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

Annual  
Report  
of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1990

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\* From November 18, 1983 to September 25, 1990.

\*\* From November 29, 1988 to October 24, 1989.

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LETTER OF TRANSMITTAL

October 1, 1991

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

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

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-sixth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1990.

By direction of the Commission.

Janet D. Steiger  
Chairman

FEDERAL TRADE COMMISSION  
1990 ANNUAL REPORT

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## SUMMARY

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

In addition to carrying out its statutory enforcement responsibilities, the Federal Trade Commission advances the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education. This report itemizes the Commission's accomplishment in fiscal Year 1990.

## MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In the merger area, even though the number of Hart-Scott-Rodino premerger filings was down, the number of merger investigations and enforcement actions was significantly higher. In fiscal 1990, the Commission reviewed mergers in many sectors of the economy and measures were taken to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

Outside the merger enforcement area, the Commission continued efforts to eliminate private and public restraints on competition, maintaining competition in the health care industry and challenging anticompetitive agreements among competitors, especially competitive restraints involving professionals.

## CONSUMER PROTECTION

In fiscal 1990, the Commission challenged as false, misleading, or unsubstantiated, a number of advertising claims which presented risk of substantial harm to Consumers. As part of this effort, the Commission accepted a number of consent agreements while issuing administrative complaints and pursuing administrative litigation in other matters.

The Commission also concluded investigations of alleged fraudulent or deceptive tactics in the sale of items and continued its efforts to



combat alternative investments and health fraud. In addition, the Commission worked to ensure that warranty information was made available and understandable to consumers prior to sale and that promises made under the warranties were honored.

The Commission obtained civil penalties or consumer redress in several actions charging violations of the Commission's Franchise, Funeral, Used Car, and Home Insulation rules. The Commission began proceedings to consider expanding the Mail Order Rule to cover telephone sales and to amend the definition of "properly completed order" for credit sales. The Commission also repealed its Automatic Sewing Machine Rule.

In fiscal 1990, the Office of Consumer and Business Education developed or revised 40 consumer publications on topics such as "900" telephone numbers, diet programs, and telemarketing fraud. Eight publications were translated into Spanish and distributed to national Hispanic organizations and Spanish language media. More than 2.7 million copies of the FTC's consumer and business publications were distributed. The Office also developed, produced, and distributed four broadcast releases. The video topics included sunscreens and housing choices for the elderly. The radio topics included fat and cholesterol advertising and "900" telephone numbers.

#### CONSUMER AND COMPETITION ADVOCACY

A number of federal and state legislatures and regulatory bodies sought the Commission's advice on proposed legislation or regulatory matters. Topics addressed included advertising, antitrust, communications, health care, housing choices for the elderly, sunscreens, occupational licensing, financial markets and transportation.

#### ECONOMIC ANALYSIS

In fiscal 1990, Federal Trade Commission economists continued to make policy, recommendations and to produce reports on topics of public interest. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau Of Economics in fiscal 1990, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection and regulatory topics. This work resulted in published reports on grocery retailing and the 1984 Shipping Act. These major reports provide insight into the effects of government regulation on competition and consumer welfare.

## ADMINISTRATION AND MANAGEMENT

A number of organizational changes during fiscal 1990 were designed to improve the delivery of ADP support services to Commission staff. The Automated Systems Division implemented three new central records systems, and also completed work on a utility to enable personal computer users to print documents on any printer attached to the Commission's local area network. The staff also improved its voice and data communications capabilities and a number of systems on the central Prime computer.

The Commission's budget increased, for the first time in a decade, by nine workyears in fiscal 1990. In addition, the recruitment activity of the Commission increased, resulting in the selection of high caliber entry level attorneys, legal interns and economists. During fiscal 1990 the Commission also piloted an alternative work schedule arrangement was well received and work was completed on a number of renovations and improvements to the Headquarters building.

## MAINTAINING COMPETITION MISSION

The Bureau of Competition devotes itself to preventing unfair trade practices and promoting competition through enforcement of the Federal Trade Commission, Clayton, Robinson-Patman, and Hart-Scott-Rodino Acts. The Bureau of Competition is primarily responsible for maintaining the competition mission with support from the Bureau of Economics, and the ten regional offices.

The activities of the mission are divided into five major program areas: Premerger Notification, Mergers and Joint Ventures, Horizontal Restraints, Distributional Arrangements, and Single Firm Violations (focusing primarily on monopolization and predation).

Under the Premerger Notification program, the Bureau is responsible for administering the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and for taking steps to ensure compliance with the program's statutory, premerger notification rules. The other four program areas review violations of the antitrust laws in industries in which the Commission has particular expertise: petroleum, natural resources, food, transportation, and health. In addition, the Commission reviews suspected collusive behavior among licensed professionals, and provides antitrust policy and studies to increase consumer awareness and to further the understanding of the role of antitrust in a competitive economy.

## PREMERGER NOTIFICATION

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") requires persons meeting certain size requirements who are planning significant acquisitions to file notification with the Commission and to delay consummation for a prescribed period of time. The premerger notification program was enacted to provide the enforcement agencies the opportunity, to review proposed transactions and to take enforcement action, if appropriate, to prevent consummation of transactions that violate the antitrust laws. The Commission, along with the Department of Justice, is responsible for administering the program and taking steps to ensure compliance with the program's requirements. In *Atlantic Richfield Co./Union Carbide Corp.*, the Commission entered into a consent agreement pursuant to which ARCO and Union Carbide agreed to the entry of a final federal court judgment requiring each company to pay \$1 million in civil penalties to settle charges that they failed to report the acquisition as specified by the HSR Act and the premerger rules.

During fiscal year 1990, 2,262 transactions were filed pursuant to the premerger notification program, a decrease of approximately 22 percent when compared to fiscal 1989. The Premerger Office staff responded to approximately 15,000 inquiries regarding the application and interpretation of the H-S-R Act and rules.

On November 29, 1989, the Commission began collecting a filing fee of \$20,000 from each acquiring person required to file a premerger notification and report form. Under the statute (Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations for the Fiscal Year Ending September 30, 1990 (H.R. 299 1), Section 605) the waiting period required under the Act does not begin until payment of the filing fee.

## MERGERS AND JOINT VENTURES

This program identifies and investigates those mergers, acquisitions, and joint ventures that are to result in the lessening of actual or potential competition.

During fiscal year 1990, the Commission initiated 62 new full-phase investigations, 55 of which involved requests for additional information under the Hart-Scott-Rodino Act, and continued work on investigations carried over from fiscal 1989. The Commission authorized preliminary injunction actions against seven mergers: *VIAG AG & SKW Alloys, Inc./K.B. Alloys Inc.*; *Bayer A.G./Columbian Chemicals, Inc.*; *International FlightSafety International, Inc./SimuFlite & Bicoastal Corp.*; *Rhone-Poulenc, Inc./Olin Corp.*; *Imo Industries Inc./Optic-Electronic Corp.*; and *R.R. Donnelley & Sons/Meredith/Burda Companies*. The

parties to the first four mergers terminated their plans to proceed with the acquisitions before the Commission filed for injunctive relief. In *Imo*, a consent requiring prior approval for certain acquisitions was accepted after the court granted the Commission's motion for a preliminary injunction and an administrative complaint challenging the \$69 million acquisition was issued. In *Donnelley*, the parties consummated the acquisition after the court denied the Commission's request for a preliminary, injunction to block the acquisition.

The Commission issued divestiture orders to settle antitrust concerns in seven transactions. The order in *Arkla, Inc./Transark Transmission Co.* required the divestiture of certain pipeline interests; the order in *MTH Holdings, Inc./Grand Union Company* required the divestiture of grocery stores in Vermont and New York; *Societe Nationale Elf Aquitaine* was allowed to acquire *Pennwalt Corp.* after the parties agreed to divest certain polyvinylidene fluoride/vinylidene fluoride assets in *Thorofare, New Jersey*. The order in *Archer-Daniels-Midland Company/Dixie Portland Flour Mills, Inc.*, required the divestiture of flour mills in three states; in *Emerson Co./McGill Manufacturing Co.*, the order required the divestiture of ball bearing assets in *Indiana*; in *Amersham International plc/Medi-Physics, Inc.*, the *Spectamine* business was ordered divested; and in *Reckitt & Colman plc/American Home Products Corporation*, the order required the divestiture of certain rug cleaning assets.

Antitrust concerns in four other transactions were settled by consent orders. Two separate orders in *Reading Hospital & Medical Center/Community General Hospital*, and *Central Soya Company, Inc./A.E. Staley Manufacturing Co.* required the parties to obtain prior Commission approval before making certain acquisitions. *Rhone-Poulenc S.A.* was allowed to acquire the *Marschall Dairy Products* division of *Miles Inc.* after *Rhone* agreed to grant licenses to market certain dairy culture products; and finally, in *Institut Merieux S.A./Connaught Bio Sciences, Inc.*, the order required the leasing of *Connaught's rabies-vaccine* business to a Commission approved acquirer.

In addition to *ARCO*, the Commission accepted for comment consent agreements in three other matters, *E-Z-EM Inc./Lafayette Pharmacal Inc.*, *T&N plc/J.P. Industries, Inc.*, and *Roche Holding Ltd./Genentech Inc.* The proposed order in *E-Z-EM* requires the divestiture of all acquired assets; certain engine bearing assets must be divested in *T&N* and in *Roche*, the proposed order requires the divestiture of certain therapeutic pharmaceutical assets and the licensing of others.

Two additional administrative complaints were issued in merger cases. In *Harold Honickman*, the Commission's complaint charged that the acquisition of *Seven-Up Brooklyn Bottling Co., Inc.*, could substantially reduce competition in the production and sale of carbonated soft drinks

in the New York metropolitan area. In Adventist Health system/West, an Administrative Law Judge dismissed the complaint that charged that the acquisitions of Ukiah Hospitals Corp. and Ukiah General Hospital could substantially lessen competition in general acute care hospital services in the Ukiah, California area.

Also during the year, administrative proceedings against several parties were concluded after the Commission accepted consents in Dr Pepper/Seven-Up Companies, Inc., Illinois Cereal Mills, Inc., and Promodes, S.A. In Dr Pepper/Seven-Up, involving litigation against Coca-Cola Bottling Southwest, Dr Pepper agreed to take no action that would interfere with the Commission's ability to fashion relief against Coca-Cola. The consent order in Illinois Cereal settled charges stemming from the acquisition of certain assets from Elders Grain, Inc. Under terms of the consent, Illinois Cereal is required to obtain prior Commission approval before making certain acquisitions. Charges against Elders Grain were later dismissed. The complaint in Promodes, S.A., which challenged Red Foods Stores' acquisition of certain Kroger grocery stores, was settled by a consent agreement requiring prior approval for the acquisition of grocery stores in the Chattanooga, Tennessee area.

Finally, the Commission in Olin Corporation ruled that the acquisition of FMC Corporation's swimming pool chemical assets was unlawful. Olin filed an appeal in the Ninth Circuit to challenge the Commission's final decision.

#### HORIZONTAL RESTRAINTS

During fiscal 1990, the Commission continued its efforts to eliminate horizontal restraints such as price fixing and other anticompetitive agreements among direct competitors - practices that may generally deny consumers access to the optimal variety, quantity, and quality of goods and services at competitive prices, and deny sellers the opportunity to produce, distribute, and sell goods and services at prices they would select under competitive conditions. Through investigation, litigation, and negotiation, the Commission worked to eliminate unlawful horizontal restraints on trade. In addition, the Commission implements its program by preparing and issuing reports, submitting comments to federal, state, and local government agencies, filing amicus curiae briefs in court actions, and issuing advisory opinions when appropriate.

This year, the Commission issued three administrative complaints: Empire State Pharmaceutical Society, Capital Area Pharmaceutical Society, and College Football Association. The complaints against Empire State and Capital Area Pharmaceutical each alleged that the trade association conspired with others to engage in an illegal boycott of

New York State's Prescription Plan in an effort to increase the program's reimbursement rate for prescriptions. Both matters were later withdrawn from adjudication; consent agreements were accepted for public comment in October 1990. Separate consent agreements were accepted with four other alleged participants in the boycott. In College Football, the Commission challenged the marketing of college football telecasts.

The Commission issued twenty-one consent agreements in ten matters during the year. Complaints accompanying the nine separate orders accepted in Cleveland Oldsmobile Connection, Dowd Oldsmobile, Inc., Earl Oldsmobile, Inc., Fred Stecker Oldsmobile, Inc., Ganley Oldsmobile, Inc., Gene Norris Oldsmobile-GMC, Inc., Hern Oldsmobile-GMC Truck, Inc., Reliable Oldsmobile, Inc., and Zalud Oldsmobile, Inc., alleged that the association and its members agreed not to advertise new car prices. Four related consent agreements settled complaints that involved a pharmacy price-fixing boycott in Pharmaceutical Society of the State of New York, Long Island Pharmaceutical Society Inc., Pharmaceutical Society of Orange County, Inc., and Westchester County Pharmaceutical Society, Inc. Three separate orders accepted in Metro MLS, Inc., Bellingham-Whatcom County Multiple Listing Bureau, and Puget Sound Multiple Listing Association, settled charges that the firms restricted the publication of properties in their separate multiple listing services. In New Jersey Movers Tariff Bureau, Inc., the order settled charges that the bureau used joint tariffs to illegally, set rates for the intrastate transport of household goods in the state of New Jersey. The order in Nippon Sheet Glass Company, Ltd./Pilkington PLC involved an ancillary, agreement relating to the acquisition of shares of Libby-Owens-Ford. In addition, three consent agreements accepted for comment last year against licensed professionals were made final; Structural Engineers Association of Northern California, Inc., involved allegations that the association illegally, restrained competition by restricting truthful advertising; Oklahoma State Board of Veterinary Medicine involved allegations that veterinarians were restricted from entering into certain business arrangements with non-veterinarians; and American Institute of Certified Public Accountants involved allegations that the institute restrained competition by restricting fee arrangements and truthful advertising. Finally, the Commission accepted a consent in Lee M. Mabee, M.D., to settle charges that he participated with others in an illegal boycott of the residence, program of the University of South Dakota School of Medicine. A related consent was accepted last year that settled similar charges against other participants in the same boycott.

The Supreme Court reversed the decision of the Court of Appeals for the District of Columbia and upheld the Commission's order against Superior Court Trial Lawyers Association. The Supreme Court ruled that

the 1983 strike by court-appointed lawyers to obtain higher reimbursement rates was an attempt to fix prices and restrain trade. The lower court issued an Order affirming and enforcing the Commission's order in its entirety.

In *New England Motor Rate Bureau*, the First Circuit Court of Appeals reversed in part the Commission's decision that prohibited the bureau from filing collective rates for the intrastate freight transfer of property in the state of Massachusetts. The court ruled that the bureau's activities were exempted from the federal antitrust laws by the "state action" doctrine.

Two circuit court of appeals cases were pending during fiscal 1990: *Ticor Title Insurance Co.*, involves an agreement to collectively set rates for title search and examination services, and *Detroit Auto Dealers Association, et al.*, involves restrictions on hours of operation and certain forms of advertising.

The Commission staff has also provided comments, advice, and guidance to governmental bodies and private groups concerning the likely competitive effects of their regulators, and other activities. These advocacy efforts have dealt with a variety of economic sectors, including the marketing and delivery of health care services, the dispensing and sale of prescription drugs by physicians, advertising and solicitation by lawyers, cable television regulation, off-site automobile sales, automotive aftermarket crash parts, trucking regulation, taxicab regulation, bank advertising of trust funds, and insurance regulation.

#### DISTRIBUTIONAL RESTRAINTS

During fiscal 1990, the Commission continued to devote a significant portion of its resources to investigate restrictions on the distribution of goods from manufacturers to consumers. Such practices can limit sources of supply or restrict channels of distribution in ways that increase prices or reduce quality. Potentially unlawful conduct includes restrictions on resale prices and restrictions on the marketing decisions of firms. In addition, the Commission investigates discrimination in prices, terms of sale, advertising allowances, and other merchandising services that tend to deny competitive opportunities to firms in the distribution chain and other practices that may injure consumers.

The Commission initiated ten new investigations during the year involving alleged distributional practices in a variety of industries such as motion pictures, clothing, furniture, carbonated soft drinks, machine tools, and children's toys and games. Administrative litigation continued against Harper & Row and five other major book publishers for alleged unlawful price discrimination under the Robinson-Patman Act.

Also during the year, the Commission published a revision of the *Guides on Advertising Allowances and Other Merchandising Payments*

and Services, referred to generally as the "Fred Meyer Guides." The Guides, first issued in 1972, are designed to assist businesses in their compliance with Sections 2(d) and 2(e) of the Clayton Act, as amended by the Robinson-Patman Act. The Guides, which are not rules, are intended to provide the public with guidance on how to provide allowances and services on proportionally equal terms to all competing customers.

### SINGLE FIRM VIOLATIONS

The Commission opened sixteen new investigations, each inquiring into the efforts of a single firm to abuse market power, an activity that injures consumers by reducing output and increasing prices above the competitive level. The program's objective is to prevent or remedy instances in which market power has been created or maintained through monopolization, or attempts to monopolize, tying arrangements, and non-price predation.

During fiscal year 1990, the Commission accepted a consent agreement in one tying case, Gerald S. Friedman, M.D. The complaint charged that Dr. Friedman required physicians who used his out-patient facilities to use his in-patient services whenever their patients required hospitalization.

The Commission continues its efforts to engage in competition advocacy concerning the reduction of barriers to entry and the elimination of restraints on pro-competitive firm conduct, and to provide legal and economic policy analysis of issues related to single firm anticompetitive behavior.

### CONSUMER PROTECTION MISSION

In fulfilling its Consumer Protection mission, the Commission strives to maintain conditions in the marketplace that allow consumers to make informed purchase choices. To this end, it works to: increase the usefulness of advertising by ensuring that advertising is truthful and not misleading; reduce instances of fraudulent or deceptive sales and marketing practices; and prevent creditors from engaging in unlawful practices in granting credit, maintaining credit information, collecting debts, and operating credit systems. Under this mission the Commission also conducts activities designed to educate consumers and businesses about their rights and responsibilities under the laws and regulations it administers.

There are five substantive programs within the Consumer Protection Mission: Service Industry Practices; Marketing Practices; Advertising Practices; Credit Practices; and Enforcement. These are supported by the



Economic and Consumer Policy Analysis program and a management program that includes the Office of Consumer and Business Education.

### SERVICE INDUSTRY PRACTICES

Consumers annually spend hundreds of millions of dollars or more on alternatives to traditional investments. Many of the sales of certain alternative investments - especially precious metals, gemstones, rare coins and purportedly, rare art works sold as investments - are based on fraud and misrepresentations. Under this program, the Commission continues to bring cases and to coordinate with other federal and state law enforcement authorities in order to protect consumers from this kind of fraud.

Health fraud also remains a wide-spread problem, and actions to combat this type of fraud are conducted under this program. Consumers spend billions of dollars to purchase health care services. Many prospective patients base their decisions, in part, on promotional materials that misrepresent the likely success or efficacy of certain medical procedures or the discomfort or inconvenience that should be anticipated in undergoing them. These advertisements may seem credible to consumers because the advertiser is a physician or other health care professional or because the consumer does not have the information necessary to evaluate their effectiveness.

In fiscal year 1990, approximately \$19.5 million in consumer redress was ordered in cases involving investment fraud. The Commission obtained settlements containing judgments of over \$15 million for distribution to customers of companies charged with falsely representing the grading and/or value of rare coins. Other redress orders involved fraudulent telemarketing schemes involving cellular telephone lotteries, gold and silver mines, and fake art. Three orders were issued against defendants involved in an overseas employment service, requiring a total of \$950,000 in consumer redress.

Five complaints filed in federal district court against companies charged with investment fraud are pending final action. A complaint was also filed against the instructor of a permanent makeup workshop, charging misrepresentation of the training provided and certification awarded.

### MARKETING PRACTICES

The fraudulent telemarketing of consumer goods and services is a primary focus of this program. Industry sources estimate that consumers lose as much as one billion dollars a year to fraudulent telemarketers. Over \$10.1 million in consumer redress was ordered in fourteen cases filed under the telemarketing program. Two important trade regulation

rules, the Funeral and Franchise Rules, are also enforced under this program. Five Funeral Rule violation cases were settled for a combined total of \$110,000 in civil penalties and \$14,350 in consumer redress. A group of southwest Texas land promoters agreed to refund \$2.5 million to consumers who purchased undeveloped land under allegedly false pretenses. A timeshare resale company agreed to pay \$1.25 million in redress to settle charges it made false claims as to the availability of buyers for timeshare resales and made false promises to clients that they would receive a \$1,000 government bond if it failed to sell the customer's timeshares.

The Commission issued an administrative complaint charging that false claims were made in a 30 minute commercial advertising government grants to consumers to start small businesses. A separate consent agreement with the Producers of the "infomercial" was accepted by the Commission subject to final approval and provides for \$175,000 in consumer refunds.

The Commission give final approval to consent agreements with a timeshare promoter, a membership campground promoter, a funeral provider, and an automobile company. Permanent injunctions were issued in five matters alleging Violations of the Franchise Rule, and one alleged travel fraud case. Seven complaints filed during the year remained pending in federal district court.

#### ADVERTISING PRACTICES

Many issues of current concern to consumers, such as food and nutrition advertising, environmental advertising or "green claims," energy saving devices, and "900" telephone numbers are addressed under this program.

The increasing evidence about the relationship of diet to the risk of chronic diseases has triggered an explosion of health claims in advertising. These are being carefully monitored to assure these advertisements are truthful and not misleading. Concern for the environment has spawned increased advertisements using terms such as "biodegradable," and "recyclable." The Commission is monitoring these advertisements, asking companies to substantiate their environmental claims when appropriate. In the area of energy savings devices, a press release was issued in August 1990 warning consumers "to be on the lookout for scams and rip-offs that take advantage of consumers' concerns about the supplies of petroleum following Iraq's invasion of Kuwait."

In fiscal year 1990, the Commission took action on several advertising practices case. Six consent agreements were given final approval, including one requiring payment of \$30,000 to NIH for research. An agreement with a cigarette company settled charges it made false and misleading advertising claims regarding the health effects of smoking,

particularly in connection with a government study. Four additional consent agreements were accepted by the Commission subject to final approval. An agreement with a company and six individuals charged with making false and unsubstantiated claims in connection with program-length commercials, requires payment of \$1.5 million in consumer redress.

The Commission issued an administrative complaint charging a company with making false and unsubstantiated claims about the effectiveness of its exercise device, and with failing to disclose that the device may break and cause injury to the user. A consent agreement with the defendants settled the charges. The Commission also filed a complaint in federal district court against the makers of certain diet pills charging the claims that the pills will help users lose weight without dieting or exercise are false and misleading.

### CREDIT PRACTICES

Credit issues are of great concern to consumers. The Commission continued to administer a strong credit program, focusing on areas of specific concern such as the confidentiality of consumers' personal financial histories and equal access to credit. Efforts to educate consumers about the risks and benefits of credit, and their responsibilities and rights continued to be a priority of this program.

Several credit cases were settled during fiscal year 1990. Four Equal Credit Opportunity Act investigations resulted in a total of \$427,500 in civil penalty judgments. An additional \$64,500 in civil penalties were ordered in four other credit cases. A credit grantor was required to pay a \$275,000 civil penalty for discriminating against elderly applicants and divorced women by not considering part time income, in another case, a \$90,000 civil penalty was ordered to resolve allegations that when married couples applied for credit, the wife's credit history was often ignored.

Three cases in which fees for travel services or travel club memberships were wrongfully, billed to the consumer's credit card, resulted in a \$15.9 million default judgment, a consumer redress order, and a permanent injunction.

Four actions involving credit repair companies resulted in over \$4.7 million in consumer redress ordered. Under these consent decrees, defendants were prohibited from misrepresenting that they can improve a person's credit record.

The Commission issued an administrative complaint charging a magazine subscription marketer with violating the FTC Act by using deceptive and abusive debt collection practices. This is the first time the Commission charged a creditor for the illegal collection activities of its debt collectors,

## ENFORCEMENT

Under this program the Commission enforces its cease and desist orders, as well as the majority of trade regulation rules, guides, and special statutes. The last category includes laws governing the labeling of fur, textile and wool products and tobacco and smokeless tobacco advertising. The Commission's consumer protection enforcement efforts encompass investigations, periodic compliance reviews, and, when warranted, rulemaking proceedings. Consumer education and guidance to affected industries to encourage voluntary compliance also are important to the success of this program.

In sixteen cases settled in fiscal year 1990, \$1,199,500 in civil penalties were ordered. Settlements included \$850,000 against four companies charged with violating prior Commission orders. A computer company was ordered to pay \$275,000 for violating an order enjoining it from representing that any computer hardware or software is available for sale to the public when, in fact, it is not available in reasonable quantities. A \$375,000 judgment was entered against a major drug manufacturer for making unsubstantiated therapeutic performance claims in violation of a 1985 order.

Seven judgments were entered against dealerships charged with violating the Used Car Trade Regulation Rule by failing to display Buyers Guides on the used vehicles they offered for sale. Civil penalties imposed in these cases totaled \$174,000. Complaints filed in federal district court against two other dealerships are pending final action.

Judgments totaling \$145,000 were entered against four companies charged with violating the Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (the R-value Rule). A firm charged with violating the Mail Order Rule was ordered to pay a \$30,000 civil penalty.

The Commission accepted a consent agreement with a wholesaler of women's clothing to settle charges it violated the Textile Act by failing to label its products as to country of origin and mislabeling the fibers of its products.

A Notice of Proposed Rulemaking was issued to amend the Mail Order Trade Regulation Rule to include merchandise ordered by telephone, and to amend the definition of "properly completed order" for credit sales. The 1975 Rule protects consumers who place their orders by mail.

The Presiding Officer and the staff of the Bureau of Consumer Protection recommended that the Commission repeal its trade regulation rule on the transistor counts of radios and walkie-talkies. The Commission voted to repeal its rule on "automatic" sewing machines. The

Commission determined that because of changes in technology the rule no longer serves a meaningful purpose.

#### OFFICE OF CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education plans, develops, and implements programs aimed at providing special information to consumers and industry about important Commission programs, enforcement actions, statutes, rules, and decisions. The purpose of this effort is to encourage informed consumer choice and competitive business education programs as a cost-effective way of obtaining compliance with the law.

During fiscal year 1990, the Office of Consumer and Business Education produced forty new or revised consumer publications. Topics were drawn from staff investigations that demonstrated marketplace problems and information needs, including "900" telephone numbers, diet programs, infertility, services, and telemarketing fraud. Eight of the new publications were translated into Spanish, and distributed to national Hispanic organizations and Spanish language media.

The Office also developed, produced, and distributed via satellite, four broadcast releases. The video broadcast topics included housing choices for the elderly, and sunscreens, developed in cooperation with AARP. The radio broadcast topics included fat and cholesterol advertising and "900" telephone numbers, both developed in cooperation with National Consumers Week efforts.

More than 2.7 million copies of the FTC's consumer and business publications were distributed through various sources. The Commission has a 'Best Sellers' list that sets out 100 titles of free consumer and business publications, including 18 Spanish translations.

#### ECONOMIC ACTIVITIES

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

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In fiscal year 1990, the Bureau of Economics continued to provide guidance and support to that mission. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions

were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve competition.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer-run effects on price, product variety, and innovation.

Although the FTC is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In 1990, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection and regulation.

## ANTITRUST

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. These activities consumed the bulk of the Bureau's resources assigned to directly support the Commission's antitrust responsibilities.

Several studies undertaken by the Bureau also support the Commission's antitrust activities. For example, during fiscal year 1990, economists participated in Congressionally requested studies of the Shipping Act of 1984, and the Japanese keiretsu system of automobile production. In addition, economists published reports on the effects of FTC antitrust challenges on the market value of rival firms, and the effects of market concentration in grocery retailing.

## CONSUMER PROTECTION

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

In addition to the Bureau's direct support for individual consumer protection matters, staff economists began work on several consumer protection studies. These included the effects of fat and cholesterol information on consumer behavior, and the effects of department store price advertising.

## REGULATION

In the regulation area, staff economists actively participated in the Commission's Competition and Consumer Protection Advocacy Pro-

gram. As part of this effort, Bureau staff reviewed a variety of regulations that it believed might raise antitrust or consumer protection issues. Requests for views on these matters from other federal regulatory authorities resulted in the Bureau submitting comments to, for example, the Federal Communications Commission on cable TV regulation and the financial interest and syndication rules; the Commodity Futures Trading Commission on dual trading; the Food and Drug Administration on food labeling regulations; and the International Trade Commission on import restraints.

EXECUTIVE DIRECTION,  
ADMINISTRATION AND MANAGEMENT, AND  
REGIONAL OFFICES

The Office of the Executive Director provides administrative and management support for the Commission as well as providing management direction to the agency's ten regional offices. The Executive Director administers these functions through a series of divisions including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems (ASD), and the Library.

#### AUTOMATED SYSTEMS

During fiscal 1990, the Commission improved its voice and data communications capabilities; took steps to improve the management of its office automation capabilities; developed, installed, or improved a number of systems on the central Prime computer; and used its data processing resources in direct support of many of its enforcement initiatives.

The Commission converted to FTS2000, a government-wide communications network that provides improved quality for both voice and data transmissions, as well as new services such as video and teleconferencing. The Automated Systems Division established a regional office pilot to make integrated mini-computer (improved application system performance, flexible report printing options, etc.) and office automation capabilities (BEAM, ZIP, server, etc.) directly accessible to regional office staff.

Because of the growth of the office automation program, the single Office Systems Branch was separated into two branches to support more effectively the user base which continues to expand in both numbers and sophistication of expected technical support. As the Commission's inventor, of office automation equipment expands and ages, maintenance becomes more important. During fiscal 1990, the staff established

an in-house parts inventory and repair capability, and installed an enhanced service order tracking and reporting system for use with the ASD Help-Desk and Hotline.

New agency-wide systems implemented during fiscal 1990 include an on-line, interactive system for automatic record checking and a full text system for electronically storing, searching, and retrieving Commission Minutes on the Prime minicomputer. The Consumer Complaint System was enhanced to permit local, off-line data entry, and the Telemarketing Complaint System was expanded to include three additional states. The FTC converted to GSA's payroll system and implemented a system to integrate office budget and planning activities with financial accounting and procurement status data.

The Litigation Support and Economic Analysis Branch provided important document management and data analysis support for investigations in all three bureaus and several of the regional offices. Zy-Index was selected as the standard PC-based tool for staff attorneys to use for investigations. The product will be included in the inventory of standard PC software that is supported by ASD and the Information Center.

The Commission established its Information Resources Security Program, in accordance with the Computer Security Act (P.L. 100-235), together with the broader Internal Controls Program also implemented in fiscal 1990.

## INFORMATION SERVICES

The Information Services Division continued developing the "data administrator" responsibility that it assumed in fiscal 1989, conducted a successful experiment in the use of contractual assistance to manage the Commission's paper records, and produced the Commission's fiscal 1989 annual report on a timely basis.

As data administrator, the Division identified and described data requirements that cross all organizational lines within the Commission, and analyzed the relationships among those data. The tables produced as part of that process will assist the Automated Systems Division in converting the Commission's automated information systems to a "relational database" structure.

The Division also determined that it could effectively use contractual assistance to log, store, maintain, retrieve, and dispose of the more traditional paper records that the agency collects and generates as part of its law enforcement efforts. Based on these results, contractual assistance will become a long-term part of the records management program.

In fiscal 1988, the Information Systems Division assumed responsibility for producing the Commission's Annual Report, which at that time was several years behind schedule. Through concerted efforts, the goal of bringing the production of these important reports up to date was



reached with the submission of the report for fiscal 1989. In fiscal 1991, the Division will evaluate the format of the report and produce recommendations for improving its effectiveness.

## LIBRARY

The Library maintained the Commission's comprehensive research collection in legal, business, and economic subjects and provided research assistance to FTC staff and the public through a variety of information sources and systems. During 1990, the Library staff responded to approximately 13,700 reference questions, conducted over 4,400 computer searches on commercial databases, processed 2,800 interlibrary loan transactions, circulated 23,000 items, and added 2,345 items to its collection bringing the total collection to over 120,000 books and audiovisual materials. In conjunction with the Bureau of Consumer Protection, the staff began a pilot project to access investigatory databases which provide information in public filings from jurisdictions nationwide.

The Library's Information Center continued to train and assist FTC staff in the use of personal computers and related software. The Information Center trained 678 employees in 109 classes on 33 different topics, ranging from computer security to Advanced WordPerfect. The staff sponsored a Production Fair featuring mini-classes on several topics, began a series of training visits to the regional offices, and published a number of instruction sheets on different software packages.

## PROCUREMENT AND GENERAL SERVICES

In addition to providing the day to day administrative support to the Commission, the Division of Procurement and General Services completed several initiatives during Fiscal 1990. These accomplishments included the completion of contract actions on the purchase of microcomputers, programming, computer facility management, audit, and stenographic services implementation of a nation-wide mail management system based on extremely efficient meter mail technology; and a waste-paper recycling program. Work concluded on numerous projects begun in fiscal 1989 to improve the Headquarters facility. These include major renovations to the Cafeteria; major repairs to elevators; and the construction of a Records Storage and Distribution Facility, Mailroom, and Service Unit office in the basement. The Division also oversaw the completion of the replacement of the emergency generator, computer center air conditioner, and building air compressors.

## BUDGET AND FINANCE

Fiscal year 1990 was a "turn around" year for the Federal Trade

Commission. The level of resources expended increased for the first time in a decade, from 894 workyears in fiscal year 1989 to 903 workyears in 1990. Starting in fiscal year 1990 the Commission's appropriation was supplemented by fees collected in conjunction with premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Legislation permitted the Commission to collect and spend up to \$20 million in such fees, but actual collections in fiscal 1990 amounted to only \$13.7 million. The fee shortfall forced the Commission to undertake a severe cost reduction program in the second half of the fiscal year. The Commission spent \$70.1 million inclusive of the filing fees in fiscal 1990.

#### HUMAN RESOURCE MANAGEMENT

Consistent with modest growth in the agency's budget, the Commission increased its recruitment activity during fiscal 1990. On-campus recruitment efforts led to the selection of high calibre entry level attorneys and economists. The recruitment circle also identified numerous Summer legal interns who were exposed to the Commission's work through a proactive program of training and on-the-job experience. The Commission also Piloted an alternative work schedule arrangement which was well-received by the employees, management and the union. A central feature of this alternative work schedule plan was the option for employees to work a regular schedule consisting of 80 hours in 9 work days each pay period as an alternative to the traditional 10 8-hour days every two weeks. The agency continued to strengthen its human resource posture by improving training delivery, and other client services.

#### REGIONAL OFFICES

The Commission's regional offices continued to play a key role in fulfilling the agency's two missions in fiscal 1990. In addition to engaging in the full range of enforcement and advocacy activities within their respective regions, the regional offices served a valuable "out-reach" function by responding to consumer complaints and inquiries, and maintaining contacts with state and local enforcement officials, trade associations, and consumer groups. During fiscal 1990, both enforcement bureaus created and filled key management positions responsible for coordinating the enforcement work of the regional offices.

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

MAINTAINING COMPETITION MISSION

Amersham International plc

(See page 28.)

Archer-Daniels-Midland Company

(See page 29.)

Atlantic Richfield Company

Atlantic Richfield agreed to divest certain assets to settle charges that its \$220 million acquisition of Union Carbide could substantially reduce potential competition in the manufacture of propylene oxide; the basic feedstock for urethane polyether polyol (UPP) and propylene glycol (PG) production. ARCO and Dow Chemical are the only domestic producers of propylene oxide; ARCO and Union Carbide are leading producers of UPP and PG. Under terms of the proposed consent agreement, ARCO would divest within twelve months Union Carbide's PG assets and the UPP assets located in the United States and Canada to a Commission approved acquirer. The assets to be divested were acquired from the Texaco Chemical Company in 1987. Included with the UPP assets are ARCO's tolling agreement with Texaco to manufacture polyols and a licensing agreement to use Union Carbide's polymer/polyol patent rights and technology. In addition, ARCO is required to supply both acquirers with propylene oxide on a most favored nation basis. The proposed consent prohibits ARCO from suing Texaco for its continuing development of propylene oxide/technology and removes the agreement that prohibited Union Carbide and Texaco from competing with ARCO in the manufacture or sale of either chemical in the United States or Canada. A hold-separate agreement accompanying the consent requires that the entire Union Carbide operation be preserved and operated independently of ARCO until all divestitures have been accomplished. The consent order contains a ten-year prior approval provision for the acquisition of any company

engaged in the production of UPP or PG in the United States or Canada. Before the consent was accepted, the Commission's staff filed a motion for a preliminary injunction: to prevent further acquisitions of the assets, to rescind the acquisitions already consummated, and to seek rescission for the parties' violation of the filing and waiting period requirements of the Hart-Scott-Rodino Act. That complaint charged that ARCO obtained "beneficial ownership" of the Union Carbide assets before complying with the provisions of the premerger notification reporting requirements under the H-S-R Act. After the consent order becomes final, the Commission will ask the Department of Justice to file the stipulated final judgment requiring each party to pay \$1 million in civil penalties to settle the charges.

#### Bellingham-Whatcom County Multiple Listing Bureau

(See page 29.)

#### Central Soya Company, Inc.

(See page 29.)

#### Cleveland Oldsmobile Connection

(See page 30.)

#### Dowd Oldsmobile, Inc.

(See page 30.)

#### Earl Oldsmobile, Inc.

(See page 30.)

#### Emerson Electric Company

(See page 31.)

#### E-Z-EM Inc.

E-Z-EM, Inc. agreed to settle charges that its 1988 acquisition of Lafayette Pharmaceutical, Inc. could substantially reduce competition in the market for products used to diagnose problems in the gastrointestinal tract. The complaint accompanying the proposed

consent alleged that E-Z-EM's acquisition of its competitor created a virtual monopoly in the already highly concentrated barium market. Under terms of the consent, E-Z-EM agreed to divest all of the acquired assets within twelve months to a Commission approved acquirer. In addition to a prior-approval provision for certain future acquisitions, E-Z-EM must give the Commission prior written notice before selling or disposing of any assets or stock to anyone engaged in the barium diagnostic products business for a period of ten years.

Fred Stecker Oldsmobile, Inc.

(See page 30.)

Ganley Oldsmobile, Inc.

(See page 30.)

Gene Norris Oldsmobile - GMC Inc.

(See page 30.)

Gerald S. Friedman, M.D.

(See page 31.)

Hern Oldsmobile - GMC Trucks, Inc.

(See page 30.)

Institut Merieux S.A.

(See page 31.)

Long Island Pharmaceutical Society Inc.

(See page 32.)

Metro MLS

(See page 33.)

New Jersey Movers Tariff Bureau, Inc.

(See page 34.)

Nippon Sheet Glass Co., Ltd.

(See page 34.)

Pharmaceutical Society of Orange County Inc.

(See page 32.)

Pharmaceutical Society of the State of New York Inc.

(See page 32.)

Puget Sound Multiple Listing Association

(See page 35.)

Reading Hospital & Medical Center

(See page 35.)

Reckitt & Colman plc

Reckitt & Colman plc entered into a consent agreement under which it could acquire the Boyle-Midway Division of American Home Products Corporation. The agreement requires Reckitt & Colman to divest its rug cleaning products business to a Commission approved acquirer within eight months. According to the order, if the assets are not divested within the specified time period, Reckitt & Colman must divest its Woolite cleaning assets within six months. The complaint accompanying the agreement charged, among other things, that the acquisition could eliminate competition between the two firms and greatly increase the likelihood of collusion. In addition, Reckitt & Colman must obtain prior Commission approval for ten years before acquiring any company that manufactures or sells rug cleaning products in the United States.

Reliable Oldsmobile, Inc.

(See page 30.)

Rhone-Poulenc S.A.

(See page 36.)

#### Roche Holding Ltd.

The Commission accepted a proposed consent agreement that would permit Roche Holding Ltd.'s acquisition of Genentech Inc. The complaint accompanying the proposed agreement charged, among other things, that the acquisition could substantially reduce competition in three areas: the world market for vitamin C; the United States market for therapeutic drugs used in the treatment of human growth hormone deficiency; and, the United States market for the development of CD4-based therapeutics used in the treatment of AIDS/HIV infection. According to the proposed complaint, Genentech, based in California, and Roche, headquartered in Switzerland, are both engaged in the research, development, and marketing of biotechnology, therapeutic pharmaceuticals. Under terms of the consent, Roche must divest its human growth hormone releasing factor business and Genentech's GLC Vitamin C assets, within twelve months, to a Commission approved acquirer. In addition, for ten years, Roche is required to license its CD4-based therapeutic domestic patents for a specified royalty. A hold-separate agreement issued with the proposed consent requires the Genentech assets to be maintained and operated independently until all divestitures are completed. Finally, the proposed order prohibits both companies from acquiring any interest in any company engaged in the clinical development or the manufacture or sale in the United States of any products subject to the proposed order.

#### T&N plc

T&N plc entered into a proposed consent agreement concerning its acquisition of J.P. Industries, Inc. The complaint accompanying the agreement charged that the acquisition could lessen competition or tend to create a monopoly in the United States for the manufacture and sale of thin wall bearings used in automobile and truck engines, and tri-metal wall engine bearings used to power large engines, such as those in locomotives and ships. Engine bearings are used to reduce friction between rotating and stationary parts of engines. Under the agreement, T&N is required to divest various assets: certain domestic thinwall engine bearings assets; tooling and related assets located in Scotland and England and for use in U.S. applications; and certain tri-metal heavy wall assets, including castings, specifications, and electroplating equipment. The divestitures must be completed within twelve months to a Commission approved acquirer. The agreement further specifies that if the assets



cannot be sold by T&N or a Commission appointed trustee, T&N will be required to include the J.P. Industries' engine bearings manufacturing facilities in McConnelsville, Ohio along with the other T&N assets to be divested.

Westchester County Pharmaceutical Society Inc.

(See page 32.)

Zalud Oldsmobile, Inc.

(See page 30.)

#### CONSUMER PROTECTION MISSION

American Life Nutrition, Inc.

American Life Nutrition, a wholesale dealer of dietary food supplements, was charged with making allegedly false and unsubstantiated therapeutic claims in its Chinese-language advertising for five of its products. The order prohibits the respondents from making false and unsubstantiated health efficacy claims for their dietary food supplement products in the future.

CPC International, Inc.

CPC International, a major seller of food products, was charged with making allegedly false, misleading and unsubstantiated advertising claims about the effect of Mazola Corn Oil and Mazola Margarine on serum cholesterol levels. CPC agreed not to make such misrepresentations in future advertising. The FTC investigation was conducted in cooperation with ten states.

Hal Morris

Hal Morris and Money Money Money Inc., were charged with making allegedly false claims in a 30-minute commercial advertising the availability of government grants. The infomercial, called "Money Money Money" is one of a series produced by the respondents. The respondents agreed not to air the infomercial again and agreed to pay \$175,000 in consumer redress.

IVF Australia, Ltd.

IVF Australia, one of the largest providers of infertility services in

the United States, allegedly misrepresented the success rate of its in vitro fertilization services. The company agreed not to make such representations in the future. The allegations did not concern the quality of the infertility services provided, but addressed only success-rate claims in Advertisements.

#### Nationwide Acceptance Corp.

Nationwide Acceptance Corp. was charged with allegedly violating the Fair Credit Reporting Act by failing to notify consumers who were denied credit that the denial was based, in part, on information from credit bureaus or other third parties. The order requires Nationwide to provide such notices in the future, and to provide notification to consumers to whom it denied credit and to whom it did not give proper notification.

#### NME Hospitals, Inc.

NME Hospitals, an infertility clinic, allegedly misrepresented the success rate of its in vitro fertilization services. The company agreed not to make such representations in the future. The allegations did not concern the quality of the infertility services provided, but addressed only success-rate claims in advertisements.

#### Twin Star Productions, Inc.

Twin Star Productions, and six Twin Star officers, allegedly made false and unsubstantiated claims in connection with program-length commercials for a weight loss product, a baldness product, and an impotence product. The respondents were also charged with falsely representing that their program-length commercials are something other than paid commercial advertising. The order prohibits the respondents from making unsubstantiated efficacy claims for any product or service and the respondents have agreed not to misrepresent that a paid advertisement is an independent program. The order also requires Twin Star and five of the six individuals to pay a total of \$1.5 million in consumer redress.

#### United States Sales Corporation

United States Sales Corporation was charged with allegedly failing to disclose the geographic origin of textile products advertised in its mail order catalogs, a violation of the Textile Fiber Identification Act. The order prohibits future violations of the Act.

PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED

## MAINTAINING COMPETITION MISSION

## American Institute of Certified Public Accountants

The American Institute of Certified Public Accountants agreed not to restrict certified public accountants from accepting contingent fees or commissions for professional services to clients for whom they are not providing financial statement reviews or other attest services. The complaint accompanying the consent charged that the association restricted CPAs from providing services to clients under a contingent fee or commission fee arrangement. According to the complaint, the association barred CPAs from accepting commissions on a client's purchase of any products recommended by the CPA, and barred CPAs from offering assistance to clients for a fee contingent on the amount of the client's recovery. In addition, the complaint further alleged that the association restricted CPAs' use of truthful advertising, the solicitation of clients and acceptance of payments for client referrals, and the use of nondeceptive trade names. The complaint alleged that these actions restrained competition among CPAs and deprived consumers of information about available services.

## Amersham International plc

Amersham International plc entered into a consent agreement under which it could acquire Medi-Physics, Inc. from Hoffmann-LaRoche, Inc. Under the agreement, Amersham was required to divest Medi-Physics' SPECTamine business to Imp, Inc. of Houston. A complaint accompanying the consent agreement alleged that the acquisition could substantially lessen competition in the manufacture and sale of radiopharmaceutical brain perfusion imaging agents used with Single Position Emission Controlled Tomography (SPECT) equipment - radioactive compounds used to create images of the blood flow to the brain enabling medical professionals to detect problems. In addition, for ten years, Amersham is required to obtain prior Commission approval before acquiring any interest in any firm engaged in the manufacture or sale of any SPECT brain imaging agent in or to the United States.

#### Archer-Daniels-Midland Company

Archer-Daniels-Midland Company agreed to divest two wheat flour mills to settle charges resulting from its acquisition of Dixie Portland Flour Mills, Inc. Under terms of the consent agreement, A-D-M agreed to divest Dixie's wheat flour mills in Milner, Georgia and Knoxville, Tennessee or possibly a mill in Cleveland, Tennessee to an acquirer pre-approved by the Commission. The complaint accompanying the consent agreement charged that the acquisition could substantially, lessen competition and enhance the likelihood of collusion among firms that produce and sell bulk bakery wheat flour in the southeastern United States. In addition, the consent agreement requires A-D-M to obtain prior Commission approval for ten years before acquiring any wheat flour milling assets in the Southeast.

#### Arkla, Inc.

Arkla, Inc. entered into a consent agreement concerning its 1986 acquisition of Transark Transmission Co. The Commission charged that the acquisition could hurt competition in the pipeline transportation of natural gas in Arkansas and Oklahoma. Under the consent agreement, Arkla agreed to divest the Transark pipeline or a portion of its own pipeline that runs through the two states to an acquirer approved by the Commission. In addition, for a period of ten years, Arkla must obtain prior Commission approval before acquiring any gas pipeline in Arkansas and Oklahoma.

#### Bellingham-Whatcom County Multiple Listing Bureau

The Bellingham-Whatcom County Multiple Listing Bureau of Bellingham, Washington, agreed not to restrain competition among residential real estate brokers, in the area by refusing to publish certain types of listings in its multiple listing service. According to the complaint accompanying the consent, Bellingham-Whatcom refused to publish property listings that had an exclusive or reserved clause under which the seller would pay a reduced commission or possibly no commission. Under terms of the order, Bellingham is prohibited from refusing to publish such listings.

#### Central Soya Company, Inc.

The Commission accepted a consent agreement that would settle charges concerning Central Soya Company, Inc.'s acquisition of

A.E. Staley Manufacturing Co.'s assets used in the manufacture and sale of soy protein concentrate. The complaint issued with the agreement alleged that the acquisition eliminated competition between Central Soya and Staley, increased Central Soya's ability to exercise market power unilaterally, and increased the likelihood of collusion. Under terms of the agreement, Central Soya must obtain prior Commission approval for ten years before acquiring any assets or stock of any company engaged in the manufacture of soy protein concentrate in the United States.

Cleveland Oldsmobile Connection  
Dowd Oldsmobile, Inc.  
Earl Oldsmobile, Inc.  
Fred Stecker Oldsmobile, Inc.  
Ganley Oldsmobile, Inc.  
Gene Norris Oldsmobile-GMC, Inc.  
Hern Oldsmobile-GMC Truck, Inc.  
Reliable Oldsmobile, Inc.  
Zalud Oldsmobile, Inc.

The Cleveland Oldsmobile Connection and eight of its members were ordered not to restrict or interfere with the advertising practices or policies of any dealer or dealer association concerning the publication of the price or condition of sale of any motor vehicle. Each complaint, issued separately with each consent order, names the dealer association, formerly known as the North Coast Nine, and eight of its member Oldsmobile dealers located in the Cleveland area: Dowd Oldsmobile, Inc., Earl Oldsmobile, Inc., Fred Stecker Oldsmobile, Inc., Ganley Oldsmobile, Inc., Gene Norris Oldsmobile-GMC, Inc., Hern Oldsmobile-GMC Truck, Inc., Reliable Oldsmobile, Inc., and Zalud Oldsmobile, Inc. According to each of the complaints, the association and its members conspired for five years to refrain from advertising the prices of new, current model Oldsmobiles. The consent agreements also prohibit any communication with competing Oldsmobile dealers about price advertising and prohibit dealers from using the association as a forum for organizing and implementing an illegal no-price-advertising agreement among Oldsmobile dealers in the future.

Dowd Oldsmobile, Inc.

(See above.)

Earl Oldsmobile, Inc.

(See page 30.)

Emerson Electric Co.

Emerson Electric Co. entered into a consent agreement that permitted its acquisition of McGill Manufacturing Co. The agreement requires Emerson to divest, within twelve months, the McGill Mounted Ball Bearing Business located in Malden, Indiana to a Commission approved acquirer. The complaint accompanying the agreement charged that the acquisition could substantially lessen competition in the production and distribution of mounted ball bearings. Emerson is the largest domestic producer of mounted ball bearings; McGill ranks fifth. The cast iron bearings are used to hold rotating shafts such as those used in conveyors, fans, and blowers. According to the agreement, Emerson agreed to hold the assets separate until the required divestitures were made. Finally, for a period of ten years, Emerson is prohibited from acquiring any domestic firm engaged in the manufacture or sale of mounted ball bearings.

Fred Stecker Oldsmobile, Inc.

(See page 30.)

Ganley Oldsmobile, Inc.

(See page 30.)

Gene Norris Oldsmobile-GMC, Inc.

(See page 30.)

Gerald S. Friedman, M.D.

A California physician, Dr. Gerald S. Friedman, agreed not to enter into any contracts with other physicians that require those physicians to use only his dialysis facilities and services. Dr. Friedman owns one mobile in-patient dialysis service and controls over ninety-percent of the out-patient dialysis treatments through his three dialysis centers in the Upland and Pomona, California areas. The complaint issued with the order, alleged that Dr. Friedman engaged in an illegal tying arrangement by requiring physicians

who used his out-patient dialysis facilities also to use his in-patient dialysis services whenever their patients were hospitalized. The complaint alleged that through this arrangement, Dr. Friedman was able to charge higher than competitive prices for in-patient care at his treatment facilities. The complaint further alleged that Dr. Friedman, who had exercised market power in out-patient care, used the tying arrangement to circumvent Medicare's regulation that only set a limit on the reimbursement amount for outpatient dialysis services. Under terms of the consent, Dr. Friedman is prohibited from entering into any conditional contracts with physicians for the use of dialysis facilities and from denying medical privileges to any physician who has chosen other in-patient facilities.

Hern Oldsmobile-GMC Truck, Inc.

(See page 30.)

Institut Merieux S.A.

The consent order settled charges that Institut Merieux S.A.'s \$798 million acquisition of Connaught BioSciences, Inc. would reduce competition. Institut Merieux is engaged in the manufacture and sale of rabies vaccine and in the development of inactivated polio vaccine; Connaught manufactures and sells inactivated polio vaccine and is engaged in the development of rabies vaccine. According to the complaint issued with the consent, the acquisition would cause Institut Merieux to be the dominant firm in the manufacture and sale of rabies vaccine and inactivated polio vaccine in the United States. Under terms of the order, Institut Merieux is required to lease Connaught's Toronto, Ontario, Canada rabies-vaccine business, technology and "know-how" to a Commission approved acquirer for at least twenty-five years. In addition, Institut Merieux must obtain prior Commission approval for ten years before acquiring any interest in any company that manufactures a vaccine for a disease for which Institut Merieux currently produces a vaccine.

Long Island Pharmaceutical Society, Inc.  
Pharmaceutical Society of Orange County, Inc.  
Pharmaceutical Society of the State of New York  
Westchester County Pharmaceutical Society, Inc.

The Commission accepted four separate consent agreements with

four New York pharmaceutical societies. Complaints accompanying each of the consents alleged that Long Island Pharmaceutical Society Inc., Pharmaceutical Society of Orange County, Inc., Pharmaceutical Society of the State of New York, and Westchester County Pharmaceutical Society conspired with others to refuse to participate in New York's Employee Prescription Plan after a proposal was made to reduce the prescription reimbursement level. According to the complaints, the boycott cost the state of New York approximately, \$7 million and coerced the state into raising the prices paid to pharmacies under the prescription plan. To comply with the orders, each society agreed not to enter into any agreement among pharmacy firms to withdraw from any participation agreement for a period of ten years. In 1989, the Commission issued an administrative complaint containing similar charges relating to the same pharmaceutical drug plan against the Chain Pharmacy Association of New York and accepted three consent agreements with three other pharmacy chains: Brooks Drug, Inc.; Carl's Drug Co., Inc.; and, Genovese Stores, Inc. During fiscal 1990, the Commission alleged similar charges in two separate complaints issued to Capital Area Pharmaceutical Society and Empire State Pharmaceutical Society, Inc. (See - Capital Area Pharmaceutical Society and Empire State Pharmaceutical Society, Inc., page 39.)

#### Metro, MLS

Metro MLS, Inc., agreed not to restrict or limit the publication of exclusive agency listings on its multiple listing service. The complaint accompanying the consent agreement charged that Metro MLS of Virginia Beach, Virginia restrained competition by refusing to publish listings that would allow the seller to eliminate or reduce the commission usually paid to the real estate broker for the sale. The order allows Metro to identify a property listing on its multiple listing service as one granting an exclusive agency.

#### MTH Holdings, Inc.

Two investment banking firms, MTH Holdings, Inc., and Solomon, Inc., entered into a consent agreement that permitted their acquisition of GU Acquisition Corp., the owner and operator of the Grand Union Co., a national retail grocery store chain. Under the consent agreement, MTH agreed to divest certain grocery stores in Vermont and New York. According to the complaint accompanying the consent, the acquisition could substantially reduce competition between the MTH owned P&C Food Markets and the Grand Union



stores in various areas of Vermont and upstate New York. The consent agreement also requires MTH to obtain prior Commission approval before acquiring any grocery store in any of the Vermont or New York counties in which the divestitures were ordered.

#### New Jersey Movers Tariff Bureau, Inc.

The New Jersey Movers Tariff Bureau, Inc., agreed not to enter into any agreement to fix or raise prices charged by movers. The complaint charged that the bureau and its affiliate, the New Jersey Warehousemen and Movers Association, used a joint tariff illegally to set movers' rates for the intrastate transportation of household goods and other property within the state of New Jersey.

#### Nippon Sheet Glass Company, Ltd.

Nippon Sheet Glass Company, Ltd. and Pilkington PLC entered into a consent agreement to settle charges relating to the proposed acquisition of 20% of the voting securities of Libby-Owens-Ford Co. According to the complaint accompanying the consent, Nippon entered into an agreement to acquire stock from Pilkington, and as collateral to the stock purchase agreement, all three companies negotiated a capacity agreement that would have prohibited both Nippon and Pilkington from building or acquiring capacity for the production of float glass in North America except through L-O-F for a period of five years. All three firms are engaged in the manufacture of float glass. The complaint charged that the capacity agreement restrained competition in the manufacture, sale, and fabrication of float glass. The consent, which also names Nippon's subsidiary, NSG-USA, prohibits the companies from initiating the capacity agreement and prohibits any agreements that would either limit the manufacture of float glass in North America or restrict imports to North America.

#### Oklahoma State Board of Veterinary Medical Examiners

The Oklahoma State Board of Veterinary Medical Examiners agreed not to restrict member veterinarian's business arrangements. The complaint issued with the consent agreement charged that the board adopted rules of conduct that prohibited members from forming a partnership with non-veterinarians to practice veterinary medicine and from accepting employment by a non-veterinarian or company engaged in the sale of veterinarian's services to the public. According to the complaint, these actions hurt competition and

deprived consumers of the benefits of lower prices for veterinarian services that could result from more efficient business arrangements.

Pharmaceutical Society of Orange County, Inc.

(See page 32.)

Pharmaceutical Society of the State of New York

(See page 32.)

Puget Sound Multiple Listing Association

The Puget Sound Multiple Listing Association agreed not to restrain competition in residential real estate. According to the complaint issued with the proposed agreement, the association refused, among other things, to publish exclusive agency listing agreements and reserve clause listing agreements. Under terms of the proposed order, the association is prohibited from refusing to publish listings that limit the seller's options, and from suggesting or fixing commission splits among brokers.

Reading Hospital & Medical Center

Reading Hospital & Medical Center and Community General Hospital agreed to settle charges that the merger of the two hospitals hurt competition in general acute care hospital services in the Reading, Pennsylvania, area. According to the complaint issued with the consent, the consolidation of the two hospitals lessened competition based on price, quality, and service. Both hospitals, which have terminated their affiliation and have become independent corporations, agreed to require any other company acquiring either hospital to file with the Commission a written agreement to be bound by the consent order for a period of ten years. In addition, both hospitals are required to obtain prior Commission approval before merging with each other or with any other hospital in Berks County Pennsylvania.

Reliable Oldsmobile, Inc.

(See page 30.)

**Rhone Poulenc S.A.**

Rhone-Poulenc S.A. entered into a consent agreement under which it could acquire the Marschall Dairy Products Division of Miles, Inc. Under terms of the agreement, Rhone-Poulenc, for a period of five years, is required to grant four-year licenses, for a fee, to produce and market the Marschall Dairy culture products using the Marschall name. At the end of the four-year period, any licensees will be allowed to continue making the product, but not to continue using the Marschall name. The complaint accompanying the consent alleged that the acquisition could substantially, lessen competition in the manufacture and sale of dairy cultures used to make cheese, yogurt, cottage cheese, and sour cream. In addition, for ten years, Rhone-Poulenc must obtain prior Commission approval before acquiring any interest in any company that makes or sells dairy cultures in the United States.

**Societe Nationale Elf Aquitaine**

Societe Nationale Elf Aquitaine (SNEA) acquired the Pennwalt Corp. under terms of a consent agreement. Under the agreement, SNEA agreed to divest Pennwalt's Thorofare, New Jersey chemical plant to a Commission approved acquirer within twelve months. In addition, an attached hold-separate agreement required Pennwalt's fluorochemicals division to be operated independent of any other companies owned by SNEA until the divestitures were completed. The complaint accompanying the agreement alleged that the acquisition would reduce competition in the production and sale of polyvinylidene fluoride and vinylidene fluoride. The agreement also requires SNEA to obtain prior Commission approval before acquiring any company engaged in the manufacture or sale of either of the two chemicals for a period of ten years. During fiscal year 1989, the Commission authorized staff to block the acquisition with a motion for a preliminary injunction if SNEA refused to divest the assets that had raised antitrust concerns.

**Structural Engineers Association of Northern California, Inc.**

Under the terms of a consent agreement, the Structural Engineers Association of Northern California, Inc. agreed not to interfere with its members' use of truthful advertising and competitive pricing policies for structural engineering services. According to the complaint issued with the agreement, the association's code of ethics prohibited structural engineers from advertising their services

and charging competitive prices, and from providing a second opinion on the work of another structural engineer. The complaint alleged that these methods restrained competition by depriving consumers of the benefits of selecting structural engineering services through advertised prices and competitive business policies.

Westchester County Pharmaceutical Society, Inc.

(See page 32.)

Zalud Oldsmobile, Inc.

(See page 30.)

#### CONSUMER PROTECTION MISSION

Black & Decker, Inc.

Black & Decker allegedly misrepresented that its Automatic Shut-Off Iron had the exclusive endorsement of a national organization with expertise in appliance fire safety. The company agreed not to misrepresent endorsements of its products in the future.

Heilig-Meyers Co.

Heilig-Meyers Co. allegedly understated its annual percentage rates (APR) to its charge customers in five states. The company agreed to calculate and accurately disclose the APRs required in connection with extensions of consumer credit. The order also requires Heilig-Meyers to make adjustments to the accounts of customers to whom it disclosed APRs that were understated more than 1/4 of one percent, except where an adjustment amounts to less than one dollar.

Import Image

Import Image settled allegations that it violated the Textile Fiber Products Identification Act by failing to label its products as to country of origin and mislabeling the fibers of its products. The company agreed not to mislabel its products in the future.

Jeep Eagle Corp.

Jeep Eagle Corp., successor corporation to the American Motors

Corp. (AMC), was charged with allegedly failing to successfully repair certain specified automatic transmission fluid or engine oil leaks and related problems within a reasonable time, on AMC's 1983-1985 Alliance vehicles and 1984-1985 Encore vehicles. Jeep Eagle will pay each eligible consumer \$40 for each repair visit beginning with the fourth visit.

#### Nature's Way Products

Nature's Way allegedly made unsubstantiated claims in advertising that "Cantrol" capsules fight yeast infections. The company was also charged with not having a reasonable basis for its claims concerning Cantrol's ability to control levels of yeast in the intestines and vaginal yeast infections. Nature's Way agreed not to make unsubstantiated claims about nutritional supplements in the future, and to pay \$30,000 to the National Institutes of Health to support research in candidiasis or the effects of yeast on health.

#### Nutronics Corp.

Nutronics Corp. settled allegations that it made false and unsubstantiated claims in advertising its fuel-saving device known as the Alter-Brake System. The company agreed not to misrepresent the device in the future.

#### Robert Lewis Wilks

Robert Lewis Wilks, former owner of the Barbers Funeral Home, settled allegations that he failed to provide his customers with goods and services that they paid for. Wilks agreed to stop doing business as a funeral service provider, or having any business relationship with any entity selling or offering to sell funeral goods or services to the public,

#### TV, Inc.

TV, Inc., and its president settled allegations that "TV Insiders," an infomercial, was misrepresented as an independent and objective television program. The Commission also alleged that the respondents made false and unsubstantiated claims about the therapeutic benefits of the bee-pollen products promoted in the ad and in promotional materials. TV, Inc., agreed to stop making unsubstantiated efficacy claims for the products and to stop representing that a paid advertisement is an independent news program.

### Vons Company, The

The Vons Company, which operates several hundred grocery stores in Southern California and Nevada, allegedly made false claims that its produce was free of pesticides. The company agreed not to misrepresent the extent to which any food contains pesticides.

## PART III ADMINISTRATIVE COMPLAINTS

### MAINTAINING COMPETITION MISSION

#### Adventist Health System/West

(See page 45.)

#### Capital Area Pharmaceutical Society Empire State Pharmaceutical Society, Inc.

The Commission charged in two separate administrative complaints that two pharmaceutical associations illegally conspired to coerce the state of New York to increase its reimbursement rate to pharmacists under the state's Employees Prescription Plan. According to the complaint, the state of New York proposed to lower the prescription reimbursement level to pharmacies in an effort to reduce costs under the state's Employees Prescription Program, and to increase the number of participating pharmacists to insure customers' adequate access to medication. The complaint charged that Capital Area Pharmaceutical Society, Empire State Pharmaceutical Society, Inc., and Alan Kadish, the former president of another pharmaceutical association, conspired with others to refuse to participate in the prescription plan at the new rates. Both complaints alleged that the illegal boycott caused the state of New York to raise the prices paid to pharmacies under the prescription plan. The complaints were withdrawn from litigation for consideration of a consent agreement. Separate related charges against four other pharmacy associations were settled with a consent agreement during the year. (See - Long Island Pharmaceutical Society, Inc., Pharmaceutical Society of Orange County, Inc., Pharmaceutical Society of the State of New York, and Westchester County Pharmaceutical Society, Inc., page 32.)

#### College Football Association

The Commission's complaint charged that the College Football

Association and Capital Cities/ABC, Inc. illegally restrained competition in the marketing of college football telecasts. The CFA consists of sixty-four colleges with major football programs in five conferences - the Big Eight, Southwestern, Southeastern, Atlantic Coast, and Western Athletic Conferences - plus major independents, such as Penn State, Notre Dame, Pittsburgh, and Syracuse. The CFA has negotiated and administered the sale of certain college football television rights for its participating members since the 1984 Supreme Court decision in *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma*, which held that the NCAA's joint marketing of the television rights to its members' games constituted an unlawful restraint on competition in the market for college football telecasts. According to the Commission's complaint, the CFA negotiated and marketed a package of television rights on behalf of its college-member institutions that gave ABC and ABC's ESPN cable affiliate exclusive rights to telecast any game in which a CFA college is the home team. Under the CFA agreement, college games not chosen by ABC or ESPN could only be shown regionally as long as the broadcast did not overlap or compete with the ABC collegiate football programming. The Commission further charged that CFA's restrictive agreements deprived consumers of the selection of college football games that would otherwise be delivered in a competitive environment.

#### Empire State Pharmaceutical Society

(See page 39.)

#### Harold Honickman

The Commission's complaint charged that Harold Honickman's 1987 acquisition of the Seven-Up Brooklyn Bottling Co., Inc. substantially reduced competition in the production, distribution, and sale of branded carbonated soft drinks in the New York Metropolitan area. According to the complaint, Mr. Honickman already owned and controlled the Pepsi-Cola Bottling Co. of New York, Inc. and the Canada Dry Bottling Co. of New York at the time of the acquisition. The complaint further charged that the acquisition eliminated a direct competitor, increased the likelihood of collusion among other bottlers in the market, and could possibly cause an increase in prices and a decline in production.

Imo Industries, Inc.

(See page 43.)

#### CONSUMER PROTECTION MISSION

American Family Publishers, Inc.

The Commission charged American Family Publishers (AFP), a New York magazine subscription marketer, with violating the FTC Act by using deceptive and abusive debt collection practices. The company used independent debt collection agencies to send allegedly deceptive attorney collection letters to consumers. Through these letters, AFP collectors allegedly misrepresented that AFP intended to take legal action against the consumer. This is the first time the Commission has charged a creditor for the illegal collection activities of the debt collectors it approved.

Consumer Direct, Inc.

(See page 42.)

Tower Loan of Mississippi, Inc.

The Commission issued a complaint charging Tower Loan with violating the Truth in Lending Act and the FTC Act, by requiring consumers to purchase credit insurance, and then requiring them to sign statements asserting that they voluntarily purchased the insurance.

Wayne Phillips

The Commission issued a complaint charging Wayne Phillips with making false claims in advertising government grants to consumers to start small businesses. The complaint charged that Phillips made the false and misleading claims through a 30 minute commercial, which is one of a series called "Money, Money, Money."



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

## MAINTAINING COMPETITION MISSION

Illinois Cereal Mills Inc.

(See page 43.)

Imo Industries, Inc.

(See page 43.)

Promodes, S.A.

(See page 44.)

## CONSUMER PROTECTION MISSION

Consumer Direct, Inc.

Consumer Direct agreed to settle allegations that it made false and unsubstantiated performance claims about its "Gut Buster" exercise device, and failed to disclose that the device may break and injure the user. The order requires respondents to warn past purchasers of the Gut Buster's potential for breakage and personal injury, and inform them of the FTC's charges that the product does not tone or strengthen the stomach. The complaint named Consumer Direct, Fitness Quest, which has since changed its name to The Gut Buster Corporation, and two principals in the companies as defendants.

PART III (ADJUDICATIVE STAGE)  
CONSENT ORDERS ISSUED

## MAINTAINING COMPETITION MISSION

Dr Pepper/Seven-Up Companies, Inc.

Dr Pepper/Seven-Up Company, Inc. agreed to settle charges that the 1984 acquisition of certain San Antonio Dr Pepper & Canada Dry franchises by the Coca-Cola Bottling Co. of the Southwest could substantially lessen competition in the production, distribution, and sale of soft drinks in the Texas area. According to the 1988 complaint, which named Dr Pepper and Coca-Cola, the acquisition

eliminated a major competitor and increased the likelihood that Coca-Cola would unilaterally, exercise market power that could lead to increased prices and the restricted production of carbonated soft drinks. Under terms of the order, Dr Pepper is prohibited from taking any action that could interfere with any relief the Commission might order if it finds that Coca-Cola violated the antitrust laws. The case against Coca-Cola remains in litigation.

#### Illinois Cereal Mills, Inc.

The consent order settled charges that Illinois Cereal Mills, Inc.'s 1988 attempted acquisition of Lincoln Grain Co., a subsidiary of Elders Grain, Inc., could lessen competition. Under terms of the order, for a period of ten years, Illinois Cereal is required to obtain prior Commission approval before acquiring any assets in any company in the industrial dry corn milling industry. The 1988 administrative complaint charged that the acquisition could reduce competition in the production and sale of industrial dry corn mill products. A federal district court granted the Commission's request for a preliminary, injunction action to undo the acquisition. Last year the United States Court of Appeals for the Seventh Circuit upheld the lower court's opinion and decision requiring rescission of the acquisition. The transaction was rescinded, and the Commission dismissed the charges against Elders Grain, Inc.

#### Imo Industries, Inc.

Imo Industries, Inc., agreed to settle charges concerning its \$69 million acquisition of Optic-Electronics Corp. According to the administrative complaint issued earlier in the year, the acquisition could substantially, reduce competition in the production of image intensifier tubes sold primarily to the Department of Defense. Imo, based in New Jersey and Optic-Electronics, based in Texas, are the nation's two largest producers of image intensifier tubes, the primary component for various night vision devices. At the request of the Commission, the United States District Court for the District of Columbia issued a preliminary injunction halting the acquisition until the Commission's administrative proceedings were concluded. The consent agreement requires that for ten years Imo must obtain prior Commission approval before acquiring any company that is engaged in the manufacture or sale of 25 millimeter second generation image intensifier tubes in the United States, or that has sold the tubes to the United States Department of Defense at any time since January, 1, 1988.

Lee M. Mabee, Jr., M.D.

Dr. Lee M. Mabee agreed not to conspire to boycott the obstetrical/gynecological residency program of the University of South Dakota School of Medicine. The consent agreement settled a 1988 administrative complaint that alleged that Dr. Mabee and eleven other obstetricians in the Sioux Falls, South Dakota area conspired to interfere with the recruitment practices of the medical school's residency program. Last year, the Commission accepted a consent agreement with the other doctors in Certain Sioux Falls Obstetricians.

Promodes, S.A.

Red Food Stores, Inc., a subsidiary of Promodes, S.A., a French grocery, company, agreed to divest six grocery stores in the Chattanooga, Tennessee area within nine months to a Commission approved acquirer. The 1989 administrative complaint charged that Red Food Stores' acquisition of all the supermarket assets of Kroger Co. in Chattanooga could substantially reduce competition among grocery stores in the area. According to the consent agreement, Red Food Stores also agreed to obtain prior Commission approval for ten years before acquiring any grocery store in the Chattanooga metropolitan area.

#### CONSUMER PROTECTION MISSION

Hensley Group, The

The Hensley Group, a timeshare promoter, agreed to settle charges it made misrepresentations in mailings soliciting customers for timeshare developments. Hensley agreed not to claim that a consumer has won a specified prize, if the consumer has not won the prize. In addition, Hensley agreed not to claim that a consumer will receive a prize or other item without disclosing immediately following an offer any cost the consumer must pay.

Outdoor World Corp.

Outdoor World, a membership campground promoter, allegedly misrepresented in promotional mailings that named consumers would receive one or more specified prizes at no additional cost. The Commission charged that in fact, consumers could not receive the specified prizes without paying additional costs. The company agreed not to make such misrepresentations in the future.

**R.J. Reynolds Tobacco Co.**

R.J. Reynolds was charged with making false and misleading advertising claims regarding the health effects of smoking. The company agreed not to misrepresent in future advertisements the purpose or results of a long-term scientific study funded by the National Heart, Lung, and Blood Institute of the National Institutes of Health (MR FIT study). In addition, Reynolds is prohibited from misrepresenting in any manner, directly or by implication, any discussion of cigarette smoking and chronic or acute health effects, or the results, design, purpose or content of any scientific test or study explicitly referred to concerning any claimed association between cigarette smoking and chronic or acute health effects.

**INITIAL DECISIONS****MAINTAINING COMPETITION MISSION****Adventist Health System/West**

An administrative law judge dismissed a complaint that challenged Ukiah Adventist Hospital's 1988 acquisition of substantially all of the assets of Ukiah Hospital Corp. and Ukiah General Hospital. The judge ruled that the Commission did not have jurisdiction over asset acquisitions made by not-for-profit entities if the acquisition was not accomplished by merger. The complaint charged that the acquisition could hurt consumers by substantially reducing competition in general acute care hospital services by giving Adventist Hospital control of three of the five hospitals in the Southeastern Mendocino area of Ukiah, California, and by increasing the likelihood of collusion. Ukiah Adventist is owned by Adventist Health System/West, a non-profit religious corporation operating hospitals in the western United States. Ukiah Hospital and Ukiah General are both owned and operated by Health Trust, Inc. - The Hospitals Company, the owner of more than twenty hospitals throughout the United States. The judge's decision was appealed by the staff.

**FINAL COMMISSION ORDERS****MAINTAINING COMPETITION MISSION****Illinois Cereal Mills, Inc.**

The Commission dismissed a 1988 complaint against Elders Grain,

Inc., which alleged that Illinois Cereal Mills, Inc.'s acquisition of Lincoln Grain Co. from Elders could substantially reduce competition in the production and sale of dry corn mill products in the United States. The transaction was rescinded in 1989 after the United States Court of Appeals for the Seventh Circuit affirmed the district court's rescission order. Elders voluntarily sold its dry corn milling assets to ConAgra, Inc. On March 12, 1990, the Commission accepted a consent order with Illinois Cereal Mills, Inc. (See - Illinois Cereal Mills, Inc., page 43.)

#### Olin Corporation

The Commission upheld a 1985 administrative complaint that alleged that Olin Corporation's acquisition of FMC Corporation's swimming pool chemical business would substantially lessen competition in the manufacture and sale of chlorinated isocyanurate and calcium hypochlorite dry swimming pool sanitizers. The Commission's decision upheld the 1987 Administrative Law Judge decision that ruled that the acquisition increased the already high level of concentration in the industry. The Commission concluded that the evidence indicated that entry by new competitors would be unlikely to defeat anticompetitive behavior in the dry sanitizer industry for years. Under terms of the order, Olin is required to divest the FMC assets within twelve months to a Commission approved acquirer. In addition, Olin must obtain prior Commission approval before acquiring any interest in a company engaged in the manufacture and sale of swimming pool chemicals for a period of ten years. Olin filed an appeal for review of the Commission's order in the United States Court of Appeals for the Ninth Circuit.

#### Robert G. Koski, D.O.

The Commission dismissed a 1989 complaint that charged that Robert G. Koski, a doctor of osteopathy, conspired with the Dickinson County Memorial Hospital Medical staff and others to prevent Marquette General Hospital from opening a clinic in Dickinson County, Michigan. The Commission found that Dr. Koski was not present at the September 1986 Medical Staff meeting when the plan to engage in a boycott of the competing medical facility was adopted by vote. Last year, the Commission accepted a consent agreement that settled similar charges against the medical staff and other doctors in Medical Staff of Dickinson County Memorial Hospital.

## ORDER MODIFICATIONS

## MAINTAINING COMPETITION MISSION

## Culligan International Co.

The Commission set aside a 1957 consent order that prohibited Culligan International Co. from engaging in exclusive dealing arrangements with dealers who sold its water softening and water conditioning products. The Commission found that Culligan lacked market power, because new entrants were not dependent on access to Culligan's distributors.

## Diamond Shamrock Corporation

At the request of Occidental Chemical Corp., a successor to Diamond Shamrock Corp., the Commission set aside a 1974 consent order that alleged that Diamond gained an unfair competitive advantage over its competitors through reciprocal dealing, a practice whereby one Company's purchases or sales are conditioned or related to the purchases or sales of other companies. In 1983, the Commission modified an order against Occidental, which had settled similar charges that Occidental had engaged in the practice of reciprocal dealing.

## Goodyear Tire &amp; Rubber Co., The

The Commission set aside a 1961 consent order that prohibited The Goodyear Tire & Rubber Co. from entering into sales commission agreements with any oil marketing company for the marketing of tires, batteries, and accessories.

## Magnavox Co., The

The Commission granted in part a petition filed by the Magnavox Co. to reopen and modify a 1971 consent order. The Commission eased restrictions on the company's distribution practices for consumer electronic products by deleting provisions that prohibited certain cooperative advertising programs, and prohibited the company from announcing resale prices and refusing to deal with retailers who failed to comply with the prices. In addition, a provision was deleted that barred Magnavox from requiring preticketing - printing the suggested retail prices on tags affixed to its products.

## CONSUMER PROTECTION MISSION

Kroger Co., The

The Commission modified a 1977 order with The Kroger Co. that required the company to keep advertised sale items on hand and to sell them at no more than the advertised price. The Commission concluded that its action in amending the Unavailability Rule constituted a changed condition of law and fact, requiring that the proceeding be reopened and the order modified.

## PRELIMINARY AND PERMANENT INJUNCTIONS

## MAINTAINING COMPETITION MISSION

Atlantic Richfield Company

(See page 21.)

Bayer A.G

The Commission authorized its staff to seek a preliminary injunction to block Bayer A.G.'s proposed acquisition of Columbian Chemicals, Inc.'s synthetic iron oxide business on the grounds that the acquisition would reduce competition. Bayer and Columbian are two of only three producers of the chemical used to impart color to paints, cement and plastics in the United States. The transaction was abandoned before the motion for a preliminary injunction could be filed in a federal district court.

FlightSafety International, Inc.

The Commission authorized its staff to seek a preliminary injunction against FlightSafety International, Inc.'s proposed acquisition of the simulator assets of Bicoastal Corp.'s SimuFlight businesses and to rescind any asset transfers to FlightSafety. The Commission had reason to believe that the acquisition or transfers could substantially lessen competition in the provision of simulator training services to business jet pilots in North America. Bicoastal's sale of the SimuFlight Division was originally authorized by the United States Bankruptcy Court for the Middle District of Florida. FlightSafety later abandoned the transaction.

**Imo Industries Inc.**

(See page 43.)

**Rhone Poulenc, Inc.**

The Commission authorized its staff to seek a preliminary injunction against Rhone-Poulenc, Inc.'s proposed acquisition of the sulfuric acid assets of Olin Corp. on grounds that the acquisition, if consummated, would raise antitrust concerns in the regeneration of weakened and contaminated sulfuric acid. The parties abandoned the transaction before the motion for a preliminary, injunction was filed in court.

**R.R. Donnelley & Sons Co.**

The Commission sought a preliminary injunction against R.R. Donnelley & Sons Co.'s proposed acquisition of the printing business of Meredith/Burda Companies until the Commission could complete its antitrust investigation. The complaint charged that the acquisition could substantially reduce competition throughout the United States in the market for printing high volume commercial publications, such as magazines and catalogs. The district court denied the Commission's motion for a preliminary injunction.

**SKW Alloys, Inc.**

The Commission authorized its staff to seek a preliminary injunction against SKW Alloys, Inc.'s proposed acquisition of K.B. Alloys, Inc. on the grounds that the acquisition could reduce competition in the manufacture and sale of aluminum-grain refiners. SKW, through one of its subsidiaries, is a direct competitor of K.B. Alloys in the production of refiners used to make aluminum more malleable for use in aerospace parts, automobile components, and beverage cans. Before court papers were filed, the parties abandoned the transaction.

**CONSUMER PROTECTION MISSION****Allied International Corp.**

The Commission filed a complaint against Allied International d/b/a Fat Magnet. The Commission charged that advertising claims that Fat diet pills will help users lose weight without dieting



or exercise are false and misleading. The court issued a temporary restraining order and froze the defendants' assets.

#### Austin Galleries

The Commission obtained a settlement with Austin Galleries and two of its officers requiring payment of \$635,000 in consumer redress. The agreement settles charges that Austin sold fake Salvador Dali, Marc Chagall, Pablo Picasso, and Joan Miro prints as good investments.

#### Bliss Holidays International, Inc.

The Commission obtained a settlement with Bliss Holidays International settling charges it made false and misleading representations in the marketing of its travel services. The final consent judgment contains a permanent injunction prohibiting the defendants from engaging in the deceptive practices alleged in the complaint, and requires the defendants to pay up to \$3,265,000 to reimburse consumers who purchased memberships in the travel club.

#### Bluff City Finance

The Commission filed a complaint against Bluff City Finance and two other small loan companies for allegedly violating the Equal Credit Opportunity Act. The complaint charges the defendants with discriminating against credit applicants on the basis of age, sex, or marital status, and receipt of income from retirement benefits, public assistance, part-time employment, or alimony and child support. This is one of the companies owned by Robert E. Blake, also named in the complaint.

#### Catherine Faith Abrash

The Commission obtained a settlement with Catherine Faith Abrash, a defendant in the Numismatic Funding Corp. case. The agreement settles charges she misrepresented the grade and investment value of silver coins sold to consumers through telephone and mail order sales. Ms. Abrash will pay approximately \$125,000 into a consumer redress fund.

#### Certified Rare Coin Galleries, Inc.

The Commission obtained a settlement with Certified Rare Coin

Galleries, and its president, to settle allegations that they misrepresented the value and investment potential of its coins. Under the settlement, respondents agreed to a permanent injunction and to pay \$400,000 in consumer redress.

#### Collectors' Guild Ltd., Inc.

The Commission filed a complaint against Collectors' Guild, the largest mail order seller of art and art-related objects in the United States. Defendants were charged with selling fake works attributed to Salvador Dali and portrayed as sound investments. The Commission is seeking a permanent injunction prohibiting the company from making misrepresentations in the sale of its art, and to order the company to pay redress to consumers.

#### Continental Communications, Inc.

The Commission obtained judgments against two defendants in the Continental Communications case. The complaint charged defendants with misleading potential investors in connection with their marketing of an application preparation service for the Federal Communications Commission's lottery of licenses to build and operate cellular telephone systems in Rural Service Areas. Gordon Cranston was ordered to pay \$21,200 and Greg Spencer was ordered to pay \$5,000 in consumer redress. Both individuals were permanently, enjoined from misrepresenting the investment potential of participating in the cellular lottery.

#### Coutoure School of Modeling, Inc.

The Commission obtained a judgment against Coutoure School of Modeling, which has operated under different names in at least 11 cities, requiring \$1.6 million in consumer redress. The company was charged with making false and deceptive claims about the services it provides to consumers who want to become models.

#### Credit Repair, Inc.

The Commission obtained an agreement with Credit Repair to settle charges it misled consumers by falsely and deceptively claiming that it could substantially improve their credit records, and by failing to honor its 100 percent money-back guarantee. The judgment requires payment of a total of \$255,000 in consumer redress by three defendants.

**David Mazur**

The Commission obtained a settlement with David Mazur, vice president and half owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships and future violations of the Franchise Rule. Mazur also agreed to pay \$10,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

**David T. Renner**

The Commission filed a complaint against David T. Renner d/b/a Collections Unlimited, Inc. The complaint charged that defendants illegally harassed consumers in attempting to collect their debts by using false threats of imminent court action, arrest, and incarceration, using obscene and profane language, and threatening them with violence, all in violation of the Fair Debt Collection Practices Act.

**Design Systems**

The Commission obtained a default judgment against the American Association of Credit, a credit-repair company doing business as Design Systems, and the company's owner. The judgment includes a permanent injunction prohibiting the defendants from misrepresenting their ability to improve a client's credit report. The company was also ordered to pay \$761,000 in consumer redress.

**Environmental Protection Systems, Inc.**

The Commission obtained an order as to defendant Martin Ledwitz. The settlement requires payment of \$100,000 in consumer redress and includes a permanent injunction against future violations. The Commission filed a complaint in federal district court charging Environmental Protection Systems with misrepresenting the capabilities of water purifiers it sells and the return or replacement policies for the purifiers.

**Fax Corp, of America, Inc.**

The Commission filed a complaint charging Fax Corp. of America and its founder with falsely promising that they would refund thousands of dollars in fees and deposits to franchisees. They were also charged with violating the Franchise Rule by failing to make

any of the required disclosures to potential franchisees. The court issued a temporary restraining order against the defendants and froze their assets.

#### First Capital Financial, Inc.

The Commission filed a complaint charging First Capital Financial with misleading consumers by deceptively advertising and marketing "gold card" credit cards. The court issued a temporary restraining order prohibiting the challenged practices and freezing the defendants' assets.

#### First Capital Trading Company

The Commission filed a complaint against First Capital Trading Company and four other defendants charging them with misrepresenting the investment value of semi-precious gemstones they sell by telephone. The court issued a temporary restraining order against the defendants prohibiting further misrepresentations and freezing their assets.

#### For Sale By Owner, Inc.

The Commission filed a complaint against For Sale By Owner, a Florida timeshare resale company, to halt allegedly false claims in connection with telemarketing schemes to sell its services. The court issued a temporary, restraining order and froze the assets of the defendants.

#### G & H Used Cars, Inc.

The Commission filed a complaint against G & H Used Cars charging it violated the Used Car Rule by failing to display Buyers Guides on the used vehicles it offered for sale.

#### Go For It

The Commission filed a complaint against Go For It, a Las Vegas partnership, charging it with conducting an allegedly deceptive overseas job placement scam. The court issued a temporary restraining order against the company, froze its assets, and appointed a temporary receiver to take charge of the company's assets and records.

#### Group America, Inc.

The Commission filed a complaint against Group America, a California brokerage firm, and three individuals. Defendants were charged with misrepresenting the investment potential of their leveraged investments in precious metals and foreign currencies, and falsely representing that an investment with them was substantially risk-free. The court issued a temporary restraining order prohibiting further misrepresentations and freezing defendants' business and personal assets.

#### GTP Marketing, Inc.

The Commission obtained a preliminary injunction against GTP Marketing and six other defendants, prohibiting them from making multiple misrepresentations in connection with the sale of water processors. The court previously issued a temporary restraining order halting the misrepresentations, froze the defendants' assets, and appointed a temporary receiver for one of the companies.

#### Hannes Tulving Rare Coin Investments

The Commission filed a complaint charging Hannes Tulving, a California retail marketer of numismatic coins, with misrepresenting the degree of risk to customers who purchased its coins, concealing its artificial market by referring customers to fictitious price increases, and failing to maintain sufficient reserve funds to honor its buy-back guarantee. The parties agreed to a stipulated preliminary injunction prohibiting further misrepresentations, freezing their assets, and appointing a temporary receiver for the corporate assets,

#### Honeyacre Corporation

The Commission obtained a stipulated permanent injunction against William and Margaret Skaife, d/b/a Honeyacre Corporation. The injunction prohibits them from violating the Franchise Rule and from misrepresenting that agricultural business ventures will achieve specific gross earnings or that the Skaifes will provide technical assistance.

#### International Marketing Data

The Commission obtained an agreement with International Market-

ing Data to settle charges it falsely represented its \$70 rubber dinghy as a "power motorboat" worth more than \$1,000 to consumers who responded to the company's solicitations. The company and its president agreed to a permanent injunction prohibiting the challenged practices and agreed to pay \$5,000 in refunds to consumers.

#### Investment Developments, Inc.

The Commission obtained a permanent injunction against Investment Developments, and ten other defendants, prohibiting them from misrepresenting material terms and information in the sale of amusement game machine business opportunities.

#### Ion Technology Systems, Inc.

The Commission charged Ion Technology Systems, a telemarketer, with making multiple misrepresentations in connection with the sale of water filters. The court issued a temporary restraining order halting the misrepresentations and freezing the company's assets.

#### James Halperin

James Halperin, former owner of Standard Financial Management Corp., agreed to a settlement providing \$1.4 million in consumer redress. The defendants in this matter were charged with falsely representing the grade of the coins they sold.

#### James West

The Commission obtained a settlement with James West, former owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships and future violations of the Franchise Rule. West also agreed to pay \$90,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

#### Kevin Lipton

Kevin Lipton, a supplier of Standard Financial Management Corp., agreed to a settlement providing \$1.3 million in consumer redress. The defendants in this matter were charged with falsely representing the grade of the coins they sold.

**Liberty Financial of North America, Inc.**

The Commission filed a complaint charging Liberty Financial with misrepresenting the investment potential of coins it sells. The action was the result of a joint investigation conducted by the Arizona Securities Division and the FTC. The court issued a temporary restraining order against the company, froze its assets, and appointed a temporary receiver.

**Local Finance Co.**

The Commission filed a complaint against Local Finance Co. and six other small loan companies for allegedly violating the Equal Credit Opportunity Act. The complaint charges the defendants with discriminating against credit applicants on the basis of age, sex, or marital status, and receipt of income from retirement benefits, public assistance, part-time employment, or alimony and child support. This was one of the companies owned by Robert E. Blake, also named in the complaint.

**McKleans, Inc.**

The Commission obtained a permanent injunction against McKleans, Inc., and its two owners. The defendants were charged with making misrepresentations in selling dry cleaning franchises in the Northeast. They agreed not to misrepresent any business venture they offer for sale in the future.

**Medico**

The Commission charged three individuals with falsely claiming to prospective distributors and consumers alike that their "Medico" in-home Aids test could diagnose Aids. The Commission obtained three consent judgments against the three individuals who will pay a total of \$62,000 in consumer redress and are enjoined from future misrepresentations.

**Morgan Whitney Trading Group, Inc.**

The Commission filed a complaint charging Morgan Whitney with misrepresenting the profit and risk potential of investments in platinum, silver, and commemorative medallions. The Commission is seeking preliminary, and permanent injunctions to halt the deceptive practices and redress for consumers. The court issued a

temporary restraining order against the company, froze its assets, and appointed a temporary receiver.

#### National Alliance of Brokers, Inc.

The Commission obtained settlements with three of the six defendants in the court action against the National Alliance of Brokers. The complaint alleged that defendants had deceived consumers in connection with the marketing of rare coins for investment purposes. Under the terms of the settlements, Kenneth Vilken is ordered to pay \$115,000 and Ronald Cunningham is ordered to pay \$15,000 in consumer redress. The three defendants, including Lou Donnelly were permanently enjoined from future violations.

#### National Business Consultants, Inc.

The Commission obtained a permanent injunction against National Business Consultants enjoining defendants from making false and misleading claims or omitting material facts in the sale of business opportunities for business Consulting services, and from violating the Franchise Rule.

#### Nationwide Credit Services, Inc.

The Commission obtained a consent decree with Nationwide Credit Services to settle charges it falsely and deceptively claimed that it could improve consumers' credit reports, remove bankruptcies and other accurate information reflecting nonpayment and delinquency from credit reports, provide refunds to consumers, and arrange for consumers to receive unsecured credit cards. The consent decree provides for a judgment of \$3.5 million in consumer redress.

#### North American Enterprises

The Commission obtained a judgment against North American Enterprises ordering \$60,000 in consumer redress. The Commission's complaint charged the company with misrepresenting a \$1,000 government bond prize offered as part of a promotion to sell vitamins and with failing to honor money-back guarantees.

#### Olympic Motors, Inc.

The Commission filed a complaint against Olympic Motors charg-



ing it violated the Used Car Rule by failing to display Buyers Guides on the used vehicles it offered for sale.

Overseas Unlimited Agency, Inc.

The Commission obtained three consent decrees and permanent injunctions against the Overseas Unlimited Agency; the defendants agreed to pay a total of \$950,000 in refunds to consumers and also agreed not to misrepresent employment services in the future. The complaint charged defendants with running a fraudulent telemarketing scheme that falsely promised to find overseas jobs for consumers for a fee.

Pacific Medical Clinics Management, Inc.

The Commission filed a complaint against Pacific Medical Clinics Management, a chain of weight loss clinics operating in California, Texas, Georgia, and Virginia. The complaint charges defendants with misleading consumers by falsely advertising that, through their "medically-safe" program, consumers can adjust their metabolism and lose up to one and one half pounds a day without exercise or strict dieting. The court issued a temporary restraining order prohibiting these acts, and freezing the defendants' assets.

Pannos Mining Co.

The Commission obtained a judgment requiring Pannos Mining Co. to pay \$2.5 million in consumer redress. The Commission's complaint charged that defendants were involved in a bogus investment scheme in which consumers lost over \$2 million. The defendants agreed to permanent injunctions settling charges that they made misrepresentations about their mining project, and ordering them not to make similar representations in the future.

Professional Coin Grading Service, Inc.

The Commission obtained a permanent injunction against Professional Coin Grading Service. The order prohibits the company from making false representations about its objectivity, consistency, or the liquidity of its coins. The company is also prohibited from making deceptive statements about the risks of investing in graded coins.

Promotion Specialists, Inc.

The Commission filed a complaint against Promotion Specialists, charging defendants with telemarketing fraud in their actions to assist telemarketers. The Commission alleged that the company solicits individuals to become telemarketers, assists in the establishment of telemarketing operations, and provides a comprehensive package of services to telemarketers. The complaint charged that the company knows or should know that telemarketers it provides services for make frequent and multiple misrepresentations to consumers. A preliminary, injunction was obtained.

Properties International, Inc.

The Commission filed a complaint charging Properties International with conducting a telemarketing scheme to sell magazine advertising to owners of undeveloped, unimproved recreational property. The Commission is seeking a permanent injunction to prohibit deceptive practices and order the defendants to pay consumer redress.

Prudential Resources, Inc.

The Commission filed a complaint charging Prudential Resources and Cal/Sterling Holdings, Inc. with illegally promoting an investment scheme. The defendants invited consumers to "loan" Prudential money to help raise \$200,000 in capital to operate a gold mine. The court issued a temporary restraining order against all defendants prohibiting them from making false or deceptive claims in connection with their gold mining investments.

Robert Galinsky

The Commission obtained a settlement with Robert Galinsky, a defendant in the American Safe Marketing case, prohibiting him from violating the Franchise Rule in the future and requiring payment of \$10,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

Robert MacKenzie Davis, Jr.

The Commission obtained a permanent injunction against Robert MacKenzie Davis, Jr., a defendant in the Certified Security Systems

case. The complaint charged he used deceptive practices to sell distributorships for energy-saving devices and home burglar alarms. Davis agreed not to misrepresent any business ventures he offers for sale in the future.

#### Robert Reid Turnage

The Commission obtained a settlement with Robert Reid Turnage, president and half owner of American Safe Marketing, prohibiting misrepresentations in the sale of distributorships and future violations of the Franchise Rule. Turnage also agreed to pay \$40,000 in consumer redress. The complaint charged defendants with making false representations in the sale of fire extinguisher franchises.

#### Ronald Dante

The Commission filed a complaint against Ronald Dante, who does business as Perma-Derm Academy and the "American Dermatology Association," charging he misrepresented both the training he provides at his "permanent makeup" workshops and the certification he awards to attendees. The court issued a temporary restraining order halting the misrepresentations and freezing Dante's assets.

#### Security Rare Coin and Bullion Corp.

The Commission obtained a judgment against Security Rare Coin and Bullion ordering \$11,600,000 in consumer redress. The company, a leading nationwide seller of coins for investment, was charged with misrepresenting the value and investment potential of its coins.

#### Security Rare Coins, Inc.

The Commission obtained an agreement with Security Rare Coins, New York firm that sold coins for investment, and its president, to settle charges that they misrepresented the value and investment potential of coins, over graded them by at least one grade, and failed to honor their buy-back policy. The court issued an order prohibiting defendants from engaging in the practices alleged in the complaint, and requiring the payment of \$110,000 in consumer redress.

### Sharp and Anderson

The Commission obtained a preliminary injunction against the operators of the White Rock and Cinder Mountain mining projects. The Commission charged that Sharp, Anderson and nine other defendants, operated bogus mining investment schemes in which consumers were likely to lose their entire investments. The court froze defendants' assets and appointed a receiver.

### Southwest Sunsites, Inc.

The Commission obtained a settlement with Southwest Sunsites and other southwest Texas land promoters. Defendants agreed to refund \$2.5 million to approximately 2,500 consumers who purchased undeveloped land under allegedly false pretenses.

### Timeshare Owners Foundation

The Commission obtained a redress judgment for \$1.25 million against Timeshare Owners Foundation, a Florida timeshare resale company. The complaint charged defendants with making false claims as to the availability of buyers for timeshare resales and making false promises to clients that they would receive a \$1,000 government bond if the company failed to sell the customer's timeshare.

### Tiny Doubles International, Inc.

The Commission filed a complaint against Tiny Doubles International charging them with violating the Franchise Rule and the FTC Act. The company markets and sells retail stores that sell miniature statues produced by gluing customers' photographs to acrylic sheets, then trimming the photograph so that the statue appears to be "three-dimensional." The court issued a temporary restraining order and froze the defendants' assets.

### TransWorld Courier Services, Inc.

The Commission filed a complaint charging defendants with failing to disclose that consumers calling the "900" or "976" telephone numbers listed in newspaper advertisements offering jobs will be charged between \$15 and \$18 per call. The court issued a temporary restraining order halting the practices and freezing the defendants' assets.

#### Travel World International

The Commission obtained a permanent injunction against Travel World International, a telemarketing company. The defendants agreed to settle charges that they made false claims about their vacation certificates, billed consumers without permission, and failed to make prompt refunds.

#### Universal Credit Network, Inc.

The Commission obtained a judgment against Universal Credit Network, doing business as Credit Express, for allegedly making false claims about the services it could provide and by failing to honor refund promises. In settling the case, Universal agreed to establish an escrow account of \$20,000 from which to reimburse consumers who ask for a refund.

#### Vacation Travel Club, Inc.

The Commission obtained a judgment against Vacation Travel Club permanently enjoining defendants from deceptively and unfairly marketing travel-related services. The order also requires defendants to provide full redress to all consumers who purchased vacation packages during a specified time period, and who complain that the defendants induced them to purchase vacation packages through any of the practices alleged as unfair or deceptive in the complaint.

#### Volcano Mining Project

The Commission obtained a permanent injunction ordering payment of consumer redress of approximately \$1.23 million against two principals behind the Volcano Mining Project, an allegedly bogus investment scheme. The injunction prohibits Seymour Adler and Contemporary Financial Management Ltd. from making any misrepresentation concerning business opportunities or investment services.

#### World Travel Vacation Brokers

The Commission obtained a \$15.9 million default judgment against two defendants in the World Travel Vacation Brokers matter. The complaint charged that the defendants misled consumers about the

price of Hawaiian vacations they offered and failed to give refunds to those who canceled their purchases.

#### World Wide Factors, Ltd.

The Commission obtained a judgment requiring payment of approximately \$1.2 million in consumer redress and injunction relief against World Wide Factors, Ltd. d/b/a Nationwide Printing and David Williams. The judgment settled charges that defendants falsely represented the costs and nature of a telemarketing "prize" promotion scheme.

### CIVIL PENALTY ACTIONS

#### CONSUMER PROTECTION MISSION

##### Allen Funeral Home, Inc.

Allen Funeral Home and its president were charged with violating the Funeral Rule by failing to provide consumers seeking to make funeral arrangements with required information. The defendants agreed to pay a civil penalty of \$15,000 and are prohibited from the Rule in the future.

##### Bailey Pontiac

Bailey Pontiac, a Texas car dealership, and its president were charged with violating the Used Car Rule by failing to post the required "Buyers Guide" on used vehicles offered for sale. Defendants agreed to pay a civil penalty of \$42,500 and are prohibited from violating the Rule in the future.

##### Charles Garner Enterprises, Inc.

Charles Garner Enterprises, a Knoxville, Tennessee used car dealership, and its owner agreed to pay \$12,000 in civil penalties to settle charges it violated the Used Car Rule by failing to display Buyers Guides on used vehicles offered for sale. Defendants also agreed to a permanent injunction barring them from violating the Rule in the future.

##### Chesterfield Finance, Inc.

The Commission charged Chesterfield Finance and 16 other finance

companies in four southern states, the auditing company that advises them, and the owner of the auditing company with violating the Equal Credit Opportunity Act and the Fair Credit Reporting Act. The defendants agreed to consent decrees prohibiting them from future violations and requiring a total of \$90,000 in civil penalties.

#### City Finance Co., Inc.

The Commission charged City Finance Co., four affiliated finance companies and two company owners and officers in Georgia and Texas, with violating the Equal Credit Opportunity Act by denying credit to loan applicants because they lacked full-time employment. The complaint also charged them with discriminating against applicants on the basis of age, sex, and marital status, and violating the Fair Credit Reporting Act. Defendants were ordered to pay a \$50,000 civil penalty and are prohibited from violating the Act in the future.

#### C-M Fiber, Inc.

C-M Fiber agreed to a consent decree requiring a civil penalty of \$15,000 for allegedly violating the Commission's R-Value Rule by overstating the insulating ability of its product. The defendant also agreed to a permanent injunction against future violations of the Rule.

#### Commodore Business Machines

Commodore Business Machines agreed to pay a civil penalty of \$275,000 for allegedly violating a 1985 consent order prohibiting the company from advertising that a computer software program was available for sale when it was not available.

#### Direct Marketing of Virginia, Inc.

Direct Marketing of Virginia, a mail order firm, was charged with violating the Mail Order Rule by failing to ship ordered merchandise to buyers within the time clearly stated in its advertisements or, when no time was clearly stated, within thirty days of receipt of an order form. The company, and its owner, agreed to pay a civil penalty of \$30,000 and are prohibited from violating the Rule in the future.

#### DMM Management Consultants

DMM Management Consultants, a Maryland company which sells debt collection forms, agreed to settle charges it violated the Fair Debt Collection Practices Act. The company was charged with selling forms that it knew would be used to represent falsely that the form was a communication sent by a creditor to a third-party debt collector, or to misrepresent that a debt collection agency intended to take legal action. The agreement required payment of a \$5,500 civil penalty and prohibits the company from violating the Act in the future.

#### Economy Cars, Inc.

Economy Cars, a Dallas used car dealership, and its owner agreed to pay \$22,500 in civil penalties for allegedly violating the Used Car Rule. The defendants were charged with failing to post the required "Buyers Guide" on used vehicles offered for sale. The consent decree prohibits future Rule violations.

#### General Electric Capital Corp.

General Electric Capital agreed to pay a civil penalty of \$275,000 to settle charges it violated the Equal Credit Opportunity Act (ECOA). The company was charged with discriminating against credit applicants on the basis of age, sex, marital status, and receipt of income from public assistance. This is the largest civil penalty that the Commission has ever obtained in an ECOA case. The consent decree prohibits future violation of the Act.

#### J.D. & M. Investment, Inc.

J.D. & M. Investment, a Salt Lake City funeral provider, was charged with violating the Funeral Rule. The company agreed to pay a civil penalty of \$10,000 and is prohibited from violating the Rule in the future.

#### Jerome Stadd & Associates

Jerome Stadd & Associates, a Maryland company which designs, manufactures, and sells debt collection forms, agreed to settle charges it violated the Fair Debt Collection Practices Act. The company was charged with selling forms that it knew would be used to represent falsely that the form was a communication sent by



a creditor to a third-party debt collector, or to misrepresent that a debt collection agency intended to take legal action. The company agreed to pay a \$9,000 civil penalty and is prohibited from violating the Act in the future.

#### Lifecall Systems, Inc.

Lifecall Systems and its president were charged with violating the Franchise Rule by failing to provide required information to prospective franchisees in over 25 states and by misrepresenting profit potential. The company president agreed to pay a \$150,000 civil penalty. In addition, the company is prohibited from violating the Rule in the future, and will waive the next two annual franchise-fee payments for all current franchisees and for former franchisees who request reinstatement.

#### McManus-Wilson Motors

McManus-Wilson Motors, a Tennessee used car dealership, was charged with violating the Used Car Rule by failing to display required "Buyers Guides" on the used vehicles offered for sale. The company agreed to pay a civil penalty of \$15,000, and was permanently enjoined from violating the Rule in the future.

#### NCB Collections Services, Inc.

NCB Collections Services, a New York debt collection agency, and an attorney, who lent his name to the agency, were charged with falsely representing that computer-generated letters to consumers were from the attorney. Through these letters, they also misrepresented that the debt collection agency intended to take legal action against the consumer. The defendant agreed to pay \$40,000 in civil penalties and agreed to refrain from such practices in the future.

#### Niday Funeral Home, Inc.

Niday Funeral Home, a Texas company, and its owner were charged with violating the Funeral Rule. The defendants agreed to pay a \$25,000 civil penalty to settle the charges and are prohibited from violating the Rule in the future.

#### Ralco Products Company, Inc.

Ralco Products, a Maryland company which designs, manufactures,

and sells debt collection forms, agreed to settle charges it violated the Fair Debt Collection Practices Act. The company was charged with selling forms that it knew would be used to represent falsely that the form was a communication sent by a creditor to a third-party debt collector, or to misrepresent that a debt collection agency intended to take legal action. The company agreed to pay a \$10,000 civil penalty and is prohibited from violating the Act in the future.

Ray F. FitzHenry d/b/a FitzHenry Funeral Home

FitzHenry Funeral Home was charged with violating the Funeral Rule. The defendant agreed to pay a civil penalty of \$10,000 and provide consumer redress in the amount of \$14,350. In addition, FitzHenry is prohibited from violating the Rule in the future, and from charging a fee for goods or services not actually provided.

Rockmont Motor Co. of Rockville, Md.

Rockmont Motors, also known as Ourisman's Rockmont Chevrolet, was charged with violating the Used Car Rule and the Warranty Disclosure Rule. The company was charged with failing to post required "Buyers Guides" on used cars offered for sale and failing to include required disclosures in its warranty documents. The company agreed to pay \$50,000 in civil penalties and is prohibited from violating the Rules in the future.

Salisbury Nissan-Jeep-Eagle, Inc.

Salisbury Nissan-Jeep-Eagle, a Maryland car dealership, and its president were charged with violating the Used Car Rule by failing to post the required "Buyers Guide" on used vehicles offered for sale. Defendants agreed to pay a civil penalty of \$20,000 and are prohibited from violating the Rule in the future.

Sears, Roebuck & Co.

The Commission charged Sears with violating the R-Value Rule by failing to make required disclosures in advertising for its home insulation products. The company agreed to pay a \$100,000 civil penalty, to comply with the R-Value Rule in the future, and to pay for an advertisement to educate consumers about home insulation.

**Signature Loan Co.**

The owner and auditor of Signature Loan Co. were charged with violating the Equal Credit Opportunity Act and the Fair Credit Reporting Act by denying credit to loan applicants because they lacked full-time employment. The individuals paid \$12,500 in civil penalties and are prohibited from violating the Acts in the future.

**Southwest Sunsites, Inc.**

Southwest Sunsites was charged with multiple violations of a 1985 FTC order concerning land sales in rural western Texas. The defendants agreed to pay \$100,000 in civil penalties to settle the charges.

**Sterling Drug, Inc.**

Sterling Drug was charged with making unsubstantiated therapeutic performance claims in advertising certain "Midol" brand products. The company agreed to pay \$375,000 in civil penalties to settle the charges.

**Supreme Motors**

Supreme Motors, a Tennessee used car dealership was charged with violating the Used Car Rule by failing to display required "Buyers Guides" on the used vehicles offered for sale. The company agreed to pay a civil penalty of \$12,500, and is prohibited from violating the Rule in the future.

**Terralab Engineers, Inc.**

Terralab Engineers, an insulation testing laboratory, and its former president agreed to settle charges that the company violated the R-Value Rule by using improper test methods and failed to keep proper test records. The defendants agreed to pay a \$10,000 civil penalty, and are required to meet specified accreditation and performance standards before conducting R-value tests. They are also prohibited from violating the R-Value Rule in the future.

**Thermex, Inc.**

Thermex and its owner agreed to pay \$20,000 in civil penalties to settle charges it overstated the R-value and coverage of its cellulose

insulation product. The defendants are also permanently enjoined from violating the R-Value Rule in the future, and agreed to conduct a quality control program over the next three years.

#### Vail Holt Funeral Home, Inc.

Vail Holt Funeral Home was charged with violating the Funeral Rule by failing to provide funeral arrangers with a written general price list of funeral goods and services. The company will pay a \$50,000 civil penalty and is prohibited from violating the Rule in the future.

#### Wilbert, Inc.

Wilbert was charged with violating a 1941 Commission order prohibiting the company, from making "waterproof" and certain other durability or performance claims for its Wilbert brand burial vaults. The company agreed to pay a civil penalty of \$100,000 and is prohibited from making any representations about the durability or expected life of any burial vault without having a reasonable basis for such claims.

### APPELLATE COURT DECISIONS

#### MAINTAINING COMPETITION MISSION

##### New England Motor Rate Bureau

On July, 20, 1990, the United States Court of Appeals for the First Circuit reversed in part the Commission's decision that prohibited the bureau from filing collective rates for the transportation of commodities in Massachusetts. The court ruled that the bureau's activities were protected by the "state action" doctrine.

### SUPREME COURT DECISIONS

#### MAINTAINING COMPETITION MISSION

##### Superior Court Trial Lawyers Association

On January, 22, 1990, the Supreme Court reversed the decision of the Court of Appeals for the District of Columbia and ruled that the 1983 two-week strike by court appointed lawyers was an illegal attempt to fix prices and restrain trade. The court further ruled that the strike was not protected by the First Amendment. On March 16,

1990, the United States Court of Appeals for the District of Columbia issued an order affirming and enforcing the Commission's order in its entirety.

#### ECONOMIC REPORTS COMPLETED

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

1. An Analysis of the Maritime Industry and 1984 Shipping Act, Timothy P. Daniel, Alan D. Mathios, and James Reitzes, November 1989. The analysis provides a brief background of the ocean shipping industry and its regulatory history, and describes and evaluates the rationales for regulating that industry. Section VII analyzes the effects of the 1984 Act, with particular attention to: 1) the roles of service contracts and independent action; 2) the structure of shipping rates; and 3) the levels of shipping rates.
2. The Effects of FTC Antitrust Challenges on Rival Firms 1981-1987: An Analysis of the Use of Stock Returns to Determine the Competitive Effects of Horizontal Mergers, Laurence Schumann, December 1989. The study examines recent FTC merger enforcement and uses stock market evidence to refute prior research which argued that the FTC tended to challenge pro-competitive mergers. The study finds that the evidence is equally consistent with the FTC challenging mergers that simultaneously have both pro-competitive and anti-competitive effects.

#### ECONOMIC ISSUES SERIES

Economic Issues Papers are literature reviews or policy analyses (rather than original empirical or theoretical work) in a subject area relevant to the Commission's mission.

1. A Review, of Structure-Performance Studies in Grocery Retailing, Keith B. Anderson, June 1990. A review of the literature on the effects of grocery retailing concentration on market performance. The report generally concludes that the existing structure-performance studies of this industry contain methodological and econometric weaknesses.

#### WORKING PAPERS

Economic Working Papers are preliminary, unpublished work products

of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses, often requiring very minor allocations of staff time.

1. Antitrust Policy for Declining Industries, (WP#175), Malcolm Coate and Andrew N. Kleit, October 1989.
2. An Analysis of Vertical Relationships Among Railroads: Why Competitive Access Should Not Be an Antitrust Concern, (WP#176), Andrew -N. Kleit, October 1989.
3. Merger in the Round: Anticompetitive Effects of Mergers in Markets with Localized Competition, (WP#177), David T. Levy and James D. Reitzes, November 1989.
4. Merger and Free Riders in Spatial Markets, (WP#178), James D. Reitzes and David T. Levy, May 1990.

#### MISCELLANEOUS ECONOMIC POLICY PAPERS

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

1. Industry Determinants and "Differences" in U.S. Intrafirm Exports, Anita M. Benvignati, December 1989.
2. Absorptive Capacity: A New Perspective on Learning and Innovation, Wesley M. Cohen and Daniel A. Levinthal, January 1990.
3. The Role of the FTC's Line of Business Data in Testing and Expanding the Theory of the Firm, David J. Ravenscraft and Curtis Wagner, May 1990.
4. Strategy Linked to Competitive Advantage at the Business Level?, Richard A. D'Aveni and David J. Ravenscraft, August 1990.
5. A Reprise of Size and R&D, Wesley M. Cohen and Stephen Klepper, August 1990.

#### CONSUMER AND COMPETITION ADVOCACY

##### OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The Commission, in fulfilling its competition and consumer protection missions, seeks to prevent or lessen consumer injury caused by private or governmental activities that interfere with the proper functioning of

the marketplace. In some instances, laws, regulations or self-regulatory standards may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, or wasting resources. The goal of the advocacy program, therefore, is to reduce such possible harms to consumers by informing appropriate governmental and self-regulatory entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking. Advocacy comments are prepared by the staffs of the Bureaus of Competition, Consumer Protection, and Economics and the 10 Regional Offices under the general supervision of the Office of Consumer and Competition Advocacy. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review, and information for the staff's work in this area. In fiscal year 1990, the Commission staff submitted 39 comments or amicus briefs to federal, state and self-regulatory entities in such areas as advertising and marketing, antitrust, communications, health care, occupational licensing, financial markets and transportation.

#### NATIONAL ORGANIZATIONS

##### Council of Better Business Bureaus

The Commission staff commented on the Council of Better Business Bureaus' draft Code of Comparative Price Advertising. The comment stated that accurate price information helps consumers make informed decisions, and comparative-price advertising can foster vigorous price competition among retailers. The staff comments identified provisions of the draft Code that might be explained more fully or otherwise modified to afford retailers greater flexibility in advertising truthful price information.

#### FEDERAL AGENCIES

##### Commodity Futures Trading Commission

The Commission staff commented to the CFTC on a proposed rule that would ban "dual trading" except in limited instances. A dual trader is a member of a commodity futures exchange who, during the same trading session, both brokers orders for customers and trades for his own account. The comment suggested that the CFTC more intensively analyze exchanges where dual trading may provide benefits. In light of possible benefits, the comment suggested that low volume markets and distant trading months be analyzed in detail before extending a dual trading ban to these types of markets.

#### Office of the Comptroller of the Currency

The Commission staff commented on an Office of the Comptroller of the Currency notice of proposed rulemaking, which was considering the lifting of some regulatory restrictions on the ways in which national banks can advertise their trust services. The comment stated that the OCC proposal appeared likely to benefit consumers by reducing their costs of collecting information on the various collective investment trusts available and by allowing national banks to advertise the existence of new services involving collective investment trusts.

#### Federal Communications Commission

The Commission staff commented on a Federal Communications Commission notice of inquiry concerning competition, rate deregulation and policies relating to the provision of cable television services. The comments were requested by the FCC to assist in its Report to Congress on the impact of the 1984 Cable Communication Policy Act. The staff comments addressed issues relating to economic efficiency, competition, and enforcement of the antitrust laws.

The Commission staff also commented on an FCC notice of proposed rulemaking about retention, modification or repeal of the FCC's financial interest and syndication rules. The rules now forbid broadcast television networks from engaging in the domestic syndication of all program or the foreign syndication of independently-produced programs, and from obtaining any financial or proprietary right or interest in the exhibition, distribution, or use of programs produced by others except for the exclusive right to network exhibition in the United States. The comment suggested that the rules are unlikely to serve their intended purpose of promoting competition and may instead have the effect of lowering the quality and quantity of programming by prohibiting certain efficient financing arrangements.

#### Federal Maritime Commission

The Commission submitted a report to Congress on the effects of the Shipping Act of 1984 on the ocean shipping industry over the five year period since the Act's passage. The Commission's report was required by Section 18 of the Act. The comment concluded that several impediments to competition remain in the ocean shipping



industry, including tariff requirements, antitrust immunity for ports and marine terminal operators, and restrictions on the negotiation of service contracts between shippers and individual carriers. The comment questioned whether these characteristics of the industry provide net social benefits, and recommended that Congress consider elimination of these impediments.

#### Federal Reserve System

The Commission staff commented on a Federal Reserve System notice of proposed rulemaking to delete or revise a provision of Regulation Z (Truth in Lending) that permits creditors to freeze a borrower's credit line when the rate cap on a home equity line is reached. The comment supported a FRS proposed alternative that would allow creditors to offer variable-rate open-end home equity credit lines that may be frozen or reduced when the maximum rate cap is reached, as long as this right is disclosed in the contract. The comment stated that this alternative would leave lenders free to compete on terms as well as rates for such lines of credit, and would leave informed consumers free to choose combinations of rates and terms that would best suit their needs.

#### Food and Drug Administration

The Commission staff commented on a Food and Drug Administration advance notice of proposed rulemaking on possible changes in the regulation of food labeling. The comment supported the FDA's proposals to amend its rules to allow truthful, substantiated health claims in food labeling. In addition, the comment recommended that the FDA consider adopting a flexible standard for substantiation of health claims. The comment expressed concerns that preapproval of health claims, requirements of standardized language for health claims, or adoption of a consensus standard for substantiating claims are likely to stifle truthful and nondeceptive information that is valuable to consumers who are trying to improve their diets.

The Commission staff again commented on the notice of proposed rulemaking itself when issued by the FDA. The comment reiterated the position taken in response to the advance notice that the final regulation should encourage increased dissemination of truthful information and promotion of food choices based on nutritional worth, while deterring unfair and deceptive claims. In this regard, the comment suggested that the FDA adopt a flexible substantiation

standard similar to the FTC's reasonable basis standard used in assessing health claims in advertising.

#### International Trade Commission

The Commission staff filed both pre-hearing and post-hearing submissions to the ITC in its investigation of trade restraints on agricultural products and natural resources. These submissions provided estimates of the employment and welfare effects of quantitative restraints on imports of dairy products, sugar, apparel, and steel, as well as the effects of all import tariffs.

The Commission submitted a post-hearing brief to the ITC in its investigation of the camera industry to determine whether certain camera imports were a cause of substantial injury to the domestic camera industry. The submission suggested an analytical approach to considering the camera market that accounted for the heterogenous nature of the industry.

#### National Highway Traffic Safety Administration

The Commission staff commented to NHTSA concerning potential environmental impacts of Corporate Average Fuel Economy (CAFE) standards on automobiles. The comment noted that a major environmental effect of the CAFE program comes from gasoline consumption, and that economic theory suggests that a binding CAFE standard may have several distinct effects on gasoline consumption and fuel efficiency. The comment identified these effects and suggested that they be factored into NHTSA estimates of gasoline savings from CAFE standards.

#### Postal Rate Commission

The Commission staff commented on a PRC proposal to establish different rate, for different sub-units of postal services. The PRC specifically asked whether the delivery of mail should be considered a single service or a chain of separate services. The U.S. Postal Service in recent years has allowed, for example, mailers to obtain a discount from the Postal Service if they presort the mail that they are sending. The PRC has asked whether mail services should be separated, or "unbundled", in certain cases. The comment stated that reorientation of the mail classification system toward unbundling separable postal functions is an attractive economic proposition where doing so will not raise the costs of other services

produced by the U.S. Postal Service. The comment reviewed the economic literature to help define the conditions under which unbundled pricing would tend to be efficient. The comment also discussed suggested alternatives for implementing an unbundling policy.

## STATES

### Alabama

The Commission staff commented on an Alabama bill that would regulate relations between suppliers of agricultural, utility, industrial and outdoor power equipment and their Alabama dealers. Specifically, the bill would prohibit termination or non-renewal of dealerships without cause; specify permissible causes, notice periods, procedures for termination and rights upon termination; and prohibit particular practices by suppliers. The comment stated that by its tendency to freeze supply relationships, the proposed legislation would tend to deprive equipment suppliers of the flexibility to adapt to changes in market or other conditions, and thereby raise the costs of distributing equipment in Alabama without providing offsetting benefits to consumers. The comment concluded that consumers could be expected ultimately to bear the burden of the resulting increases in equipment prices and in decreases in the quality of dealership services.

### Arizona

The Commission staff commented to the State Bar of Arizona on certain proposed amendments to the Arizona Rules of Professional Conduct concerning client testimonials, electronic media advertising, and written communications with prospective clients. The comment cautioned that these provisions may restrict the flow of truthful information to consumers and therefore, on balance, may have the potential to impede competition and increase costs without providing countervailing benefits to consumers.

### California

The Commission staff commented on a California bill that would change the regulation of sales of automobiles by lessor-retailers, and restrict off-site automobile sales. The comment stated that the proposed regulations would likely raise the prices that California consumers pay for new and used automobiles, reduce competition by limiting innovative marketing methods, and deprive consumers

of the savings that then, could realize through such marketing methods.

#### Florida

The Commission staff filed an amicus curiae brief to the Florida Supreme Court, arguing against a proposed advisory opinion of the Florida Bar's Standing Committee on the Unlicensed Practice of Law. By preventing non-legal professionals from performing certain advisory functions with respect to pension plans, the brief argued that the proposed opinion would be likely to injure those who wish to establish or revise such plans and the employees who participate in them.

#### Georgia

The Commission staff commented on two bills in the Georgia State Senate concerning the sale of so-called collision damage waivers (CDW) by vehicle rental companies. The comment said that one bill, which would prohibit CDW, might result in increased costs to some consumers who rent vehicles without providing significant benefits to the majority of renters or to the public at large. The comment concluded that the other bill, which would require disclosures concerning CDW, more likely would serve the interests of consumers.

#### Indiana

The Commission staff commented on an Indiana bill that would regulate the activities of individuals and persons providing credit repair services. The comment expressed the staff's belief that a substantial segment of the credit repair industry engages in practices that both injure the general public and individual consumers. The comment stated that disclosure requirements could reduce a credit repair company's ability to misrepresent what it is likely to achieve. Many consumers do not understand that accurate, adverse information will almost never be removed by a credit bureau until it becomes obsolete. The comment suggested that simple, non-technical disclosure requirement would assist consumers in this respect.

#### Massachusetts

The Commission staff commented on the anticompetitive effects of

two Massachusetts bills that would prohibit petroleum refiners from owning or operating retail gasoline service stations, and that would mandate "open supply." The comment stated that these restrictions may lessen competition among motor fuel dealers and raise gasoline and diesel prices to Massachusetts consumers and visitors.

#### Michigan

The Commission staff commented on a Michigan House bill that would allow beer manufacturers to sell beer at the retail level in limited instances. The comment stated that the bill would permit more efficient forms of distribution and increase consumer choice. The comment concluded that Michigan brewers would become more able and inclined to offer specialty brands and to streamline their distribution systems. The comment stated that this would enhance competition.

#### Missouri

The Commission staff commented on a Missouri Senate bill that would prohibit a person from selling seven or more cars any place away from that person's established place of business unless a majority of the local dealers participate in the sale. The comment stated that the likely effect of the contemplated restrictions would be to eliminate many car sales events at sites other than car dealerships even though such sales may enhance the efficiency of distribution and result in savings that may be passed along to consumers.

#### New York

The Commission staff commented on proposed regulations governing New York State real estate brokers and salespersons. The comment stated that the proposed rules aim to reduce confusion and misunderstanding among consumers and brokers and salespersons, and may benefit consumers in some circumstances, although some of the proposed limitations on certain real estate practices and contract terms unnecessarily may harm some consumers.

#### Ohio

The Commission staff commented to the Ohio General Assembly on a bill regulating the sale of automotive aftermarket crash parts. The comment stated that consumers are better off when they have

the ability to make choices among different quality crash parts, and urged the Assembly to examine the possibility that the bill's provisions directed at alleged overpricing practices may actually restrict product availability. The comment also said that the existence of quality differences does not, by itself, necessitate the use of mandated information disclosures, since producers may have both the incentive and ability to provide consumers with adequate information.

The Commission staff commented to the Ohio State Bar Association on several proposed amendments to the Ohio Code of Professional Responsibility. The comment noted that the proposed rules would prohibit self-laudatory statements, claims concerning the quality of the lawyer's services, emotional appeals, client testimonials, any claims that are not verifiable, and certain kinds of fee advertisements. The comment concluded that the proposed restrictions may restrict the flow of valuable information to consumers and may have the potential to impede competition or increase costs without providing, countervailing benefits to consumers.

The Commission staff commented on an Ohio bill that would define conditions under which municipalities may grant additional cable franchises in areas with an existing cable system. The comment stated that previous experience with similar forms of entry regulation suggests that consumers' interests are rarely served when prospective entrants are required to demonstrate, in a regulatory setting, the competitive benefits of entry.

#### Pennsylvania

The Commission staff commented on a Pennsylvania bill that was intended to guarantee consumers greater freedom to choose where they obtain pharmacy services covered by health insurance policies or employee benefit plans. The comment stressed that the proposed legislation appeared likely to have the unintended effect of denying consumers the benefits of cost-reducing arrangements in the provision of pharmaceutical services.

The Commission staff commented on a Pennsylvania bill that would prohibit bidders for corporate control from voting control shares unless a majority of shareholders, including incumbent management, had voted to exercise that right. The bill would also prohibit potential and actual corporate acquirers from retaining any increase in the value of corporate securities sold within 18 months

of attaining controlling person or group status, and would require the payment of severance compensation to employees terminated within two years of a successful acquisition. The comment expressed the view that takeover activity most often enhances economic efficiency and thus benefits consumers, workers, and shareholders. The comment noted that the bill would likely impede many of the potential beneficial consequences of takeovers without offering countervailing benefits and that some of the provisions may significantly reduce the rights of shareholders (including those not seeking control) to vote their shares and participate in the governance of the corporations that they own. The comment suggested that the legislature might wish to consider whether the bill's proposals would unduly interfere with the market for corporate control to the detriment of the economy and consumer welfare generally.

#### South Carolina

The Commission staff commented to the South Carolina Legislative Audit Council on certain statutes and regulations governing harbor pilots, auctioneers, and foresters. The comment stated that certain statutory limitations on entry into harbor pilotage may have the effect of reducing competition and efficiency, and raising prices. The comment also stated that certain restrictions on advertising by auctioneers may be detrimental to consumers. Finally, the comment noted that the staff did not find any competitive concerns in the code of ethics adopted by the Foresters' Registration Board.

#### Tennessee

The Commission staff commented to the Tennessee Division of Audit concerning the possible restrictive or anticompetitive effects of statutes governing 14 state agencies. The comments related to statutes governing nine Tennessee health profession regulatory boards: the Boards of Chiropractic Examiners, Dentistry, Dispensing Opticians, Examiners in Psychology, Medical Examiners, Optometry, Osteopathic Examiners, Registration in Podiatry, and Veterinary Medical Examiners. The comment stated that several of the authorizing statutes restrict a number of forms of commercial practice by professional licensees. Other statutes may restrict various types of truthful, nondeceptive advertising, including price advertising, and solicitation by licensed professionals, or restrict the provision of health-related services and products by non-traditional providers. The comment concluded that some of these restrictions

could have anticompetitive effects that may reduce output and increase prices to consumers.

The Commission staff commented on the statutes, rules, and regulations governing trucking in Tennessee. The comment explained how relaxing economic regulation of trucking would benefit consumers and competition by increasing choices, improving service and reducing prices for the transportation of goods.

#### Texas

The Commission staff commented on Texas Railroad Commission proposed regulations to allow a greater range of rates for common motor carriers for intrastate shipments. The comment stated that relaxation of price constraints would benefit consumers by increasing choices, improving services, and reducing prices for the transportation of goods. The comment also noted that deregulation of intrastate trucking has not had the adverse impact on competition and consumers that had been predicted by critics of deregulation.

#### Vermont

The Commission filed two amicus briefs before the Vermont Supreme Court in *Vermont v. International Collection Service, Inc.*, No. 89-300 (Vt.), arguing that the term "unfair or deceptive acts or practices" in the Federal Trade Commission Act is not confined to practices that injure consumers purchasing for their personal use. This case presented factual issues of serious and pervasive misrepresentation by a debt collection firm serving 34,000 customers throughout the country.

#### Virginia

The Commission staff commented to the Virginia Board of Pharmacy concerning its proposed regulations governing the dispensing and sale of prescription drugs by physicians. The comment stated that while the staff does not endorse physician dispensing as preferable to pharmacist dispensing, it does support consumers having a choice among qualified providers of prescription drugs. The comment concluded that physician dispensing maximizes consumers' options in the purchasing of prescription drugs and may increase competition among physicians and between physicians and pharmacists and lead to lower prices and better services.



The Commission staff commented on a Virginia bill that would prohibit petroleum refiners from owning and operating retail motor fuel stations and from expanding hours of operation by their franchised and leased service stations. The bill would also enact "open supply" for lessee-dealers by allowing them to purchase and sell brands of motor fuels other than those of their lessors. The comment stated that these provisions may lessen competition among motor fuel dealers and raise gasoline and diesel prices to 4 Virginia consumers and visitors.

#### Washington

The, Commission staff commented on a Washington State House of Representatives bill regulating the sale of automotive aftermarket crash parts. The bill would establish mandatory disclosure and certification requirements in connection with the use of crash parts by automotive repairers. The comment stated that when effective private mechanisms for the transmission of information that consumers value are already in place, the additional benefit of statutorily-imposed disclosures and certification standards may be quite limited. The comment suggested the Legislature might wish to examine whether the producers of crash parts are already adopting measures that give consumers truthful information on quality, warranties, and the effect of crash part use on existing warranties.

#### Wisconsin

The Commission staff commented on proposed changes to the Wisconsin Department of Transportation regulations concerning off-site automobile sales. The comment stated that restrictions on automobile dealers and automobile sales at places other than a dealership would likely raise the prices that Wisconsin consumers pay for new and used automobiles, reduce competition by limiting innovative marketing methods, and deprive consumers of the savings that they could realize through such marketing methods.

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