notification Program. It also proposed modifications to the reporting rules to reduce the premerger reporting burden and to reduce incentives to violate the rules. In fiscal 1988, the Commission sought to enjoin nine proposed merger transactions that it had reason to believe were likely to substantially lessen competition, if consummated. In other instances, parties contemplating mergers abandoned their efforts, or signed consent decrees curing potentially harmful effects, in the face of imminent Commission enforcement action.

Outside the merger enforcement area, the Commission continued efforts to eliminate private and public restraints on competition. The Commission devoted considerable attention to maintaining competition in the health care industry and to challenging anticompetitive agreements among competitors, especially competitive restraints involving professionals. In the compliance area, the Bureau of Competition staff continued or completed work on civil penalty litigation, petitions to modify orders, and applications for approval of divestitures and

acquisitions from entities already subject to Commission orders. Along with its enforcement activities, the agency promoted competition through other methods, including, when invited, advocacy before state and federal bodies of regulatory approaches that would foster rather than impair competition.

## CONSUMER PROTECTION

In fiscal 1988, the Commission challenged as false, misleading, or unsubstantiated, a number of advertising claims which presented risk of substantial harm to consumers. Such claims involved diet supplements, water purifiers, tanning devices, and other items. As part of this effort, the Commission accepted a number of consent agreements while issuing administrative complaints and pursuing administrative litigation in other matters.

The Commission also concluded investigations of alleged fraudulent or deceptive tactics in the sale of items such as vacation packages, artwork, rare coins, gold-mining rights, and business opportunities. The Commission continued its participation, together with state and local law enforcement authorities, in a nationwide computer network for consumer complaints involving telemarketing fraud. In addition, the Commission filed a number of actions charging violations of federal credit statutes.

The Commission obtained civil penalties or consumer redress in several actions charging violations of Commission rules and federal labeling acts. The Commission adopted two amendments to the appliance labeling rule and began proceedings to consider two additional amendments. The Commission also amended rules implementing the Hobby Protection Act and the Textile, Wool, and Fur Labeling Acts. Finally, the Commission announced that it would consider modifying its Games of Chance Rule.

In fiscal 1988, the Office of Consumer and Business Education developed a broadcast and print campaign to help consumers understand the possible risks of home equity loans. In addition, the Office developed or revised 30 consumer publications on topics such as consumer credit record keeping, transmission repair fraud, and rare coins. The staff distributed approximately 2.3 million copies of consumer and business publications.

## CONSUMER AND COMPETITION ADVOCACY

A number of federal and state legislatures and regulatory bodies sought the Commission's advice on proposed legislation or regulatory matters. Topics addressed included restrictions on business practices of professionals, restraints on relationships between suppliers and dealers,

and other competition-related issues. Staff comments generally endorsed market solutions as superior to regulatory approaches. The staff also filed amicus curiae briefs in federal appellate courts concerning several major issues related to the agency's missions.

## ECONOMIC ANALYSIS

In fiscal 1988, Federal Trade Commission economists continued to make policy recommendations and to produce reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics in fiscal 1988, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection and regulatory topics. This work resulted in published reports on resale price maintenance, air and trucking deregulation, state regulation of corporate takeovers, the cost of railroad regulation, the effects of hospital certificate of need laws, and other topics. These major reports provide insight into the effects of government regulation on competition and consumer welfare.

## ADMINISTRATION AND MANAGEMENT

The Commission continued to make substantial gains in office automation during fiscal 1988. The staff installed several hundred personal computers, each loaded with standard software, and printers in offices throughout the agency. Work continued on expanding the use of the Commission's "Voicemail" communications system. Numerous enhancements to the capabilities of the Commission's central computer system were completed during the year.

In the Human Resource Management area, efforts focused on improving recruitment programs for attorneys, economists, and secretaries. The Division of Personnel completed plans for a drug-free workplace and a leave sharing program, and developed a new job series and title (Federal Trade Investigator). Substantial progress occurred in ongoing Equal Employment Opportunity matters. The agency carefully managed its fiscal 1988 budget, spending $66.2 million and approximately 986 workyears, about 2.1 percent fewer than in 1987. The Commission continued in its commitment to bolster its ten regional offices, although overall budget constraints forced the agency to defer action planned for fiscal 1988.

## MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair

methods of competition and promoting competition. The Bureau of Competition is primarily responsible for conducting the activities of this mission. Activities are grouped into ten program areas: mergers, energy and natural resources, health care, transportation, compliance, international antitrust, horizontal restraints, market power, distributional restraints, and food. In addition, the Bureau has an evaluation and planning unit.

In enforcing the Federal Trade Commission and Clayton Acts, through its Maintaining Competition Mission, the Commission examines a wide variety of industries and commercial practices. The mission's purpose is the detection and elimination of antitrust law violations, including collusion, anticompetitive mergers, predatory single-firm conduct, and injurious vertical agreements.

## MERGERS

This program includes investigations of mergers, acquisitions, and joint ventures and challenges to those that appear likely to cause injury to consumers. Additionally, the program provides for the operation of the statutory premerger notification program, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which allows the Commission to review prior to their consummation substantial mergers, acquisitions, and joint ventures.

Under the premerger notification program, businesses filed notifications to report 2,746 transactions, an increase of approximately 8.4 percent over fiscal year 1987. The Commission issued requests for additional information in 47 of the reported transactions. In October 1987, the Commission published the Premerger Notification Sourcebook, a reference document that compiles in a single volume the text of the Hart-Scott-Rodino Act, the Commission's premerger notification rules, all rule interpretations issued formally by the Commission, and various other documents relevant to the premerger notification program.

The Commission published in the Federal Register a Notice of Proposed Rulemaking proposing one principal proposal and two alternative approaches to revising the rules of the premerger notification program for the purpose of receiving public comments. The purpose of these proposed changes is to reduce the burden of the program by narrowing the types of acquisitions that are subject to the notification requirement and by reducing incentives to violate the rules.

The Commission has reinstated its dairy merger reporting program under the Dairy Merger Enforcement Policy, under which dairy processors over a certain size must give the Commission prior notice of certain acquisitions, The Commission had established the program in 1974 and suspended it in 1981.

The Commission has the authority to seek to enjoin mergers prelimi-

narily under Section 13(b) of the FTC Act when the Commission deems such action appropriate to prevent violations of the antitrust laws. In fiscal year 1988, the Commission authorized nine preliminary injunction actions: American Maize/UST; Browning-Ferris/Palladino; Illinois Cereal/Elders; James River Corp./Princeton Packaging, Dun & Bradstreet/Information Resources; McCormick/Specialty Brands; Owens-Illinois/Brockway; Schering-Plough/Cooper; and SPX/Stanadyne. In fiscal 1988 the Commission filed an injunction action it had authorized in fiscal 1987 to block the Pacific Resources/Shell transaction. With the exception of three matters, Owens-Illinois, Pacific Resources, and Illinois Cereal matters, the parties abandoned each of these transactions before the Commission filed its injunction application.

In Owens-Illinois, following a district court's denial of a preliminary injunction, an administrative complaint was issued by the Commission, and the matter is in adjudication. In Illinois Cereal, after an emergency judgement in district court denied the Commission's request for a temporary restraining order, the judgement in district court assigned to the case granted the Commission's application for a preliminary injunction and ordered recision of the transaction. He stayed the effect of his decision but maintained a temporary restraining order pending appeal. An administrative complaint was issued by the Commission, and the matter is in adjudication. In Pacific Resources, a district court granted an injunction against the transaction, which the parties thereupon abandoned. The Commission issued an administrative complaint in that matter. Pacific Resources, Inc. entered into a proposed consent agreement in the matter, under which it agreed to obtain prior Commission approval before making certain acquisitions. The Commission also issued an administrative complaint in Coca-Cola of the Southwest/San Antonio Dr Pepper, and that matter is in adjudication.

Other litigation matters for the fiscal year include adjudications where an administrative law judge or the Commission issued decisions. In MidCon/United Energy, following an administrative law judge's initial decision dismissing the remaining count of an administrative complaint, the Commission heard oral argument on complaint counsel's appeal. In Olin/FMC Corp., the Commission also heard oral argument on respondent's appeal of an administrative law judge's initial decision condemning the acquisition and ordering divestiture and prior approval. In Occidental Petroleum/Tenneco, an administrative law judge issued an initial decision condemning the acquisition and ordering divestiture and prior approval. In B.F. Goodrich/Diamond Shamrock the Commission found a violation in one market but dismissed the complaint as to another market, ordering divestiture and prior approval.

In addition to the consent agreement in Pacific Resources, five final consent orders and proposed consent agreements have flowed from the

merger program in fiscal 1988. In the Occidental Petroleum/Tenneco matter, Tenneco, Inc. entered into a consent agreement whereby if divestiture were ordered in the Occidental litigation, Tenneco would reacquire the disputed assets in A manner consistent with the Commission's final order. In West Point Pepperell/J.P. Stevens, West Point Pepperell, Inc. entered into a proposed consent agreement that requires divestiture and prior approval. The Commission issued consent orders having similar provisions in American Stores/Lucky Stores; Supermarket Development (Furr's)/Safeway; and Von's/Safeway.

ENERGY AND NATURAL RESOURCES

Under this program, the Commission investigates and enforces the antitrust provisions of the Clayton Act and the FTC Act, and serves as an advocate of competition before governmental bodies, to maintain and promote competition in both petroleum and nonpetroleum energy industries. During fiscal 1988, a number of investigations were initiated or continued in various resource industries.

The Commission reviewed several significant proposed energy acquisitions, which are also discussed under the Mergers heading. In one of these, the Pacific Resources/Shell transaction, the Commission filed a preliminary injunction to block Pacific Resources, Inc.'s acquisition of Shell Oil's Hawaiian gasoline and other petroleum fuels terminalling and distribution operations because of the apparent horizontal overlaps in that market. The Commission also issued an administrative complaint, charging that the transaction, which was abandoned, could have lessened competition in the distribution of gasoline and diesel fuel in Hawaii. Pacific Resources, Inc. has entered into a proposed consent agreement in settlement of the matter.

The Commission is continuing an administrative proceeding in the MidCon/United merger., An administrative law judge dismissed a 1985 complaint which charged that the merger would substantially lessen competition in the transportation of natural gas and that sought divestiture of certain offshore Gulf Coast natural gas pipelines which were combined into one company in the merger. The Commission heard oral argument on complaint counsel's appeal of the decision.

The Commission continued its program of analyzing, on request, the competitive effects of the regulatory activities of other federal and state agencies in energy markets and of proposed federal and state legislation. When requested, the Commission offered advice regarding the competitive impact of various proposals. It also intervened in regulatory proceedings concerning energy competition issues when the Commission believed it necessary or appropriate to advocate that market solutions would be superior to regulatory activities.

Finally, the Commission continued to discharge its responsibilities

under the Energy Policy and Conservation Act with regard to the International Energy Program by monitoring industry meetings, providing antitrust advice to other agencies of the United States government, and preparing and issuing reports on the competitive impact of the International Energy Program to the President and to Congress. The Commission also continued to fulfill its obligations under the Deep Seabed Hard Mineral Resources Act, and Industrial Fuel Use Act.

## HEALTH CARE

Under this program, the Commission investigates and brings enforcement action in a wide variety of cases involving restrictions on competition in the health care sector of our economy. Restrictions on competition stem from the private conduct of health care professionals as well as restrictions imposed by state regulatory boards that regulate particular health care professionals and that are dominated by members of the profession they regulate, and from anticompetitive mergers involving health facilities. The Commission was particularly active in law enforcement efforts to eliminate private and public restraints on competition in the health care industry.

The Commission accepted for public comment or issued final consent orders in four matters involving collective or coercive activities by health professionals to obstruct cost containment efforts by insurers or to affect the prices paid for health professionals' services. In New York State Chiropractic Association, the association agreed not to conspire to deal with third-party payers on collectively determined terms. In Patrick S. O'Halloran, M.D., the Commission issued consent orders against obstetricians in Rhode Island, who agreed not to deal with governmental health care programs, such as Medicaid, on collectively determined terms; and in Preferred Physicians, Inc., a consent order was issued against a stock corporation, formed by competing physicians to conduct joint negotiations with third-party payers, which agreed not to enter into agreements with its members to deal with third-party payers on collectively determined terms. In Jose F. Calimlim, M.D., thirty-one anesthesiologists in New York agreed not to deal with third-party payers on collectively determined terms or to coerce third-party payers.

Four consent orders and proposed consent agreements concerned restraints by health professionals upon new entry in the market. In Certain Sioux Falls Obstetricians, the Commission accepted for comment a consent order involving 11 obstetricians in South Dakota, who agreed not to engage in collective, coercive activities that interfere with the residency program of a school of medicine. Related to that consent agreement, in Lee M. Mabee, M.D., the Commission issued an administrative complaint against a twelfth obstetrician who had refused to enter into the settlement agreement. In Medical Staff of Doctor's

Hospital of Prince George's County, the medical staff of a hospital in Maryland agreed not to boycott or use other means of coercion to prevent the delivery of health care services by health maintenance organizations, A medical staff in Georgia, in Medical Staff of Memorial Medical Center, agreed not to deny or restrict hospital privileges to certified nurse midwives unless the staff has a reasonable basis. The fourth matter, Robert E. Harvey, M.D., concerned an allergy clinic in Texas which entered into a proposed agreement under which it agreed not to use boycotts to prevent competition from doctors who are not allergists.

Two additional consent orders involved professional societies' ethical restraints upon the commercial practice and advertising of their members. In Iowa Chapter of American Physical Therapy Association and Tarrant County Medical Society, the Commission placed on the public record for comment consent agreements concerning a physical therapy association that agreed not to restrict member therapists from being employed by physicians; and a medical society in Texas that agreed not to restrict its members' truthful advertising. Two other matters concerned advertising restrictions imposed by state regulatory boards. The Commission issued a consent order against the Wyoming State Board of Chiropractic Examiners, and the Commission ruled in the Massachusetts Board of Registration in Optometry litigation that the board had illegally conspired to restrain competition among optometrists by promulgating and enforcing regulations prohibiting certain truthful advertising by optometrists.

In addition to traditional law enforcement activity, the Commission's staff provided advisory opinions and informal guidance to health care professionals seeking to insure that their proposed activities, including new forms of health care marketing and delivery, such as novel preferred provider organizations or joint ventures, are consistent with the antitrust laws. It also provided advice and comments to the states and the public on matters involving competition in the health care field, including comments concerning Medicare/Medicaid anti-kickback regulations, professional advertising, and certificate-of-need regulation.

## TRANSPORTATION

This program is aimed at eliminating anticompetitive conduct in the transportation area of the economy through law enforcement efforts and promotion of competition through public advocacy. During fiscal 1988, the Commission continued to monitor various transportation markets to determine whether opportunities exist for Commission participation either in the form' of enforcement actions or competition advocacy projects. The Commission also continued its program of examining the regulatory activities of other federal and state agencies in transportation

markets and examining proposed federal and state legislation in such markets. When requested, the Commission offered advice regarding the competitive impact of various proposals, and intervened in regulatory proposals when the Commission believed it necessary or appropriate. These advocacy activities included the areas of motor vehicle sales, motor carrier services, trucking regulation, and taxicab regulation.

The Commission continued its litigation involving the MidCon/United Energy merger, which is discussed also under the Mergers and Energy and Natural Resources headings. In that matter, an administrative law judge dismissed an administrative complaint challenging MidCon Corp.'s merger with United Energy Resources, Inc., charging that the merger would substantially lessen competition in the transportation of natural gas.

## HORIZONTAL RESTRAINTS

Under this program, the Commission investigates industries and persons for evidence of horizontal restraints and relationships that may have the effect of raising prices, impeding entry or expansion or otherwise adversely affecting competition, and files advocacy comments to promote competition. The Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially in markets for professional and health care services. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means, including advocacy before regulatory agencies and state legislatures, cooperative efforts resulting in voluntary compliance, investigations, consent orders and litigation.

During fiscal 1988, the Commission's staff conducted numerous investigations of allegedly anticompetitive regulations of state licensing boards and private professional and trade associations. These investigations and other investigations involving private actions involved competition among pharmacists, veterinarians, accountants, funeral service providers, engineers, and architects.

The Commission issued two consent orders to settle charges concerning horizontal restraints in residential real estate multiple listing services. In Florence Multiple Listing Service, and Multiple Listing Service Mid County, Inc., it was charged that the services restrained competition among residential real estate brokers by placing various restrictions on members.

The Commission issued a final order requiring an optometric board to stop prohibiting truthful advertising in Massachusetts Board of Registration in Optometry, and it issued a number of consent orders or entered into proposed consent orders to prevent horizontal restraints in the health care sector. These consent matters, which are listed under the Health Care heading, include orders against a group of physicians who

allegedly threatened a boycott of third-party payers in an effort to resist discounting of fees; a medical staff that allegedly boycotted a hospital because the hospital's owner was planning to open a health maintenance organization that would, compete with the physicians on the medical staff; a group of anesthesiologists who allegedly conspired to raise the fees paid to them by a Blue Shield plan; and a group of physicians who allegedly boycotted a state Medicaid program.

## INTERNATIONAL ANTITRUST

Under this program, the Commission investigates, advocates consumer interests, and participates in liaison activities involving international antitrust issues. During fiscal 1988, the international antitrust program was active in a total of 19 full phase and initial phase investigations involving such matters as: possible horizontal price-fixing in imported cement, melamine, imported fresh-cut flowers, satellite communication services and kitchen utensils; possible attempted monopolization of the market for bentonite; and potential anticompetitive restraints resulting from proposed transnational mergers involving manufacturers of electrical transmission equipment, ball bearings, pharmaceutical products, aircraft engine parts, food preservatives and food packaging plastics.

Through a total of nine projects, the international program has been active in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues affecting the domestic economy. For example, the Commission intervened in trade law proceedings involving imported antifriction bearings and photocopier supplies, and provided legal and economic analyses which sought to identify and quantify the economic costs to consumers and the national economy of trade relief remedies requested. As part of its international liaison activities, the Division maintained full compliance with the notification provisions of bilateral and multilateral international antitrust cooperation agreements and understandings with foreign nations, which serve to minimize international law and policy conflicts, as well as facilitate United States' antitrust law enforcement efforts involving international commercial transactions and the acquisition of evidence located abroad. In addition, the Commission, in cooperation with the Department of justice and the State Department, continued its participation on the OECD Committee of Experts on Restrictive Business Practices, and the interagency Committee on Foreign Investment in the United States (CFIUS).

## MARKET POWER

Under this program, the Commission investigates problems of market dominance and attempts to rectify those problems through various

avenues, including filing advocacy comments. The Commission staff has continued investigations into possible abuses of market power, including possible abuse of the patent process and other practices that may raise rivals' costs as a means to destroy competition. The Commission staff is examining additional circumstances in which nonprice predation may be an effective anticompetitive tool. Additionally, Commission staff carefully consider all complaints about alleged predatory prices.

## DISTRIBUTIONAL RESTRAINTS

Under this program, the Commission investigates and attempts to eliminate or prevent distributional arrangements that adversely affect competition, such as anticompetitive resale price maintenance, price discrimination, and nonprice vertical restraints. During fiscal 1988, the Commission continued to investigate and initiated new inquiries into possible unlawful restraints on the distribution of goods or services in the marketplace.

The Commission staff continued to review the Fred Meyer Guides, which advise businesses regarding discriminatory advertising and promotional allowances and to monitor for violations of the Robinson-Patman Act, which prohibits discriminatory prices and promotional allowances or discounts.

The Commission obtained a consent judgment against Union Carbide Corp., a matter which is also described under the Compliance Heading, to settle charges that it violated a 1977 consent order that required the company to cease using any tying arrangement or employing exclusive dealing contracts that are not for one year or less in duration or which fail to provide a 90-day or less period for notice of termination.

## FOOD

Under this program, the Commission investigates and undertakes activities to maintain and promote competition in food items and food retailing industries. The program includes advocating consumers' interests before governmental bodies in these industries. Investigations of mergers and of other activities continued in the food (including soft drinks) and food retailing industries and new investigations were initiated. As a result of these investigations, the Commission authorized staff to seek preliminary injunctions, authorized issuance of administrative complaints and issued consent orders against several companies involved in mergers in these areas matters which are described in greater detail under the Mergers heading.

Regarding merger activity in the food item area, the Commission issued an administrative complaint in Coca-Cola Co. of the Southwest/San Antonio Dr Pepper; issued an administrative complaint and

filed a preliminary injunction in Illinois Cereal Mills/Elder Grain, concerning dry corn mill products; and filed a preliminary injunction in McCormick/Specialty Brands, concerning food spices. Three consent orders were issued against acquisitions in the retail grocery stores industry: American Stores/Luck Stores; Supermarket Development (Furr's)/Safeway; and Von's/Safeway.

## EVALUATION, PLANNING AND DEVELOPMENT

This program includes general management of the Bureau of Competition, evaluation of investigational and advocacy activities, and researching and analyzing significant antitrust issues. During fiscal 1988, the Bureau continued its participation in the Commission's competition advocacy program, The Bureau staff wrote, and the Commission authorized the staff to submit several briefs, analyses, or comments in a program designed to encourage and foster competition wherever the Commission's expertise might be helpful or persuasive. These activities deal with various economic sectors, including health care marketing and delivery, certificate-of-need regulation in the health care field, dentistry, motor vehicle sales, trucking regulation, taxicab regulation, and liquor sales. For example, the Commission joined the amicus curiae brief of the United States urging the Supreme Court to construe narrowly the state action exemption in the Patrick v. Burget case. The Supreme Court generally adopted the reasoning of the government's brief.

Work has also continued on a variety of ongoing responsibilities, including evaluation of current Bureau investigations, management of the Bureau's efforts in competition advocacy, providing guidance to the public regarding Commission policies, research and analysis of significant antitrust issues, and supplying information to management on Maintaining Competition Mission activities.

## COMPLIANCE

This program includes the Commission's efforts to assure compliance with Commission orders to cease and desist from certain conduct, orders for divestiture, and other forms of relief as well as its efforts to investigate and act against instances of noncompliance. During the fiscal year, the Commission, through the Department of Justice, filed five civil penalty complaints alleging that a total of seven corporations and three individuals had violated the premerger notification requirements of the Hart-Scott-Rodino Act by failing to comply with reporting and waiting period requirements before consummating certain stock acquisitions. In each case, a proposed consent judgment was filed simultaneously with the complaint.

Three of the cases concerned the use of an investment banking firm

allegedly to avoid filing under the act: Wickes Companies, Inc.; First City Financial Corp., Ltd.; and Donald Trump. In the fourth case, Roscoe Moss Co., the complaint charged that the company had violated the Hart-Scott-Rodino Act when it acquired the voting securities of San Jose Water Co. The fifth case involved a complaint which charged that Lonrho PLC and Diamond A. Cattle Co. did not comply with the act when Lonrho acquired half of Diamond. The complaints were settled with the companies and individuals charged agreeing to pay civil penalties. In another civil penalty action, the Commission filed a complaint against Union Carbide Corp., alleging that it violated provisions of a 1977 consent order. That matter was settled with the company agreeing to pay civil penalties.

The Commission also acted on numerous petitions to modify orders. The Commission modified five of its orders. In modifying the orders, the Commission set aside a prior approval provision; removed a divestiture requirement; permitted a company to engage in activities necessary to participate in lawful joint ventures; permitted a company to list suggested retail prices; and modified an order provision to permit a company to hold certain assets of a hospital that was to be divested as security in the financing of the divestiture.

There was also considerable activity involving extant Commission orders in the merger area, with the Commission reviewing and approving numerous divestitures. In addition, the staff advised Bureau attorneys on the effectiveness of proposed remedies, and conducted investigations of possible order violations and possible violations of the premerger reporting statute and rules.

## CONSUMER PROTECTION MISSION

The Consumer Protection Mission encompasses the Commission's activities designed to ensure that the marketplace is free of unfairness, fraud and deception, and serves as the nation's advocate of competition and consumerism. To achieve these objectives, the Mission has undertaken several initiatives, including: increasing efforts to inform and educate consumers of their rights; working more closely with business groups to increase compliance with the law; developing approaches that focus on specified market failures; fashioning innovative remedies; implementing a sound program of law enforcement actions; and strengthening the Commission's program of filing comments before various federal and state agencies in support of competition and consumers.

Mission activities are grouped into five program areas: Advertising Practices, Marketing Practices, Credit Practices, Service Industry Prac-

tices, and Enforcement. These program areas are supported by the Office of Consumer and Business Education and the Economic and Consumer Policy Analysis program.

## ADVERTISING PRACTICES

Under the Advertising Practices program, six consent orders were issued by the Commission and litigation of deceptive advertising complaints previously filed against North American Philips, Kraft, and R.J. Reynolds Tobacco Company continued.

In New Medical Techniques, a manufacturer and distributor of counter top water distillers agreed not to misrepresent the ability of its devices to provide pure water. The resulting consent order also requires that the company refrain from falsely representing that such devices are approved or endorsed by any person or organization.

In two separate complaints, the Commission alleged that a marketer and a manufacturer of artificial tanning devices had falsely claimed that their products do not pose the risk of skin aging or skin damage. The companies, Silver Group and Sun Industries, agreed to orders prohibiting them from misrepresenting the safety of their products.

A consent order against Great Earth International prohibits the company from making certain claims about its food supplements. The Commission alleged that the company falsely claimed that three of its food supplements would enable users to lose weight, build muscle, or promote healing. Jerome Milton, maker of Shane toothpaste, is required, under a consent order, to have adequate substantiation for claims of superiority in reducing plaque and efficacy in curing or alleviating gum problems associated with gingivitis and periodontitis.

A consent agreement subject to final approval would require General Nutrition to pay a total of $600,000 for research in nutrition, obesity, or physical fitness. The money is to be divided equally among the American Diabetes Association, the American Cancer Society, and the American Heart Association. The agreement settles charges the company made false and unsubstantiated claims that a diet supplement, Healthy Greens, was effective in reducing the risk of cancer. The agreement also settles additional charges from a separate investigation that the company falsely claimed six other food supplements would promote weight loss and muscle growth or retard aging.

The Commission obtained settlements of allegations previously filed in federal district court that two mail order companies misrepresented their nationally advertised products, ranging from copper cookware to "sex pills", and also violated the Mail Order Rule. Philip Goutell, president of the two mail-order companies, agreed to pay $300,000 in civil penalties to settle these allegations. Defendants also agreed not to misrepresent any product they sell through the mail in the future.

The marketer of Dream Away diet pills agreed to pay $1.1 million in consumer redress because of allegedly false advertising claims that taking Dream Away would enable consumers to lose weight while sleeping and without exercising or dieting. Under the settlement, filed in federal district court, the defendants also agreed not to misrepresent Dream Away, Advanced Dream Away, or any food, drug, or device.

Three permanent injunctions were entered in federal district court in the matter of Solar America and Solar Michigan. These companies agreed not to misrepresent that their solar energy heating systems could significantly reduce residential heating fuel consumption and would pay for themselves in a short time. The Solar Michigan order also requires the company to provide refunds to consumers. Richard Hauber, the former president and founder of the Solar America, agreed not to misrepresent the savings potential of any energy-conservation product.

## MARKETING PRACTICES

Telemarketing fraud is a major problem facing consumers today. In response to a complaint filed by the Commission, the federal district court found that Amy Travel Services had misrepresented the cost of vacation packages, obtained credit card numbers under false pretenses, and had billed consumers' credit card accounts without authorization. The defendants are permanently barred from engaging in similar practices and have been ordered to pay $6.6 million in refunds to consumers. The Commission also filed a complaint in federal district court alleging that Bliss Holidays International deceived consumers by selling vacations that were never provided, and misrepresenting costs and other terms of the vacations. The defendants have been permanently enjoined from engaging in deceptive sales practices and freezing corporate and individual assets. Corporate and personal assets are frozen pending the court's final disposition of the consumer redress issue.

The Commission filed a complaint against a Las Vegas telemarketer, Southwest Marketing, alleging that it misrepresented its "gift" or "bonus" vacation package offered as part of a product promotion. The company and its officers agreed to pay at least $75,000 in refunds to consumers and also agreed not to engage in the challenged practices in the future. Southwest Marketing, which also did business under the name "The Competitive Edge," sells promotional products such as pen and pencil sets, lighters, card holders, money clips, and desk clocks.

A preliminary injunction and asset freeze were issued by a federal district court against World Wide Factors Ltd., which does business as Nationwide Printing and Printers Clearing House, and its owner, David E. Williams. The Commission alleged that defendants falsely told small businesses that they had won $1,800 or more in valuable products and

would have to pay only a small fee to claim the prizes. However, the complaint alleges, in most instances the consumers won nothing of value and usually paid $69 or $79 in processing fees, only to receive catalogs from which they could order several small items for free. World Wide sells promotional materials, such as pens, key chains, and mugs to small businesses, with total sales of $60 million.

Complaints were filed in federal district court against several companies that allegedly violated the Franchise Rule. Lady Foote International, a shoe store franchisor, allegedly failed to give potential investors important information about likely earnings, and misrepresenting the kind of assistance the company would provide. In settlement of the charges, Frank Fioravanti and Leon Coleman, principal officers and owners in the now defunct company, agreed to pay $25,000 each in civil penalties. A default judgment was issued by a federal court ordering American Legal Distributors not to make any misrepresentations in the sale of distributorships of prepaid legal plans. The court also ordered defendants not to violate the Franchise Rule and to collectively pay more than $3 million in refunds to consumers.

U.S. Music Club was alleged to have made false and misleading claims in the sale of franchises to sell discount coupons for records, cassette tapes, compact discs, video tapes, and athletic shoes. A federal court issued a temporary restraining order forbidding further misrepresentations and violations of the Franchise Rule, and also froze the defendants' assets. In addition, the Commission filed a complaint in federal court alleging that Mytel International deceptively marketed and sold photocopy supplies through a network of telemarketing sales companies. The complaint alleges that repeated misrepresentations were made in selling the supplies over the phone to small businesses and nonprofit organizations around the country.

Other actions include the Commission's issuance of a consent order against a computer company, NEC Home Electronics, settling charges it deceptively advertised the memory capacity of its desktop microcomputer. The order requires the company to pay $15,000 in redress to approximately 100 consumers. A consent order in an adjudication against Volkswagen of America became final in fiscal year 1988. Under the order, Volkswagen must set up an arbitration program for owners of certain Volkswagen and Audi automobiles with faulty valve seals and other oil consumption-related problems. The costs of repairing these problems can range from approximately $125 to $2,000.

Two consent agreements were accepted subject to final approval by the Commission. The complaints alleged that Batesville Casket Co., the nation's largest casket manufacturer, made false claims about the length of time its caskets will keep out air, water, and other gravesite substances. The consent settling the allegations prohibits future misrep-

resentations and unsubstantiated claims concerning casket durability. The Commission charged Montgomery Ward & Co. with allegedly making false and unsubstantiated claims in selling its service contracts. The company agreed not to make future misrepresentations concerning service contract coverage and products' need for maintenance, adjustment, or servicing.

Five matters involving funeral homes resulted in the payment of civil penalties and consumer redress. The Crane Weiland Funeral Directors, R. N. Horton Co. Morticians, Ware Crest, Inc. and Manning Funeral Chapel agreed to pay $30,000, $15,000, $10,000 and $12,500 respectively in civil penalties to settle allegations that they violated the Funeral Rule by failing to give consumers required information. The rule requires that funeral providers give detailed and accurate information about prices and legal requirements to people who are arranging funerals. Simon Funeral Chapel, and its owner, agreed to pay a $10,000 civil penalty and $7,500 in consumer redress for violating the Funeral Rule by failing to give consumer required information and by charging consumers for certain services without their permission. A complaint was filed against Niday Funeral Home alleging violations of the Funeral Rule and requesting that the court order defendants to pay civil penalties and be prohibited from violating the rule in the future.

The Commission alleged that Wayne Phillips Seminars, an Arizona-based company that markets real estate investment and other financial advice materials, failed to honor its money-back guarantees. In a stipulated order and judgment settling the allegations, the company and its owner must pay refunds to consumers and are prohibited from misrepresenting their money-back guarantees. The company marketed various audio tapes, books, and other materials, sold in sets for $50 to $350, that promoted making money in real estate and saving money on income tax.

The Commission asked a federal district court to order Figgie International to pay redress to consumers who bought Vanguard brand heat detectors based on the company's false claims that the heat detectors give consumers sufficient warning to escape from most residential fires. Figgie is under Commission order prohibiting such deceptive claims in the future. The complaint filed in court is requesting redress for consumers who purchased the residential fire alarm systems between May 1980 and July 1987.

James R. Quincy, former head of the sales organization that promoted memberships in the Harbor Village Club and Paradise Palms Vacation club, agreed to settle allegations that he misrepresented vacation timeshare interests in Hawaii, Lake Tahoe, Nevada, and the state of Washington. The settlement prohibits Mr. Quincy from having any connection with the timeshare business in the future.

The Commission granted in part and denied in part Arizona's petition for a statewide exemption from the Funeral Rule. As a basis for the partial denial, the Commission concluded that certain provisions of the Arizona law did not afford consumers a level of protection as great as the level of protection afforded by the federal law.

## CREDIT PRACTICES

Two district court actions involving travel companies were initiated under this program. A preliminary injunction was issued by a federal court against World Travel Vacation Brokers, and a previously issued asset freeze continued. The court found that the defendants had falsely advertised a $29 airfare to Hawaii when, in fact, they added the cost of the airfare to the cost of the accommodations.

The Commission filed a complaint in federal district court against BankCard Travel Club alleging that the company deceptively bills consumers for membership fees and fails to honor requests for promised cancellations, refunds, or credits. BankCard has approximately 400,000 members who each paid an annual fee of $49.20, with gross revenues of approximately $20 million.

A complaint was filed in federal district court against Credit-Rite, a major credit repair clinic, operating through 29 franchises in 13 states. The company allegedly mislead consumers by falsely claiming it could substantially improve their credit records, for a cost of between $500 and $700, and by failing to honor its 100 percent money-back guarantee. The Commission has asked the court to permanently prohibit them from the challenged practices. Under a separate consent decree, Jeffrey Roberts, former president of Credit-Rite, is prohibited from misrepresenting the ability of any credit improvement service to improve consumers' credit reports and must honor refund promises.

A federal court approved a stipulated preliminary injunction against Action Credit Systems to enjoin them from specified practices, in addition to a temporary restraining order and asset freeze previously issued. The court will rule later on the Commission's complaint, which alleges that the defendants misled consumers by falsely and deceptively claiming to improve credit reports and to arrange for consumers to receive major credit cards. The staff believes that several thousand consumers paid between $95 and $650 each for Action Credit's services.

Twelve defendants in the matter of Nationwide Mortgage Corp. agreed to settle allegations that they misrepresented loan terms and caused more than 100 homeowners to lose their homes, file for bankruptcy, or try to refinance their loans at great expense. The complaint alleged that the defendants claimed to offer long-term loans, when in fact they gave consumers one-year, interest-only, balloon-payment loans secured by the consumers' houses.

The Commission obtained a temporary restraining order and asset freeze against Creative Advertising Specialty House. The California-based "marketing research" firm is charged with allegedly promising consumers a free power motorboat worth over $1000 for responding to a market survey, and instead sending a $70 rubber dinghy and a $250 bill for shipping. The Commission is seeking temporary and permanent injunctions and a redress order.

The Commission filed a complaint and consent decree with Continental Transactions for violations of the Fair Debt Collection Practices Act. The complaint alleged that Continental engaged in a pattern of false representations and verbal harassment in collecting debts, disclosed consumers' debts to third parties, and ignored consumers' valid disputes. Continental agreed to cease these practices, pay a $10,000 civil penalty and provide consumers with two notices disclosing their rights under the
Act.

The Commission made allegations that Nationwide Credit Services mislead consumers by falsely and deceptively claiming the companies could improve consumers' credit records, remove bankruptcies from their credit reports, and arrange for consumers to receive major credit cards. The complaint also alleged that the companies harassed consumers who allegedly owed them money. The Commission is seeking a permanent injunction and consumer redress.

The Commission granted California an exemption from the cosigner provision of the Credit Practices Rule. The rule is designed to protect consumers from unfair and deceptive practices by creditors. Although it need not comply with the cosigner provision, California will still be covered by other provisions of the rule.

## SERVICE INDUSTRY PRACTICES

A federal district court order was issued against nine defendants, including Atlantex Associates, a Miami-based boiler room, selling partnerships in an oil and gas drilling operation. The order requires defendants to pay $12 million plus interest into a consumer redress fund, and prohibits them from misrepresenting the risk of the investment and the income to be gained from it.

A permanent injunction was issued against Rainbow Enzymes and three other defendants, and redress was ordered paid to consumers. The Commission had charged defendants with misleading consumers into paying $3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these consumers to recruit others to take part. The court ordered Rainbow Enzymes, Stanley Massie, and Jack Schaefer to pay $4.2 million in redress to consumers. The former president of Rainbow Enzymes, Rita Mills McCoy, agreed to

pay $15,000 into the consumer redress fund. The case against other individuals named in the original complaint is still pending.

The Commission obtained a temporary restraining order and asset freeze against three branches of Austin Galleries and two individuals. The defendants allegedly bilked consumers by selling fake Salvador Dali, Marc Chagall, and Pablo Picasso prints which they portrayed as good investments. According to the complaint, most of the prints, which were sold for between $200 and several thousand dollars, were worth $50 at most because they were not authentic works. The Commission is seeking a permanent injunction against any misrepresentations in the sale of artwork and to order the companies to pay redress to consumers.

A federal district court issued a preliminary injunction against a second art gallery, Federal Sterling Galleries, alleged with selling fake Salvador Dali prints which were falsely portrayed as low-risk, highly liquid investments. The court ordered default judgments against three defendants, ordering them to pay $4,6 million in consumer redress. The gallery had sales of approximately $5 million.

John Pace and Wayne Pederson, two former officials of Schoolhouse Coins, a nationwide telemarketer of coins for investment, have agreed not to misrepresent the value and profit potential of coins or other investments they sell. According to staff estimates, the defendants' sales of coins totaled several million dollars per year, with many customers investing between $10,000 and $20,000. The Commission obtained $1 million consumer redress judgments against Pace and Pederson individually.

Preliminary injunctions were issued against defendants in the matter of Lynn Murphy & Company, involved in selling consumers investments in rare coins and silver and platinum bullion. The company allegedly was falsely representing the value of gold coins, and misrepresenting that they would purchase bullion to serve as collateral for loans they helped investors obtain from banks. The injunctions prohibit defendants from making any misrepresentations concerning investments they offer, and also continue the asset freeze and the receivership.

The Commission filed a complaint in federal district court against Rare Coins of Georgia, and three other defendants, alleging that the quality of silver coins wholesaled to telemarketers for resale to the public was overstated. The court granted the Commission's request for a temporary restraining order and an asset freeze. The company is believed to be a major supplier for at least sixteen telemarketing boiler rooms nationwide; the average consumer investment in these coins is $3,000-$5,000.

The Commission obtained preliminary injunctions against Numismatic Funding Corp, and other defendants named in a complaint charging defendants with making misrepresentations in telephone sales of silver coins to consumers. The order continues a previously obtained asset

freeze. The court also accepted a stipulation in which a creditor and a collection agency, not parties to the case, agreed to restrictions on their efforts to collect money from Numismatic customers.

The Commission made allegations in court that Beverly Hills Coin Gallery, and five other defendants, misrepresented the value and investment potential of coins it sold. The district court issued a temporary restraining order, froze the defendants assets, and ordered a receiver to take over the companies named in the complaint. The defendants allegedly promoted coins through the mail and telephone calls, and advertised on television and in newspapers. The Commission is seeking preliminary and permanent injunctions prohibiting future misrepresentations of coins, and an order that the defendants pay redress to consumers.

Overseas Unlimited Agency, and its two officers, were accused in federal district court with conducting a fraudulent telemarketing scheme that promises to place consumers in overseas jobs, but which allegedly bilked approximately 70,000 consumers out of an estimated $25 million. The court issued a preliminary injunction against the defendants ordering them not to misrepresent their employment services. The court also continued a previously-issued asset freeze and receivership.

In the standards area, the Commission joined with the Justice Department in filing an amicus brief with the Supreme Court in the case Indian Head, Inc. v. Allied Tube & Conduit. In this case Allied argued that under the Noerr-Pennington doctrine, attempts to influence private standards associations are outside Sherman Act scrutiny when the association's standards are adopted by state or local governments. The Supreme Court held that, as the amicus brief had argued, such activities are not protected by Noerr-Pennington. The Court thereby preserved the traditional rule that private standards-setting is subject to antitrust scrutiny.

The Commission approved a rule prohibiting certain state restrictions on optometrists' commercial practices. The Ophthalmic Practices Rule removes four state restrictions, including those that ban optometrists from having offices in shopping centers. The Commission also voted to continue requiring eye doctors to give consumers their eyeglass prescriptions automatically.

The Commission voted to amend its Retail Food Store Advertising Rule, allowing grocers to comply with the rule by offering rainchecks or substitutes of comparable value when they run out of advertised items. Under the amended rule, grocers could also comply with the rule by disclosing in advertisements that items are available only in limited quantities or only at some stores.

The Commission began a proceeding to review the Funeral Industry Practices Rule. The rule contains a requirement that the Commission

initiate the rulemaking amendment proceeding to address whether the rule should remain in effect unchanged, or should be amended or repealed. Under the rule, funeral providers must disclose price and other information to consumers who visit the funeral home and over the telephone to people who ask.

The Commission terminated a proceeding that had been opened to examine whether to amend the Vocational Education Rule to establish certain requirements for proprietary vocational and home study schools. The Commission noted that the Department of Education had informally proposed new regulations applicable to all schools participating in the Guaranteed Student Loan Program.

Commission staff, at Congress' request, conducted a study of Medigap and specified disease and hospital indemnity insurance to determine the extent to which, if at all, unfair or deceptive acts or practices are currently being used in the sale of such insurance.

The Commission continued its participation in the nationwide databank, jointly developed with the National Association of Attorneys General, designed to help participating law enforcement officials identify and prosecute fraudulent telemarketers. During fiscal year 1988, the Council of Better Business Bureaus, the U.S. Secret Service, and the U.S. Postal Inspection Service began participating in the program. Telemarketing fraud costs consumers and businesses an estimated $1 billion a year.

## ENFORCEMENT

Civil penalties were ordered in seven actions brought under the Enforcement program. The owners of Rocky Mountain Circulation were allegedly selling magazine subscriptions without providing the magazines and not making refunds to consumers who canceled their orders under the Cooling-Off Rule. A consent judgment requires the payment of $20,000 in civil penalties and prohibits future violations of the rule or the making of certain misrepresentations. McCall Publishing Co. agreed to pay $400,000 in civil penalties to settle charges it illegally billed consumers for magazine subscriptions that consumers did not expressly order, in violation of the unordered merchandise statute and Section 5 of the FTC Act.

Two companies that sell imitation perfumes nationwide, Parfums de Paris and Favorite Fragrances, were allegedly violating the Mail Order Rule by failing to make timely shipments or refunds, and by failing to send proper notices when shipments would be delayed. The companies and their president agreed to pay $75,000 in civil penalties and to abide by the Mail Order Rule in the future.

The Commission, filed a complaint against Terralab Engineers, a Salt Lake City testing laboratory, for alleged violations of the testing and

record keeping requirements of the R-Value Rule. This rule requires manufacturers to disclose the thermal performance (R-Value) of their home insulation products, to follow specific test procedures and to keep records to show that they have conducted the tests correctly. The Commission also filed a complaint against C-M Fiber charging the company with overstating the insulating ability of its product in violation of the R-Value Rule.

Thermocon International agreed to pay $30,000 in civil penalties to settle allegations it overstated the amount of protection its home insulation provided. In addition, the company is enjoined from violating the Commission's R-Value Rule in the future in regard to spray applied cellulose insulation.

A 1980 consent order with General Motors Corp. and General Motors Acceptance Corp. was modified by changing the accounting procedures for the sale of repossessed cars and light trucks. Several paragraphs in a 1976 order concerning the recruitment, sales, and debt collection practices of Encyclopaedia Britannica were modified by the Commission. The company's request to set aside the order or set an expiration date was denied. The Commission also modified a portion of a 1983 consent order with The Ogilvy Group to match the language of an order issued against Thompson Medical Co. and vacated consent orders with four mobile home companies. The orders concerned delivery of warranty service on mobile homes and were issued to test the provisions of a proposed mobile home rule.

The Commission granted Maine an exemption from the Used Car Rule, because Maine enacted a rule that gives consumers protection substantially equal to the federal rule. The FTC's rule requires auto dealers to post a window sticker giving detailed warranty information and other important disclosures on each used car offered for sale to consumers. Also during. fiscal year 1988, the staff issued final staff guidelines to help used car dealers comply with the rule.

Three companies agreed to pay civil penalties for allegedly violating the Used Car Rule by failing to display properly completed window stickers on used vehicles offered for sale to consumers. Price Auto Sales paid $32,500, M & M's Car World paid $10,000, and Crystal Ford paid $35,000 in civil penalties. In addition, the Commission filed a complaint alleging Plaza Motors and its owner with violating the Used Car and Warranty Disclosure Rules.

The Commission amended the Appliance Labeling Rule to add central air conditioners, heat pumps, and pulse combustion and condensing furnaces to the list of. appliances covered by the rule. Under the amended rule, manufacturers must disclose these products' energy efficiency ratings and annual operating costs, enabling consumers to compare the efficiency of various models before they buy. The

Commission also amended the rule by revising the table of average unit energy costs to incorporate the latest figures for electricity, natural gas, heating oil, propane, central air conditioners, heat pumps, and water heaters. Finally, the Commission initiated a rulemaking proceeding to consider two amendments to the rule, and to solicit comment on other possible changes to the rule.

The Commission terminated its Regulatory Flexibility Act reviews of the Fair Packaging and Labeling Act and the Appliance Labeling Rule, concluding no changes are necessary under the Act at this time because there is an insufficient basis to conclude that there was a significant economic impact on a substantial number of small businesses. The Commission adopted amendments to reduce the paperwork burden of compliance with the Textile, Wool, and Fur Labeling Acts. The amendments streamline record keeping provisions in each of the three regulations, and clarify that the Textile and Wool Rules allow required disclosures to be combined on a single label.

A Notice of Proposed Rulemaking was published by the Commission announcing it will consider amendments to its Games Of Chance Rule. The 1969 rule establishes requirements for food and gasoline retailers in conducting and advertising games of chance. Finally, the Commission granted the petition of Gilbarco, Inc. requesting permission for partial exemption from the Octane Posting and Certification Rule.

The Commission amended its Hobby Protection Act rules by changing the size requirements for marking imitation coins "Copy." This amendment will make it easier for manufacturers of miniature imitation numismatic items to comply with the rule.

## OFFICE OF CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education plans and develops education programs aimed at providing information to consumers and industry on important Commission programs, statutes, rules, and decisions. In fiscal year 1988, the Office designed a broadcast and print campaign to help consumers understand the risks of home equity loans, new and unique lines of credit. It developed and distributed via satellite a video news release to more than 700 major stations and marketed a free consumer brochure on the subject.

The Office also developed and distributed 30 new and revised consumer publications, many done jointly with other organizations. For example, the office worked with the Associated Credit Bureaus and the National Foundation for Consumer Credit on a publication to explain how credit bureaus keep consumer credit records. It worked with the Automotive Parts Rebuilders Association and the Automatic Transmission Rebuilders Association to produce and jointly distribute a consumer brochure about transmission repair fraud. It also worked with the

American Bar Association on a consumer credit booklet, and with the American Numismatic Association on a consumer brochure to alert consumer about investing in rare coins. On a pilot basis, the office distributed camera-ready consumer articles in a national supplement going to 12,000 editors and received coverage in 60 newspapers.

In addition, the Office developed and distributed two business booklets, one in cooperation with the Direct Marketing Association. The Office also participated in the planning and presentation of a national newspaper business conference for advertising managers on the subject of fraudulent advertising. The conference was conducted under the auspices of American Newspaper Publishers Association and the U.S. Office of Consumer Affairs.

More than 2.3 million copies of consumer and business publications were distributed by the Commission, the Consumer Information Center, and through associations and organizations, such as the American Association of Retired Persons, whose members may have particular interest in the Commission's activities.

## ECONOMIC ACTIVITIES

The FTC's Bureau of Economics provides economic support to the agency's antitrust and consumer protection activities, advises the Commission about the likely effects of government regulation on competition, and analyzes economic events in the American economy as they relate to antitrust, consumer protection, and regulation.

In the antitrust area, the Commission's economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated both for their immediate impact and for their longer-run effects on price and product variety.

Although the FTC is primarily an enforcement agency, Congress also has charged it with the responsibility for analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work. is undertaken by the Bureau of Economics. In 1988, the Commission's economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation.

## ANTITRUST

In supporting the Commission's antitrust activities, Commission's economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. They also advised the Commission on all proposed antitrust actions. These activities consumed the bulk of the Bureau's resources. In addition, the economists conducted several studies during 1988, including reports on resale price maintenance, airline and trucking industries deregulation, state regulation of corporate takeovers, and the costs of railroad regulation.

## CONSUMER PROTECTION

In the consumer protection area, the Commission's economists evaluated proposals for full phase investigations, consent negotiations, consent settlements, and complaints. In addition, the economists routinely provided day-to-day guidance on individual matters and made policy recommendations directly to the Commission.

In addition to providing direct support for individual consumer protection matters, staff economists studied and produced reports on consumer protection topics of particular interest to the Commission as well as the Congress. These included examinations of the effect of certificate-of-need laws on hospital costs, the effects of the Funeral Services Rule, and the effect of automobile fuel economy standards on energy consumption.

## REGULATION

Staff economists actively participated in the Commission's Competition and Consumer Protection Advocacy Program. As part of this effort, Bureau of Economics staff reviewed a variety of regulations that raise antitrust or consumer protection issues. In response to invitations to submit views, the economics staff filed a number of comments with other agencies. These included comments to: the Department of Transportation on corporate average fuel economy standards; the Federal Energy Regulatory Commission on capacity brokerage in natural gas pipelines; the Federal Communications Commission on licenses for FM translators; and to Massport regarding efficient landing fee systems for use at Logan International Airport in Boston.

# EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT, REGIONAL OFFICES

The Office of the Executive Director carries out administrative and management responsibilities for the Commission as well as providing management direction to the agency's ten regional offices. The Executive Director administers these functions through a series of divisions including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems and the Library. In fiscal 1988 major management initiatives included:

## REGIONAL OFFICES

The Commission extended its presence throughout the U.S. through its ten regional offices. The regional offices serve as "mini-FTCs," engaging in the full range of Commission enforcement and advocacy activity within their respective regions. They also serve a valuable "outreach" function, maintaining important contacts with state and local enforcement officials, consumer groups, and trade associations. The Commission continued its effort to bolster staffing in the regional offices, although overall budget constraints forced the agency to defer some of the build-up to later years.

## BUDGET

The fiscal 1988 budget and finance program consisted of three elements: budget planning and control of funds, accounting of expenditures, and audit of results. Careful control of agency expenditures and workyear usage was necessary to accomplish objectives with decreased resources. The agency used approximately 986 workyears and spent $66.2 million in fiscal year 1988. The workyears used were 2.1 percent fewer than in fiscal 1987. Finally, several internal control reviews of agency activities were completed in fiscal 1988.

## HUMAN RESOURCES

The focus of the fiscal 1988 human resource management program was to market the FTC as a viable employer. This was accomplished by revamping the three major recruitment programs - recruiting attorneys, economists, and secretaries; training interviewers in interviewing techniques; and developing current and interesting recruitment brochures. A review of the Research Analyst position was conducted and a new series and title (Federal Trade Investigator) was developed. A Drug-Free Workplace Plan was drafted and forwarded to the Departments of

Justice and Health and Human Services for review. A new Leave Sharing Program was developed and implemented so that all interested employees could participate.

## EQUAL EMPLOYMENT OPPORTUNITY

The Office of EEO emphasized increased understanding of the implications of FTC policies and actions - and how employees perceive such actions. Specific EEO-Human Resource Management initiatives were established. Initiatives were designed to address specific performance management and affirmative recruitment issues and to enhance management's involvement in the complaint resolution process.

## INFORMATION SYSTEMS SUPPORT

Significant progress was made during 1988 in improving the quality and effectiveness of the information systems and related services provided to assist the Commission and its staff in their work.

The Automated Systems Division made major improvements in office automation, central computing, and litigation support systems. Several hundred personal computers and printers were installed, each equipped with standard software (for word processing, spreadsheets, legal research, and other applications) and communications capabilities (communications software and access to a "backbone" communications network), Work continued on expanding the use of the "voicemail" system on the Commission's PBX telephone system to improve efficiency in receiving and distributing information to the public; new systems were installed in the Public Reference Branch and the Planning and Information Hotline Dispatcher Desk.

Major advances in Commission-wide central computing systems included: complete redesign of two systems using standard computer programming languages; continued progress in integrating systems that share related information; implementation of new systems to support joint federal/state enforcement efforts with respect to telemarketing fraud and liaison efforts with the Department of Justice; and making commonly used administrative information more accessible to management and administrative staff.

In response to staff's increasing need for technical assistance and service, the agency implemented a computerized tracking and reporting system to improve responsiveness, Litigation support included data analysis and programming support services for numerous investigations and litigation cases.

The Library Services Branch responded to numerous requests for reference information, computer searches on commercial databases, and interlibrary loan transactions. New initiatives included the publication of

several bibliographies, acquisition of a state legislative tracking system, and a program to track pertinent state legislation for the various regional offices.

The Information Center continued to provide personal computer training for the FTC staff, adding several new classes for more experienced computer users. While continuing to respond to questions on the use of core software and equipment, the Information Center published several new pieces of documentation and modestly expanded the inventory of laptop pc's and other computer equipment available for use by staff while on travel.

The Information Services Division completed a number of projects intended to improve the management of agency information resources, including significant improvements to the effectiveness with which information is distributed within the Commission and to the public.

## PROCUREMENT AND GENERAL SERVICES

The Procurement Office implemented an agency-wide credit card procurement program in fiscal 1988. The General Services Office devised a standard space plan for regional offices, provided project management for construction of the FTC Child Care Center, released 6,300 sq. ft. of office space at 601 Pennsylvania Avenue, installed new building signage, and painted Headquarters building corridors and lobbies in accordance with national historic preservation guidelines.

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PART II (INVESTIGATIVE STAGE)
CONSENT AGREEMENTS ACCEPTED
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

American Stores Co.

(See page 34).

Certain Sioux Falls Obstetricians

Eleven obstetricians in the Sioux Falls, South Dakota, area agreed not to engage in collective, coercive activities that interfere with the residency program of the University of South Dakota School of Medicine. The complaint accompanying the agreement made allegations that a conspiracy among the doctors began when the medical school recruited the area's first perinatologist for its full-time faculty. When the perinatologist began advertising for patients, and the medical school continued recruiting additional practicing obstetricians, it is charged, that the obstetricians threatened a boycott of the OB/GYN residency program. The complaint alleged that a twelfth obstetrician acted in combination with them. That doctor refused to sign the consent agreement and a separate administrative complaint was issued against him. (See Lee M. Mabee, M.D., p. 41.)

Eugene M. Addison, M.D.

Fourteen physicians in the Huntsville, Texas, area agreed not to deal collectively with health maintenance organizations or health plans, boycott them, or deny hospital staff privileges because the applicant is associated with them. The agreement settled allegations in an accompanying complaint that the physicians first acted collectively in negotiations with HMOs to obtain more advantageous terms of participation, and then when those efforts were unsuccessful, collectively refused to participate with. HMOs, and engaged in an effort to restrict the hospital privileges of physicians affiliated with HMOs. The complaint alleged that these actions limited competition and increased prices to consumers.

Florence Multiple Listing Service, Inc.

(See page 34.)

Iowa Chapter of American Physical Therapy Association

The Iowa Chapter of the American Physical Therapy Association agreed not to restrict member therapists from being employed by physicians. The complaint issued with the agreement charged that the association had adopted a resolution saying it was illegal and unethical for physical therapists to work for doctors, called on its members to report any such therapists and threatened disciplinary action against such therapists. According to the complaint, these actions hurt competition and deprived consumers of the choice of providers and the convenience of choosing physician and physical therapy services at the same location.

Medical Staff of Doctors' Hospital of Prince George's County

(See page 34.)

Medical Staff of Memorial Medical Center

(See page 35.)

Multiple Listing Service Mid County, Inc.

(See page 35.)

Patrick S. O'Halloran, M.D.

(See page 35.)

Preferred Physicians, Inc.

(See page 36.)

Robert E. Harvey, M.D.

(See page 36.)

Von's Companies, Inc.

(See page 37.)

West Point-Pepperell, Inc.

West Point-Pepperell, Inc. entered into a proposed consent agreement concerning its acquisition of J.P. Stevens & Co., Inc. The Commission accepted a hold-separate agreement, allowing West Point to make the acquisition but requiring it to run most of the Stevens' assets as an independent business. Under the agreement, the company agreed to divest certain towel and sheet making facilities. The complaint accompanying the agreement charged that the acquisition could substantially reduce competition in the manufacture and sale of sheets and towels in the United States. Additionally, under the agreement, the Commission may also require West Point to divest a sheeting mill located in North Carolina, a yam plant in South Carolina and up to three of certain trademarks and designer licenses.

Wyoming State Board of Chiropractic Examiners

(See page 37.)

CONSUMER PROTECTION MISSION

Batesville Casket Co.

Batesville Casket Co., the nation's largest casket maker, was charged with making false advertising and warranty claims about the length of time its caskets will keep out air, water, and other gravesite substances. The order prohibits future misrepresentations and unsubstantiated claims concerning casket durability.

Montgomery Ward & Co., Inc.

Montgomery Ward allegedly made false and unsubstantiated claims in selling its service contracts. The consent agreement prohibits Ward from misrepresenting service contract coverage and the need for buying a service contract, including the need for maintenance, adjustment and servicing of products. The consent agreement also prohibits Ward from making unsubstantiated claims about the durability or reliability of any product for which it sells service contracts.

## PART II (INVESTIGATIVE STAGE)
## CONSENT ORDERS ISSUED

### MAINTAINING COMPETITION MISSION

American Stores Co.

American Stores Co. entered into a consent agreement under which it could acquire Lucky Stores, Inc. The agreement requires American Stores to divest between 31 and 37 grocery stores in California. The complaint accompanying the consent agreement charged that the acquisition could substantially reduce competition among grocery stores in sections of California, and in parts of Illinois, Iowa, and Indiana. American also agreed to divest Lucky's common limited partnership interest in Eagle Food Centers, L.P., which operates grocery stores in the Midwest in competition with American's stores, Under the agreement, American must seek prior Commission approval before acquiring grocery stores in specified areas in California.

Florence Multiple Listing Service, Inc.

Florence Multiple Listing Service, Inc. agreed to settle charges that it restrained competition among residential real estate brokers by restricting membership. The complaint accompanying the consent agreement alleged that the service told prospective members that as conditions of membership, they must own a real estate business for at least six months before application, agree not to join another multiple listing service, agree not to compete with Florence, and are subject to a two-thirds vote of acceptance by the existing membership. It was charged that Florence's actions limited consumers' ability to choose among a variety of firms competing over price, terms and services and limited competition.

Medical Staff of Doctors' Hospital of Prince George's County

The Medical Staff of Doctors' Hospital of Prince George's County, Maryland, agreed not to organize or further any agreement among physicians to refuse to deal with or coerce anyone for the purpose of preventing delivery of health care services by health maintenance organizations or other health care facilities. The agreement settled charges in an accompanying complaint that the medical staff had restrained competition and had illegally coerced and pressured the owner of the hospital and HMO not to open a planned HMO

facility in Prince George's County. According to the complaint, the staff's actions deprived consumers of the benefits of competition and restricted competition among physicians and the HMO.

Medical Staff of Memorial Medical Center

The Medical Staff of Memorial Medical Center in Savannah, Georgia, agreed not to deny or restrict hospital privileges to certified nurse midwives unless the staff has a reasonable basis for believing that such restrictions would serve the interest of the hospital in providing for the efficient and competent delivery of health care services. The agreement settled charges in an accompanying complaint that the staff conspired to avoid competition by denying a certified nurse midwife's application for hospital privileges without a reasonable basis. According to the complaint, the staff's conduct unreasonably restrained trade and deprived consumers of the benefits of competition.

Multiple Listing Service Mid County, Inc.

Multiple Listing Service Mid County, Inc., of Brooklyn, New York, agreed to end various practices that have allegedly restrained price and service competition among residential real estate brokers. Under the agreement, Mid County is prohibited from requiring that any applicant or member operate a full-time office, fixing any division of commission between selling and listing brokers, adopting policies for exclusive agency listings, requiring members to inform Mid County of the commission agreed to between a listing broker and a homeowner, and adopting policies that delay the solicitation of a listing agreement.

Patrick S. O'Halloran, M.D.

Five obstetricians in the Newport, Rhode Island area agreed not to conspire to deal with any governmental health care program on collectively determined terms or to coerce any governmental health care program. The agreement settled complaint charges that the physicians acted concertedly and forced the state to raise Medicaid payments to obstetricians by threatening to refuse to accept any new Medicaid patients. This conduct is alleged to have restrained competition among obstetricians in the area and increased the prices charged to Medicaid patients.

Preferred Physicians, Inc.

Preferred Physicians, Inc., a stock corporation, owned and formed by competing physicians to conduct joint negotiations with third-party payers on behalf of its physician member shareholders, agreed not to enter into agreements with its members to deal with third-party payers on collectively determined terms. In addition, under the agreement, for five years, it may not advise its members on the desirability or appropriateness of prices to be paid for physicians' services by third-party payers. The accompanying complaint alleged that many of the physicians in the Tulsa, Oklahoma, area agreed not to compete with each other with respect to whether and on what terms to contract with third-party payers. To implement this agreement, they formed the corporation.

Robert E. Harvey, M.D.

Victoria Allergy and Asthma Clinic, in the Victoria, Texas area, and allergists who practice there, agreed not to conspire to use boycotts and coercion to prevent competition from doctors who are not allergists. The complaint accompanying the agreement charged that two physicians organized a conspiracy of allergists in Texas to boycott the manufacturers of new allergy testing products that were being marketed to nonallergist physicians. It is charged that the conspiracy hindered competition in the provision of allergy diagnostic and treatment services and hurt consumers by limiting their ability to choose among a variety of providers.

Supermarket Development Corp.

Furr's Inc., a subsidiary of Supermarket Development Corp., entered into a consent agreement under which it could acquire Safeway's El Paso division. The agreement requires Furr's to divest grocery stores in 12 towns in west Texas and New Mexico to Commission approved acquirers before consummating the acquisition. The complaint accompanying the agreement charged that the acquisition would substantially reduce competition in those 12 towns. Under the agreement, Furr's must seek prior Commission approval before acquiring any grocery store, including any recently closed stores, in 19 cities in west Texas and New Mexico in which it and Safeway, currently operate grocery stores.

Tarrant County Medical Society

The Tarrant County Medical Society of Fort Worth, Texas agreed not to restrict its members' truthful advertising. The complaint accompanying the consent agreement charged that the society imposed limitations on the size and duration of newspaper advertisements and telephone listings by its members. The complaint also alleged that the conspiracy restricted competition among physicians and deprived consumers of truthful information about physicians' prices, services, and qualifications.

Von's Companies, Inc.

The Von's Companies, Inc. entered into a consent agreement under which the company could acquire three Safeway divisions with stores in southern California and Nevada. The agreement requires Von's and Safeway to divest 12 grocery stores in California to Commission approved acquirers before consummating the acquisition. The complaint accompanying the agreement charged that the acquisition would substantially reduce competition in retail grocery markets in southern California. Under the agreement, Von's must seek prior Commission approval before acquiring certain grocery assets in Las Vegas, Nevada, and specified areas in California and must give the Commission notice before making certain acquisitions in southern California.

Wyoming State Board of Chiropractic Examiners

The Wyoming State Board of Chiropractic Examiners agreed not to restrict truthful advertising by chiropractors. The complaint accompanying the agreement charged that the board unreasonably restricted competition among chiropractors by unreasonably preventing the dissemination of truthful, nondeceptive information about fees, specialized treatment, and claims of superiority. Although Wyoming law prohibits advertising "in any unethical or unprofessional manner," the state, it is charged, has not explicitly authorized the board to prohibit truthful, nondeceptive advertising, nor has the state adopted any clear and comprehensive policy to displace competition with regulation in the chiropractic profession. Under the agreement, the board is not prevented from enforcing prohibitions against advertising that it reasonably believes to be false or deceptive within the Wyoming statute, as limited by the Constitution.

CONSUMER PROTECTION MISSION

Great Earth International, Inc.

Great Earth, a franchiser of food supplement stores, allegedly made false claims that three of its food supplements would enable users to lose weight, build muscle, or promote healing. The order requires Great Earth to have substantiation for claims that any product will cure or prevent disease, assist a user in losing or controlling weight, improve or strengthen any body organ or function, or eliminate or reduce harmful substances in the body or environment.

NEC Home Electronics (U.S.A.), Inc.

NEC Home Electronics, seller of a broad range of computer products and peripheral equipment, settled allegations that it deceptively advertised the memory capacity of its desktop micro-computer. The consent agreement requires the company to cease misrepresenting the memory capacity of its microcomputers and to pay $15,000 in consumer redress. NEC is the U.S. subsidiary of the world's largest electronics firm.

New Medical Techniques, Inc.

New Medical Techniques, manufacturer and distributor of countertop water distillers, allegedly used deceptive advertising for its water distillers. The company agreed not to falsely claim that its distillers remove all chemicals and impurities from tap water or that such devices are approved or endorsed by any person or organization.

Silver Group, The

The Silver Group, a major marketer of artificial tanning devices, allegedly made false claims that its products do not pose a risk of skin aging or skin damage, including skin cancer. The consent agreement prohibits the company from misrepresenting that its devices do not pose a risk of any harmful side effect associated with sun exposure. For one year Silver must include in its ads and promotional material a statement advising the user to read the mandatory FDA warning label found on every tanning machine. After one year, the company must include that statement in ads making safety or health benefit claims.

Sun Industries, Inc.

Sun Industries, one of the country's largest manufacturers of artificial tanning devices, allegedly made false claims that its products are "safe," can be used safely without eye protection, and do not pose the risk of skin damage, including the risk of skin aging and skin cancer. The order prohibits the company from misrepresenting the safety of its products. In addition, the order requires that Sun must include a warning statement in its ads and promotional materials for one year. After the first year, the company must include the warning in any ads making health or safety claims.

## PART III ADMINISTRATIVE COMPLAINTS

### MAINTAINING COMPETITION MISSION

#### Coca-Cola Company of the Southwest

The Commission charged in an administrative complaint that Coca-Cola Co. of the Southwest's acquisition of certain San Antonio Dr Pepper Bottling Co. assets substantially lessened competition in the production, distribution, and sale of soft drinks in the San Antonio area. According to the complaint, Coca-Cola of the Southwest bought the Dr Pepper and Canada Dry franchises and related assets from San Antonio Dr Pepper for about $14.5 million in 1984. The other assets of Dr Pepper Bottling became the Big Red Bottling Co. The complaint charged that the acquisition hurt competition by significantly weakening the Big Red Bottling Co., reduced competition between soft drink brands and increased the likelihood of collusion and that Coca-Cola Company of the Southwest will unilaterally exercise market power. The Commission alleged that these factors would likely lead to increased prices and restricted output of carbonated soft drinks.

#### Illinois Cereal Mills, Inc.

The Commission charged in an administrative complaint that Illinois Cereal Mills, Inc.'s acquisition of Lincoln Grain Co. from Elders Grain, Inc. could substantially reduce competition in the production and sale of dry corn mill products in the United States. The complaint charged that the acquisition could hurt competition in industrial dry corn milling and in the specific products produced by dry corn mills for food use, such as cornmeal and corn flour. The Commission sought a preliminary injunction against the acquisition seeking recision of the transaction or appointment of a receiver pending the completion of administrative hearings to determine the legality of the purchase. After an emergency judge in Chicago denied the Commission's request for a temporary restraining order, a preliminary injunction was issued by the U.S. District Court for the Northern District in Illinois, ordering that the acquisition be undone and that the contracts between Illinois Cereal and Elders be rescinded. The effect of the order was stayed pending appeal in the Seventh Circuit, U.S. Court of Appeals.

Lee M. Mabee, M.D.

The Commission issued a complaint charging 12 obstetricians in Sioux Falls, South Dakota, with illegally attempting to eliminate or limit competition by conspiring to boycott the OB/GYN residency program of the University of South Dakota School of Medicine. Eleven of the twelve obstetricians agreed to enter into settlement of the matter. A separate administrative complaint was issued against the twelfth obstetrician, who had refused to enter into the settlement agreement. (See Certain Sioux Falls Obstetricians page 31.)

Owens-Illinois, Inc.

The Commission charged in an. administrative complaint that Owens-Illinois, Inc.'s proposed acquisition of Brockway, Inc. could substantially reduce competition in the manufacture and sale of certain glass containers. According to the complaint, in terms of production capacity, Owens and Brockway are two of the largest manufacturers of glass containers for food, beverages and other products in the United States. The Commission sought a preliminary injunction against the acquisition pending the completion of administrative hearings to determine the legality of the acquisition. The preliminary injunction was denied by the U.S. District Court for the District of Columbia. The Commission's motion for an injunction pending an appeal of the denial was also denied.

Pacific Resources, Inc.

(See page 42.)

## PART III (ADJUDICATIVE STAGE)
## CONSENT AGREEMENTS ACCEPTED
## AND PUBLISHED FOR PUBLIC COMMENT

### MAINTAINING COMPETITION MISSION

New York State Chiropractic Association

(See page 43.)

Pacific Resources, Inc.

Pacific Resources, Inc. entered into a proposed consent agreement under which it agreed to obtain Commission approval before acquiring certain gas or oil assets in Hawaii. The agreement stems from a 1987 administrative complaint alleging that the proposed $32 million acquisition, which was abandoned, of Shell Oil Co.'s Hawaiian petroleum products and gasoline assets would, if consummated, reduce competition in the supply of gasoline and diesel fuel in the state and could increase prices for gas or diesel fuel in the state. The Commission sought a preliminary injunction against the acquisition pending completion of administrative hearings to determine the legality of the purchase, which the U.S. District Court for the Western District of Washington issued. Under the agreement, Pacific must obtain Commission approval before acquiring any terminalling, refining or gasoline retail marketing assets in Hawaii. It must also obtain approval before entering into any terminalling agreement, such as a long-term lease, for more than 50 percent of a terminal's capacity.

Tenneco, Inc.

(See page 44.)

### CONSUMER PROTECTION MISSION

General Nutrition, Inc.

General Nutrition, one of the nation's largest health food chains, settled allegations that it made false and unsubstantiated claims that a food supplement, Healthy Greens, was effective in reducing the risk of cancer. The consent agreement also settled allegations from a separate investigation that the company falsely claimed six other food supplements would promote weight loss and muscle growth or

retard aging. The order requires that, in lieu of consumer redress, GNC pay a total of $600,000 for research in nutrition, obesity, or physical fitness. The money is to be divided equally among the American Diabetes Association, the American Cancer Society, and the American Heart Association. The company also agreed not to misrepresent government reports or scientific tests.

## PART III (ADJUDICATIVE STAGE)
## CONSENT ORDERS ISSUED

### MAINTAINING COMPETITION MISSION

Jose F. Calimlim, M.D.

Thirty-one anesthesiologists in the Rochester, New York, area agreed not to conspire to deal with third-party payers on collectively determined terms or to coerce third-party payers. The complaint accompanying the agreement initially named 35 doctors but four have since retired. The agreement settled a 1985 administrative complaint that charged that the anesthesiologists illegally conspired to raise the fees paid to them for anesthesia services by engaging in collective negotiations over the pricing terms of third-party payers and threatening not to participate in certain plans offered by third-party payers and had concertedly departicipated from Blue Shield when it refused to accede to the anesthesiologists' demand for higher reimbursement. The complaint alleged that the conspiracy effectively eliminated competition among anesthesiologists and increased fees for their services.

New York State Chiropractic Association

The New York State Chiropractic Association agreed not to conspire to deal with third-party payers on collectively determined terms, act on behalf of its members in negotiating with third-party payers, or coerce third-party payers. The agreement settled a 1987 administrative complaint that charged that the association's members had agreed to act as a united front to coerce an increase in payment levels and coverage from a health insurance company. After the health insurance company refused to accede to the demands, the association, it is charged, solicited its members to resign from their participation in the insurer's program and many members did so. The actions allegedly restrained competition among chiropractors and increased the prices that they are paid for their services. The

agreement also provides that for eight years the association may not advise its members on the desirability of participating in plans offered by third-party payers, including providing advice on the price to be paid or other terms of participation.

Tenneco, Inc.

Tenneco, Inc. agreed to a settlement to the Commission suit charging that the $70 million acquisition by Occidental Petroleum Corp. of Tenneco's subsidiary, Tenneco Polymers, Inc., could substantially reduce competition in the production of three polyvinyl chloride (PVC) resin product markets. PVC is a widely used thermoplastic. The Commission issued an administrative complaint against the acquisition in 1986. Under the consent agreement, Tenneco agreed that if divestiture were ordered in the Occidental suit, Tenneco will reacquire the plant in a manner that is consistent with the purposes of the Commission's final order against Occidental. (See Occidental Petroleum Corp. page 45.)

CONSUMER PROTECTION MISSION

Jerome Milton

The maker of Shane toothpaste was charged with deceptively claiming its toothpaste cures gum disease and is superior to other toothpastes in reducing plaque. Under a consent agreement, Jerome Milton may not claim that Shane cures or alleviates the symptoms of canker sores, or reduces tooth sensitivity, unless it has at least one well-controlled clinical test to substantiate the claim. In addition, the company must rely on one or more scientifically-accepted tests or studies for claims that the toothpaste is useful in the diagnosis, cure, mitigation, treatment, or prevention of any disease. Under the agreement, Milton must have at least two well-controlled clinical tests to substantiate claims that the product reduces plaque more effectively than any other oral hygiene product or that it cures or alleviates gingivitis or periodontitis.

Volkswagen of America, Inc., et al.

Volkswagen of America (VWoA) settled charges that the company failed to disclose important information about potentially expensive oil consumption-related engine, valve and cylinder head repairs in 1974-1979 Volkswagens and Audis with water-cooled gasoline engines. Under the order, VWOA must set up arbitration programs for current and former owners of vehicles which experienced the oil

consumption-related problems, and for current owners of any Volkswagen or Audi vehicle which has experienced an internal engine component problem. The order also requires VWOA to make its product service bulletins publicly available.

## INITIAL DECISIONS

### MAINTAINING COMPETITION MISSION

MidCon Corp.

An Administrative Law Judge dismissed a Commission complaint challenging MidCon Corp.'s merger with United Energy Resources, Inc. The 1985 administrative complaint charged that the merger would substantially lessen competition in the transportation of natural gas from the offshore area of the Gulf of Mexico and also in the New Orleans/Baton Rouge area. The Commission at that time accepted a consent agreement settling the Louisiana-area charges. MidCon acquired United later that year and then divested all of the United assets in June 1987 to LaSalle Energy Corp. The Commission refused to dismiss the complaint. The Administrative Law Judge's decision is written as if the sale of United to LaSalle had not occurred. The judge held that competition was not hurt in the geographic market set forth in the complaint. Commission counsel filed a notice of intent to appeal the judge's decision, and the Commission heard oral argument on complaint counsel's appeal.

Occidental Petroleum Corp.

An Administrative Law Judge ruled that Occidental Petroleum Corp.'s $70 million acquisition of certain Tenneco, Inc. assets would reduce competition in the production of three materials used to make plastics. The decision upholds a 1986 administrative complaint challenging the acquisition, charging that the acquisition could substantially reduce competition in the production of three polyvinyl chloride (PVC) resin product markets. PVC is a widely used thermoplastic. The judge ruled that the acquisition eliminated in each of the relevant markets competition and substantially increased market power and the likelihood that the market power will be exercised in an anticompetitive manner. The judge ordered Occidental to divest the PVC assets. Under the order, Occidental must seek prior Commission approval for ten years before acquiring any producer of the PVC products. (See - Tenneco, Inc. page 44.)

Olin Corp.

An administrative law judge ruled that Olin Corp.'s $49.5 million acquisition of certain FMC Corp. assets lessened competition. The decision upheld a 1985 administrative complaint challenging the acquisition. The judge found that the acquisition lessened competition in the manufacture and sale of sanitizing chemicals for swimming pools. Olin and FMC were two of the largest producers and sellers of the products. The judge ruled that the acquisition made Olin a dominant firm. Olin was ordered to divest the FMC assets except the technology for the production of cyanamide assets. Under the order, for ten years Olin must obtain Commission approval before acquiring any interest in a company that makes swimming pool chemicals. The Commission heard oral argument on respondent's appeal of the decision.

CONSUMER PROTECTION MISSION

North American Philips Corp.

An administrative law judge found that Norelco falsely advertised that its $50 Clean Water Machine would make tap water clean or Cleaner, when it knew that the machine added a potentially hazardous chemical to the water. The ALJ ordered the company not to misrepresent the performance of the Clean Water Machine or any other electric-powered consumer appliance. Under the order the company is also prohibited from misrepresenting any test or study of its products.

## FINAL COMMISSION ORDERS

MAINTAINING COMPETITION MISSION

B.F. Goodrich Co.

The Commission upheld part of a 1982 administrative complaint which alleged that B.F. Goodrich Co.'s acquisition of Diamond Shamrock Plastics Corp. violated the antitrust laws and ordered Goodrich to divest a chemical plant in La Porte, Texas. The Commission also dismissed part of the complaint concerning a more processed material used to make plastic. According to the Commission decision, the acquisition substantially lessened competition in the production of vinyl chloride monomer (VCM) but not in the production of polyvinyl chloride (PVC). VCM is used to make PVC,

which in turn is used to produce a wide variety of plastic objects. The complaint alleged that the acquisition could reduce competition in the production of both PVC and VCM. In addition to the divestiture, Goodrich must for ten years receive Commission approval before acquiring an interest in any producer of VCM in the United States.

Massachusetts Board of Registration in Optometry

The Commission ruled that the Massachusetts Board of Registration in Optometry had illegally conspired to restrain competition among optometrists by promulgating and enforcing regulations prohibiting optometrists from truthfully advertising price discounts, prohibiting optical and other commercial establishments from advertising the names of optometrists or availability of their services, and prohibiting the use of testimonial or sensational advertisements. The Commission found that state law does not mandate that the Board prohibit truthful advertising of discounts by optometrists, nor has the state otherwise clearly articulated an intention to supplant competition in that way. Under the order, the board is prohibited from restraining truthful advertising but may adopt and enforce reasonable rules to restrict false or deceptive advertising within the meaning of state law.

## ORDER MODIFICATIONS

### MAINTAINING COMPETITION MISSION

General Railway Signal Company

The Commission modified a 1964 consent order with General Railway Signal Company, a manufacturer of railroad signaling and control systems and equipment, to allow the company to engage in activities necessary to participate in lawful joint ventures.

Hospital Corporation of America

The Commission modified a 1985 order against Hospital Corporation of America, a hospital system, which requires HCA to divest Diagnostic Center Hospital in Tennessee. The order modification is to accommodate the second mortgage HCA is to hold on Diagnostic's assets as security for the financing HCA is providing to the hospital's purchaser.

Interco, Inc.

The Commission modified a 1978 order with Interco, Inc., a distributor of footwear, wearing apparel, and accessories, to permit Interco and its two subsidiaries to suggest retail prices in documents if they include a statement that the prices quoted are suggested only. The Commission also set aside the provision prohibiting the companies from listing suggested retail prices on tags attached to the products the companies ship to sellers.

MidCon Corp.

The Commission modified a 1986 consent order with MidCon Corp., a national gas pipeline owner and operator, to remove a requirement that the company divest its interests in the Acadian Gas Pipeline System.

National Tea Company

The Commission modified a 1980 consent order with National Tea Company, an operator of retail grocery stores. The provision of the order requiring the company to obtain Commission approval before acquiring grocery stores in certain geographic areas for a ten year period was set aside.

CONSUMER PROTECTION MISSION

Encyclopaedia Britannica, Inc.

The Commission granted in part and denied in part, a petition by Encyclopaedia Britannica to set aside or modify a 1976 order against the company. The Commission modified the order to require the disclosure of the sales purpose of any telephone solicitation within the first 30 seconds of the call and to allow EB personnel to contact purchasers during the three-day cancellation period to correct inadvertent errors.

General Motors Corp., et al.

The Commission modified an order with General Motors Corp. and General Motors Acceptance Corp. by changing the accounting procedures for the sale of repossessed cars and light trucks. The consent order settled 1976 complaint charges that GM dealers failed to compute properly and pay to defaulting customers the surpluses resulting from the resale of repossessed motor vehicles.

Ogilvy Group, Inc., The

The Commission modified a portion of a 1983 consent order with The Ogilvy Group, and denied a request for further modification. The order settled charges that the advertisements Ogilvy developed for Thompson Medical Co.'s Aspercreme product misled consumers by making unsubstantiated effectiveness claims and by saying the product contained aspirin, when in fact it did not. The Commission modified portions of the order to match the language in the Thompson order.

## PRELIMINARY AND PERMANENT INJUNCTIONS

### MAINTAINING COMPETITION MISSION

American Maize-Products Co.

The Commission authorized its staff to seek a preliminary injunction against the proposed $36.5 million acquisition by American Maize-Products Co. of U.S. Tobacco Co.'s dry snuff assets on the grounds that the acquisition could substantially reduce competition in the production and sale of dry snuff. American, through its subsidiary, is the second largest dry snuff producer in a four-company industry, and U.S. Tobacco is the third largest producer. Before court papers were filed, the parties abandoned the transaction.

Browning-Ferris Industries, Inc.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by Browning-Ferris Industries, Inc. of Inland Refuse Transfer Co., Inc., Inland Reclamation, Inc., and Solon Sanitary Landfill, Inc., from their co-owners James and Jon Palladino, on the grounds that the acquisitions could substantially reduce competition in the solid waste disposal market in northeastern Ohio by giving Browning-Ferris control of four of the nine solid waste disposal sites serving the Cleveland area that are available to commercial customers. Before court papers were filed, the parties abandoned the transaction.

Dun & Bradstreet Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by Dun & Bradstreet Corp. of

Information Resources, Inc. on the grounds that the acquisition could substantially reduce competition in syndicated national tracking services, which are methods of tracking what products consumers buy. Dun & Bradstreet and Information Resources are two of the three companies that provide this service. Before court papers were filed, the parties abandoned the transaction.

Illinois Cereal Mills, Inc.

(See page 40.)

James River Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed $130 million acquisition by James River Corp. of Flexible Packaging Division of Princeton Packaging, Inc. on the grounds that the acquisition could substantially reduce competition in the manufacturer and sale of frozen food film and bakery bags. James River and Princeton are the two largest United States producers of printed frozen food film, which is formed into plastic bags used for frozen food packaging. They are also two of the top three producers of printed bread bags. Before court papers were filed, the parties abandoned the transaction.

McCormick & Co., Inc.

The Commission sought a preliminary injunction against McCormick & Co., Inc.'s proposed $56 million acquisition of the Spice Islands assets from Specialty Brands, Inc. until the Commission could complete its antitrust investigation of the proposal. The Commission charged that McCormick had not fully complied with a request for information about the merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The U.S. District Court for the District of Columbia issued the preliminary injunction. Thereafter, the Commission authorized its staff to seek a preliminary injunction against the proposed acquisition pending administrative proceedings to determine the legality of the purchase on the grounds that the acquisition could substantially reduce competition in the production and sale of spices. McCormick is the leading manufacturer, marketer and distributor of spices, herbs and extract in the United States. Specialties' only business are Spice Island's gourmet spices, herbs and vinegars and a line of blended regional seasonings. Before court papers for that preliminary injunction were filed, the parties abandoned the transaction.

Owens-Illinois, Inc.

(See page 41.)

Pacific Resources, Inc.

(See page 42.)

Schering-Plough Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed $150 million acquisition by Schering-Plough Corp. of The Cooper Companies, Inc.'s contact lens assets on the grounds that the acquisition could substantially reduce competition in the sale of contact lenses. Schering-Plough and Cooper's subsidiary CooperVision, Inc. are among the top five producers and sellers of soft contact lenses. Before court papers were filed, the parties abandoned the transaction.

SPX Corp.

The Commission authorized its staff to seek a preliminary injunction against the proposed $32.3 million acquisition by SPX Corp. of Stanadyne Holding Corp.'s valve lifter assets on the grounds that the acquisition could substantially reduce competition in the manufacture and sale of hydraulic valve lifters in the United States. Valve lifters are part of the valve train in the engines of cars and light trucks. SPX and Stanadyne are two of only four companies in the United States that produce hydraulic valve lifters for these types of engines. Before court papers were filed, the parties abandoned the transaction.

CONSUMER PROTECTION MISSION

Action Credit Systems, Inc.

The Commission filed a complaint charging Action Credit Systems, a major credit repair clinic, with falsely claiming to improve consumers' credit reports and to arrange for consumers to receive major credit cards. In addition, the complaint alleges that Action Credit falsely claimed that the Fair Credit Reporting Act allowed it to remove negative information, such as bankruptcies, from credit reports. The company guaranteed results. The Commission asked the court to grant a preliminary injunction prohibiting these practices land to order defendants to pay consumer redress.

American Legal Distributors, et al.

The Commission obtained a default judgment ordering American Legal Distributors and its two officers not to make any misrepresentations in the sale of their distributorships of prepaid legal plans. The court also ordered them not to violate the Franchise Rule and to pay refunds of more than $3 million to consumers.

Amy Travel Services, Inc.

The Commission obtained an order against Amy Travel for misrepresenting the cost of vacation packages, obtaining credit card numbers under false pretenses, and billing consumers credit card accounts without authorization. The company was permanently barred from engaging in similar practices and was ordered to provide restitution of $6.6 million to consumers.

Atlantex Associates, Ltd.

The Commission obtained a redress judgment against Atlantex Associates, and several related firms and individuals. Defendants were ordered to pay $12.1 million into a consumer redress fund. Atlantex was charged with falsely claiming it could guarantee investors long-term, low-risk, high-level income from partnerships in an oil and gas drilling operation.

Austin Galleries, et al.

The Commission filed a complaint charging Austin Galleries with making sales of counterfeit graphic art. The court entered preliminary injunctions against all defendants, prohibiting them from selling graphic art purportedly created by Picasso, Moreau, Chagall, and Dali.

BankCard Travel Club, et al.

The Commission filed a complaint charging BankCard, a nationwide travel club, with deceptively billing consumers for membership fees and failing to honor requests for promised cancellations, refunds, or credits. The Commission sought a temporary restraining order and preliminary and permanent injunctions against the defendants and an order to pay consumer redress.

Beverly Hills Coin Gallery, Inc.

The Commission filed a complaint charging Beverly Hills Coin Gallery with over grading coins and thereby misstating the investment value of the coins sold by them. The court froze defendants' assets, appointed a receiver and entered preliminary injunctions against three individual and three corporate defendants. In addition to a permanent injunction, the Commission asked the court to order consumer redress.

Bliss Holidays International, Inc., et al.

The Commission filed a complaint against Bliss Holidays International for allegedly deceiving consumers by selling vacations that were never provided and misrepresenting costs and other terms of the vacations. The court entered a temporary order prohibiting the defendants from engaging in deceptive sales practices and freezing corporate and individual assets. The Commission is seeking a permanent injunction and consumer redress.

C-M Fiber, Inc., et al.

The Commission filed a complaint against C-M Fiber and its owner for violating the R-Value Rule by overstating the R-value and coverage of their loose-fill cellulose insulation. The Commission asked the court to order the New York insulation manufacturer to pay a civil penalty and to obey the Rule in the future.

Credit-Rite, Inc., et. al.

The Commission filed a complaint charging Credit-Rite, a major credit repair clinic, with falsely claiming that the company could substantially improve consumers' credit records and by failing to honor its 100 percent money-back guarantee. The Commission asked the court for an injunction prohibiting these practices as well as an order mandating consumer redress.

Discount Travel Services, Inc., et al.

The Commission filed a complaint against Discount Travel Services, a Florida telemarketing company. The complaint charged the company with making false claims about its vacation certificates, billed consumers without their permission, and failed to make

prompt refunds. The court issued a preliminary injunction prohibiting these practices and froze the defendants' assets.

Dream Away by Nutri Marketing, et al.

The Commission obtained a settlement with the marketers of Dream Away diet pills to disgorge $1.1 million because of false advertising claims that taking Dream Away would enable consumers to lose weight while sleeping and without exercising or dieting. The defendants also agreed not to misrepresent the performance, efficacy, or safety of any food, drug, or device. In addition, the defendants must disclose prominently in any ads for weight control or reduction that dieting and/or exercise is required in order to lose weight.

Federal Sterling Galleries, Inc.

The Commission obtained permanent injunction against Federal Sterling Galleries. The defendants were charged with making sales of counterfeit Dali graphic art by misrepresenting that prints were authentic limited editions of Dali art productions. The court also awarded $4.6 million as consumer redress. The Commission filed a motion for summary judgment against the remaining individual defendant.

Figgie International, Inc.

The Commission filed a complaint asking the court to order Figgie International to pay redress to consumers who bought Vanguard brand heat detectors based on the company's false claims that the heat detectors give consumers sufficient warning to escape from most residential fires. The Commission issued a final order in 1986, ruling that Figgie's heat detector performance claims were deceptive.

International Marketing Data, et al.

The Commission filed a complaint against Creative Advertising Specialty House, a California-based "marketing research" firm, operating under the fictitious business name International Marketing Data, The company was charged with allegedly promising consumers a free power motorboat worth over $1000 for responding to a market survey, and instead sending a $70 rubber dinghy

and a $250 bill for shipping. The court issued a preliminary injunction and froze the defendants' assets.

James Quincy

The Commission obtained a settlement with James Quincy to settle charges that he misrepresented vacation timeshare interests in Hawaii, Lake Tahoe, Nevada, and Washington state. The settlement prohibits Quincy from having any connection with the timeshare business in the future. Quincy was head of the sales organizations that promoted memberships in the Harbor Village Club and Paradise Palms Vacation Club. He is currently serving a seven-year federal prison sentence after being convicted on 41 counts of fraud-related crimes in connection with timeshare sales.

Jeffrey Roberts

The Commission obtained a settlement prohibiting Jeffrey Roberts, former president of Credit Rite, a major credit repair clinic, from misrepresenting his ability to improve consumers' credit reports and requiring him to honor refund promises.

Lynn Murphy & Co., Inc.

The Commission filed a complaint against Lynn Murphy & Co. alleging that defendants misrepresented the grade and investment value of coins sold by them and also misrepresented services in connection with the sale of bullion to customers. The complaint charges that defendants failed to purchase bullion as required, failed to repurchase products in accordance with their agreements and failed to make refunds to customers entitled to same. The court entered preliminary injunctions against all defendants and has frozen defendants' assets and appointed a receiver to oversee asset administration.

Mytel International, Inc., et al.

The Commission filed a complaint charging Mytel International with deceptively marketing and selling photocopy supplies through a network of sales companies operating telephone boilerrooms. The complaint charged that sales companies working with Mytel made repeated misrepresentations in selling the supplies over the phone to small businesses and nonprofit organizations around the country.

The complaint also charged that Mytel authorized, condoned, or assisted in these practices.

Nationwide Credit Services, Inc.

The Commission filed a complaint against Nationwide Credit Services and A-1 Credit Services, major credit repair clinics charging they falsely claimed that the companies could improve consumers' credit records, remove bankruptcies from their credit reports and arrange for consumers to receive major credit cards. The complaint also alleged that the companies unfairly harassed consumers who supposedly owe them money. The Commission asked the court to grant a permanent injunction prohibiting these practices and order defendants to pay consumer redress.

Nationwide Mortgage Corp., et al.

The Commission obtained a permanent injunction against twelve defendants in the matter of Nationwide Mortgage Corp. The complaint charged the defendants misrepresented loan terms and caused more than 100 homeowners to lose their homes, file for bankruptcy, or try to refinance their loans at great expense. The complaint also charged that the defendants claimed to offer long-term loans, when in fact they gave consumers one-year, interest-only, balloon-payment loans secured by the consumers' houses.

Nationwide Printing, et al.

The Commission filed a complaint against Nationwide Printing charging the seller of promotional merchandise with falsely telling small businesses that they had won $1,800 or more in "valuable products" and would have to pay only a small fee to claim the prizes. The court issued a preliminary injunction and froze defendants' assets. The complaint also seeks an order to pay redress to tens of thousands of consumers and permanent injunctions.

Niday Funeral Home, Inc., et al.

The Commission filed a complaint charging that Niday Funeral Home violated the Funeral Rule by failing to provide price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, and failing to provide consumers with other disclosures required by the Rule.

Numis Group, Inc.

The Commission obtained settlements with John Pace and Wayne Pedersen, former officials of Numis Group, a nationwide telemarketer of coins for investment. The agreements settled charges that defendants, in telephone sales and written promotional materials, falsely claimed that their coins were a low-risk investment and that customers could reasonably expect to resell coins at a substantial profit. In addition to the two permanent injunctions against sales misrepresentations, the Commission obtained $1 million judgments against the defendants individually. Any money collected will be used for consumer refunds.

Numismatic Funding Corp., et al.

The Commission filed a complaint charging Numismatic Funding with misrepresenting the grade and investment value of rare silver coins. The court ordered an asset freeze and preliminary injunctions against all defendants.

Overseas Unlimited Agency, Inc.

The Commission filed a complaint charging Overseas Unlimited Agency with fraudulent promotion of overseas employment matching services. The complaint charges that consumers were led to believe that defendants had a job bank and would be able to match the consumer with an overseas employer, when such was not the case. The court issued preliminary injunctions against all defendants, froze defendants' assets, and appointed a receiver to take charge of the assets and administer them.

Plaza Motors, Inc.

The Commission filed a complaint against Plaza Motors, a Virginia used car dealership, alleging violations of the Used Car Rule and Warranty Disclosure Rule. The complaint charged that the defendants failed to post required window stickers on used cars offered for sale to consumers, failed to include required disclosures in the sales contracts, and failed to disclose in warranty documents required statements concerning limitations on the duration of implied warranties. The Commission asked the court to order the defendants to pay civil penalties and to prohibit future rule violations...

Rainbow Enzymes, Inc., et al.

The Commission obtained a redress judgment against Rainbow Enzymes for $4.2 million. The complaint charged that the defendants misled people into paying $3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these people to recruit others to take part. Separate permanent injunctions and redress orders were also issued against Gwen Terry, Rita Mills McCoy, Stanley Alan Massie, and Jack Schaefer.

Rare Coins of Georgia, et al.

The Commission filed a complaint against Rare Coins of Georgia charging defendants with selling coins and allegedly false grading certificates to telemarketers who in turn resold the coins to consumers. The telemarketers used these grading certificates to make false claims about the value of the coins. The court ordered an asset freeze.

Solar America, Inc.

The Commission obtained a permanent injunction against Solar America, in which the company agreed not to misrepresent that its solar energy heating systems could significantly reduce residential heating fuel consumption and would pay for themselves in a short time. The injunction also requires Solar America to pay refunds to certain purchasers if it becomes financially able to do so. A separate permanent injunction was ordered against Richard Hauber, former president of the company.

Solar Michigan, Inc.

The Commission obtained a permanent injunction and order of redress against Solar Michigan. The company was charged with falsely claiming that its solar energy heating systems can significantly reduce residential heating fuel consumption and would pay for themselves in a short time. The Commission also charged that the company had no reasonable basis for making the claims.

Southwest Marketing, Inc., et al.

The Commission obtained a settlement against Southwest Marketing, a seller of promotional products. The company and its officers

agreed to pay $75,000 in refunds to consumers and also agreed not to engage in the challenged practices. The complaint charged defendants with misrepresenting its "gift" or "bonus" vacation packages offered as part of a product promotion.

Terralab Engineers, Inc., et. al.

The Commission filed a complaint against Terralab Engineers, a test laboratory, and its owner for violating the R-Value Rule by improperly conducting tests that home insulation manufacturers use as the basis for claims to consumers, and by failing to maintain the proper records concerning the tests conducted. The Commission asked the court to order the defendants to pay a civil penalty and to obey the Rule in the future. This was the first case in which the Commission charged a testing laboratory with violating the R-Value Rule.

United States Music Club, Inc.

The Commission filed a complaint charging U.S. Music Club with making false and misleading claims in the sale of its franchises to sell discount coupons for records, cassette tapes, compact discs, video tapes, and athletic shoes. The court issued a temporary restraining order forbidding further misrepresentations and violations of the Franchise Rule, and also froze the defendants' assets.

Wayne Phillips Seminars, Inc.

The Commission obtained a permanent injunction and redress judgment of $241,000 against Wayne Phillips Seminars. The Arizona-based company which markets real estate investment and other financial advice materials was charged with failing to honor its money-back guarantees.

## CIVIL PENALTY ACTIONS

### MAINTAINING COMPETITION MISSION

Donald J. Trump

Donald J. Trump agreed in a consent judgment to pay $750,000 in civil penalties to settle charges that he failed to comply with federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when he acquired voting

securities through the investment banking firm of Bear Stearns & Co. This is the third case the government has brought concerning the use of an investment banking firm in a stock acquisition to avoid filing under the act. The complaint accompanying the judgment charged that Trump acquired stock in Holiday Corp. and Bally Manufacturing Corp. in an amount beyond the dollar threshold at which he should have filed notification. Trump eventually made the appropriate filings but not within the time frame established by the act. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Justice Department.

First City Financial Corp., Ltd.

First City Financial Corp., Ltd. agreed in a consent judgment to pay $400,000 in civil penalties to settle charges that it did not comply with the federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when it acquired voting securities through the investment banking firm of Bear Stearns & Co. This is the second case the government has brought concerning the use of an investment banking firm in a stock acquisition to avoid filing under the act. The complaint accompanying the judgment charges that First City acquired stock in Ashland Oil, Inc. in an amount beyond the dollar threshold at which it should have filed notification. First City eventually made the appropriate filings but not within the time frame established by the act. The complaint also named Roxboro Investments, Ltd. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Justice Department.

Lonrho PLC and Diamond A. Cattle Co.

Lonrho PLC and Diamond A. Cattle Co. each agreed in a consent judgment to pay $122,000 in civil penalties to settle charges that the companies did not comply with federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when Lonrho acquired half of Diamond. According to the complaint accompanying the judgment, Diamond sold half of its voting securities to Lonrho in October 1986 but the companies did not make notification about the transaction until November. The complaint did not allege that the companies intentionally violated the law or that the acquisition itself would violate the antitrust laws. The complaint also names Robert 0. Anderson,

Chairman of Diamond. The complaint was filed in U.S. District Court for the District of Columbia at the Commission's request by the Department of Justice.

Roscoe Moss Co.

Roscoe Moss Co. agreed in a consent judgment to pay $500,000 in civil penalties to settle charges that it did not comply with federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when Roscoe acquired stock in San Jose Water Co. According to the complaint accompanying the judgment, Roscoe began acquiring San Jose stock in November 1977 and by December 1984 had acquired stock that caused the value of its holding to exceed $15 million. Roscoe filed a notification of its intent to acquire at least 25% of the stock of the company that holds the stock of San Jose in February 1986. The complaint alleged that Roscoe did not comply with the act's reporting requirements. The complaint did not allege that the company intentionally violated the law or that the acquisition itself would violate the antitrust laws. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Department of Justice.

Union Carbide Corp.

Union Carbide Corp. agreed in a consent judgement to pay $500,000 in civil penalties to settle charges that it violated a 1977 consent order by offering or executing at least 34 contracts that are prohibited by the order. Under the 1977 order, Union Carbide agreed not to offer or enter into contracts or agreements that require a distributor to purchase industrial gases from Union Carbide, unless the initial term of the contract or agreement is for no more than one year and the contract can be terminated annually upon no more than 90 days' notice. According to the complaint accompanying the judgment, since 1980 Union has entered into at least 25 contracts and offered at least 9 others that violate the order. In addition to the civil penalty, Union agreed to revise those contracts. The Commission filed the complaint and judgment in U.S. District Court for the Southern District of New York.

Wickes Companies, Inc.

Wickes Companies, Inc. agreed in a consent judgment to pay $300,000 in civil penalties to settle charges that it did not comply

with federal premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 when it acquired voting securities through the investment banking firm of Bear Stearns & Co. This is the first case the government has brought concerning the use of an investment banking firm in a stock acquisition to avoid filing under the act. The complaint accompanying the judgment charges that Wickes acquired stock in Owens-Corning Fiberglass Corp. through Bear Stearns in an amount beyond the dollar threshold at which it should have filed notification under the act. Wickes eventually made the appropriate filings but not within the time frame established by the act. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Justice Department.

CONSUMER PROTECTION MISSION

Continental Transactions, Inc.

Continental Transactions, a debt collector, agreed to pay $10,000 in civil penalties to settle charges it violated the Fair Debt Collection Practices Act. The complaint charged that the company harassed consumers to pay alleged debts by using profane language, threatening violence, telephoning consumers repeatedly, continuously or at prohibited times or places and making various other false representations in violation of the Act.

Crane Rhoton Services Corp.

Crane Rhoton Services, owner of Crane Weiland Funeral Directors, agreed to pay $30,000 in civil penalties to settle charges it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, and failing to provide consumers with other required disclosures.

Crystal Ford

Crystal Ford, a Maryland automobile dealership, and its president, Howard Castleman, agreed to pay $35,000 in civil penalties to settle charges it violated of the Used Car Rule. The company was charged with failing to display properly completed Buyers Guides on used vehicles, including demonstrators, and failing to include required warranty disclosure and other information in sales contracts. The consent decree prohibits future violations of the Rule.

Ed. C. Smith & Bro. (Ware Crest)

Ware Crest, former owner of Ed. C. Smith & Bro. Funeral Directors, agreed to pay $10,000 in civil penalties to settle charges it violated the Funeral Rule by failing to provide consumers with price fists and an itemized statement of goods and services selected at the time and in the manner required by the Rule.

Frank E. Bush, Inc.

In a settlement in federal district court, Philip Goutell, president of Frank E. Bush and Conceptual Trends, agreed to pay $300,000 in civil penalties to settle charges that he violated the Mail Order Rule. Goutell also agreed to a permanent injunction prohibiting further misrepresentations of mail order products.

Lady Foot International, Inc., et al.

Lady Foot International, a seller of women's discount shoe store franchises, agreed to pay $50,000 in civil penalties to settle charges it violated the Franchise Rule. The company was charged with failing to give potential investors important information about likely earnings and misrepresenting the kind of assistance the company would provide franchisees.

Manning Funeral Chapel, Inc.

Manning Funeral Chapel agreed to pay $12,500 in civil penalties to settle charges that it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, failing to provide consumers with other required disclosures, and failing to itemize prices.

McCall Publishing Co.

McCall Publishing agreed to pay $400,000 in civil penalties to settle charges that it illegally billed consumers for magazine subscriptions that they did not expressly order. In addition, the company attempted to collect money for the magazines. Under the consent decree, McCall is prohibited from taking such actions in the future.

M&M Car World

M&M Car World, a California used car dealership, agreed to pay $10,000 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to prepare the required Buyers Guides properly, failing to display them on cars offered for sale and to distribute them to purchasers, and failing to provide the required information in Spanish to Spanish-speaking customers.

Parfums de Paris, et al.

Parfums de Paris agreed to pay a civil penalty of $75,000 to settle charges that it violated the Mail Order Rule by failing to make timely shipments or refunds and by failing to send proper notices when shipments would be delayed in connection with its sale of imitations of popular and expensive perfumes. The consent decree prohibits the firms and their owner from violating the Rule in the future.

Price Auto Sales, Inc.

Price Auto Sales, a Texas car dealership, agreed to pay $32,500 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to display Buyers Guides containing warranty information on used vehicles. The consent decree prohibits further violations of the Rule.

R.N. Horton Co. Morticians, Inc.

R.N. Horton agreed to pay $15,000 in civil penalties to settle charges it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, failing to itemize prices in accordance with the requirements of the Rule, and failing to provide consumers with other required disclosures.

Rocky Mountain Circulation, et al.

Rocky Mountain Circulation agreed to pay $20,000 in civil penalties to settle charges it violated the Cooling-Off Rule. The company was charged with selling magazine subscriptions without providing the magazines and failing to make refunds to consumers who were entitled to them.

Simon Funeral Chapel

Simon Funeral Chapel agreed to pay $10,000 in civil penalties and $7,500 in consumer redress to settle charges it violated the Funeral Rule. The company was charged with failing to provide consumers with price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, failing to provide consumers with other disclosures required by the Rule, and performing and charging for embalming without securing prior authorization. This is the first case in which a party has been ordered to give refunds for violating the Funeral Rule.

Thermo Products Company, Inc., et al.

Thermocon International, formerly Thermo Products Co., Inc., and its former owner agreed to pay a civil penalty of $30,000 to settle charges that it violated the R-Value Rule by overstating the R-value and coverage of its spray applied cellulose insulation. The consent decree prohibits the Texas insulation manufacturer and its former owner from violating the R-Value Rule in the future.

## APPELLATE COURT DECISIONS

Boise Cascade Corp.

On January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit remanded the decision of the Commission holding Boise Cascade in violation of Section 2(f) of the Robinson Patman Act for further Commission proceedings. The court held that dealer specific evidence of lack of competitive injury from the challenged price discounts given to the dealer was relevant to rebut a presumption of competitive injury arising under the Robinson Patman Act.

Louisiana-Pacific Corp.

On May 3, 1988, the U.S. Court of Appeals for the 9th Circuit dismissed for lack of appellate jurisdiction the Commission's appeal of a federal District Court's order. The District Court ordered the Commission to reopen a consent order against Louisiana-Pacific to consider whether and how the consent order should be modified, altered or set aside.

Superior Court Trial Lawyers Association

On August 26, 1988, the U.S. Court of Appeals for the District of Columbia Circuit vacated a final order entered by the Commission and remanded the case to the Commission for further proceedings. The court ruled that proof of market power was required to find that the boycott violated federal antitrust laws.

## ECONOMIC REPORTS COMPLETED

Economic reports usually entail a substantial commitment of resources and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

The Effect of State Certificate-of-Need Laws on Hospital Costs: An Economic Policy Analysis, Daniel Sherman, January 1988. Study evaluates the effects of CON regulation on hospital costs using 1983-1984 data for a national sample of 3708 hospitals. Study finds no evidence that CON programs have led to the resource savings they were designed to promote, but rather indicates that reliance on CON review may raise hospital patient treatment costs.

Resale Price Maintenance: Economic Evidence from Litigation, Pauline Ippolito, April 1988. Report reviews all 203 public and private RPM cases from 1976 to 1982 (pre-Monsanto decision). Finds that case records are consistent with several of the efficiency-enhancing rationales for the use of RPM (e.g., "free rider" and more recent agency theories). Only 15 percent of cases appear consistent with collusion theories of RPM that would be associated with reduced consumer welfare.

An Analysis of the Funeral Rule Using Consumer Survey Data on the Purchase of Funeral Goods and Services, Timothy P. Daniel, April 1988. The study presents the results of two surveys of funeral services consumers, one conducted in 1981 and the other conducted in 1987. Comparisons are drawn between services provided and costs incurred without benefit of the rule (1981) and after passage of the rule (1987). A comparison is also made of differences in service and cost to those surveyed in 1987 between those who purchased funeral services and goods from providers complying with the rule and those that were not.

Regulation of Advertising: Capital Market Effects, Alan Mathios and

Mark Plummer, May 1988. Report finds that firms who lose litigated FTC advertising cases can suffer a 5 percent loss in market value. The report also examined NAD, NARB, and Lanham Act cases.

Minimum Quality Versus Disclosure Regulations: State Regulation of Interstate Open-ended Investment Company and Common Stock Issues, John Hilke, May 1988. The report comprises two studies, one of which examines state regulation of opened-end investment companies (mutual funds), and the other examines state regulation of common stock issues. Each study compares the effects of minimum quality regulation and disclosure regulation on investor return, risk, and other factors.

The Deregulated Airline Industry: A Review of the Evidence, Jonathan D. Ogur, Curtis Wagner, and Michael G. Vita, January 1988. Report summarizes the available evidence on the effects of deregulation. The main conclusions are: 1) airline safety has improved since deregulation; 2) requiring general aviation to follow safety rules similar to those already followed by commercial airlines could significantly improve safety; 3) increasing airport landing fees during congested periods would significantly reduce delays; 4) frequency of flights to small cities has risen since deregulation; and 5) deregulation has significantly lowered prices of commercial air travel and permitted more people to fly.

Deregulation in the Trucking Industry, Diane S. Owen, May 1988. Study examines the effects of deregulation in the trucking industry brought about by the Motor Carrier Act of 1980 and subsequent state deregulatory actions, and concludes that deregulation has led to lower prices, more efficient, reliable, and innovative service, and a significant overall reduction in the nation's logistics costs.

## WORKING PAPERS

Economic Working Papers are preliminary, unpublished work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection With ongoing agency activities or independent analyses. The papers usually entail relatively minor allocations of official time.

The Analysis of Causality in Escape Clause Cases, (WP#157), Kenneth Kelly, November 1987.

Costs of the Voluntary Restraint Agreements on Steel: Reply, (WP#158), David G. Tarr, November 1987.

The Impact of Alternative Forms of State Regulation of AT&T on Direct Dial Long Distance Telephone Rates, (WP#159), Alan Mathios and Robert P. Rogers, December 1987.

The Impact of Automobile Fuel Economy Standards, (WP#160), Andrew N. Kleit, February 1988.

Enforcing Time Inconsistent Government Regulations, (WP#161) Andrew N. Kleit, March 1988.

Strategic Business Behavior and Antitrust, (WP#162), Charles A. Holt and David T. Scheffman, April 1988.

State Regulation of Takeovers and Shareholder Wealth: The Case of New York's 1985 Takeover Statutes, (WP# 163), Laurence Schumann, April 1988.

The Costs of Railroad Regulation: A Further Analysis, (WP#164), Christopher C. Bamekov and Andrew N. Kleit, May 1988.

Vertical Integration as Strategic Behavior in a Spatial Setting: Reducing Rival's Revenues, (WP#165), David Levy and David Reiffen, June 1988.

## MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research, and generally entail small amounts of agency resources. These papers may be prepared by FTC staff economists or by outside individuals who have been granted access to economic data compiled by the FTC. These papers usually explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission.

Diversified Entry By Large Established Firms, Cynthia A. Montgomery and S. Hariharan, July 1988.

On the Sources of Scope Economics in US Manufacturing Firms, Len M. Nichols, July 1988.

Can the Stock Market Predict Merger Success?, David J. Ravenscraft and George A. Pascoe, July 1988.

## CONSUMER AND COMPETITION ADVOCACY

### OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The competition and consumer protection missions of the Commission are to seek to prevent unfair methods of competition and unfair or deceptive acts and practices. The number and reach of laws and regulations have made various governmental entities important participants in the market economy. In many instances laws or regulations may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, and wasting resources. A goal of the advocacy program is to reduce harm to consumers by informing appropriate governmental entities of the potential effects on consumers, both positive and negative, of proposed legislation or rule-making. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review, and information for the staff's work in this area.

Below is a list of advocacy activities for fiscal year 1988.

### FEDERAL AGENCIES

#### Department of Health and Human Services

Comments of HHS concerning regulations that Congress asked HHS to promulgate in order to clarify the kinds of business arrangements that would not violate the Medicare and Medicare anti-kickback statute. The staff comments suggest that certain specific kinds of business arrangements between health care providers and health maintenance organizations, preferred provider organizations and referral services might technically violate the anti-kickback statute. However, these arrangements are often pro-competitive and would tend to lower the costs of the Medicare and Medicaid programs. (V880009)

#### Department of Housing and Urban Development

Comments to HUD on a proposal to exempt from Section 8 payments by a borrower to mortgage brokers or other intermediaries, such as real estate agents, who assist in bringing the borrower and lender together. The staff comments provide a theoretical examination of the costs and benefits of referral fees in markets

generally. In real estate markets, the Staff identifies consumer benefits that include lower search costs, increased information, the increased use of innovative technologies, and lower prices for loan packages. (V880047)

Federal Communications Commission

Comments to the FCC on the role of commercial FM translators in the radio broadcast service. The staff comments said that consumer benefits may result from a less restrictive regulatory environment. In particular, the number of listening options for consumers may increase which may, according to an empirical analysis, increase partnership. Potential spectrum inefficiency may be alleviated by allowing a market transfer of spectrum allocation. (V880052)

Federal Energy Regulatory Commission

Comments to FERC concerning a rule which would allow holders of firm transportation rights on interstate natural gas pipelines to sell or assign (i.e., broker) those rights to other customers. The staff comments express the view that the proposed rule could lead to greater efficiency in gas transportation markets, thereby benefitting consumers of gas and gas transmission services. The competitive analysis used by the FTC in its merger investigations may help FERC identify workably competitive markets. (V880041)

Food and Drug Administration

Comments to the FDA on a proposal to permit food manufacturers to include truthful health information on food labels. The staff comments recommended that the FDA bring its substantiation program standard closer to the FTC's flexible ad substantiation doctrine. The staff comments also stated that consumers would probably be better off with a policy that permits carefully qualified truthful information about diet-health relationships than with a policy that prohibits such claims, (V870027)

National Highway Traffic Safety Administration

Comments to the NHTSA of the Department of Transportation on the effects of reducing fuel economy standards for the 1989 and 1990 automobile model years. The staff comments recommended that the NHTSA adopt Corporate Average Fuel Economy standards for model years 1989 and 1990 no greater that 26.6 mpg. Imposing

the planned 27.5 mpg fuel economy standard for automobiles for those years would yield few social benefits and would impose substantial costs on the U.S. economy, the staff comments concluded. (V880058)

STATES

California

Letter to the California State Senate on a bill which would eliminate the California Public Utilities Commission's authority to set tariffs for intrastate contract trucking and would establish a safety inspection program. The staff letter said the bill would be a significant step in deregulating the state's trucking industry and bringing to both consumers and competitors the benefits of price competition. (V880005)

Letter to the Chairman of the California State Assembly Transportation Committee on a proposed regulation which would place significant restrictions on advertising by automobile brokers. The staff letter said that the regulation may have the practical effect of putting automobile brokers out of business, since it would make it difficult or impossible for them to inform others of their service. (V880013)

Letter to the California Public Utilities Commission on trucking deregulation. The staff letter noted that deregulation on other states has met with satisfaction from shippers and has led to lower overall rates. The staff letter also said that the evidence is clear that consumers benefit from lower rates with no decline in service. (V880023)

Letter to the California Board of Dental Examiners on a proposed regulation governing dental practice by dental auxiliaries. Under the proposed changes, patients would have to be examined by the dentist personally before an auxiliary could provide any services and again after the services are performed. The staff letter said that the proposal could harm consumer welfare by curtailing dental screening programs and increasing the cost of dental services. (V880022)

Delaware

Letter to the Delaware General Assembly concerning a proposed anti-takeover statute. The staff letter reviews the extant empirical

literature, which indicates that vigorous takeover activity enhances economic efficiency and benefits consumers, workers, and stock-holders. The proposal, if adopted, might impede many of the beneficial consequences of takeovers without offering countervailing benefits. (VS80015)

Florida

Letter to the Florida Senate Committee on Economic, Community and Consumer Affairs on Florida's relevant market area ("RMA") laws governing the relationship between automobile manufacturers and dealers. The staff letter said that the laws may be anticompetitive and that repeal of these provisions would likely result in lower automobile prices for consumers. RMA laws place restraints on manufacturers' ability to compete. (V880027)

Georgia

Letter to the Georgia General Assembly on a proposal to relax temporarily part of the state's certificate of need ("CON") regulation. The staff letter said that the change represents a worthwhile undertaking which may lead to greater diversity and better quality in health care services and increased price competition in the health care market. The staff letter said that CON regulation tends to foster higher prices, lower quality, and reduced innovation in health care markets. (V880021)

Idaho

Letter to the Idaho State Board of Chiropractic Physicians on a proposal to ban only advertising that is fraudulent, false, deceptive or misleading. The staff letter said that the proposal is likely to benefit consumers by encouraging all forms of truthful, nondeceptive advertising. However, the staff letter suggested that the Board consider whether a requirement that advertising include the names of participating chiropractors and a ban on advertising that is likely to appeal to lay persons' fears or ignorance about health may be overly broad. (V880006)

Maryland

Letter to the Montgomery County Council in Montgomery County, Maryland, on a proposed new taxicab law. The staff letter suggested that amendments to eliminate the cap on the number of licenses in

the county and to eliminate regulation of fares would be beneficial to consumers. Deregulation of the taxicab business, the staff letter noted, would increase the number of taxis available to consumers, lower fares, and increase employment opportunities. (V870028)

Massachusetts

Letter to the Massachusetts Port Authority on its Proposal for Airport Capacity Efficiency (PACE) which would change the basis for calculating landing fees at Logan Airport. The staff letter said that PACE would be a step toward more efficient pricing because it considers cost variables other than the weight of the aircraft. The staff letter suggested that efficient landing fees should cover the airport's costs, the costs of delay for other aircraft and for consumers, and the costs of aircraft noise. (V870030)

Letter to the Commission to Review Massachusetts Anti-Takeover Laws on certain provisions of the state's current corporate takeover laws. The staff letter concluded that on the whole, vigorous takeover activity enhances economic efficiency and thus benefits consumers, workers, and shareholders. Massachusetts' takeover statutes are likely to impede many of the beneficial consequences of takeovers without offering countervailing benefits. (V880048)

Michigan

Letter to the Michigan House of Representatives on proposed revisions in Michigan's certificate of need ("CON") requirements regulating spending for health care facilities. The staff letter said that existing CON regulations are contrary to the interests of health consumers in Michigan because they tend to decrease efficiency and impede competition. Any potential benefits of CON regulations are likely to be outweighed by its adverse effects on competition in health care markets. (V880007)

Letter to the Michigan State Senate on a proposal to prohibit the brokering of automobiles. The staff letter says that the proposal could reduce competition, retard innovation, and injure consumers by entrenching one group of business owners at the expense of new entrants. The letter concluded that the likely net effect of prohibiting brokering will be to reduce consumer choices and increase automobile prices. (V880055)

Montana

Letter to the Montana Board of Dentistry on certain regulations of Board of Dentistry rules. The staff letter suggested modifications to three categories of regulation, price advertising, quality claims, and solicitation. The modifications would likely increase information available to consumers to allow them to make informed choices among dentists. (V880025)

New Jersey

Letter to the New Jersey Supreme Court's Committee on Attorney Advertising on the rules of professional conduct governing attorney advertising and promotion. The staff letter suggested that the Committee consider permitting truthful, nondeceptive advertising of experience, special skills, comparison claims, and fees through any media, direct solicitation of clients short of harassment, and multi-disciplinary practices. (V880004)

Letter to the New Jersey General Assembly on New Jersey's prohibition against self-service gasoline stations. The staff letter said that the prohibition may result in increased annual costs of between $131 million and $348 million to consumers in that state. The staff letter concluded that the ban may have a substantial impact on the gasoline retail market and that it imposes a heavy monetary burden upon New Jersey consumers. (V880040)

New York

Testimony before the New York City Council on proposed rent control legislation for commercial properties. James Giffin, Acting Regional Director for the New York Regional. Office, testified for the staff that commercial rent control may reduce the incentive to invest in such property, artificially reduce the space available for new businesses, and cause the deterioration of commercial rent properties. The staff suggested that rent control in any form will not promote consumer welfare and other alternatives could be explored to address perceived problems. (V880011)

Ohio

Letter to the Ohio legislature on a bill that would be a major step in deregulating the state's trucking industry. The staff letter stated that the bill is a significant step toward bringing to consumers the

benefits of price competition in Ohio's motor freight industry. (V880017)

Oregon

Letter to the Oregon Liquor Control Commission on requirements that manufacturers and wholesalers of beer and wine post prices ten days before price changes and maintain posted price decreases for at least 30 days for wine and 90 days for beer. The staff letter said that these restrictions may facilitate collusion and may prevent suppliers from responding quickly to changing market conditions, both of which may result in higher prices for consumers. In addition, the letter noted that less restrictive methods could prevent price discrimination. (V880014)

Pennsylvania

Letter to the Pennsylvania House of Representatives on a proposal to repeal certificate of need ("CON") process. The staff letter said that maintaining CON regulation of health care markets is likely to harm consumers in the state. The benefits of CON regulation, if any, are likely to be outweighed by the adverse effects of such regulation on competition in health care markets. (V880012)

Rhode Island

Letter to the Rhode Island Department of Transportation concerning possible additional taxicab service at Theodore Francis Green State Airport. The staff letter points out that allowing additional taxicabs to service the airport can result in lower fares and shorter waiting times for consumers. Total deregulation of taxicabs at airports may cause some difficulties, most notably higher fares and resulting excess taxicab service levels. Thus the letter also suggests that limited regulation in the form of fare ceilings be considered if such problems arise. (V880034)

Letter to the Rhode Island Legislature on a bill to exempt from trucking regulation motor vehicles leased to or contracted to a cooperative group and used exclusively for the transportation of the property of the group or its members. The staff letter discussed the general issue of regulation of the trucking industry, pointing out the benefits of deregulation. The letter also supported the proposed bill which could be a step toward trucking deregulation. (V880038)

South Carolina

Letter to the South Carolina Legislative Audit Council on statutes and regulations of South Carolina concerning real estate professionals, engineers, and land surveyors. The staff letter suggested that certain provisions could have anticompetitive effects, and that policy makers in South Carolina may wish to weigh the potential costs of these anticompetitive effects against any quality-enhancing benefits. (V880008)

Letter to the South Carolina House of Representatives on an amendment to the law which prohibits off-site sales of motor vehicles. The staff letter said that the amendment to allow dealers to sell vehicles at temporary locations away from the dealer's established place of business would likely benefit consumers. (V880031)

Texas

Letter to the Committee on Business and Commerce of the Texas House of Representatives on a bill to restrict business takeovers. The staff letter said that enactment of the proposed legislation is likely to deter takeovers that benefit shareholders, employees, consumers and the economy as a whole. The letter also recommended that the legislation, if approved, be made applicable to corporations that affirmatively act to be covered by it through amendments to their articles of incorporation. (V880042)

Wisconsin

Letter to the Wisconsin legislature on a proposed bill which would restrict suppliers of Wisconsin dealers from changing the nature of their operations or even deciding to go out of business. The staff letter said that enactment of the bill could reduce the number of dealers, reduce the number of new products in the state, and lead to higher prices. Further, the letter said that the state-created barrier may give existing dealers a degree of market power to increase prices or decrease services without fear of new entry. (V880024)

Wyoming

Letter to Wyoming's Assistant Attorney General on a proposed broadening of the Wyoming below-cost selling statute. The staff letter suggested that because predatory pricing appears to be

difficult to accomplish and quite rare, an excessively strict law may deter businesses from vigorous but legitimate price competition. The letter also suggested that in examining predatory pricing cases, law enforcement authorities may want to consider whether a market is structured in a way that does not lend itself to predatory pricing, as further investigation may therefore be unnecessary. (V880010)

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