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Complaint

IN THE MATTER OF

INTERNATIONAL ASSOCIATION OF
CONFERENCE INTERPRETERS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9270. Complaint, Oct. 25, 1994--Final Order, Feb. 19, 1997

This final order requires, among other things, the International Association of Conference Interpreters, a Switzerland-based voluntary professional association of interpreters from 68 countries, and its U.S. affiliate members to eliminate Association rules and bylaws regarding, among other things, fees, travel expenses, pro bono work, and commissions.

Appearances

For the Commission: *Kent Cox* and *Michael D. McNeely*.

For the respondents: *James Meyers* and *Robert Skitol, Drinker, Biddle & Reaths*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondents, the International Association of Conference Interpreters, also known as the Association Internationale des Interprètes de Conférence (hereafter, "AIIC"), a corporation, and the United States Region of the International Association of Conference Interpreters (hereafter, "the U.S. Region"), an unincorporated association, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent AIIC is a corporation organized, existing and doing business under and by virtue of the laws of France, with its principal place of business located at 10, Avenue de Sécheron, 1202 Geneva, Switzerland. AIIC is a voluntary professional association of individuals in 68 countries engaged in the business of conference interpreting. Respondent the U.S. Region is

a voluntary, unincorporated professional association of individuals residing in the United States and engaged in the business of conference interpreting who are members of AIIC.

PAR. 2. Except to the extent that AIIC and the U.S. Region have restrained competition as described herein, AIIC members, including those in the U.S. Region, have been and are in competition among themselves and with other interpreters.

PAR. 3. AIIC and the U.S. Region engage in substantial activities that further their members' pecuniary interests. By virtue of these activities, AIIC and the U.S. Region are corporations within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. The acts and practices of AIIC and the U.S. Region, including the acts and practices alleged herein, are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. AIIC maintains a set of work rules that are binding on members performing services in the United States and that require members to refuse to work on inferior terms. AIIC members have agreed to abide by the work rules and can be investigated and expelled for violations. The U.S. Region has participated in formulating, securing agreement to, and enforcing those rules as they are applied in the United States.

PAR. 6. AIIC has periodically created and distributed fee schedules containing minimum fees for interpretation services in the United States. AIIC work rules state or have stated that members' rates of daily remuneration shall be the rates specified in the fee schedules. The U.S. Region has participated in formulating and securing agreement to those fee schedules as they apply in the United States.

PAR. 7. Within the United States the AIIC work rules require or have required:

A. Identical compensation for interpreters working on the same interpretation team and performing the same function regardless of differences in interpreters' experience, skill, or other characteristics;

B. Members to calculate conference interpretation fees on an indivisible full-day basis, regardless of the duration of the actual assignment during the day;

C. Members to charge an added fee when they whisper or interpret alone;

- D. Members to charge for cancellations; and
- E. Members to pay their own travel and subsistence expenses when providing services free of charge.

PAR. 8. Within the United States the AIIC work rules prescribe or have prescribed rates for:

- A. Reimbursement or allowances for travel, lodging, subsistence and other expenses;
- B. Compensation for travel time, briefing time, rest time, and weekends or other non-working days over the duration of a conference; and
- C. Recording of interpretations.

PAR. 9. Within the United States the AIIC work rules prescribe or have prescribed mandatory standards for:

- A. The maximum hours worked per day and per shift by interpreters;
- B. The composition of interpretation teams, including the minimum number of interpreters based on the number of target and source languages used at a conference;
- C. The quality of transportation to and from conferences; and
- D. Members' use of portable electronic simultaneous interpretation equipment.

PAR. 10. Within the United States the AIIC work rules prohibit or have prohibited:

- A. Members from accepting or paying commissions;
- B. Members from engaging in comparative advertising;
- C. Members from offering or accepting "package deals" (which combine interpretation with other cost items) and lump sum payment arrangements;
- D. Members from performing non-interpretation services at conferences for which they have been hired as interpreters;
- E. Members from entering into arrangements whereby particular interpreters are available exclusively through them;
- F. Members from accepting more than one assignment for the same period of time; and

G. Members who coordinate interpreters from operating under a trade name.

PAR. 11. As applied to members residing in or traveling to the United States, the AIIC work rules require or have required that travel expenses to a job be charged based on a member's declared professional address, regardless of the member's actual location and even if no travel is actually involved. The AIIC work rules also require or have required members to declare a single professional address, to change such professional addresses no more than once every six months, and to give three months' advance notice of any change.

PAR. 12. Within the United States the AIIC work rules:

A. Required or have required members selecting an interpretation team to hire freelance interpreters before hiring interpreters who have permanent positions; and

B. Discourage or have discouraged interpreters with permanent positions from competing with freelancers.

PAR. 13. By enacting, participating in, securing agreement to, or enforcing the fee schedules, work rules, and other restrictions, as set forth in paragraphs five through twelve, respondents AIIC and the U.S. Region have been and are acting as a combination of their members or in conspiracy with their members or others to fix or stabilize fees and to restrain competition by attempting to control the price, output and marketing of interpretation services performed in the United States.

PAR. 14. The combination or conspiracy and acts or practices described above have had and continue to have the purpose and actual or likely effects of unreasonably restraining competition and injuring consumers in the United States by, among other ways, depriving consumers of the benefits of price and other forms of competition among interpreters.

PAR. 15. The acts and practices herein alleged were and are to the prejudice and injury of the public, will continue in the absence of the relief herein requested, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION

BY JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE
JULY 26, 1996

The Commission's complaint in this matter, issued October 25, 1994, charges the International Association of Conference Interpreters ("AIIC") and the U.S. Region of AIIC with unfair methods of competition.

The complaint charges that AIIC maintains work rules binding on members; that AIIC members can be expelled for violations; that the U.S. Region of AIIC has participated in enforcing those rules; that AIIC has minimum fees for interpretation services in the United States; that members' rates of daily remuneration shall be the rates specified in the fee schedules.

The complaint alleges that AIIC rules require: (a) identical compensation for interpreters working on the same interpretation team regardless of differences in their experience or skill; (b) payment of interpretation fees on an indivisible full-day basis, regardless of the number of hours actually worked; (c) added fees for whispered or solo interpretation; (d) cancellation charges; and (e) restrictions on providing services free of charge.

The complaint alleges that AIIC rules prescribe rates for: (a) reimbursement for travel, lodging, and subsistence; (b) compensation for travel time, briefing time, rest time, weekends or other non-working days over the duration of a conference; and (c) recording of interpretations.

The complaint alleges that the AIIC work rules prescribe mandatory standards for: (a) the maximum hours worked per day and per shift by interpreters; (b) the composition of interpretation teams, including the minimum number of interpreters based on the number of languages used at a conference; (c) the quality of transportation to and from conferences; and (d) members' use of portable interpretation equipment.

The complaint alleges that AIIC work rules prohibit: (a) the acceptance or payment of commissions; (b) comparative advertising; (c) "package deals" that combine interpretation with other services, and lump sum payment arrangements; (d) the performance of non-interpretation services by interpreters; (e) exclusive availability arrangements for particular interpreters; (f) the acceptance of more

than one assignment for the same period of time; and (g) the use of trade names.

The complaint alleges that AIIC rules require members to declare a single professional address, to change such professional addresses no more than once every six months, and to give three months' advance notice of any change; and that, as to members residing in or traveling to the United States, travel expenses to a job be charged based on the member's declared professional address, regardless of the member's actual location and even if no travel is actually involved.

The complaint alleges that AIIC requires members selecting an interpretation team to hire freelance interpreters before hiring interpreters who have permanent positions; and discourages interpreters with permanent positions from competing with freelancers.

The complaint alleges that the AIIC and the U.S. Region conspire with their members to fix price and output of interpretation services in the United States; that the effect of this conspiracy is to unreasonably restrain competition and injure consumers in the United States by depriving consumers of the benefits of price and other forms of competition among interpreters; and that the acts and practices alleged are to the prejudice and injury of the public.

Respondents moved to dismiss the complaint on jurisdictional grounds on December 8, 1994. This motion was denied on January 24, 1995, and by modified order on February 7, 1995. Respondents subsequently filed an answer to the Commission's complaint on February 10, 1995. On October 13, 1995, respondents moved for partial summary decision, which was denied on November 20, 1995. On October 23, 1995, complaint counsel moved for partial summary decision on jurisdictional issues, which was denied on November 29, 1995, except as to the existence of interstate commerce jurisdiction and the amenability of the U.S. Region to personal jurisdiction, which respondents did not dispute.

Except for one witness who testified on November 27, 1995, the hearing in this matter began on December 4, 1995. The last witness testified on April 17, 1996. In total, complaint counsel called 16 witnesses, including an economist and a cognitive psychologist, and respondents called five witnesses, including an economist and a psychologist. There were a total of 26 days of trial and 4,000 pages of trial transcript. Approximately 1,000 complaint counsel exhibits

numbered CX-1 through CX-3007 were admitted into evidence.¹ Respondents introduced approximately 240 exhibits numbered RX-2 through RX-820.² The record also includes 94 stipulated facts, adopted by order on April 8, 1996.

FINDINGS OF FACTS

I. THE CONFERENCE INTERPRETATION INDUSTRY

A. Respondents

1. AIIC

1. Respondent International Association of Conference Interpreters, "AIIC" (CX-600-A) is an association of professional conference interpreters. (Stip. 6.) AIIC's Secretariat is located in Geneva, Switzerland. (Stip. 7.) AIIC's rules are in its "Basic Texts." (Stip. 9; CX-1; CX-2.)

2. AIIC's supreme body, the Assembly (all Association members), meets once every three years. (Stip. 10.) AIIC also has a "Council" (president, three vice presidents, a treasurer, and representatives from each of the Association's regions), nominated by their regions and elected to the Assembly. (Luccarelli, Tr. 1628; Stip. 11.) The Council implements Assembly decisions and adopts the annual budget. (Stip. 12.) AIIC also has a "Bureau" (the president, the three vice presidents and the treasurer), exercising the Council's functions. (Stip. 13.) AIIC has 2,000 members worldwide, and 141 in the United States. (CX-600-K; Stip. 36.)

3. AIIC publishes a Bulletin to members. (Stip. 67.) AIIC sends Bulletins to the United States reporting on the business of AIIC (including matters relating to the rates of remuneration and work rules.) (Stip. 17.) Proposed amendments to AIIC's Basic Texts are in the Bulletin. (Stip. 18.)

4. AIIC has two sectors. The "Agreement Sector" safeguards AIIC members working as freelance interpreters pursuant to AIIC's negotiated agreements with international organizations. (CX-2085-E; F. 492-97.) The "Nonagreement Sector," or "NAS," involves AIIC freelance interpreters working in the private sector not covered by

¹ By order of July 10, 1996, approximately 430 of complaint counsel's exhibits were withdrawn.

² By order of July 11, 1996, approximately 100 of respondents' exhibits were withdrawn.

AIIC's Agreements. (CX-278-Z-2; CX-242-E.) NAS meets twice annually. (CX-245-F.)

2. The U.S. Region of AIIC

5. Members of AIIC in any country with 15 members may form a "Region." (Stip. 32.) The membership of an AIIC region consists of the AIIC members then having their professional address in that region. (Stip. 33.) Currently, AIIC has 22 regions. (Stip. 35.) One of these is the U.S. Region of AIIC. (Stip. 33, 36.)

B. The American Association of Language Specialists

6. The American Association of Language Specialists ("TAALS") is an association of conference interpreters, translators, precis-writers and editors based in the Western Hemisphere, principally the United States. (CX-997-C, Q, Z-35 to Z-49; CX-995-C, J.)

7. TAALS has a professional code, binding on members, that, prior to 1994, included many of the restraints now challenged in the complaint against AIIC. (F. 304, 307-13.)

8. The Federal Trade Commission issued a consent order against TAALS (Aug. 31, 1994) prohibiting TAALS from price fixing or limiting price competition, agreements to restrict the time that interpreters work or the number of interpreters used and prohibiting restraints against advertising professional address rules and portable equipment restrictions.

C. The Conference Interpretation Industry in the United States

9. Interpretation refers to the conversion of the spoken word from one language into another. Translation involves written statements. (Luccarelli, Tr. 1572-73.)

10. Conference interpretation involves business meetings, meetings with audiences, seminars and conferences involving sensitive subjects or technical material. (Clark, Tr. 589/21.) There are two principal modes of conference interpretation, consecutive and simultaneous. (Stip. 1.)

11. In consecutive interpretation, interpreters listen to the speakers for a while, and then interrupt to interpret what they have heard into another language. (Stip. 2.) Consecutive interpretation is usually limited to two languages because of the time required when

multiple languages are involved. (CX-304-K (Motton); Obst, Tr. 265, 267-68.)

12. In simultaneous interpretation, the interpreter talks at the same time as the speaker. (Obst, Tr. 264.) Interpreters sit in soundproof booths with microphones and headsets and provide a running interpretation into another language, which conference participants hear with their own headsets. (Stip. 3; CX-300-Z-54 (Motton); Obst, Tr. 264.) Simultaneous interpretation is performed in half the time as consecutive. (Obst, Tr. 265.) While conference interpreters sometimes perform consecutive interpretation, simultaneous interpretation is used for larger conferences. (Hamann-Orci, Tr. 15, 18; Stip. 4; Van Reigersberg, Tr. 433.)

13. Whispered interpretation is simultaneous without equipment and with the interpreter sitting next to two or three listeners. (CX-300-Z-57 to Z-58 (Motton); Hamm-Orci, Tr. 19.) Whispered interpretation is used at state dinners, for heads of state and at press conferences. (Hamann-Orci, Tr. 19; Obst, Tr. 268.)

14. A conference interpreters usually interprets simultaneously in a booth. (Clark, Tr. 591.) Conference interpreters listen and speak at the same time as someone else. (Hamann-Orci, Tr. 17.) In addition to language fluency, a conference interpreter must switch easily between two cultures and languages, which ideally involves having lived extensively in the countries where the foreign languages are spoken. (Weber, Tr. 1164, 1178; CX-303-R to S (Moggio-Ortiz).) Conference interpreters usually undergo specialized training in simultaneous interpreting. (Hamann-Orci, Tr. 17.) They are usually university educated and knowledgeable in many fields. (Davis, Tr. 854; Van Reigersberg, Tr. 384-85.) The majority of them are trained from two to five years. (CX-242-J.)

15. The number of languages at private conferences in the United States can vary from one other than English, to six or seven, but are usually two or three; the attendees can range from a couple of dozen into the thousands. (Neubacher, Tr. 762.) English and Spanish are the most common languages, followed by French. (CX-300-Z-134 (Motton); Citrano, Tr. 520.) In the United States, typical speeches are in English with interpretation into other languages. (Clark, Tr. 627.)

16. At conferences, simultaneous interpreters work in teams. (Luccarelli, Tr. 1617; Moser-Mercer, Tr. 3450.) Under AIIC's current rules, a conference in English and Spanish could have a team of three members working together in one booth, or it could have two teams

of two persons each working in two separate booths: a team interpreting from Spanish into English and a team interpreting from English into Spanish. (F. 160-61.) If there are two booths, when English is spoken on the floor the interpreters in the Spanish booth would take turns interpreting from English into Spanish, but when Spanish is spoken on the floor the interpreters in the Spanish booth would be listening. (Clark, Tr. 628-29.)

17. In the United States, except for large organizations such as the State Department or United Nations, conference interpretation teams are most often organized by intermediaries. (Weber, Tr. 1121; CX-302-Z-311 to Z-312 (Luccarelli); Stip. 5.) Intermediaries supply conference interpreters to users of interpretation services such as international associations, corporations, museums and non-profits. (Davis, Tr. 838, 846; Clark, Tr. 595.) Berlitz, Brahler, Language Services International, and CACI are examples of intermediaries. (Saxon-Forti, Tr. 2600; Luccarilli, Tr. 1564-65; Swetye, Tr. 2759; Weber, Tr. 1123.)

18. Berlitz uses conference interpreters for all simultaneous interpretation and for any assignment that is complex in nature; for sensitive subject matter or highly technical material; for large audiences, media assignments, live interviews; where quality is of the utmost importance; and for assignments involving important business meetings. (Clark, Tr. 589-91.) Some business meetings are interpreted simultaneously, others consecutively. (Clark, Tr. 590.)

19. Intermediaries advise conference sponsors about the conference interpretation business. Most clients do not know what is needed to supply simultaneous interpretation for a conference. (Clark, Tr. 602, 644; Weber, Tr. 1150; Davis, Tr. 875.)

20. Intermediaries educate clients about how difficult it is to interpret simultaneously, and the number of interpreters required. (Clark, Tr. 630-31; Weber, Tr. 1151.) Most clients do not get involved in the details of organizing interpretation teams once they have selected an intermediary, and have never heard of TAALS and AIIC. (Clark, Tr. 602, 607-08; Jones, Tr. 705.)

21. According to intermediaries, a reputation for quality is important in the interpretation business. (Weber, Tr. 1152.) Berlitz has a name to uphold in the industry and wants to maintain a good reputation for quality service. (Clark, Tr. 597, 640-41.) In CACI's experience, prospective clients take reputation, as well as price, into consideration when choosing an intermediary. (Jones, Tr. 704.) The quality of interpretation is the most important factor to Brahler

because it has a reputation as a high-quality supplier. (Davis, Tr. 849, 872.)

22. Berlitz wants repeat business. (Clark, Tr. 596-97.) CACI gets repeat work because of its reputation for providing quality conference interpretation. (Jones, Tr. 704.) Half of Braehler's clients are repeat clients. (Davis, Tr. 838.)

23. Intermediaries decide the number of interpreters (Clark, Tr. 642; Davis, Tr. 862-65, 870; Jones, Tr. 697-99, 748-49), the length of the working day (Clark, Tr. 642-43; Davis, Tr. 862, 871; Lateiner, Tr. 972), and the type of equipment to use. (Davis, Tr. 871; Clark, Tr. 600-01, 643-44.)

24. The needs of clients vary with the subject matter of the meeting, the duration, the number languages that are required, and the level of quality desired. (Weber, Tr. 1151-52; Clark, Tr. 625-27.) Intermediaries can choose the working conditions when staffing a conference rather than adopting blanket rules. (Van Reigersberg, Tr. 467.)

II. CONSPIRACY

A. AIIC's Basic Texts

25. The Basic Texts include the basic rules of procedure and membership. (CX-300-Z-1, Z-163 to Z-243 (Motten).) The Basic Texts include AIIC's Statutes, Disciplinary Procedure, Admissions Procedure, Code of Professional Ethics, Professional Standards, and various Annexes to the Professional Standards. (CX-1-A to Z-55; RX-2, 1-80; Stip. 9.) The Basic Texts are published in the AIIC Bulletin, the AIIC publication disseminated world-wide to all its members. (Stip. 18.)

26. AIIC's Basic Texts bind all members of the association, including United States members. (CX-305-Z-341 (Sy); CX-218-L; CX-221-D; CX-284-D.) In 1994 the Council approved a resolution stating that "Council confirms the binding character of the professional standards." (CXT-501-T, p.2; CX-302-Z-388, Z-939 (Luccarelli); Luccarelli, Tr. 1860, 1862.) The Basic Texts are published in English and French. (CX-1-3.)

1. Code of Ethics and Professional Standards

27. AIIC's Code of Ethics ("Code") governs the professional conduct of members of the association. (CX-305-Z-29 (Sy).)

Professional Standards ("Standards") provide the base working conditions. (CX-1-Z-40; CX-2-Z-40; CX-3-F.) The Code and the Standards include rules on: "double-dipping," advertising, working without a booth, required paid briefing sessions, professional address, recording fees, cancellation fees, paid non-working days, rest days and travel fees, length of day, team strength, indivisible daily rates, same team/same rate, commissions, charity restrictions, daily rate, per diem, and travel conditions. (CX-2.)

28. Annexes attached to the Standards contain the Guidelines for Recruiting Interpreters (CX-1-Z-47 to Z-50; CX-2-Z-50 to Z-53; RX-2, 61-62, 65-66), and the Staff Interpreters' Charter (CX-1-Z-53; CX-2-Z-54; RX-2, 79).

29. AIIC's 1991 Code and Standards (including the Annexes) were adopted by vote at the AIIC 1991 General Assembly. (CX-301-Z-7, Z-10, Z-44, Z-153 to Z-172 (Bishopp); CX-300-Z-3, Z-102, Z-163 to Z-243 (Motton); CX-2.) At the 1991 Assembly, the members voted on whether to remove the monetary conditions from the Basic Texts, but the vote failed. (Luccarelli, Tr. 1851; CX-262-C to J.) Thus, the 1991 Basic Texts retained references to rates in the Standards. (CX-270-K; CX-441-B.)

30. AIIC called a 1992 Extraordinary Assembly "to determine the broad lines of the structure and guiding principles of the AIIC of the future, the actual texts remaining to be adopted at the next Ordinary Assembly." (CX-272-H; CX-273-F.) AIIC members voted "to remove all mention of monetary conditions . . . from out basic texts" and invited "the council to take all necessary steps for the immediate implementation of these decisions." (CX-273-G.) The Council decided that "All provisions of the Basic Texts that refer to financial conditions are immediately withdrawn. . . . The Basic Texts shall be amended consequently at the next Ordinary Assembly." (CX-279-I; CX-273-O, CXT-273-O, p.1.)

2. Annexes to the Code

31. Like the Basic Texts, Annexes to the Basic Texts are binding on AIIC's members. (Weber, Tr. 1340/2; CX-284-D; CX-221-D; CX-218-J.) Non-compliance with "any rules of the code of professional conduct and its annexes" could be the subject of disciplinary proceedings. (Weber, Tr. 1128/16.)

a. Guidelines for recruiting interpreters

32. AIIC's Guidelines for Recruiting Interpreters ("Recruiting Guidelines") are attached as Annex 1 to AIIC's Standards. (CX-1-Z-47; CX-2-Z-50; CX-214-M to N.) The Recruiting Guidelines were approved at the 1991 Assembly, and are part of the 1991 Basic Texts, (CX-300-Z-14 to Z-15 (Motton); Luccarelli, Tr. 1855/1), and the 1994 Basic Texts. (CX-1-Z-47 to Z-50; RX-2, 62, 65-66.) The Recruiting Guidelines contain five of the restraints challenged in this action: ban on package deals and lump-sum payments, commissions, and exclusive agency arrangements; restriction on trade names; and regulation of advertising. (CX-1-Z-49.) When a conference interpreter makes up a team, "she or he sees to it not only that the Association's rules, but also its recommendations are complied with." (CX-1-Z-47.) The coordinating interpreter must apply the guidelines to all interpreters he or she appoints, whether or not they are AIIC members. (CX-1-Z-47.)

33. The rules in the Recruiting Guidelines currently bind members. (Weber, Tr. 1154-56; CX-284-D; RX-336, 8145; Luccarelli, Tr. 1680-82.)

34. The precursor to the present version of the Recruiting Guidelines was originally adopted by the AIIC Assembly held in New York and published as Annex 2 to the 1983 Basic Texts. (CX-2422; CX-256-Z-45; CX-260-Z-106.)

b. Staff interpreters' charter

35. The Staff Interpreters' Charter was first adopted in 1977. (CX-215-D.) The 1991 Charter provides that "staff interpreters should...act as interpreters outside their organization only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (Stip. 89; CX-1-Z-53; CX-2113; CX-262-Z-129 to Z-130.)

c. Videoteleconferences

36. An annex to AIIC's 1994 Standards circumscribes members' ability to perform videoteleconferencing services. (CX-1-Z-54 to Z-55.) A videoteleconference is a remote conference where the interpreters are not at the same location as the speakers. (CX-1-Z-54.) The rules are in the 1994 Basic Texts. (CX-5-D; CX-2-Z-55 to Z-56;

CX-1-Z-54 to Z-55.) The videoteleconferencing rules restrict the number of hours an interpreter is allowed to work to not more than three hours a day, or else "manning strengths shall be correspondingly increased. If remote conferencing leads to night work, interpreters shall be entitled to appropriate compensation." (CX-1-Z-54.)

B. Creation of the Work Rules by Agreement

1. General Assembly Vote

37. AIIC's Assembly conducts the business of the association and sets polity by debates and votes on standards, the code of ethics, admissions procedure and budget. (CX-1-E to F, Art. 19; Luccarelli, Tr. 1628.) All members may vote, personally or by proxy. (CX-1-E to F, Art. 19; CX-1-P, Rule 7.)

38. The Standards and the Code are adopted by vote at the AIIC Assembly. (CX-305-Z-8 (Sy); CX-300-Z-4 (Motton).) A two-thirds majority of the Assembly is required to amend existing Basic Texts or to expel a member. (CX-1-T, Rule 14; Luccarelli, Tr. 1629.) Changes to the Annexes also can be made by the Assembly. (CX-253-D.) A simply majority of AIIC's members is otherwise acceptable for most Assembly votes. (CX-1-T, Rule 14.)

2. Council Action

39. Each AIIC Region nominates its representative to the AIIC Council, and the Assembly votes on those nominations. (Luccarelli, Tr. 1628.) The Council may oversee the daily activities of the association, implementing Assembly decisions, granting waivers to rules, resolving member disputes, maintaining disciplinary investigations and actions, and adopting the annual budget. (CX-1-G to H, Art. 24, Z-1; Stip. 12; Lucarrelli, Tr. 1630.)

40. The Council may adopt Council texts, recommendations of the NAS or self-generated texts. (Lucarrelli, Tr. 1631.) "As consensus develops on rules, binding on the profession as a whole, they are gradually included in the Code. Pending consensus on rules, however, AIIC intends to publish guidance material to make all members more familiar with their rights and responsibilities in private sector negotiations. . . ." (CX-206-C.)

41. The Council approves the rates and per diem published by the association, by country or by region. (CX-304-Z-49 (Motton).) The

Council grants waivers to the application of Basic Text provisions. (CX-1-Z-1, Rule 14; CX-300-Z-35 (Motton); F. 56-57.)

3. AIIC's Nonagreement Sector

42. The NAS includes interpretation markets not governed by agreements negotiated by AIIC. (CX-278-Z-2.) Within the NAS, interpreters are recruited solely on the basis of the AIIC Code and their contracts are governed by the AIIC Code. (CX-242-E.) The purpose of the NAS is to "promote interpretation in the NAS in an equally systematic and AIIC-subsidized manner as in the Agreement Sectors [and to prepare] AIIC Standards of Professional Practice applicable to the sector for ratification by Council and Assembly." (CX-278-Z-2.) The NAS accepts the AIIC texts regarding working conditions. (CX-272-F, CXT-272-F to G.) The NAS exhorted members to "comply with AIIC standard practices." (CX-222-H.)

C. Agreement to Follow the Basic Texts

43. To become an AIIC member, a candidate must have practiced professional conference interpretation in a booth for at least 200 days, without complaints from employers or colleagues, while following all of AIIC's rules. (Stip. 16; CX-1-B, Art. 1; CX-304-Z-110 (Motton).) Before becoming members of AIIC, all conference interpreters must enter into the commitment described in the application form. (CX-1-C; CX-2-C; F. 44-46.)

1. Applicants for Membership

44. There are two types of candidates for AIIC membership: pre-candidate and candidate. (CX-300-Z-5 (Motton).) Pre-candidates for AIIC admission are simultaneous conference interpreters who have worked less than 200 days in the booth. (CX-2053-A; CX-1-Z-29, Art. 4.) Pre-candidates agree to be "bound to observe [AIIC's] Statutes, its Code of Professional Ethics and all of its other rules and regulations." (CX-1-Z-30; CX-2-Z-30.) AIIC requires the pre-candidate to agree, in writing, that: "Having taken cognizance of the rules and regulations of the Association, and namely the provisions of the Code of Professional Ethics, I hereby undertake to abide by them." (CX-2053-A.)

45. Candidates for AIIC admission are conference interpreters who have worked at least 200 days in the booth. (CX-2054-C; CX-301-S to T, W (Bishopp); CX-300-Z-8 (Motton).) AIIC's Admissions Procedures require the applicant, "without exception," to observe the Code and all of its other rules and regulations. (CX-1-Z-30; CX-2-Z-30; CX-300-Z-8 (Motton).)

46. Five AIIC member-sponsors are required for each candidate. (CX-1-Z-30, Art. 5; Lucarrelli, Tr. 1558; CX-300-Z-7 (Motton).) The sponsors certify that: "to the best of our knowledge, the candidate possesses the required professional experience and that she/he observes the rules and regulations of the Association." (CX-2054-A; CX-300-Z-7 to Z-9 (Motton); CX-271-G.) The sponsors guarantee that the candidate has respected AIIC's rules. (CX-202-F.) The names of candidates are published in the AIIC Bulletin (CX-300-Z-10 (Motton)) and members are expected to challenge them on their "respect of AIIC rules (including the professional code)." (CX-202-F; CX-300-Z-10 (Motton).)

47. Once the 200-day period is complete, the application process itself takes approximately one and one-half years. (Hamann-Orci, Tr. 20.) During this period all candidates follow AIIC's professional standards. (CX-300-Z-10 to Z-13 (Motton).) The 200 working day requirement may mean that applicants will follow the AIIC rules five years before membership is granted because "beginners don't work as much [as] more experienced interpreters." (CX-306-Z-143/20 (Weide).)

2. AIIC Rules Are Binding

48. AIIC's Statutes require, as a condition of membership, that conference interpreters "enter into a commitment to respect the statutes, the Code of Professional Ethics, and all of the Association's other rules and regulations as well as the other rules of the profession." (CX-1-C; CX-2-C.) AIIC members are "bound to observe its Statutes, its Code of Professional Ethics, and all other rules and regulations." (CX-2-Z-30.) A member of AIIC pledges to abide by the rules set forth in AIIC's Basic Texts. (Luccarelli, Tr. 1558-59.)

49. AIIC's Basic Texts, including the Code, the Standards, and AIIC's rules and working conditions, are binding on all AIIC members. (CX-305-Z-4, Z-6 to Z-7 (Sy); CX-2-Z-30.) AIIC members in the United States understand that the Code applies to interpreters

in the United States. (CX-306-Z-134/1-15 (Weide); CX-284-C to D; CX-208-I.)

50. Article 8 of the 1991 version of AIIC's Code states that: "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of the Association or not, any working conditions contrary to those laid down in this Code or in the 'Standards of Professional Practice' applying to the work of members of the Association, which establish, in particular, rules concerning remuneration, travel, copyright, subsistence allowances and travel expenses." (CX-2-Z-39.)

51. The 1994 version of the Basic Texts states: "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of the Association or not, any working conditions contrary to those laid down in this Code or in the Professional Standards." (CX-1-Z-39.)

52. Malick Sy, the President of AIIC, explained that AIIC's working conditions are binding: in the March 1995 Bulletin, he wrote, "I wish to take this opportunity to state clearly and unequivocally once again on behalf of the Council, the Bureau, and myself as President, that our working conditions are binding upon all our members." (CX-284-D.) He confirmed that members of the association adhere to the association's rules. (CX-305-Z-4, Z-7 (Sy); CX-300-Z-9 (Motton).)

53. AIIC provides a standard form contract ("model") to be used by members in their dealings with clients. (CX-1-Z-49; CX-2059; CX-301-Z-25 to Z-27 (Bishopp); Hamann-Orci, Tr. 22-23.) TAALS also has such a model contract, approved by TAALS "and in conformity with the standard practices of the International Association of Conference Interpreters-AIIC." (CX-1063-A; Hamann-Orci, Tr. 23.) AIIC has provided such a model since at least 1963. (CX-206-D.) The model has been made available to U.S. Region interpreters. (CX-427-B; CX-428-A.) The AIIC contract implements AIIC's hours, package deals, provision of non-interpretation services, commissions, portable equipment, recording, travel fees, travel conditions, cancellation fees, per diem, and professional domicile restraints. (CX-2059-A to B.)

54. Interpreters use the AIIC contract when negotiating with clients because it provides the backing of a professional organization. (Hamann-Orci, Tr. 22.)

55. AIIC's Guidelines for Recruiting Interpreters state that the Association's contract should be used by members. (CX-1-Z-49.) AIIC members use the form contract. (Hamann-Orci, Tr. 21-23.) AIIC members cite to the associations' rules in their contract negotiations with intermediaries. (Clark, Tr. 602; Weber, Tr. 1153-54.)

3. Waivers of the Rules

56. AIIC's rules provide a waiver by which rules may be temporarily modified by the AIIC Council. (CX-1-Z-1, Rule 14; CX-300-Z-33 (Motton).) The waiver mechanism shows that the rules are mandatory rather than advisory. (CX-300-Z-34 to Z-37 (Motton).)

57. Waivers, if granted by the Council, are "authorized for a stated period only, and if renewal is requested, a further request must be made." (CX-208-H.)

4. Members Adhere to AIIC Rules

58. According to Claudia Bishopp, the U.S. Region Representative on the AIIC Council from 1978 to 1993, interpreters largely succeed in applying AIIC's working conditions. (CX-301-Z-140 (Bishopp).) AIIC members generally follow AIIC's Standards, Code, and other Basic Texts and Guidelines. (Luccarelli, Tr. 1621-23; Hamann-Orci, Tr. 28; Weber, Tr. 1155.)

59. Interpreters expect intermediaries to conform to AIIC's rules and are generally unwilling to negotiate rates and certain working conditions. (Citrano, Tr. 502-06, 509.) Interpreters view the AIIC and TAALS rules "like a bible. That was how the business was conducted." (Citrano, Tr. 507/4-14; Neubacher, Tr. 778-79; Jones, Tr. 696-97, 700.)

5. AIIC Enforces Its Rules

60. AIIC members are subject to punishment, including expulsion, for failure to follow the AIIC Code or the Standards. (CX-301-Z-8 (Bishopp); CX-1-H; CX-2-H; Luccarelli, Tr. 1630.) AIIC has taken formal measures to discipline members through warnings, threats, investigations, and inquiries into violation of AIIC rules by

U.S. members. (Wilhelm Weber, F. 181, 229, 242, 249, 344-60; Marc Moyens, F. 219, 277; Jeannine Lateiner, F. 182, 285, 316.)

61. Under AIIC's rules (CX-1-G, Art. 24 1-2), if anyone accuses a member of the Association "of failure to observe the Statutes, the Code of Professional Ethics or any other applicable rules and regulations," it will be referred to the Council. (CX-1-Z-26; CX-2-Z-26.) The Council then appoints a three-member committee to investigate disciplinary charges. (CX-1-Z-26.) The disciplinary committee has authority to gather information from complainants, third parties, and the accused. (CX-1-Z-26.) "The refusal of any person accused [of a violation of the rules] to supply such information may be interpreted as evidence against them." (CX-1-Z-26.) The Council usually adopts the recommendation of the disciplinary committee. (CX-301-Z-122 to Z-123 (Bishopp).)

62. The AIIC Council may warn, reprimand, or suspend a member for failure to follow AIIC's rules. (CX-1-Z-27; Luccarelli, Tr. 1815-16; CX-300-Z-111 (Motton).) There is no right of appeal for warnings, reprimand or suspension. (CX-1-Z-27.) If the Council deems the member's violation sufficient to warrant expulsion, it recommends to the Assembly that the member be expelled. (Luccarelli, Tr. 1630; CX-300-Z-111 (Motton).) Only the Assembly, by two-thirds vote, may expel a member. (CX-1-T, Rule 14; Luccarelli, Tr. 1629.)

63. Charges of non-adherence to the rates set forth in the Standards, including charges of undercutting, could be the subject of AIIC's disciplinary proceedings. (Weber, Tr. 1128-29.)

64. Whenever a member is reprimanded, suspended, or expelled, the disciplinary action "shall be ... made known to the members of the Association." (CX-1-Z-27.) AIIC announces disciplinary measures taken in the Bulletin. (CX-284-N; CX-1-Z-27.) The possibility of such publication is a credible threat of punishment. (Wu, Tr. 2166.)

65. Article 12, of the AIIC Statutes states that resignation from the Association "shall not prevent disciplinary proceedings arising out of any earlier occurrence." (CX-1-C; CX-2-C.) Censure could affect an interpreter's ability to get referrals and therefore make sales. (Wu, Tr. 2167-68.)

66. Someone expelled from AIIC might never be hired by another AIIC member ever again. (Weber, Tr. 1268/21.) Publication of disciplinary actions and investigations can damage interpreters' reputations among other interpreters. (Hamann-Orci, Tr. 26-27;

Citrano, Tr. 553; Wu, Tr. 2166.) Two complaints against AIIC member, Jeannine Lateiner, were sent, apparently by the complaining party, to the other members of her team. No formal disciplinary action was taken. (Lateiner, Tr. 904; F. 182, 285, 316.)

67. The Executive Secretary of AIIC reported that the AIIC Council "stressed the need to encourage members not to hesitate to raise such matters (failure to observe obligations under the Code) even though they may not personally be involved, through appropriate channels in the future." (CX-226-B.) Similarly, AIIC's President warned the membership that members must be vigilant against lapses in adherence to the rules, that "there is not unity without the cement of discipline." (CX-227-H to I.)

68. In 1995, AIIC referred penalty matters against seven members to a committee of inquiry, announced that it suspended three members, issued reprimands to eight members, and issued "number of warnings." (CX-284-N.)

69. Interpreter associations have used fear of retaliation to force adherence to their rules. According to Luigi Luccarelli, U.S. Region representative to the AIIC Council, speaking at a TAALS meeting, "we have operated with a lot of fear in the past" and young interpreters "had heard from their teachers that they should obey the rules in order not to make enemies." (CX-962-D; CX-302-Z-326, Z-335, Z-337, Z-853.)

70. Interpreters get work through word of mouth, and they need to establish a positive reputation among their colleagues to get work because a lot of referrals come from other interpreters. (Hamann-Orci, Tr. 26; Swetye, Tr. 2795/24 to 2796/2; Citrano, Tr. 553.)

71. Interpreters must get along with their boothmate. (Hamann-Orci, Tr. 26.) Requests to work with particular colleagues are often made by future boothmates when contacted by clients. (Hamann-Orci, Tr. 26-27.) "If you can't get a partner to work with you, then you're basically unemployed." (Citrano, Tr. 516, 553.) Interpreters ask who their partners will be before they ask other questions. (Citrano, Tr. 553-54.)

72. Price undercutters could be cut out of the referral network or blacklisted. (Jones, Tr. 690; Swetye, Tr. 2795-96; CX-300-Z-108 (Motton).)

73. One intermediary testified that interpreters have agreed to deviate from the AIIC rules, and asked him to keep the terms of the agreement secret, for fear of retaliation by other interpreters. (Citrano, Tr. 516-17.)

74. In the summer of 1995, Mr. Weber, acting as an intermediary, received two anonymous telephone calls threatening him with retaliation if he testified against AIIC in this proceeding. (Weber, Tr. 1347-48.) One anonymous caller told him that if he testified, there "will be consequences." (Weber, Tr. 1347/22, 1348/4.) The other caller threatened that if Mr. Weber testified, AIIC would boycott the 1996 summer Olympic games for which he is responsible for organizing the interpretation services. (Weber, Tr. 1348/7-12.)

D. Respondent U.S. Region and the Conspiracy

1. AIIC's Mandatory Rates

75. U.S. Region members discussed rates and voted at U.S. Region meetings to set daily freelance conference interpretation fees in the United States. (CX-409-A; CX-1136.)

76. The U.S. Region provided the AIIC Council with the rates for the United States to be published in the AIIC Bulletin. (CX-301-Z-45, Z-46, Z-175 to Z-182 (Bishopp).) When the AIIC Bulletin published the incorrect figure for the United States in a report from various regions in 1990, the U.S. Region Representative corrected the Bulletin figure at a U.S. Region meeting. (CX-436-F.)

77. In December 1981, AIIC's U.S. Region noted that, on the advice of antitrust lawyers, although "it is preferable not to appear with a fixed figure on the rate sheet," "there is a 'gentleman's agreement' not to ask for less than U.S. Dollars 250 per day." (CX-1226-A.)

78. In 1986, AIIC's U.S. Region agreed that "the region should publish suggested minimum rates. As far as per diem, the meeting agreed that the rules we have been applying in the U.S. are still the best for the region. . . ." (CX-427-B; CX-432-F; CX-434-C.)

79. In 1988, the U.S. Region noted that AIIC did not publish a daily nongovernmental freelance rate for 1989. (CX-432-E.) The Region agreed to "publish 'Available on request,' which is considered better than not indicating any rate at all." (CX-432-E.)

2. The U.S. Region Connection to AIIC's Rules

80. AIIC's U.S. Region members or their elected representatives voted on AIIC's fees, Standards, and Code of Ethics. (CX-441-B; CX-300-Z-100 to Z-103 (Motton).) The U.S. Region urged members to attend, or to tender proxies to those who would attend, AIIC General Assembly meetings. (CX-407-E; CX-436-E; CX-446-A; Stip. 40, 42.) The U.S. Region contributed funds to members to defray travel costs for trips to European AIIC meetings "on our behalf." (CX-427-A.)

81. In response to the prospect of litigation at the Federal Trade Commission, in 1994, AIIC's U.S. Region published a resolution urging the "AIIC Council to continue its support of the U.S. Region's effort to defend those Standards." (CX-448-A, E.) In 1995, the representative for the U.S. Region to the AIIC Council stated that the "major concern all along has been to maintain AIIC's right to set working conditions for its members." (CX-450-B, C.)

3. The U.S. Region and Compliance with AIIC's Work Rules

82. The U.S. Region has secured compliance with AIIC's work rules. (CX-1393; CX-1396; CX-1470-A; CX-1471.) The U.S. Region reminded U.S. members of their obligations under the AIIC rules and urged adherence to the work rules for the United States (CX-56; CX-407-F; CX-439-B), and informed members of the availability of AIIC's standard form contracts. (CX-428-A.)

83. The U.S. Region enforces the AIIC rules. In 1984, the AIIC Council passed a resolution opposing the use of unpaid students in place of professionals and requested "the U.S. Region to report to the Bureau as soon as possible. . . ." (CX-236-G.)

84. The U.S. Region agreed to recommend to the AIIC Council a change in universal minimum manning strengths, but decided that it would fix the charges for non-working days and travel days. (CX-427-B.)

4. AIIC's Work Rules Were Binding on U.S. Members

85. In May 1994, after receiving a report that the AIIC Council reaffirmed the binding nature of the professional standards on all the members of the association, the U.S. Region passed a resolution to maintain AIIC's standards. (Luccarelli, Tr. 1862-63.) Absent a waiver, it is not possible for any AIIC region to rescind any of AIIC's

Basic Texts. (CX-300-Z-34 (Motton); Luccarelli, Tr. 1813; CX-302-Z-295 to Z-296 (Luccarelli).)

86. In 1988, the U.S. Region requested a renewal of its waiver from the rule against solo interpretation. (CX-432-G.) The U.S. Region applied for, and received, waivers for an interpreter to work alone when a meeting is no more than 40 minutes long. (CX-300-Z-34 to Z-35 (Motton); CX-259-H; CX-268-F.) The U.S. Region applied for a renewal of this waiver once again the following year. (CX-435-A; CX-2452.)

87. In 1986, AIIC's U.S. Region considered, but did not request a waiver for interpreters to accept 80% of the standard fee for meetings of less than 2 and 1/2 hours duration. (CXT-245-Q; CX-428-B; CX-301-Z-136 (Bishopp).)

88. In December 1989, the AIIC Council member for the U.S. Region passed on to members of the U.S. Region caution about working for three agencies who purportedly did not respect AIIC conditions and noted that some regions had refused work from these agencies. (CX-434-B; CX-301-Z-151.12 (Bishopp); CX-253-D.)

89. In 1990, AIIC's U.S. Region representative prepared a provisional paper on the local working conditions in the U.S. Region in response to a request from AIIC. (CX-435-A; CX-1408-A, C to E; CX-439-D to F.) The paper, sent to members with the U.S. Region minutes for discussion or revision, was intended "to ensure the uniform application in the USA of the AIIC Code of Professional Conduct and its Annexes." (CX-439-D.) The local working conditions described AIIC's rules on team strength, including: a daily rate multiplier for solo consecutive work; rules for recruiting interpreters; rules for direct contracts between the interpreters and the conference organizer; provision for cancellation, preparation, non-working days, and travel fees; and recording, and films. (CX-439-D to F; CX-301-Z-152.18.)

III. AIIC'S RESTRAINTS

A. Minimum Daily Rates

90. AIIC specifies minimum rates charged by AIIC members for work done in the United States. (F. 102.) Article 8 of the 1991 Standards provides, "The rate of daily remuneration shall be the standard rate applicable in the region concerned and, more precisely in the appropriate cases, in the country concerned . . . in those

countries where it is possible to apply a standard rate." (CX-2-Z-43-44.) Articles 9, 10 and 11, concerning simultaneous, consecutive, and whispered interpretation, specify that members shall charge the standard rate. (CX-2-Z-43-44.) Article 8 of the 1991 Standards provides for a "basic rate," which equals two-thirds of the standard rate. (CX-2-Z-43.) Its purpose is to calculate the charge for non-working days, such as travel and briefing days. (F. 130-32, 134.)

91. The "standard" and "base" rates originate from AIIC's defining large and small teams of interpreters for simultaneous interpretation. (F. 170-74.) The standard rate was the "small team rate" and the base rate was the "large team rate." (F. 174.) The small team got a higher rate because each interpreter worked harder. (CX-300-Z-106/3-16 (Motton); Lateiner, Tr. 913-16; Weber, Tr. 1134/7-19; CX-304-T/12-U/5 (Motton).) AIIC members in the United States did not distinguish rates for teams. (Weber, Tr. 1134.)

92. Since its founding in 1953, AIIC published rates of remuneration for its members. (CXT-2468, p.1; CX-3-D, K to M; CX-4-I to K; CX-5-F, I to K; CXT-6, pp. 3, 507; CX-7-E, H, J; CX-8-F, H, J; CX-9-F, I to K.) It required members to comply with local fees when they exceed AIIC minimums. (CX-50; CX-9-M; CX-2-Z-48.)

93. From 1970 to 1975, AIIC rate lists included the term "minimum." (CX-50; CX-58.) From 1976 until 1980, the rate lists carried the title, "AIIC Minimum Rates." (CX-60-65.) From 1983 to 1991, it sent out the rates under the title "Market Survey." (CX-71-84.)

94. Rates labeled "Market Survey" are not the product of a survey. (CX-300-Z-90 (Motton); CX-77; CX-306-Z-111-114 (Weide).) A memo sent to the Regions by then AIIC Treasurer Patricia Longley explains that these "surveys" actually are local minimum daily rates. (CX-2446-C; F. 519.)

95. AIIC rates were published in the Bulletin, which AIIC regularly mailed from Geneva to its U.S. members. (Stip. 19; CX-301-Z-42 (Bishopp); Weber, Tr. 1263-64; CX-305-Z-49-50 (Sy); Luccarelli, Tr. 1749; CX-257-E.)

96. AIIC's published rates included a "standard" and "base" rate for each region of AIIC (CX-71 to CX-83), or earlier, a "small team" and "large team" rate. (CX-57-68.) For the United States, however, they included a single rate (CX-55-65), because the U.S. Region did not use the small team. (F. 171.)

97. After the Federal Trade Commission investigation of the conference interpretation industry began, AIIC ceased publishing rates. (F. 93, 538.) AIIC's Extraordinary Assembly in 1992 in Brussels decided to remove "monetary conditions" from its Basic Texts. (F. 509.) At its General Assembly meeting in 1994, it adopted new versions of its Code and Standards, modifying references to rates. (CX-970-A; CX-1-Z-37-46.)

98. Originally, the AIIC Assembly discussed and voted on rates. According to former member Wilhelm Weber, "Typically, council would make proposal concerning rates. And then there would be a discussion in the assembly, and the assembly would either accept the proposal or reject it." (Weber, Tr. 1135.)

99. Until 1973, AIIC published a single rate for all interpreters worldwide (CX-203-C), except in certain countries, including the United States, where mandatory minimum rates were higher. (Weber, Tr. 1142.) In May 1973, AIIC began "readjustments and alignments to rates," (CX-201-E) setting rates in the currencies of individual countries. (CX-220-L; Weber, Tr. 1142-46.)

100. Members of the U.S. Region voted on the rates to charge in the U.S. and sent them to AIIC in Geneva to be published by AIIC as the rates for the United States. (Lateiner, Tr. 918-20; CX-405-C; CX-432-B; CX-1136.) The U.S. Region also supplied AIIC with the rates created by TAALS. (F. 307-08.)

101. The TAALS rates were created by vote at TAALS General Assembly meetings. (F. 307.) U.S. Region members were also members of TAALS and voted on rates. (F. 370-73; CX-432-E.)

102. U.S. Region members understood AIIC's rates to be mandatory minimums. (CX-1238 (Langley); CX-303-Z-86 (Moggio-Ortiz); Hamann-Orci, Tr. 38; Lateiner, Tr. 955.) The phrase "minimum daily rates" left to the judgment of individual interpreters to ask for higher rates, but not to work for less than the minimum rate. (Weber, Tr. 1140; F. 519.)

103. The three U.S. Region members who testified about undercutting charges lodged against them each defended themselves on the basis that they did not in fact undercut. (Hamann-Orci, Tr. 53; Lateiner, Tr. 903; CX-1273-C.) AIIC members testified that they never charged below the AIIC rate. (Luccarelli, Tr. 1757-58; Lateiner, Tr. 977; CX-303-Z-90 (Moggio-Ortiz); Hamann-Orci, Tr. 38.)

104. From 1988 to 1991, intermediaries generally paid the TAALS/AIIC rate or more. (F. 328-34.)

105. After 1973, regions proposed their own rates to the AIIC Council (CX-224-Z-7 to Z-8) and the Council approved them. (CX-267-H; CX-301-Z-41 to Z-42 (Bishopp).) AIIC became concerned about regional differences in rates, "lest divergent currency and rates developments weaken or destroy [the] universal system on which AIIC hinges." (CX-207-C.) The NAS tried to reduce these differences. (CX-223-L to M.)

106. U.S. Region members feared that if they charged less than AIIC minimum for the United States, they would be branded as undercutters, losing important referrals from other members. (CX-301-Z-152.9 to Z-152.10 (Bishopp); Hamann-Orci, Tr. 38.) Interpreters expressed concern to intermediaries about being known to other interpreters as price undercutters. (Jones, Tr. 690.) They feared other interpreters may not give them references for future work. (Jones, Tr. 690; Citrano, Tr. 514.) Interpreters explained they could not work for Metropolitan because of its lower pay because "in this business, you have to work with a partner and if you can't get a partner, you're kind of dead in the business." (Citrano, Tr. 516.)

107. The term "undercutting" refers to not respecting the AIIC rules (Swetye, Tr. 2820-21); working under inferior conditions, such as improper manning strength, working alone all day, or working without the proper equipment (Swetye, Tr. 2820-21; Hamann-Orci, Tr. 53); and working for lower rates than suggested by AIIC. (CX-305-Z-173 to Z-174 (Sy); CX-301-Z-152.9 (Bishopp); Hamann-Orci, Tr. 53.)

108. The Secretary-General of AIIC felt that "members know very well that they must not undercut" AIIC's rates. (CX-1238.) On November 10, 1983, Wilhelm Weber wrote to the Secretary-General of AIIC that he was concerned about a clause on the back of the AIIC standard contract, which the Los Angeles Olympics Organizing Committee interpreted to mean that interpreters could be negotiated downwards from the going rate. (CX-1236; Weber, Tr. 1206.) The Secretary-General of AIIC replied on December 15, 1983. She wrote, "I don't see how anyone could honestly use it for undercutting purposes. Members all know [w]hat the local rate is, and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the 'cartel' pricefixing laws in some countries, but members know very well that they must not undercut." (CX-1238; Weber, Tr. 1207-09.)

109. AIIC's publication of a "suggeted minimum" rate raised prices by defining the price below which AIIC members would not

compete. (Wu, Tr. 2085.) With AIIC's rules that all members of an interpretation team be paid the same rate, AIIC's rules affected prices paid to non-members as well as members of AIIC. (Wu, Tr. 2086.)

B. Per Diem

110. According to Article 13(a) of the 1991 Standards of Practice, "For the whole of the period spent away from the place of her or his professional address the interpreter shall receive a subsistence allowance, calculated per night of absence. As a general rule, this allowance shall be paid on the first day of the conference and in the currency of the country where it is being held." (CX-2-Z-46.) Members were required to charge for subsistence when they worked away from their professional address. (CX-300-Z-71 to Z-72 (Motton); CX-301-Z-67 (Bishopp).)

111. Previous versions of the AIIC Code and Annexes required members to charge clients per diem for lodging and subsistence. (CX-3-N; CX-4-L to N; CX-5-K to L; CXT-6-E-M, p.4; CX-7-F, J; CX-8-G; CX-9-F to G.)

112. AIIC prepares per diem sheets which are mailed to members in the United States. (CX-259-V; CX-300-Z-74/9 to Z-75/5 (Motton); CX-268-B, E, M; CX-102 to CX-130 (lists of per diem rates).)

113. AIIC Council approved per diem rates. (CX-130; CX-301-Z-152.41 to Z-152.42 (Bishopp); CX-268-E; CX-300-Z-72/3 to Z-74/22 (Motton).)

114. At meetings in 1980 and 1981, the Non-Agreement Sector discussed how to calculate the per diem amount for travel of less than a full day that did not require an overnight stay. (CX-223-N; CX-228-F to H.) Secretary-General D. Hespel and past President W. Keiser noted that a full subsistence allowance "is owed per night spent away from the professional domicile" and a one-half subsistence allowance (per diem) is owed per day if all travel can be completed between 8:00 a.m. and 8:00 p.m. and the interpreter does not cross a border. (CXT-229-B; CX-230-C.)

115. AIIC published per diem for the United States of America, one for New York, one for Washington and one for "elsewhere," which "shall be due for each night spent away from the interpreter's professional domicile." (CX-247-Z-2, Z-5; CX-124-E; CX-125-E.)

116. The U.S. Region adopted a formula whereby the organizer pays the interpreter's hotel room, including tax and service, and the

interpreter would then charge the organizer a fixed percentage of the hotel rate (40% in 1991) for meals. (CX-301-Z-65, Z-150 to Z-152.1 (Bishopp); CX-432-F; CX-343-C; CX-439-F.)

117. According to Berlitz, "there has always been a standard per diem that interpreters charged." (Clark, Tr. 614; Neubacher, Tr. 771.)

118. The chairman of a NAS meeting cited the "disastrous effect" of "bargaining" away the per diem, and the need for "clear, easily applicable, unambiguous rules" to avoid this. (CX-223-L.) AIIC's Council worried that interpreters working for two clients holding consecutive conferences might try to split expenses as a "sales argument" which would constitute "unfair competition." (CX-222-Q.) In such cases, the interpreter must charge both clients a full per diem. (CX-222-Q.) According to a report given at its January 1987 NAS meeting, the fact that in Canada no per diem "can be set," as a result of the action against AIIC under the Anti-Combines Act, "leads to true competition between members." (CX-245-H.)

119. AIIC's agreement on travel expense and per diem prevents competition on the total price for an interpretation assignment. (Wu, Tr. 2093-94.) These rules make the detection of cheating more likely, by requiring these reimbursements and payments to be stated separately on contracts for interpretation. (Wu, Tr. 2093-94.)

C. Indivisible Daily Rates

120. AIIC's rules require that members charge for a full day regardless of the amount of time they actually work. The 1991 AIIC Standards provide that "remuneration shall be on an indivisible daily basis." (CX-2-Z-42.) AIIC's Code and Annexes dating back to 1972 include the same requirement. (CX-3-I; CX-4-H; CX-5-H; CX-6-G; CXT-6-E to M, p.3; CX-7-E; CX-8-F; CX-9-F.)

121. AIIC is opposed to hourly rates for interpretation. (CX-304-Z-113 (Motton); CX-301-Z-32 to Z-33 (Bishopp).) AIIC's rules mean that "you charge per day no matter how long you work." (CX-303-Z-109 (Moggio-Ortiz); CX-886-D; Saxon-Forti, Tr. 2696; CX-305-Z-89, Z-97, Z-110 (Sy).)

122. Where they received an AIIC waiver, interpreters who worked alone for 40 minutes in the U.S. were required to charge the full daily rate. (CX-301-Z-152.1 (Bishopp); CX-432-G.)

123. The June 1993 Bulletin recommended that interpreters negotiate indivisible rates for "conferences of short duration,"

explaining that "one cannot take other assignments in the course of a free half-day." (CXT-276-E-G, p.2.)

124. According to one U.S. Region member, charging twice for the same day is unethical, and interpreters will only take one assignment at the daily rate. (CX-2579-A.) If members accept two contracts on the same day, it must be "after having ascertained that no other member is available . . . provided . . . appropriate fees are paid." (CX-481-I.)

125. According to a U.S. Region member, a TAALS proposal to accept 80% of the daily fee for short meetings was unacceptable because it violated AIIC's rule and "would undermine the hard won gains of TAALS and AIIC and open the door to abuse by the greedy." (CX-886-D.) The NAS voted to ask the Council not to permit regions to charge 80% of the daily rate or remuneration for sessions not exceeding two and one-half hours. (CX-245-I, F.)

126. U.S. Region interpreters charge indivisible daily fees. (Swetye, Tr. 2830-31; CX-306-Z-129 (Weide); CX-300-Z-143 (Motton); Weber, Tr. 1264.) For example, Idette Swetye sent a contract (CX-2601) to the Konrad Adenauer Foundation in which she was to be paid a full day's pay for interpreting one luncheon speech lasting forty minutes. (Swetye, Tr. 2826-28.) AIIC members charge for a full day regardless of the number of hours even if it's a half day. (Weber, Tr. 1264; CX-300-Z-143 (Motton) ("We don't have hourly rates"); (CX-306-Z-129 (Weide).)

127. Intermediaries understood the "AIIC rate" or "industry rate" to mean a daily rate for services regardless of the actual time required. (Neubacher, Tr. 763, 765-66; Citrano, Tr. 552-53; Clark, Tr. 617.)

128. Berlitz always pays conference interpreters on a daily basis. (Clark, Tr. 624.) Although it rarely happens, Brahler pays interpreters a daily rate even for a short meeting of two to three hours. (Davis, Tr. 860.) Half of Brahler's interpreters are not members of AIIC or TAALS. *Id.*

129. AIIC's rule requiring that fees be paid on an indivisible daily basis standardizes the unit of output to which the agreed daily rate applies. (Wu, Tr. 2107.) It also helps AIIC detect cheating by making rates more comparable. (Wu, Tr. 2107.)

D. Fees for Non-Working Days

130. AIIC rules require interpreters to be paid for days traveling, preparing for a conference, or resting. Article 12(a) of the 1991 Standards of Professional Practice states: "When an interpreter is recruited to work in a place other than that of her or his professional address she or he shall receive a remuneration for each day required for travel and rest as well as for Sundays, public holidays and non-working days in the course of a conference or between conferences. This remuneration shall be at least equal to the base rate." (CX-2-Z-46.)

131. AIIC's rules required that "every contract signed with a member of the Association for a conference ... must include payment of travel. . . ." (CX-2-Z-48.) AIIC specified unrestricted tickets and, for journeys of more than nine hours, the interpreter was "entitled to" rest days, which "equated to non-working days and remunerated at the same rate." (CX-4-L.) In lieu of rest days, the interpreter could accept first class airfare. (CX-2-Z-47.)

132. Article 12(b) of the 1991 Standards requires payment for non-working days when an interpreter is working at his or her home base. It states: "When an interpreter is recruited to work in the place of her or his professional address she or he shall receive a remuneration for each non-working day in the course of the conference (up to a maximum of two). This remuneration shall be at least equal to the base rate." (CX-2-Z-46.)

133. Article 14 of the 1991 Standards provides that "Contracts for the recruitment of members of the Association shall make provision for the payment of a fee for each journey made between the place of the interpreter's professional address and the conference venue." (CX-2-Z-47.) This fee is to be paid in addition to expenses for travel and per diem. (CX-2-Z-47, Z-48.)

134. Article 14 of the 1991 Standards further requires payment of fees for rest days after travel, unless flying first class. (CX-2-Z-47.) The rule specifies that the interpreter receives one paid rest day if the journey time is 9-16 hours, two paid rest days for a journey of 16-21 hours, and three paid days for a journey of more than 21 hours. If the interpreter could finish the trip after normal working hours on the eve of the conference or after the conference, the interpreter receives only one-half of the base rate as a travel fee. (CX-2-Z-47.)

135. Article 7(g) of the 1991 Code provides that members "shall request a paid briefing session whenever appropriate." (CX-2-Z-39.)

The 1991 Recruiting Guidelines provide that the "coordinating interpreter shall ensure . . . that, if necessary, a briefing session be held." (CX-2-Z-51.)

136. The 1994 Standards perpetuate the rule that members must charge for non-working days. Article 8 provides: "The remuneration for non-working days occurring during a conference as well as travel days, days permitted for adaptation following a long journey and briefing days that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45.)

137. The 1994 Standards quantify rest days. Article 10 provides: "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey. This means that journeys lasting a long time or involving a major shift in time zone call for the scheduling of rest days (generally one rest day for journeys of between nine and sixteen hours, and two rest days for journeys of 16-21 hours and three for journey[s] in excess of 21 hours.)" (CX-1-Z-45.)

138. The 1994 Code continues the briefing days requirement, stating that members "shall request a briefing session whenever appropriate." (CX-1-Z-39.)

139. AIIC provides for fees for non-working days in the standard form contract used by its members. (CX-2060-A; CX-226-B; Weber, Tr. 1221.) The Recruiting Guidelines state that AIIC's model contract "should normally be used" and any other contract used "must at least embody the standard conditions specified by the Council," without limiting clauses. (CX-1-Z-49.)

140. AIIC had a provision calling for payment of non-working days in 1972. (CX-9-F,K,G,L; CXT-6-E to M, pp.4-5, 7-8.) Over the years, the fees due for non-working days (including briefing, travel and rest days as well as for the intermediate days of a conference) increased as a percentage of the daily rate. (CX-217-D; CX-2-Z-46.)

141. At its July 1979 meeting in Geneva, the Council agreed that an interpreter working for two employers, one after another, in the same city away from his or her professional address, could allocate the travel fees between the two employers if it was done retroactively, and not as an inducement to obtain the contract, providing all intervening days were paid in accordance with the provisions of Art. 16c of the Code. (CX-222-Q.)

142. At the February 1980 Private Sector (NAS) meeting, the chairman "asked for an indicative vote as to whether half the small

fee is always due for travel taking place the day before or after normal working hours on the last day of a conference. A large majority of those present felt that this was so at the moment. . . . The meeting then decided: When the journey takes place the day before or after a conference at times which makes [sic] it impossible to accept work on these days a large majority felt that the amount paid should be higher than half the small fee - there was no agreement on the actual level of this higher amount." (CX-223-O.)

143. The September 1986 AIIC Bulletin advised, "Divergent interpretations of Annex I, par. 4 of the [AIIC Professional] Code result in evident undercutting among AIIC members. It must always be stipulated that . . . the basic rate applies to non-working days except for special terms negotiated with agreement organizations." (CXT-243-D to F, p.1.)

144. These rules specifying payment for non-working days help AIIC members to detect cheating on the fee agreement, by requiring separate payment for these days. Requiring separate payments allows AIIC members to determine whether their fellow AIIC members adhere to the minimum fee rule. (Wu, Tr. 2089.)

145. In 1981 the Executive Secretary reported to AIIC members a complaint against another member for not following the non-working days rule. After investigation, AIIC found the complaint to be "now without foundation as the member concerned succeeded in amending the contracts." (CX-2438.)

146. In the 1984 Los Angeles Olympic Games, the Olympic Committee negotiated to reduce costs by not paying interpreters for non-working days. (Weber, Tr. 1222/4-14.) AIIC-member Wilhelm Weber, who organized interpretation teams at the Olympics, told the Committee that it was "part of our code of professional conduct and that it was also current practice in the profession." The Committee agreed to pay for non-working days. (Weber, Tr. 1223/10-13.) The LAOOC eventually conformed to AIIC rules on non-working days. (Weber, Tr. 1262.)

147. Members of the U.S. Region adhered to the AIIC agreement to charge for non-working days. (Luccarelli, Tr. 1605; CX-302-Z-8 (Luccarelli).) According to a New York intermediary, interpreters insist on being paid a half day's travel, on top of a full day's interpretation fee, even when they work and travel on the same day. (Citrano, Tr. 552-53.) One AIIC member refused to work without two full paid travel days. (Citrano, Tr. 512, 514.) AIIC or TAALS members who accepted conditions and remuneration less favorable

than the rules provide did so only after extracting the intermediary's promise not to reveal their actions to any other AIIC or TAALS member. (Citrano, Tr. 516-18.)

148. Mr. Misson, a member of the U.S. Region, wrote to a client on May 26, 1990, seeking an amendment to his contract. He explained that he had mistakenly quoted the previous year's rate but would honor his quote and would waive the per diem. However, Mr. Misson insisted that he had to charge extra for the day spent traveling because he could be accused of undercutting by his colleagues in AIIC, which is more important to him than the money involved and asked the client to keep the discussion confidential. (CX-2456-A.) The client accepted the new terms. (CX-2456-B.)

149. AIIC's rules specifying payment for non-working, rest, travel and briefing days prevent competition on the total price for an interpretation assignment. (Wu, Tr. 2088-91; CX-223-L.)

E. Same Team Same Rate

150. AIIC requires that all interpreters on a team receive the same rate. Article 6(c) of the 1991 AIIC Standards provides that members shall accept assignments only if all the freelance interpreters of that team are contracted to receive the same amount of remuneration. (CX-2-Z-42; CX-301-Z-33, Z-35 (Bishopp); CX-305-Z-101 (Sy); Weber Tr. 1224-25.) Previous versions of AIIC's Code and its Annexes dating from 1972 contain similar rules. (CX-3-I, Art. 6(c); CX-4-H, Art. 6(d); CX-5-F, Art. 13(c); CXT-6-E-M, Art. 13(d); CX-7-E, Art. 12(d); CX-8-F, Art. 11(d); CX-9-F, Art. 11(d).) AIIC's Recruiting Guidelines require that if a coordinator is a member of the interpreting team, her or his fee as an interpreter shall be the same as the other interpreters on the team. (CX-1-Z-49.)

151. AIIC's rule that members of the same team receive the same pay did not apply when interpreters were recruited for an "exotic" language. (CX-2-Z-42, Art. 6(c); CX-301-Z-33, Z-35 to Z-36 (Bishopp); CX-300-Z-82 (Motton).) This exception applies to languages like Russian, Japanese, or German for which "there is difficulty finding interpreters." (CX-301-Z-33, Z-35 to Z-36 (Bishopp); CX-300-Z-82 (Motton).)

152. AIIC's "same team same rate" rule, according to AIIC's past-president, Mr. Thiery, means that conference interpreters are paid "the

same daily remuneration at the start of one's career as a colleague with twenty years' experience." (CX-203-C.)

153. Except for interpreters working in exotic languages, the experience of members of the U.S. Region has been that interpreters on the same team are normally paid the same rate. (Swetye, Tr. 2819-20; CX-303-Z-110 (Moggio-Ortiz); Hamann-Orci, Tr. 40; Saxon-Forti, Tr. 2681.)

154. AIIC avoids competition from new interpreters through use of its "same team same rate" rule. (CX-220-M.) In 1980, the AIIC Schools Committee declared, "The idea of a beginner's rate in the Nonagreeent Sector is out of the question." (CX-224-W.)

155. AIIC's rules which specify that members must charge at least the AIIC rate, and that all members of an interpretation team be paid the same rate, also affect prices paid to non-members and intermediaries pay AIIC rates to non-members. (Wu, Tr. 2085-86; Jones, Tr. 694; Neubacher, Tr. 763-64.)

156. The rule also discourages AIIC members from working with undercutters. One interpreter explained that, "Even if I were recruited to work with undercutters, I couldn't accept according to AIIC rules because I would be paid more than they would." (CX-231-Q.)

157. AIIC's rule requiring all members of an interpretation team to be paid the same rate reinforces the assurance that members are adhering to the rates and rules generally. (Wu, Tr. 2101.) It also helps AIIC members detect cheating by making prices more easily observed and compared. (Wu, Tr. 2103.) It helps AIIC members deter entry by novices gaining experience by working for lower rates. (Wu, Tr. 2104-05.)

F. Team Size and Hours of Work

1. History

158. AIIC rules specify the number of hours that members will work in a single day. Article 4 of AIIC's 1991 and 1994 Standards, entitled "Definition of the interpreter's working day," provides, "The normal duration of an interpreter's working day shall not exceed two sessions of between two-and-a-half and three hours." (CX-2-Z-42; CX-1-Z-45.) The six hour length of day rule applies to simultaneous, consecutive, or whispered interpretation. (CX-1-Z-45; CX-2-Z-42.)

159. AIIC has rules on the number of interpreters to be hired per job per number of languages used at a conference. (Article 5 of the

1991 Standards; CX-2-Z-42.) Article 8 requires that members charge the standard rate (F. 90), and sets the team size. (CX-2-Z-42; F. 160-62.)

160. Article 11 of the 1991 Standards provides for teams of simultaneous interpreters: "As a general rule, a team is composed of at least two interpreters per language and per booth." (CX-2-Z-44.) Article 11 also contains a table "that must be respected" that specifies the number of target and source languages used in the conference room, the number of booths, and the number of interpreters "at the standard rate." (CX-2-Z-44 to Z-45.) For a one-language conference, the table specifies that if the interpretation is into one other language there be two interpreters at the standard rate, and if the interpretation is into two other languages there be four interpreters at the standard rate. (CX-2-Z-45.) For a two-into-two language conference, the table calls for three interpreters. A three-into-three-language conference requires five interpreters. (CX-2-Z-45.)

161. Article 9 of the 1991 Standards provides for consecutive interpreters with two languages being interpreted into two, the minimum number of interpreters required is two at the standard rate. If the number of languages used is three, the minimum number of interpreters is three at the standard rate. (CX-2-Z-43.)

162. Article 10(a) of the 1991 Standards provides that for whispered interpretation a conference of one or two languages there be two interpreters "remunerated at least at the standard rate." (CX-2-Z-43.)

163. The 1994 Standards retain the identical team size requirement as the 1991 Standards. (CX-2-Z-43.) However, in Article 6 of the 1994 Standards references to the standard rate are removed, and makes no mention of having one interpreter for whispered interpretation in certain circumstances. (CX-1-Z-42.)

164. Versions of the AIIC Code or its Annexes, back to 1972, specified the number of interpreters for a conference. (CX 3-K to M; CX 4-I to K; CX 5-F, J to K; CX 6-E, J to K; CX 7-C, H to J; CX 8-D, H to J; CX 9-D.)

165. Article 6(a) of the 1991 Standards provides that "remuneration shall be on an indivisible daily basis." (F. 120.)

166. Many AIIC interpreters charge for overtime when working beyond six hours. (Neubacher, Tr. 767/19 to 770/5, 781/17-24, 804/18 to 805/4; Jones, Tr. 750/5-8; Weber, Tr. 1189/25 to 1190/7; Davis, Tr. 860/22 to 862/8; Clark, Tr. 636/2-8; Citrano, Tr. 539/20-

24, 542/11 to 544/11, 544/25-546/20; Luccarelli, Tr. 1662/3 to 23; CX-2330 to CX-2336; Saxon-Forti, Tr. 2697-99; CX-2596-B; Wu, Tr. 2238/8-2239/7; F. 343.)

167. The AIIC standard form contract defines the length of the day as six hours, and members have used it to charge for overtime. (CX-306-Z-9/13 to Z-10/2, Z-55/6 to Z-56/3, Z-61/13 to 22, Z-63/8 to Z-64/7, Z-65/19 to Z-66/24, Z-71/13 to Z-72/23 (Weide); CX-2347-B; CX-2348-B.)

168. AIIC's rules allow members to work beyond the hours specified by AIIC as long as they are paid for overtime. (CXT-6, p.6; CX-221-Z-9 to Z-10; CX-2064-C.)

169. Articles 9, 10 and 11 of the 1991 Standards list the number of interpreters to be used for particular numbers of language combinations "at the standard rate." (CX-2-Z-43 to Z-44.)

170. In the 1970's, AIIC maintained two team size tables for simultaneous interpretation that set forth the number of interpreters to be hired for a conference. There was the "small team" (or in French "petite équipe,") and the "large team" (or in French "grande équipe)." (CX-9-I, J; CX-6; Lateiner, Tr. 912/19 to 914/23; Weber, Tr. 1132/20 to 1133/21.) For simultaneous interpretation going from two languages into two languages, AIIC's tables called for higher remuneration per interpreter for a conference using two interpreters, and lower remuneration when using three or four interpreters. (CX-9-I, J; CX-6-J, K, CXT-6-E to M, pp. 6-7; Lateiner, Tr. 912/19 to 914/23; Weber, Tr. 1134.) A higher rate applied to the small team size table, ostensibly, because the workload was greater when an interpreter was working in a small team. (Lateiner, Tr. at 913/5 to 916/3; Weber, Tr. 1134/7-19; CX-300-Z-106/3-16 (Motton).) The small team rate was 160% of the large team rate. (CX-9-J; CX-2461-A (1990).) Prior to 1981, AIIC required interpreters working alone in consecutive to charge twice the large team rate (200%). (CX-6-J; CXT-6-E-M, p.6.)

171. The U.S. Region decided not to adopt the small team in the United States. (CX-211-C; CX-405-C; CX-407-F to G.) At the U.S. Region's November 1975 meeting, the U.S. Region voted unanimously to "remind AIIC in general that it never had the petite equipe and is determined to expose all outside interpreters who accept the practice in our Region." (CX-405-C.) Its warning was published in the AIIC Bulletin. (CX-210-E.) AIIC published rate sheets entitled "Local Conditions in the U.S.A." that set forth a single rate of remuneration when working in the U.S. rather the small team rates

and large team rates as published for other regions. These sheets contained the U.S. Region's team size rules. (CX-50; CX-56.)

172. The varying systems of team configuration and remuneration for small and large teams became too complicated. AIIC found that the system resulted in "grey areas" where there was competition among interpreters. (CX-220-V, Z-29 to Z-32, CXT-220-Z-29 to Z-32 at 1.) Competition in the application of the two team size tables in the private sector led to undercutting. (CX-206-B-2; CXT-206-B-2.)

173. The single team size table was meant to simplify the teams and remuneration and increase interpreter incomes and rates. (CXT-220-Z-30, p.2; CX-225-B.) The AIIC Council wanted to standardize the system of teams and remuneration to get rid of competition regarding team size. (CXT-206-B-2 at 1; CXT-220-Z-29 to 32 at 2; CXT-224-Z-4.)

174. The 1981 General Assembly voted to retain the "two-tiered" system, but dispensed with the terms "small team" and "large team," publishing new team size tables designating the number of interpreters needed at either the "standard rate" or the "base rate." (CX-224-K; CX-226-U to V.) The standard team size table increased the number of interpreters needed in the former small team table for two-into-two languages conferences from two to three interpreters and from four to five interpreters for a three-into-three language conference using simultaneous interpretation. The new team size table provided, however, that one less interpreter would be needed for two language and three language conferences that were of short duration. (CX-2-Z-46; CX-224-K; CX-5-J to K.) Thereafter, AIIC's "market surveys" set forth a "standard rate" and a "base rate" corresponding to the team size tables in AIIC's professional standards. (CX-71 to CX-74; CX-76 to CX-83; CX-5-I; CXT-6-E to M, p.6.)

175. In 1991 the General Assembly adopted a single team size table for simultaneous interpretation. Most regions had already abolished the old "small team" by then. (CX-260-Z-88.) The 1991 Basic Texts retained the earlier "standard" team size table setting forth the minimum number of interpreters needed at the standard rate. These texts, however, eliminated the table with larger team sizes charged at the base rate. (CX-2-Z-45; CX-260-Z-88, Z-94; CX-256-Z-28, Z-32.)

176. AIIC team size rules prohibit interpreters from working alone, and interpreters working in the same booth take turns at the

microphone. (Moser-Mercer, Tr. 3450/4 to 23; CX-302-Z-86/2 to 87/19 (Luccarelli).) Team size rules provide for interpreter relief, so during a working day interpreters spend no more than three hours interpreting. (Moser-Mercer, Tr. 3450/4 to 23; Luccarelli, Tr. 1617/15 to 18/19; CX-302-Z-86/2 to 87/19 (Luccarelli).)

177. The team size and length of day rules affect workload. The number of interpreters in a bilingual meeting in the United States depends upon the length of the meeting. (Swetye, Tr. 2776/4-14.) For two-language conferences, three interpreters are required for a full-day meeting and two interpreters for a meeting lasting half a day or no more than four hours. Six interpreters are required for a three language conference. (CX-439-B, D to F; CX-301-Z-152.46 to Z-152.48 (Bishopp); Weber, Tr. 1132/20 to 1133/21.)

2. Compliance

178. Interpreters have refused to work for intermediaries under working conditions that exceed AIIC's team size and length of day rules. (Neubacher, Tr. 778/21 to 779/7; Jones, Tr. 694/13 to 695/15, 696/13 to 697/9, 700/11-16; Davis, Tr. 839/19 to 840/1, 869/22 to 870/2; Clark, Tr. 601/5-24, 614/22 to 615/20.) During the 1984 Olympics, a team leader and AIIC member pulled the interpreters from a meeting that continued for more than six hours, because that is what the AIIC rule says. (Weber, Tr. 1253/13-1255/15.) AIIC members have charged overtime for work in excess of six hours. (F. 166-68, 343.)

179. AIIC members adhere to AIIC's team size table. (Luccarelli, Tr. 1669/17-19; Hamann-Orci, Tr. 44/9-23; CX-306-Z-55/6 to Z-56/3, Z-65/19 to Z-66/24, Z-71/13 to Z-72/23 (Weide); CX-2347-B; CX-2348.)

180. In 1988, the U.S. Region asked the AIIC Council for a waiver to allow an interpreter to work alone for up to 40 minutes, which the Council granted. (CX-432-G; CX-435-A; CX-301-Z-152/24 (Bishopp); Luccarelli, Tr. 1788/5 to 1789/10; CX-300-Z-34/15 to Z-35/2 (Motton).)

181. TAALS wrote to Wilhelm Weber questioning his proposed hours of work and team size for the 1984 Olympic Games as a possible violation of the TAALS/AIIC codes. (CX-1248-A.) AIIC also wrote a letter warning him to conform to AIIC's code. (CX-1253, CXT-1693-A-C; Weber, Tr. 1223/14 to 1224/20, 1226/2 to 1228/17.) An AIIC member objected to a contract offered by Mr. Weber to

provide interpretation services at the Olympics with seven hour days. (CX-1300-A; Weber, Tr. 1252/22 to 1253/11.)

182. In 1985, AIIC reprimanded U.S. Region member Marc Moyens in the AIIC Bulletin for "pushing the limit of" the Code, "concerning the composition of teams that lie behind the team strength tables." (CXT-239-I.) The Canadian Region complained to AIIC and TAALS that a member of the U.S. Region, Jeannine Lateiner, organized a conference in Canada using a petite equipe team size when Canada did not use a petite equipe. (CX-1066-D; CX-1086; CX-1090; CX-1100; Lateiner, Tr. 901/8-904/11, 909/13-910/8, 946/2-947/17.)

183. The U.S. Region decided at its November 23, 1991, meeting to send the table of manning strength to all members of the region. (CX-439-B.)

3. Effects

184. To the extent that interpreters use it to limit the length of their working day, AIIC's "normal working day" rule reduces output. (Wu, Tr. 2125; Silberman, Tr. 3122.)

185. The AIIC rule defining the length of the normal working day fixes price, specifying the time period for which the daily rate is to be paid, after which overtime is charged. (Wu, Tr. 2123-25.) An agreement not to work more than six hours a day without being paid overtime could reduce competition. (Silberman, Tr. 3122.)

186. AIIC's "normal working day" rule helps AIIC detect cheating on the price agreements by standardizing the working day, an observable aspect of output. (Wu, Tr. 2123.)

187. AIIC's team size rules restrict interpreters from competing bi-directionally (French to English and English to French). (Wu, Tr. 2126-27.)

188. AIIC's team size rules reduce output, specifying the work that an interpreter will perform. By raising price, the rule reduces output. (Wu, Tr. 2128-29.) AIIC's team size rules fix price, specifying the amount of output for which the rate is to be paid. Interpreters have worked on smaller teams for additional compensation. (Wu, Tr. 2127-28.)

189. AIIC's team size rules help AIIC detect cheating, specifying the number of interpreters required. Deviation would be observable. (Wu, Tr. 2127.)

190. AIIC's team size and length of day rules increase consumer costs. (Jones, Tr. 702/8 to 703/12; Clark, Tr. 627/22 to 632/3.) The U.S. State Department's costs of interpretation would increase with a six-hour rule because it would have to hire additional interpreters. (Obst, Tr. 300/20 to 301/4.)

4. Health and Quality

191. The 1994 General Assembly inserted a justification for its length of day rules by alluding to "the principles of quality and health." (CX-1-Z-42 to Z-45.) References to "quality and health," were added to the team size and hours of work provisions after the FTC investigation began. (F. 537-39; CX-1-Z-42 to Z-44.)

192. Respondents have no studies addressing performance falling during the work day (Moser-Mercer, Tr. 3431/11-15), or for interpreters working outside the team strength tables. (Moser-Mercer, Tr. 3431/16-20.) No scientific studies support respondents' health and quality claims with respect to conference interpretation. (Parasuraman, Tr. 3804/12-20, 3702/6-23, 3625/23 to 3630/1.)

193. The United Nations uses a six-hour rule based upon its negotiated agreement with AIIC. (CX-2069-I; Moser-Mercer, Tr. 3539.)

194. As support for the health and quality justifications for the team size and length of day rules, AIIC referred to a memorandum from the United Nations in the 1950's. (CX-305-Z-88/2 to Z-89/8, Z-142/12-14 (Sy); CX-306-Z-94/7-11 (Weide); Saxon-Forti, Tr. 2705/19 to 2706/2; CX-300-Z-48/10-52/2 (Motton).) The 1957 U.N. Medical Officer's memorandum recommends that issues of workload be handled on an individual basis:

The question of fatigue due to the length of time on duty in the booths does not lend itself to such general solutions. Some of the interpreters have not found the existing hours of work excessive; others find 1 ½ hours at a time all they can manage efficiently and would even require every third day off. The question of workload therefore is one which should be dealt with administratively on an individual basis, bearing in mind such considerations as the volume of work in particular booths etc. (RX-668 at 2 ¶ 7; Parasuraman, Tr. 3711/21-3713/4; Moser-Mercer, Tr. 3551/20-3552/7.)

195. AIIC's agreements with the International Trade Secretariats, Interpol, and Coordonnees provide that the work day should not exceed seven hours (two sessions of 3 to 3 ½ hours). (CX-2066-B; CX-245-L (International Trade Secretariats); CX-2067 (Interpol);

CX-2068 (Coordonnees); Luccarelli, Tr. 1841/22 to 1843/3 (European Union, Coordonnees, and Interpol.) Interpol provides longer coffee breaks. (Weber, Tr. 1843.)

196. AIIC's agreement with the European Commission provides that the interpreter may work up to three sessions a day for three and one-half hours for each session except for sessions beginning after 3:30 p.m., which cannot exceed three hours. Thus, the work shall not exceed ten hours as set forth in the European Commission's regulations for staff and independent interpreters. (CX-2632-B, CXT-2632-B to G, p.1 (European Union); Luccarelli, Tr. 1841/22 to 1842/6 (European Union); Obst, Tr. 300/8-17.)

197. Quality and health do not suffer under AIIC's agreements in the Agreement Sector. The length of day rules and team size tables in these AIIC agreements assure health and quality. (Moser-Mercer, Tr. 3540-3541.)

198. The U.S. State Department expects its conference interpreters to work as long as needed for the conference and does not follow the six-hour rule. (Obst, Tr. 293/3 to 294/4, 295/9-25, 300/8-19.)

199. The number needed and the time they are able to work varies with the interpreters' language skills, experience, and stamina. (Moser-Mercer, Tr. 3479/13-19, 3538/15-23; CX-306-Z-89 (Weide); CX-305-Z-87/4-17 (Sy); CX-300-Z-47/10-24 (Motton); Clark, Tr. 666/5-13.)

200. The number of interpreters needed for a multilingual conference varies depending upon: (a) difficulty of the material, (Weber, Tr. 1151/14 to 1152/9; Obst, Tr. 298/12 to 300/7; Van Reigersberg, Tr. 404/17 to 405/7; Jones, Tr. 697/10 to 698/23; Davis, Tr. 862/10 to 867/19; CX-302-Z-86/2 to 90/18 (Luccarelli); (b) duration of the conference day (Weber, Tr. 1151/14 to 1152/9, 1188/24 to 1189/24; Van Reigersberg, Tr. 435/10 to 436/16); and (c) amount of time each target language is spoken on the conference floor. (Van Reigersberg, Tr. 406/12 to 407/10; Jones, Tr. 697/10 to 698/23, 700/3-10, 748/16 to 749/13; Davis, Tr. 862/10 to 867/19; Clark, Tr. 595/19 to 96/9; Luccarelli, Tr. 1600/8 to 1601/20; 1617/15 to 1618/19.)

201. Intermediaries sometimes ask AIIC members to work beyond AIIC's team size table and length of day rules and believe the quality would remain acceptable. (Davis, Tr. 862; CX-254-C (right

column); CX-248-H to I; Weber, Tr. 1188-89; CX-306-Z-4/4 to Z-7/15, Z-8/7 to Z-12/16 (Weide).)

202. In the United States, in 1994 freelance interpreters worked an average of 102 days. (CX-285-F to G.) U.S. interpreters working 160 days per year are in the top quarter in volume of work. (Luccarelli, Tr. 1607-09.)

203. Comparing occupations is accepted scientific methodology for opinions about AIIC's team strength and length of day rules. (Parasuraman, Tr. 3626/19 to 28/21, 3641/16 to 45/22; Moser-Mercer, Tr. 3508/3 to 10/17.)

204. Worker performance may vary with the cognitive demands on the worker. (Parasuraman, Tr. 3797/18 to 98/5.) Cognitive means mental processes of human behavior such as language, reading, memory, and decision making. (Parasuraman, Tr. 3602-25.)

205. Conference interpreting requires cognitive skills of verbal memory, speaking, and reasoning. (Moser-Mercer, Tr. 3417/7 to 19, 3486/25 to 89/13; Parasuraman, Tr. 3647/1 to 48/4, 3655/15 to 83/10.) Interpreters perform cognitive tasks when performing conference interpretation. (Moser-Mercer, Tr. 3486/25 to 88/4; Parasuraman, Tr. 3799/2 to 13.) However, interpreters usually work in half hour shifts and then are relieved by their boothmate. (CX-301-Z-13-14 (Bishopp); CX-300-Z-48 (Motton).) A six-hour day means that interpreters are on the microphone three hours a day. Interpreters may work even less because they are not interpreting when their target language is being spoken on the floor. (Luccarelli, Tr. 1617/15 to 18/19.)

206. Air traffic control and piloting involve high cognitive demand. (Moser-Mercer, Tr. 3509/10 to 09/17; Parasuraman, Tr. 3626/19 to 28/21, 3630/2 to 31/7, 3635/9 to 36/3.) Air traffic controllers engage in cognitively demanding tasks. (Parasuraman, Tr. 3632/22 to 34/11; CX-2636.) Likewise, a pilot engages in cognitively demanding tasks. (Parasuraman, Tr. 3637/3 to 19.)

207. Dr. Parasuraman, complaint counsel's expert, compared the cognitive demands of conference interpreting (both simultaneous and consecutive), air traffic controllers, and pilots regarding whether AIIC's team size tables and length of day rules are reasonably necessary for quality and health of the interpreter. (Parasuraman, Tr. 3625/12 to 22, 3626/19 to 28/21, 3629/7 to 30/11, 3702/24 to 04/2.) He used scientific methodology to compare performance of occupations. (Parasuraman, Tr. 3627/12 to 28/21, 3639/17 to 41/23, 3648/5 to 49/14, 3703/10 to 04/2; CX-2639.) The task analysis

compared the cognitive demand imposed by 17 job characteristics in each occupation. (Parasuraman, Tr. 3648/5 to 21, 3649/10 to 53/19; CX-2639; CX-2635.)

208. Dr. Parasuraman found that the cognitive demand on conference interpreters for consecutive or simultaneous interpretation is not as high as the cognitive demand on air traffic controllers and pilots. (Parasuraman, Tr. 3626/19 to 28/21, 3639/17 to 40/4, 3649/10 to 14, 3655/3 to 14, 3683/11 to 84/3, 3655/15 to 83/10; CX-2639.)

209. Studies of the performance and health of air traffic controllers and pilots show that they do not decline for the first eight to ten hours of work. (Parasuraman, Tr. 3626-28; CX-2635.) Dr. Parasuraman believed that interpreters' performance would not decline for an eight to ten hour work day. He concluded that respondents' six-hour work rule is not reasonably necessary to maintain quality. (Parasuraman, Tr. 3622/13 to 22, 3692/7 to 15, 3692/25 to 93/11, 3693/23 to 24, 3694/19 to 95/9, 3700/20 to 01/4.) Studies of air traffic controllers' health show no link between adverse health effects and the occupation. (Parasuraman, Tr. 3713/6 to 14/15, 3704/20 to 05/20; CX-2635-B.) Dr. Parasuraman believed that there is no link between the occupation of conference interpreter and adverse health effects. He concluded that the six-hour work rule is not reasonably necessary to protect interpreters' health. (Parasuraman, Tr. 3628/22 to 29/6, 3704/20 to 05/20, 3714/16 to 15/7.)

210. AIIC commissioned a study of stress among interpreters. The 1981 Cooper and Cooper study arose after AIIC adopted its six-hour rule in 1979 (F. 158), but never examined the issue of the length of the work day or the performance of interpreters. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.) It did not include any physiological examination, but used a questionnaire sent to AIIC members. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.) The study concluded that interpreters' occupational stress was about the same as experienced by business executives. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.)

211. Some AIIC members recognize that the team strength tables and length of day rules are exceptionally protective when conference interpreting is compared to other occupations. (CX-247-Y; CX-248-Z-7.) One commented that:

No profession that I know of has a 21-hour working week. And no matter how great the mental stress, nervous tension, etc. of our job, there are plenty of other professions where working conditions are just as trying, physically and mentally, where strains, stresses and responsibilities are considerably greater and far more sustained, remuneration no better and hours far longer than ours. To claim that our profession is unique on any of those counts is ridiculous. (CX-215-D; CX-248-Z-7; CX-247-Y.)

G. Professional Address Rule

1. History

212. AIIC rules require that members declare a single professional address, keep such address for at least six months, and provide three months' notice before any change. (CX-300-Z-39 to 41, Z-71 to Z-72 (Motton); Bowen, Tr. 1008, 1012; CX-301-Z-22 to Z-23 (Bishopp); CX-2-Z-40; CX-1-Z-40.)

213. The professional address rule has been in effect since AIIC was founded. (CX-2434.)

214. Article 1(a) of the 1991 Standards of Professional Practice states that the declared professional address "shall be the only place on which contracts shall be based." (CX-2-Z-40.)

215. Under AIIC rules, professional address determines when members must charge for travel and rest days. Article 12(a) states, "When an interpreter is recruited to work in a place other than that of her or his professional address she or he shall receive a remuneration for each day required for travel and rest. . . . This remuneration shall be at least equal to the base rate." (CX-2-Z-40, Z-46.)

216. Under AIIC rules, professional address determines when members must charge per diem or subsistence allowances and train fare or airfare. (CX-2-Z-46; F. 110.) Article 14 requires contracts to include fees "for each journey made between the place of the interpreter's professional address and the conference venue," and sets out the calculation of such fees. (CX-2-Z-47; F. 130.) Article 15(a) states that every contract signed with a member "away from the place of her or his professional address must include payment of travel." (CX-2-Z-48; F. 237.)

217. "Professional address" refers to the location from which an AIIC member is to base travel charges. (CX-268-C; CX-495-P.) For work outside the professional domicile, the interpreter will charge for travel and per diem. (Bowen, Tr. 1008; CX-301-Z-19 to Z-20, Z-21 (Bishopp); Hamann-Orci, Tr. 45.)

218. Each member's professional address is in the AIIC Directory. (CX-2-Z-40; Weber, Tr. 1210-1211; CX-600.)

219. Members are allowed one professional address at a time. (CX-301-Z-19 to Z-20, Z-21(Bishopp); CX-300-Z-38 (Motton); CX-2-Z-40.) Some interpreters have alternating domiciles -- six months in one city and six months in another. (Hamann-Orci, Tr. 46; Bowen, Tr. 1010.)

220. Interpreters' professional addresses are not always where they reside. (CX-302-Z-140 (Luccarelli); Bowen, Tr. 1009; CX-495-P.)

221. Interpreters may declare their professional address away from their home so they get more work "because it would mean that they wouldn't charge for travel." (CX-302-Z-140 (Luccarelli).) However, when interpreters work near their home they charge the client for travel based on their professional domicile, not their residence. (CX-302-Z-140 to Z-141, Z-438 (Luccarelli); CX-2-Z-40; CX-301-Z-20 (Bishopp).)

222. Under the professional address rule, an interpreter with a professional domicile in Brussels, would charge any client in the United States for a round trip ticket between Brussels and the U.S. (Hamann-Orci, Tr. 45.) A member vacationing in Europe, with a professional address in Washington, D.C., could accept a conference interpreting job in Europe by charging for travel from the United States. (CX-301-Z-21 to Z-22 (Bishopp).)

223. Because of this professional domicile rule, Dr. Margareta Bowen, an AIIC member, traveled round-trip between Washington and New York to work a conference in New York but charged the client for roundtrip travel between Vienna and New York because Vienna was her professional domicile. (Bowen, Tr. 1011-12.)

224. The professional address rule protects local interpreters from outsiders who might travel at their own expense in order to work, replacing a local person. (CX-300-Z-42 to 43 (Motton); Weber, Tr. 1213.)

225. An AIIC member, C. Gibeault-Becq., was offered a job in Washington on November 15, 1991. Her professional address would change to Washington on December 20. The U.S. Region Representative suggested that she contact AIIC in Geneva, or "telephone all other colleagues with your language combination in the Washington area, to verify that they were all indeed working on that date." (CX-1471.)

226. Members of the U.S. Region of AIIC testified that it is unethical and unfair to local colleagues for interpreters not to charge for travel when working away from their own professional address. (CX-300-Z-39 (Motton); Hamann-Orci, Tr. 32.)

2. Enforcement

227. Members follow the professional address rule, unless they obtain a waiver. (CX-300-Z-38 (Motton); CX-284-L; Bowen, Tr. 1029-30.) In July 1984, the AIIC Council adopted a policy for granting waivers of the professional address rule and reaffirmed its determination to enforce the rule. (CX-237-H; CXT-237-H.) The AIIC Council issued reprimands for changing professional domicile without providing three-months' advance notice. (CX-237-I; CXT-237-I.)

228. AIIC's Recruiting Guidelines require AIIC members who are recruiting interpreters to apply AIIC rules to non-members. (F. 32.) AIIC construed the professional domicile rule to prohibit Mr. Weber from recruiting an Austrian interpreter, whose parents lived in Los Angeles, to work at the Olympics -- even though the interpreter was planning to travel to Los Angeles at his own expense and avoid lodging costs by staying with his parents. (Weber, Tr. 1211-12)

229. U.S. Region member Wilhelm Weber was accused of violating AIIC's rule on professional domicile. (Weber, Tr. 1264.) In 1983, he transferred his professional domicile for six months from Monterey to Geneva to obtain work. Weber stayed in Geneva for about six weeks and went back to Monterey. (Weber, Tr. 1265.) Weber accepted an interpreting job at a conference in San Francisco, although his professional address was still in Geneva. In July 1984, the AIIC Council threatened to issue sanctions against Mr. Weber for violation of the professional address rule. (CXT-237-H.)

230. The AIIC General Assembly in 1985 voted on whether to expel U.S. Region member Marc Moyens (CX-304-Z-128 (Motton)), for violating the professional address rule, for working for two employers in Europe without charging each for transatlantic travel. (CXT-239-I.) His expulsion was rejected but a Committee of Inquiry recommended that the Council reprimand Mr. Moyens. (CXT-239-I.) He resigned from AIIC. (CX-304-Z-128 (Motton).)

231. On November 30, 1991, the U.S. Region Representative wrote to one member who "without officially notifying AIIC of his change of address" had been working in the New York area although

he had a Washington, D.C. professional address. The U.S. Region Representative declared, "this is against our rules." (CX-1470-A; CX-608-Z-221.)

232. The 1994 AIIC Standards retain the professional address rule but not as the basis for calculating travel and subsistence charges. (CX-1-Z-40.)

233. The proposed amendments to the AIIC Basic Texts, "eliminated the monetary conditions while taking care to preserve the great principles which the association holds to, such as professional address. . . ." (CXT-279-K to O, p.4.) In January 1984, the NAS reaffirmed "its moral commitment to the concept and the application of the principle of professional address." (CX-1568-A; Luccarelli, Tr. 1770.)

234. The Council granted a waiver to one member, in January 1995, "allowing her to work four months per year for the Canadian Government while retaining her professional address in Norway." (CX-284-L.)

3. Economic Effect

235. The professional address rule reduces output by protecting local interpreters from competition. (Wu, Tr. 2199-2100.) It discourages out of town interpreters from working at a conference without being paid for travel, and from taking work from local interpreters. (Wu, Tr. 2100-01)

236. The professional address rule also deters cheating by helping members to detect undercutting by out-of-town interpreters in violation of the AIIC rules on fees. (Wu, Tr. 2100.)

H. Travel Arrangements

237. AIIC set rules for travel arrangements. Article 15(a) of the 1991 Standards provides "Every contract signed with a member of the Association for a conference, or a number of immediately consecutive conferences, away from the place of her or his professional address must include payment for travel" by the shortest possible round trip. (CX-2-Z-48.) It further specifies that travel by air shall be first class, business class, or club class and that tickets are not to be restricted to a particular carrier. (CX-2-Z-48.) The rule also requires that for successive conferences away from the interpreter's professional address, unless there is a separate payment for return travel from each

conference, the interpreter shall receive a fee and a subsistence allowance for every day between conferences. (CX-2-Z-48.)

238. In the 1994 Standards, AIIC has replaced the former provisions with the statement in Article 10, "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey," and Article 9 provides, "Except where the parties agree otherwise, members of the Association shall be reimbursed their travel expenses." (CX-1-Z-45.) AIIC's standard form contract continues to provide for first class travel on journeys of long duration. (CX-2059-B.)

239. AIIC's rule concerning travel arrangements was binding in the U.S. The 1991 paper, "Working conditions for interpreters in U.S.A.," the purpose of which was to ensure the uniform application in the U.S. of the AIIC rules, states, in ¶ 6, that "In addition to professional fees, each interpreter shall be entitled to: return economy air fare for trips under 8 hrs. Restricted tickets are not acceptable. For trips longer than 8 hrs. Interpreters are entitled to business class or first class tickets. When train service is more convenient, first class tickets." (CX-439-D to E.)

240. AIIC's travel rules help its members maintain their agreement by deterring cheating. (Wu, Tr. 2093-94.)

I. Cancellation Fees

241. AIIC requires that members be paid even if the event for which they are hired is canceled. Article 2(c) of the 1991 Standards provides: "Any contract for the recruitment of a member of the Association must specify that in the event of the organizer canceling all or part thereof, whatever the reason for and the date of cancellation, the interpreter shall be entitled to the payment of all fees contracted therein (working and non-working days, briefing days as well as days allowed for rest and travel) in addition to the reimbursement of any expenditure already incurred." (CX-2-Z-41.) Article 2(d) of the 1991 Standards further states that the interpreter cannot be forced to accept an alternative job to mitigate the organizers' liability. (CX-2-Z-41.)

242. When Wilhelm Weber began to organize interpretation services for the 1984 Los Angeles Olympics, he did not offer the standard AIIC cancellation clause to interpreters. (Weber, Tr. 1235-36, 1244-45.) When news of this reached AIIC, AIIC warned Mr. Weber about his breach of the rules. (CX-1693-A to C; CXT-1693-A

to C; Weber, Tr. 1243-48, 1255-56.) As a result of the pressure by AIIC, an "acceptable" cancellation clause was included in the Olympics contracts and Mr. Weber received a reprimand from AIIC for his actions. (Weber, Tr. 1257; F. 356.)

243. Other AIIC interpreters have relied on AIIC's standards to obtain cancellation clauses in contracts. Ursula Weide wrote a June 28, 1992, letter relying on the AIIC standard contract cancellation clause in requesting a fee from a person who had tried to put together a team of interpreters for an arbitration, but who postponed the engagement. (CX-2571-A to B.)

J. Recording

244. AIIC requires that fees should be charged for recordings of the interpretation at conferences. Article 2(b) of both the 1991 and 1994 Standards provides: "Any contract for the employment of a member of the Association must stipulate that the interpretation is intended solely for immediate audition in the conference room. No one, including conference participants, shall make any tape recording without the prior consent of the interpreters involved, who may request appropriate remuneration for it, depending on the purpose for which it is made and in accordance with the provisions of international copyright agreements." (CX-2-Z-41; CX-1-Z-40.) AIIC's rule on recordings is binding in the United States. (Weber, Tr. 1251.)

245. Interpreters' practice of charging for recordings goes back to the 1979 Code. (CX-6, CXT-6-E to M, p.1.) The April 5, 1989, AIIC Bulletin reported that members at the NAS meeting held in Dublin in January voted that recordings not for resale should be charged at 25% of the daily rate, and recordings for resale, at 100% the daily rate. (CX-253-D; CXT-251-W at pp.2-3.)

246. AIIC's rule on recordings helps the AIIC agreement by discouraging potential undercutting on the minimum daily fee by waiving a charge for recordings. (Wu, Tr. 2119.)

K. Charity

247. AIIC limits free charitable work by its members. Article 7 of the 1991 Basic Texts, Standards of Professional Practice, titled "Non-Remunerated Work," states: "Members of the Association may provide their services free of charge, especially for conferences of a

charitable or humanitarian nature, provided they pay their own travel expenses and subsistence (subject to the granting of a waiver by the Council beforehand). All the other conditions laid down in the Code of Professional Ethics and in these Standards of Professional Practice must be observed." (CX-2-Z-42; CX-1-Z-41; CX-9-F; CXT-6-E to M, p. 4; Weber, Tr. 1232.)

248. The 1983 AIIC General Assembly in Berlin passed a resolution that student interpreters should work only at conditions of remuneration that are in conformity with the professional code of conduct. (Weber, Tr. 1231; CX-234-J to K.) The resolution further provided that the students should work free of charge only if they pay for their own travel costs and per diem. (Weber, Tr. 1231-32.)

249. The student interpreters at the 1984 Olympics did not comply with the Code, because the LAOOC paid the student interpreters' airfare from Monterey, CA to Los Angeles, CA. (Weber, Tr. 1232-33.) As a result, the Council determined that a letter of warning should be sent. (Weber, Tr. 1271-72.) U.S. Region Representative Jean Neuprez then wrote to Wilhelm Weber, who was responsible for coordinating the Olympics' interpretation services, on June 16, 1984, warning that his actions "go against a number of principles and rules of our profession." (CXT-1320-A to C, p.1.)

250. AIIC's restrictions on pro bono work deter entry by novice interpreters working without charge. Absent the rule, student or novice interpreters could seek to work without charge in order to gain experience and make contacts in the profession. (Wu, Tr. 2109.)

L. Commissions

251. AIIC prohibits its members from giving or receiving commissions. Paragraph c)4 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards the Profession," provides that "Members of the Association shall not accept or give commissions or any other rewards in connection with team recruitment or the provision of equipment." (CX-1-Z-49; CX-2-Z-52; CX-301-Z-100 (Bishopp); Luccarelli, Tr. 1690-1691.) Article 6(d) of the 1991 Standards states that: "Remuneration shall be net of any commission." (CX-2-Z-42.)

252. AIIC's rule against commissions prohibits granting secret discounts. The ban on commissions is based on a practice in Europe of an organizing interpreter charging a commission "under the table" as a condition of hiring an interpreter. (Luccarelli, Tr. 1691.)

253. The March 1981 AIIC Bulletin reports a meeting involving AIIC members where the practice of intermediaries taking a commission was "heartily condemned" and states, "There is no reason why an intermediary, AIIC member or otherwise, should not request a fee from the organizers for expenses incurred in recruiting a team, but this must be charged to the organizer and clearly shown as distinct from the interpreters fees and never deducted from the interpreters fees." (CX-227-J.)

254. AIIC's ban on commissions deters entry by preventing new interpreters from gaining experience by paying commissions to intermediaries. (Wu, Tr. 1251.)

M. Package Deals

255. Paragraph b)7 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards Colleagues," provides that "Members of the Association acting as coordinators shall not make 'package deals' grouping interpretation services with other cost items of the conference and shall in particular avoid lump-sum arrangements concealing the real fees and expenses due individual interpreters." (CX-1-Z-49.) Similarly, paragraph c)1 states, in part, "The provision of professional interpretation services is always kept clearly separate from the supply of any other facilities or services for the conference, such as equipment." (CX-1-Z-49.) Paragraph b)5 of the AIIC Guidelines for Recruiting Interpreters, provides, "Interpreter's fees shall be paid directly to each individual interpreter by the conference organizer." (CX-1-Z-49.)

256. AIIC opposed package deals, and required direct contracts between the interpreter and the conference sponsor. (CX-301-Z-100 (Bishopp); Luccarelli Tr. 1692) A provisional paper on AIIC working conditions for interpreters in the United States, prepared for and discussed at meetings of the U.S. Region in 1990 and 1991, stated, "All contracts shall be concluded directly between the conference and the interpreter; the conference shall make payment directly to the interpreter." (CX-439-B, D-E; CX-435-A.)

257. AIIC feared that "[n]on-interpreter intermediaries (such as multinational language schools) and commercial intermediaries (providers of temporary labour, translation bureaux) are eating into our markets. They all facilitate the gradual mushrooming of a 'grey market'." (CX-237-B.)

258. The Council issued an emergency suspension against a member for failing to provide a direct contract to the interpreters on a team that she was organizing to perform conference interpretation work. (CXT-240-G.) At its July 1985 meeting, the Council decided to lift her suspension as soon as she "submitted to the AIIC her written promise to respect henceforth all commitments incumbent upon her as member of the Association." (CXT-240-G.)

259. An AIIC founding member and past president, Christopher Thiery (Weber, Tr. 1137), wrote in the Bulletin in 1978 that the danger of "losing our freedom to establish our own rates" would come from losing direct contact with the people who used interpretation services. "We must never forget that when the chips are down an intermediary may well have to cut costs to stay in business. And if we happen to be one of the 'costs,' then that's just too bad for us." (CX-219-U; CX-616-Z-53.) He wrote earlier, "The danger lies for us in the presence of the intermediary, whose interests can never be identical to ours. . . . Once we accept impresarios and professional conference organizers and conference halls as our employers, we lose control over the situation and end up by being paid what they decide is good for us. Hence, the gradual introduction of the direct contract and direct payment principle. . . ." (CX-203-C.)

260. Clients prefer contracting through intermediaries because intermediaries can more readily be held financially liable if the conference is unsuccessful and provide quicker response time to requests for services than individual interpreters. (CX-227-J; CX-1633-B.)

261. AIIC's ban on package deals helps AIIC detect cheating on the AIIC price agreements by requiring that prices for interpreters be separately stated, and therefore permitting those prices to be monitored. (Wu, Tr. 2153.) AIIC sought "to avoid letting happen to conference interpreters what had happened to other 'interpretive' professions (actors, musicians, etc.): to fall into the hands of commercial impresarios with all that would entail: paying commissions, varying rates of remuneration with the creation of 'divas.' Hence direct contract rules with equal remuneration for all the members of a given team." (CXT-233-J & M.)

N. Exclusivity

262. Paragraph c)3 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards the Profession," provides, "The

conference interpreter makes it clear that he or she does not 'provide' interpreters, but that she or he recommends them and negotiates contracts on their behalf. She or he avoids creating the impression that certain interpreters are available only through him or her or that she or he controls teams of fixed composition." (CX-1-Z-49; CX-256-Z-45; CX-214-N; CX-5-Q.)

263. In the United States, recruiting interpreters do not exclusively represent interpreters and no AIIC member has established a commercial interpretation firm with interpreters as employees. (Luccarelli, Tr. 1693-94; CX-301-Z-105 (Bishopp); CX-428-A.)

264. AIIC's prohibition of exclusivity helps the AIIC agreement by preventing the formation of firms of interpreters. (Wu, Tr. 2147.) Reduction in product heterogeneity makes it easier for members to agree. (Wu, Tr. 2147.) AIIC's prohibition of exclusivity also reduces output by preventing the formation of interpreter firms, which might be an efficient means of providing interpretation services. (Wu, Tr. 2149.) It also deters entry by new interpreters benefitting from the reputation of a firm and letting them enter the market, gain experience and develop a reputation. (Wu, Tr. 2148.)

O. Trade Names

265. Paragraph c)1 the AIIC Guidelines for Recruiting Interpreters provides, "The coordinating interpreters's conduct must always be in keeping with the dignity of the profession. She or he acts under her or his own name and does not seek anonymity behind the name of a firm or organization, although co-operative services may be offered by a group of interpreters who carry on business under a group name." (CX-1-Z-49.)

266. Cooperative services as referred to in this rule, means that a group of interpreters set themselves up as an office. There are no such "cooperatives" of interpreters in the United States. (CX-301-Z-104 (Bishopp).)

267. The 1983 Code of Ethics provided that members had a duty towards the profession not to seek anonymity behind the name of a firm or organization. (CX-5-Q.)

268. AIIC's prohibition of trade names helps reduce competition among AIIC members by reducing the ability of members to differentiate themselves in the minds of consumers. The restriction

therefore reduces product heterogeneity, which makes it easier for members to reach and maintain price agreements. (Wu, Tr. 2146.) It deters entry by new entrants trying to make themselves known. (Wu, Tr. 2147-48.)

P. Portable Equipment

269. A "bidule," is a miniature portable interpretation system small enough to be carried in a briefcase. (Davis, Tr. 846-47; CX-302-Z-80 (Luccarelli); Hamann-Orci, Tr. 47.) Portable booths are versions of permanent booths. (Luccarelli, Tr. 1699-1700.)

270. AIIC restricts members' use of portable equipment. AIIC's Code of Ethics prohibits members from simultaneous interpretation without a sound booth except when the quality of the interpretation work is not impaired. (CX-1-Z-38; CX-301-Z-133 to Z-134 (Bishopp).)

271. In January 1991 the AIIC Council adopted standards governing members' use of portable electronic simultaneous interpretation equipment. (CX-266-Z-14; CX-2-Z-38; CX-301-Z-15, Z-133 (Bishopp).) Those standards permit use of portable equipment for visits to factories, hospitals or remote field visits. (CX-266-Z-14.) The standards limit the use of portable equipment to short meetings (two hours) with 12 or fewer participants. (CX-266-Z-14; CX-267-F; CX-301-Z-133 (Bishopp).) The standards mandate at least two interpreters when portable equipment is used. (CX-266-Z-14; CX-267-F.)

272. The Council standards must be met before members may accept an interpretation assignment with portable equipment. (CX-266-Z-14; CX-300-Z-70 to Z-71 (Motton).)

273. Portable equipment costs less. (CX-270-G.) The rent of portable equipment is less than the cost for standard booths. (CX-302-Z-282 to Z-283, Z-804 (Luccarelli); Clark, Tr. 634; Obst, Tr. 303.) No technician is required. (Hamann-Orci, Tr. 47; Obst, Tr. 307/5; Neubacher, Tr. 778; Clark, Tr. 632.)

274. The NAS agreed that use of the "bidule" "must be strongly discouraged." (CX-259-U.) In January 1992 in Washington, D.C., the NAS exhorted members to dissuade the use of portable equipment. (CX-270-G.)

275. AIIC's rules against portable equipment reduce output by limiting the use of interpretation technology. (Wu, Tr. 2139.) The rules force adherence to AIIC's team strength tables for simultaneous

interpreting. (F. 175, 188-90.) The rules reduce output by specifying the number of interpreters required, limiting the amount of work an individual interpreter will perform, raising the price of the interpretation services, and aiding in the detection of cheating. (Wu, Tr. 2123, 2127-29, 2139.) Specifying the time an interpreter may work (two hours), AIIC's rules against portable equipment reduce output. (Wu, Tr. 2139, 2125; Silberman, Tr. 3122.)

Q. Other Services

276. The AIIC model contract states: "The functions of the interpreter shall exclude the written translation of texts; they shall therefore be confined to the interpretation of spoken proceedings and shall not cover any event not specifically provided for in the contract." (CX-2347-B, ¶ 2; CX-2060-D, ¶ 2.)

277. The rule against performing other duties does not discourage interpreters from translating on weekends or on breaks when they are not interpreting. (CX-301-Z-26 (Bishopp).) Members occasionally depart from this rule without punishment from AIIC. (Luccarelli, Tr. 1672.)

278. Harry Obst, the Chief Interpreter of the State Department, and a highly credible witness, sometimes asks an interpreter to translate a written document when a translator is unavailable, "and they usually do." (Obst, Tr. 301-02.)

279. The intermediary, Metropolitan Interpreters and Translators, sometimes asks interpreters to interpret when clients are checking in, or at the gift shop. While no interpreter has directly refused, some have disappeared "when asked to perform such services." (Citrano, Tr. 523-24.) AIIC and TAALS members are a little more likely to avoid such extra services. (Citrano, Tr. 524.)

R. Moonlighting

280. AIIC's "Guidelines for Recruiting Interpreters" requires AIIC members to hire: "freelance interpreters rather than permanents having regular jobs." (CX-1-Z-48; CX-2-Z-51; CX-6-O.)

281. AIIC's "Staff Interpreters' Charter" provides that staff interpreters should act as interpreters outside their organization "only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (CX-1-Z-53; CX-2-Z-54.)

282. "Moonlighting" refers to an interpreter who already has permanent employment seeking temporary employment elsewhere. (CX-305-Z-99 (Sy); CX-304-Z-84 to Z-85 (Motton).)

283. AIIC members understood the provisions of AIIC's rules regarding moonlighting to mean that permanents should not perform freelance work unless no freelance interpreter is available. (CX-301-Z-106 to Z-107 (Bishopp); CX-300-Z-121 to Z-122 (Motton); Lateiner, Tr. 907/4-5.) At the U.S. Region meeting in 1988, AIIC members were warned: "[O]ur permanent colleagues are reminded that if they are offered a contract outside their organization they should check first whether there are any free-lance interpreters available with the required language combination. They have a permanent, steady job and freelancers don't. Therefore they should show some 'restrain' [sic] in the private market." (CX-432-M.)

284. The majority of AIIC's members are freelancers. In 1981 only 17% of AIIC members were Staff interpreters. (CX-230-N; Stip. 57, 58, 60). At its November 1975, and 1976 meetings, the U.S. Region agreed that staff interpreters should not work in the private sector unless all freelancers were already engaged. (CX-405-C; CX-407-F.)

285. In 1980, Jeannine Lateiner was investigated for hiring permanent interpreters instead of local freelance interpreters. (Lateiner, Tr. 905; CX-1138-A to B.) The next year, AIIC's Council stated that: "The Council meeting of July 1981 had condemned the practice of moonlighting and had called for restraint from retired staff interpreters, wishing to do freelance work despite their pensions." (CX-230-M.) In 1984, the AIIC Council suspended three members (CX-236-C), following a case of moonlighting which attracted a lot of attention in Switzerland. (CX-1256-B.) In 1986, after press articles and the Council action, moonlighting practically disappeared in Geneva. (CX-241-B to C.)

286. The NAS has asked permanents to show restraint in accepting work in the Non-Agreement Sector (CX-240-I), discussing what it called "the problem" of moonlighting and retired permanents working on the private market (CX-1538-G).

287. The purpose of the anti-moonlighting rule is to protect the interests of freelance interpreters. (CX-300-Z-114 to Z-115 (Motton); Motton CX-300-Z-121 (Motton); CX-301-Z-95 to Z-97 (Bishopp).)

288. The AIIC Bureau invited members to file official complaints concerning any violations of the moonlighting rule, including written proofs or copies of contracts. (CX-301-Z-152/5-6 (Bishopp).)

289. Interpreters honor the anti-moonlighting rules, and attempt not to compete with AIIC's freelance members who are not employed. (Hamann-Orci, Tr. 14-15; Van Reigersberg, Tr. 363-64.)

290. AIIC's rules against moonlighting reduce output by restricting the output of staff interpreters. (Wu, Tr. 2136.) They deter entry into the private sector by preventing staff interpreters from entering the private sector without giving up their staff positions. (Wu, Tr. 2136.)

291. There are no justifications for the moonlighting rule. (F. 191-211.) The moonlighting rule is over broad, since it prohibits staff interpreters from working freelance on days when they are not working for their organizations.

S. Double-Dipping

292. Article 3 of the AIIC Code provides that "members of the Association shall not accept more than one assignment for the same period of time." (CX-1-Z-37; CX-2-Z-37; CX-3-B, Art. 4(c); CX-4-C, Art. 3(b).) AIIC referred to this as "double-dipping." (CX-432-G.)

293. AIIC's president explained that interpreters cannot accept two contracts for the same time. (CX-305-Z-94 (Sy).) The rule means that only overlapping assignments are prohibited, which does not prevent members from accepting more than one assignment in a day. (*Id.*; Luccarelli, Tr. 1673-74.)

294. Part of the reason for the rule against double-dipping was to avoid over booking by an interpreter who accepts more than one assignment for a day, which could be deceptive and leave a team short handed. (Luccarelli, Tr. 1675-76.)

295. AIIC allowed departures from the rule against double-dipping so long as there was no other member available and "appropriate fees" are paid. (CX-237-K.) AIIC has not enforced the rule. (Luccarelli, Tr. 1673-76.)

296. In 1988, the U.S. Region discussed double-dipping where an interpreter is engaged in a conference and accepts work at a short meeting during that employment. "It is said that the practice is widespread in Washington, and there is the anecdote of interpreters working with a taxi waiting to take them back to their other meeting." (CX-432-G.)

T. Advertising

297. AIIC prohibits comparative advertising. The AIIC Code excludes "commercial forms of one-upmanship." (CX-1-Z-49; CX-2-Z-52.)

298. Members understand "commercial forms of one-upmanship" to be about comparative claims. This provision means that interpreters cannot disparage their colleagues in order to get work. (CX-2-Z-52; CX-301-Z-103 (Bishopp); Luccarelli, Tr. 1682-1683.)

299. The 1994 Code of Ethics provides that AIIC members "shall refrain from any act which might bring the profession into disrepute." (CX-1-Z-38; CX-2-Z-38.)

300. The 1972 AIIC Code of Ethics stated, "Members shall refrain from any activities likely to bring discredit on the profession, including all forms of personal publicity." (CX-9-C.) This barred "activities such as canvassing or commercial forms of one-upmanship or advertising." (CX-5-Q; CX-260-Z-109; CX-232-F.) Prior to 1991, AIIC prohibited members from publicizing individually that they are conference interpreters. (CX-301-Z-12 to Z-13 (Bishopp).)

301. In 1994, AIIC acted against Carol Gold, an AIIC member in Canada, for making comparative pricing claims. Ms. Gold wrote a letter to a client that stated that "Using accredited conference interpreters [meaning: "AIIC members" (CX-305-Z-332/24-25 (Sy))] would be much more expensive and would involve bringing in two interpreters from Montreal, plus one local." (CXT-501-W.) The AIIC Council concluded that Ms. Gold's conduct "constitutes a flagrant violation of paragraph (b) of Article 4 of the Code of Professional Ethics." (CXT-501-V to W; CX-305-Z-336/1-4 (Sy).) Ms. Gold sent documents concerning this matter to the Canadian Bureau of Competition; the AIIC Council issued a warning to Ms. Gold. (CX-305-Z-336 (Sy); CXT-501-W at p.2.)

302. Also in 1994, thirty-six members of AIIC filed a complaint against a member named T. Cordon Vilas. (CXT-502-Z-53 to Z-54; CX-305-Z-337 (Sy).) Ms. Vilas had written a letter to an international organization offering to reduce the cost of language services through her own full-time employment. (CXT-502-Z-53-54; RX-815.) The AIIC Council suspended Ms. Vilas for two years, until the next Assembly. (CX-502-Z-36; RX-815; CX-305-Z-338 (Sy).)

303. AIIC's prohibition on comparative advertising reduces product heterogeneity, which makes it easier for the members to

agree. (Wu, Tr. 2144/20-22.) It deters entry by making it more difficult for entrants to make themselves known. (Wu, Tr. 2145/1-8.)

IV. TAALS

A. TAALS' Rules

304. TAALS' rules are binding on its members. (Saxon-Forti, Tr. 2689; CX-2240-A; CX-995-C; CX-993-D.) Applicants for TAALS membership follow the association's rules for the 200 day period "in the booth" prior to becoming members. (CX-997-Q; Hamann-Orci, Tr. 20.) In signing the TAALS application form, candidates undertake to abide by the TAALS rules. (CX-986-A.) TAALS members voted on rules at TAALS Assembly meetings. (Lateiner, Tr. 923-24, 929; CX-895-B; CX-962-I.)

305. TAALS enforces its rules. (CX-1742.) Members who infringe the Code are subject to expulsion or other penalties. (CX-997-I; Hamann-Orci, Tr. 51, 53-54.)

306. In 1989, Janine Hamann-Orci was investigated by TAALS for quoting low rates and manning strength at odds with TAALS guidelines. (Hamann-Orci, Tr. 52; CX-2552; CX-2553.) The interpreter who filed the complaint was a member of AIIC, as were three members of the TAALS disciplinary committee that investigated Ms. Hamann-Orci. (Hamann-Orci, Tr. 93-94; CX-2554.) The Committee to Ensure Respect for the Code exonerated Ms. Hamann-Orci. (CX-2557-A to B; CX-913-F.)

B. AIIC and TAALS Rates

307. TAALS voted on the rates at its General Assembly meetings. (Hamann-Orci, Tr. 31; CX-301-Z-56 to Z-58 (Bishopp).) Charging less than the association rate was undercutting for which violators would be expelled. (Hamann-Orci, Tr. 53-54.)

308. AIIC used the TAALS rate as its published rate for the United States. (CX-301-Z-45/10-20, 49/15 (Bishopp); CX-304-Z-80, Z-207, Z-221 (Motton); CX-83; CX-925-A; CX-409-A.) AIIC obtained the TAALS rate either from the U.S. Region Representative to the Council or by writing directly to the president of TAALS. (CX-301-Z-45 to Z-46 (Bishopp).)

309. Prior to 1991, intermediaries understood the "industry rate" to be the rate recommended by TAALS and AIIC. (Davis, Tr. 843;

Clark, Tr. 610-11; Jones, Tr. 688-89, 694; Neubacher, Tr. 763.) In the late 1980's, to determine the rate for private sector freelance conference interpretation, intermediaries contacted a member of TAALS or AIIC. TAALS and AIIC interpreters charged the same. (Clark, Tr. 668; Jones, Tr. 688-89; Citrano, Tr. 555.)

310. Members of AIIC and TAALS frequently have the same rates today. (Jones, Tr. 690-93; Citrano, Tr. 573.)

C. Same Rules

311. Before the Federal Trade Commission Consent Order against TAALS (The American Association of Language Specialists ("TAALS"), C-3524 (Aug. 31, 1994) (consent order)), AIIC and TAALS had the same rules. (Saxon-Forti, Tr. 2677; CX-301-Z-140 (Bishopp); Lateiner, Tr. 922.) The TAALS standard contract form states that it conforms with the standard practices of AIIC. (CX-2114-A to B; Hamann-Orci, Tr. 23.)

312. AIIC and TAALS had similar rules concerning per diem (F. 110; CX-997-J, Art. 13a, K, Art. 3); charges for non-working days (F. 130-35; CX-997-K, Art. 4, J Art. 11(a)); cancellation clauses (F. 241; CX-997-K, Art. 1); and recordings (F. 244; CX-997-L, ¶ C.6). Each association specified minimum travel arrangements (F. 237; CX-997-K, Art. 4); and prohibited members from being paid for travel and subsistence when working for free (F. 247; CX-997-J, Art. 12). AIIC and TAALS required all interpreters on the same team be paid the same rate (F. 150-51; CX-997-J, Art. 10d; Hamann-Orci, Tr. 40) and on an indivisible daily basis (F. 120; CX-997-J, Art. 10b; Saxon-Forti, Tr. 2696); and both required that fees be payable without the deduction of any commission. (F. 251; CX-997-J, Art. 11b.) AIIC and TAALS had rules on the number of booths and interpreters required (F. 160-62; CX-997-L, ¶ B.3); and defined a working day as two sessions of three hours each. (F. 158-59; CX-997-L, ¶ B.4.) TAALS and AIIC had restrictions on the use of portable equipment (CX-988-B; CX-301-Z-134 (Bishopp); F. 269-72); on the performance of non-interpretation services at conferences (CX-997-J, Art. 7); and on advertising (F. 297; CX-997-I, Art. 4b). Both required that members declare a single professional address and base travel charges on that address. (F. 212, 215; CX-997-J, Arts. 8, 13.)

313. AIIC and TAALS required members to refuse work under conditions not in accord with their rules. (F. 48; CX-997-I, Art. 6.) TAALS told its members that they should use the AIIC rate when

engaged in conference interpretation outside the United States. (Saxon-Forti, Tr. 2695.)

D. Coordination

314. TAALS and AIIC coordinated their activities. "[T]here is a systematic exchange of information between TAALS and AIIC." (CX-409-A; CX-218-J; CX-266-Z-6.)

315. In 1984 the TAALS Council appointed an official liaison from TAALS to AIIC with a term of eight years. (CX-1728-B.) Information discussed by either AIIC or TAALS is shared by the two organizations. (CX-300-Z-32 (Motton); Lateiner, Tr. 917; Luccarelli, Tr. 1766-68, 1802; CX-302-Z-402 to Z-405 (Luccarelli); CX-898-D to E.)

316. AIIC and TAALS worked together in enforcing their overlapping rules. (Lateiner, Tr. 904-05; CX-1066-A; CX-1090; CX-1138-A to B.) TAALS and AIIC coordinated enforcement against Wilhelm Weber for the 1984 Olympic Games. (F. 355, 359; CXT-237-H-I, p.1; CX-239-B.) In 1984, TAALS suspended Wilhelm Weber for working without charging for travel outside of his listed professional domicile. (CXT-1731-B.)

V. EFFECTS

A. Anticompetitive Effects

1. Price Study

317. Ninety-six AIIC freelance members reside in the United States. (Stip. 60.) Dr. Lawrence Wu, complaint counsel's economic expert, examined the daily rates charged by AIIC members domiciled in New York and Washington for private sector ("freelance") conference interpretation. (CX-3003-04.) Sixty-two members were subpoenaed; 51 returned the subpoena; and 42 produced private market contracts in response to the subpoena (the "Wu Data Set"). (Wu, Tr. 1995; CX-3005.)

318. The freelance prices charged by AIIC members indicate that AIIC members agreed to charge the AIIC "suggested minimum" rate or more during 1988 through 1991. (Wu, Tr. 2020-22, 2051-52.)

- a. The "suggested minimum" rate was the most frequently charged price in each of the four years. (Wu, Tr. 2002-04.)
- b. "Cheating" on the suggested minimum rate was only in 10% of transactions over this four-year period. (Wu, Tr. 2007.)
- c. Ninety percent of prices charged by the AIIC members were at or above the "suggested minimum." (Wu, Tr. 1996.)

Prices by these AIIC members for private market freelance interpretation services were affected by the agreement to charge the "suggested minimum" or more as a day's rate for conference interpretation. (Wu, Tr. 2020/7-22.)

319. In the four years from 1988 through 1991, 90% of the transactions in the Wu Data Set were at or above the AIIC suggested minimum rate for that year. (Wu, Tr. 1996; CX-3004.) In the same four years, 70% of the transactions were at or within \$50 above the AIIC suggested minimum rate (Wu, Tr. 1996; CX-3004), and 41% of the transactions were exactly at the AIIC suggested minimum rate. (Wu, Tr. 1996; CX-3004.)

320. In each of the four years from 1988 through 1991, the most frequently charged price of the transactions was the AIIC suggested minimum rate for that year, to the dollar. (Wu, Tr. 1996, 2004; CX-3004.) In 1988 through 1991, the percentage of transactions at the AIIC suggested minimum rate were 28, 39, 52 and 39%, respectively. (Wu, Tr. 2003, 2007; CX-3004.)

321. Ten percent of the 1988-1991 contracts (39 out of 384) were at prices below the AIIC suggested minimum. (Wu, Tr. 2007; CX-3005.)

322. Of those 39 contracts entered into by 18 interpreters (Wu Tr. 2008), eight were for conferences in January, and may have been entered into prior to the publication of that year's AIIC or TAALS rate. (Wu, Tr. 2008-09, 2262-63; Silberman, Tr. 3335; RX-189, 157-0031, 157-0053-54, (contract for Jan. 3-6, 1991); RX-194, 161-0057; RX-191, 126-0011 (contract dated Dec. 29, 1988).)

323. Seven of the contracts charging below the minimum rate were entered into by AIIC member Raquel Felsenstein, including contracts for short interpretation assignments at Eastern High School in the District of Columbia. (Wu, Tr. 2009-10, 2221-22, 2258.) However, this member adhered to AIIC and TAALS rates and rules including proper team size when organizing teams of interpreters for conferences. (CX-2577-D; CX-2578-C; Wu, Tr. 2010-11, 2014-15.)

324. Interpreters differ in their reputation, training, experience, specialization and language combinations. (F. 199.) Conferences differ in subject matter, schedules, languages, and use of languages. (Wu, Tr. 2023-25; F. 200.) In a competitive market, prices would reflect that variety. However, the prices observed by Dr. Wu do not reflect variety, but are around the AIIC suggested minimum price. (Wu, Tr. 2025-26, 2028-29.)

325. These AIIC members were adhering to AIIC's rules as well as to AIIC's published rates. (Wu, Tr. 2017-20, 2054.)

326. The distribution of transaction prices is consistent with an agreement to charge the AIIC suggested minimum rate. The AIIC rate was charged 41% of the time; there was adherence to the suggested minimum rate 90% of the time; and there was no significant cheating on the minimum (less than 10%). (Wu, Tr. 1996.)

327. That AIIC members charged the agreed rates over four years indicates that AIIC had market power in U.S. conference interpretation in the years 1988 through 1991. (Wu, Tr. 2052-53, 2055.) The anticompetitive effects in the United States show that AIIC has market power, since market power is the ability to raise price or restrict output. (Wu, Tr. 1994-95, 2020-22, 2051-57.)

2. Industry Witnesses

a. Rates

328. Intermediaries learned from interpreters that TAALS and AIIC raised the minimum rates. Berlitz determined what to pay interpreters in Western European languages by contacting TAALS and AIIC interpreters. (Clark, Tr. 610-11.)

329. Intermediaries understand that TAALS and AIIC members charged the same rates. In the late 1980's, Susan Clark of Berlitz understood that the rate Berlitz was quoted was applicable to all AIIC and TAALS members. (Clark, Tr. 612-13.)

330. Even before 1987, Berlitz knew that the TAALS/AIIC rate changed every year. (Clark, Tr. 586, 611.) There were yearly increases in the TAALS/AIIC rates. (Clark, Tr. 611-12; CX-3002.)

331. Prior to 1991, interpreters' rates went up by the same amount, typically \$25, at the same time of year. (Jones, Tr. 690-93; Davis, Tr. 845; Clark, Tr. 612; Neubacher, Tr. 764.) This pattern exists through the present. (Jones, Tr. 690-93.)

332. From 1988 through 1991, intermediaries generally paid the AIIC/TAALS rate or more, rather than attempt to negotiate lower prices with conference interpreters, whether they belonged to those organizations or not. (Clark, Tr. 613; Neubacher, Tr. 763; Jones, Tr. 688-89/10-12, 694.)

333. Joseph Citrano of Metropolitan Interpreters and Translators recruited conference interpreters and found that AIIC and TAALS interpreters did not negotiate rates, and only occasionally negotiated travel time. (Citrano, Tr. 504-06.) Members of AIIC and TAALS pointed out to Mr. Citrano that his offer "didn't conform to the rules that were in the book." (Citrano, Tr. 502-03.) In the past five or six years, interpreters referred to the rate as the TAALS rate and the AIIC rate. (Citrano, Tr. 555.)

334. Since 1991, the change in interpreter rates has been more erratic than it was before 1991, but interpreter rates have continued to climb. (Davis, Tr. 845; Weber, Tr. 1185-87.)

b. Rules

335. Interpreters viewed the industry rules "like a bible. This was how the business was conducted." (Citrano, Tr. 507.) Interpreters declined offers of employment, stating as their reason for declining the offers that those offers did not conform to industry standards. (Citrano, Tr. 508-09.)

336. Per Diem: In Susan Clark's experience at Berlitz there has always been a standard rate that conference interpreters charge for per diem. (Clark, Tr. 614.) In Berlitz's experience, the standard rate that all conference interpreters charged for per diem was \$60, now it is \$70. (Clark, Tr. 614.)

337. Travel: Interpreters insist on being paid a half day's travel, on top of a full day's interpretation fee, when they work and travel on the same day. (Citrano, Tr. 552-53.)

338. Indivisible Day: Berlitz always pays conference interpreters on a daily basis. (Clark, Tr. 624.) Brahler pays interpreters the daily rate regardless of how short the day is, and has paid a full day's rate to interpreters it hires for two to three hours. (Davis, Tr. 859-60.) "[I]t was generally understood that any portion of any full day was considered a full day's rate; in other words, the services were not prorated." (Neubacher Tr., 765-66.) The demands by interpreters conformed with AIIC's rules on indivisible day. (F. 120-29.)

339. Same Team, Same Rate: CACI pays the same rate at a conference to the most experienced and least experienced interpreters. (Jones, Tr. 688.) Neubacher paid the AIIC rate to AIIC and TAALS interpreters and to other interpreters who worked at conferences with AIIC and TAALS interpreters. (Neubacher, Tr. 763, 765.) LSI also pays the same rate to all conference interpreters in European languages. (Weber, Tr. 1184.) The demands by interpreters conformed with AIIC's rules on same team, same rate. (F. 150-57.)

340. Recording: Interpreters usually demand a fee if they are asked to provide a recording of the conference interpretation. (Jones, Tr. 705-06.) The demands by interpreters conformed with AIIC's rules on payment for recordings. (F. 244-46.)

341. Team Size: Intermediaries sometimes deviate from industry staffing requirements. In those circumstances, they pay interpreters extra compensation. (Citrano, Tr. 539; Neubacher, Tr. 767-69; Lateiner, Tr. 916.) The demands by interpreters conform with AIIC's rules on team size. (F. 169-77.)

342. Although interpreters can work alone for short presentations, CACI has found that in these situations interpreters usually ask for more money and may request that the acceptance be kept private. (Jones, Tr. 701, 745-46.) Berlitz occasionally negotiated a deviation from the strict industry staffing requirements, and in those circumstances, paid the interpreters extra compensation. (Neubacher, Tr. 767-69.)

343. Hours: Interpreters may insist on receiving overtime payments if the workday exceeds a normal workday. Berlitz pays interpreters more money when they work in excess of six hours in a single day. (Clark, Tr. 636.) Linx paid interpreters about 20% more than the standard rate when interpreters worked more than six hours in a day. (Neubacher, Tr. 804-05.) Metropolitan finds that interpreters seek overtime for anything over a seven hour workday, and it pays them an extra \$100 to \$200 each. (Citrano, Tr. 543, 545.) Brahler has paid interpreters overtime on occasions that would be an hour or hour and a half over the schedule. (Davis, Tr. 861.)

3. Anticompetitive Effects

a. 1984 Olympics

344. In 1984, the Olympic Games were organized privately, and the Los Angeles Olympic Organizing Committee ("LAOOC") was

extremely cost-conscious. (CX-1243-A; CX-1278-A; Weber, Tr. 1200-01.) LAOOC decided to save the expense of professional interpreters at the main Press Center by using unpaid, volunteer college students and professors. (CX-1336-D.) Wilhelm Weber, then a member of TAALS and AIIC, proposed that LAOOC use unpaid interpretation students from the Monterey Institute, where he was Dean, to replace volunteer college students and teachers who were going to be used to provide interpretation solely at the Press Center. (Weber, Tr. 1200-01.) Ten of the graduate students would act as interpreters and 40 would be translators. Professional interpreters would be used elsewhere. (CX-1268-B.) Weber wanted assurance that no professional interpreters be used at the Press Center because he "wanted to avoid the impression that by offering student interpreters [he] would be taking work away from professional interpreters." (Weber, Tr. 1202.) The LAOOC retained Weber as the Chief Interpreter, responsible for all professional interpreters and 45 student interns who worked at the games. (Weber, Tr. 1199-1201.)

345. The LAOOC initially sought to pay conference interpreters at rates below the then "going rate." Mr. Weber reported that LAOOC wanted to engage in "collective bargaining about fees." (CX-1236.) However, Mr. Weber explained to LAOOC that conference interpreters would not work for less than the "going rate" and it agreed to fees at the going rate. (Weber, Tr. 1203-05.) AIIC's Secretary-General wrote to Weber confirming that "any bargaining with the client can only be upwards and not downwards" from the local rate. (CX-1238; F. 517.) Although the LAOOC did not want to pay interpreters for non-working days, Mr. Weber told the LAOOC that such payments were "part of our code of professional conduct and that it was also current practice in the profession," and the LAOOC agreed to pay for them. (Weber, Tr. 1222/9-14, 1223/7-13.)

346. AIIC's president wrote to LAOOC from Geneva, warning against hiring non-AIIC interpreters at less than the going rate. (CX-1278-B.)

347. At its November 1983 meeting, the U.S. Region asked its representative on the AIIC Council, Jean Neuprez, to contact Mr. Weber about "potentially serious" charges. (CX-1240.) On November 21, 1983, Mr. Neuprez wrote Mr. Weber, asking him to clarify the situation. (CX-1240.)

348. At its meeting in early January 1984, the AIIC Council adopted a resolution, published in the Bulletin, disapproving Mr. Weber's use of unpaid interns. (CX-236-G; CX-1253-A; CXT-1693;

Weber, Tr. 1230; CX-5-B.) The Council directed the U.S. Region to send to Weber a letter of warning. (CX-236-G; Weber, Tr. 1230.)

349. Following the Council meeting, the U.S. Region Representative to the AIIC Council, Jean Neuprez, sent Mr. Weber a second letter warning him not to violate any AIIC rule in connection with the Olympics. (CX-1253-B; CXT-1693.)

350. Mr. Weber understood the letter from Mr. Neuprez to the U.S. Region to be a warning, a sanction, "one of the . . . possible [AIIC] actions, the others being suspension or expulsion." (Weber, Tr. 1228.) Mr. Weber believed he had to respond to correct the rumors to protect his own reputation, and to prevent interpreters who agreed to work at the Olympics from being accused of violating AIIC's rules. (Weber, Tr. 1234/1-12.)

351. Some U.S. Region members wrote to Weber refusing his offers to work at the Olympics because of the contractual conditions, and out of fear that students would be integrated with professionals. (CX-1246-A; CX-1286-A; CX-1695-A; CX-1722.)

352. On March 1, 1984, Patricia Longley, the Secretary General of AIIC, wrote a letter to Mr. Weber about the contract for interpreters at the Olympics, stating "There seem to be . . . several deviations from the AIIC standard contract." (CX-1283-A.) She complained about the cancellation clause, provisions concerning rest days, non-working days, and per diem, and the clause on recording of interpretation because it carried no written guarantee that it is for internal use only, such as the preparation of minutes. (CX-1283-A.)

353. AIIC's president and secretary general also urged LAOOC to avoid "pitfalls," and to accept AIIC's contractual conditions. (CX-1278; CX-1280.) On February 29, 1984, AIIC's president warned the LAOOC that it should not bring interpreters from other regions or non-AIIC interpreters willing to work at lower rates. (CX-1278-B.) On March 1, 1984, the secretary general, spelled out in detail AIIC's rules regarding cancellation fees, fees for rest days and non-working days, and per diem. (CX-1280-B-C.) She informed the LAOOC that officials of AIIC had asked Mr. Weber to "reopen discussions with you on the points raised in our letter and have asked M. Jean Neuprez to coordinate reactions on the part of the professional conference interpreters in North America." (CX-1280-C; Weber, Tr. 1243.)

354. Albert Daly, the president of AIIC, also wrote a letter to Mr. Weber, dated June 5, 1984, saying: "We shall hold you personally responsible as recruiting interpreter if for reasons of the non-

appearance of the USSR at the games, any of the contracts offered by LAOOC are not honored and interpreters fees paid in full, provided they do not find work elsewhere." (Weber, Tr. 1255-56; CX-1316.) Weber understood this letter to mean that Daley would ask him to pay for any canceled interpreter contracts - which totaled approximately \$700,000 - "out of his own pocket." (Weber, Tr. 1256-57.)

355. TAALS was also concerned about the Olympic games, and AIIC and TAALS shared information on enforcement and their efforts to change the terms of the contracts. (CX-1248; CX-1266-B; CX-1310; CX-1696; CX-1708; CX-1714-A; CX-1733; CX-1735.) Lisa Valiyova, an AIIC and TAALS member and chairman of TAALS' "fact-finding committee," and liaison to AIIC, wrote to Mr. Weber (CX-1248; CX-1728-B), questioning how he would bring the contracts "into line with the TAALS/AIIC Codes" regarding same team, same rate; hours; and team size. Valiyova kept AIIC informed about the progress of her "Fact-Finding" investigation. (CX-1310.)

356. The LAOOC acceded to AIIC's rules in its hiring of interpreters for the Olympics, and conformed their contracts to AIIC's rules. (Weber, Tr. 1257-58, 1262.) These contracts comported with AIIC's rules on when and for what use interpreters could be recorded. (Weber, Tr. 1250/20-21, 1252/4-8, 1262/20.) AIIC was also successful at forcing the LAOOC to include the full-payment cancellation clause required by AIIC's rules, rather than the partial payment clause initially negotiated by Mr. Weber with the LAOOC. (Weber, Tr. 1235/25 to 36/7, 1262/22.)

357. AIIC took credit for the changes. In a letter to Mr. Weber dated June 16, 1984, AIIC's U.S. Region Representative stated: "Thanks, especially to AIIC's pressure (you yourself acknowledged it and were pleased), the proposed conditions were improved, and recently an acceptable cancellation clause materialized." (CX-1320-B, CXT-1320 at p.2; Weber, Tr. 1257/16 to 58/10.) That "acceptable cancellation clause" was the standard, full-payment AIIC clause. (Weber, Tr. 1235/25 to 36/7.)

358. As a result of the negotiations with Mr. Weber and AIIC, LAOOC had higher costs of simultaneous interpretation than anticipated. LAOOC reported to the president of AIIC in Geneva that: "These costs resulted in some Federations not holding Congresses here, and others substantially reducing their original interpretation requirements." (CX-1293.)

359. A November 26, 1984 letter from AIIC's president to Mr. Weber issued several warnings. (CX-1741.) Although, "the contracts

finally issued were almost in conformity with normal standards, . . . because of inadequacies in the original offers, several colleagues refused work which should normally have been theirs, and this is unacceptable under Article 5 a) of the Code." (CX-1741-A.) AIIC's president also observed that several AIIC candidates worked at the Olympics while paying their own travel expenses, "does not promise them an easy acceptance into the Association," and he noted that a very close watch would be kept on Mr. Weber with regard to his handling of the 1988 Seoul games. (CX-1741-A-B.)

360. In January 1985, the AIIC Council passed a resolution, which it published in the Bulletin, commending "those members who rejected contracts offered for the Los Angeles Olympic Games when such contracts included provisions that were not in keeping with AIIC practice." (CX-239-B.) The resolution further "Congratulates the members of the United States Region for their efforts which resulted in obtaining contracts more in conformity with normal working conditions." (CX-239-B.)

b. Other anticompetitive effects

361. In a history of AIIC, Mr. Thiery, past president and founding member of AIIC, wrote,

In 1957 . . . AIIC decided for the first time that the daily remuneration should go up. . . . [A]nd the intergovernmental organizations refused even to acknowledge letters. When AIIC's united front forced the decision upon them (members simply refusing contracts at earlier rates), we suddenly came to be considered as very reasonable people who entirely deserved a long due increase in pay. In fact, that was the first test of AIIC's strength. And when, in 1963-1964, AIIC decided to increase the daily rate from \$30 to \$40, large as the rise was it went through much more smoothly. (CX-203-C.)

Those "intergovernmental organizations" included the United Nations and its New York headquarters. (Weber, Tr. 1137-38.)

362. In 1974, Mr. Thiery wrote that "AIIC minimum rates are recognized the world over." (CX-204-B.) AIIC interpreters at the United Nations in New York walked out in protest "against what were regarded as unreasonable working hours, and it is understood that satisfactory solutions have now been agreed by the authorities." (CX-204-F.)

363. AIIC and its members understand that the price fixing rules applied in the United States. (Weber, Tr. 1140/18-22 (mandatory

minimums), 1223/11-13 (non-working days, travel), 1225/9-13 ("same team same rate"), 1247/18-22 (paid rest days), 1252/9-16 (per diem), 1266 (travel); (Bishopp) CX-301-Z-33/1-13 (indivisible daily rate), Z-35/12-16 ("same team same rate"), Z-58/14 to Z-59/5 (minimums), Z-67/19-24 (per diem), Z-87 to Z-89 (non-working days, rest days), Z-91/1 to Z-92/7 (travel days); Bowen, Tr. 1011-12 (phantom travel charges); Hamann-Orci, Tr. 38/1-5 (mandatory minimums), 39/25 to 40/16 (same team same rate); Lateiner, Tr. 955/10-14 (minimum rates); Lucarrelli, Tr. 1762-64 (travel fees); (Moggio-Ortiz) CX-303-Z-86/11-14 (mandatory minimum), Z-113/5-13 (non-working days); (Motton) CX-300-Z-80/5-7 (indivisible daily rate); Saxon-Forti, Tr. 2696/10-18 (indivisible daily rate); Swetye, Tr. 2819/14-16 (same team same rate).

364. In 1975, "the U.S. Region has finally managed to bring PAHO [Pan American Health Organization] into line." As Marc Moyens reported to the AIIC Council and to U.S. Region members, "PAHO's Chief of Personnel sent a letter to our Council member [Moyens] assuring him that the PAHO's fee would now be '154.15 gross' in the USA. It is the first time such an assurance has been given by PAHO." (CX-405-A-B.)

365. In 1976, AIIC members refused to work for the Organization of American States in Santiago de Chile at \$83, insisting on the AIIC world-wide minimum rate of \$105. U.S. Council member Marc Moyens negotiated fees with OAS, which "resulted in a deal under which AIIC members agreed for the last time to work for \$83 provided that: 1) OAS rate would be raised to \$105 right after the Conference; 2) this fee would apply all over the American continent; 3) this fee would be \$105 net in the U.S. region, in conformity with U.N. practice. The AIIC minimum was thus established and it was agreed that OAS would hold periodic meetings with M. Moyens to review the rates and settle any pending questions such as contracts and working conditions." (CX-407-C.)

B. Market Share

1. Relevant Markets

366. The relevant product markets in this case include conference interpretation of language pairs (English to Spanish, Spanish to English, French to English, etc.). (Wu, Tr. 2057, 2063; Silberman, Tr.

2985.) The relevant geographic market is the United States. (Wu, Tr. 2193-94.)

367. Conference interpretation is a narrower product market than all interpretation. Persons unable to provide simultaneous interpretation generally would not be hired as conference interpreters in the private sector. (Weber, Tr. 1172/4-5; Jones, Tr. 681; Clark, Tr. 591.)

2. Market Share Calculation

a. Numerator

368. AIIC's U.S. members are distributed among the following languages: 129 French, 95 Spanish, 22 German, 16 Italian, 23 Portuguese. (RX-503.) These figures include all interpreters rated A, B or C in any of those languages. An "A" rating represents native fluency, a "B" represents perfect command, and a "C" language is one that the interpreter can understand, but does not typically work into. (CX-600-O.) Including all such interpreters is necessary in order to be consistent with the data from other sources, since some other sources do not distinguish interpreters by A, B or C ratings. (RX-220 (Berlitz); RX-258; RX-342 (CACI); RX-335 (Lateiner); RX-334 (LSI); RX-288 (Metropolitan).)

369. In addition to AIIC members, the numerator of a market share calculation should include TAALS members. TAALS members adhered to the same rates and rules as did AIIC members. (F. 407-23.) TAALS members in the United States worked primarily between English and the French, Spanish, German, Italian, and Portuguese. (CX-995; CX-997; CX-998.)

370. TAALS and AIIC have overlapping memberships. (Luccarelli, Tr. 1568; Lateiner, Tr. 917, 922; CX-301-Z-134, Z-148 (Bishopp).) AIIC and TAALS have the same membership requirements. (CX-1-B; CX-986-A, C.)

371. In 1995, in the United States, TAALS had 97 members and AIIC had 144 members. (CX-3006; CX-998; CX-600; CX-601.) The overlap of 52 members represents 54% of TAALS' members in 1995 that were also members of AIIC. (Wu, Tr. 1991-92.)

372. In 1991, in the United States, TAALS had 108 members and AIIC had 126 members. (CX-3006; CX-995; CX-608; CX-609.) The overlap of 54 members represents 50% of TAALS' members in 1991 that were also members of AIIC. (Wu, Tr. 1991-92.)

373. Thus, the number and percentage of TAALS members that were also AIIC members stayed roughly the same from 1991 to 1995. Over many years, many U.S. Region members were also TAALS Council Members. (CX-913-F; CX-914-C; CX-919-B; CX-302-J (Luccarelli).)

374. Adding interpreters who are members of TAALS but not AIIC (RX-503), yields numerators of interpreters who were members of AIIC or TAALS at January 1, 1995: 159 French, 129 Spanish, 30 German, 20 Italian, 31 Portuguese.

375. In addition to AIIC and TAALS members, the numerator of a market share calculation should include candidates for admission to both TAALS and AIIC. Such candidates adhere to the rules of the associations. (F. 44-47, 304.) The number of such candidates is not in the record.

b. Denominator

376. Respondents' estimates of the total number of conference interpreters, by language, are set forth in RX-502. Respondents' expert offered three estimates. (RX-502; Silberman, Tr. 3008-11.) Respondents' expert made these estimates by counting the names that appeared on lists of interpreters obtained from the State Department, AIIC, TAALS, ASI, and the intermediaries who testified at trial. (RX-500; Silberman, Tr. 2992-93.) Some of those private intermediaries' lists are not limited to conference interpreters. (Clark, Tr. 667 (Berlitz); Jones, Tr. 683-684 (CACI).)

377. Respondents' expert did not make any adjustment to his estimates to account for the fact that the lists he used included individuals other than conference interpreters. (RX-502 n.*; Silberman, Tr. 3010-11, 3223-24, 3237-38.)

378. The difference between respondents' largest estimate (no. 1) and their other estimates is that estimate no. 1 includes all State Department seminar interpreters, whether or not those interpreters appear on the list of any intermediary. (RX-500; Silberman, Tr. 3237/18-22.) State Department seminar interpreters should not be included as current participants in the market for conference interpretation.³ The difference between respondents' intermediate estimate (no. 2) and smallest estimate (no. 3) is that estimate no. 2

³ Intermediaries do not regard seminar interpreters as substitutes for conference interpreters and have not used seminar interpreters rather than AIIC members or other conference interpreters. (Neubacher, Tr. 770; Weber, Tr. 1174.) The State Department, likewise, does not use seminar interpreters for conferences except "in a real emergency when no conference interpreter is available." (Obst, Tr. 285.)

includes 238 interpreters whose names appear in Berlitz's files but not on the lists of any other intermediary. (RX-500; Silberman, Tr. 3244/12-24.) The interpreters whose names appear in Berlitz's files but not in any other intermediary's files should not be included in the denominator. The difference between respondents' estimate no. 2 and estimate no. 3 is that estimate no. 2 includes 238 interpreters whose names appear in Berlitz's files but not on the lists of any other intermediaries. These intermediaries should not be counted in the denominator.⁴

379. Using respondents' smallest estimate, no. 3, as the denominator and an adjusted numerator consisting of all TAALS and AIIC members (less overlaps) yields "market shares" of the two associations combined based on headcounts, as follows: 44% of the estimated number of French conference interpreters (159 of 364); 34% of the estimated number of Spanish conference interpreters (129 of 374); 28% of the estimated number of German conference interpreters (30 of 107); 29% of the estimated number of Italian conference interpreters (20 of 68); and 24% of the estimated number of Portuguese conference interpreters are AIIC or TAALS members (31 of 131).

380. Knowledgeable intermediaries placed the number of conference interpreters between 300 and 500, making AIIC's (and TAALS') membership between 35 and 60% of all U.S. conference interpreters. (Wu, Tr. 2198-99; Clark, Tr. 597-98 ("a few hundred"); Weber, Tr. 1197 (500); Davis, Tr. 857 (500 plus various categories "off the top of my head"); Wu, Tr. 2214-15 (Berlitz Production Manager Lisa Broadwell estimated 300); Hamann-Orci, Tr. 56 (300).)

381. Alternatives to AIIC and TAALS interpreters are limited. (Citrano, Tr. 526-27.) In 1987 AIIC reported that "in North America, in particular in New York (United Nations). . . , local freelance interpreters are often difficult to obtain." (CX-248-Z-3.) Berlitz's business would suffer a "very negative" impact if it did not use AIIC or TAALS interpreters. (Clark, Tr. 638.) Brahler would find it difficult to staff a conference if it could not use AIIC or TAALS members. (Davis, Tr. 866.) In 1979, AIIC's president stated that "our association . . . includes, perhaps, nine tenths of the capable members of this profession world wide. . . ." (CX-221-K.)

⁴ The Berlitz list used was not limited to conference interpreters (Clark, Tr. 667/4-6), is not currently used by the Berlitz employee who recruits interpreters (Silberman, Tr. 3239/2-6), and includes interpreters who do not perform simultaneous interpretation. (Silberman, Tr. 3247/9-18.)

382. The State Department is the second largest public employer of interpreters in the United States, after the United Nations (Obst, Tr. 330-31), yet it is frequently difficult for the State Department to find conference interpreters in the romance languages (French, Spanish, Italian, and Portuguese) in the United States. (Van Reigersberg, Tr. 407-08.)

383. AIIC and TAALS members constitute most of the qualified conference interpreters in the United States. (CX-2576-A, CX 2573 (Weide); CX-2600 (Swetye); CX-2459-E to F (Weber); Hamann-Orci, Tr. 44; CXT-221-A to Z-20, p.3.)

3. Ease of Entry

a. Historic entry

384. AIIC has maintained rates for the United States since at least 1973 (Weber, Tr. 1143; CX-201-F), and AIIC's agreements continue to achieve adherence to the "suggested minimum" rate. (F. 317-27.) New entry into the conference interpretation profession has not been sufficient to defeat the agreements.

385. Entry into the conference interpretation profession has been slow in the United States over the last several years. Wilhelm Weber, who for 14 years was Dean of the Interpretation Department at the Monterey Institute of International Studies (Weber, Tr. 1122), wrote in 1990 that several factors in the United States "have led to a very low turnover in the profession, thereby inverting the age pyramid in favor of older interpreters and seriously endangering the future of the profession in this country." (CX-2459-D.)

386. Interpretation schools in the United States produce very few graduates. During Mr. Weber's tenure at Monterey, that school produced "normally not more than four or five [conference interpretation graduates] a year." (Weber, Tr. 1195-96.) Georgetown's program in interpretation graduated 10 students in the past four years, 1992 through 1995. (Bowen, Tr. 997-98.) Georgetown and Monterey "are the two main places" that teach conference interpretation in the United States. (Luccarelli, Tr. 1652/12-13.)

b. Entry barriers

387. Private sector intermediaries will not hire as conference interpreters persons who have not had formal training or substantial

experience in conference interpretation. Berlitz hires conference interpreters who are members of TAALS or AIIC, or have similar experience. (Clark, Tr. 592.) CACI requires formal education in simultaneous interpretation and at least two years of experience. (Jones, Tr. 684.) Language Services International and Metropolitan hire as conference interpreters only people trained in simultaneous conference interpretation. (Weber, Tr. 1161/11-19; 1163/9-23; 1178/13-24; Citrano, Tr. 531-32.)

388. In addition to an undergraduate degree, conference interpreters have training in conference interpretation. AIIC members who testified had extensive training: Margareta Bowen, Vienna and Georgetown (Bowen, Tr. 989-90); Janine Hamann-Orci, two certificates at Georgetown (Hamann-Orci, Tr. 11); Jeannine Lateiner, five years at Geneva (Lateiner, Tr. 897-98); Luigi Luccarelli, two years at Monterey (Luccarelli, Tr. 1552-54); Evelyn Moggio-Ortiz, three diplomas from Geneva (CX-303-J); Peter Motton, London (CX-300-I); Anna Saxon-Forti (Saxon-Forti, Tr. 2654); Idette Swetye (Swetye, Tr. 3842); Ursula Weide, four semesters at Heidelberg and four semesters at Georgetown (CX-306-F); Wilhelm Weber studied interpretation and translation for four years at the University of Geneva. (Weber, Tr. 1118.)

389. A conference interpreter without specialized training cannot do simultaneous interpretation. (Davis, Tr. 853.)

390. The ideal candidate for training in conference interpretation should have lived extensively in the countries of each of his languages, and has a university degree in something other than languages or interpretation "such as economics, medicine, the law and so on." (Weber, Tr. 1166/7-9.)

VI. JURISDICTION

A. Personam Jurisdiction Over AIIC

391. U.S. Region members hear reports of AIIC's committees, groups, and sectors at U.S. Region meetings, and discuss AIIC-related issues, including upcoming AIIC meetings (CX-436-E; CX-417-B); the AIIC "rates" (CX-432-E) and working conditions (CX-435-A); the AIIC logo (CX-434-B); the future of AIIC (CX-438-A; CX-439-B); the procedure for proposing amendments to AIIC's Basic Texts (CX-1406-B); sponsorship of Russian-speaking interpreters for AIIC membership (CX-436-E; CX-439-B); and the possibility of

adding intermediate level classifications of interpreters' language abilities (CX-436-F; CX-415-B).

392. AIIC asked the U.S. Region to send an observer to the Monterey Institute in California on behalf of the AIIC Schools Committee, and the U.S. Region did so. (CX-432-D; Stip. 50.)

393. The U.S. Region used the funds in its U.S. bank account (CX-300-K; CX-300-M (Motton); CX-432-B) to reimburse, fully or partly, Region members who travel to perform tasks for AIIC and for other AIIC business (CX-438-A), including Council (CX-432-C), NAS (CX-432-D to E), Permanents Committee (CX-432-D to E), and AIIC-wide meetings (Stip. 50; CX-405-B).

394. The Assembly elects a member who resides in the United States to be the U.S. Region representative to the AIIC Council. (Luccarelli, Tr. 1628; CX-304-Z-53 (Motton).) This person typically opens and presides over meetings of the U.S. Region. (Stip. 46.)

395. The Treasurer of the U.S. Region resides in the United States. (Stip. 45.) This person collects AIIC dues from U.S. members and transfers the funds to AIIC in Geneva, reminds members of their obligation to pay dues (Stip. 45), and has warned that failure to do so would result in deletion of their name from the annual directory. (CX-407-B; CX-300-G, K, L (Motton); CX-401-A.)

396. The President of AIIC and other foreign-based AIIC officials travel to the United States on AIIC business. (CX-305-I, L, Z-282 to Z-283 (Sy); CX-245-J; CX-500-A to B.)

397. AIIC members with professional addresses in the United States participate directly or by proxy, in meetings of AIIC's U.S. Region, which are held once or twice a year. (CX-410; CX-441; CX-443; CX-450.)

398. Members of the U.S. Region actively participate in AIIC decisions by attending, or by giving their proxies to U.S. Region members who will attend an AIIC General Assembly. (CX-423-B, CX-436-E, CX-407-E; CX-300-Z-98 to Z-104 (Motton).) The U.S. Region has paid for expenses of U.S. Region members to participate in AIIC meetings. (Stip. 50.)

399. AIIC members domiciled in the United States serve on AIIC committees. (Stip. 27; CX-300-J (Motton).)

400. Members of the U.S. Region spent three years preparing for the AIIC General Assembly held in New York in 1979. (CX-407-F; CX-409-C to D; CX-410; CX-411-B; Stip. 28.)

401. A resident of New York, N.Y., served as AIIC vice-president, and a resident of Washington, D.C., served on the AIIC

staff interpreters and budget committees. (CX-245-J; CX-300-O to Q; CX-616-Y; CX-606-Z-248.)

402. AIIC collects dues from U.S. members annually and wires 10% of the total annual dues of the U.S. Region's members back directly to the U.S. Region's bank account as a refund. (Stip. 49; CX-300-K to N, Z-157 (Motton); CX-304-Z-53 (Motton).)

403. U.S. Region members used to pay AIIC dues to the U.S. Region, which retained a portion of those dues to cover U.S. expenses and forwarded a portion to AIIC headquarters. (CX-407-A to B) More recently, U.S. Region members mail a check to the U.S. Region Treasurer who converts the dues into Swiss Francs and wires them to AIIC headquarters in Geneva. (CX-300-K to L; CX-434-C.)

404. AIIC sends funds to U.S. members to reimburse them for attending meetings on its behalf. (CX-432-C-D.)

405. The U.S. Region received special "outlying regions contribution" funds from AIIC. The U.S. Region has to account to the AIIC central organization for those funds. (CX-300-M to N, Z-24; CX-1510-A.)

406. AIIC holds meetings of its international membership within the United States. The General Assembly met in New York in 1979. (Stip. 28-30; CX-245-J; CX-255-F.)

407. AIIC held educational events in the United States. (CX-245-J; Stip. 51, 73; CX-300-Z-51 to Z-52; CX-434-D; CX-436-D.)

408. AIIC regularly sent Bulletins to the United States that report on the general business of AIIC, discuss AIIC's rules and announce the dates of future meetings. (Stip. 17-19; CX-302-Z-123 to Z-124 (Luccarelli); CX-303-Z-57 (Moggio-Ortiz); CX-306-Z-30 to Z-31 (Weide); CX-214-E to F; CX-259; CX-268; CX 270.)

409. AIIC regularly sent surveys and questionnaires to members in the United States. (Stip. 20-23; CX-239-B; CX-1643-E; CX-432-A; CX-434-A, C; CX-436-C.)

410. AIIC mails membership directories listing members' names, addresses and language combinations to U.S. consumers to help its members market their services. (Stip. 59, 61-62; CX-268-Z-7; CX-301-Y to Z-1 (Bishopp).)

411. AIIC provided the U.S. Region with an information packet on conference interpretation and interpreter terms and conditions, to which the region could add local information such as fees and per diem. (CX-432-F; CX-434-B; CX-303-Z-69 to Z-70 (Moggio-Ortiz).)

412. AIIC prepared form contracts for members, including U.S. members, to use when negotiating agreements with conference sponsors. (Stip. 66; CX-2059-A to E; CX-2060-A to H; CX-2-Z-41, 1991 Standards of Professional Practice, Article 2(a).)

413. AIIC negotiates "Agreements" with large intergovernmental and other international organizations that hold meetings and employ interpreters in the United States, governing the pay and working conditions of such interpreters. (Stip. 74-75; Moser-Mercer, Tr. 3540/1 to 41/5; Luccarelli, Tr. 1591/9-21, 1643/5 to 44/14; CX-305-Z-345/14 to Z-347/24 (Sy); CX-2598; CX-2597.)

414. AIIC offered insurance to U.S.-based members and published information in its Bulletin about insurance programs offered by unaffiliated third-parties. (Stip. 70; CX-301-Z-152.8 (Bishopp).)

415. AIIC sent membership cards in credit card format to U.S. members, entitling them to special discounts AIIC has negotiated for its members at hotels in the United States. (CX-268-Z-7; CX-432-I to J; CX-439-B.)

416. AIIC provided its U.S. interpreters with a computerized list of convention centers and other potential customers, seminars on public relations techniques and model Yellow Pages advertisements. (CX-268-Z-7 to Z-8.)

417. AIIC maintained a "solidarity fund" that lends money to members, including U.S. members. (CX-301-Z-152.8 to Z-152.9 (Bishopp).)

418. AIIC purposefully availed itself of the benefits of U.S. laws. AIIC's 1991 Standards of Professional Practice, Article 2(a), states, "As far as possible, members shall use a standard form of contract as approved by the Association." (CX-2-Z-41.) The AIIC standard form contract referred to by Article 2(a) calls for the application of U.S. law to interpretation of contracts negotiated by U.S. members. (CX-2059-B; CX-2060-D.) Further, AIIC members lobbied the United States Congress to protest the Postal Union's failure to hire U.S.-based interpreters. (CX-1404.)

*B. Minimum Contacts With The United States Arising
From Conduct Challenged In The Complaint*

419. AIIC published rates of remuneration for the United States. (F. 93-96.)

420. AIIC prepared schedules of per diem charges (to cover expenses while on work-related travel), with entries unique to the United States. (F. 113, 115.)

421. AIIC tailored its work rules for application in the United States. (F. 96 (rates); F. 113 (per diem); F. 125 (indivisible day waiver); F. 171 (team size).)

422. AIIC produced documents called "Local Conditions in the U.S.A.," which included interpretation team size, contracting methods, and paid briefing days for scientific and technical conferences. (Stip. 22; CX-50; CX-56.)

423. At the request of its U.S. members, AIIC waived the U.S. applicability of provisions concerning interpreters working alone and authorized interpreters within the United States to perform simultaneous interpretation alone for up to 40 minutes. (CX-1384-A; CX-268-F; CX-301-Z-152.43 (Bishopp); CX-300-Z-33 to Z-36 (Motton); CX-432-G to H.)

424. The U.S. Region discussed and sent to Geneva a document called "AIIC Working Conditions for Interpreters in USA (Provisional Paper)." (CX-439-A, D; CX-1408-A.) This document was intended ensure the uniform application of the AIIC Code and its Annexes in the United States. (CX-439-A, D to F; CX-1408-A, C to E.)

425. In 1991, the AIIC Council gave 3500 Swiss Francs to the U.S. Region for FAX machines to be used in New York, Washington, D.C. and the West Coast. (CX-439-A.)

426. AIIC surveys its members, including those in the U.S., annually on market conditions. (Stip. 21, 23; CX-268-J; CX-1643-E; CX-434-A, C; CX-432-A.) The U.S. Region provided AIIC with information on the U.S. market for interpretation. (CX-210-F-G; CX-211-B-C; CX-218-G-H; CX-270-E; CX-435-A; CX-1346.)

427. AIIC reports on market conditions in the U.S. (CX-302-Z-164, Z-384 (Luccarelli); CX-245-H; CX-259-S; CX-305-Z-216 to Z-217 (Sy).)

428. AIIC investigated complaints against U.S. Region members for violations of its rules. (Wilhelm Weber, F. 181, 229, 242, 249, 344-60); Marc Moyens, F. 182, 230; Jeannine Lateiner, F. 182, 285, 316.)

429. AIIC cautioned U.S. Region members against moonlighting and double-dipping (CX-432-G to H) and solicited complaints from the U.S. Region against U.S. members who have moonlighted in

violation of AIIC rules and asked for the moonlighters' names and copies of contracts. (CX-432-M.)

430. The U.S. Region conspired with AIIC. (F. 75-89.)

431. The U.S. Region representative to the AIIC Council advised members on how to comply with the rules and issued warnings. (CX-1471; CX-1470-A.)

432. U.S. members of AIIC serve on the bodies responsible for creating and enforcing AIIC's rules. (CX-300-O to Q (Motton); CX-2490-A to G; CX-1-G-H and CX-2-G to H (1991 & 1994 AIIC Statutes Article 24 (6).)

433. AIIC advised one U.S. conference organizer who had inquired about whether interpreters' conduct had violated the AIIC Code of Ethics to contact the U.S. Region representative to the AIIC Council if she wanted to pursue the matter. (CX-1393; CX-1396.)

434. An AIIC Council member criticized some contracts in the United States that violated AIIC rules. (CX-405-B.)

435. AIIC has cooperated with TAALS with respect to conduct in the United States challenged in the complaint. (F. 307-16, 355.)

436. The AIIC General Assembly met in New York in 1979 and voted to adopt provisions challenged in the complaint, including rules prescribing equal remuneration for all members of an interpretation team and limiting the length of the working day. (CX-6-A to M, CXT-6-E to M; CX-219-P to R; CXT-221-A-Z-20, pp. 18-19; CX-221-D.)

437. AIIC's Non-Agreement Sector met in Key Biscayne, Florida in 1987, and decided to ask AIIC to be more restrictive in granting waivers of the AIIC rules challenged in the complaint. (CX-245-I.) At that meeting, the Non-Agreement Sector also agreed on manning strengths, fees for radio and television interpretation, and on an extra fee of 20% or 100% when interpretation is recorded. (CX-245-F to H.) In addition, members were informed that the daily rate in the United States was \$320, with per diem based on the price of a single room in a good hotel, plus 50%. (CX-245-H.)

438. AIIC's Non-Agreement Sector met in Washington, D.C. in 1992. Members discussed AIIC provisions on team strength, portable equipment, and recorded interpretation. (CX-270-F to G.)

439. AIIC sends mail to U.S. members from Geneva about AIIC meetings, waivers, changes to the provisions, and disciplinary actions against members violating AIIC work rules. (Stip. 17-19; CX-268-F, K; CX-266-E; CX-300-Z-23 to Z-24 (Motton).) AIIC mailed to the

United States copies of its rate schedules including rates unique to the United States. (CX-306-Z-31, Z-189 (Weide).)

440. AIIC mailed draft proposals of its Codes of Ethics and Standards of Practice to the United States for review and comment before General Assembly meetings. (CX-1406-B; CX-266-Z-5; CX-260-A to B.)

C. Personal Jurisdiction Over U.S. Region

441. The U.S. Region is subject to personal jurisdiction in the United States. (Order re Complaint Counsel's Motion for Partial Summary Decision, Nov. 29, 1995, at p.3.)

D. The U.S. Region As A Separate Entity Under Section 4

442. AIIC has 22 regions including the U.S. Region. (Stip. 31-32, 35; CX-1-G, I-K.)

443. The membership of the U.S. Region consists of AIIC members having their professional address in the United States. (Stip. 33, 36.)

444. AIIC's "General Document on Regions" and Articles 34 to 36 of the AIIC Statutes serve as the charter for the creation, recognition, representation, and governance of the U.S. Region and all regions. (Stip. 31; CX-1-K, Z-8-12.)

445. The U.S. Region has its own Rules of Procedure. (Stip. 38.) The rules govern its members' participation in the U.S. Region activities, identify the U.S. Region's officers, set down meeting schedules, and provide for budgetary disciplines. (Stip. 38, 43, 44, 46; CX-2124-A; CX-417-F; CX-304-Z-65 (Motton); CX-2449.)

446. The U.S. Region holds meetings, once or twice a year, at which nearly half of U.S. AIIC members are present or represented. At these meetings, the U.S. Region holds elections, reviews the U.S. Region's financial status, and conducts U.S. Region business. (Stip. 39, 40; CX-410-441; CX-443-450.) The U.S. Region mails to all members minutes of its meetings that are approved at the following meeting. (Stip. 47; CX-410 to CX-441; CX-443 to CX-450.)

447. The U.S. Region elects a treasurer and a regional secretary, and nominates a candidate for regional representative to serve on the AIIC Council. (Stip. 43, CX-1-K, Z-8 to Z-12; CX-429; CX-302-Z-348 to Z-349 (Luccarelli); Luccarelli, Tr. 1628.) The U.S. Region's treasurer, regional secretary, and regional representative serving on

the AIIC Council operate together under the term "the Bureau." (Stip. 44; CX-2124-A; CX-429; CX-435-B; CX-304-Z-53 to Z-53 (Motton).)

448. When voting at AIIC Council meetings, Luigi Luccarelli, the current U.S. Region representative, votes according to his understanding of the views of the members of the U.S. Region. (CX-302-Z-350/2-20 (Luccarelli).)]

449. The U.S. Region maintains its own funds in bank accounts in the United States (CX-432-B; CX-443-A; CX-300-M/2-M/6), makes decisions regarding disbursements (CX-450-C; CX-436-D; Stip. 50), and receives and collects AIIC membership dues. (Stip. 49; CX-407-A to B; CX-300-K/10-M/6 (Motton).)

450. With AIIC's regional structure and according to its purposes, each region represents the profession of conference interpreters in its region and safeguards their interests. (CX-1-A; CX-2-A; CX-274-D.)

451. The U.S. Region represents conference interpreters in the United States and safeguards the interests of U.S. Region members. The U.S. Region: (a) recommended to the AIIC Council daily rates or agreed to daily rates applicable in the United States (Lateiner, Tr. 916-920; Weber, Tr. 1147; CX-201-F; CX-222-P; F. 90-103); (b) adopted recommendations relating to proposed revisions to AIIC's code and professional standards that reflected the interests of the U.S. Region (CX-435-B); (c) negotiated with the Organization of American States regarding daily rates for interpreters (CX-407-C); (d) adopted per diem rate formulas applicable in the U.S. Region (CX-301-Z-65 to Z-66 (Bishopp); CX-432-F; CX-434-C); (e) issued a warning letter to a U.S. member, Wilhelm Weber, about possible violation of AIIC's rules in connection with interpretation at the 1984 Olympics in the United States (Weber, Tr. 1226-28; CX-1253-A to C; CXT-1253-A to C); (f) cautioned U.S. members about accepting jobs at the 1984 Olympics in the United States that do not conform to AIIC's rules (CX-1253-B; CXT-1253-B); and (g) encouraged U.S. Region members to work in the United States in accord with the AIIC working conditions applicable in the United States. (CX-439-B; CX-301-Z-152.47 to Z-152.48 (Bishopp).)

452. The U.S. Region adopted team size tables and length of day rules for the United States that are different than AIIC's universal team size tables and length of day rules (CX-2254; CX-407-F; CX-409-A; CX-439-B, D-F; CX-50; CX-56; CX-301-Z-152.47 to Z-152.48 (Bishopp).) It has sought a waiver of the AIIC rules to allow

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Initial Decision

interpreters to work alone for 40 minutes in the United States. (CX-301-Z-152.14 to Z-152.15 (Bishopp); CX-432-G; CX-435-A.)

E. Members' Profit

453. Respondents' members are profit seekers. AIIC's members engage in the profession of conference interpretation. (Stip. 8; CX-1-B, Art. 6.)

454. One of AIIC's goals is to represent the profession of conference interpreter and to safeguard the interests of its members. (CX-2490-D, ¶ 10; CX-1458-A; CX-1-A; CX-2-A; CX-245-D.)

455. AIIC defends the interests of its members "in case of controversy surrounding the application of agreed standards." (CX-1458-A.)

456. AIIC's president stated that the association exists to serve the interests of its members. (CX-305-Z-184 to Z-185 (Sy).)

457. AIIC adopted rules requiring its members to charge AIIC-published rates. (F. 90-157 (mandatory rates, per diem, non-working days, "same team same rate"); F. 237-54 (travel arrangements, cancellation, recording, charity).)

458. AIIC rules are designed to improve the terms and conditions under which members work. (F. 158-211 (team size and hours); F. 212-36 (professional address); F. 255-303 (package deals, exclusivity, trade names, portable equipment, non-interpretation services, moonlighting, double-dipping, advertising).)

459. AIIC holds meetings of its entire membership, as well as meetings of committees and regions, at which issues affecting interpreters' livelihoods are discussed. (CX-271-B; CX-259-Q.)

460. AIIC aims is to improve members' remuneration. (CX-208-I; CX-273-G; CX-231-O.) AIIC's president stated in 1957: "AIIC decided for the first time that the daily remuneration should go up." (CX-203-C.) The AIIC Council reminded members in 1973 that "it is the Council's duty, as part of its responsibility for protecting members' interests, to maintain interpreters' remuneration by effecting readjustments and alignments to rates." (CX-201-E; CX-224-Y.)

461. AIIC's Basic Texts refer to terms of employment that relate to members' remuneration. (CX-2-Z-40 to Z-49; F. 90-157 (daily rate and rate); F. 150-57 (same team).)

462. AIIC mailed schedules of rates for conference interpretation. (F. 93-96.)

463. AIIC aims to improve the working conditions for all interpreters. (Stip. 63; CX-245-C.)

464. Respondents assist freelance members to secure interpretation jobs. (F. 465-75.)

465. AIIC rules encourage the hiring of its members. AIIC Guidelines for Recruiting Interpreters require that "members of the Association and applicants for membership shall be approached before non-members." (CX-219-M to N; CX-2-Z-51; CX-1-Z-48.)

466. AIIC membership helps interpreters obtain work. (CX-304-Z-83, Z-110 to Z-111 (Motton); CX-301-Z-152.3 (Bishopp); CX-280-E.)

467. AIIC produces an annual directory, with the name, address and language combination of each member. (Stip. 59; CX-600-A, Z-12, Z-90 to Z-92; CX-606.) Conference interpreters and intermediaries use AIIC's directory to recruit interpreters. (Clark, Tr. 593; Weber, Tr. 1159; Hamann-Orci, Tr. 91.) AIIC sends its directory to purchasers of interpretation services. (CX-268-E; RX-22, 405; CX-304-Z-109/16 (Motton).)

468. The AIIC directory facilitates searching for interpreters with a specific languages or in a particular location. (Stip. 62.) AIIC intends its membership directory to be used by employers. (CX-274-B; CX-1458-A.) Interpreters join AIIC to get their names in the AIIC directory used by chief interpreters and conference organizers. (CX-271-M; Swetye, Tr. 2795; CX-306-X/2 (Weide); Hamann-Orci, Tr. 21; CX-304-L, Z-109/24 to Z-110/11 (Motton).)

469. AIIC provides members with Availability Cards used to inform potential employers of their available dates. (Stip. 64; CX-274-D; CX-2092-A-B.)

470. AIIC's treasurer wrote to members: "[D]on't forget that AIIC has been working for several years in order to improve physical and technical conditions of work . . . to improve our remuneration and that, in particular, the mention of your name and quality in the Yearbook is often most helpful in the pursuit of your professional career." (CX-201-B.)

471. AIIC refers business to members. (CX-427-A; CX-2050-B; CX-1583-A.)

472. AIIC posts employment opportunities in the AIIC Bulletin. (CX-253-E; CX-254-F; CX-276-W, CX-2497-K.)

473. AIIC promotes AIIC members to prospective customers. (Luccarelli, Tr. 1625; CX-274-B to C; CX-259-T; CX-257-O.) AIIC

uses the Public Relations Committee "to get more work for our members." (CX-1593-A; CX-280-F; CX-2490-E, ¶ 11.)

474. AIIC advised potential buyers of interpretation services to "entrust the recruiting of a team of interpreters to those AIIC members who are ready to perform this essential service." (CX-215-B; CX-2093; CX-2103-A to J.)

475. AIIC published a magazine, *Communicate*, to promote interpretation to purchasers. (CX-2095-A to D; CX-279-I.)

476. AIIC provides members with form contracts (containing AIIC's working conditions) for agreements with clients. (Stip. 66; CX-2059-A to F; CX-2060-A to H.)

477. AIIC provides members with other materials to educate purchasers on interpretation services and the staffing of conferences. (CX-1458-A, L to M; CX-2088-A to F; CX-2089.)

478. AIIC rates interpretation equipment and facilities in a Directory of Conference facilities. (CX-259-N to O; CX-2073; CX-2074; CX-2070-A to Z-65; CX-2071-A to N; CX-2112.)

479. AIIC publishes a quarterly AIIC Bulletin to members. (Stip. 67; CX-259; CX-268; CX-270; CX-274.)

480. AIIC's Statistics Committee surveys AIIC members, including those in the United States. (Stip. 20.) These surveys provide members with accurate figures on employment, language trends, and venues of meetings. (CX-268-J; CX-269-G; CX-1643-E.)

481. AIIC surveys users of interpretation services. (Stip. 68; CX-259-I; CX-280-I to M.)

482. AIIC provides members with information concerning the calculation of Value Added Taxes with respect to interpretation services. (CX-280-E; CX-71 to CX-84; CX-1643-E.)

483. AIIC negotiates discounted prices on members' purchases. (CX-268-Z-7; CX-259-G.) AIIC membership cards entitle their holders to discounts at hotels and on airfares. (CX-268-Z-7; CX-1458-F; CX-2058-A to W.) Members of AIIC previously received discounts on the purchase of publications, such as dictionaries. (Stip. 69.) AIIC provides members with applications for credit cards. (CX-1658-E.)

484. AIIC provides its members insurance plans for health, loss of earnings, and retirement. (CX-259-E; CX-306-Z-135/6 (Weide); CX-301-Z-152.8/17 (Bishopp).) For the Non-Agreement Sector, AIIC negotiates agreements with insurance plans for accident, sickness and loss of earnings benefits to which members can then subscribe

directly. (CX-1643-C; CX-261-W; CX-1458-M; CX-304-Z-126, Z-331 (Motton).) AIIC also makes available travel insurance. (CX-1658-F; CX-1458-M; CX-304-Z-126, Z-331 (Motton).)

485. AIIC members manage two retirement plans for members. (Stip. 71, 72; CX-2077-D to E; CX-1458-M; CX-1643-C; CX-2076-A.)

486. AIIC maintains a "Solidarity Fund" to assist members through grants and loans in emergency distress situations, such as workplace accidents. (CX-226-Z-5; CX-301-Z-152.8/22 to Z-158.9/4 (Bishopp); CX-254-H; CX-2085-B.)

487. AIIC contacted European governments to obtain exemption from the Value Added Tax for interpretation services. (CX-280-D-E; CX-268-J.)

488. AIIC contacted a U.S. Senator to increase employment for U.S. interpreters in a meeting of the United Postal Union. (CX-1404-A-E.)

489. AIIC safeguards the interests of its members by training and research. (CX-301-Z-1/22-24 (Bishopp).) AIIC organized lectures and seminars to improve the quality of interpretation. (Stip. 73.)

490. AIIC has seminars to assist members with commercial aspects of interpretation (RX-27, 461; CX-277-Z-5); on sales and negotiating techniques (CX-1578-A; CX-253-B; CXT-279-Z-2 to Z-5); and on "Winning Work Competitively" (CXT-279-Z-2 to Z-5; CX-1578-A; CX-1579-A.) AIIC instructed members in "Sales Arguments" for interpreters negotiating with clients. (CX-302-Z-314 to Z-315 (Luccarelli); CX-1480-B.)

491. AIIC organizes seminars and lectures on the practice of interpretation. (CX-252-D; CX-269-I; CX-277-Z-25; CX-301-Z-1.1/12 (Bishopp).)

492. AIIC negotiates "Agreements" with large international organizations. (Stip. 74.) These Agreements govern the pay rates and working conditions applicable to all freelance interpreters working for those employers. (Stip. 75; CX-2490-E, ¶ 12; CX-1538-A.) AIIC's negotiated agreements for all freelance interpreters, whether or not members of AIIC. (CX-305-Z-186 (Sy); Stip. 76.) There are five Agreements, which AIIC refers to as the "Agreement Sectors": (1) members of the United Nations Common System ("United Nations"); (2) the European Union; (3) Coordonnees; (4) Interpol; and (5) various international trade secretariats. (Stip. 77.)

493. AIIC negotiates an agreement on remuneration and working conditions for freelance interpreters working for the United Nations

Common System (including the United Nations, the World Health Organization etc.). (Stip. 78; CX-1643-B.)

494. AIIC negotiates an agreement, which is in effect throughout the world, with labor unions, known as international trade secretariats, that governs rates of pay and working conditions for all freelance interpreters (not just AIIC members). (Stip. 79; CX-277-W.)

495. AIIC negotiates an agreement with Interpol governing the wages and working conditions of freelance interpreters working for it. (CX-1458-M; Stip. 75, 78.)

496. AIIC negotiates an agreement with the European Union, which includes the European Commission, the European Parliament, and European Court of Justice, for an agreement to provide interpretation services. (CX-1458-M; CX-1643-C.)

497. AIIC negotiates an agreement governing the wages and working conditions of freelance interpreters working for Coordonnees, which consists of European Space Agency; the Council of Europe; the Organization for Economic Co-operation & Development; the North Atlantic Treaty Organization; and the Union de l'Europe Occidentale. (Stip. 81; CX-1643-C.)

VII. LABOR EXEMPTION

498. The State Department's list of freelance interpreters, which includes many AIIC members, is a "roster of independent contractors." (CX-242-H.)

499. Interpreters hold a copyright interest in any recording of their interpretation because they are independent contractors. (CX-244-F; CX-224-Z-8-9; CXT-273-O-P; CX-2121; CX-2059-B.)

500. AIIC's standard contract limits the control of the conference organizer over the work practices of interpreters because interpreters operate as independent contractors. (CX-2059-B.)

501. AIIC's agreements specify terms for freelance interpreters with various organizations, but not for staff interpreters who are employed by those organizations. (CX-302-Z-121/18 to Z-122/1 (Luccarelli).)

502. There exists an interpreters' union in the United States that is separate from AIIC and TAALS. *See* Motion for Leave to File Amicus Brief on Behalf of the Translators and Interpreters Guild Affiliated with the Newspaper Guild, AFL-CIO, CLC, Oct. 17, 1995.

503. Freelance interpreters determine whether to work at a particular conference on a case by case basis. (Luccarelli, Tr. 1614-15, 1620-21; Swetye, Tr. 2775/2-14, 2793/10-19; Silberman, Tr. 3354/11-14, 3355/20-22.)

504. The AIIC committee that explored various options for restructuring the organization acknowledged that a trade union's members must be employees. (CX-268-W-X.) This was part of the reason AIIC rejected unionization. (*Id.*) Some governmental and intergovernmental organizations employ staff interpreters. (Luccarelli, Tr. 1693/24 to 1695/8.) No AIIC member has established a commercial interpretation firm with interpreters as employees. (Luccarelli, Tr. 1693-94; CX-301-Z-105 (Bishopp); CX-428-A.)

505. In 1992 respondents rejected the option of becoming a union. (CX-270-K, n.**; *cf.* CX-268-W-X.)

506. Since 1964, AIIC has negotiated collective bargaining agreements with institutional employers (EEC, UN, NATO). (CX-218K-L; CX-203-C; CX-225-B-C; CX-284-D; CX-286-Z-32.)

507. In 1978, AIIC's president felt that non-agreement (freelance) members were independent and not employees (CX-219-S), since employers could not instruct them how to do their work. (CX-219-U.)

508. Agreement sector AIIC members want AIIC to act as a union. (CX-284-C.)

VIII. NEED FOR AN ORDER

A. Likelihood of Continuing Violations

509. In August 1992 at the Extraordinary Assembly in Brussels, members of AIIC removed monetary conditions from the AIIC Basic Texts. (CX-273-G.) The resolution states:

DEEPLY ATTACHED to the principles of universality and solidarity upon which AIIC, since its inception, has based its action in organizing the profession, for the benefit of both the interpreters and the users of interpretation,
FULLY AWARE of the gradual implementation of anti-trust legislation in the various parts of the world,
DECIDES on the following principles:

1. To remove all mention of monetary conditions (*e.g.* rates, subsistence and travel allowances, payment of non-working days) from our basic texts. . . ."

(CX-273-G.) The resolution provided that AIIC may negotiate agreements governing the working conditions of conference

interpreters, including remuneration and manning strengths, with employers in non-governmental organizations. (CX-273-H.)

510. The day before the Extraordinary Assembly, the NAS held a meeting -- that was planned to have "neither minutes nor recording of the proceeding" -- to explain how, in light of the antitrust laws, it is possible to "operate in another way." (CX-271-C, F; CX-273-U.)

511. According to one of the members of the AIIC Council (CX-616-C), AIIC "deregulated" its monetary conditions at the Extraordinary Assembly and "trusted" its members to "keep the faith." (CX-285-S.)

512. The AIIC Council reminded members that they could still assert their "rights" despite removal of express mandatory conditions. (CXT-2479, p.1.) The U.S. Region Council member advised U.S. Region members in January, 1994, "We should not forget . . . that deregulation does not mean we have lost our rights as individual professionals. Those are still the same, and we have to defend them individually." (CX-1566.) Another Council member wrote, in June 1993, "competition must be exercised in conformity with the code of professional ethics" and working conditions. He also stated that interpreters have the "right" to the same working conditions in the future:

rights should be respected in the future as they were in the past: the interpreter working away from his "professional address" has the RIGHT to a per diem and to complete reimbursement of his travel expenses; the interpreter has a RIGHT to payment of "nonworking days"; the interpreter has a RIGHT to compensation for a "loss of earnings"; the interpreter has the RIGHT to fees that are a fair reflection of the difficulty and importance of his work. (CXT-2479, pp. 1-2.)

B. History of Attempts to Evade the Antitrust Laws

513. In November 1975, the U.S. Region meeting, "unanimously decided to set up a committee to study the [antitrust] question in liaison with TAALS." (CX-405-C.) AIIC's Executive Secretary wrote TAALS and requested information on antitrust legislation in the United States. (CX-210-E, D.)

514. AIIC knew it was illegal to agree on rates in the United States. (CX-305-Z-27, Z-35, Z-206 to Z-207 (Sy); Weber, Tr. 1208-09; CX-300-Z-88 to Z-89 (Motton).)

515. In 1979, the AIIC Council became aware of an antitrust suit against AIIC's Canadian region. (CX-222-N; CX-223-V.) AIIC

ceased publishing rates for Canada because of the litigation. (CX-301-Z-59 to Z-60 (Bishopp).)

516. AIIC stopped publishing rates for the U.S. between 1981 and 1987 because of the antitrust laws. (CX-305-Z-36 (Sy); CX-72, CX-73, CX-75.) Nevertheless, its price agreements continued. (CX-1226) According to the report of the December 5, 1981, meeting of the U.S. Region, there was a "gentleman's agreement" to maintain the price conspiracy:

As members of Council know, there is a "gentleman's agreement" not to ask for less than US Dollars 250 per day. Because of the advice given by the anti-trust lawyers consulted; it is preferable not to appear with a fixed figure on the rate sheet. There is a trend now to ask for 275. (CX-1226-A.)

517. In 1983, AIIC's Secretary General explained that despite the price-fixing laws, members know what they are supposed to charge:

Members all know that [sic: what] the local rate is and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the "cartel" price-fixing laws in some countries, but members know very well that they must not undercut. (CX-1238.)

518. In 1986, the U.S. Region Treasurer (CX-616-Z-4) reported to AIIC that "The minimum rate on the non-governmental sector is unchanged and is not to be published on account of U.S. Government regulations." (CX-1346.)

519. About 1983, AIIC began publishing its minimum rates under the label of "market survey." (CX-71; CX-2446-C.) In 1987, Patricia Longley, then AIIC Treasurer (CX-616-Y), stated that in these "market surveys": "The figures represent the currently applied daily rates of remuneration, in other words the minima for a given local market." (CX-2466-C.) U.S. Region members understood that the "standard" figures on the market survey were the "standard" rates referred to in Article 8 of AIIC's 1991 Standards of Professional Practice (which specify what "the rate of daily remuneration shall be"). (CX-303-Z-62 (Moggio-Ortiz); CX-2-Z-43; CX-76.)

520. Before its 1991 Assembly, AIIC was "strongly advised" for antitrust reasons to adopt amendments that would have removed the "monetary" references from the basic texts. (CX-262-Z-42; CXT-262-Z-45 to Z-47, p.3.)

521. At the 1991 Assembly, Malick Sy, now AIIC President, insisted that the monetary conditions could not be removed by simple majority. (CX-305-Z-244 to Z-245 (Sy); CX-301-Z-129 to Z-131

(Bishopp); CX-266-S.) The Assembly did not achieve the two-thirds majority "necessary to remove all mention of fee scales on the private market" from the Basic Texts. (CX-441-B; CX-270-K.)

522. In 1994, Malick Sy was elected president of AIIC on a platform of solidarity. According to Mr. Sy, AIIC is "like pillars of universality, rigorous professionalism, the solidarity between the members serving as cement, the binding material between the two pillars." (CXT-279-T-U.)

C. Changes to the Basic Texts

523. AIIC's new rules, the 1994 Professional Standards, "carefully" addressed "financial matters." (CX-1-Z-40 to Z-46; CX-1556-A.) An interpreter "may ask for the inclusion of" AIIC's form-contract cancellation clause (CX-1-Z-41, Art. 3); professional address (still changeable only once in six months and with three months notice) "shall be used, *inter alia*, as a basis for setting up Regions" (CX-1-Z-40, Art. 1); journeys (depending on their length) "call for the scheduling of [one to three] rest days" (CX-1-Z-45, Art. 10); members "shall" receive subsistence allowance and travel expenses unless "the parties agree otherwise" (CX-1-Z-45, Art. 9, 11); members "shall request a briefing day whenever appropriate," and non-working days "that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45, Art. 8, Z-39.)

524. Reporting on the results of the 1992 Assembly the U.S. Region Representative did not indicate that freelance interpreters should change their practices as a result of any of AIIC's changes to its Basic Texts (CX-448-B; CX-303-Z-100, Z-99 (Moggio-Ortiz).)

525. The committee that drafted the 1994 rules, "eliminated the monetary conditions while taking care to preserve the great principles which the association holds to, such as the professional address. . . ." (CXT-279-K, p.4.)

526. While drafting the 1994 Professional Standards, AIIC prepared a "Vademecum" (CXT-2484-A-C, pp. 2-3) defined as a "pocket compendium of basic AIIC rules and recommendations" (CX-206-D) and "for internal use." (CX-277-Z-4; CX-245-C.) The purpose of the Vademecum is to "speak more openly on financial or related questions" ("since this document is not a basic text and has only an informative character") and "specify in maximum detail all the circumstances that are appended to each article of the Standards

as an annex, as well as all the 'rules' that should not be forgotten in the case of an assignment." (CXT-2484-A-C, pp. 2-3.) The Vademecum indicates that interpreters should include in their cost estimates the following factors: indivisible daily rate, commission, travel expenses, subsistence allowances, remuneration for days of travel, remuneration for rest days, remuneration for nonworking days, remuneration for days of briefing, recording ("copyrights"), cancellation, and non-interpretation duties. (CXT-2609-A to C, pp. 3-5.)

527. After the FTC investigation began (F. 538), AIIC introduced "health and quality" into the preambles to its rules. The preamble to the Standards of Professional Practice, Version 1991, reads in part, AIIC "herewith adopts the following Standards of Professional Practice applying to the work of its members." (CX-2-Z-40.) The 1994 Version adds, "whose purpose is to ensure an optimum quality of work performed with due consideration being given to the physical and mental constraints inherent in the exercise of the profession." (CX-1-Z-40.)

528. AIIC's 1994 Professional Standards are virtually identical to the 1991 texts with restraints on staffing strength (CX-1-Z-42 to Z-44, CX-2-Z-43 to Z-46), hours (CX-1-Z-45; CX-2-Z-42), double-dipping (CX-1-Z-37, Art. 3(c); CX-2-Z-37), recording (CX-1-Z-40, Art. 2(b); CX-2-Z-41) and performing non-interpretation services (CX-1-Z-39, Art. 7(h); CX-2-Z-39). The "Guidelines for Recruiting Interpreters" remains appended to the Standards, with the same rules on advertising, commissions, exclusivity, package deals, and trade names that it contained prior to the vote to remove monetary conditions. (CX-1-Z-49; RX-2.) In July 1994, the AIIC Council "confirm[ed] the binding character of the Professional Standards [Normes professionnelles]." (CXT-501-T, p. 2; CXT-249-C-D.)

529. According to AIIC's president, AIIC's monetary conditions can no longer be published "openly." (CX-1580.)

530. AIIC's standard form contract provides a template for members to continue to adhere to AIIC's price fixing rules. (CX-2060-A to B.) The contract has blanks for filling in daily remuneration, remuneration for travel days, rest time, recording, per diem for period away from the professional domicile, and first class travel. (CX-2060-A.) The "General Conditions of Work" on the contract (CX-2060-B) enumerate AIIC's rules about package deals (§ 1), non-interpretation duties (§ 2), working hours/overtime (§ 3), recording fees (§ 4), travel arrangements (§ 7), and cancellation (§ 9).

(CX-2060-B.) The quadruplicate format, which provides a copy for the consulting interpreter, interpreter, recruiter, and conference sponsor, allows any of these parties to verify compliance with rules on same team same pay and package deals. (CX-2060.)

531. AIIC's March 1994 Bulletin contained a recommendation for interpreters to specify to clients that "interpreters' fees are unchanging." (CXT-279-Z-2 to Z-5, p.2.) This and other recommendations came in reports of "sales techniques" sessions that the NAS set up in August 1992 to learn to operate in light of the antitrust laws. (F. 510; CX-273-U; CXT-276-E to G, p.2.)

532. Rates remain stable among interpreters. (Weber, Tr. 1186; Clark, Tr. 614.)

533. The pricing of AIIC members in the United States in 1992-1995, during which AIIC did not publish suggested minimum prices, was similar to 1988-1991. (Wu, Tr. 2205-06; CX-3004; Silberman, Tr. 3068; CX-3004-A.)

D. Agreement Sector

534. AIIC continues to negotiate "agreements" with intergovernmental and international organizations, which govern the pay rates and working conditions for all freelance interpreters working for those employers. (F. 492-97; Stip. 75; Bowen, Tr. 1031.) AIIC publishes in its Bulletin the rates negotiated under its Agreement Sector agreements, including rates for the United States. (Luccarelli, Tr. 1840; CX-305-Z-347 (Sy).) Meetings pursuant to these agreements have taken place in the United States. (Luccarelli, Tr. 1600; CX-2597; CX-2598.)

535. By entering into an agreement with labor unions, referred to as the International Trade Secretariats (ITS), AIIC decided prices to charge private sector users. (Stip. 79-80.) ITS used such terms for conferences it organized in the United States. (CX-2597-98.) The March 1995 AIIC Bulletin, published 795 Swiss Francs as the daily rate applicable in the United States when interpreters are working for the unions. (CX-284-U; CX-2066-A.)

536. Members use the agreements for remuneration and working conditions in the rest of the private sector. (CX-226-C; CX-231-C; CXT-2484, pp. 2-3.) AIIC used the UN per diem levels as a floor in the private sector. (CX-226-C; CX-231-C.)

E. Underground Practices

537. AIIC's suspension of publishing rates in the United States during the 1980's created an irregular rate. (F. 524; CX-1348-B; CXT-244-H.) In 1986, the U.S. Region "decided to request the inclusion of a 'suggested minimum rate' on the annual 'market survey sheet,' as the lack of a figure for the US Region caused a number of problems (imported teams, use of the 'elsewhere rate', etc.)." The Council agreed, and the rate was scheduled to be published on the next market survey as the suggested minimum rate for the United States. (CX-1348-B.)

F. Changes to AIIC's Basic Texts Made In Response to Antitrust Investigation

538. AIIC knew of FTC investigations of interpreters in June 1991, when two U.S. Region members (also members of TAALS) responded to a Commission document request of TAALS concerning horizontal restraints. (Saxon-Forti; Valiyova; CX-608-Z-77; CX-935-B.) AIIC discussed the TAALS investigation at its January 1992 Non-Agreement Sector meeting in Washington, D.C. (CX-270-F) which agreed to organize a debate and find a lawyer. (CX-1480-A.) FTC Staff took testimony from U.S. Region member (and past TAALS President) Anna Saxon-Forti regarding AIIC (Saxon-Forti, Tr. 2687), contacted three U.S. Region members prior to May 1992 (CX-441-A), and took their testimony. (CX-301-B (Bishopp); CX-300-A (Motton); Swetye, Tr. 2804.)

539. The FTC investigation of AIIC led to AIIC's 1992 decision to remove monetary conditions from its Basic Texts. (CXT-1534.)

540. The AIIC Assembly voted in 1992 and in 1994 not to approach "DG-IV" (the European Union's antitrust enforcement department) for antitrust "exemption" and recognition of the right to establish working conditions for AIIC members. (CX-302-Z-362 to Z-363 (Luccarelli); CXT-280-P-Q, pp. 1-4; CX-273-H.) AIIC recognized that notifying the DG-IV implies "the impossibility of AIIC negotiating collective (bargaining) agreements with intergovernmental employers." (CXT-280-P-Q, p.4.)

541. Despite antitrust concerns raised in Germany, Canada, and the European Union, AIIC did not change its basic texts until the FTC investigation began. (F. 523, 528-39; CX-84; CX-301-Z-59-60 (Bishopp).)

542. AIIC is dedicated to fighting to improve interpreter pay. (CXT-268-T-V.) Rates are one of AIIC's "most precious professional attainments." (CXT-268-T-V, p.3.)

LEGAL DISCUSSION

The profession of interpreting -- orally converting one language into another -- has long served to ease diplomacy, international trade and cultural exchange.⁵ Consecutive interpreting grew from the League of Nations in the 1920's and simultaneous interpreting was first used in the Nuremberg Trials after the Second World War. In 1952, interpreters -- both civil servants and freelance -- decided to found a professional association "to regulate the profession, to impose standards and ensure their application." (CX-245-C.) This is the history of AIIC.

SUMMARY

For more than forty years, AIIC has regulated the livelihood of its members. AIIC specified the length of the working day and the number of interpreters to be hired at a conference. AIIC members agreed on minimum daily rates to be charged in the United States. AIIC required that all interpreters at a conference be paid the same daily rate.

AIIC rules protected its local freelance members from competition from other AIIC members, and prevented intermediaries from forming firms of interpreter employees. AIIC prohibited advertising by members of "commercial forms of one-upmanship." Its Basic Texts specified minimum fees AIIC members should charge, and for what amount of work. AIIC members adhered to those rules and AIIC and the U.S. Region took action on the rules in the United States.

AIIC required payment for travel expenses, per diem, rest days and non-working days depending on whether the interpreter was away from a "professional address." AIIC defined a "normal working day" of six hours. Each effective restraint was part of a scheme to raise prices.

AIIC's restraints had anticompetitive effects. The conspiracy accomplished its purpose: fixing and raising the fees paid to AIIC

⁵ "And they knew not that Joseph understood them; for he spoke unto them by an interpreter." Genesis, Ch. 42 v.23.

members. As a result, AIIC interpreters earned more and worked less. The evidence obviates extensive inquiry into market power, market definition or market share. *California Dental Ass'n*, FTC Docket No. 9259 (1995) ("CDA"), slip op. at 28 n.19; *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 461 (1986) ("IFD"); *National Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85, 109-10 (1984) ("NCAA").

Endeavoring to improve interpreters' working conditions and income, respondents exist for the profit of their members. Their actions to improve the economic welfare of the interpreters resemble closely union activity which might be exempt from antitrust scrutiny. AIIC has determined, however, that it is a professional association -- not a union -- and respondents waived the defense by failing to raise it in pleadings or during the presentation of evidence.

A finding of violation shows that the Commission has jurisdiction over AIIC for acts performed in, or with effects in, the United States. And the Commission may proceed against the U.S. Region, an unincorporated association, as part of a AIIC.

Respondents continue to maintain rules on fees and working conditions that deprive consumers of the benefits of competition and violate the antitrust laws. AIIC tried to conceal price-fixing agreements in "gentlemen's agreements" and "market surveys," "unpublished" rates and a little book called a "Vademecum." Despite the removal of some offending rules from their Basic Texts after the commencement of the investigation that led to this case, respondents and their members continue to fix prices, allocate markets and violate the antitrust laws.

FACTS

AIIC's records show its intent to raise prices by eliminating competition between AIIC's members and to prevent intermediaries from coming between interpreters and clients. These documents are persuasive evidence of AIIC's beliefs as to the effects of its rules and practices.

1. Rates and Terms

Since the 1950's, AIIC members have forced employers to meet AIIC's rates and terms of employment. (F. 92.) As founding member and past president, Christopher Thiery (Weber, Tr. 1137) stated on AIIC's 20th anniversary in 1973 (F. 361):

It was in 1957 that AIIC decided for the first time that the daily remuneration should go up. The base rate had been \$25 since the end of the war, and it was decided to increase it to \$30. It had to be a unilateral decision: for the private market there was no "interlocuteur valable" (nor is there now) and the intergovernmental organizations refused even to acknowledge letters. . . . When AIIC's united front forced the decision upon them (members simply refusing contracts at earlier rates), we suddenly came to be considered as very reasonable people who entirely deserved a long due increase in pay. In fact, that was the first test of AIIC's strength. And when, in 1963-64, AIIC decided to increase the daily rate from \$30 to \$40, large as the rise was it went through much more smoothly.

In 1976, the U.S. Region demanded and got its rates from the Organization for American States. AIIC and TAALS boycotted OAS until AIIC's U.S. Region council member struck a deal that would pay the AIIC minimum rate. (F. 365.) The AIIC rate increased every year; businesses like Berlitz and Brahler called a TAALS or AIIC member to find out the price for the year. (F. 328.)

AIIC's rates became the price for interpreters to charge worldwide -- except in the United States, where the mandatory minimum rate was higher. (F. 99.) The U.S. Region agreed to AIIC's rates for the United States by vote. (F. 100, 307.) In 1977, the U.S. Region adopted the rate voted on at TAALS' General Assemblies. (F. 307-08.) AIIC became concerned about regional differences in rates. The Non-Agreement Sector (freelance) came into existence to try to reduce these differences. (F. 105.) Competition began to arise from differing team strength tables resulting in competing bids. (F. 172.) AIIC adopted a uniform team strength table, increasing the minimum number of interpreters for a job. (F. 172-75.)

AIIC's price-fixing prevailed in the United States. Members of AIIC's U.S. Region feared that if they were branded as undercutters by not charging the U.S. rate they would lose the referrals from other members on which they depend. (F. 105.)

In November 1975, after *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), AIIC "set up a committee to study the question in liaison with TAALS." (F. 513.) In 1983, they changed their rate sheets to documents called "Market Surveys." (F. 519.) A 1987 AIIC memorandum makes clear that the "Market Surveys" are in fact the mandatory minimum rates. (F. 519.) The U.S. Region adopted a "gentlemen's agreement" not to charge less than a particular rate. (F. 516.) In 1983, AIIC's secretary general wrote to Wilhelm Weber,

who was recruiting interpreters for the 1984 Olympic Games in Los Angeles:

Members all know that [sic: what] the local rate is and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the "cartel" price-fixing laws in some countries, but members know very well that they must not undercut.

(F. 517.) In 1986, when the U.S. Region treasurer reported to AIIC on rates in the U.S. Region, she wrote, "the minimum rate in the non-governmental sector is unchanged and is not to be published on account of US Government regulations." (F. 518.)

In 1986 the U.S. Region decided it too should publish rates in the "market survey," and included what it called a "suggested minimum" (F. 537), again sending the TAALS rates to Geneva for publication. (F. 308.)⁶ AIIC continued to publish rates for the U.S. Region, provided to AIIC by the U.S. Region, which used the rates voted on by TAALS, until AIIC ceased publishing its "Market Survey" in 1992. (F. 308; CX-17-84.)

2. Recruiting Guidelines

AIIC felt that intermediaries (organizers of interpreters for conferences) would erode interpreters' fees in the private market. According to Christopher Thiery, "once we accept impresarios and professional conference organizers and conference halls as employers, we lose control over the situation and end up by being paid what they decide is good for us. Hence the gradual introduction of the 'direct contract' and 'direct payment' principal" (F. 259.) Mr. Thiery later observed, "We must never forget that when the chips are down an intermediary may well have to cut costs to stay in business. And if we happen to be one of the 'costs,' then that's just too bad for us." (F. 259.)

In 1963, AIIC's 10th Assembly resolved that contracts should be between interpreters and conference organizers. "Step by step, this provision was later included in the Code" and in 1979 into the "Guidelines for Recruiting Interpreters." (CX-206-C.)⁷

⁶ Those rates had been voted on at TAALS meetings (F. 307); about half of the TAALS members were also members of AIIC (CX-3006).

⁷ Five restraints are in the Recruiting Guideline: AIIC's bans on package deals and lump-sum payments, commissions, exclusive agency arrangements, trade names, and comparative advertising. (CX-1-Z-49.)

The Recruiting Guidelines were adopted by AIIC Assembly in 1983 (F. 34), and sent to AIIC members as a binding annex to the 1991 Basic Texts. (F. 32-33.) The same document is also included in the 1994 Basic Texts. (CX-1-Z-47 to Z-50; RX-2 at 61-62, 65-66.) The Recruiting Guidelines have never been repealed. (F. 33.)

3. Abandonment

AIIC has never abandoned its price fixing. (F. 331, 333-34, 532-33.) It stopped publishing rates, removed some rules from its "Basic Texts," and rewrote other rules to avoid antitrust scrutiny. (F. 523, 528.) In 1991, AIIC rejected a proposal to remove its "monetary conditions." (F. 520-21.) AIIC's 1992 resolution reaffirms AIIC's commitment to collective action. (F. 509.) Council members exhorted "skeptics" and U.S. colleagues that the "rights" incorporated into the "monetary conditions" should be "respected in the future as they were in the past." (F. 512.) AIIC made certain that its "old" rules continue to be communicated to its members. (F. 523-33.)

AIIC's 1994 rules did not remove AIIC's monetary conditions; they rewrote them. (F. 523, 528.) Under AIIC's new rules, an interpreter "may ask for the inclusion of" AIIC's form-contract cancellation clause, which contains the same terms as the "removed" AIIC rule on cancellation fees (CX-1-Z-41); depending on length, journeys may "call for the scheduling of [one to three] rest days"; members "shall" receive subsistence and travel expenses unless "the parties agree otherwise"; members "shall request a briefing day whenever appropriate"; and non-working days "that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45, Z-39.) The rewritten "professional address" rule still allows an interpreter to change her domicile only once every six months and then with three months notice. (F. 233.) At its meeting during the 1994 Assembly, NAS "reaffirm[ed] its moral commitment to the concept and application of the principle of professional address." (F. 233.)

In 1994 AIIC introduced "health and quality" language into its team size, working day and non-interpretation duties rules, leaving the substance of the rules unchanged. (CX-279, 527.) In July 1994, the AIIC Council "confirm[ed] the binding character of the Professional Standards." (F. 528.) AIIC's president stated in 1994 that monetary conditions "can no longer be published openly." (F. 529.)

AIIC prepared a "Vademecum," a "pocket compendium of basic AIIC rules and recommendations" for "internal use." (F. 526.) The purpose of the Vademecum is to "speak more openly on financial or related questions." (F. 526.)

AIIC's Vademecum suggests that interpreters should include in their cost estimates the fee elements they included under the old rules: remuneration, indivisible daily rate, commission, travel expenses, subsistence allowances, recording ("copyrights"), cancellation, non-interpretation duties and remuneration for days of travel, rest days, non-working days, and days of briefing, and explains how to calculate those charges. (F. 526.)

AIIC still maintains its standard form contract, which provides a template for members to continue to adhere to AIIC's price fixing rules. (F. 476.) The contract still has blanks for filling in daily remuneration for travel days, rest time, recording, per diem allowances for the period away from the professional domicile, and first class travel. The standard contract's "General Conditions of Work" spell out AIIC's rules about package deals, non-interpretation duties, working hours, recording fees, travel arrangements, and cancellation. (F. 530.)

AIIC's Bulletin continues to explain AIIC's price restraints. Two months after the new rules were adopted, the Bulletin recommended that interpreters tell clients that "interpreters' fees are unchanging." (F. 531.) The June 1993 Bulletin recommended that interpreters negotiate indivisible rates for "conferences of short duration" by saying that "one cannot take other assignments in the course of a free half-day"; negotiate travel day charges by "explaining that the interpreter is at the client's disposal during the travel days"; and "promote our profession without noisy publicity" in light of some countries' prohibitions on comparative advertising. (F. 531.) These recommendations came in reports of a "sales techniques" session that NAS instituted when it met in August 1992 to learn to operate in light of the antitrust laws. (F. 531.)

"Going rates" still exist and remain stable among interpreters. (F. 331, 333-34.) Prices in the years 1992-1995, when AIIC did not publish suggested minimum prices, closely resemble those in 1988-1991. (F. 320.) Published rates rose \$25 per year. (F. 533.)

AIIC continues to negotiate collectively with large international organizations, which govern the pay rates and working conditions for all interpreters working for those employers. (F. 492-97.) AIIC publishes the rates negotiated under its Agreement Sector agreements,

including rates for the United States. (F. 534.) AIIC has collectively entered into an agreement with international federations of labor unions. (F. 494, 535.) That agreement has governed fees and terms for conferences in the United States. (F. 535.) In March 1995, AIIC published a daily rate for the United States for interpreters working for those unions. (F. 535.)

I. AGREEMENT

At the heart of any conspiracy is an unlawful agreement. *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946). The evidence shows agreement by AIIC, the U.S. Region, and the interpreters to enforce its restrictive rules.

A. Conspiracy

An organization controlled by competitors is the agent of the group, and its conduct is a conspiracy of its members.⁸ Respondents' members are competing conference interpreters (F. 453-54), and respondents' conduct in restricting competition constitutes a conspiracy of its members. A code of ethics, alone, "implies agreement among the members of [the] organization to adhere to the norms of conduct set forth in the code." CDA, Slip op. at 10, citing *AMA*, 94 FTC at 998 n.33. Here, AIIC's members voted on the Association's Basic Texts and agreed to abide by "the rules and regulations of the Association" as a condition of membership. (F. 43, 48-52, 63-67.)

1. Vote

The restraints were created by majority vote at AIIC General Assembly meetings attended by U.S. members. (F. 29-30, 37-38.) AIIC's rules are in the "Basic Texts," which include the Code of Professional Ethics and the Standards of Professional Practice. (F. 25.) Attached to the Basic Texts are binding annexes: AIIC's Guidelines for Recruiting Interpreters, Staff Interpreters' Charter, and

⁸ *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988); *National Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978) ("Professional Engineers"); *American Medical Association*, 94 FTC 701, 997-98 (1979) ("AMA"), *aff'd* by an equally divided Court, 455 U.S. 676 (1982); *Goldfarb*, 421 U.S. at 781-82.

Videoteleconferencing rules. (F. 28.) AIIC members and candidates sign commitments that they will follow the rules adopted by AIIC.⁹

The 1994 Code of Professional Ethics states that members are bound to respect the Code in their work as conference interpreters.¹⁰

(F. 51.) Members are bound by the rules and follow them, recruiting other interpreters to follow AIIC rules. (F. 52, 58.)

AIIC enforces its work rules with penalties for breach, including warning, reprimand, suspension, and expulsion. (F. 62.) Members charged with violating the rules have been investigated and penalized, or have resigned. (F. 66, 68, 229-30, 301, 316.) The AIIC Council grants "waivers," to suspend a particular rule to a specific individual. (F. 56-57.)

2. Enforcement and Understanding

AIIC and its members understood that all of the price-fixing rules applied in the United States. (F. 26, 52, 362.) From 1972 until 1982, and again from 1988 through 1991, AIIC published rates specifically applicable in the United States. (F. 93, 516-21.) AIIC stated that "members all know what the local rate is and any bargaining with clients can only be upwards and not downwards." (F. 108.) Respondents successfully pressured the 1984 Los Angeles Olympics to meet AIIC rates and terms in the United States. (F. 108, 344-60.)¹¹

Wilhelm Weber was threatened because of the terms on which he recruited interpreters to work at the 1984 Olympics (F. 359), and for working without charging phantom travel charges. (F. 228-29.) Jeannine Lateiner was investigated for hiring permanent interpreters rather than local freelancers. (F. 285.) AIIC attempted to expel U.S. Region member Marc Moyens for violating the professional address rule and failing to charge for travel expenses, in connection with work in Europe, and reprimanded him when the expulsion vote failed to obtain a two-thirds majority. (F. 230.)

⁹ Applicants for membership in AIIC follow AIIC's rules for 200 working days prior to application. (F. 44-47.) Members can object to applicants' membership for not following AIIC's rules. (F. 46, 359.) Applicants must sign a pledge that they will continue to abide by the AIIC Code of Ethics and Standards. (F. 44.)

¹⁰ "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of this Association or not, any working conditions contrary to those laid down in this Code or in the Professional Standards." (CX-1-Z-39.)

¹¹ Enforcement is not an element of conspiracy. *United States v. National Ass'n of Real Estate Bds.*, 339 U.S. 485, 488 (1950).

AIIC also used rumor and blacklisting to secure members' adherence to the rules. Interpreters feared being labeled as undercutters. (F. 72, 106.) When interpreters deviated from the AIIC rules, they kept their agreement secret, for fear of retaliation by other interpreters. (F. 73, 106, 148.) Conference interpreters rely on their colleagues for referrals. Interpreters fear being blacklisted by colleagues because much of their referral work comes from other interpreters. (F. 71-72, 106.) In 1989, AIIC's U.S. Region and AIIC warned their members about three intermediaries who did not follow AIIC rules, hinting that some regions have actually decided to refuse work from these agencies. (F. 88.) The U.S. Region also "remind[ed] AIIC in general that it never had the petite equipe. . . . It is determined to expose all outside interpreters who accept this practice in our region." (CX-405-C.) AIIC leaders warned U.S. members against moonlighting. (F. 283.)

In 1987, AIIC's then-president stated, in a speech about work rules that if AIIC no longer had a "universally valid Code of working conditions," clients would benefit by playing interpreters against each other "in a poker game of undercutting." (CX-245-D.) Interpreters cite the rules in negotiating with clients. (F. 54-55, 59.)

AIIC's members, including AIIC's U.S. members, agreed to join AIIC and be bound by its rules. They met to discuss prices and price-related agreements, and voted on those prices and agreements and set minimum daily rates. (F. 98, 100, 516-19.)¹² They adhered to the prices published by AIIC 90% of the time. (F. 319.) Such simultaneous price moves indicate conspiracy. (*United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 182 (3d Cir. 1970) ("American Standard"), *cert. denied*, 401 U.S. 948 (1971).)

B. U.S. Region's Participation

AIIC is a professional association comprised of regions. (F. 444-45.) The U.S. Region nominated officers to serve as members of AIIC's governing Council. (F. 447.) The AIIC Council recommends amendments to AIIC's Basic Texts for ratification by vote of the entire membership at its triennial General Assemblies. (F. 39.) The Council issues interpretations of respondent's rules, and institutes

¹² The meetings and votes on rates took place at TAALS meetings (F. 307) and AIIC meetings (F. 98, 100.) Intermediaries observed that in the 1980's, the "going" rate represented the TAALS/AIIC rate, charged by all interpreters, regardless of the affiliation. (F. 328-34.)

disciplinary proceedings against interpreters who violate respondent's Basic Texts or any other rule. (F. 39, 61-62.)

AIIC members in the United States adhere to the rules. (F. 58-59, 85-89.) The U.S. Region delegates vote at the AIIC General Assemblies and Councils that created the AIIC fees, standards and codes of ethics. (F. 80.) It has also reminded U.S. members of their obligations to follow the AIIC rules. (F. 82.) The U.S. Region's members adopted a "gentlemen's agreement" providing that members should not charge below a stated price. (F. 77, 516.) The U.S. Region threatened to "expose all outside interpreters" who did not follow its staffing strength rules. (F. 171.) The U.S. Region enforces AIIC's rules. (F. 83.)

The U.S. Region participated in the anticompetitive conduct in this case.

II. ANTITRUST LAW AND AGREEMENTS AMONG COMPETITORS

Antitrust law prohibits agreements among competitors that "unreasonably" restrain trade, "either from the nature of the contract or act or where the surrounding circumstances were such as to justify the conclusion" that they are unreasonable. *Standard Oil Co. v. United States*, 221 U.S. 1, 58 (1911). AIIC's restraints are unreasonable restraints of trade by their nature.

A. Per Se Violations

The *per se* rule against price fixing condemns agreements among competitors intended to affect prices, and "the machinery employed by a combination for price-fixing is immaterial." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940). The restraints in this action were adopted as part of AIIC's price fix, and have the tendency to support that price fix.

CDA rejected a reading of Mass. Board that price fixing *per se* violations of the antitrust laws can be defended by efficiencies. Slip op. at 38 n.26. CDA makes clear that *per se* unlawful conduct may not be defended on the basis that it is reasonable, efficient, procompetitive or harmless. Slip op. at 15-16.

Price fixing, output fixing and market allocations can be categorically condemned:

In sum, price-fixing cartels are condemned *per se* because the conduct is tempting to businessmen but very dangerous to society. The conceivable social

benefits are few in principle, small in magnitude, speculative in occurrence, and always premised on the existence of price-fixing power which is likely to be exercised adversely to the public.

7 P. Areeda, *Antitrust Law* ¶ 1509, at 412-13 (1986); *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 434 n.16 (1990) ("SCTLA").

1. Combined Effect

Respondents prevented competition on conference interpreting by agreements that required: minimum daily rates; all interpreters at a conference paid the same; an "indivisible day" to prevent lower remuneration for shorter meetings; standard team sizes and length of day rules to equalize the work performed for the daily rate; same pay for travel, rest, briefing, non-working days (to equalize payments to interpreters); uniform per diem allowances and travel expenses, rather than actual cost; and uniform cancellation and recording fees. Respondents' "professional address" rule, with prescribed fees, fixed prices and divided markets, as did AIIC's rules on pro bono services and moonlighting. Respondents' rules extended AIIC's rules to all interpreters working with an AIIC member, and respondents coordinated its agreement with TAALS.

In order to understand the combined effect from all practices used by respondents to aid a price fix:

plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. "[T]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *United States v. Patten*, 226 U.S. 525, 544. "[I]n a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it."

American Tobacco Co. v. United States, 147 F.2d 93, 106 (6th Cir. [1944]); *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962); *Fort Howard Paper Co. v. FTC*, 156 F.2d 899, 905 (7th Cir.), *cert. denied*, 329 U.S. 795 (1946). Acts in aid of the price fix include agreements to specify product quantity or quality, *National Macaroni Manufacturers Ass'n v. FTC*, 345 F.2d 421, 426 (7th Cir. 1965); reporting to detect cheaters, *American Column & Lumber Co. v. United States*, 257 U.S. 377, 399, 410

(1921); and boycotts aimed at obtaining a higher price. *SCTLA*, 493 U.S. at 422-23.

2. Monetary Rules

a. Fees

The core of this case is the agreement between AIIC's members not to charge less than a daily rate. This falls squarely within the *per se* rule against price-fixing. *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 648 (1980) (*per curiam*).

(1) Minimum rates

AIIC required its members working in the U.S. private sector to charge the daily rate. (F. 90, 92-93.) From 1972 until 1981, and again from 1988 until 1992, respondents set rates for the United States. (F. 92.) Since the AIIC Code requires AIIC members to "respect local conditions" (CX-409-A), the U.S. Region decided in 1977 that AIIC's rates would be identical to TAALS' rates (F. 100) -- as they were whenever AIIC published rates from then until 1992. (F. 93.)

AIIC began calling its rate sheet a "Market Survey." In 1982, to escape antitrust scrutiny, the U.S. Region members adopted a "gentlemen's agreement" to adhere to rates not published by AIIC. (F. 516.) Since 1992, when AIIC ceased publishing rates, there continues to be a "going rate," and U.S. Region members continue to adhere to a rate that rose \$25 a year in 1992, 1993 and 1994. (F. 533.)

AIIC's agreements with "Agreement Sector" consumers also include rates and other terms. (F. 492-97.) These include the International Trade Secretariats. (F. 494.) These agreements are illegal *per se*. *NCAA*, 468 U.S. at 106-107, 113.¹³

(2) Same team, same rate

Until 1992, AIIC's rules provided that "any member of the Association asked to work in a team of interpreters shall only accept the assignment if all the freelance members of that team are contracted to receive the same rate of remuneration." (F. 150.) U.S.

¹³ Complaint counsel do not contend that the Commission's jurisdiction extends to enforcement of the antitrust laws against agreements to which the United Nations or other intergovernmental organizations are parties. (Proposed Findings at p.44, n.31.)

Region members observed this rule. (F. 153.) Intermediaries understood the AIIC rate to mean that everyone is charged that rate. (F. 329, 339.) They paid interpreters -- whether AIIC members or not -- AIIC's rate.¹⁴

The "same rate" rule prohibits an individual interpreter from competing on price for a place on a team. AIIC requires more than one interpreter for any simultaneous interpretation assignment in the United States exceeding 40 minutes (F. 86, 180, 423), and an individual interpreter cannot offer a lower fee than the fee acceptable to the rest of the team. The rule also prevents individual interpreters from charging more than their team-mates. (F. 156.) This rule removes the incentives an interpreter might have to strengthen skills and compete on quality. (F. 152, 154, 157.) It impedes entry, making novices as expensive as seasoned interpreters. (F. 154, 157, 250.) By comparison, the United Nations pays beginners less than experienced interpreters, providing an opportunity to gain experience. (CX-220-M.)

AIIC's same team, same rate rule is illegal *per se*. *Sugar Institute v. United States*, 297 U.S. 553, 601-02 (1936) It constitutes an agreement to provide the same rewards to all practitioners "regardless of their skill, their experience, their training." *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 348 (1982) ("Maricopa").

(3) Non-working days

Since 1972, AIIC's rules have specified when interpreters would be paid for travel time (F. 133), briefing days (F. 135), rest days after travel (F. 134), and weekends or other days off during a conference. (F. 132, 136.) Different interpretations of these rules resulted in competition among AIIC members. (F. 143.) At a 1980 NAS meeting, the chairman called for a rule to "avoid the disastrous effect of this sort of bargaining." (CX 223-L.)

In 1981, a complaint against a member concerning non-working days was found to be "without foundation because the member concerned succeeded in amending the contracts." (F. 145.) Another AIIC member, Alain Misson, asked a client to amend his contract. Mr. Misson had inadvertently failed to charge an extra day's fee for

¹⁴ If one AIIC member is on a team with non-AIIC members all team members must be paid the same. (F. 150-51, 155, 339.)

time spent traveling, and he did not want to undercut his AIIC colleagues; the client agreed. (F. 148.)

In 1984, the Los Angeles Olympic Organizing Committee ("LAOOC") sought to reduce the costs for interpreters at the Olympic Games by not paying interpreters fees for non-working days. (F. 146, 344.) AIIC secretary general Patricia Longley wrote to Mr. Weber instructing him that contracts did not conform to AIIC's rules on rest and travel days. (F. 352.)¹⁵ Mr. Weber told the LAOOC that it was "part of our code of professional conduct and that it was also current practice in the profession," and the Committee agreed to pay for non-working days. (F. 146, 345, 356-58.)

Intermediary Joseph Citrano testified that interpreters insist on being paid a half day's travel in each direction, on top of their full day's interpretation fee, when they work and travel on the same day. (Citrano, Tr. 552-53.) Interpreters viewed the rules "like a bible. That was how the business was conducted." (F. 147, 335.)

AIIC's rules requiring payment for non-working days are horizontal agreements to fix prices. *Catalano*, 446 U.S. at 647-48.

(4) Per diem

AIIC required that interpreters charge their clients a per diem for the period away from the interpreter's professional domicile. (F. 110-16, 536.) The rule prevents discounting: AIIC was concerned that interpreters working for two clients holding consecutive conferences might try to split expenses as a "sales argument," which would "constitute unfair competition"; AIIC's freelance interpreters wanted to avoid the "disastrous effect" of "bargaining" away the per diem. (F. 118.)

Fixing any element of price, including per diem, is *per se* illegal price-fixing. *Catalano*, 446 U.S. at 648.

(5) Travel

AIIC's rules required that "every contract signed with a member of the Association for a conference . . . must include payment for travel. . . ." (F. 287.) AIIC specified first class air travel and unrestricted tickets. In lieu of first class airfare, the interpreter was "entitled to" rest days, "equated to non-working days and

¹⁵ TAALS and AIIC coordinated their efforts to pressure Mr. Weber and the LAOOC. (F. 349, 351, 355.)

remunerated at the same rate." (CX-2-Z-47.) "For travel by air . . . business or club class, or, in its absence economy/tourist, may be accepted for journeys of less than nine hours." (CX-2-Z-48.)

By agreeing on travel expense, AIIC and its members have fixed prices in violation of the antitrust laws. *Catalano*, 446 U.S. at 645.

(6) Cancellation

AIIC's rules require "that once a commitment has been made to an interpreter . . . full payment is due in the case of a cancellation." (Weber, Tr. 1235.) A cancellation clause is in the standard AIIC contract. (CX-1-Z-41.) AIIC members consider an oral offer and acceptance to be a basis for collecting cancellation fees. (F. 243.)

The negotiations for the 1984 Olympics demonstrate the use of AIIC's cancellation clause. (F. 242.) When Mr. Weber first began organizing interpretation teams for the Olympics, "negotiations were still going on with the Eastern Bloc countries about a possible boycott . . . this is why [the LAOOC] did not want to commit to a 100% cancellation clause this early." (Weber, Tr. 1235.) Mr. Weber and LAOOC agreed on a staggered cancellation clause as a compromise. (F. 356.) Albert Daly, AIIC's president, wrote to Weber to say that he would hold Weber "personally responsible" for all the fees due AIIC interpreters if any contracts were canceled. (F. 354.) Mr. Weber ultimately did persuade the LAOOC to conform its contracts to AIIC's rules, including the cancellation clause, and was congratulated for that by Jean Neuprez, AIIC's U.S. Region council member. (F. 356-57.)

AIIC's agreement to use a standard cancellation clause is price-fixing, illegal *per se*. The clause prevents competition on cancellation fees among interpreters who might be willing to take greater risks of cancellation. (Wu, Tr. 2114-16.) Like the credit terms in *Catalano*, AIIC's rule on cancellations is an agreement to place on the purchaser a cost (or risk) of the transaction.

(7) Recording

AIIC and its members have agreed to charge fees for recordings: 100% of the daily fee, per interpreter per day, if the recording is to be sold; 25% of the daily fee if the recording is for internal, non-commercial purposes. (CXT-261-S.) AIIC reaffirmed the mandatory nature of the fee in March 1994, almost two years after AIIC

purportedly abandoned fixing prices. An amendment proposed by the Canadian Region, aimed at replacing the rule's "must" with "should," was rejected at the 1994 Assembly. (CXT-279-K-O.)

This rule is an agreement to charge for recording, and constitutes *per se* illegal price fixing. *Catalano*, 446 U.S. at 647-48.

(8) Ban on commissions

AIIC's Guidelines for Recruiting Interpreters prohibit members from accepting or paying commissions. (F. 251.) The rule prevents jobs from going to interpreters willing to pay the most commissions. (F. 252.) A 1981 meeting between AIIC members and representatives of the conference industry concluded that an intermediary's organizing fee must be charged to the conference sponsors, and must be "clearly shown as distinct from the interpreters fees and never deducted from the interpreters fees." (F. 253.) In March 1994, AIIC advised members to explain to hotel employees and technicians who usually receive commissions "that AIIC members do not do it because they would be obligated to raise their price" -- rather than absorb the commissions -- "and everyone would lose." (CXT-279-Z-2 to Z-5, p.2.)

AIIC's ban on the payment of commissions is an agreement to refrain from giving discounts from the fixed minimum rate, *per se* illegal. *Catalano*, 446 U.S. at 649.

(9) Restrictions on pro bono work

AIIC's rules required interpreters donating their services to pay their own travel and subsistence expenses. (F. 247-48.) Student interpreters worked at the 1984 Olympics without fee. They violated the AIIC rule because "the LAOOC paid the student interpreters' air fare from Monterey to Los Angeles." (Weber, Tr. 1232-33.) AIIC officers warned Mr. Weber about these student interpreters. (CX-236-G.) Jean Neuprez, then AIIC's U.S. Region Council Member, also wrote to Mr. Weber; warning that his actions "would go against a number of principles and rules of our profession." (F. 249.)

This rule prevents AIIC members from discounting their services by accepting "gifts" in lieu of payment (at the mandatory minimum rate), and from discounting their services unless they also pay their expenses. By prohibiting discounts and free services, the rule is a *per se* violation of the antitrust laws. *Catalano*, 446 U.S. at 647-48.

The rule also deters entry by discouraging new interpreters from working away from their professional address without charge. (F. 250.) Like the professional address rule, the pro bono rule divides markets and protects local interpreters, and is a *per se* violation of the antitrust laws. *Palmer v. BRG*, 498 U.S. 46, 49-50 (1990).

b. Unit of output -- a day's work for a day's fee

AIIC rules specify the unit of output for the daily rate, preventing AIIC members from competing by working harder, longer, in smaller teams. These output restrictions are unlawful *per se*. *NCAA*, 468 U.S. at 100. Output fixing is price fixing: "This constriction of supply is the essence of 'price-fixing,' whether it be accomplished by agreeing upon a price, which will decrease the quantity demanded, or by agreeing upon an output, which will increase the price offered. . . . The horizontal arrangement among these competitors was unquestionably a 'naked restraint' on price and output." *SCTLA*, 493 U.S. at 423.

(1) Indivisible day

AIIC's rules provided that "remuneration shall be on an indivisible daily basis." (F. 120.) This rule requires an interpreter to charge a full daily rate regardless of the time worked. (F. 120-22.) The rule and the "normal working day," and team size rules fix the unit of output for which the minimum daily rate is to be paid.

This indivisible day rule has been followed in the United States. (F. 338.) Intermediaries understood that the AIIC rate was a rate for a day's services, regardless of the actual time required. (F. 127.) In 1987, the U.S. Region voted not to seek a waiver that would have allowed interpreters to charge 80% of a day's rate for a short meeting. (F. 125.) The rule is *per se* price fixing. *Catalano*, 446 U.S. at 645.

(2) Hours and team size

AIIC's rules detail team size, setting the minimum number of interpreters in simultaneous, consecutive, and whispered interpretation for conferences using specified numbers of languages. (F. 159-64, 171-75.) AIIC also defines the interpreter's "normal working day" and shorter maximum working days when teams are smaller, the interpreter is using portable electronic equipment, or for

video conferencing. (F. 158, 271, 36.) These rules define the unit of output for which an interpreter charges a daily fee.

When AIIC adopted the current team size tables in 1991, the tables set the number of interpreters at AIIC's "standard rate." (F. 159-62, 165, 169, 175.) When working alone, for example, the interpreter was instructed to impose a surcharge. (F. 170.) According to AIIC's current team size table, a two-language conference requires three interpreters, and a three-language conference requires five interpreters. For conferences in four languages or more, AIIC's rule requires two interpreters per conference language. (F. 160, 163, 177.)

AIIC's rules define a "normal working day" of not more than two sessions a day of 2 1/2 to 3 hours. (F. 158, 165.) "Shorter meetings" -- defined by the U.S. Region to be no more than four hours (F. 174, 177) -- may need one fewer interpreter than required for the two or three-language conference. (F. 160, 174.) AIIC allows interpreters in the United States to work alone for up to 40 minutes. (F. 86, 177.) Thus, for a bilingual meeting in the United States, AIIC specifies that one interpreter may work alone for up to 40 minutes, two interpreters may work the same meeting for up to four hours, and three interpreters can work up to six hours. (F. 86, 122, 177.) Interpreters using portable equipment are instructed not to work more than two hours and those involved in video conferencing not more than three hours. (F. 36, 271.) Under AIIC's rules, the interpreter tends to work less than half time, since interpreters take turns and since the floor language typically is not interpreted by that language's booth. At a six-hour bilingual meeting staffed with three interpreters, each interpreter will work two hours. (F. 176.) When a "short" bilingual meeting (up to four hours in the United States) is staffed with two interpreters, each is working on the microphone for two hours. (F. 176-77.) In conferences in four languages, each interpreter spends no more than three hours a day at the microphone. (F. 176.)

From 1972 until 1991, AIIC maintained two rates of remuneration for two team size tables. The rate paid to each member of the smaller team was higher than the rate paid to each member of the larger team, since the small team's workload is divided among fewer interpreters. The small team rate was 160% of the large team rate. (F. 170.) Under these complex team size tables and rates consumers received offers for different numbers of interpreters (and different costs). (F. 172.) In the 1970's, the U.S. Region voted to ban small teams in the United States. (F. 171.) AIIC's Council proposed in 1974 to adopt a single universal team size/rate, to eliminate competition and market

deterioration. (F. 173.) The 1979 General Assembly was unable to reach a consensus to increase the staffing on the two-into-two language conference (CXT-20, p.19), but standardized the length of the work day by adopting the current six-hour rule. (F. 158.) In 1981, AIIC adopted a new rate and team size table. (F. 174.) The new table increased the minimum number of interpreters for a bilingual meeting from two to three, and for a three-language conference from four to five interpreters. However, the "standard rate" was set to equal the former "small team" rate -- rather than the lower, large team rate. Under the new AIIC team size table for a bilingual meeting, consumers had to pay for a third interpreter at the "standard" rate when it formerly had paid for only two interpreters. Most of the regions had abolished the old small team size by 1991. (F. 175.) AIIC dropped the larger base rate team over the objections of the U.S. and Canadian Regions, who continued to require six interpreters for a three language conference, one more interpreter than the standard team size table required. (CX-250-E-F.)

The history of team size and hours shows that AIIC revised its rules to eliminate competition and to increase interpreters' incomes. Until 1994 the team size tables specified the daily rate charged for each interpreter on the team. The work rules set the threshold for collecting overtime. Interpreters can work longer hours and on smaller teams than prescribed by AIIC, charging more. (F. 166-68, 170.) AIIC members relied upon the team size tables and length of day rules to charge additional fees when they worked longer hours or on smaller teams. (F. 165-68.)

AIIC members lodged complaints involving alleged violations of the team size and length of day rules against Jeannine Lateiner, Wilhelm Weber, Marc Moyens and Janine Hamann-Orci. (F. 181-82, 306.) These complaints were published among AIIC members and other interpreters, and could have a chilling effect on anyone considering violating AIIC's team size and length of day rules. (F. 181-82, 306.)

AIIC's team size and hours rules are *per se* violations of the antitrust laws. They are agreements to charge additional fees when work exceeds specified amounts. *Catalano*, 446 U.S. at 647-49. They are agreements intended to affect price. *Socony-Vacuum*, 310 U.S. at 223. And they are agreements fixing units of output. *SCTLA*, 493 U.S. at 423.

(3) Other services ban

Since 1972, AIIC Codes have stated that "members of the Association . . . shall not perform any other duties except that of conference interpreter at conferences for which they have been taken on as interpreters." (CX-1-Z-39.) There is slight evidence that members follow this rule. (F. 277; Luccarelli, Tr. 1672; CX-301-Z-26.) Perhaps not surprisingly, interpreters use it to avoid mundane, after-hours tasks. Joseph Citrano testified that AIIC members are a little more rigid about not making themselves available for extra services, such as helping a delegate check into the hotel or attending a cocktail party. (Citrano, Tr. 523-24; F. 279.) The State Department's Harry Obst, however, testified that "in the diplomatic environment situations arise when unexpectedly a text has to be drafted and translated on the spot for passing to the media or . . . another government wants to see it in their language. And if no translators are present we would expect those of our conference interpreters who also can handle written translations well to help with that chore and they usually do." (Obst, Tr. 301; F. 278.)

The allegation concerning a conspiracy to prevent interpreters from providing other services should therefore be dismissed.

(4) Double-dipping

AIIC's Code provides that "members of the Association shall not accept more than one assignment for the same period of time." (F. 292.) At least part of the intent behind this rule was to avoid overbooking, leading to client deception and leaving a team shorthanded. (F. 294.) The evidence shows that the rule against double-dipping is generally ignored. (F. 295-96.) The allegation that respondents have conspired to prevent double-dipping should therefore be dismissed.

c. Market allocation

(1) Professional address

AIIC rules require that members declare a single professional address, keep that address for at least six months, and provide three months advance notice before changing their professional address. (F. 212.) The professional address determines fees for travel, per

diem subsistence, and transportation (F. 217) -- whether or not that travel is taken or those expenses incurred:

--Margareta Bowen charged the New York Stock Exchange for travel from Vienna, Austria to New York and back, even though she only traveled from Washington to New York and back. (F. 223.)

--Wilhelm Weber was accused of violating the professional address rule for failing to charge for travel between Geneva, Switzerland and San Francisco, even though he only traveled from Monterey, California to San Francisco. (F. 229.)

--U.S. Region member Marc Moyens worked for two different employers in Europe without charging each for transatlantic travel from Washington. Mr. Moyens was reprimanded, and resigned from AIIC. (F. 230.)

The professional address rule divides markets. (F. 224.) Thus:

--Claudia Bishopp, then U.S. Region Council member, told one member that he was violating AIIC's rules by working in New York without "officially notify[ing] AIIC" of his change of address. The member was working in New York "for about a year" without charging each client for travel from his professional address in Washington. (F. 231.)

--Ms. Bishopp advised another member, who wanted to work for the World Bank after she had moved to Washington from Paris but before her professional address "officially change[d]," that she should either seek permission from AIIC or, "failing this, . . . telephone all other colleagues with your language combination in the Washington area, to verify that they were all indeed working on that date." (CX-1471.)

This agreement to divide markets is *per se* unlawful under the Sherman Act. *Palmer v. BRG*, 498 U.S. at 49-50. AIIC's rules regarding travel, per diem and payment for travel days, restrain interpreters from competing by absorbing travel costs or foregoing payment for travel days, or -- as in the case of Mr. Moyens -- splitting travel costs between clients. Charging "phantom freight" to coordinate prices is an unfair method of competition. *FTC v. Cement Institute*, 333 U.S. 683, 722 (1948).

(2) Moonlighting

AIIC's "Staff Interpreters' Charter" provides that "staff interpreters should . . . act as interpreters outside their organization only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (F. 281.) The rule requires AIIC members, when recruiting interpreters, to "bear in mind the following priorities: . . . freelance interpreters

rather than permanents having regular jobs as such." (F. 280.) The moonlighting rule protects the interests of freelance interpreters. (F. 287.)

AIIC's rules regarding moonlighting mean that permanent staff interpreters should not perform freelance work unless no freelance interpreter is available. (F. 281.) AIIC enforced the rule, suspending three members in Switzerland in 1984. (F. 285.)¹⁶ AIIC members in fact adhered to the anti-moonlighting rules, and attempted not to compete with AIIC's freelance members who were unemployed. (F. 289.)

AIIC's moonlighting rules constitute an agreement between staff interpreters and freelancers that staff interpreters will not compete with freelancers. This agreement by staff interpreters not to compete in the freelance market, like the professional address rule, is a *per se* violation of the antitrust laws.

d. Price advertising

Article 4(b) of the Code of Ethics provides that AIIC members "shall refrain from any act which might bring the profession into disrepute." (CX-1-Z-38.) Although Article 5 permits members to "publicize the fact that they are conference interpreters and members of the Association,"¹⁷ that article "exclude[s] activities such as commercial forms of one-upmanship." (F. 297.) The article prohibits AIIC members from advertising that their services are less expensive than those of other AIIC members. (F. 301-02.)

In 1994, an AIIC committee of inquiry concluded that a Canadian member of AIIC committed a "flagrant violation" of the Code by writing to a potential client that it would be less expensive to hire non-AIIC members for which the interpreter received a warning. (F. 301.) That same year, AIIC suspended another member for writing to an international organization and offering to work for a salary -- according to AIIC's president, an act that might bring the profession into disrepute. (F. 301.)

AIIC's Code of Ethics prohibits comparative price claims. Restrictions on price advertising are "naked attempt[s] to eliminate price competition and must be judged unlawful *per se*." CDA, slip op. at 19.

¹⁶ AIIC protects freelance members by discouraging international associations from hiring their own retired staff members on a freelance basis. (CS-230-M.)

¹⁷ Until 1991, AIIC prohibited any advertising by members. (F. 300.)

B. Rule of Reason

While most of the challenged restraints are *per se* violations, some, with a less obvious effect on competition, should be judged under the rule of reason. The issue here is whether the challenged restraint promotes or suppresses competition. *Professional Engineers*, 435 U.S. at 691. Its effect on other objectives (safety, quality, prevention of ruinous competition) is irrelevant.¹⁸

1. Competitive Effects

a. Portable equipment

Since 1972, AIIC prohibited the use of portable equipment ("bidule"),¹⁹ except "visits to factories, hospitals and similar establishments or remote field visits." (F. 270-71.) The rule limits the use of portable equipment to short meetings of no more than two hours, with no more than twelve participants. (F. 271.) In 1990, AIIC's NAS agreed that "while the 'bidule' serves a purpose in exceptional circumstances, its use must be strongly discouraged." (CX-259-U.) Portable equipment is much less expensive than using a booth, partly because no technician is required. (F. 273.)

Limiting the use of portable equipment is a direct restraint on output. (F. 275.) The limitations forbid the use of the technology from potential users of portable equipment with more than twelve conference delegates. (F. 271.) AIIC's rules restricting the use of portable equipment constitute anticompetitive restrictions on the "package of services offered to customers." *IFD*, 476 U.S. at 459. "Absent some countervailing procompetitive virtue . . . such an agreement limiting consumer choice by impeding the 'ordinary give and take of the market place' . . . cannot be sustained under the Rule of Reason." *Id.*

¹⁸ *Professional Engineers*, 435 U.S. at 695; *NCAA*, 468 U.S. at 116-17; *IFD*, 476 U.S. at 462-63; contra, *United States v. Brown University*, 5 F.3d 658, 672 (3d Cir. 1993) (Economic impact on consumers less predictable when professional association adopts restraints motivated by ethical or public service norms; not applicable, however, where the parties have strong economic self-interest, 5 F.3d at 667.)

¹⁹ The bidule is a non-booth, conference interpretation system consisting of headsets for the conference delegates and microphones for the interpreters. (F. 269.)

b. Ban on firms

AIIC imposed restraints that prevent integration of interpreters into commercial firms. Three of those restraints are challenged here: AIIC's prohibitions of exclusivity arrangement, trade names and package deals.

The Guidelines for Recruiting Interpreters, including the rules on exclusivity, trade names and package deals, were designed to prevent intermediaries from "establish[ing] themselves in the field." (CX-206-C; F. 257.) Those Guidelines prohibit exclusive relationships between interpreters and intermediaries. (CX-1-Z-49; F. 262.) The Guidelines also prohibit members from selling interpretation services as part of a package deal. (F. 255.)

AIIC's prohibitions of trade names, exclusivity and package deals prevent interpreters and intermediaries from integrating into commercial firms. (F. 264.) Those prohibitions are motivated by a fear that competition among intermediaries will reduce AIIC's control of the market, and thereby reduce interpreter revenues. (F. 259.) The formation of firms could improve interpreters' abilities to differentiate themselves in the minds of consumers. (F. 264.) These restrictions on commercial practice reduce product heterogeneity, which makes it easier for members to reach and maintain pricing agreements. (F. 264.) By keeping interpreters from adopting what may be more economically efficient business formats the restraints have an adverse effect on competition. *AMA*, 94 FTC at 1018.

Respondents did not proffer any efficiency justification for these practices; therefore, these AIIC restraints on trade names, exclusivity and package deals violate Section 5.

c. Advertising ban

The AIIC rules prohibit AIIC members from claiming that they are better interpreters than other AIIC members. Members believed that this provision means that interpreters cannot disparage their colleagues in order to get work. (F. 298.)

Prohibitions against non-price advertising can be unlawful under the rule of reason. *CDA*, slip op. at 38-39. Analysis can be "simple and short." *Id.* at 25. The Commission "evaluates comparative advertising in the same manner as it evaluates all . . . industry codes and interpretations that impose a higher standard of substantiation for

comparative claims than for unilateral claims. . . ."²⁰ AIIC's bans on comparative quality (and other) advertising are not limited to prohibiting false or misleading advertising. AIIC's rules prohibit truthful quality claims -- even those claims that could be substantiated. The breadth of AIIC's rule, the likely anticompetitive effects of the advertising restraints, and the absence of any proffered justification demonstrate that this advertising restraint violates Section 5.

2. Efficiency Justification

Not all conceivable justifications for agreements among competitors are "efficiencies." *Professional Engineers*, 435 U.S. at 695. Public safety, interpreter health, or quality of interpretation, are not efficiencies. *SCTLA*, 493 U.S. at 423-24; *IFD*, 476 U.S. at 463. The argument that shorter hours make better car salesmen was held implausible in *Detroit Automobile Dealers*, 111 FTC 417, 498 n.22 (1989), *aff'd in part and remanded*, 955 F.2d 457 (6th Cir. 1990), *cert. denied*, 506 U.S. 973 (1992). Moreover, the proffered justification must be tailored to the restraint. CDA, slip op. at 33.

a. Workload

Respondents argue that their rules limiting interpreters' workloads (hours, team size, double-dipping and moonlighting) promote interpreters' health and the quality of their interpretation.

(1) History

The rule-of-reason analysis directs us to look at the "history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained." *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918). Historical examination may help us predict the restraint's consequences.

Respondents' expert Dr. Moser-Mercer, noted a 1957 memorandum of the UN Medical Health Officer and claimed that the six-hour work rule arose from practice at the United Nations. However, that memorandum recommends against any uniform

²⁰ CDA, slip op. at 35.

workload rules for interpreters, and urges instead that workload be handled on an individual basis. (RX-668 at 2.)

At the 1994 AIIC General Assembly, members resisted "deregulation" of team size tables and length of day rules even after AIIC's president acknowledged that the working conditions may involve antitrust problems. (F. 511-12.) The members feared loss of "our most precious professional attainments," including minimum team strengths. In 1994, AIIC rewrote its rules to survive antitrust scrutiny, and adopted the self-serving preambles on which it now relies. (F. 191.)

(2) Quality and health

The U.S. State Department has not found a decline in quality when interpreters are working more than six hours and expects interpreters to work as long as needed at the conference. (F. 198.) The European Commission of the European Union -- the world's largest user of conference interpretation services (Moser-Mercer, Tr. 3540/12-15) -- allows interpreters to work up to ten hours a day. (F. 196.) Other international organizations require interpreters to work more than AIIC's "normal working day." (F. 195.) Dr. Moser-Mercer testified that the length of day rules and team size tables in all of these AIIC agreements assure health and quality. (Moser-Mercer, Tr. 3540-41.) If the heavier workload rules found in AIIC's agreements with these international organizations do not jeopardize quality or impair health,²¹ respondents' lighter workload rules for the non-agreement sector cannot be reasonably necessary to maintain quality and protect interpreter health.

(3) Science

There are no studies showing that performance falls during a working day or when interpreters work outside the team strength tables. (F. 192.) No studies show a link between adverse health affects and working longer than six hours a day as a conference interpreter. (F. 192.) AIIC's members were not aware of any studies supporting their health and quality claims other than the UN Medical Officers' 1957 memorandum. (F. 194.) As noted at a 1995 AIIC Budget Committee meeting, the health evidence supporting AIIC's

²¹ European members (constituting most AIIC members) work more than 60% of the time in the Agreement Sector; members in the United States and Canada work in the Agreement Sector 45% of the time. (CX-285-G.)

claims in the FTC proceeding is "flimsy, to say the least." (CX-1658-G.)

Interpreters should be able to work longer hours and in small teams, so long as the interpreter has an opportunity for occasional breaks. Dr. Parasuraman found that air traffic controllers and commercial pilots performed more demanding tasks than conference interpreters, and can perform those tasks for eight to ten hours without a decline in performance or injury to their health.²² (F. 207-08.) Based upon those studies, Dr. Parasuraman concluded that interpreters should be able to work at least eight to ten hour a days without risk of substantial declines in quality or risk to their health. (F. 209.)

(4) Connection

Respondents have failed to demonstrate a connection between workload and quality or health. Even if such a connection were shown, AIIC's workload rules are broader than needed to advance that purpose. There is a wide range of interpreters and markets that affect interpreter performance and health. One rule cannot fit all. (F. 199-200.) AIIC's team size table and length of day rules are not set for the "fittest" but for the great majority of interpreters. (Moser-Mercer, Tr. 3538-39.) The restraints restrict a more able interpreter from exploiting competitive advantage.

(5) Cognizability

"Quality" is not recognized as a valid efficiency under the antitrust laws. *Professional Engineers*, 435 U.S. at 695-96; *NCAA*, 468 U.S. at 116-17.

b. Portable equipment rules

Respondents argue that their portable equipment rules prevent a decrease in quality and a risk of detriment to the health and welfare of interpreters from the use of inferior equipment.

AIIC allows portable equipment to be used on visits to factories, hospitals and similar establishments or remote field visits, but not in

²² Reputable scientific studies, published in peer reviewed journals, have shown that air traffic controllers and commercial pilots can work eight to ten hour shifts per day, without performance decline or ill health. (F. 253.)

a conference room. (F. 271.) If quality decreases as the ambient noise increases, the rule should forbid all use of portable equipment. Portable equipment is reliable for the State Department, the White House, the World Bank, the International Monetary Fund and cost-conscious conference organizers. (Hamann-Orci, Tr. 48-49; Davis, Tr. 848; Obst, Tr. 303-04.)

Consumers are willing to tolerate lower quality, in exchange for lower prices. (Clark, Tr. 634-35.) Claims that the market will seek a lower level of quality are not cognizable efficiencies. *IFD*, 476 U.S. at 463-64. The rules do not take into account variables that affect whether portable equipment is practical for a job, or differences in ambient noise, or interpreters' abilities or hearing, and therefore are not reasonably tailored to their goals. *NCAA*, 468 U.S. at 119.

3. Effects and Market Power

a. Anticompetitive effects

Proof that conspirators achieved their purposes proves market power. For example, market power can be proven by a group of sellers raising prices over competitive levels for a significant period of time. (Silberman, Tr. 3172/19-23.) Here, AIIC's members followed AIIC's rules, and intermediaries had to obtain conference interpretation on AIIC's terms. Intermediaries learned of the TAALS/AIIC rates from TAALS or AIIC members (F. 328), understood that all AIIC and TAALS members charged that rate (F. 329), observed that the rates went up at the beginning of every year (F. 330-31), and almost invariably paid the TAALS/AIIC rate rather than attempt to negotiate lower rates. (F. 332, 334.) Intermediaries found that AIIC and TAALS members -- and other interpreters -- would not accept offers that did not conform to AIIC rules. (F. 335.) AIIC's rules on per diem, travel, the indivisible day, the same rate for all team members, and fees for recording, were all followed by interpreters and accepted by clients. (F. 336-40.) Some AIIC members were willing to work in smaller teams, or longer days -- for more money. (F. 341-43.)

In 1975, AIIC's U.S. Region caused the Pan American Health Organization to raise its rates. (F. 364.) In 1976, AIIC members boycotted the Organization of American States, causing a 25% increase in OAS's rates (from \$83 to \$105 per day). (F. 365.) In 1984, AIIC and TAALS pressured the Los Angeles Olympic Organizing

Committee to meet AIIC's rates (F. 356), cancellation clauses (F. 356-57), non-working days, same team-same rate, and recordings. (F. 356.) AIIC achieved this by sending a "warning" ("mise en garde") to the Olympics' chief interpreter, Mr. Weber, and published that warning to all AIIC members (F. 348); coordinating its efforts with TAALS (F. 355) and writing threatening letters to Mr. Weber and to the LAOOC. (F. 353-54.) As AIIC's then-U.S. Region Council member observed to AIIC's then-Secretary General, "I think that the pressure AIIC put to bear is getting results." (CX-1266-B; F. 357.) The results were that LAOOC had higher costs. (F. 358.)

AIIC and TAALS members demanded and received the rates and rules specified in their agreements, more than 90% of the time during 1988 through 1991. (F. 319.) In each of those four years, the most frequently charged price was the AIIC "suggested minimum" rate. (F. 318-20.) AIIC's members usually charged at least the "suggested minimum" rate. AIIC's rules affected these prices. AIIC could not have affected these prices without having market power. AIIC had market power. "[P]roof of actual detrimental effects, such as a reduction in output, can obviate the need for an inquiry into market power, which is but a 'surrogate for actual anticompetitive effects.'" *IFD*, 476 U.S. at 460-61.

b. Market share

The relevant product markets in this case are conference interpretation language pairs in the United States. (F. 366.) Market shares for AIIC and TAALS members in these markets range from 24% to 60%. (F. 379-80.)²³ Taking a "quick look," because AIIC was able to secure its members' adherence to the rules these market shares support the finding that consumers' ability to look elsewhere is limited. (F. 381.) These facts establish anticompetitive effects of respondents' conduct. CDA, slip. op. at 29.

c. Entry barriers

Entry into conference interpreting is slow and difficult. Conference interpreters need extensive training in the techniques of

²³ Only 17% of the professional engineers in the United States were members of the National Society of Professional Engineers (55,000 of 325,000). *Professional Engineers*, 389 F. Supp. 1193, 1202 (D.D.C. 1974.)

simultaneous and consecutive interpretation and in the subjects of international conferences, such as medicine, economics, law and politics. (F. 387-88, 390.) The AIIC members who testified had formal training in interpretation, often for four years or more. (F. 388.) Intermediaries will not hire untrained conference interpreters. (F. 387.) Interpretation schools in the United States produce very few graduates (F. 386), and more interpreters have been leaving the profession than entering it. (F. 385.) AIIC has been able to maintain its practices without new entry eroding its market power.

III. JURISDICTION

A. Nonprofit

Respondents each argue that it is not a "corporation" organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act.²⁴

AIIC and the U.S. Region are each associations that exist for the profit of their members. (F. 453-97.) AIIC's purpose is "to define and represent the profession . . . [and] to safeguard the interests of its members." (F. 454.) This statement of purpose alone is sufficient to invoke jurisdiction over respondents. *FTC v. National Commission on Egg Nutrition*, 517 F.2d 485, 487 (7th Cir. 1975), cert. denied, 426 U.S. 919 (1976). In addition:

- AIIC mailed schedules of rates for interpreters to charge in the United States. (Stip. 22-3; F. 93-96.)²⁵ AIIC exists for the profit of its members; whether or not those rates were mandatory in the United States, mailing the rate sheets and market surveys is for the profit of its members.²⁶
- AIIC's minimum rate was the standard. (F. 320.)

²⁴ Section 5 of the FTC Act directs the Commission to prevent unfair methods of competition by "persons, partnerships, or corporations." 15 U.S.C. 45(a)(2). Section 4 of the Act provides in relevant part that a "corporation" is, among other things, "any association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members." 15 U.S.C. 44 and 45(a)(2). The legislative history of the FTC Act suggests that the "profit of its members" language was included to confer Commission jurisdiction over trade associations. *Community Blood Bank of Kansas City Area, Inc. v. FTC*, 405 F.2d 1011, 1017-18 (8th Cir. 1969.)

²⁵ Even if these rates sheets were merely "market surveys," distributed to advise members of prevailing rates that they might expect to be paid, their dissemination was for the pecuniary benefit of AIIC's members, to assist them in deciding what fees to demand. The "market surveys" were in fact the minimum mandatory rate sheets. (F. 519.)

²⁶ *Egg Nutrition*, 517 F.2d at 487-88; *Community Blood Bank of Kansas City v. FTC*, 405 F.2d at 1017.

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Initial Decision

- AIIC members, and other interpreters, are paid on an indivisible daily basis in the United States. (F. 338.)
- All members of interpretation teams, except for Japanese and some other Asian interpreters, typically were paid the same rate. (F. 339, 150-53.)
- AIIC mandates payment for non-working days, travel, rest and briefing days, and payment of fees on cancellation. (F. 147-48, 243.) AIIC officers insisted that AIIC's non-working days and cancellation rules be adhered to in recruiting interpreters for the 1984 Los Angeles Olympics. (F. 356-57.)
- AIIC disseminates its membership lists to prospective employers to get employment for its members. (F. 467-68, 470.)
- AIIC refers members for employment to people organizing conferences. (F. 471, 473.) The AIIC Directory "provides valuable information to users or potential users of interpretation services." (Stips. 61-62.)
- AIIC holds meetings and seminars discussing employment issues and sales techniques, and sponsors lectures discussing the practice of interpretation. (Stip. 73.)
- AIIC "educates the public." (CX-2490-D-E; Luccarelli Decl. at 10; Weber, Tr. 1153.)
- AIIC represents interpreters in negotiations over wages, hours, and working conditions with governments and private organizations. (F. 493-97.)
- AIIC offers pension and insurance plans to its members, and maintains a "solidarity fund" for its members. (Stip. 81; F. 484-86.)

The Commission has jurisdiction over a nonprofit trade or professional association when its "activities engender a pecuniary benefit to its members if that activity is a substantial part of the total activities of the organization, rather than merely incidental to some non-commercial activity." *AMA*, 94 FTC at 983; accord *CDA*, slip op. at 5; *Michigan State Medical Soc'y*, 101 FTC 191, 284 (1983). AIIC was established to protect the pecuniary interests of its members. (F. 454-56.) Thus, it comes within Section 4 of the Act. *FTC v. National Commission on Egg Nutrition*, 517 F.2d at 487. Respondents engage in activities to improve members' incomes and working conditions. (F. 457-61.) That has always been AIIC's purpose, and AIIC's first actions were directed to raising interpreters'

pay. (CX-203-C.) AIIC's members are themselves profit seekers. AIIC's members are all professional conference interpreters who provide their interpretation services for pay. (F. 453.) AIIC promotes members' economic interests, including members' remuneration and work conditions. (F. 453-97.) Respondents fall within FTC jurisdiction as "corporations" within the meaning of the statute. CDA, slip op. at 6-7.

B. Personal Jurisdiction Over AIIC

The Commission has jurisdiction to investigate and regulate activities of foreign corporations that affect U.S. commerce. *FTC v. Compagnie de Saint-Gobain-Point-a-Mousson*, 636 F.2d 1300, 1322 (D.C. Cir. 1980). The FTC may exercise jurisdiction subject to the interstate commerce limitation and the limits imposed by due process. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). If the defendant is not present within the forum, due process requires that it have "minimum contacts" with the United States. *Id.* at 316. Minimum contacts are found, in antitrust cases, when the defendant's activity, directed toward the United States, has effects in the United States. AIIC has sufficient contacts with the United States for the Commission to exercise specific jurisdiction.²⁷ (F. 419-40.)

AIIC's conduct was intended to affect the prices charged by AIIC members for conference interpretation, and the terms under which they worked in the United States. (F. 412-13, 419-40.) AIIC has members in the United States (Stip. 27); AIIC adopted its workload and other rules (Stip. 9, 83-87), and AIIC expects those workload rules to be followed in the United States. (Silberman, Tr. 3132-33.) AIIC adopted rules specifically for the United States (F. 451-52), including price schedules for interpreters' daily fees and per diem (F. 419-21). AIIC's promulgating a schedule of fees, in United States dollars, for interpreters to charge when working in the United States, is sufficient conduct, purposefully directed toward the United States, to support jurisdiction over claims arising from that conduct. *Burger King v. Rudzewicz*, 471 U.S. 462, 479-80 (1985). AIIC adopted rules specifically to be adopted in the United States, including rules on

²⁷ "When the cause of action sued on does not arise from the defendant's contacts with the forum state, general jurisdiction must be predicated on contacts sufficiently continuous and systematic to justify haling the defendant into court. Special [specific] jurisdiction is asserted when the defendant's forum contacts are sporadic, but the cause of action arises out of those contacts." 4 C. Wright & A. Miller, *Federal Practice & Procedure*, Section 1067 at 295-96 (1987); cf. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415-16 (1984).

staffing that were more stringent than the European rules (F. 171, 421-22), and a waiver permitting interpreters to work alone for 40 minutes. (F. 423.) AIIC conducted surveys and studies of the U.S. market (F. 426-27), mailed documents into the United States to promote its anticompetitive agreements (F. 439-40), and held meetings to promote its restrictions in the United States. (F. 436-38.) AIIC has a director working in the United States (the United States Region representative to AIIC, who as such is a member of the AIIC Council, Stip. 27, 43, 44, 46), who explains AIIC's rules to members in this country. (F. 431-34.)

As a result of these contacts with the United States arising out of AIIC's conduct, the Commission has specific personal jurisdiction over AIIC. *Consolidated Gold Fields, P.L.C. v. Anglo American Corp.*, 698 F. Supp. 487, 494-96 (S.D.N.Y. 1988), *aff'd in part and rev'd and remanded in part on other grounds sub nom. Consolidated Gold Fields, P.L.C. v. Minorco, SA*, 871 F.2d 252 (2d Cir.), *cert. dismissed*, 492 U.S. 939 (1989); *Pillar Corp. v. Enercon Indus. Corp.*, 1989-1 Trade Cas. ¶ 68,597 (E.D. Wis. 1989).

Respondents are not charged with untargeted negligence. Rather, their actions were expressly aimed at the United States, and give rise to jurisdiction. *Calder v. Jones*, 465 U.S. 783, 789-90 (1984).²⁸ AIIC has "purposefully avail[ed] itself of the privilege of conducting activities within the [United States]," and is therefore subject to its jurisdiction. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).²⁹

C. Personal Jurisdiction Over the U.S. Region

Section 5 of the FTC Act broadly provides that the Commission can bring actions and issue orders against "corporations." Section 4 defines "corporation" to include "associations, incorporated or

²⁸ *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995); *Haisten v. Grass Valley Medical Reimbursement Fund*, 784 F.2d 1392, 1399 (9th Cir. 1986).

²⁹ Respondents rely on *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113 (1987), as holding that "a defendant's mere awareness that its products will enter the forum is insufficient as a matter of law to support personal jurisdiction." (Respondent Br. at 118.) That was the position of Justice O'Connor and three other Justices, 480 U.S. 112, in a portion of the opinion that five Justices (Brennan, White, Marshall, Balckmun, Stevens, JJ.) rejected. 480 U.S. at 116-20 (Brennan, J., concurring in part); 480 U.S. at 121 (Stevens, J., concurring in part).

Cases in which courts did not find general personal jurisdiction (as different from specific jurisdiction) over defendants with few contacts with the forum include: *Donatelli v. National Hockey League*, 893 F.2d 459, 470-71 (1st Cir. 1990); *Health Care Equalization Committee v. Iowa Medical Soc'y*, 851 F.2d 1020, 1030 (8th Cir. 1988). *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110, 1119 (6th Cir. 1994) involved an application of association rules in Europe to events taking place in Europe.

unincorporated." The Commission has proceeded against unincorporated associations.³⁰ The Supreme Court has defined "associations" to include: "a body of persons united without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise." *Hecht v. Malley*, 265 U.S. 144, 157 (1924). The issue, therefore, is whether the U.S. Region is "a body of persons united without a charter," with "methods and forms used by incorporated bodies" for "the prosecution of some common enterprise."

AIIC's Basic Texts and AIIC Statutes expressly provide for the creation, recognition, representation, and governance of AIIC regions. (F. 5, 444.) The U.S. Region has adopted its own rules of procedure, including rules for its members' participation in the U.S. Region activities, establishing the U.S. Region's officers, setting down meeting schedules, and providing for budgetary disciplines. (F. 445-46.) The U.S. Region elects its officers and holds regular meetings where official minutes are taken. (F. 446-47.) The U.S. Region manages its own budget and has control over its own expenses. (F. 446-49.)

Members of the U.S. Region are united together to "prosecute a common enterprise." The U.S. Region was created by U.S. AIIC members to represent conference interpreters in the United States and to safeguard the interests of U.S. members. (F. 450-51.) The U.S. Region has advanced these goals that unite its members when it has recommended rates of remuneration, set per diem formulas, and issued team size tables for the United States. (F. 448, 451-54.) The Region prosecutes a common enterprise by negotiating rates with the OAS, urging members to respect AIIC working conditions in the United States, and enforcing the AIIC code against alleged violators in the United States. (F. 451.)

The evidence shows a series of acts committed by the U.S. Region, as a group, including: a "gentlemen's agreement" on rates (F. 77); decisions to take rate-making activities underground (F. 77, 79); efforts to increase team sizes in the United States and "expose" interpreters who violated the U.S. Region's team size and rate rules (F. 171); intercession by AIIC's U.S. Region council member in AIIC's efforts to conform rates and conditions at the 1984 Olympics to AIIC's rules (F. 83, 242, 146); efforts by another U.S. Region council member to have AIIC members conform to the professional

³⁰ *SCTLA*, 107 FTC 510, 516-17, 564-65 (1986), rev'd on other grounds, 856 F.2d 226 (D.C. Cir. 1988), rev'd, 493 U.S. 411 (1990); *IFD*, 101 FTC at 74, 159.

domicile rule (F. 231); and the U.S. Region's agreement to cause AIIC to resume publishing "suggested minimum" rates for the United States. (F. 78.)

The United States Region holds meetings twice a year, which are attended by nearly half of the Region's AIIC members. (F. 446.) The United States Region has an elected treasurer, a regional secretary, and a regional representative serving on the AIIC Council. (F. 447-48.) The AIIC Basic Texts include a "General Document on Regions" and Articles 34-36 of the AIIC Statutes, which provide for the creation, recognition, representation, and governance of AIIC regions. (F. 444.) Pursuant to these documents, the United States Region has its own rules of procedure (Stip. 38), which govern its members' participation in the U.S. Region activities, identify the U.S. Region's officers, set down meeting schedules, and provide for budgetary disciplines. (Stip. 38, 43-44, 46; F. 445.) The U.S. Region maintains its own funds in a bank account in the United States, over which it has independent authority, and it collects and receives AIIC membership dues. (Stip. 49-50; F. 449.)

The Commission may, therefore, proceed against the U.S. Region as an unincorporated association. *Hecht v. Malley*, 265 U.S. at 157. The Commission also has jurisdiction to join U.S. Region as part of AIIC. *AMA*, 94 FTC at 1032.

D. Labor Exemptions

Respondents' "labor exemption" defense is rejected. It was not timely asserted.³¹ Further, respondents have not shown that AIIC is a union or that its members are employees. They bear the burden of establishing their right to the exemption. Rule 3.43(a), 16 CFR 3.43(a).

The statutory labor exemption is available for unilateral union conduct. *United States v. Hutcheson*, 312 U.S. 219, 232 (1941). But respondents do not claim that AIIC is a labor union. Respondents do not qualify as a "labor organization" under the National Labor Relations Act's definition, since respondents are not employees.³²

³¹ Respondents' answer did not contain "a concise statement of facts constituting [this] ground of defense," Rule 3.12(b)(1)(i), 16 CFR 3.12(b)(1)(i).

³² The Act defines "labor organization" as "any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. 152(5)(1973).

AIIC negotiates collective bargaining agreements for AIIC members employed by intergovernmental organizations. (F. 506.) But AIIC decided not to be a union. (F. 505.) AIIC's agreements specify terms and working conditions for freelance interpreters. (F. 501.) AIIC freelance interpreters are independent contractors. (F. 504.) Freelance interpreters are thus not employees entitled to the protection of the exemption. "A party seeking refuge in the statutory exemption must be a *bona fide* labor organization, and not an independent contractor or entrepreneur." *H.A. Artists & Associates v. Actors' Equity Ass'n*, 451 U.S. 704, 717 n.20 (1981).³³

Respondents are ineligible for the nonstatutory labor exemption. That exemption is available only for union-employer agreements. *Connell Construction Co. v. Plumbers & Steamfitters Local No. 100*, 421 U.S. 616, 623-25 (1975); *HBO*, 531 F. Supp. at 604 ("the nonstatutory exemption . . . protects the terms of collective bargaining agreements").

IV. RELIEF

A. Fashioning a Remedy

The Commission has wide discretion in its choice of a remedy deemed adequate to cope with unlawful practices. *Jacob Siegel v. FTC*, 327 U.S. 608, 611-13 (1946). In fashioning a remedy, it is appropriate to go "beyond a simple proscription against the precise conduct previously pursued." *Professional Engineers*, 435 U.S. at 698.

The substantive provisions of the order are based on orders issued by the Commission against TAALS and the American Society of Interpreters ("ASI"). The American Association of Language Specialists, C-3524 (Aug. 31, 1994) (consent order); American Society of Interpreters, C-3525 (Aug. 31, 1994) (consent order).

³³ In *Home Box Office, Inc. v. Directors Guild of America*, the court described the defendant Directors Guild of America as a "collective bargaining representative." 531 F. Supp. 578, 581 (S.D.N.Y. 1982), *aff'd mem.*, 708 F.2d 95 (2d Cir. 1983 ("HBO")). The HBO court noted, 531 F. Supp. at 589:

not all combinations of unions with entrepreneurs or independent contractors fall outside the statutory exemption. . . . Even though a challenged combination includes independent contractors or entrepreneurs, it may come within the statutory exemption if the non-employee parties to the combination are in job or wage competition with the employee parties, or in some other economic interrelationship that substantially affects the legitimate interests of the employees.

Here the non-agreement sector AIIC members and the agreement sector AIIC members do not compete by specific AIIC rule. (F. 280.)

B. Abandonment

Respondents contend no order should issue against their "removed" "monetary conditions." Their argument is rejected. Respondents have a history of knowingly concealing antitrust violations; respondents have not in fact abandoned their price fixing; and the minimal actions respondents took were only taken after they knew they were under investigation.

AIIC violated the antitrust laws for years before they claim to have removed the "monetary conditions" from their Basic Texts. (F. 513-21.) In 1991, despite advice from lawyers, AIIC again voted to codify its many anticompetitive rules. (F. 520-21.) Respondents do not acknowledge wrongdoing for any period. The likelihood of recidivism is great. *Coleman v. Cannon Oil Co.*, 849 F. Supp. 1458, 1471-72 (M.D. Ala. 1993).

AIIC modified its Basic Texts by changing mandates to advice, trusting members to continue to adhere to the rules. (F. 523, 527-28.) The 1992 resolution "removing" the "monetary conditions," stated that AIIC remained "DEEPLY ATTACHED to the principles of universality and solidarity upon which AIIC, since its inception, has based its actions in organizing the profession. . . ." (F. 509.) AIIC never told its members to stop agreeing on prices or terms. (F. 509-10, 524.) AIIC exhorted members to defend their individual "rights" to charge for per diem, non-working days, travel days, and "fees that are a fair reflection of the difficulty and importance of his work." (F. 512.) In March 1994, AIIC recommended that interpreters tell their clients, "interpreters' fees are unchanging." (F. 531.)³⁴

AIIC's continues to ensure understanding about all of its rules:

- AIIC maintains team size and hours rules (F. 175, 184-86);
- AIIC still provides to its members its standard form contract, which shows interpreters how they can adhere to AIIC's monetary conditions. (F. 530.)
- In "removing" monetary conditions AIIC issued a vademecum to enumerate AIIC's price fixing rules, explaining what an interpreter's cost estimate "should" include. (F. 526.)

³⁴ An agreement to adhere to previously announced prices is *per se* price fixing. *Sugar Institute*, 297 U.S. 553, 601-02 (1936).

- AIIC continues to collectively agree on rates and other terms to be applied in its Agreement Sector which include organizations in the U.S. private sector. (F. 534-36.)
- Members use AIIC's Agreement Sector terms to model their behavior in the remainder of the private sector. (F. 536.)

The AIIC or "going rate" is still in force. (F. 532-33.) The pricing practices of AIIC members in the United States continue. (F. 533.) AIIC's efforts do not constitute an abandonment of this unlawful conspiracy.³⁵ The antitrust laws look to substance, not to form, *United States v. Line Material Co.*, 333 U.S. 287, 357 (1948), and cannot be satisfied by cosmetic changes to "basic texts."

Changes to AIIC's Basic Texts came after antitrust inquiries in Germany, Canada, and the United States. (F. 541.)³⁶ AIIC failed to remove the "monetary conditions" at its January 1991 assembly. (F. 520-22.) In August 1992, when AIIC did vote to remove monetary conditions, it had known for over a year that Commission staff was investigating TAALS, and had subpoenaed and taken testimony from AIIC members in this country. (F. 538.) Abandonment depends on the *bona fides* of the intent to comply with the law in the future, the effectiveness of the discontinuance, and the character of the past violations. *Mass. Bd.*, 110 FTC 549, 616 (1988), citing *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *Borg-Warner Corp. v. FTC*, 746 F.2d 108, 110 (2d Cir. 1984).

AIIC argues that, as an international organization, it is outside of the Commission's jurisdiction. Although aware for nearly two decades before this investigation began that its rules were illegal in the United States AIIC did not change any of its rules until after it became aware of the FTC investigation. A claim of abandonment is rarely sustainable as a defense when discontinuance occurred "only after the Commission's hand was on the respondent's shoulder." *Zale Corp.*, 78 FTC 1195, 1240 (1971); *Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976). Without a Commission order there will be nothing to prevent AIIC from continuing in its old ways of publicly regulating competition as to the price, output and marketing of interpretation services within the United States.

³⁵ AIIC members continue to adhere to AIIC's travel, recordings, cancellation, indivisible day, same team-same rate, team size and hours rules. (F. 509-12, 523-33.)

³⁶ AIIC continued its price-fixing in Canada as well as the United States. (F. 301, 541.)

CONCLUSION

Respondents have violated Section 5 of the Federal Trade Commission Act, and an appropriate order must issue.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over respondents International Association of Conference Interpreters, a/k/a Association Internationale des Interpretes de Conference ("AIIC") and United States Region of the International Association of Conference Interpreters ("U.S. Region").

2. Each respondent is a corporation, within the meaning of Section 4 of the Federal Trade Commission Act (the "Act"), 15 U.S.C. 44, as amended. Respondent AIIC is an incorporated association organized for the profit of its members. Respondent U.S. Region is an unincorporated association organized for the profit of its members.

3. Each respondent is properly joined.

4. Respondents engaged in agreements, combinations, and unfair methods of competition by rules and practices fixing the prices for conference interpretation in the United States, reducing output and competition among themselves and with other conference interpreters, by *per se* unlawfully agreeing:

(a) To charge minimum rates; the same rate for all members of a team of interpreters at a conference; fees for travel, briefing, rest and non-working days; per diem allowances; travel expenses; fees for recordings; cancelled contracts; not to pay or receive commissions; and not to work without compensation but with travel and subsistence expenses paid.

(b) To refuse to sell conference interpretation services except on an indivisible daily basis; and to specify the number of interpreters required and the maximum number of hours worked for a daily fee.

(c) To allocate markets and protect local freelance interpreters from competition from other members of AIIC and other interpreters, by requiring members to declare a professional address and to base charges for travel, per diem allowances, and non-working days (including travel and rest days) from the professional address; and by

preventing staff interpreters from competing with freelance interpreters.

(d) Not to advertise or promote conference interpretation services by comparing the price or cost of members' services.

5. Further, respondents engaged in agreements, combinations and unfair methods of competition by rules and practices fixing prices for conference interpretation in the United States, reducing output and eliminating competition among themselves and with other conference interpreters, by agreeing to deter the formation of firms of interpreters (by rules prohibiting exclusive agency relationships, trade names, and package deals of interpretation services); and by agreeing not to use portable equipment nor to advertise conference interpretation services.

6. None of the agreements in the foregoing paragraph is supported by cognizable or demonstrated efficiency or other procompetitive justifications; under a rule of reason analysis, each agreement is an unreasonable restraint of trade.

7. The practices challenged in the complaint have had anticompetitive effects in the United States, and demonstrate the exercise of substantial market power in the United States in markets for conference interpretation.

8. Each effective agreement identified herein is part of an scheme to fix prices, and all are therefore unlawful *per se*.

9. Respondents have engaged in unfair methods of competition, in violation of Section 5 of the Act, 15 U.S.C. 45.

10. This order is necessary and appropriate to remedy the violation of law.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "AIIC" means the International Association of Conference Interpreters (also known as Association Internationale Des Interpretes De Conférence), officers, members, agents, employees, successors, and assigns; "U.S. Region of AIIC" means the United States Region of the International Association of Conference Interpreters (also known as Association Internationale Des Interpretes De Conférence),

officers, members, agents, employees, successors, and assigns; "respondent" or "respondents" means either AIIC or the U.S. Region of AIIC.

B. "*Fees*" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances (including subsistence and travel allowances), reimbursements for expenses, cancellation fees, recording fees, compensation for time not worked, compensation for travel time, compensation for preparation or study time, and payments in kind.

C. "*Cancellation fee*" means any fee intended to compensate for the termination, cancellation or revocation of an understanding, contract, agreement, offer, pledge, assurance, opportunity, or expectation of a job.

D. "*Interpretation*" means the act of expressing, in oral form, ideas in a language different from the language used in an original spoken statement.

E. "*Translation*" means the act of expressing, in written form, ideas in a language different from the language used in an original writing.

F. "*Other language service*" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation, including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

G. "*Interpreter*" means one who practices interpretation.

H. "*Translator*" means one who practices translation.

I. "*Language specialist*" means one who practices interpretation, translation, or any other language service.

J. "*Person*" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

K. "*Exclusive employment arrangement*" means an employment arrangement in which interpreters or other language specialists are available for hire only through a particular individual or firm or in which interpretation teams of fixed composition are controlled by a particular individual or firm.

II.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees applicable in the United States for interpretation, translation, or any other language service, including but not limited to fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, participating in, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, standardize, raise, maintain, or otherwise interfere with or restrict fees applicable in the United States for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters or other language specialists to charge, pay, offer, or adhere to, for transactions within the United States, any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. Continuing a meeting of interpreters or other language specialists after 1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees, applicable in the United States, charged or proposed to be charged for interpretation, translation, or any other language service and failing to dismiss such person from the meeting, or 2) two persons make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition in the United States, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Discouraging, restricting, or prohibiting interpreters or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated or payable on other than a full-day basis for services performed within the United States;

G. Discouraging, restricting, or prohibiting interpreters from performing interpretation, translation, or other language services within the United States free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses; and

H. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any forms of advertising within the United States, including but not limited to comparative advertising by interpreters or other language specialists.

Provided that, nothing contained in this paragraph II shall prohibit respondents from:

- * Compiling or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

- * Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees;

- * Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in paragraphs II.A and II.B of this order; or

- * Formulating, adopting, disseminating to its organizational subdivisions and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, participating in, promoting, assisting, enforcing or maintaining any agreement, understanding, plan, program,

combination, or conspiracy to limit, restrict, or mandate, within the United States:

A. The length of time that interpreters or other language specialists work in a given period, or for which they are paid for preparation or study;

B. The number of interpreters or other language specialists used for a given job or type of job;

C. The reimbursement of or payment to interpreters or other language specialists for travel expenses or time spent traveling, or the use of any terms, conditions, limitations or restrictions that would prevent consumers from receiving any advantages based on interpreters' or other language specialists' actual travel arrangements or geographic location;

D. The number or duration of residences, domiciles or professional addresses of members;

E. Any discounts, costs, or other advantages or disadvantages to consumers based on actual travel arrangements or geographic location;

F. The equipment used in performing interpretation, translation, or other language services;

G. The number or types of services offered or performed by interpreters, or other language specialists within a given period of time;

H. Exclusive employment arrangements or the use of trade names by interpreters or other language specialists;

I. The recruitment of interpreters, or other language specialists on the basis of whether or not they are permanently employed;

J. The payment or receipt of commissions; or

K. Package deals, lump sum payments, or any arrangements whereby payment or charges for more than one good or service are included in a single sum.

IV.

It is further ordered, That respondents shall, within thirty (30) days after the date this order becomes final, amend the Basic Texts and all sub-parts and appendices to conform to the requirements of paragraphs II and III of this order and amend the rules and bylaws to require each member, region, sector, chapter, or other organizational

subdivision, to observe the provisions of paragraphs II and III of this order.

V.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each member, affiliate, region, sector, chapter, organizational subdivision, or other entity associated directly or indirectly with respondent, copies of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, (4) and any document that respondent revises pursuant to this order; and

B. Distribute to all new officers, directors, and members of respondent, and any newly created affiliates, regions, sectors, chapters, or other organizational subdivisions of respondent, within thirty (30) days of their admission, election, appointment, or creation, a copy of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, and (4) any document that respondent revises pursuant to this order.

VI.

It is further ordered, That each respondent shall:

A. Within sixty (60) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the proviso in paragraph II of this order;

B. For a period of ten (10) years after the date this order becomes final, collect, maintain and provide upon request to the Federal Trade Commission: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Council, General Assembly, and all committees, subcommittees, working groups, or any other organizational subdivisions of respondent; and all mailings of respondent to membership;

C. For a period of ten (10) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the Basic Texts or Appendices thereto, and any new rule, regulation or guideline of respondent applicable in the United States;

D. For a period of ten (10) years after the date this order becomes final, permit any duly authorized representative of the Commission: (1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, minutes, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order, and (2) Upon five (5) days notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That the U.S. Region of AIIC shall cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any organization of interpreters or other language specialists within thirty (30) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has engaged, after the date this order becomes final, in any act or practice that if engaged in by respondent would be prohibited by paragraphs II or III of this order; unless prior to the expiration of such thirty (30) day period said organization informs respondent by verified written statement of an officer of the organization that the organization has ceased and will not resume such act or practice, and respondent has no grounds to believe otherwise.

VIII.

It is further ordered, That this order shall terminate twenty (20) years from the date this order becomes final.

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Initial Decision

APPENDIX A

[DATE]

ANNOUNCEMENT

The Federal Trade Commission, an agency of the government of the United States of America, has determined that certain rules and practices of the International Association of Conference Interpreters ("AIIC") violate the antitrust laws of the United States.

Members are advised that agreements between competitors on rates and fees violate the antitrust laws of the United States, and may violate the laws of other countries. Other agreements between competitors on matters other than rates and fees may also violate the antitrust laws of the United States. Individuals who enter into such agreements may be subject to criminal penalties and fines under the laws of the United States of America. 15 U.S.C. 1, 18 U.S.C. 3571. Individuals who enter into such agreements may also be subject to civil liabilities to persons injured in their business or property as a result of violations of the antitrust laws. 15 U.S.C. 15.

AIIC and its United States Region are now subject to an order issued by the United States Federal Trade Commission. The order prohibits AIIC, including its members, regions, or organizational subdivisions, from engaging in various practices that would lessen competition in the United States. Copies of this order are attached to this Announcement.

OPINION OF THE COMMISSION

BY VARNEY, *Commissioner*:

Respondents International Association of Conference Interpreters ("AIIC," as it is known by its French acronym) (IDF 1)¹ and its United States Region ("U.S. Region") are charged with violating Section 5 of the Federal Trade Commission Act ("FTC Act") by adopting and enforcing rules that govern how their members compete. We find that respondents' price-fixing practices and market allocation rules are *per se* unlawful agreements in restraint of trade and a violation of the FTC Act. We further find that the rules governing non-price terms and conditions of employment, business arrangements, and advertising must be analyzed under the rule of reason. Because the record evidence is insufficient to demonstrate a violation of law under the rule of reason, we dismiss the complaint allegations that those rules unlawfully restrain trade. In reaching these conclusions, we also find that AIIC's actions, which form the basis for this lawsuit, affect interstate commerce in the United States and are sufficient to confer specific personal jurisdiction; that respondents do not qualify for the "not-for-profit" exemption to the FTC's jurisdiction; and that respondents do not qualify for either the statutory or non-statutory labor exemption.

The order we enter prohibits respondents for a period of twenty (20) years from imposing any price-related or market allocation restraints in the United States.

I. BACKGROUND

The Commission's complaint in this matter, issued on October 25, 1994, charges the respondents with restraining competition among conference interpreters in the United States in violation of Section 5 of the FTC Act, 15 U.S.C. 45 (1994), by conspiring with their members to fix the price and output of interpretation services in the

¹ The following abbreviations are used in this opinion:

ID -- Initial Decision of the ALJ
IDF -- Numbered Findings in the ALJ's Initial Decision
CX -- Complaint Counsel's Exhibit
CXT -- Complaint Counsel's Exhibit -- English Translation
RX -- Respondents' Exhibit
Tr. -- Transcript of Trial before the ALJ
Stip. -- ALJ's order setting forth joint stipulations of Fact

United States. After pretrial discovery, 26 days of trial testimony, and pre- and post-trial motions, the record closed on May 16, 1996. Administrative Law Judge ("ALJ") James P. Timony issued a decision and proposed order on July 26, 1996.

The ALJ found that for more than forty years, AIIC regulated the employment of its members by adopting and enforcing an elaborate series of work rules governing, *inter alia*, the minimum daily rates to be charged in the United States, length of the working day, number of interpreters to be hired at a conference, ability of out-of-town and staff interpreters to compete with local freelance interpreters, advertising, and payment for travel expenses, per diem, rest days and non-working days depending on whether the interpreter was away from a "professional address." ID at 95.

The ALJ found that each restraint was part of a scheme to raise the price of conference interpretation services and that these restraints had anticompetitive effects. Although the ALJ found that the "evidence obviates [the need for] extensive inquiry into market power, market definition or market share," ID at 95, he nevertheless went on to determine that some of the restraints are also unlawful under the rule of reason, specifically finding that the respondents have market power. ID at 122-23.

The ALJ concluded that respondents endeavor to improve interpreters' working conditions and income and therefore exist for the profit of their members. ID at 95. The ALJ noted that although some of respondents' actions resemble union activity, they are not exempt from antitrust scrutiny under the statutory or nonstatutory labor exemption because AIIC specifically chose to be a professional association -- not a union. ID at 95-96; IDF 505. The ALJ further found that "respondents waived the [labor exemption] defense by failing to raise it in pleadings or during the presentation of evidence." ID at 96. The ALJ also found that the Commission has specific jurisdiction over AIIC for acts performed, or with effects, in the United States and that the Commission may proceed against the U.S. Region, an unincorporated association, as part of AIIC. ID at 96.

Finally, the ALJ rejected respondents' arguments that they have abandoned all of the rules that were arguably unlawful (ID at 131), finding that respondents continue to maintain rules on fees and working conditions despite their attempts "to conceal price-fixing agreements in 'gentlemen's agreements' and 'market surveys,' 'unpublished' rates and a [draft pamphlet] called a 'Vademecum.'" ID

at 96. The ALJ was unpersuaded that respondents' removal of some offending rules from their Basic Texts after the commencement of this investigation made an order unnecessary. ID at 131-33.

The respondents filed their appeal from the ALJ's Initial Decision on August 28, 1996. The respondents appeal all of the ALJ's jurisdictional findings, including his findings that the Commission has specific *in personam* jurisdiction over AIIC and that neither the statutory nor the nonstatutory labor exemption is available as a defense. Brief for Respondents-Appellants at 77-82. Respondents also appeal from the ALJ's finding that an order is necessary as to the monetary conditions that were contained in respondents' Basic Texts, arguing that the rules governing monetary conditions never applied to the U.S., were not enforced in the U.S., and were abandoned altogether in 1992. *Id.* at 1, 23-27. Finally, the respondents argue on appeal that the rules governing working conditions must be analyzed under the rule of reason and cannot be found unlawful because complaint counsel have not proven that respondents had power in the market for conference interpretation in the U.S. or that the rules had any anticompetitive effect in the U.S. *Id.* at 18-22, 36-61.

II. RESPONDENTS

Respondent AIIC is an association of professional conference interpreters organized under French laws, with its Secretariat located in Geneva, Switzerland. Stips. 6-7. AIIC's rules are in its "Basic Texts," which include AIIC's Statutes, Code of Professional Ethics, and Professional Standards (also referred to as Standards of Professional Practice). Stip. 9; CX-1; CX-2; Brief for Respondents-Appellants at 9.

AIIC's supreme body, the Assembly, consists of all Association members and meets once every three years. IDF 2; Stip. 10. AIIC's Assembly is responsible for setting policy, including voting on Basic Texts and expelling members for rule violations. IDF 37-38. AIIC has a "Council," consisting of the president, three vice presidents, a treasurer, and representatives from each of the Association's regions, each nominated by their regions and elected by the Assembly. IDF 2; Stip. 11. The Council implements Assembly decisions, investigates disciplinary matters, approves the rates and per diems published by AIIC, grants waivers from AIIC rules, and adopts the annual budget. IDF 2, 39-41; *see also* Stip. 12. AIIC also has a "Bureau," consisting of the president, the three vice presidents, and the treasurer, that

exercises the Council's functions between meetings. IDF 2; Stip. 13. AIIC has approximately 2,500 members worldwide and 141 in the United States. Brief for Respondents-Appellants at 6; Stip. 36; *see also* CX-600-K; IDF 2; Luccarelli, Tr. 1626-32.

AIIC publishes a Bulletin for members (IDF 3; Stip. 67), which is sent to the United States to report on the business of AIIC, including matters relating to the rates of remuneration and work rules. IDF 3; Stip. 17. Proposed amendments to AIIC's Basic Texts are published in the Bulletin. IDF 3; Stip. 18.

Organizationally, AIIC is divided into two sections known as sectors. The "Agreement Sector" negotiates agreements for freelance interpreters with international and intergovernmental organizations. These agreements address a variety of issues of importance to AIIC's freelance interpreter members, including issues related to rates and working conditions. CX-2085-E; IDF 492-97; Brief for Respondents-Appellants at 6. The Agreement Sector currently has negotiated agreements with: 1) the United Nations, 2) Interpol, 3) the European Union, 4) Coordonnées, and 5) various international trade secretariats. IDF 492; Stip. 77; Respondents' Post-Trial Brief at 7. The "Non-Agreement Sector," or "NAS," meets twice each year to address "issues of interest to members who have private sector, governmental or intergovernmental clients with which AIIC does not have an agreement." CX-278-Z-2; CX-245-F; CX-242-E; Brief for Respondents-Appellants at 6; IDF 42.

Members of AIIC in any country with 15 or more members may form a "region," the membership of which consists of the AIIC members then having their professional address in that region. Stips. 32-33. AIIC has 22 regions, including the respondent U.S. Region. IDF 5; Stip. 35.

III. JURISDICTION

A. The Commission Has Specific Personal Jurisdiction Over Respondent AIIC

Respondent AIIC contends that the Commission lacks *in personam* jurisdiction over it.² As explained below, we conclude otherwise. At the outset it should be noted that counsel for AIIC

² Neither the agency's exercise of personal jurisdiction over the U.S. Region, nor the Commission's subject matter jurisdiction under Section 5 with respect to either respondent, has been challenged in respondents' appeal. We adopt the ALJ's conclusions with respect to each of these issues. *See* ID at 134.

stated at oral argument and in a subsequent written submission that it would not appeal any order that the Commission might issue, provided that such order would not constrain respondent's ability to retain four of the challenged restraints (*viz.*, the length of day, team size, professional address, and portable equipment rules). Oral Argument Tr. 7; *see also id.* at 8-10; Supplemental Brief for Respondents-Appellants at 6 (Oct. 26, 1996). Further, during argument and in its supplemental brief, respondent's counsel acknowledged its earlier proffer of a consent order encompassing all but four challenged restraints. *Id.* Such conduct may constitute a waiver of respondent's *in personam* jurisdiction objections in light of the Commission's decision to issue an order that does not enjoin those four rules (albeit for reasons other than respondent's offer). *Cf. Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinée*, 456 U.S. 694, 703-05 (1982) (party can waive its personal jurisdiction defense and "actions of the defendant may amount to a legal submission to . . . jurisdiction . . . whether voluntary or not").³ Nevertheless, in an abundance of caution, we address the issue of *in personam* jurisdiction.

1. Legal Standard for Exercise of *In Personam* Jurisdiction Over Foreign Respondent

The Supreme Court in *International Shoe Corp. v. Washington*, 326 U.S. 310 (1945), presented a two-pronged test that established and continues to underlie the due process requisites for *in personam* jurisdiction. First, "minimum contacts" must be shown.⁴ Second, the

³ *See also English v. 21st Phoenix corp.*, 590 F.2d 723, 728 n.5 (8th Cir.) (*in personam* jurisdiction may be obtained by actions of a party amounting to a waiver, and a court has jurisdiction to enter an order finding a waiver), *cert. denied*, 444 U.S. 832 (1979); *Meetings & Expositions, Inc. v. Tandy Corp.*, 490 F.2d 714, 717 (2d Cir. 1974) (stipulation and agreement to settle that were filed in federal court constituted a consent to the personal jurisdiction of the court); *Joseph V. Edeskuty & Assocs. v. Jacksonville Kraft Paper Co.*, 702 F. Supp. 741, 745 (D. Minn. 1988) (statements of counsel at hearing deemed tantamount to consent to personal jurisdiction).

⁴ Because the claims against respondents are based on federal antitrust laws, as opposed to state law, the inquiry is whether respondent AIIC has sufficient contacts with the United States, rather than with any one state. *See Mariash v. Morrill*, 496 F.2d 1138, 1143 (2d Cir. 1974); *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 71 (D.D.C. 1992); *Consolidated Gold Field, PLC v. Anglo Am. Corp. of So. Africa*, 698 F. Supp. 487, 493 (S.D.N.Y. 1988), *aff'd in part and rev'd in part sub nom. Consolidated Gold Fields, PLC v. Minorco, S.A.*, 871 F.2d 252 (2d Cir.), *cert. dismissed*, 492 U.S. 939 (1989). Respondent's reliance on *Friends of Animals, Inc. v. American Veterinary Medical Ass'n*, 310 F. Supp. 620 (S.D.N.Y. 1970), is inapposite in this analysis. Constitutional due process for *in personam* jurisdiction requires only "minimum contacts" with the forum. The Clayton Act venue provision, challenged in *Friends of Animals*, focused on a requirement of substantiality, which was a component of the "transacting business" test applicable only to analysis of the venue provision. *See* 310 F. Supp. at 624.

court must find that "fair play and substantial justice" would not be offended by the assertion of jurisdiction. *International Shoe*, 326 U.S. at 316, 320. Both prongs of this test must be satisfied. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

The "minimum contacts" prong of the analysis focuses on whether the connection between the defendant, the forum, and the litigation is such that "[the defendant] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 288, 297 (1980); *see also Burger King*, 471 U.S. at 472 (Due Process Clause requires that individuals have "fair warning" that a particular activity may subject them to the jurisdiction of a foreign sovereign, quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring)). That requirement is met if, for example, the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *World-Wide Volkswagen*, 444 U.S. at 297 (a defendant that "purposefully avails itself of the privilege of conducting activities within the forum[,]" quoting *Hanson v. Denckla*, has "clear notice that it is subject to suit there").

If the defendant's conduct satisfies the "minimum contacts" requirement, the courts then consider whether the assertion of personal jurisdiction would comport with fair play and substantial justice. *See, e.g., Burger King*, 471 U.S. at 476. Under this prong of the *International Shoe* analysis, the courts evaluate the "reasonableness" of asserting personal jurisdiction under the particular circumstances of the case, and may consider not only the defendant's contacts with the forum, but also "other factors" (*e.g.*, the respective interests of the plaintiff and the forum, judicial efficiency). *Id.* at 477; *see also Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 (1987) (outlining factors to be considered in reasonableness determination, where personal jurisdiction over foreign entities was at issue).

2. Specific Jurisdiction

As the case law implementing these basic principles of jurisdiction has developed, two species of *in personam* jurisdiction over foreign respondents have emerged: "specific" jurisdiction and "general" jurisdiction. Specific jurisdiction attaches if there is a

sufficiently close relationship between the cause of action and the nonresident's activities within the forum.⁵ General jurisdiction requires a higher degree of involvement with the forum than does specific jurisdiction, and allows a plaintiff to sue a defendant on virtually any cause of action, including those that do not arise from the defendant's contacts with the forum. Thus, normally, there would be no reason to determine whether general jurisdiction exists if the cause of action at issue and the forum are sufficiently related to trigger specific jurisdiction.

In determining whether specific jurisdiction exists in this instance, we must ask: (a) whether the conduct was "purposefully directed" to the forum, *Burger King*, 471 U.S. at 471 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)); (b) whether the cause of action "arise[s]" from or relates to that conduct, *Burger King*, 471 U.S. at 472 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)); and (c) whether the assertion of specific jurisdiction is reasonable as a matter of due process, *Burger King*, 471 U.S. at 471; *see also Asahi*, 480 U.S. at 113. As set forth below, we affirm the ALJ's conclusion that the agency may properly exercise specific jurisdiction over respondent AIIC.

a. Conduct Purposefully Directed Toward the United States

With respect to the first aspect of specific jurisdiction analysis, we find that respondent AIIC intentionally engaged in conduct that caused consequences in the United States market for interpretation services. In so finding, we focus primarily on AIIC's conduct, not on that of its members. The conduct of AIIC's U.S. members is relevant only to the extent that the members were acting as agents of AIIC. Specifically, AIIC engaged in four courses of conduct that were intended to affect both the prices charged by AIIC members for conference interpretation and the terms under which they worked.

First, respondent published rates of remuneration for interpretation services performed in the United States and prepared

⁵ *Electro-Catheter Corp. v. Surgical Specialties Instrument Co.*, 587 F. Supp. 1446, 1449 (D.N.J. 1984). In the specific jurisdiction analysis, the tribunal must inquire whether the relationship between the transaction at issue and the forum justifies the forum's assertion of jurisdiction over the defendant. *Id.* Specific jurisdiction is asserted when the defendant's forum contacts are sporadic, but the cause of action arises out of those contacts. In determining whether there are sufficient minimum contacts to satisfy due process requirements, we focus upon the relationship among the defendant, the forum and the cause of action. *Burger King*, 471 U.S. at 471, 475; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *Shaffer v. Heimer*, 433 U.S. at 204.

schedules of *per diem* charges with entries unique to this country. *See generally* CX-71, 75, 76, 79, 81 to 84; CX-2446-C; CX-301-Z-42 (Bishopp); CX-305-Z-49 to 51 (Sy); CX-55 to -65; CX-247-Z-2, Z-5; CX-124-E; CX-125-E; CX-130; CX-301-Z-152.41 to Z-152.42 (Bishopp); CX-268-E; CX-300-Z-72 to Z-76, Z-128 to Z-129 (Motton). Similarly, AIIC tailored its work and monetary rules, and waivers for such rules, for application in the United States. *See generally* CX-71 to -73, 75 to 77, 79, 81 to 84 (rates); CX 55 to 65 (rates); CX-124-E (per diem); CX-125-E (per diem); CX-130 (per diem); CX-247-Z-2, Z-5 (per diem); CX-301-Z-152.41 to Z-152.42 (Bishopp) (per diem); CX-268-E (per diem); CX-300-Z-72 to Z-76, Z-128 to Z-129 (Motton) (per diem); CX-245-I, F (indivisible day waiver); CX-405-C (team size); CX-407-F to G (team size); CX-50 (team size); CX-56 (team size); CX-1384-A (solo interpreter waiver applicable to U.S.); CX-268-F (solo waiver); CX-301-Z-152.43 (Bishopp) (solo waiver); CX-300-Z-33 to Z-36, Z-128 to Z-129 (Motton) (solo waiver); CX-432-G to H (solo waiver). AIIC also adopted its workload and other rules with the expectation that those rules would be followed in the United States. *See generally* Stips. 9, 83-87; Silberman, Tr. 3132-33.

Second, respondent AIIC sought, in conjunction with efforts of the U.S. Region, to ensure the uniform application of the AIIC Code and its Annexes in the United States. For example, the U.S. Region discussed and sent to AIIC in Geneva a document called "AIIC Working Conditions for Interpreters in USA (Provisional Paper)." *See* CX-439-A, D to F; CX-1408-A, C to E. In addition, AIIC investigated complaints against U.S. Region members for violations of its rules. *See generally* CX-1693-A to C; CXT-1693-A to C; CX-1300-A; CXT-1320-A to C; CXT-239-I; CX-304-Z-128 to Z-131 (Motton); CX-1066-A to E; CX-1086; CX-1090; CX-1100; CX-1138-A to B; CX-1256-B; CX-236-C. AIIC also solicited complaints from the U.S. Region concerning members who violated AIIC's moonlighting rules, including the names of such members and copies of contracts demonstrating such violations. *See* CX-432-G to H, M. The U.S. Region representative to the AIIC Council also advised U.S. members how to comply with AIIC rules and issued warnings to members regarding noncompliance with association rules. *See* CX-1471; CX-1470-A. U.S. Region members also serve as agents of AIIC when serving on the bodies responsible for creating and enforcing AIIC rules. *See* CX-300-O to Q (Motton); CX-2490-A to

G; CX-1-G to H (1994 AIIC Statutes Article 24(6)); CX-2-G to H (1991 AIIC Statutes Article 24(6)).⁶

Third, AIIC cooperated with The American Association of Language Specialists ("TAALS") with respect to conduct in the United States challenged in the complaint. *See generally* CX-409-A; CX-218-J; CX-266-Z-6 (coordination of AIIC and TAALS activities); CX-405-C (in 1975 AIIC agreed to work with TAALS to examine issue of U.S. antitrust laws); CX-1728-B (appointment of official liaison from TAALS to AIIC, with eight-year term). In particular, AIIC and TAALS worked together to enforce their overlapping rules in the U.S. *See generally* CX-1066-A; CX-1090; CX-1138-A to B; CX-237-H; CX-239-B; CXT-1731-B. Further, TAALS and AIIC shared information on enforcement and on their mutual efforts to effect changes in the terms of the contracts for interpretation services at the 1984 Olympic Games. *See* CX-1248; CX-1266-B; CX-1310; CX-1696; CX-1708; CX-1714-A; CX-1728-B; CX-1733; CX-1735.

Fourth, respondent AIIC held its General Assembly in New York City in 1979 and voted there to adopt several of the provisions challenged in the complaint, including rules prescribing equal remuneration for all members of an interpretation team and limiting the length of the working day. *See* CX-6-A to M; CXT-6-E to M; CX-219-P to R; CXT-221-A-Z-20, pp. 18-19; CX-221-D. In addition, AIIC mailed draft proposals of its Codes of Ethics and Standards of Practice to the United States for review and comment before other General Assembly meetings. *See* CX-1406-B to C; CX-266-Z-5; CX-260-A to B.

b. Claims Against Respondent AIIC Arising From U.S. Activities

With respect to the second aspect of specific jurisdiction analysis, it is settled that "[a]n action will be deemed not to have arisen from

⁶ We find unpersuasive respondent's reliance on cases in which an association failed to exercise substantial influence over the members' activities in the forum. *See* Brief for Respondents-Appellants at 77-78. Two of the cited cases involved general jurisdiction analysis, which calls for a heightened degree of contact with the forum. *See Donatelli v. National Hockey League*, 893 F.2d 459, 468-72 (1st Cir. 1990); *Rhodes v. Tallarico*, 751 F. Supp. 277, 279 (D. Mass. 1990) (citing "minimum contacts" test applied in *Donatelli*). Further, the court in *Rhodes* concluded that the defendant organization lacked minimum contacts with the forum because there was no evidence that the organization lacked minimum contacts with the forum because there was no evidence that the organization exercised any influence over its members' decision to perform services in the forum. In contrast, AIIC's professional address rule required its members to remain at a professional address for a minimum of six months. In addition, AIIC's conduct described above in the text had a substantial influence over its members' conduct in providing interpretation services in this country.

the defendant's contacts with the forum state only when they are unrelated to the operative facts of the controversy." *Creech v. Roberts*, 908 F.2d 75, 80 (6th Cir. 1990), *cert. denied*, 499 U.S. 975 (1991). In this case, the cause of action arose from the very same conduct conferring jurisdiction. The Commission's complaint alleges that respondent AIIC and its United States affiliate members conspired to fix the fees that they could charge for interpretation services performed in the United States, and that they imposed a variety of restrictions that illegally restrained competition among U.S. interpreters. Specifically, AIIC and its U.S. Region allegedly enforced fee schedules, work rules and other restrictions on members operating in the United States.

The alleged price-fixing herein includes minimum rates that members must charge within the United States: for performance of interpretation services; for cancellations; for recording of interpretations; as compensation for travel time, rest, and conference recesses; for performing whispered interpretation or working alone; and as reimbursement for travel, lodging and other expenses. The complaint also challenges the respondents' work rules in the U.S. requiring that all interpreters on the same job obtain the same pay regardless of skill level or experience; that interpretation fees be paid on a full-day basis; and that member interpreters must pay their own subsistence and travel when they do volunteer work. The following additional restrictions imposed on U.S. interpreters by AIIC and its U.S. Region were also challenged in the complaint: specified minimums as to the number of interpreters per job; limitations on the number of hours members may work per day; limits on member use of portable equipment; a requirement that interpreters declare a single professional address that they can change only once every six months with three months' notice; a prohibition against accepting non-interpreter duties at a conference where members are performing interpretation services; a prohibition on comparative advertising; restrictions against certain exclusive employment arrangements; a prohibition on offering package deals of interpretation and other services; a ban on commissions; a requirement that members selecting an interpretation team give preference to freelance interpreters over interpreters with permanent positions; limits on accepting multiple assignments within a period of time; and prohibitions on the use of trade names by members who coordinate interpreters.

We therefore find that the claims in the Commission's complaint arise from, or are related to, the foregoing AIIC contacts with the United States.

c. Reasonableness

The third aspect of specific jurisdiction analysis is to determine whether, under the particular circumstances of the case, the exercise of jurisdiction is reasonable as a matter of constitutional due process. We conclude that the Commission's exercise of personal jurisdiction here would satisfy that standard.

Asahi Metal Industry Co. is the Supreme Court's most recent pronouncement on *in personam* jurisdiction over foreign defendants. The Court explained that determining "reasonableness" of the exercise of jurisdiction in a given case depends on an evaluation of several factors, which the Court had previously articulated in *World-Wide Volkswagen* (a case involving personal jurisdiction over domestic defendants):

A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies."

Asahi, 480 U.S. at 113 (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

As to "the burden on the defendant," we recognize that AIIC is a foreign association, organized under French law and having its only office in Geneva, Switzerland. Nonetheless, the Commission does not believe that requiring AIIC to appear through counsel in the present action imposes on AIIC an unusually severe or unreasonable burden.⁷ In any event, "when minimum contacts have been established," as they have been here, "often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even . . . serious burdens placed on the alien defendant." *Asahi*, 480 U.S. at 114.

⁷ In *Asahi*, the Court found that litigation in California would severely burden the Japanese defendant (and that there was no showing that litigation in California, rather than Japan or Taiwan, would be more convenient for the Taiwanese plaintiff). In the present case, by contrast, litigation in the United States offers some convenience due to AIIC's relationship with the U.S. Region. Indeed, the interests of AIIC and its U.S. Region are sufficiently parallel that they are represented by the same counsel. The feasibility of common representation substantially mitigates the severity of the burdens imposed on AIIC by litigation in a foreign forum.

As to the "interests of the forum" and the "plaintiff's interest in obtaining relief," we find that the interests of the forum and the plaintiff in the assertion of jurisdiction over AIIC are substantial. The objective of the present action is to ensure that respondents' anticompetitive restraints in this country will cease. Although much of respondent AIIC's conduct occurred outside this country, the intended effect of its actions in establishing work rules, including rules having unique application to this country, was to restrain competition in the United States. *See supra* at 6-8. This agency was established to enforce federal antitrust laws to protect competition in this country, and we therefore assert a strong interest in challenging respondents' alleged anticompetitive conduct.⁸

Finally, the "interest in obtaining the most efficient resolution of controversies" also strongly favors the resolution in the United States of questions respecting AIIC's conduct. The Commission is exercising jurisdiction over AIIC's United States Region, and, in any event, the challenged conduct by AIIC is closely related to that region.⁹

On balance, in this case, we conclude that the Commission's interest in protecting competition within the United States, and considerations of efficiency, are sufficient to outweigh the burdens

⁸ A Plaintiff's interest in relief may sometimes be satisfied by the availability of redress in a foreign tribunal. Here, there is no reason to believe that a foreign sovereign will act to protect the market for interpretation services in the United States, and the Commission is unaware of any pending action by a foreign sovereign to remedy the competitive injury alleged in this case. Further, even were it shown that a foreign sovereign had some enforcement interest in this matter, that consideration, while relevant, *see infra* note 9 (discussing *Asahi*), is only one of several factors to be weighed in determining whether personal jurisdiction would be "reasonable." *See, e.g., Caruth v. International Psychoanalytical Ass'n*, 59 F.3d 126, 129 (9th Cir. 1995) (declining to find that personal jurisdiction over membership association organized under Swiss law and based in Argentina was unreasonable, even though plaintiff failed to demonstrate that effective remedy was unavailable in alternative forum); *Roth v. Garcia Marquez*, 942 F.2d 617, 624-25 (9th Cir. 1991) (declining to find that personal jurisdiction over Spanish defendants was unreasonable, even though interests of foreign sovereignty weighed slightly in favor of defendants, and plaintiff did not show that he could not litigate in alternative forum); *Sinatra v. National Enquirer*, 854 F.2d 1191, 1199-1201 (9th Cir. 1988) (finding personal jurisdiction over Swiss clinic to be reasonable, even though plaintiff failed to show that alternative forum was unavailable); *Taubler v. Giraud*, 655 F.2d 991, 994-96 (9th Cir. 1981) (finding personal jurisdiction over French wine maker to be reasonable, citing as factors but not specifically discussing foreign authorities' interests or availability of alternative forum, instead noting that "[s]tate and federal antitrust violations should not go without a domestic remedy").

⁹ Nor would assertion of personal jurisdiction here impinge adversely upon the values reflected in the last *Asahi* "reasonableness" element relating to "the shared interest of the several States in furthering fundamental substantive social policies." *See Asahi*, 480 U.S. at 115 (acknowledging the need to weigh procedural and substantive policies of other nations whose interests are affected by the U.S. court's assertion of jurisdiction). To the extent that concerns about efficiency and substantive social policies are relevant here, our analysis considers other national interests, as discussed *supra* note 8.

that may be placed on AIIC to defend itself in this forum. Thus, we conclude that the assertion of personal jurisdiction over AIIC here is reasonable under the Due Process Clause.

Accordingly, because AIIC's unlawful conduct was purposefully directed towards the United States, because the claims alleged in this case arose from such activities, and because the assertion of jurisdiction here would be reasonable under the Due Process Clause, we hold that the Commission may lawfully exercise *in personam* jurisdiction over AIIC in this case.

B. The Not-for-Profit Exemption Is Inapplicable

We disagree with respondents' claim that they are entitled to the not-for-profit exemption. Respondents claim that "[n]either AIIC nor the U.S. Region is 'organized to carry on business for its own profit or that of its members' under Section 4" of the FTC Act, 15 U.S.C. 44 (1994), as interpreted by the Commission in its opinion in *College Football Ass'n*, D. 9242 (July 8, 1994), 5 Trade Reg. Rep. (CCH) ¶ 23,631 ("CFA"). Respondents' Post Trial Brief at 126-27. In *Community Blood Bank of Kansas City Area, Inc. v. FTC*, 405 F.2d 1011 (8th Cir. 1969), the Eighth Circuit rejected the notion that a corporation's nonprofit organizational form alone places it beyond the Commission's jurisdiction. The Eighth Circuit explained that the FTC Act's Section 4 nonprofit exemption extends only to corporations that are "in law and in fact charitable." *Id.* at 1019. We applied this standard in *American Medical Ass'n*, 94 FTC 701 (1979), *aff'd as modified*, 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided Court*, 455 U.S. 676 (1982) ("AMA"), and have since adhered to that formulation of the reach of our jurisdiction over nonprofit organizations, most recently in our opinion in *California Dental Ass'n*, D. 9259 (Mar. 25, 1996), 5 Trade Reg. Rep. (CCH) ¶ 24,007 ("CDA"). See also *Michigan State Med. Soc'y*, 101 FTC 191, 283-84 (1983).

Nonetheless, AIIC argues that it is "a *bona-fide* tax-exempt, non-profit association under French law" and that this case is even stronger than in CFA because, "[u]nlike in CFA, AIIC does not obtain revenues or profits on behalf of its members and distribute those profits to them." Respondents' Post-Trial Brief at 126-27. Our decision in CFA does not afford immunity to respondents in this case. CFA addressed whether a nonprofit organization, all of whose members are not-for-profit entities, is subject to the Commission's

jurisdiction when it engages in commercial activity and distributes the income earned from that activity to its members. Our jurisdictional analysis in CFA did not call the holding in AMA into question. *See* CFA, slip op. at 20-26, 5 Trade Reg. Rep. (CCH) at 23,361-64; CDA, slip op. at 6, 5 Trade Reg. Rep. (CCH) at 23,782.

AIIC falls within our jurisdiction for many of the same reasons the AMA and CDA did. *See generally* CDA, slip op. at 6-7, 5 Trade Reg. Rep. (CCH) at 23,782-83; *AMA*, 94 FTC at 986-88. AIIC and the U.S. Region exist and engage in activities to improve members' incomes and working conditions. AIIC and the U.S. Region adopted minimum daily rates for use in the U.S. and adopted other rules governing the working conditions for interpreters. AIIC publishes a directory of AIIC members, which AIIC sends to AIIC members and purchasers of interpretation services to facilitate the hiring of AIIC members. IDF 467, 468; Stips. 61-62. AIIC also negotiates member discounts for such items as airfare, hotels, and publications. IDF 483. AIIC also provides its members with insurance plans for health, loss of earnings, and retirement, and manages two retirement plans for members. IDF 484, 485. AIIC has contacted various governmental entities, including a U.S. Senator, to improve the financial situation of its members. IDF 487, 488. The ALJ found numerous other examples of how AIIC serves the pecuniary benefits of its members, and we agree with his findings in this regard. *See generally* IDF 453-97. Finally, because AIIC and U.S. Region members are themselves profit seekers, this case is more akin to CDA and AMA and unlike CFA, where the members were not-for-profit educational institutions.

C. AIIC Does Not Qualify for the Labor Exemption

Respondents argue that "the statutory labor exemption immunizes all challenged Basic Texts provisions from antitrust liability [and] the nonstatutory labor exemption so immunizes AIIC's agreements." Brief for Respondents-Appellants at 82 n.84. The statutory labor exemption is designed to protect union conduct, and the Supreme Court has said that "a party seeking refuge in the statutory exemption must be a *bona fide* labor organization, and not an independent contractor or entrepreneur." *H.A. Artists & Assocs. v. Actors' Equity Ass'n*, 451 U.S. 704, 717 n.20 (1981) (citing *Meat Drivers v. United States*, 371 U.S. 94 (1962), and *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143 (1942)). The nonstatutory labor exemption

protects from antitrust liability certain labor agreements that are part of, or result from, the collective bargaining process. *Brown v. Pro Football, Inc.*, 116 S. Ct. 2116, 2121 (1996).

AIIC is an association of professional interpreters who have, through the association, promulgated a series of rules and regulations governing competition among themselves concerning the provision of conference interpretation services. As the ALJ found, the association members have expressly declined to organize AIIC as a labor organization (IDF 504-05), and we find that the weight of the evidence shows that the freelance AIIC members, for whom the pay and working conditions have the most relevance, are self-employed entrepreneurs and not employees. For example, AIIC members individually arrange their jobs and have complete discretion as to which jobs they will take and which they will decline. IDF 503. Moreover, the respondents, who carry the burden of proof with respect to establishing the applicability of this exemption, have offered no evidence to support the position that freelance AIIC members are employees. In fact, respondents have stipulated that 68 percent of "AIIC members in the United States are self-employed (*i.e.*, freelance) interpreters." Stips. 57, 60. Moreover, Mr. Luccarelli, one of respondents' key witnesses, testified that outside of the permanent employees of various international organizations, interpreters are generally not considered employees. Luccarelli, Tr. 1694; *see also* IDF 504.

We therefore find that AIIC is an organization of competing self-employed professionals and not a *bona fide* labor organization. Accordingly, we reject AIIC's argument that its Basic Texts are shielded by the statutory labor exemption. *See H.A. Artists & Assocs.*, 451 U.S. at 717 n.20. *See generally* 1 Phillip E. Areeda & Donald F. Turner, Antitrust Law ¶ 229c (1978); Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 229'c (Supp. 1996).

Respondents also argue that they have negotiated several collective bargaining agreements on behalf of AIIC members with institutions that employ freelance AIIC members alongside their regular employees. Stips. 75, 78, 81. AIIC asserts that its agreements are immunized from antitrust challenge by the nonstatutory labor exemption. Because we are not challenging the agreements that AIIC relies upon for the nonstatutory exemption, we do not have to reach the question whether those agreements are in fact the product of a

collective bargaining process or are something else, such as employment contracts or contracts for the provision of services.¹⁰

IV. LEGALITY OF RESTRAINTS OF TRADE

Restraints of trade are unlawful under Section 5 of the Federal Trade Commission Act, as well as Section 1 of the Sherman Act, 15 U.S.C. 1 (1994), when they are *per se* illegal or when they are unreasonable under the rule of reason. The law does not condemn some practices that restrain trade in a literal sense -- as, for instance, all contracts do to varying degrees -- when those practices have no significant anticompetitive effect or even promote competition. In each case "the ultimate question is whether the challenged restraint hinders, enhances, or has no significant effect on competition." CDA, slip op. at 14, 5 Trade Reg. Rep. (CCH) at 23,786; *see also National Collegiate Athletic Ass'n v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85, 104 (1984) ("NCAA"); *National Soc'y of Prof'l Engineers v. United States*, 435 U.S. 679, 691 (1978). Recent Supreme Court decisions continue the distinction between *per se* and rule of reason analyses. *See, e.g., Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990) (*per curiam*); *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990) ("SCTLA").¹¹

Although respondents do not specifically appeal from the ALJ's finding that their rules resulted from a conspiracy, before examining respondents' restraints and the analysis to be accorded each, we address this element of a Section 5 case. As we noted recently in CDA, it is well-established that "professional associations are 'routinely treated as continuing conspiracies of their members.'" CDA, slip op. at 9, 5 Trade Reg. Rep. (CCH) at 23,783 (quoting 7 Areeda, Antitrust Law, *supra* note 11, ¶ 1477, at 343, and citing *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988)). *See also National Soc'y of Prof'l Engineers*, 435 U.S. at 692

¹⁰ While the ALJ incorrectly said that the nonstatutory labor exemption "is available only for union-employer agreements" (ID at 131), *cf., e.g., Brown v. Pro Football, Inc.*, 116 S. Ct. at 2123-24, we think it clear that the only agreements that the nonstatutory labor exemption reaches are those that grew out of the collective bargaining process, *see id.*

¹¹ We note that some earlier Supreme Court cases had suggested the merging of the *per se* and rule of reason analyses. *See, e.g., Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1 (1979) ("BMI"); *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 461 (1986) ("IFD"). Areeda also has suggested that there may have been some convergence of the *per se* category (*see, e.g.,* the willingness to look beyond a horizontal price agreement in BMI) and a full blown rule of reason (*see, e.g.,* the "quick look" approach of IFD) so that at times the two antitrust approaches do not differ significantly. *See* 7 Phillip E. Areeda, Antitrust Law ¶ 1508c, at 408 (1986).

(Court noted, in declaring a professional association's ethics rule a violation of Sherman Act Section 1, that "[i]n this case we are presented with an agreement among competitors"); *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 455 (1986) ("IFD") (members of IFD had "conspired among themselves" by promulgating a policy restricting the information its members would provide insurance companies); *NCAA*, 468 U.S. at 99.

Respondents herein, as in CDA, clearly promulgated their Basic Texts, which "implies agreement among the members of [the] organization to adhere to the norms of conduct set forth in the code." CDA, slip op. at 10, 5 Trade Reg. Rep. (CCH) at 23,784 (citing *AMA*, 94 FTC at 998 n.33). Moreover, as in CDA, respondents herein require both members and candidates for membership to expressly pledge to abide by AIIC's Basic Texts. IDF 43-45; CX-1-Z-30; CX-2-Z-30; CX-300-Z-8 to Z-10 (Motton). AIIC's Council also interprets and enforces AIIC's Basic Texts. *See* IDF 39-41.

We therefore affirm the ALJ's finding that the restraints at issue in this case are the result of an agreement among competitors -- namely, the members of AIIC, acting through their Assembly and other representative entities. *See* ID at 101-04. We turn to the specific restraints imposed by respondents and analyze each under the appropriate antitrust standard to determine whether it is an unreasonable restraint of trade.¹²

A. Restraints on Price Competition -- Per Se Unlawful

Per se categories of unlawful conduct consist of agreements or practices that are almost always harmful to competition and rarely, if ever, accompanied by substantial procompetitive justifications. The law accords *per se* treatment to certain kinds of behavior that longstanding experience has shown to be beyond justification, and courts generally will not consider arguments that such conduct is harmless or procompetitive. Thus, the courts have concluded that such agreements are illegal without further examination of the particular circumstances under which they arise or the effects thereof -- "once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is

¹² Because AIIC made numerous changes to its rules between 1991 and 1994, we discuss both versions where necessary to provide a complete understanding of the practices challenged in this proceeding. In general, we discuss the 1991 version of the rules in the text and the 1994 version in footnotes, noting whether we have concerns with the revised rules.

unreasonable." *Arizona v. Maricopa County Med. Soc'y*, 457 U.S. 332, 344 (1982) (footnote omitted). See also *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 289-90 (1985). As we recently made clear in CDA, "[e]xamples of such practices are horizontal price fixing," citing *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940), and SCTLA; "territorial divisions among competitors," citing *United States v. Topco Assocs.*, 405 U.S. 596 (1972); "and certain group boycotts," citing *Northwest Wholesale Stationers*. CDA, slip op. at 15, 5 Trade Reg. Rep. (CCH) at 23,786 (also citing *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 5 (1958)).

It is well established that a horizontal agreement to eliminate price competition is a *per se* violation of the antitrust laws. See, e.g., *Maricopa*, 457 U.S. at 344-48; *United States v. Trenton Potteries Co.*, 273 U.S. 392, 397 (1927).¹³ Thus, any alleged "reasonableness" of an agreement to fix prices will not justify the resulting interference with competition. See *Trenton Potteries Co.*, 273 U.S. at 397-98; *United States v. Addyston Pipe & Steel*, 85 F. 271, 291 (6th Cir. 1898) (dictum), *aff'd as modified*, 175 U.S. 211 (1899). Lack of market power to effect the agreement is not a defense to the *per se* illegality of the agreement. SCTLA, 493 U.S. at 430-31; *Socony-Vacuum*, 310 U.S. at 224-25 & n.59.

1. Facts

AIIC and the U.S. Region adopted a wide variety of rules that affected and eliminated price competition among AIIC members in the United States. Since AIIC was founded in 1953, it has established binding rules governing its conference interpreter members, including rules concerning the remuneration charged. AIIC rules are found in its Basic Texts, which include Governing Statutes (CX-2-A (1991); CX-1-A to M(1994)), a Code of Professional Ethics (CX-2-Z-37 to 39(1991); CX-1-Z-37 to 39(1994)), Standards of Professional Practice (CX-2-Z-40 to 49 (1991); CX-1-Z-40 to 46 (1994)), a Staff Interpreters' Charter (CX-2-Z-54) (1991)), and various Annexes to the Basic Texts, including the Guidelines for Recruiting Interpreters.

¹³ But see BMI (price agreement that was essential to the market availability of the product reviewed under the rule of reason); U.S. Dep't of Justice & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (Aug. 28, 1996) (Statements 8 & 9), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,153 (price agreements that are ancillary to the formation of an integrated joint venture analyzed under the rule of reason).

CX-2-Z-50 to 53 (1991); CX-1-Z-47 to 52 (1994). For the reasons discussed *infra* at 25-29, we find that the following rules are individually and collectively part of an overall price-fixing scheme and we declare each of them *per se* unlawful under Section 5.

a. Minimum Daily Rates

From 1953 until 1973, AIIC published universal minimum daily rates applicable world-wide, with certain exceptions for particular countries where the mandatory minimum rate was higher. In 1973, when the U.S. dollar and other currencies were no longer traded at fixed exchange rates, AIIC began a program to establish individual rates for each country on the basis of recommendations from AIIC members in those countries. IDF 99; Weber, Tr. 1142-44, 1147. However, in 1983 AIIC became aware that certain countries were applying their antitrust laws to rules adopted by professional associations and began to send out lists of minimum daily rates under the title "Market Survey," which was widely understood to reflect a "gentleman's agreement" on the minimum rate to be charged.¹⁴ IDF 516. In 1982 the U.S. Region became particularly concerned about the application of U.S. antitrust laws and asked AIIC to stop publishing a minimum daily rate for the United States. *See* CX-1226-A ("gentleman's agreement not to ask for less than" \$250 per day; antitrust lawyers advised U.S. Region not to have fixed rate appear on the rate sheet). From approximately 1982 until 1988, there was a tacit "gentleman's agreement" to abide by minimum daily rates for the U.S. Region. IDF 77; ID at 106. However, in 1988 AIIC again began publishing, at the U.S. Region's request, minimum daily rates for the U.S. *See* IDF 78.

Article 8 of the 1991 AIIC Basic Texts, Standards of Professional Practice, stated:

The rate of daily remuneration shall be the standard rate applicable in the region concerned and, more precisely in the appropriate cases, in the country concerned. All the standard rates must be approved by the Council, which shall inform all members. In those countries where it is impossible to apply a standard rate, the Council shall adopt whichever alternative provisions it deems necessary and shall also inform all members.

¹⁴ In 1977, in order to standardize rates for the U.S., AIIC's U.S. Region decided to adopt the minimum daily rate established and voted on by TAALS and transmit that rate to AIIC's headquarters for publication as the official rate applicable in the United States. *See* ID at 106; IDF 338, 100. The Commission issued a consent order against TAALS on August 31, 1994. Docket No. C-3524, 5 Trade Reg. Rep. (CCH) ¶ 23,537.

The base rate, which shall equal two-thirds of the standard rate, shall be applied in the cases provided for in Articles 12 and 14 below.¹⁵

AIIC became aware of the FTC investigation of interpreter associations in June 1991, when two U.S. Region members responded to a Commission document request sent to TAALS. IDF 538; CX-608-Z-77; CX-935-B. At its General Assembly meeting in 1991, AIIC's membership voted on whether to remove the monetary conditions from its Basic Texts, but the vote failed to achieve the required two-thirds majority. IDF 520-21; CX-270-K. AIIC then decided to hold an Extraordinary Assembly in 1992 to reconsider eliminating the monetary rules. One day before its 1992 Extraordinary Assembly, the Non-Agreement Sector held an off-the-record meeting to examine how, in light of the antitrust laws, it was possible to "operate in another way."¹⁶ IDF 510; CX-271-C, F; CX-273-U. The next day the Assembly voted on the following resolution:

DEEPLY ATTACHED to the principles of universality and solidarity upon which AIIC, since its inception, has based its action in organizing the profession, for the benefit of both the interpreters and the users of interpretation, FULLY AWARE of the gradual implementation of anti-trust legislation in the various parts of the world, DECIDES on the following principles:

1. To remove all mention of monetary conditions (e.g. rates, subsistence and travel allowances, payment of non-working days) from our basic texts. . . .

CX-273-G; IDF 509. The Council subsequently decided that "[a]ll provisions of the Basic Texts that refer to financial conditions are immediately withdrawn. . . .The Basic Texts shall be amended consequently at the next ordinary Assembly." CX-279-I (March 1994 Bulletin); *see also* CX-273-O; CXT-273-O, p.1. Subsequently, at the 1994 Assembly, necessary changes to remove the monetary conditions were incorporated into the Basic Texts. IDF 97; CX-970-A.

¹⁵ CX-2-Z-43. Article 4 of the 1994 version of the Professional Standards states: "Except for those cases where the Association has signed an Agreement, members are free to set their level of remuneration." We have no objection to this formulation of the rule.

¹⁶ The June 1992 AIIC Bulletin set forth the agenda for the Extraordinary Assembly. It contained this message from AIIC's president:

We urge as many members as possible to attend this meeting on cartels which has been proposed by the NAS and will be attended in the morning by a lawyer. Colleagues from Canada and Germany will explain how, in practice, it is possible to "operate in another way." Since there will be neither minutes nor recording of the proceedings, your presence is essential if you wish to fully informed. . . . On the basis of this information, you will be able to take the relevant decisions which will enable the Assembly to achieve its aims.

CX-271-F.

b. Indivisible Daily Rates

Article 6(a) of the 1991 AIIC Standards provided that "[r]emuneration shall be on an indivisible daily basis." CX-2-Z-42.¹⁷ AIIC's rules meant that "you charge per day no matter how long you work." CX-303-Z-109 (Moggio-Ortiz); *see also* CX-886-D; Saxon-Forti, Tr. 2696; CX-305-Z-89, Z-97, Z-110 (Sy).

Even where interpreters received a waiver from AIIC allowing them to work alone for meetings lasting 40 minutes or less in the U.S., they were nonetheless required to charge the full daily rate. CX-301-Z-152.1 (Bishopp); CX-432-G. The June 1993 Bulletin presented sales arguments interpreters could use in light of the deregulation of AIIC's Basic Texts, noting that they should argue that with respect to "conferences of short duration . . . one cannot take other assignments in the course of a free half-day." CXT-276-E-G, pp.1-2.

U.S. Region interpreters charge indivisible daily fees, regardless of the number of hours worked. IDF 126; Swetye, Tr. 2826-28, 2830-31; CX-300-Z-143 (Motton); Weber, Tr. 1264. Intermediaries understood the AIIC rate to mean an indivisible daily rate, which they paid. IDF 127, 126; Neubacher, Tr. 763, 765-66; Citrano, Tr. 552-53.

c. Fees for Non-Working Days

Article 12 of the 1991 Standards of Professional Practice stated:

a) When an interpreter is recruited to work in a place other than that of her or his professional address she or he shall receive a remuneration for each day required for travel and rest as well as for Sundays, public holidays and non-working days in the course of a conference or between conferences. This remuneration shall be at least equal to the base rate.

b) When an interpreter is recruited to work in the place of her or his professional address she or he shall receive a remuneration for each non-working day in the course of the conference (up to a maximum of two). This remuneration shall be at least equal to the base rate.

CX-2-Z-46. As noted above, the "base rate" was defined in Article 8 of the 1991 Basic Texts as being at least two-thirds of the standard minimum daily rate. CX-2-Z-43 (Article 8). Article 14 specified, *inter alia*, that for journeys of more than nine hours, the interpreter was "entitled to" rest days, which "equated to non-working days and

¹⁷ There is no provision specifying that remuneration shall be for an indivisible day in the 1994 Basic Texts.

remunerated at the same rate." In lieu of rest days, the interpreter could accept first class airfare. CX-2-Z-47.¹⁸

d. Same Team, Same Rate

Article 6(c) of the 1991 AIIC Standards of Professional Practice provided that "[a]ny member of the Association asked to work in a team of interpreters shall only accept the assignment if all the freelance members of that team are contracted to receive the same rate of remuneration." CX-2-Z-42.¹⁹ The rule further stated that "[a]ny interpreters recruited separately for a language which is not one of the normal working languages of the organization concerned may be regarded as not being members of the teams." *Id.* Thus, the rule did not apply when interpreters were recruited for an "exotic" language, such as Russian, Japanese, or German, or another language for which "there is difficulty finding interpreters." IDF 151; CX-301-Z-33, Z-35 to Z-36 (Bishopp); CX-300-Z-82 (Motton).

e. Travel Arrangements

Article 15(a) of the 1991 Standards provided:

Every contract signed with a member of the Association for a conference, or a number of immediately consecutive conferences, away from the place of her or his professional address must include payment for travel by the shortest possible return (or circular) route between the place of her or his professional address and the conference venue (or venues).

CX- 2-Z-48. The rule further specified that payment for travel by air shall be for first class, business class, or club class and that tickets are not to be restricted to a particular carrier nor can an interpreter be forced to travel by charter flight. *Id.* Article 15(b) further required

¹⁸ Article 8 of the 1994 Standards provides: "The remuneration for non-working days occurring during a conference as well as travel days, days permitted for adaptation following a long journey and briefing days that may be compared to normal working days shall be negotiated by the parties." Article 10 of the 1994 Standards further provides: "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey. This means that journeys lasting a long time or involving a major shift in time zone call for the scheduling of rest days (generally one rest day for journeys of between nine and sixteen hours, and two rest days for journeys of 16-21 hours and three for journey[s] in excess of 21 hours)." CX-1-Z-45. Although the rule as revised in 1994 is not *per se* illegal, in light of the previous agreements to set remuneration for non-working days and to specify the forms of travel, we are requiring that for a period of five years AIIC eliminate from its Basic Texts all references to payments and travel arrangements, even if expressed in non-mandatory language. See discussion in Section VI, *infra* at 48-49.

¹⁹ There is no provision specifying that remuneration shall be the same for all members of a team in the 1994 Basic Texts.

that for successive conferences away from the interpreter's professional address, unless there is "full and separate payment of the return travel from each [conference], the interpreter shall receive a fee and a subsistence allowance for every day" between conferences. *Id.*

AIIC's rules governing travel arrangements were binding in the U.S. IDF 239. In fact, the 1991 paper, "Working conditions for interpreters in USA," the purpose of which was to ensure the uniform application in the U.S. of the AIIC rules, states that "[i]n addition to professional fees, each interpreter shall be entitled to: . . . return economy air fare for trips under 8 hrs. Restricted tickets are not acceptable. For trips longer than 8 hrs. interpreters are entitled to business class or first class tickets. When train service is more convenient, first class tickets." CX-439-E, ¶ 6; IDF 239.²⁰

f. Per Diem

Article 13 of the 1991 Standards of Practice provided:

a) For the whole of the period spent away from the place of her or his professional address the interpreter shall receive a subsistence allowance, calculated per night of absence.

b) The Association shall regularly publish a list of subsistence allowances for the various countries. They shall reflect the prices charged by first-class hotels.

c) The interpreter may agree to the conference organizers paying up to half the subsistence allowance in kind by providing a hotel room, including breakfast, or up to eighty percent by providing full-board.

d) One half of the subsistence allowance shall be due when the interpreter's absence from the place of her or his professional address is less than twelve hours between 8:00 and 20:00 hours (which may vary slightly as a function of local custom) and when it is not necessary for the interpreter to spend the night away from the place of her or his professional address.²¹

²⁰ In the 1994 Standards, Article 10 states: "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey." Article 9 further provides: "Except where the parties agree otherwise, members of the Association shall be reimbursed their travel expenses." CX-1-Z-45; IDF 238. Although the rule as revised in 1994 is not *per se* illegal, in light of the previous agreements to specify forms of travel, we are requiring that for a period of five years AIIC eliminate from its Basic Texts all references to payments and travel arrangements, even if expressed in non-mandatory language. See discussion in Section VI, *infra* at 48-49.

²¹ Article 11(a) of the 1994 Professional Standards revised this provision to state:
Unless the parties agree otherwise, the interpreter required to travel to the conference shall receive a subsistence allowance, calculated per night of absence. As a general rule, this allowance shall be paid on the first day of the conference and in the currency of the country where it is being held.

CX-1-Z-45. Although the rule as revised in 1994 is not *per se* illegal, in light of the previous agreements to specify the payment of *per diems* and formulas for calculating such *per diems*, we are requiring that for a period of five years AIIC eliminate from its Basic Texts all references to payments and travel arrangements, even if expressed in non-mandatory language. See discussion in Section VI, *infra* at 48-49.

CX-2-Z-46. The record establishes that: AIIC rules required members to charge a per diem when they worked away from their professional address (IDF 110; CX-300-Z-71 to Z-72 (Motton); CX-301-Z-67 (Bishopp));²² AIIC's Council approved the rates (IDF 113; CX-301-Z-152.41 to Z-152.42 (Bishopp); CX-268-E; CX-300-Z-72/3 to Z-74/22 (Motton)); and AIIC published a per diem rate for the United States (CX-247-Z-2, Z-5, CX-124-E, CX-125-E). In addition, the U.S. Region adopted a formula whereby the organizer pays the interpreter's hotel room, as well as a fixed percentage of the hotel rate for meals and incidentals. IDF 116; CX-301-Z-65, Z-150 to Z-152.1 (Bishopp); CX-432-F (50% of hotel rate in 1988); CX-439-F (40% of hotel rate in 1991).

g. Cancellation Fees

Article 2(c) of the 1991 Standards of Professional Practice provided:

Any contract for the recruitment of a member of the Association must specify that in the event of the organizer cancelling [sic] all or part thereof, whatever the reason for and the date of cancellation, the interpreter shall be entitled to the payment of all fees contracted therein (working and non-working days, briefing days as well as days allowed for rest and travel) in addition to the reimbursement of any expenditure already incurred.

CX-2-Z-41; *see* IDF 241. Article 2(d) of the 1991 Standards further stated that the interpreter cannot be forced to accept an alternative job to mitigate the organizers' liability. *Id.*²³

²² According to one intermediary, Berlitz, "there has always been a standard rate that all interpreters charge for per diems." Clark, Tr. 614; *see also* Neubacher, Tr. 771.

²³ Article 3.2 of the 1994 Professional Standards states:

At the time the contract is being negotiated, the interpreter may ask for the inclusion of a clause whereby, in the event of all or part of the contract being canceled by the conference organizer, the remuneration envisaged would remain payable to the interpreter and she or he would, if applicable, be refunded any out-of-pocket expenses. A specimen cancellation clause that may be used for this purpose shall be included in the general conditions appearing on the back of the standard contract for individual interpreters.

CX-1-Z-41. Although the rule as revised in 1994 is not *per se* illegal, in light of the previous agreements to specify a standard cancellation clause that provides for the payment in full of all remuneration contemplated to be paid under the contract, we are requiring that for a period of five years AIIC eliminate from its Basic Texts all references to such payments in the event of cancellation, even if expressed in non-mandatory language. *See* discussion in Section VI, *infra* at 48-49.

h. Recording

Article 2(b) of both the 1991 and 1994 Standards of Professional Practice provides:

Any contract for the employment of a member of the Association must stipulate that the interpretation is intended solely for immediate audition in the conference room. No one, including conference participants, shall make any tape recording without the prior consent of the interpreters involved, who may request appropriate remuneration for it, depending on the purpose for which it is made and in accordance with the provisions of international copyright agreements.

CX-2-Z-41 and CX-1-Z-40. The ALJ found that "AIIC's rule on recordings is binding in the United States." IDF 244; Weber, Tr. 1251. Moreover, members at a NAS meeting held in Dublin in January 1989 voted that recordings not for resale should be charged at 25% of the daily rate, and recordings for resale at 100% the daily rate. The results of the vote were published in AIIC's Bulletin. CX-253-D (Apr. 5, 1989 AIIC Bulletin); CXT-251-W at 2-3; IDF 245.²⁴

i. Pro Bono Work

Article 7 of the 1991 Basic Texts, Standards of Professional Practice, titled "Non-Remunerated Work," stated:

Members of the Association may provide their services free of charge, especially for conferences of a charitable or humanitarian nature, provided they pay their own travel expenses and subsistence (subject to the granting of a waiver by the Council beforehand). All the other conditions laid down in the Code of Professional Ethics and in these Standards of Professional Practice must be observed.

CX-2-Z-42. *See also* CX-9-F; CXT-6-E to M, p. 4 (1979 Code); Weber, Tr. 1232.²⁵

²⁴ The only testimonial evidence regarding the actions taken at the Dublin meeting was provided by Claudia Bishopp in her investigational hearing testimony. CX-301-Z-152.7 - 152.11. Ms. Bishopp stated with respect to the rates for recordings: "I don't think this was ever agreed. It has certainly never been put into practice. There is no agreement among members of what would be acceptable to each one." *Id.* at 152.8. Thus, there is no additional evidence as to whether this agreement was ever adhered to, or whether it is still in place or was disavowed as a result of the 1992 Assembly vote to eliminate all monetary conditions from AIIC's rules.

²⁵ Article 5 of the 1994 Professional Standards states that "[w]henver members of the Association provide thier service free-of-charge for conferences of a charitable or humanitarian nature, they shall respect the conditions laid down in the Code of Professional Ethics and in these Professional Standards." CX-1-Z-41 (1994). We have no objection to this rule as currently written.

j. Commissions

Paragraph (c)4 of the AIIC Guidelines for Recruiting Interpreters (appended to the 1991 and 1994 Basic Texts),²⁶ under "Duties Towards the Profession," provides that "Members of the Association shall not accept or give commissions or any other rewards in connection with team recruitment or the provision of equipment." Article 6(d) of the 1991 Standards of Professional Practice further stated: "Remuneration shall be net of any commission." CX-2-Z-42 (1991).²⁷

AIIC members discussed the issue of commissions at a meeting in the early 1980s. An AIIC Bulletin subsequently reported: "There is no reason why an intermediary, AIIC member or otherwise, should not request a fee from the organizers for expenses incurred in recruiting a team, but this must be charged to the organizer and clearly shown as distinct from the interpreters fees and never deducted from the interpreters fees." CX-227-J (March 1981 Bulletin); IDF 253.

2. Legal Analysis

Based on the extensive history and publication of minimum daily rates, the record evidence of the price-fixing agreement, and the expert testimony, we conclude that there was an unlawful agreement among AIIC members as to the minimum price to be charged for conference interpretation in the U.S. We further find that respondents engaged in restraints that prevented price competition on virtually all aspects of conference interpreting, including minimum daily rates; an "indivisible day" that prevented lower remuneration for shorter meetings; specified payment for travel, rest, briefing, and nonworking days; a mandate that all interpreters at a conference be paid the same; standardized payments for full fare travel expenses; uniform per diem

²⁶ There is some contradictory information in the record as to whether the Recruiting Guidelines continued as an Annex to the 1994 Basic Texts. The Guidelines are appended to CX-1-Z, which is the full set of 1994 Basic Texts. However, according to a letter dated October 21, 1994 from respondents' counsel to complaint counsel transmitting the then-current Basic Texts, the respondents had not yet completed revised Guidelines for Recruiting Interpreters, and the draft that was included eliminated all mention of commissions. The testimony is also contradictory: Mr. Luccarelli testified that the Guidelines were no longer in existence (Luccarelli, Tr. 1676-77) and Mr. Weber testified that as far as he knew, AIIC never announced to the membership that the Guidelines were repealed. Weber, Tr. 1156.

²⁷ The 1994 Professional Standards contain no similar provision mentioning that remuneration shall be net of commissions or any other references to commissions.

allowances; cancellation and recording fees; and restrictions on *pro bono* work and the payment of commissions. These restraints constitute a comprehensive price-fixing scheme and, individually and collectively, are *per se* unlawful.

The reason for condemning price fixing categorically was articulated by Professor Areeda in language quoted by the Supreme Court:

In sum, price-fixing cartels are condemned *per se* because the conduct is tempting to businessmen but very dangerous to society. The conceivable social benefits are few in principle, small in magnitude, speculative in occurrence, and always premised on the existence of price-fixing power which is likely to be exercised adversely to the public.

7 Areeda, Antitrust Law, *supra* note 11, ¶ 1509, at 412, quoted in *SCTLA*, 493 U.S. at 434 n.16.

Agreements between AIIC and its U.S. members to promulgate and follow AIIC's rates constitute illegal agreements on price and are classic *per se* antitrust violations. It is irrelevant whether AIIC's rates are reasonable or unreasonable. *SCTLA*, 493 U.S. at 421 (although "[w]e may assume that the preboycott rates were unreasonably low, and that the increase has produced better legal representation for indigent defendants[,] the boycott and price fix are illegal *per se*"); *Trenton Potteries Co.*, 273 U.S. at 396. The *per se* rule against price fixing applies fully to professionals. *SCTLA*, 493 U.S. at 422, 427, 434; CDA, slip op. at 21-23, 5 Trade Reg. Rep. (CCH) at 23,789-90.

Although the core agreement is the one among AIIC's members not to charge less than an agreed-upon daily rate, the *per se* rule against price fixing is far broader. The *per se* rule embraces any agreement that has a substantial impact upon price, whether or not the agreement directly specifies prices to be charged. The conduct condemned in *Socony-Vacuum* was a concerted effort by oil companies to increase prices by buying up surplus gasoline. As the Supreme Court stated in *Socony-Vacuum*, "the machinery employed by a combination for price-fixing is immaterial." 310 U.S. at 223.

In *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643 (1980) (*per curiam*), the Supreme Court held that an agreement to terminate the availability of free credit in connection with the purchase of goods is "tantamount to an agreement to eliminate discounts, and thus falls squarely within the traditional *per se* rule against price-fixing." *Id.* at 648. Even if the price of the underlying product is not fixed (as it was not in *Catalano*, but is here), an agreement substantially impacting the

price to be charged is unlawful. *Id.* at 647; *Sugar Institute v. United States*, 297 U.S. 553, 600-02 (1936) (agreement to adhere to announced prices and terms of sale unlawful, even though the specific prices and terms were not agreed upon). Similarly, the courts have held *per se* unlawful other methods of affecting price competition that fall short of fixing the actual price of the product. *See, e.g., Plymouth Dealers' Ass'n of N. Cal. v. United States*, 279 F.2d 128, 134 (9th Cir. 1960) (uniform trade-in allowances and standard requirements for cash down payments); *cf. United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 185-88 (3d Cir. 1970) (sufficient evidence to support jury finding that defendants illegally agreed to limit discounts), *cert. denied*, 401 U.S. 948 (1971).

The AIIC rule providing that remuneration be on an indivisible daily basis required interpreters to charge the full rate regardless of the amount of time worked. This rule prevented interpreters from discounting by charging an hourly rate or a discounted or *pro rata* fee for a meeting lasting less than a full day. This rule is a *per se* unlawful price-fixing restraint under *Catalano*, 446 U.S. at 645.

The provisions related to "same team, same rate" set the rate of compensation for every team member at or above the AIIC rate, regardless of the interpreters' varying levels of skill, experience, or specialized knowledge of the subject matter of a particular conference. Although a showing of adherence is not necessary to establish the antitrust illegality of the type of horizontal agreement that courts have uniformly condemned *per se*, several witnesses in this case testified about interpreters' general adherence to this rule. Swetye, Tr. 2819-20; CX-303-Z-110-11 (Moggio-Ortiz); Hamann-Orci, Tr. 40; but *see* Saxon-Forti, Tr. 2681 (some instances in which interpreters did not adhere to rule). Moreover, during the 1984 Los Angeles Olympics, several interpreters raised concern that they not be required to work with student interpreters who were working for free because they would be in violation of this rule. *See* IDF 351; CX-1246-A; CX-1283-B. The Supreme Court has held that the *per se* rule is violated by agreements tending to provide the same economic rewards to all practitioners "regardless of their skill, their experience, [or] their training[.]" *Maricopa*, 457 U.S. at 348. We find that the "same team, same rate" agreement is an agreement to charge the same price and is thus *per se* unlawful.

We find that AIIC's 1991 rules setting the rate of remuneration for non-working, travel, rest, and briefing days constitute unlawful price

fixing. These rules, by setting forth specific pricing formulas, are also similar to other *per se* unlawful pricing schemes that have used multiple-base-point systems and phantom freight systems. *See FTC v. Cement Institute*, 333 U.S. 683 (1948) (agreement among cement manufacturers to use a multiple-base-point system for freight charges an unfair method of competition in violation of Section 5); *cf. In re Plywood Antitrust Litigation*, 655 F.2d 627, 634 (5th Cir. 1981) (discussing evidence from which reasonable jury could find that phantom freight formula, whereby West Coast freight prices were used regardless of where the shipment originated, was *per se* illegal), *cert. dismissed*, 462 U.S. 1125 (1983).²⁸ The price-fixing formula used here also prevented interpreters from competing with one another by discounting their rates for non-working days. *See Catalano*, 446 U.S. at 644-45 (discussing role of discounts in competition among wholesalers).

The travel rules prevent conference organizers from realizing considerable economies by planning ahead and taking advantage of special offers.²⁹ More significant, absent the travel rules, competing interpreters or intermediaries could use savings on travel expenses as a term of price competition. By agreeing to forego competition on this element of price, AIIC and its members have fixed prices in violation of the antitrust laws. *See Catalano*, 446 U.S. at 645; *cf. In re Plywood Antitrust Litigation*, 655 F.2d at 634. We also agree with the ALJ's finding that "AIIC's travel rules help its members maintain their agreement by deterring cheating." IDF 240; Wu, Tr. 2093-94.

Similarly, we find that respondents' agreement contained in the 1991 Basic Texts to charge per diems and to standardize per diem charges, through the use of formulas or otherwise, is an agreement affecting price that is *per se* unlawful. *See Catalano*, 446 U.S. at 648 (agreement to terminate credit discounts that affected price); *Northwestern Fruit Co. v. A. Levy & J. Zentner Co.*, 665 F. Supp. 869 (E.D. Cal. 1986) (fixing of standardized component charges was *per se* illegal price fixing).

²⁸ This case is distinguishable from *Vogel v. American Society of Appraisers*, 744 F.2d 598, 602-04 (7th Cir. 1984), in which Judge Posner, writing for the court, held an appraising society rule barring fees based on a flat percentage of appraisals to be lawful. Unlike the rules involved in the present case, the rule at issue in *Vogel* did not prescribe the charge to be made, but only prohibited a particular pricing formula.

²⁹ For instance, in the case of the 1984 Olympic Games, United Airlines had provided free air travel to the Los Angeles Olympic Organizing Committee ("LAOOC"), so the LAOOC wanted to use United for interpreters' transportation. Weber, Tr. 1247. AIIC advised that this effort by the LAOOC to reduce its costs was "usually unacceptable." CX-1283-A.

We further find that the agreement to abide by a standard cancellation clause, requiring a conference organizer to pay an interpreter his or her full fee in the event the conference does not take place, eliminates another form of price competition and as such is *per se* unlawful price fixing. The clause prevents competition on cancellation fees among interpreters, some of whom might be willing to take greater risks of cancellation.³⁰ Thus, AIIC's rule on cancellation is an agreement to place on the purchaser a cost of the transaction and is analogous to the agreements on credit terms in *Catalano* and on freight costs in *FTC v. Cement Institute*. Cf. *American Radiator*, 433 F.2d at 185-88 (evidence of conspiracies to limit maximum discounts and to eliminate a low-priced product line sufficient for jury to find illegal price fixing).

AIIC's rules, in combination with agreements reached at the NAS meeting in 1989, set the amount to charge for recordings and constitute another form of *per se* unlawful price fixing. See, e.g., *Catalano*, 446 U.S. at 647-48; *Northwestern Fruit Co.*, 665 F. Supp. at 871-72.

Complaint counsel's economic expert testified that the ban on commissions helped AIIC members reach and maintain their cartel agreement by preventing discounts on the minimum fee charged. Wu, Tr. 2150-51. Moreover, at a NAS seminar on sales techniques and negotiations held in January 1994, members were instructed to "[s]peak openly about the subject with hotel employees and technicians who usually get commissions and explain that AIIC members do not do it because they would be obliged to raise their price and everyone would lose." CX-279-Z-3; CXT-279-Z-2 to 5, p.2. Respondents' only defense of their ban on commission payments (*i.e.*, that it serves to inform customers of the respective earnings of the interpreter and the intermediary (Brief for Respondents-Appellants at 35)) is unpersuasive. Particularly when viewed in the context of

³⁰ For example, the situation that arose during the 1984 Los Angeles Olympics illustrates the application and impact of this rule. Wilhelm Weber, who organized interpretation services for the 1984 Los Angeles Olympics, initially did not offer the standard AIIC cancellation clause to interpreters. IDF 242; Weber, Tr. 1235-36, 1244-45; CX-1300-A to B. The LAOOC wanted a staggered cancellation clause to mitigate potential financial outlays because of concern about the threatened (later actual) boycott by the Soviet Bloc countries. AIIC warned Mr. Weber about his breach of the rules and stated that if the contract were not renegotiated to include the standard cancellation clause, Mr. Weber would be held personally liable for any money due to interpreters in the event of a cancellation. IDF 354, 242; Weber, Tr. 1243-48, 1255-56. As a result of the pressure by AIIC, an "acceptable" cancellation clause was included in the Olympics' contracts and Mr. Weber received a warning from AIIC for his actions. IDF 354, 356, 242; Weber, Tr. 1226-29; see also CX-1741-A (Nov. 26, 1984 letter from AIIC to Weber). The change in the cancellation clause substantially raised the costs to the LAOOC as a result of the Soviet Bloc boycott of the Olympics. See IDF 354; Weber, Tr. 1256-57.

AIIC's other efforts to set minimum rates, we find that AIIC's ban on commission payments is in effect an agreement to refrain from giving discounts from the fixed minimum rate and as such is *per se* illegal. See *Catalano*, 446 U.S. at 649; *United States v. Gasoline Retailers Ass'n*, 285 F.2d 688, 691 (7th Cir. 1961) (agreement not to give trading stamps and other premiums to retail gas customers was *per se* illegal); cf. *American Radiator*, 433 F.2d at 185-86. The ban on commissions may also serve to deter entry by preventing new interpreters from paying commissions to intermediaries to help them gain experience, even if at a discounted fee. See IDF 254.

Similarly, the ALJ found that "AIIC's restrictions on *pro bono* work deter entry by novice interpreters working without charge. Absent the rule, student or novice interpreters could seek to work without charge in order to gain experience and make contacts in the profession." IDF 250; see also Wu, Tr. 2109. For example, this provision became an issue when student interpreters at the 1984 Olympics violated the Code by allowing the LAOOC to pay their airfare from Monterey, California to Los Angeles, California. IDF 249. AIIC's Council, as well as the U.S. Region, warned the organizer (Weber) that his actions "go against a number of principles and rules of our profession." CXT-1320-A to C, p.1.; IDF 249; see generally Weber, Tr. 1232-33, 1271-72. Thus, we find that AIIC's 1991 rule on *pro bono* work operated as a prohibition on discounts and is *per se* illegal under *Catalano*. Alternatively, AIIC's restraints on *pro bono* work can be viewed as setting a minimum price because AIIC members would have to charge some amount for their services in order to receive reimbursement for travel and other expenses associated with charitable work. Minimum price setting in the sale of services, as well as goods, is *per se* illegal price fixing. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 782-83 (1975) (state bar association's minimum fee schedule held to be a naked restraint and unlawful price fixing).

B. Market Allocation -- Per Se Unlawful

Agreements among competitors to divide or allocate markets are illegal *per se*. See *Palmer v. BRG*, 498 U.S. at 49-50; *Topco*, 405 U.S. at 608 (citing cases). The Supreme Court has held such horizontal market divisions *per se* illegal, even when unaccompanied by price fixing, *Topco*, 405 U.S. at 609 n.9, or when the market division was between potential, not actual, competitors, see *Palmer v. BRG*, 498

U.S. at 47 (non-competition agreement between former competitors). For reasons discussed *infra* at 30-31, we find that the respondents' moonlighting rules constitute market allocation and are *per se* illegal.

1. Facts

Paragraph b(2) of AIIC's 1991 "Guidelines for Recruiting Interpreters" required AIIC members to hire "freelance interpreters rather than permanents having regular jobs." CX-1-Z-48. Paragraph 6 of AIIC's "Staff Interpreters' Charter" states that staff interpreters should act as interpreters outside their organization "only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." CX-1-Z-53; CX-2-Z-54; IDF 281.

AIIC members understood these provisions to mean that staff interpreters with permanent jobs should not perform freelance work unless no freelance interpreter is available. IDF 283; CX-301-Z-106 to Z-107 (Bishopp); CX-300-Z-121 to Z-122 (Motton); Lateiner, Tr. 907. The U.S. Region agreed with AIIC's rules that staff interpreters should not work in the private sector unless no freelance interpreters were available. IDF 284; CX-405-C; CX-407-F. The U.S. Region, at a 1988 meeting, admonished its members: "[O]ur permanent colleagues are reminded that if they are offered a contract outside their organization they should check first whether there are any freelance interpreters available with the required language combination. They have a permanent, steady job and freelancers don't. Therefore they should show some 'restrain' [sic] in accepting work on the private market." CX-432-M; IDF 283.

2. Legal Analysis

We concur in the ALJ's findings that AIIC's moonlighting rules constitute an agreement that staff interpreters will not compete with freelance interpreters. *See* IDF 280-291; CX-300-Z-114 to Z-115, Z-121 (Motton); CX-301-Z-95 to Z-97 (Bishopp); *see generally* Hamann-Orci, Tr. 14-15; Van Reigersberg, Tr. 363-64; but *see* Lateiner, Tr. 905. This agreement is in effect a market allocation because it promotes and protects the economic interests of local, freelance interpreters from competition from permanently employed "staff" interpreters. Thus, the agreement effectuates a market division and is a *per se* violation of the antitrust laws.

Judge Posner's opinion for the Seventh Circuit in *General Leaseways, Inc. v. National Truck Leasing Ass'n*, 744 F.2d 588, 594-95 (7th Cir. 1984), makes clear that horizontal market divisions have the same anticompetitive effects -- and are as unlikely to have efficiency rationales -- as price fixing and output restraints. In *General Leaseways*, the defendant was an association of local truck leasing firms that, *inter alia*, allowed the local firms to compete with national truck leasing firms by providing for reciprocal service agreements among the local companies across the United States. Other rules, however, limited competition among the member truck leasing firms by limiting the geographic area in which they could compete and restricting their ability to affiliate with the national truck leasing firms. The Seventh Circuit found these latter rules to amount to a *per se* unlawful market division. 744 F.2d at 595.

In 1990, the Supreme Court unanimously reconfirmed the vitality of the *per se* rule against horizontal market allocations in a case involving companies that offered competing bar review courses:

Each agreed not to compete in the other's territories. Such agreements are anticompetitive regardless of whether the parties split a market within which they both do business or whether they merely reserve one market for one and another for the other.

Palmer v. BRG, 498 U.S. at 49-50 (citing *Maricopa*, 457 U.S. at 344 n.15 (market division is *per se* offense)); *see also Hammes v. AAMCO Transmissions, Inc.*, 33 F.3d 774, 782 (7th Cir. 1994) (complaint allegations sufficient to survive motion to dismiss because, if proved at trial, the allocation of customers among competitors via a call forwarding scheme from phantom dealers would be *per se* unlawful). We therefore find that AIIC's rules to protect freelance interpreters from competition by staff interpreters are *per se* unlawful.

C. Rules Governing Non-Price Terms and Conditions of Employment, Business Arrangements, and Advertising -- Rule of Reason Analysis

The Supreme Court is generally reluctant to utilize a *per se* approach to review professional associations' codes of conduct and has admonished lower courts not to expand the *per se* category "until the judiciary obtains considerable rule-of-reason experience with the particular type of restraint challenged." *Maricopa*, 457 U.S. at 349 n.19. In fact, we recognized and applied this approach in our recent

decision in CDA. *See slip op.* at 24-25, 5 Trade Reg. Rep. (CCH) at 23,790-91. AIIC's restrictions on the non-price terms and conditions of employment, business arrangements, and advertising are not in the categories of restraints traditionally considered *per se* illegal. Moreover, we cannot say that they appear "to be one[s] that would always or almost always tend to restrict competition and decrease output." *Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1, 19-20 (1979) ("BMI"). We believe it would be imprudent to expand the *per se* rule to these restrictions and, therefore, we apply the rule-of-reason analysis instead.

Under the rule of reason, a court will examine the restraint in the totality of the material circumstances in which it is presented in order to assess whether it impairs competition unreasonably. Although many courts have elaborated on the details of this test, Justice Brandeis' classic formulation remains the touchstone for rule-of-reason analysis:

The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.

Board of Trade of the City of Chicago v. United States, 246 U.S. 231, 238 (1918).

The Supreme Court has made clear that the rule of reason contemplates a flexible inquiry, examining a challenged restraint in the detail necessary to understand its competitive effect. *See, e.g., NCAA*, 468 U.S. at 103-10. Thus, the inquiry need not be conducted in great depth and elaborate detail in every case, for sometimes a court may be able to determine the anticompetitive character of a restraint easily and quickly by what has come to be known as a "quick look" review. *See IFD*, 476 U.S. at 459-61; *NCAA*, 468 U.S. at 106-10 & 109 n.39. As the cases make clear, however, a variety of factors go into conducting an appropriate rule-of-reason analysis, depending upon the particular facts of the case. Generally, a court will look to the following: product and geographic market definition;

market power; anticompetitive effects; barriers or impediments to entry; and any plausible efficiency justifications. Because the rules at issue here are not plainly anticompetitive and complaint counsel has not established anticompetitive effects or respondents' market power, we dismiss the complaint as to the rules governing length of day, team size, professional address, portable equipment, advertising, package deals, exclusivity, trade names, double-dipping and other services.

1. Market Definition

In defining the relevant product market, the courts and the Commission generally examine what products are reasonable substitutes for one another. In the context of monopolization cases under Section 2 of the Sherman Act, the Supreme Court has stated:

The "market" which one must study to determine when a producer has monopoly power will vary with the part of commerce under consideration. The tests are constant. That market is composed of products that have reasonable interchangeability for the purposes for which they are produced -- price, use and qualities considered.

United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 404 (1956) (although du Pont had a 75 percent share of the cellophane market, cellophane was in the same product market as other flexible packaging materials and du Pont did not have monopoly power in this larger market).

In defining the relevant product market in connection with analyzing mergers, the antitrust agencies examine what products would be substitutes in the event of a "small but significant and nontransitory" increase in price. U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines Section 1.11 (Apr. 2, 1992), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,104. We look to what possible alternatives a consumer would have if, for example, the price of conference interpretation from English into French increased by five or ten percent.

The ALJ found that the "relevant product markets include conference interpretation of language pairs (English to Spanish, Spanish to English . . .)." IDF 366. Both parties have suggested that because an interpreter who interprets only from English into German could not substitute for the English into French interpreter, the appropriate product market is conference interpretation by language

pair. See, e.g., Complaint Counsel's Reply to Respondents' Proposed Findings of Fact and Conclusions of Law, at 43 n.35 and Appendix C, p.1; Wu, Tr. 2057, 2391; Respondents' Proposed Findings, ¶ 113; Silberman, Tr. 2985; Oral Argument, Tr. 18-19. Based on the evidence in this record, as well as the admissions by both sides, it is likely that the proper product market definition is conference interpretation by language pair.

In *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962), the Supreme Court discussed its approach to defining the relevant geographic market, noting that it was essentially the same as the approach taken to define the relevant product market and that "[t]he geographic market selected must, therefore, both 'correspond to the commercial realities' of the industry and be economically significant." 370 U.S. at 336-37 (footnote omitted). Thus, we generally look to the geographic area in which sellers of a service operate and to which purchasers can reasonably turn for those services. See *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961).

The Department of Justice and the FTC have set forth their approach to defining the relevant geographic market in the 1992 Merger Guidelines as that area within which a hypothetical monopolist could impose a "small but significant and nontransitory" increase in price that would not be offset by a loss in sales. Horizontal Merger Guidelines Section 1.21. Thus, for example, we would look to whether conference interpreters from outside the United States would offer their services in the United States and whether customers in the United States would seek the services of foreign interpreters if faced with a price increase of five to ten percent.

The ALJ found that the "relevant geographic market is the United States." IDF 366; see also Wu, Tr. 2193-94. Respondents initially argued that the geographic market should include interpreters who reside in Mexico and Canada, as well as foreign interpreters who reside in the United States part of the year. Respondents' Proposed Findings of Fact, ¶¶ 142-45. Respondents, however, have not challenged the ALJ's conclusion on appeal. Although there is some evidence that employers and intermediaries may include foreign interpreters on the lists from which they attempt to hire, the rules related to travel and per diem leave us unpersuaded that foreign interpreters function as a constraint on price increases by interpreters

domiciled in the United States. Thus, our review of the record provides no reason to overrule the ALJ's finding in this regard.

2. Competitive Effects and Market Power

As we recently stated in CDA:

Market power is part of a rule of reason analysis, but it is important to remember why market power is examined. We consider market power to help inform our understanding of the competitive effect of a restraint. Where the consequences of a restraint are ambiguous, or where substantial efficiencies flow from a restraint, a more detailed examination of market power may be needed.

CDA, slip op. at 28, 5 Trade Reg. Rep. (CCH) at 23,792 (footnote omitted). Similarly, the Supreme Court has indicated that when a court finds actual anticompetitive effects, no detailed examination of market power is necessary to judge the practice unlawful. *See IFD*, 476 U.S. at 460-61; *NCAA*, 468 U.S. at 109-10.

Complaint counsel and the ALJ place substantial reliance on evidence that AIIC's members adhered to the price-fixing agreement to prove that AIIC had market power. More specifically, the ALJ found that the Wu Data Set established that the AIIC members "charged at least the 'suggested minimum'" 90 percent of the time. *IDF* 318.³¹ The ALJ also found that the fact "[t]hat AIIC members charged the agreed rates over four years indicates that AIIC had market power in U.S. conference interpretation in the years 1988 through 1991. (Wu, Tr. 2052-53, 2055.) The anticompetitive effects in the United States show that AIIC has market power, since market power is the ability to raise price or restrict output." *IDF* 327.

We disagree with the ALJ's finding that AIIC had market power because AIIC members charged the agreed-upon price. The fact that AIIC members charge and receive a set price does not necessarily mean that they have market power. It could simply mean that they have made an ill-advised decision to set a price that some market participants accept but that in reality lowers overall demand for their services, or it could mean that the price fixed was set exactly equal to the competitive price. There is no evidence in this record to show, for example, what non-AIIC members charged or received or the percentage of overall private sector conference interpretation work

³¹ See *IDF* 317-27; *ID* at 122-23; Complaint Counsel's Proposed Findings of Fact, Conclusions of Law, Brief in Support Thereof, and Orders, Volume II, at 115-22. Dr. Wu analyzed the contracts of 42 AIIC members over a seven-year period, finding that the "suggested minimum" was charged 90 percent of the time during the four years 1988 through 1991.

that AIIC versus non-AIIC members perform. Thus, in this case, we do not believe that it is appropriate to attribute market power to AIIC by the mere fact that its members found it in their interest to adhere to a price-fixing agreement. Moreover, if there were evidence of the amount being charged by interpreters who were not members of AIIC, that would not necessarily be dispositive proof of whether AIIC had market power. It is precisely the danger that business persons will find it in their economic interest to go along with a price-fixing agreement that makes price fixing so pernicious and a *per se* offense requiring no showing of market power.

Thus, to determine whether AIIC has market power, we look first to market share evidence. While the parties, as well as the ALJ, agree that the market is properly defined by language combination, there is no evidence in the record from which to determine market shares by language combination. *See, e.g.*, Reply Brief for Respondents-Appellants at 20; Complaint Counsel's Reply to Respondents' Proposed Findings of Fact and Conclusions of Law, Vol. I, at 43 n.35; Wu, Tr. 2391. The briefs, findings of fact, Initial Decision, and oral argument discuss at length the market shares held by AIIC members, but the shares discussed are all defined by singular languages or the overall number of interpreters working in the United States. For example, the ALJ found that AIIC (in combination with TAALS) has 24 percent of the estimated number of Portuguese conference interpreters and 44 percent of the French conference interpreters (with percentages for other languages between these extremes). IDF 379. Respondents, on the other hand, argue that their market shares for the five Western European languages focused on by the ALJ are "at most from the low to mid-teens to the low twenties." Reply Brief for Respondents-Appellants at 24 (emphasis in original). Without delving into the particulars of the different versions of market shares, we conclude, assuming that the product market is defined as language pairs, that neither the ALJ's, complaint counsel's, nor respondents' calculations can serve as the basis for a finding of market shares. Thus, complaint counsel has failed to carry the burden of proof concerning respondents' market shares by language combination, making it impossible to determine market power.

Even without a showing of market power, if the anticompetitive effects of the rules were clear, we still would be able to make a finding of liability under a rule-of-reason analysis. The competitive effects of the rules at issue here, however, are not obvious from the

rules alone, and the record in this case is virtually devoid of evidence of anticompetitive effects flowing from the non-price restraints. *See generally* IDF 317-65. With the exception of three findings (IDF 341-43), all of the effects discussed by the ALJ stem from the price-related restraints. Two findings address "Team Size" and demonstrate that AIIC members generally abide by AIIC's rules with respect to team size, and that to the extent they deviate from the recommended team strength, they receive additional compensation. IDF 341-42. However, it is not clear that this is an anticompetitive result. Almost all of the witnesses testified that AIIC's team size rules reflected the way conference interpretation works best and that they therefore generally utilize the same team sizes AIIC advocates in its rules. The third finding addresses the length-of-day rule and suggests that interpreters sometimes insist on receiving extra compensation if the conference "exceeds a normal workday." IDF 343. As discussed *infra* at 37-39, the evidence suggests that not all interpreters insist on overtime pay and, for the ones that do charge, the amount they charge varies. Moreover, many of the witnesses at trial testified that the length of day specified in AIIC's rules generally coincides with the reality of the time period after which interpreters begin to experience mental fatigue, which can affect the quality of the interpretation services being provided. *See discussion infra* at 37-38. Thus, in our view, the ALJ's findings in this regard are not sufficient to make a finding of anticompetitive effects flowing from the non-price restraints.

3. Efficiencies

Over the past few decades both the Commission and the courts have increasingly recognized the role of efficiencies in assessing the competitive impact of restraints of trade under the rule of reason. *See* CDA, slip op. at 32-37, 5 Trade Reg. Rep. (CCH) at 23,794-96. *See generally* 1 Federal Trade Comm'n Staff, *Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace*, ch. 2 (May 1996). The Supreme Court relied extensively on an analysis of the efficiencies of certain vertical contractual restraints in upholding such restrictions in *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977). The Court's decision in BMI is another example of the role of efficiencies: the Court found that BMI's issuance of blanket licenses was not a *per se* violation of the antitrust laws because the activity appeared on its face

to "increase economic efficiency and render markets more, rather than less, competitive." 441 U.S. at 20 (quoting *U.S. v. United States Gypsum Co.*, 438 U.S. 422, 441 n.16 (1978)); see also *NCAA*, 468 U.S. at 114 (citing district court's conclusion that restrictions on television rights to be offered to broadcasters were not justified by any "procompetitive efficiencies which enhanced the competitiveness of college football television rights").

Lower courts have also taken certain efficiencies into account when reviewing the activities of professional associations. See, e.g., *Kreuzer v. American Academy of Periodontology*, 735 F.2d 1479, 1491-92 (D.C. Cir. 1984) ("public service" argument); *Wilk v. American Med. Ass'n*, 719 F.2d 207, 221-22 (7th Cir. 1983) ("patient care" motive), cert. denied, 467 U.S. 1210 (1984).³² Thus, in the examination of an industry standard or a professional standard under the rule of reason, efficiencies are part of the analysis. See CDA, slip op. at 32-37, 5 Trade Reg. Rep. (CCH) at 23,794-96.

Respondents argue that the restraints at issue in this case are justified by various efficiencies, to wit, that they ensure the quality of the interpretation services provided; maintain the health and safety of interpreters; and provide needed information to consumers about the appropriate way to staff conferences requiring interpretation services. Although our decision with respect to the issues of market power and anticompetitive effects negates the need to assess the adequacy of these justifications, at least some are not facially without merit.

4. Conclusion

For the reasons discussed, we cannot condemn under the rule of reason any of the non-price rules disputed below.³³ Those rules include length of day, team size, professional address, portable equipment, advertising, package deals, exclusivity, trade names, double-dipping and other services.³⁴

³² This does not mean that an otherwise *per se* violation such as price fixing could be justified as quality enhancing; our discussion *supra* at 14-16, 25-31, makes it clear that it cannot. Cf. *National Soc'y of Prof'l Engineers*, 435 U.S. at 693-96.

³³ Our decision in this regard obviates the need to discuss issues related to entry or enforcement of the rules.

³⁴ Because the ALJ dismissed the complaint allegations challenging the rules on double-dipping and other services, we do not discuss these rules. However, we note that while we are upholding the dismissal, we disagree with the ALJ's analysis. He found the rules *per se* illegal but dismissed them for lack of enforcement; on the other hand, we believe the rules should be analyzed under the rule of reason and dismiss them because complaint counsel has not met its burden of proof.

5. Rules Being Dismissed

a. Length of Day

The 1991 (Article 4) and 1994 (Article 7) Standards of Professional Practice state that "the normal duration of an interpreter's working day shall not exceed two sessions of between two-and-a-half and three hours each." CX-2-Z-42; CX-1-Z-45. The ALJ found that AIIC's rules allow members to work beyond the hours specified by AIIC as long as they are paid for overtime, and that many AIIC members charge overtime when working beyond six hours. IDF 166-68. The ALJ further found that one intermediary paid interpreters "about 20% more than the standard rate when interpreters worked more than six hours a day (Neubacher, Tr. 804-05)," while another paid interpreters an additional \$100-200 for anything over a seven-hour day. IDF 343; Citrano, Tr. 543-45. Some complaint counsel witnesses testified that AIIC members occasionally work longer days without charging overtime. Davis, Tr. 881 (interpreters do not always request additional compensation for working beyond the standard day -- it depends on how much additional time is being required); Lateiner, Tr. 973 (half-hour grace period). Other intermediaries testified that interpreters have refused work for hours that exceed the normal working day. IDF 178. Finally, complaint counsel's expert testified that "[s]ometimes, the overtime charge would be another half day of remuneration, sometimes there would be hourly charges." Wu, Tr. 2120.

The only arguable enforcement of this rule dates back to the 1984 Olympic Games, when AIIC wrote Wilhelm Weber a letter warning him to conform his contracts to AIIC's Code. An AIIC member had objected to a contract offered by Weber that provided for a seven-hour work day. IDF 181; CX-1300-A; Weber, Tr. 1252-53; *see generally* CXT-1693-A to C.

The rules themselves contain no mention of overtime or the appropriate level of remuneration for sessions that exceed AIIC's recommended length of day. Moreover, the evidence suggests that individual interpreters applied this rule in a wide variety of ways. Finally, many of the interpreter and intermediary witnesses (called by both respondents and complaint counsel) testified that this rule helped to maintain the quality of interpretation and the health of the interpreters because working beyond the "normal" working day often results in mental fatigue and interpreting mistakes. Hamann-Orci, Tr.

84-85; Davis, Tr. 871-73; Weber, Tr. 1187, 1292, 1297; Luccarelli, Tr. 1661. Since the evidence does not show that AIIC specified that overtime must be paid, that interpreters uniformly charged for overtime, or that uniform rates were charged for overtime, this does not constitute independent price fixing.³⁵ Moreover, this rule differs from the *per se* unlawful price-fixing rules, such as those on commissions and *pro bono* work, because, unlike the latter two, the length of day rule has no price aspect on its face and there are some plausible justifications for setting forth what a "normal" day is. For example, even Wilhem Weber, one of complaint counsel's key witnesses, testified that the rules with respect to length of day and team strength ensure the health of the interpreters and the quality of the interpretation services. Weber, Tr. 1278-79, 1296-97.

Complaint counsel argue and the ALJ found that the length of day rule was an output restraint and therefore *per se* unlawful. We agree that if this rule were a strict limitation on output, it would likely be condemned as *per se* unlawful because output restrictions have the same basic economic effect as an agreement to increase prices. See *SCTLA*, 493 U.S. at 423; *NCAA*, 468 U.S. at 100. However, because the rule itself merely sets forth the "normal" length of day, does not prohibit interpreters from working overtime, and does not set any overtime pay, and because the evidence shows that interpreters work overtime (with and without additional compensation), the rule is not a strict limitation on output and we cannot say with confidence that it is a restraint that will always or almost always have anticompetitive effects.³⁶

We believe AIIC's rule specifying the "normal" work day is somewhat similar to the standardization of products. As Areeda observed:

³⁵ We note, however, that as recently as 1989 AIIC issued a document entitled "Conditions Governing Recruitment and Work at Intergovernmental Meetings Outside the Agreement Section," which could be used under certain specified circumstances "[i]n lieu of the corresponding rates and conditions laid down in Annex I to the AIIC Code of Professional Conduct and Practice." This document specified the compensation to be paid to interpreters who were required to work in excess of the daily or weekly workload levels set forth in the document. CX-2064-A to D. Because there is no testimony or other evidence in the record explaining this document, how it was developed, whether it was adopted by agreement among AIIC's membership, and in what countries it was applicable, a decision as to its legality is not before us.

³⁶ This flexibility, combined with evidence supporting AIIC's proffered justifications, distinguishes this rule from the absolute ban on operating automobile salesrooms during certain periods that we condemned in *Detroit Automobile Dealers Ass'n*, 111 FTC 417 (1989), *aff'd in relevant part*, 935 F.2d 457 (6th Cir.), *cert. denied*, 506 U.S. 703 (1992).

Product standardization might impair competition in several ways. For example, producers of automobile tires might agree to produce only five tire varieties for which they adopt common specifications. Such standardization might deprive some consumers of a desired product, eliminate quality competition, exclude rival producers, or facilitate oligopolistic pricing by easing rivals' ability to monitor each other's prices.

7 Areeda, *Antitrust Law*, *supra* note 11, ¶ 1503a, at 373. In examining the sufficiency of the evidence from which to infer the existence of a conspiracy, courts have recognized that "standardization of a product that is not naturally standardized facilitates the maintenance of price uniformity." *C-O-Two Fire Equip. Co. v. United States*, 197 F.2d 489, 493 (9th Cir. 1952) (citing *Milk and Ice Cream Can Inst. v. FTC*, 152 F.2d 478, 492 (7th Cir. 1946)). The courts there said that some standardization is understandable, but too much leads to evidence that can be drawn upon to reach a conclusion of the existence of a conspiracy.

Standardization does not, in our view, fall under the *per se* rule, but should be examined under the rule of reason. For example, it hardly is *per se* illegal to sell gasoline by the gallon, although that unquestionably aids horizontal price fixing among gas stations. Here, the length of work-day rule by itself does not enable members to fix price or output; the problem is primarily with the fixing of the price itself. We believe that this rule must therefore be examined under the rule of reason. Therefore, for the reasons set forth *supra* at 33-36, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

b. Team Size

Articles 9, 10, and 11 of the 1991 Basic Texts, Standards of Professional Practice, set forth team size tables for consecutive, whispered, and simultaneous interpretation. CX-2-Z-43 to 46.³⁷ In the case of simultaneous interpretation, the rule is absolute, providing that "[t]he team strength indicated . . . must be respected." CX-2-Z-46 (Art. 11). Although AIIC at one point maintained two different team size tables with corresponding prices for simultaneous

³⁷ Although little discussion in the briefs or at oral argument addressed this issue, two provisions of the team size tables set the remuneration for use of smaller numbers of interpreters at 125 percent of the remuneration for the larger team size. For consecutive and whispered interpretation, the 1991 Basic Texts rule provided that if fewer interpreters are recruited than the number recommended by AIIC (which should only occur "under exceptional circumstances"), the remuneration for each interpreter "should be at least equal to 125% of the standard rate." CX-2-Z-43. To the extent that this rule was applied to the United States, we find this aspect of the 1991 rule *per se* unlawful.

interpretation, that dual system was not used in the United States. Thus, the U.S. Region always had only the absolute written prohibition. *See* IDF 171.³⁸

There is some evidence of adherence to the team strength rules. Some interpreters have refused work with intermediaries under working conditions that do not conform to staffing requirements (Davis, Tr. 869-70; Clark, Tr. 614-15 (Berlitz was expected to meet AIIC's working conditions)); intermediaries who have deviated from staffing requirements have paid interpreters extra compensation (Citrano, Tr. 539; Neubacher, Tr. 767-69); and individual interpreters have said that they adhere to the staffing requirements (Luccarelli, Tr. 1669; *see also* IDF 179-81). Nonetheless, the fact that interpreters adhere to the team size tables does not answer the question as to anticompetitive effects. Many witnesses testified that they adhere to the team size rules because they reflect the reality of how best to staff a conference and avoid excessive fatigue and maintain the quality of interpretation services. *See, e.g.*, Luccarelli, Tr. 1663-65, 1667-70; Davis, Tr. 885.

Complaint counsel argue and the ALJ found that the team size rule was an output restraint and therefore *per se* unlawful. Although the team size rule is closer to an output restraint than the length of day rule, as with the rule on length of day, the team size rule differs from the *per se* unlawful price-fixing rules, such as those on commissions and *pro bono* work, because, unlike the latter two, this rule as currently written has no price aspect on its face and there are some plausible justifications for setting forth optimal team strength. This rule appears akin to a standard with respect to setting forth optimal staffing to maintain the quality of conference interpretation services, and this similarity to standard setting leads us to conclude that the team size rule should be examined under the rule of reason. Moreover, since we are condemning as *per se* unlawful all of the price-related agreements and prohibiting the implementation of price-related agreements in the future, we believe that once AIIC members begin to compete on price, it is unlikely that there will be anticompetitive effects from this rule. Therefore, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

³⁸ Article 6 of the 1994 Professional Standards contains AIIC's current rules governing team strength for whispered, consecutive, and simultaneous interpretation. CX-1-Z-42-44. The current rules do not reference any rates of remuneration either for the recommended team strengths or for team strengths of fewer than the recommended number of interpreters.

c. Professional Address Rule

Article 1 of AIIC's 1991 Standards of Professional Practice required that members declare a single professional address that they must maintain for at least six months and can change only upon three months' notice. CX-2-Z-40. The 1991 rules also explicitly required that all contracts be based only upon the official professional address of the AIIC member. *Id.* Under the 1991 rules, the professional address also provided the basis for remuneration for non-working days (Article 12), subsistence allowance (Article 13), travel days (Article 14), and travel expenses (Article 15). In addition, rule b(2)(b) of AIIC's Recruitment Guidelines suggested that organizers "bear in mind" selecting conference interpreters with a professional address at, or nearest, the conference venue. CX-2-Z-51; *see also* IDF 212-36.³⁹

Under the 1991 rule, even if interpreters actually lived away from their declared professional addresses, they would charge their clients for travel to and from their professional addresses only, even when travel originated from their residences. IDF 221. *See also* CX-302-Z-140 to Z-141, Z-438 (Luccarelli); CX-2-Z-40; CX-301-Z-20 (Bishopp); but *see* CX-302-Z-140 (Luccarelli) (interpreters would sometimes declare their professional addresses to be away from their homes so they could get more work "because it would mean that they wouldn't charge for travel"). Thus, an interpreter with a professional address in Brussels would charge a client in the United States for a round trip ticket between Brussels and the U.S. Hamann-Orci, Tr. 45; IDF 222. *See also* CX-301-Z-21 to Z-22 (Bishopp).

One AIIC member traveled round-trip between Washington and New York to work for the New York Stock Exchange, but charged the client for round trip travel between Vienna and New York because Vienna was her professional domicile. Bowen, Tr. 1011-12; IDF 223. Another member was offered a job in Washington on November 15, 1991, but her professional address did not change from Paris to Washington until December 20. The U.S. Region

³⁹ Article 1 of the 1994 Professional Standards sets forth the rules governing the declaration of a professional address, requiring that

... in order to ensure that members are able to exercise their voting rights at statutory regional meetings and that the rules pertaining to dues are respected, any change in professional address from one region to another shall not be permitted for a period of less than six months. Any such change must be notified to the secretariat at least three months before the intended change in order to ensure that it can be published in the Association's list of members in good time. The secretariat shall inform the members of the Council and the regional secretaries of the two regions concerned.

CX-1-Z-40 (emphasis added).

Representative suggested that she either seek permission from AIIC in Geneva, or "telephone all other colleagues with [her] language combination in the Washington area, to verify that they were all indeed working on that date." CX-1471; IDF 225.

The ALJ found that AIIC members follow the professional address rule, unless they obtain a waiver, and that the AIIC Council enforces this rule. IDF 227; *see also* CX-300-Z-38 (Motton); CX-284-L; Bowen, Tr. 1029-30; CX-237-H to I; CXT-237-H to I. On November 30, 1991, the U.S. Region Representative admonished one member that he was in violation of the AIIC rules because he had been working in the New York area although he had a Washington, D.C. professional address "without officially notifying AIIC of his change of address." IDF 231; CX-1470-A; *see also* CX-608-Z-221 (1991 AIIC Membership Directory). Wilhelm Weber, the intermediary who helped organize interpreters for the 1984 Los Angeles Olympics, was accused of violating the professional address rule for failing to charge for travel between Geneva, Switzerland, his professional domicile, and San Francisco, even though he only traveled from Monterey, California, where he resided. IDF 229; Weber, Tr. 1264-65.

We believe that the professional address rule, as reflected in the 1991 Standards, has been used by AIIC and its members to provide the reference point for the *per se* unlawful price fixes of per diem, non-working days, and travel arrangements. Nonetheless, once we have struck down respondents' unlawful price-fixing agreements that were tied to the professional address rule, we believe that the professional address rule itself, which requires that AIIC members give three months' notice before changing their professional address and that they retain the address for at least six months, is better analyzed under the rule of reason because there is nothing in the rule itself that suggests it will have anticompetitive effects and there are plausible efficiency justifications for the rule (*i.e.*, facilitates ability to ensure member is voting in and paying dues to the appropriate region), particularly as it is currently written and tied to the regional structure of AIIC. Therefore, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

d. Portable Equipment

Article 7 of AIIC's 1991 and 1994 Code of Professional Ethics prohibits members from simultaneous interpretation without a booth "unless the circumstances are exceptional and the quality of interpretation work is not thereby impaired." CX-2-Z-37; CX-1-Z-38. Portable equipment costs less than standard booths. IDF 273; *see also* CX-270-G; CX-302-Z-282 to Z-283, Z-804 (Luccarelli); Clark, Tr. 632-33; Obst, Tr. 303, 307. In addition, unlike working with a soundproof booth, a technician is not required for the operation of the portable equipment. IDF 273; Hamann-Orci, Tr. 47; Neubacher, Tr. 777-78.

The ALJ, citing to IFD, found that the rule on portable equipment was a restriction "on the package of services offered" (ID at 117) and should be analyzed under the rule of reason. We agree that this rule must be analyzed under the rule of reason. This rule is akin to a typical professional standard, declaring the use of certain equipment to be inferior and recommending against its use except in certain limited circumstances. In fact, numerous witnesses testified that although the use of portable equipment is acceptable under certain limited circumstances, which AIIC's rules recognize, its use would not be appropriate for large or long conferences because the lack of a soundproof booth subjects the interpreter to environmental noise, compromises the quality of the interpretation services, and increases the interpreter's mental fatigue. *See, e.g.,* Respondents' Proposed Findings of Fact, ¶¶ 351-355, citing to Hamann-Orci, Tr. 49-50; Neubacher, Tr. 707; Luccarelli, Tr. 1701-02; Clark, Tr. 632, 643-44; Obst, Tr. 304 (State Department tries to avoid use of portable equipment). We also note that there are in fact international standards for built-in (permanent) booths (ISO 2603 (1983)), portable booths (ISO 4043 (1981)), and other equipment (IEC 914 (1988)). *See* CX-2064-D; CX-2062-G. We therefore reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

e. Advertising

Both the 1991 and 1994 versions of AIIC's Code of Professional Ethics contain the following provisions:

Article 4 (b): They [Members] shall refrain from any act which might bring the profession into disrepute.

Article 5: For any professional purpose, members may publicize the fact that they are conference interpreters and members of the Association, either as individuals or as part of any grouping or region to which they belong.

CX-1-Z-38, CX-2-Z-38. The "Recruitment Guidelines" further state that "Article 5 of the Association's Code allows members to provide factual information to users about the nature and availability of interpreters' services, but is intended to exclude activities such as commercial forms of one-upmanship." CX-2-Z-52. The ALJ found that "[m]embers understand 'commercial forms of one-upmanship' to be about comparative claims" and that interpreters should not "disparage their colleagues in order to get work." IDF 298; CX-2-Z-52; CX-301-Z-103 (Bishopp); Luccarelli, Tr. 1682-83.

The ALJ found that AIIC's advertising rules and two 1994 instances of disciplinary action against AIIC members amounted to a prohibition of comparative price claims and thus were "naked attempts to eliminate price competition [that] must be judged unlawful *per se*." ID at 116 (citing CDA, slip op. at 19, 5 Trade Reg. Rep. (CCH) at 23,788). We disagree with the ALJ. We do not believe that the language of these rules is sufficient to support a finding that AIIC prohibited price advertising and therefore committed a *per se* violation. Moreover, the two instances of enforcement the ALJ cites do not support a finding that the rules were interpreted or enforced to prohibit price advertising.⁴⁰ Any restrictions on nonprice advertising and promotion must be analyzed under the rule of reason. *See* CDA, slip op. at 24-25, 5 Trade Reg. Rep. (CCH) at 23,790-91. Therefore, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

f. Package Deals

The AIIC Guidelines for Recruiting Interpreters, attached as an annex to the 1991 Basic Texts, in paragraph (b)7, "Duties Towards Colleagues," provide that "Members of the Association acting as coordinators shall not make 'package deals' grouping interpretation services with other cost items of the conference and shall in particular

⁴⁰ One of the instances had no relationship to the United States -- it involved an incident in Canada. *See* CX-305-Z-332 (Sy); CXT-501-W. Moreover, there was testimony that the disciplinary action taken in that case resulted from the member's failure to use the internal AIIC grievance procedures, rather than because of the alleged advertising rule violation. *See* Luccarelli, Tr. 1683-86; *see also* CXT-501-W, p. 2. The second incident involved a member who had written a letter to an international organization offering to reduce the cost of language services through her own full-time employment. CXT-502-Z-53 to 54; RX-815.

avoid lump-sum arrangements concealing the real fees and expenses due to individual interpreters." CX-1-Z-49; IDF 255. Paragraph (c)1 states: "The provision of professional interpretation services is always kept clearly separate from the supply of any other facilities or services for the conference, such as equipment." *Id.* Paragraph (b)5 states that "[i]nterpreter's fees shall be paid directly to each individual interpreter by the conference organiser." *Id.*

In 1990 and 1991, the U.S. Region prepared and discussed a provisional paper on AIIC working conditions for interpreters in the United States. The paper stated: "All contracts shall be concluded directly between the conference and the interpreter; the conference shall make payment directly to the interpreter." CX-439-D; *see also* CX-435-A; IDF 256.

The ALJ found that "clients prefer contracting through intermediaries because intermediaries can more readily be held financially liable if the conference is unsuccessful and provide quicker response time to requests for services than individual interpreters." IDF 260; CX-227-J; CX-1633-B. Nonetheless, the ALJ concluded that the competitive effect of this rule is less obvious than some of the others and that it therefore should be analyzed under the rule of reason. We agree and note that there is some evidence that some intermediaries who are AIIC members do occasionally offer lump sum payment arrangements and package deals, with no repercussions from AIIC. *See* Lateiner, Tr. 976. We therefore reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

g. Exclusivity

The AIIC Guidelines for Recruiting Interpreters state: "The conference interpreter makes it clear that she or he does not 'provide' interpreters . . . [and] avoids creating the impression that certain interpreters are available only through her or him, or that she or he controls teams of fixed composition." CX-2-Z-52. The ALJ found that, in compliance with AIIC's rules, coordinating interpreters in the United States do not exclusively represent interpreters and no AIIC member has established a commercial interpretation firm with interpreters as employees. IDF 263; Luccarelli, Tr. 1693-94; CX-2-Z-52 (1991); CX-301-Z-105 (Bishopp). The ALJ concluded that the competitive effect of this rule is less obvious than some of the others and that it therefore should be analyzed under the rule of reason. *See*

ID at 117-18. We agree that this rule is of the type adopted by professional associations that is traditionally analyzed under the rule of reason. In fact, there is evidence that some intermediaries have lobbied against laws in states that were considering whether subcontractors (such as freelance interpreters) should be considered employees of the companies with which they contract because the intermediaries apparently believed that it would be economically detrimental to them if the interpreters were considered employees. Luccarelli, Tr. 1693-96. Therefore, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

h. Trade Names

The AIIC Guidelines for Recruiting Interpreters state that a coordinating interpreter "acts under her or his own name and does not seek anonymity behind the name of a firm or organization, although co-operative services may be offered by a group of interpreters who carry on business under a group name." CX-2-Z-52. The ALJ found that "there are no such 'cooperatives' of interpreters in the United States" and that this rule was a prohibition on the use of trade names. IDF 266, 268; CX-301-Z-104 (Bishopp). Nonetheless, there is testimony that several intermediaries called by complaint counsel have firms that operate under a trade name. *See* Weber, Tr. 1123 (started his own firm, Language Services International); Lateiner, Tr. 976 (operated under the name Lateiner International Associates since 1980); Neubacher, Tr. 761 (started own firm, Linx Interpretation Service). There are also other large intermediaries such as Berlitz and Brahler, both of which recruit freelance interpreters for conferences. *See* Neubacher, Tr. 760-62; Davis, Tr. 836-38 (worked for both Berlitz and Brahler). The ALJ concluded that the competitive effect of this rule is less obvious than some of the others and that it therefore should be analyzed under the rule of reason. *See* ID at 117-18. We agree that this rule is of the type adopted by professional associations that is traditionally analyzed under the rule of reason and in light of this, and of the fact that so many interpreters and intermediaries practice under trade names, we reverse the ALJ and find that complaint counsel failed to carry the burden of proof under the rule of reason.

V. NEED FOR AN ORDER

Respondents argue that an order is inappropriate and unnecessary because their rules affecting price never extended to the United States and, even if they did, respondents abandoned the monetary conditions worldwide in 1992. The Commission has identified the following factors as relevant to the question whether to issue an order when a respondent professes to have ceased the complained-of activities: the *bona fides* of the respondent's expressed intent to comply with the law in the future; the effectiveness of the claimed discontinuance; and the character of the past violations. *Massachusetts Bd. of Registration in Optometry*, 110 FTC 549, 616 (1988) (citing *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953)). *Cf. Borg-Warner Corp. v. FTC*, 746 F.2d 108, 110 (2d Cir. 1984) (citing *W.T. Grant* in discussion of proof necessary for relief against allegedly discontinued conduct). These factors all argue strongly in favor of placing respondents under order.

The facts do not support respondents' assertions that AIIC's rules did not apply in the United States and that, even if they did, AIIC has abandoned all monetary rules. The record shows that AIIC's rules were adhered to and enforced in the United States and that AIIC's members agreed to follow, and did follow, AIIC's price-fixing and market allocation rules in the United States. *See* discussion *supra* at 15-31.⁴¹ Despite AIIC's adoption of a "resolution" in 1992 to remove all monetary conditions and a commitment to change its Basic Texts in 1994, there continued to be widespread adherence to a standard rate. Dr. Lawrence Wu, complaint counsel's economic expert, found that many AIIC members continued to set their fees with reference to the AIIC rate even after AIIC stopped publishing a rate for the U.S. Region in 1992. Wu, Tr. 2205-06; IDF 533. For 1992 to 1994 the rates continued to be clustered near the AIIC rate, and through 1993 the most frequently charged rate continued to increase yearly by \$25. Although in 1994 and 1995 there was no increase in the most frequently charged rate and there was a greater distribution of prices, most prices for a day's work were still in the \$500-550 range, and the clustering found suggests that AIIC's "discontinuance" of the price-fixing agreement was not particularly effective, at least through 1995. Wu, Tr. 2204-05, 2207; *see also* Clark, Tr. 614.

⁴¹ Dr. Lawrence Wu, complaint counsel's economic expert, examined conference interpreting contracts of freelance interpreters in New York and Washington, D.C., and found that from 1988 to 1991 two-thirds of the contracts examined were at or \$50 above the published AIIC rate. Wu, Tr. 2016-17; IDF 104.

Moreover, many of AIIC's other "repealed" rules are still contained in AIIC's Basic Texts (phrased in less mandatory language) and in the standard form contracts AIIC provides for its members' use. Although the evidence in the record is insufficient to determine whether AIIC and its members actually agreed to the terms in its standard form contracts, the standard form contract nevertheless contains many of the same (or similar) provisions we are declaring unlawful. Thus, the continued use of these provisions in the standard form contract seems inconsistent with AIIC's expressed intent to comply with the law in the future.⁴²

For example, AIIC's standard form contract provides for fees for non-working days. CX-2059-A; CX-2060-A; IDF 139; Weber, Tr. 1221. In addition, although the 1994 rules eliminate any ties between the professional address and payments for travel, subsistence, and non-working days, the standard form contract continues to tie travel reimbursement to the professional address. The "General Conditions of Work," which are part of the form contract, state:

Unless both parties have agreed otherwise, the interpreter shall have the free choice of route and dates of travel. He/she is not bound to use chartered flights. He/she shall however only be refunded the costs for the mode(s) of transport laid down in clause VII.1 for direct return travel between his/her professional address and the conference venue . . . As a general rule and unless the parties have agreed otherwise, the interpreter shall travel first class on air journeys of long duration and in business class for a journey of less than 9 hours.⁴³

The standard contract also provides for the appropriate remuneration in the event of cancellation in two separate clauses. CX-2059-B. The relevant portions of the contract state that the conference organizer shall be obliged to pay an interpreter the amount provided for in the contract regardless of the reasons for cancellation and whether they were beyond the control of the organizer. CX-2059-B, ¶¶ 6&9. Paragraph 6 of the General Conditions of Work further provides in relevant part that "[t]he remuneration shall be paid net of commission."

With respect to the "character of respondents' past violations," respondents engaged in *per se* unlawful price fixing and attempted to

⁴² The Recruiting Guidelines appended to the Basic Texts and Statutes state that AIIC's model contract "should normally be used" and any other contract used "must at least embody the standard conditions specified by the Council." CX-1-Z-49; IDF 139.

⁴³ CX-2059-B, ¶ 7. Clause VII.1 of the contract provides for the "cost of a first-class return ticket by rail/air/sea from. . . at the current tariff." CX-2059-A.

hide their price-fixing agreements in the past: during the 1980s in the United States, rates were unpublished but no less binding.⁴⁴ As one AIIC Council member wrote in a 1995 AIIC Bulletin: "At Brussels [in 1992] we deregulated our monetary conditions and trusted our members to keep the faith. Now why on earth can we not trust our members today to maintain the other working practices even though they may not be mandatory ?" CX-285-S. *See also* IDF 509-12.

A claim of abandonment is rarely sustainable as a defense to a Commission complaint where, as here, the alleged discontinuance occurred "only after the Commission's hand was on the respondent's shoulder." *Zale Corp.*, 78 FTC 1195, 1240 (1971); *see also Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976). In light of all of the circumstances of this case, an order prohibiting respondents from continuing to engage in price fixing is necessary and in the public interest. The remedy we impose has a "reasonable relation to the unlawful practices found to exist" and therefore is within our authority. *See Jacob Siegel Co. v. FTC*, 327 U.S. 608, 613 (1946).

VI. FINAL ORDER

Paragraph I of the order sets forth the applicable definitions. Paragraphs II and III of the order prohibit respondents from agreeing, *inter alia*, to provisions governing: fees, including minimum daily rates; indivisible daily rates; rates for nonworking days, including travel, briefing, and rest days; per diem rates or formulas; reimbursement for travel expenses; standard cancellation clauses; recording fees; commissions; and the recruitment of interpreters based on whether or not they are permanently employed. The order applies only to conduct that would affect activities in the United States.

Paragraph IV of the order requires respondents to discipline individuals who at their meetings engage in discussions about fees applicable in the United States. The required discipline includes warning a participant or participants to refrain from engaging in the prohibited discussions and, if the warning is not effective, removing

⁴⁴ *See, e.g.*, CX-1238 (letter from AIIC's Secretary General to Wilhelm Weber in connection with the Los Angeles Olympics, stating how it was inconceivable that anyone could read the standard form contract to mean that rates could be negotiated downward: "[M]embers all know that [sic] the local rate is and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the 'cartel' pricefixing laws in some countries, but members know very well that they must not undercut.").

the person or persons from the meeting. If such disciplinary actions prove unsuccessful, the meeting must be adjourned.

Paragraph V of the order clarifies that nothing in our order prohibits respondents from performing under or entering into any negotiated agreement, as that term is defined in paragraph I (L). Paragraph VI requires respondents to amend, *inter alia*, AIIC's Basic Texts to conform to the requirements of the order. Because of the longstanding nature of many of respondents' price-related restraints, paragraph VIII requires respondents to distribute to their members, officers, directors, and affiliates an announcement about the Commission's action, a copy of the complaint and order, and any of respondents' documents that are amended pursuant to the order.

Paragraph VII of the order is a "fencing-in" provision and requires respondents for a period of five years to eliminate from their Basic Texts and standard form contracts provisions related to certain payments and travel arrangements. In light of the longstanding and comprehensive nature of respondents' price-fixing agreements, fencing-in relief is particularly warranted. As the Supreme Court has observed, "[t]he purpose of relief in an antitrust case is 'so far as practicable, [to] cure the ill effects of the illegal conduct, and assure the public freedom from its continuance.'" *United States v. Glaxo Group Ltd.*, 410 U.S. 52, 64 (1973) (quoting *United States v. United States Gypsum Co.*, 340 U.S. 76, 88 (1950)). The Court further found in *National Society of Professional Engineers* that a district court is "empowered to fashion appropriate restraints on . . . future activities both to avoid a recurrence of the violation and to eliminate its consequences," even if that entails "curtail[ing] the exercise of liberties that [respondent] might otherwise enjoy." 435 U.S. at 697. The same is true when the Commission, as opposed to a federal court, fashions the remedial order. See *FTC v. National Lead Co.*, 352 U.S. 419 (1957).

Thus, the Commission can proscribe unlawful activity that the respondent has not yet undertaken, as well as activity that would itself be considered lawful but for the fact that it threatens to perpetuate or revive a violation of law. For example, in *National Lead Co.*, the Commission prohibited the individual adoption of zoned pricing plans because it had found *per se* unlawful horizontal collusion on zoned pricing plans. The Court upheld a temporary and conditional prohibition of individually adopted zoned pricing plans aimed at "creating a breathing spell during which independent pricing might

be established without the hang-over of the long-existing pattern of collusion." 352 U.S. at 425. Since the plan could easily be subject to unlawful manipulation and had been used for nearly 25 years, and since the respondents had been found to have violated the antitrust laws, the provision bore a reasonable relation to the underlying unlawful practice. *Id.* at 421, 429. In light of the temporary nature of this provision, the order was upheld.

Similarly, respondents here have engaged in a longstanding, comprehensive scheme to eliminate price competition on virtually all aspects of conference interpreting. The Commission finds that it is necessary to prohibit respondents, for a period of five years, from maintaining any provisions in their Basic Texts or form contracts, even if phrased in non-mandatory language, that relate to: payment in the event of cancellation of a contract; payment of commissions or a requirement that remuneration shall be paid net of any commissions; payment for travel, specification of specific modes of travel, connecting payment or tickets for travel to an interpreter's professional address, or specification of rest days for travel; payment for non-working days, travel days, or rest days; payment for a subsistence allowance while on travel; and payment for recordings of conference interpretation.

Finally, the order contains standard reporting and record keeping requirements that will allow the Commission to monitor respondents' compliance with the order, as well as a 20-year sunset provision.

VII. CONCLUSION

The International Association of Conference Interpreters and its U.S. Region adopted a comprehensive price-fixing scheme that restrained competition among conference interpreters in the U.S. in violation of Section 5 of the FTC Act. We find that AIIC's contacts with the U.S. are related to this cause of action and are sufficient to allow the Commission to exercise specific personal jurisdiction over AIIC. Moreover, we find that respondents provide their members with sufficient pecuniary benefits to bring them within our jurisdiction. We further find that AIIC is not entitled to either the statutory or the non-statutory labor exemption for the conduct we find unlawful and hereby enjoin. The respondents' restrictions on all forms of price competition cannot be justified on any grounds, and we condemn these restrictions as *per se* unlawful. The rules governing certain non-price terms and conditions of employment, business

arrangements, and advertising, however, are entitled to an examination under the rule of reason. Because complaint counsel has not carried its burden of proof under the rule of reason, we dismiss the complaint as to those rules. The findings and Initial Decision of the ALJ are upheld in part and reversed in part, consistent with our opinion and final order.

OPINION OF COMMISSIONER ROSCOE B. STAREK, III,
CONCURRING IN PART AND DISSENTING IN PART

In an opinion issued just about a year ago, the Commission held that respondent California Dental Association ("CDA") committed a *per se* violation of the antitrust laws by promulgating and enforcing restrictions on members' advertising of prices for dental services in California.¹ Although I agreed with my colleagues that CDA's restraints on both price and non-price advertising merited antitrust condemnation, I disagreed with their *per se* approach, which in my view applied -- by its language and its logic -- not only to CDA's particular price advertising restraints but also to "all agreements among competitors to restrain truthful, nondeceptive price advertising."² I pointed out in CDA that *Massachusetts Board of Registration in Optometry*, 110 FTC 549 (1988) ("Mass. Board") -- frequently and fruitfully relied on until CDA, then cast aside (if not explicitly overruled) by the CDA majority for reasons never clearly spelled out -- still provides a dependable framework for the analysis of horizontal restraints.³

Once again I agree with the result reached by my colleagues but disagree with elements of their analytical methodology. I concur in the Commission's determinations that (1) the Commission has personal jurisdiction over respondent International Association of Conference Interpreters; (2) the Federal Trade Commission Act's not-for-profit exemption is unavailable to respondents; and (3) neither the

¹ California Dental Ass'n, Docket No. 9259, 5 Trade Reg. Rep. (CCH) ¶ 24,007 (Mar. 25, 1996) ("CDA"), appeal pending, No. 96-70409 (9th Cir., filed May 20, 1996). The Commission also concluded that CDA's restrictions on both price and non-price forms of advertising were unlawful under the antitrust rule of reason. CDA, slip op. at 37-39 [5 Trade Reg. Rep. (CCH) ¶ 24,007 at 23,796-97].

² CDA, Opinion of Commissioner Roscoe B. Starek, III, Concurring in Part and Dissenting in Part, at 1 [5 Trade Reg. Rep. (CCH) ¶ 24,007 at 23,815].

³ "[I]f the majority considers Mass. Board beyond repair, why has it not overruled the case? If the majority has identified specific weaknesses in Mass. Board analysis that might be remedied, why not apply Mass. Board in this and other appropriate cases so that the process of case-by-case adaptation and improvement can occur?" *Id.* at 9 [5 Trade Reg. Rep. (CCH) ¶ 24,007 at 23,818].

statutory nor the nonstatutory labor exemption immunizes respondents' conduct. I also have no objection to the order appended to the majority's opinion, because in my view the majority reached the correct determination as to which restraints should be declared unlawful. I simply do not share the majority's eagerness to replace Mass. Board's prudent approach to horizontal restraints with a system in which reference to categories of conduct -- some condemned *per se*, others judged under the rule of reason -- supplants discerning analysis.⁴

In one footnote in its opinion, the majority makes passing reference to a point that I emphasized in CDA -- that the Supreme Court's horizontal restraints jurisprudence of the late 1970s and early 1980s established the foundation for an analytical methodology like that laid down in Mass. Board.⁵ Nevertheless, judging from the juxtaposition of that footnote with the majority's observation (in the accompanying text) that "[r]ecent Supreme Court decisions continue the distinction between *per se* and rule of reason analyses,"⁶ my colleagues apparently believe that the Supreme Court decided for reasons unexplained to forsake the approach of IFD and BMI and has instead endorsed the use of categories whose legality falls on one side or the other of a supposedly bright *per se*/rule of reason line.

Obviously, I do not assert that the Supreme Court and the lower courts have never found a practice to be *per se* illegal. Naked price-fixing, bid-rigging, market or customer allocation, and certain types of boycotts are condemned *per se* upon proof of the existence of an agreement -- that is, they are conclusively presumed to restrain trade unreasonably. But over the last 20 years, Supreme Court jurisprudence pertaining to restraints of trade -- both horizontal and vertical -- has steadily evolved into a heightened sensitivity to the economic implications of the conduct at issue and a reluctance to base

⁴ The fact that my colleagues and I agree here -- as we did in CDA -- on which restraints are illegal does not mean that our disagreement over analytical methodology lacks practical significance. Some future cases will likely involve alleged restraints whose competitive ramifications are more ambiguous than those at issue in the present case. Whether the Commission applies a Mass. Board analysis or adheres to the more mechanical approach established in CDA (and followed today) could obviously make a difference to the outcome.

⁵ "We note that some earlier Supreme Court cases had suggested the merging of the *per se* and rule of reason analyses. See, e.g., *Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1 (1979) ('BMI'); *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 461 ('IFD'). Areeda also has suggested that there may have been some convergence of the *per se* category (see, e.g., the willingness to look beyond a horizontal price agreement in BMI) and a full blown rule of reason (see, e.g., the 'quick look' approach of IFD) so that at times the two antitrust approaches do not differ significantly. See 7 Phillip E. Areeda, *Antitrust Law* ¶ 1508c, at 408 (1986)." Slip op. at 14 n.11.

⁶ *Id.* at 14.

condemnation of a particular practice on a superficial resemblance to price-fixing.

The Supreme Court decisions on which the majority relies (*Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990), and *FTC v. Superior Court Trial Lawyers Association*, 493 U.S. 411 (1990) ("SCTLA")) do not undermine my point that the consistent thrust of the Court's decisions since the late 1970s has been to eschew antitrust decision making on the basis of labels, categories, and mechanical line-drawing. It is hardly surprising that the Court found *per se* violations in *Palmer* and *SCTLA*, both of which involved conduct long viewed as plainly anticompetitive; nor is there any doubt that such cases will continue to arise as long as there is antitrust enforcement. But the Supreme Court has not signaled a retreat from the "presumption in favor of a rule-of-reason standard"⁷ for analyzing restraints. *BMI*, *IFD*, and *NCAA*⁸ still represent the general direction of the Court's thinking in this area; *Palmer* and *SCTLA* simply illustrate, against the backdrop of this overall trend, that anticompetitive conduct can occasionally be condemned *per se*.

The approach of the majority does nothing to mitigate -- and in fact perpetuates -- the principal weakness of *CDA*: that over simplistic analogizing to traditional *per se* categories is not a satisfactory substitute for the cautious analysis mandated by the Supreme Court.⁹ By contrast, *Mass. Board*, with whatever imperfections it had, distilled the essential elements of the Supreme Court's teaching: that seeming restraints of trade may not be what they first appear to be; that it is necessary to devote adequate scrutiny to an alleged restraint's competitive effects unless one can say, with a very high degree of confidence, that it is unmistakably anticompetitive; and that this whole exercise should not be conducted through the use of labels and categories. As I observed above, if the *Mass. Board* analysis needs improvement, the instant case presents (as did *CDA*) an opportunity to accomplish that. What I cannot accept is the majority's unwarranted abandonment of the *Mass. Board* precedent.

⁷ *Business Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 726 (1988).

⁸ *Nat'l Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85 (1984).

⁹ *NCAA*, *supra* n.8; *BMI*, *supra* n.5.

FINAL ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "*AIIC*" means respondent International Association of Conference Interpreters, also known as Association Internationale des Interprètes de Conférence, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, sectors, regions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

B. "*U.S. Region*" means respondent United States Region of AIIC, its directors, trustees, general assemblies, councils, committees, working groups, boards, divisions, sectors, regions, chapters, officers, representatives, delegates, agents, employees, successors, and assigns.

C. "*Fees*" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of services, including, but not limited to, salaries, wages, transportation, lodging, meals, allowances (including subsistence and travel allowances), reimbursements for expenses, cancellation fees, recording fees, compensation for time not worked, compensation for travel time, compensation for preparation or study time, and payments in kind.

D. "*Cancellation fee*" means any fee intended to compensate for the termination, cancellation or revocation of an understanding, contract, agreement, offer, pledge, assurance, opportunity, or expectation of a job.

E. "*Interpretation*" means the act of expressing, in oral form, ideas in a language different from the language used in an original spoken statement.

F. "*Translation*" means the act of expressing, in written form, ideas in a language different from the language used in an original writing.

G. "*Other language service*" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation, including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing,

supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

H. "*Interpreter*" means one who practices interpretation.

I. "*Translator*" means one who practices translation.

J. "*Language specialist*" means one who practices interpretation, translation, or any other language service.

K. "*Intergovernmental Organization*" refers to any organization to which privileges and immunities have been extended pursuant to the International Organizations Immunities Act, 22 U.S.C. 288 *et seq.*, as amended.

L. "*Negotiated Agreement*" means any contract or other agreement negotiated between AIIC and any user of interpretation, translation or other language service setting forth, *inter alia*, the rates and working conditions for interpreters, translators or other language specialists working on a freelance basis for that user.

M. "*Person*" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

N. "*Basic Texts*" means the various governing and policy documents of AIIC, including, but not limited to, AIIC's Statutes, Code of Professional Ethics, Professional Standards, and Appendices to any of these documents.

II.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with their activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees applicable in the United States for interpretation, translation, or any other language service, including, but not limited to, fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, participating in, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, standardize, raise, maintain, or otherwise interfere with or restrict fees applicable in the United States for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters, translators, or other language specialists to charge, pay, offer, or adhere to, any existing or proposed fee for transactions within the United States, or otherwise to charge or refrain from charging any particular fee in the United States;

D. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition in the United States, including, but not limited to, offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, offering discounted rates, or accepting any particular lodging or travel arrangements;

E. Discouraging, restricting, or prohibiting interpreters, translators, or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated or payable on other than a full-day basis for services performed within the United States; and

F. Discouraging, restricting, or prohibiting interpreters from performing interpretation, translation, or other language services within the United States free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses.

Provided that, nothing contained in this paragraph II shall prohibit respondents from:

1. Compiling or distributing accurate aggregate historical market information concerning fees actually charged in transactions in the United States that were completed no later than one (1) year before the date of such compilation, provided that such compilation or distribution begins no earlier than three (3) years after the date this order becomes final, and provided further that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions; or

2. Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies or pursuant to a Negotiated Agreement, if such publication states the qualifications and requirements for a person to be eligible to receive such fees.

III.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection

with their activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, participating in, promoting, assisting, enforcing, or maintaining any agreement, understanding, plan, program, combination, or conspiracy to limit, restrict, or mandate, within the United States:

A. The reimbursement of or payment to interpreters, translators, or other language specialists for travel expenses or time spent traveling; or any discounts, costs, or other advantages or disadvantages to consumers based on actual travel arrangements or geographic location;

B. The recruitment of interpreters, translators, or other language specialists on the basis of whether or not they are permanently employed; or

C. The payment or receipt of commissions.

IV.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with their activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, in connection with any meeting being held, first warn and, if the warning is not heeded, dismiss from any meeting any person or persons who make a statement, addressed to or audible to the body of the meeting, concerning the fees applicable in the United States, charged or proposed to be charged for interpretation, translation, or any other language service. If the aforementioned disciplinary actions are not effective in stopping the prohibited discussion, then respondents must adjourn the meeting until such time as it may be conducted without such prohibited discussion.

V.

It is further ordered, That nothing herein shall prohibit respondents or their members from:

A. Performing pursuant to any existing agreement entered into between AIIC and any Intergovernmental Organization or any other existing Negotiated Agreement, unless such agreement is repudiated

by such Intergovernmental Organization or other user of interpretation, translation, or other language service; or

B. If requested to do so in writing in advance by such Intergovernmental Organization or other user of interpretation, translation, or other language service, negotiating a new or renewed agreement or Negotiated Agreement with any Intergovernmental Organization or other such user, concerning the wages, hours, and working conditions of freelance interpreters, translators, or other language specialists working for such Intergovernmental Organization or other user.

VI.

It is further ordered, That respondents shall, within ninety (90) days after the date this order becomes final:

A. Amend the Basic Texts, including all subparts and appendices, to conform to the requirements of paragraphs II, III, and IV of this order; and

B. Amend their rules and bylaws to require each member, region, sector, chapter, or other organizational subdivision to observe the requirements of paragraphs II, III, and IV of this order.

VII.

It is further ordered, That respondents shall, within ninety (90) days after the date this order becomes final, amend the Basic Texts, including all subparts and appendices, and their standard form contracts, to eliminate, for a period of five (5) years, all provisions related to:

A. Payments in the event of cancellation of a contract;

B. The payment of commissions or the requirement that remuneration be paid net of any commissions;

C. Payment for travel, specification of specific modes of travel, connecting payment or tickets for travel to an interpreter's professional address, or specification of rest days for travel;

D. Payment for non-working days, travel days, or rest days;

E. Payment for a subsistence allowance while on travel; and

F. Payment for recordings of conference interpretation.

VIII.

It is further ordered, That respondents shall:

A. Within ninety (90) days after the date this order becomes final, distribute to each member, affiliate, region, sector, chapter, organizational subdivision, or other entity associated directly or indirectly with respondents, copies of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, and (4) any document that respondents revise pursuant to this order; and

B. Distribute to all new officers, directors, and members of respondents, and any newly created affiliates, regions, sectors, chapters, or other organizational subdivisions of respondents, within thirty (30) days of their admission, election, appointment, or creation, a copy of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, and (4) any document that respondents revise pursuant to this order.

IX.

It is further ordered, That respondents shall:

A. Within ninety (90) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondents have complied and are complying with this order, and any instances in which respondents have taken any action within the scope of the provisos to paragraph II of this order;

B. For a period of ten (10) years after the date this order becomes final, collect, maintain, and provide upon request to the Federal Trade Commission: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports, or tape recordings of meetings of the Council, General Assembly, and all committees, subcommittees, working groups, or any other organizational subdivisions of respondents; and all general mailings by respondents to their membership;

C. For a period of ten (10) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the Basic

Texts or appendices thereto, and any new rule, regulation, or guideline of respondents applicable in the United States;

D. For a period of ten (10) years after the date this order becomes final, permit any duly authorized representative of the Commission: (1) access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, minutes, memoranda, and other records and documents in the possession or under the control of respondents relating to any matters contained in this order, and (2) upon five (5) days' notice to respondents and without restraint or interference from them, to interview officers, directors, or employees of respondents; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either respondent, such as dissolution or reorganization of itself or any proposed change resulting in the emergence of a successor corporation or association, or any other change in either respondent that may affect compliance obligations arising out of this order.

X.

It is further ordered, That respondent U.S. Region shall cease and desist for a period of one (1) year from maintaining or continuing its affiliation with any organization of interpreters, translators, or other language specialists within thirty (30) days after the U.S. Region learns, or obtains information that would lead a reasonable person to conclude, that said organization has engaged, after the date this order becomes final, in any act or practice that would be prohibited by paragraph II or III of this order if engaged in by the U.S. Region unless, prior to the expiration of such thirty (30) day period, said organization informs the U.S. Region by verified written statement of an officer of the organization that the organization has ceased and will not resume such act or practice, and the U.S. Region has no grounds to believe otherwise.

XI.

It is further ordered, That this order shall terminate twenty (20) years from the date this order becomes final.

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Final Order

APPENDIX A

[DATE]

ANNOUNCEMENT

The Federal Trade Commission, an agency of the government of the United States of America, has determined that certain rules and practices of the International Association of Conference Interpreters ("AIIC") violate the antitrust laws of the United States.

Members are advised that agreements between competitors on rates and fees violate the antitrust laws of the United States and may violate the laws of other countries. Other agreements between competitors on matters other than rates and fees may also violate the antitrust laws of the United States or of other countries. Individuals who enter into such agreements may be subject to criminal penalties and fines under the laws of the United States of America. 15 U.S.C. 1; 18 U.S.C. 3571. Individuals who enter into such agreements may also be civilly liable to persons injured in their business or property as a result of violations of the antitrust laws. 15 U.S.C. 15.

AIIC and its United States Region are now subject to an order issued by the United States Federal Trade Commission. The order prohibits AIIC, including its regions and organizational subdivisions, from engaging in various practices that would lessen competition in the United States. Copies of this order are attached to this Announcement.

IN THE MATTER OF

SCHWEGMANN GIANT SUPER MARKETS, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3584. Consent Order, June 2, 1995--Modifying Order, Feb. 24, 1997

This order reopens a 1995 consent order -- that required the Louisiana-based corporation to divest several supermarkets in the New Orleans area -- and this order modifies the consent order by replacing a provision requiring Schwegmann to obtain prior Commission approval for certain transactions, with a prior notice provision for any acquisition of retail supermarkets in the New Orleans area that Schwegmann makes through June 6, 2005. The Commission determined that the changed provisions are warranted and consistent with the Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions and therefore justified reopening the proceeding and modifying the order.

ORDER REOPENING AND MODIFYING ORDER

On November 21, 1996, Schwegmann Giant Super Markets, Inc. ("Schwegmann" or "respondent"), the respondent named in the consent order issued by the Commission on June 2, 1995, in docket No. C-3584 ("order"), filed its Petition To Reopen and Modify Consent Order ("Petition") in this matter. Schwegmann asks that the Commission reopen and modify the prior approval requirements of the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").¹ The order requires Schwegmann to seek the prior approval of the Commission to acquire any supermarket in the New Orleans metro area. The thirty-day public comment period on Schwegmann's Petition expired on December 26, 1996. No comments were received.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification

¹ 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.