

Federal Trade Commission
Bureau of Competition
Joseph J. Simons, Director

Antitrust Enforcement Activities
Fiscal Year 1999 - March 15, 2003

ABA Antitrust Section Spring Meeting 2003

**ABA ANTITRUST SECTION
SPRING MEETING**

*Summary of Bureau of Competition Activity
Fiscal Year 1999 Through March 15, 2003*

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ABA ANTITRUST SECTION SPRING MEETING

Summary of Bureau of Competition Activity Fiscal Year 1999 Through March 15, 2003

I. Mergers

A. Consent Orders

Agrium, Inc. (Final Order November 13, 2000): A consent order requires Agrium to divest a deepwater terminal near Portland, Oregon, an up water terminal in central Washington and other assets settling charges concerning its proposed acquisition of the nitrogen fertilizer business of *Union Oil Company of California*. Agrium and Unocal are the leading producers in the Northwest of nitrogen fertilizer – anhydrous ammonia, urea and UAN 32% solution – ingredients used for plant growth.

Airgas, Inc. (Final Order December 18, 2001): Airgas, Inc., the nation's largest distributor of industrial, medical, and specialty gases, settled antitrust charges that its January 2000 acquisition of Mallinckrodt, Inc.'s *Puritan Bennett Medical Gas Business* eliminated competition in the North American market for the production and sale of nitrous oxide. Under terms of the order, Airgas is required to divest two nitrous oxide plants and related assets to Air Liquide America Corporation within 10 days after the Commission issues its final order. Nitrous oxide is a clear, odorless gas used mainly in dental and surgical procedures as an analgesic agent or as a supplement to anesthesia.

Albertson's, Inc. (Final Order December 8, 2000): The final order, modified after the public comment period, does not require the divestiture of a Lucky (American Stores Company) store in Lompoc, California to Ralph's. Albertson's Inc. agreed to divest 104 supermarkets and *American Stores Company* agreed to divest 40 supermarkets to settle charges that Albertson's acquisition of American Stores raised antitrust concerns in 57 markets in California, Nevada and New Mexico. The divestiture agreement is the largest retail divestiture of supermarkets ever required by the Commission.

AmericaOnline, Inc. (Final Order April 17, 2001): AOL and *Time Warner Inc.* settled Commission concerns relating to their proposed merger. The order requires AOL Time Warner

to open its cable system to competitor internet service providers. In addition, the company is prohibited from interfering with content passed along the bandwidth contracted for by non-affiliated internet service providers; and prohibited from interfering with the ability of non-affiliated providers of interactive television services to interact with interactive signals that AOL Time Warner agreed to carry.

Amgen Inc. (Final Order September 3, 2002): Amgen settled antitrust charges that its proposed \$16 billion acquisition of *Immunex Corporation* would reduce competition and tend to create a monopoly in the biopharmaceutical markets for neutrophil (white blood cell) regeneration factors; tumor necrosis factor (TNF) inhibitors; and interleukin-1 (IL-1) inhibitors. The consent order requires the firms to sell all of Immunex's assets related to Leukine - a neutrophil regeneration factor - to Schering AG; license certain intellectual property rights to TNF inhibitors to Serono S.A.; and license certain intellectual property rights related to IL-1 inhibitors to Regeneron Pharmaceuticals Inc.

Associated Octel Company Limited (Final Order December 22, 1999): Associated Octel settled charges that its acquisition of *Oboadler Company* would eliminate direct competition and raise prices in the highly concentrated market for the manufacture and sale of lead antiknock compounds. Under terms of the order, Octel agreed to supply Oboadler's current distributor, Allchem Industries, Inc., with lead antiknock compounds for resale in the United States for 15 years.

Baxter International, Inc. (Final Order February 3, 2003): Baxter settled Commission concerns stemming from its \$316 million proposed acquisition of *Wyeth Corporation's* generic injectable drug business and agreed to divest several pharmaceutical products. The Commission charged that the acquisition would reduce competition in the manufacture and sale of propofol (a general anesthetic); new injectable iron replacement therapies; metoclopramide (used to treat nausea); and vecuronium and pancuronium (neuromuscular blocking agents used to temporarily freeze muscles during surgery). The consent order requires divestitures in each of the pharmaceutical markets.

Bayer AG (Final Order August 2, 2002): A consent order permits Bayer to purchase *Aventis CropScience Holdings S.A.* from Aventis S.A. The order requires Bayer to divest businesses and assets in the following four major markets: new generation chemical insecticide products; new generation chemical insecticide active ingredients; post-emergent grass herbicides for spring wheat; and cool weather cotton defoliant. According to the complaint, the transaction as proposed would result in the elimination of both actual and potential competition in the four markets; increase barriers to entry; reduce innovation competition for certain products; and increase the possibility of coordinated interaction between competitors.

The Boeing Company (Final Order January 5, 2001): The consent order permits the acquisition of *Hughes Space and Communications*, a subsidiary of General Motors Corporation, but prohibits Boeing from providing systems engineering and technical assistance (SETA) to the

U.S. Department of Defense for a specific classified program. According to the complaint, Boeing is the sole supplier of SETA programs and Hughes is one of two competing contractors.

BP Amoco p.l.c. (Final Order August 29, 2000): BP Amoco settled charges that its acquisition of *Atlantic Richfield Company* (ARCO) would lessen competition in the production and sale of crude oil in several United States markets. The order requires BP to divest ARCO's complete free standing businesses relating to oil production on Alaska's North Slope to Philips Petroleum Company within 30 days.

Ceridian Corporation (Final Order April 6, 2000): A consent order requires Ceridian to grant licenses to new and existing firms that provide commercial credit cards (known as "trucking fleet-cards") used by over-the-road trucking companies to make purchases at retail locations. The order settles charges that Ceridian's consummated acquisitions of *NTS Corporation* and *Trendar Corporation* gave Ceridian the power to control the markets for the provision of trucking fleet cards and the systems used to read them at truck stops throughout the country.

Chevron Corporation (Final Order January 4, 2002): A consent order permitted the \$45 billion merger of Chevron and Texaco Inc., but required significant divestitures in the petroleum industry.

Computer Sciences Corporation (Final Order January 26, 2000): Final consent order permitted the acquisition of *Mynd Corporation* and required the divestiture of Mynd's Claims Outcome Advisor System to Insurance Services Office, Inc. Claims assessment systems are used by insurance companies to evaluate appropriate payments for claims of bodily injury and to evaluate return-to-work plans in workers compensation matters.

Dainippon Ink and Chemicals, Inc. (Final Order March 13, 2003): Dainippon agreed to divest the perylene business of its U.S. subsidiary, *Sun Chemical Corporation*, to Ciba Specialty Chemicals Inc. and Ciba Specialty Chemicals Corporation to settle allegations that its proposed acquisition of Bayer Corporation's high-performance pigment manufacturing facility would eliminate competition in the highly concentrated world market for perylenes – organic pigments used to impart unique shades of red color to products, including coatings, plastics and fibers.

Delhaize Freres et cie "Le Lion" S.A. (Final Order May 30, 2001): The consent order permitted the merger of *Establisements Delhaize Freres et Cie "Le Lion" S.A.* and *Delhaize America, Inc.* with *Hannaford Bros. Co.* and required the sale of 37 Hannaford supermarkets and one Hannaford site to three different buyers.

Deutsche Gelatine-Fabriken Stoess AG (Final Order April 17, 2002): A consent order allowed DGF to complete its \$170 million acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary under terms that the entire pigskin and beef hide gelatin business of Goodman Fielder would be excluded from the transaction. The complaint issued with the order alleged that if the firms were allowed to consummate the transaction, as

originally proposed, they would account for more than 50 percent of the U.S. market for these gelatin products used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The consent order requiring the restructured transaction was negotiated after the Commission authorized staff to seek a preliminary injunction in federal district court to block the parties from consummating the transaction.

Diageo plc (Final Order December 19, 2001): Diageo and Vivendi Universal S.A. resolved antitrust concerns regarding Diageo's and Pernod Ricard S.A.'s joint acquisition of Vivendi's *Seagram Spirits and Wine Business* that would combine the second- and third- largest rum producers in the United States. The consent order, among other things, required Diageo to divest the Malibu rum business worldwide to a Commission-approved buyer within six months of the acquisition of Seagram. On October 23, 2001, the Commission authorized staff to seek a preliminary injunction in federal district court to block the transaction.

Dominion Resources, Inc. (Final Order December 14, 1999): A consent order permits Dominion's acquisition of *Consolidated Natural Gas Company* but requires the divestiture of Consolidate's Virginia Natural Gas, Inc. The complaint alleged that the merger would combine the dominant provider of electric power in Virginia with the primary distributor of natural gas in southeastern Virginia.

Dow Chemical Company, The (Final Order March 15, 2001): Dow settled antitrust concerns relating to its proposed merger with *Union Carbide Corporation*. Dow agreed to divest and license intellectual property necessary to the production of linear low-density polyethylene - an ingredient used in premium plastic products such as trash bags and sealable food pouches - to BP Amoco plc.

Duke Energy Corporation (Final Order May 9, 2000): Duke agreed to divest 2,780 miles of gas gathering pipeline in Kansas, Oklahoma and Texas to settle antitrust concerns stemming from Duke's and *Phillips Petroleum Company's* proposed merger of their natural gas gathering and processing businesses; and its proposed acquisition of gas gathering assets in central Oklahoma from Conoco Inc. and Mitchell Energy and Development Corporation The new company will be known as Duke Energy Field Services, L.L.C.

El Paso Energy Corporation (Final Order January 30, 2001): A final order allowed El Paso Energy Corporation to acquire *PG&E Gas Transmission Teco, Inc.* and *PG&E Gas Transmission Texas Company* (subsidiaries of Pacific Gas & Electric) with the provision that it divest its interest in the Oasis Pipe Line Company; PG&E's share of the Teco Pipeline; and the Matagorda Island Offshore production area. The divestitures ensure that competition is maintained for natural gas transportation in three Texas markets.

El Paso Energy Corporation (Final Order March 19, 2001): A modified consent order allows the merger of El Paso and *Coastal Corporation* and requires the divestiture of more than 2,500

miles of gas pipeline system in Florida, New York and the Midwest. The modifications relate to the establishment of the Development Fund for the Green Canyon/Tarpon pipeline acquirer and is described in the final order.

El Paso Energy Corporation (Final Order January 6, 2000): A final order ensures competition in the markets for natural gas transportation out of the Gulf of Mexico and into the southeastern United States. The consent order permitted El Paso's \$6 billion merger with *Sonat Inc.* and requires the divestiture of Sea Robin Pipeline Company; Sonat's one-third ownership interest in Destin Pipeline Company, L.L.C.; and, the East Tennessee Natural Gas Company.

Exxon Corporation (Final Order October 30, 1998): Exxon will divest its viscosity index improver business to Chevron Chemical Company LLC to settle allegations that its proposed joint venture with *Royal Dutch Shell* to develop, manufacture and sell their fuel and lubricants additives would reduce competition and lead to collusion among the remaining firms in the market.

Exxon Corporation (Final Order January 30, 2001): A consent order settled antitrust concerns stemming from Exxon's proposed acquisition of *Mobil Corporation*, and required the largest retail divestiture in Commission history. The divestitures, representing only a fraction of the worldwide assets of Exxon and Mobil, include 2,431 gas stations; an Exxon refinery in California; a pipeline; and other assets. According to the complaint, the proposed merger would injure competition in moderate concentrated markets – California gasoline refining; marketing and retail sales of gasoline in the Northeast, Mid-Atlantic, and in the State of Texas; and in the highly concentrated markets for jet turbine oil.

Federal-Mogul Corporation (Final Order December 4, 1998): Federal-Mogul agreed to divest the thinwall bearings assets (Glacier Vandervell Bearings Group) it acquires in its takeover of *T&N plc* to a Commission-approved buyer. The complaint alleged that the acquisition would increase the likelihood of coordinated anticompetitive conduct between Federal-Mogul and the remaining competitors in the market for thinwall engine bearings used to separate component parts in the engines of cars, trucks and heavy equipment.

Fidelity National Financial, Inc. (Final Order February 17, 2000): A consent order settled charges that Fidelity's acquisition of *Chicago Title Corporation* would reduce competition for title information services in San Luis Obispo, Tehama, Napa, Merced, Yolo, and San Benito, California. The order requires the divestiture of title plants in each of the six areas.

FMC Corporation (Final Order May 19, 2000): The consent order requires FMC to divest its phosphorus pentasulfide business in Lawrence, Kansas to Peak Investments, LLC and Solutia Inc.'s phosphate assets in Augusta, Georgia to Societe Chimique Prayon-Rupel to settle charges that the proposed FMC/Solutia joint venture could substantially lessen competition in the United States market for pure phosphoric acid and phosphorus pentasulfide.

Hoechst AG (Final Order January 18, 2000): A consent order settled charges stemming from Hoechst's merger with *Rhone-Poulenc S.A.* According to the complaint, the merger (the merged firm would be renamed Aventis S.A.) raised antitrust concerns in the market for cellulose acetate and direct thrombin acetate. The order requires the divestiture of the subsidiary, Rhodia, a specialty chemicals firm that produces cellulose acetate.

INA-Holding Schaeffler KG (Final Order February 15, 2002): The consent order permits INA's acquisition of *FAG Kugelfischer Georg Schafer AG* but requires the divestiture of FAG's cartridge ball screw support bearing business to Aktiebolaget SKF within 20 business days after the consummation of the INA/FAG transaction. According to the complaint issued with the consent order, the acquisition, as planned, would create a monopoly in the market worldwide.

Intel Corporation (Final Order July 20, 1998): A consent order settled allegations that Intel's acquisition of *Digital Equipment Corporation's* assets could endanger the continuing and future development of the Alpha microprocessor, a direct competitor of Intel's Pentium line of computer system components. The order required Digital to license the Alpha technology to Advanced Micro Devices and to Samsung Electronics Co., Ltd. or to other Commission-approved companies to manufacture Digital's microprocessor devices.

Koch Industries, Inc. (Final Order January 31, 2001): A consent order settles allegations that Entergy-Koch LP's (a limited partnership owned equally by *Entergy Corporation* and Koch) acquisition of 50 percent of the Gulf South Pipeline Company, LP from Koch would lessen competition for the sale of electricity to consumers in Louisiana and western Mississippi and the distribution of natural gas to consumers in New Orleans and Baton Rouge. Entergy is the regulated electric and natural gas utility in parts of Louisiana and Mississippi. The order requires Entergy to establish a transparent process to buy natural gas and natural gas transportation that will assist state regulators in determining whether Entergy purchased gas supplies at inflated prices from its Entergy-Koch partnership.

Koninklijke Ahold NV (Final Order April 14, 1999): The consent order requires divestiture of 10 supermarkets in Maryland and Pennsylvania to settle antitrust concerns stemming from Ahold's acquisition of *Giant Food Inc.*

Koninklijke Ahold NV (Final Order December 7, 2001): Ahold would be permitted to acquire *Bruno's Supermarkets, Inc.* under terms of a consent order, but would be required to divest two BI-LO supermarkets in Georgia - one Milledgeville, and one in Sandersville. The Commission's complaint charged that the acquisition as originally proposed would reduce competition in the retail sale of food and grocery items in supermarkets in the area and would eliminate direct competition between supermarkets owned and controlled by Ahold and those owned or controlled by Bruno's.

Kroger Company (Final Order January 10, 2000): Final order requires Kroger and *Fred Meyer Stores, Inc.* to divest eight supermarkets to settle charges that the acquisition of Fred Meyer

would increase concentration and decrease competition in Arizona, Wyoming, and Utah. Under terms of the order, two Smith's Food & Drug Centers will be sold to Nash-Finch Company; one "City Market" will be sold to Albertson's Inc.; and five supermarkets (two "City Markets"; two Fry's, and one Smith's) will be sold to Fleming Companies, Inc.

Kroger Company (Final Order November 8, 1999): A final order settled charges stemming from Kroger Company's acquisition of *The John C. Groub Company*. The order requires the divestiture of three supermarkets in Columbus and Madison, Indiana to Roundy's, Inc., one of the largest food wholesalers in the United States.

Lafarge Corporation (Final Order August 8, 2001): The consent order required the divestiture of Blue Circle Industries PLC's cement business serving the Great Lakes region of Ohio, Michigan, Illinois, Wisconsin and New York; its cement business in the Syracuse, New York; and its lime business in the southeast United States. These divestitures settled antitrust concerns stemming from Lafarge's proposed merger with Blue Circle. The two firms are market leaders in the industry for cement and lime.

Lafarge Corporation (Final Order February 12, 1999): As a result of plans to acquire *Holnam, Inc.*'s Seattle cement plant and other cement assets in Washington State, Lafarge entered into an illegal agreement that would reduce competition by restricting its cement distribution in the Puget Sound area. The consent order requires LaFarge to restructure the sales agreement with Holnam to delete the production penalty clause.

MacDermid, Inc. (Final Order February 3, 2000): A consent order permits MacDermid's acquisition of *Polyfibron Technologies, Inc.* and requires the divestiture, among other things, of Polyfibron's liquid photopolymer business to Chemence Inc. According to the complaint, the acquisition would result in a monopoly in the production, distribution and sale of liquid and solid photopolymer in North America. Photopolymers are used to make flexographic printing plates.

Manheim Auctions, Inc. (Final Order November 13, 2000): The consent order settles antitrust concerns stemming from the acquisition of *ADT Automotive Holdings, Inc.*, the nation's third largest operator of wholesale motor vehicle auctions. The order requires Manheim to divest nine auctions in Kansas City, Missouri; Denver and Colorado Springs, Colorado; Atlanta, Georgia; San Francisco, California; Seattle, Washington; Tampa, Orlando and Daytona Beach, Florida; and Phoenix, Arizona.

MCN (Final Order May 15, 2001): A final order permitted the \$4 billion merger of MCN, a natural gas utility servicing communities in Michigan, and *DTE*, a public utility engaged in the generation and sale of electricity in Detroit and southeastern Michigan. The consent order, designed to resolve Commission concerns that the merger would lessen competition in the local distribution of electricity and in the local distribution of natural gas in the city of Detroit and in the Michigan counties of Macomb, Monroe, Oakland, Washtenaw and Wayne. MCN is the parent of Michigan Consolidated Gas Company and DTE is the parent holding company of The

Detroit Edison Company.

Medtronic, Inc. (Final Order December 21, 1998): A consent order settles allegations stemming from Medtronic's proposed acquisition of *Physio-Control International Corporation's* automatic external defibrillator business. According to the complaint, Medtronic, through its controlling interest in SurVivaLink Corporation, a direct competitor of Physio-Control, would control both companies as a result of the acquisition and thereby increase the likelihood of coordinated interaction which could result in increased prices and reduce innovation in the market. The consent order requires Medtronic to become a passive investor in SurVivaLink and reduce many of its present and future business contacts with the firm.

Medtronic, Inc. (Final Order June 3, 1999): Medtronic agreed to divest *Avecor Cardiovascular, Inc.'s* non-occlusive arterial pump assets to settle antitrust concerns that the acquisition would lessen competition for the research, development, manufacture and sale of the pumps in the United States. The consent order requires Medtronic to provide assistance to the buyer of the Avecor Pump assets to enable the buyer to obtain FDA approval to manufacture and market the Avecor pumps and reservoirs.

Merck and Co, Inc. (Final Order February 18, 1999): The complaint, issued with the consent order, alleged that as a result of Merck's 1993 acquisition of *Medco*, the nation's largest benefits manager, Merck's drugs received favorable treatment through Medco's drug-list formulary made available to medical professionals who prescribe and dispense prescriptions to health plan beneficiaries. The consent order requires Medco, among other things, to maintain an "open formulary" to include drugs approved by an independent Pharmacy and Therapeutics Committee, staffed by physicians and pharmacologists who have no financial interest in Merck.

Metso Oyj (Final Order October 23, 2001): Metso settled charges that if its acquisition of *Svedala Industri AB* were allowed to proceed as planned, competition would be lessened in four rock processing equipment markets: primary gyratory crushers; jaw crushers; cone crushers; and grinding mills. The firms agreed to divest Metso's worldwide primary gyratory crusher and grinding mill businesses and Svedala's worldwide jaw crusher and cone crusher businesses. The three crusher businesses would be purchased by Sandvik AB, a Swedish corporation; the grinding mill business would be purchased by Outokumpu of Finland. Metso and Svedala are the two largest suppliers of rock processing equipment in the world.

MSC. Software Corporation (Final Order August 14, 2002): MSC settled charges that its 1999 acquisitions of *Universal Analytics, Inc.* and *Computerized Structural Analysis & Research Corp.* eliminated competition between the three firms in the development and application of engineering software. The administrative complaint issued October 2000, alleged that the two acquisitions would eliminate competition for advanced versions of Nastran, an engineering simulation software program used throughout the aerospace and automotive industries. The consent order required MSC to divest at least one clone copy of its current advance Nastran through royalty-free perpetual, non-exclusive licenses to one or two acquirers approved by the

Commission.

Nestle Holdings, Inc. (Final Order February 8, 2002): Nestle settled antitrust charges that its \$10.3 billion proposed acquisition of *Ralston Purina Company* would substantially lessen competition in the United States market for dry cat food through the elimination of direct competition between the two firms and increase the likelihood that the combined firm could unilaterally exercise market power. The order requires the divestiture of Ralston's Meow Mix and Alley Cat brands to J.W. Childs Equity Partners II, L.P.

Nortek, Inc. (Final Order October 8, 1998): The consent order permits Nortek's acquisition of *NuTone, Inc.*, its closest competitor, but requires its divestiture of M&S, the second largest seller of hard-wired residential intercoms in the United States.

Novartis AG (Final Order December 19, 2000): The consent order permits the merger of Novartis and *AstraZeneca PLC* into a new Swiss company, Syngenta AG. The order requires Novartis to divest its worldwide foliar fungicide business (based on the strobilurin chemical class) to Bayer Ag; and requires AstraZeneca to divest its worldwide corn herbicide business (based on the active ingredient acetochlor) to Dow AgroSciences LLC.

Pfizer Inc. (Final Order July 28, 2000): Final consent order permits Pfizer's merger with *Warner-Lambert Company* and requires divestitures in several pharmaceutical markets including: Pfizer's RID brand of head lice treatment; Pfizer's antidepressant drug, Celexa; Warner's Cognex, a drug used in the treatment of Alzheimer's disease; and assets relating to the Epidermal Growth Factor receptor tyrosine kinase inhibitor - drugs under development to treat solid cancerous tumors such as head and neck, non-small cell lung, breast, ovarian, pancreas and colorectal cancers.

Philip Morris Companies, Inc. (Final Order February 27, 2001): The consent order permits the merger of Philip Morris and *Nabisco Holdings Corporation* while settling charges that the merger of the two food companies would reduce competition in the already highly-concentrated food product markets. Under terms of the order, the parties are required to divest Nabisco's dry-mix gelatin, dry-mix pudding, no-bake dessert, and baking powder assets to The Jel Sert Company and Nabisco's intense mints assets to Hershey Foods Corporation.

Phillips Petroleum Company (Final Order February 7, 2003): A final consent order allows the merger of Phillips Petroleum and *Conoco Inc.* but requires certain divestitures and other relief to maintain competition in the gasoline refining market in specific areas of the United States. Among the assets to be divested are refineries, propane terminals, and natural gas gathering facilities. The combined firm will be known as ConocoPhillips.

Precision Castparts Corporation (Final Order December 21, 1999): A final order requires the divestiture of large titanium stainless steel and large nickel-based superalloy production assets (structural cast metals used in the manufacture of aerospace components) to settle antitrust

concerns stemming from its acquisition of *Wyman-Gordon Company*. The order requires Precision Castparts to divest Wyman-Gordon's titanium foundry in Albany, Oregon and Wyman-Gordon's Large Cast Parts foundry in Groton, Connecticut.

Provident Companies, Inc. (Final Order September 20, 1999): The consent order ensures that the merged firm of Provident and *UNUM Corporation* will continue to participate in industry-wide solicitations for data to make actuarial predictions on probable future claims by applicants who hold policies with providers of individual disability insurance. The order requires Provident/UNUM to provide data to the Society of Actuaries and/or the National Association of Insurance Commissioners for studies and reports.

Quest Diagnostics, Inc. (Proposed Consent Agreement Accepted for Public Comment February 21, 2003): Quest Diagnostics agreed to divest clinical laboratory testing assets in Northern California to Laboratory Corporation of America to settle antitrust concerns that the proposed acquisition of *Unilab Corporation* would have substantially increased concentration in the clinical laboratory testing services market.

Quexco Incorporated (Proposed Consent Agreement Accepted for Public Comment May 10, 1999; Parties Abandoned Transaction): Proposed agreement would have permitted the acquisition of *Pacific Dunlop GNB Corporation* and required the divestiture of GNB's secondary smelter to Gopher resources, Inc. The parties abandoned the transaction during the 60-day public comment period.

Reckitt & Colman plc (Final Order January 18, 2000): A final order permits Reckitt & Colman to acquire *Benckiser N.V.* from NRV Vermögensverwaltung GmbH but requires the divestiture of Benckiser's Scrub Free® and Delicare® business to Church & Dwight, Inc., producers of household cleaning products.

RHI AG (Final Order March 21, 2001): A consent order permits the acquisition of *Global Industrial Technologies, Inc.* and requires the divestiture of two refractories manufacturing facilities – Global's Hammond, Indiana and Marelán, Quebec plants – to Resco Products, Inc. According to the complaint, the proposed acquisition would create the largest producer of refractories in North America with dominant positions in the magnesia - carbon brick refractory market and in the high alumina brick refractory market. Refractories are used to line furnaces in many industries that involve the heating or containment of solids, liquids, or gases at high temperatures.

Rhodia, Donau Chemie AG (Final Order April 21, 2000): Rhodia divested certain assets to resolve antitrust concerns stemming from its acquisition of *Allbright & Wilson PLC*. The consent order permits the acquisition but requires the divestiture of Albright's interest in its United States phosphoric acid joint venture to its joint venture partner, Potash Corporation of Saskatchewan.

Rohm & Haas Company (Final Order July 13, 1999): Rohm & Haas settled charges that its acquisition of *Morton International, Inc.* would lessen competition in North American for the production and sale of water-based floor care polymers used in the formulation of floor care products such as polishes. The consent order requires the divestiture of Morton's worldwide water-based floor care polymers business to GenCorp, Inc.

Service Corporation International (Final Order June 29, 2000): Service Corporation International divested the *LaGrone Funeral Home*, acquired in 1994, to settle charges that the acquisition gave Service Corporation a monopoly in the provision of funeral services in Roswell, New Mexico. The order also requires Service Corporation, for ten years, to obtain prior Commission approval before acquiring any funeral home serving Chaves County, New Mexico.

Service Corporation International (Final Order May 4, 1999): Consent order permits the acquisition of *Equity Corporation International*, the fourth largest funeral home and cemetery company in the United States, and requires SCI to divest funeral service and cemetery properties in 14 markets to Carriage Services, Inc. to remedy the anticompetitive effects of the acquisition.

Shaw's Supermarkets, Inc. (Final Order April 5, 2000): A consent order settled charges that Shaw's proposed acquisition of *Star Markets, Inc.* could eliminate supermarket competition and increase prices in the greater Boston metropolitan area. The consent order permits the acquisition and requires the divestiture of three Shaw supermarkets and seven Star markets in eight communities.

Shell Oil Company (Final Order November 18, 2002): Shell Oil Company was allowed to complete its \$1.8 billion acquisition of *Pennzoil-Quaker State Company* but required to divest certain assets to maintain healthy competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. Under terms of the consent order, Shell and Pennzoil must divest its 50 percent interest in Excel Paralubes (a base oil refinery in Westlake, Louisiana) and freeze Pennzoil's right to obtain additional Group II supply under a contract with ExxonMobil at approximately current levels (up to 6,500 barrels of base oil per day).

Shell Oil Company (Final Order December 21, 1998): The consent order requires Shell Oil and its Tejas Energy, LLC, subsidiary, to divest parts of the ANR pipeline system in Oklahoma and Texas to settle charges that its acquisition of gas gathering assets of *The Coastal Corporation* would lead to anticompetitive increases in gas gathering rates and an overall reduction in gas drilling and production in the two states.

Siemens AG (Final Order May 18, 2001): Siemens settled charges relating to its proposed \$9 billion acquisition of *Atecs Mannesmann AG*, a subsidiary of Vodafone. The consent order requires, among other things, the divestiture of Vodafone's Mannesmann Dematic Postal Automation business to Northrop Grumman Corporation. Siemens and Vodafone, through its Dematic subsidiary, are the two leading suppliers of postal automation systems in the world.

SmithKline Beecham plc (Final Order December 26, 2001): Under terms of a final consent order settling charges stemming from the merger of SmithKline and *Glaxo Wellcome plc*, the parties agreed to divest pharmaceutical products in six markets: antiemetics; the antibiotic, ceftazidime; oral and intravenous antiviral drugs for the treatment of herpes; topical antiviral drugs for the treatment of genital herpes; and over-the-counter H-2 blocker acid relief products.

SNIA S.p.A. (Final Order July 28, 1999): Final order settles charges that Sorin Biomedica S.p.A.'s acquisition of *COBE Cardiovascular, Inc.* would eliminate competition in the United States market for research, development, manufacture and sale of heart-lung machines. The order permits the acquisition and requires the divestiture of COBE's heart-lung machine business to Baxter Healthcare Corporation.

Solvay S.A. (Final Order June 25, 2002): Solvay settled antitrust concerns stemming from its proposed acquisition of *Ausimont S.p.A.* from Italenergia S.p.A., and agreed to divest its U.S. polyvinylidene fluoride (PVDF) operations and its interest in Alventia LLC, a joint venture which manufactures the main raw material for PVDF. According to the complaint, the proposed acquisition would lessen competition in two markets: the production and sale of all grades of PVDF; and the production and sale of melt-processible grades of PVDF.

Tyco International, Ltd. (Final Order December 5, 2000): Tyco settled antitrust concerns relating to its acquisition of *Mallinckrodt, Inc.* Tyco agreed to divest its endotracheal tube business to Hudson RCI. The consent order permitted the acquisition.

Valero Energy Corporation (Final Order February 22, 2002): The consent order permitted Valero to complete its \$6 billion merger with *Ultramar Diamond Shamrock Corporation*, but required the divestiture of Ultramar's Golden Eagle Refinery, bulk gasoline contracts, and 70 Ultramar retail service stations in Northern California to a Commission-approved acquirer. According to the complaint, the merger as originally proposed, would have lessened competition in two refining markets in California resulting in consumers paying more than \$150 million annually if the price of CARB gasoline increased just one cent per gallon. CARB gasoline meets the specifications of the California Air Resources Board.

Valspar Corporation (Final Order January 26, 2001): Final order permitted Valspar's acquisition of *Lilly Industries, Inc.*, but requires Valspar to divest its mirror coatings business to Spraylet Corporation. Mirror coatings are applied to the back of a piece of glass in order to produce a mirror.

VNU N.V. (Final Order December 7, 1999): VNU N.V. settled antitrust concerns that its proposed acquisition of *Nielsen Media Research, Inc.* would restrict competition in the market for advertising expenditure measurement services in the United States. The order requires VNU to divest its Competitive Media Reporting division, the nation's largest supplier in the specialized market.

Wal-Mart Stores, Inc. (Final Order February 27, 2003): A consent order settled Commission concerns that Wal-Mart's proposed acquisition of the largest supermarket chain in Puerto Rico, *Supermercados Amigo, Inc.*, would eliminate competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned or controlled by Amigo. While the consent order permits the acquisition, it requires Wal-Mart to divest four Amigo supermarkets in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico to Supermercados Maximo.

Winn-Dixie Stores, Inc. (Final Order February 14, 2000): A consent order permitted Winn-Dixie's acquisition of 68 supermarkets and other assets from bankrupt *Jitney-Jungle Stores of America, Inc.* The order prohibits Winn-Dixie, among other things, from acquiring any interest in four specified Jitney-Jungle supermarkets without obtaining prior Commission approval. The sale of the 68 supermarkets was also approved by the U.S. Bankruptcy Court for the Eastern District of Louisiana.

Zeneca Group PLC (Final Order June 7, 1999): The consent order, resolving antitrust concerns relating to Zeneca's merger with *Astra AB*, requires the divestiture of all assets relating to levobupivacaine, a long-acting local anesthetic. The assets will be purchased by Chiroscience Group plc, the developer of levobupivacaine.

II. Authorizations to Seek Preliminary Injunctions

BP Amoco p.l.c. (February 2, 2000): Commission authorized staff to file a motion in federal district court to prevent the merger of BP Amoco p.l.c. and *Atlantic Richfield Company*. The complaint, filed in the U.S. District Court for the Northern District of California, San Francisco Division on February 4, 2000, alleged that the merger would reduce competition in the exploration and production of Alaska North Slope crude oil and its sale to West Coast refineries, and in the market for pipeline and storage facilities in Cushing, Oklahoma. The merger would combine: (1) the two largest producers of crude oil on the North Slope of Alaska; (2) the two largest suppliers of Alaska North Slope crude oil to refineries in California and Washington; (3) and the two most successful competitors in bidding for exploration leases on the North Slope. On March 15, 2000, five days before the start of the trial, the defendants and the Commission agreed to seek adjournment of the federal court proceedings to enter into consent negotiations. The consent order became final August 29, 2000.

Conso International Corporation (August 2, 2000): Conso International Corporation, owner of the Simplicity brand of home sewing patterns, abandoned its proposed acquisition of *McCall Pattern Company* after the Commission filed a motion for a preliminary injunction in the United States District Court for the Southern District of New York. The complaint charged that the acquisition would reduce the number of United States sewing pattern designers and producers from three to two, creating a firm with more than 75% of the domestic unit sales of domestic home sewing patterns.

Cytec Corporation (June 24, 2002): The Commission authorized staff to seek a preliminary injunction to block the acquisition of Digene Corporation on grounds that the combination of the two firms would reduce competition and increase consumer prices within the highly concentrated market for primary cervical cancer screening tests, both now and in the future. The parties abandoned the transaction before court papers could be filed.

Deutsche Gelatine-Fabriken Stoess AG (January 15, 2002): The Commission authorized staff to seek a preliminary injunction to block DGF's proposed acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary. According to the Commission this transaction, if allowed to proceed as planned, would increase the likelihood of anticompetitive activity in the U.S. market for pigskin and beef hide gelatin, used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The combination of the two firms would account for more than 50 percent of the relevant market in the U.S. A proposed consent agreement designed to remedy the significant antitrust concerns was accepted for public comment March 7, 2002; the consent order was finalized April 17, 2002.

Diageo plc (October 23, 2001): The Commission authorized staff to file a motion for a preliminary injunction to block the proposed acquisition of *Vivendi Universal S.A.'s Seagram Wine and Spirits Business* on grounds that the transaction, would not only combine the second- and third-largest rum producers in the U.S. eliminating actual competition between the firms, but could also create higher prices for consumers of rum. A consent order permitted the acquisition, with certain conditions.

The Hearst Trust and The Hearst Corporation (April 5, 2001): Hearst and its First DataBank subsidiary were charged with illegally acquiring a monopoly over a key type of drug information database used by pharmacists, hospitals, health plans, and other health care professionals through Hearst's 1998 acquisition of its main competitor, *Medi-Span*. The complaint, filed in the U.S. District Court for the District of Columbia, asked the court to either order Hearst to create a new competitor to replace *Medi-Span* or forfeit its profits from the anticompetitive price increases that followed the acquisition of its only competitor. The complaint further alleged that the acquisition was consummated as a result of Hearst illegally withholding documents required for the premerger antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. On December 18, 2001, a federal district court entered a proposed Final Order and Stipulation requiring Hearst to pay \$19 million as disgorgement of unlawful profits and to divest *Medi-Span* to Facts and Comparisons. This settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. A separate complaint to settle allegations that The Hearst Trust and The Hearst Corporation subsidiary, violated the reporting requirements of the Hart-Scott-Rodino Act was filed October 11, 2001. In that settlement, Hearst paid \$4 million in civil penalties.

H.J. Heinz Company (July 7, 2000): The Commission authorized staff to file a motion for a

preliminary injunction in federal district court on grounds that the proposed \$185 million acquisition of *Milnot Holding Company*, owner of Beech-Nut Nutrition Corporation, would reduce the number of competitors in the baby food market from three to two – creating a duopoly. The complaint was filed in the U.S. District Court for the District of Columbia on July 14, 2000. The federal district court denied the Commission’s request for a preliminary injunction on October 19, 2000. On April 27, 2001, the U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and remanded for entry of a preliminary injunction against Heinz and Beech-Nut. Within minutes of the Appeals court decision, the parties abandoned the transaction.

Kroger Company, The/Raley’s Corporation (October 2, 2002): The preliminary injunction authorized by the Commission during the investigation into Kroger’s acquisition of 18 Raley’s supermarkets in the Las Vegas, Nevada area was not filed. After staff determined that the transaction would promote healthy competition in the Las Vegas/Henderson area due to the rapid growth of the market and the presence of Wal-Mart, Albertson’s, Kroger and Safeway - the four major competitors in the area, the investigation was closed.

Kroger Company/Winn-Dixie (June 2, 2000): The Commission authorized staff to file a motion in federal district court to block the proposed acquisition of 74 *Winn-Dixie* supermarkets in Texas and Oklahoma. The complaint, filed in the U.S. District Court for the Northern District of Texas, alleged that the acquisition would end 22 years of direct competition between the two supermarket chains in several markets in Texas, including metropolitan Fort Worth, Granbury, Weatherford, Brownwood, Henderson, Denton and Marshall. The parties abandoned the transaction before the start of the trial.

Libby, Inc. (December 18, 2001): The Commission authorized staff to seek a preliminary injunction to block Libby’s proposed \$332 million acquisition of *Anchor Hocking*, a subsidiary of Newell Rubbermaid, Inc., on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. The district court granted the Commission’s request for an injunction on April 22, 2002. An administrative complaint, issued on May 9, extend the injunction until the conclusion of the administrative proceedings. Pursuant to the delegation of authority, the Commission withdrew the matter from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

Meade Instruments Corporation (May 29, 2002): The Commission authorized staff to seek a temporary restraining order and a preliminary injunction to prevent Meade from acquiring any of the assets that could become available as a result of the pending bankruptcy proceedings in *Tasco Holdings, Inc.’s Celestron International*. According to the Commission, the purchase of the performance telescope assets would eliminate competition in that market and create a monopoly for the Schmidt-Cassegrain telescopes. Meade agreed not to submit any bid for Celestron or its assets.

Nestlé Holdings, Inc. (March 4, 2003): The Commission authorized staff to seek a preliminary injunction to block the merger of Nestlé and *Dreyer's Grand Ice Cream, Inc.* on grounds that the merger would reduce competition in the highly concentrated market for superpremium ice cream. Nestlé markets superpremium ice cream under the Häagen Dazs brand; Dreyer's superpremium brands include Dreamery, Godiva and Starbucks.

Swedish Match AB (June 22, 2000): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of *National Tobacco Company, L.P.* on grounds that the \$165 million acquisition would lessen competition in the market for loose leaf chewing tobacco and that Swedish Match's market share would increase to 60 percent. On December 14, 2000, the U.S. District Court for the District of Columbia issued a 42-page opinion granting the Commission's motion for the injunction. On December 22, 2000, the parties abandoned the transaction.

III. Commission Opinions/Initial Decisions

Swedish Match AB (January 5, 2001): The Commission dismissed the administrative complaint after Swedish Match and *National Tobacco Company, L.P.* abandoned the transaction that would give Swedish Match control of 60 percent of the loose leaf chewing tobacco market.

Tenet Healthcare Corporation (December 23, 1999): The Commission dismissed the administrative complaint that challenged the acquisition of *Doctors Regional Medical Center* in Poplar Bluff, Missouri after the United States Court of Appeals for the Eighth Circuit denied the Commission's petition for a rehearing en banc and denied the Commission's motion to stay the mandate in October 1999.

IV. Court Decisions

H.J. Heinz Company (April 27, 2001): The U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and granted the Commission's request for entry of a preliminary injunction to enjoin Heinz's proposed acquisition of *Milnot Holding Company*, the owner of the Beech-Nut Nutrition Corporation. Within minutes of the Appeals Court decision, the parties abandoned the transaction.

Swedish Match AB (Dec. 14, 2000): The U.S. District Court for the District of Columbia granted the agency's request for a preliminary injunction to block the proposed acquisition of the loose leaf chewing tobacco business of National Tobacco Company, L.P. The parties later abandoned the transaction.

Tenet Healthcare Corporation (July 22, 1999): The U.S. Court of Appeals for the Eight Circuit reversed the district court decision and dissolved the preliminary injunction mainly on geographic market grounds. The Commission's petition for rehearing was denied.

V. Order Violations

Boston Scientific Corporation (October 31, 2000): A complaint charged that Boston Scientific Corporation violated a 1995 consent order when it failed to provide *Hewlett-Packard Company* with a license to all of its intellectual property and technical information relating to intravascular ultrasound catheters. The complaint which seeks civil penalties and other equitable relief, was filed by the Department of Justice on behalf of the Commission. The trial was held in August 2002. Awaiting court decision.

VI. Other Commission Orders

H.J. Heinz Company (December 7, 2001): The Commission dismissed the Part III administrative complaint after Heinz abandoned its proposed merger with *Milnot Holding Company*, the owner of Beech-Nut Nutrition Corporation, that would combine the nation's second- and third- largest manufacturers of jarred baby food, respectively.

Tenet Healthcare Corporation (December 23, 1999): The Commission decided not to continue with administrative litigation of the complaint that charged that the proposed merger of Tenet and *Doctors Regional Medical Center* would eliminate price, cost and quality competition and put consumers at risk of paying more for health care in Poplar Bluff, Missouri. The case was dismissed under the agency's 1995 policy to determine on a case-by-case basis whether to pursue administrative litigation in merger cases after a federal court has declined to bar the companies from merging pending the outcome of an administrative trial.

VII. Complaints

Chicago Bridge & Iron Company N.V. (October 25, 2001): The Commission challenged the February 2001 purchase of the *Water Division and Engineered Construction Division* of Pitt-Des Moines, Inc. alleging that the acquisition significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. The administrative proceedings before an administrative law judge has been concluded. Awaiting the initial decision.

H.J. Heinz Company (November 22, 2000): An administrative complaint charged that the proposed acquisition of *Milnot Holding Corporation*, owner of Beech-nut Nutrition Corporation,

would substantially reduce competition in the manufacture and sale of jarred baby food in the United States. On November 1, 2000, the Commission sought an emergency stay from the Court of Appeals for the D.C. Circuit after the federal district court denied the Commission's request for a preliminary injunction. The Court of Appeals for the District of Columbia enjoined the transaction. The parties abandoned the proposed transaction and the administrative complaint was dismissed by the Commission.

Libby, Inc. (May 9, 2002): An administrative complaint charged that the proposed acquisition of *Anchor Hocking*, a wholly-owned subsidiary of Newell Rubbermaid, Inc. would substantially reduce competition in the market for soda-lime glassware sold to the food service industry in the United States. The complaint was issued after the U.S. District Court in Washington, D.C. enjoined the acquisition pending administrative adjudication. The matter was withdrawn from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

MSC. Software Corporation (October 9, 2001): An administrative complaint challenged the 1999 acquisitions of *Universal Analytics, Inc.* and *Computerized Structural Analysis & Research Corp.* alleging that MSC., the dominant supplier of advanced computer-aided engineering software known as "Nastran", acquired the other two suppliers in the market. According to the complaint, the acquisitions eliminated competition and tended to create a monopoly the market. The complaint was settled by a proposed consent agreement accepted for public comment issued August 12, 2002; the consent order became final October 29, 2002.

Swedish Match AG (December 21, 2000): An administrative complaint was issued after the United States Federal District Court for the District of Columbia granted the Commission's motion for a preliminary injunction to block Swedish Match North America from acquiring the loose leaf chewing tobacco brands of *National Tobacco Company*. The administrative complaint alleged that the acquisition would substantially reduce competition by combining the first and third sellers of loose leaf chewing tobacco in the United States. According to the complaint, if the acquisition were consummated, Swedish Match would gain a market share of 60 percent in U.S. sales. The Commission dismissed the administrative complaint after the parties abandoned the transaction.

VIII. Other

Best Practices Analysis for Merger Review Process (Announced March 15, 2002): The Commission conducted "brown bag" public workshops in Chicago, Los Angeles, New York, San Francisco, and Washington, DC during 2002 to solicit input from a broad range of interest groups who have participated in the Commission's or the Department of Justice's merger review process. The areas under consideration included:

- the initial waiting period under HSR;
- the content and scope of the second request;

- negotiation of modifications to the second request;
- special issues concerning electronic records and accounting of financial data.

Suggested remedies include:

- the package of assets to be divested;
- the manner of a proposed divestiture;
- the proposed buyer of divested assets;
- the Buyer Up Front;
- the use of Fix-It-First;
- the use of Crown Jewel Provisions;
- third party rights;
- the risks to competition and to the parties;

Workshops held:

- Electronic Records (June 5, 2002) Washington, DC
- General Session on Best Practices for Merger Investigations (June 5, 2002) San Francisco, CA
- General Session on Best Practices for Merger Investigations (June 12, 2002) Chicago, IL
- General Session on Best Practices for Merger Investigations (June 25, 2002) Los Angeles, CA
- General Session on Best Practices for Merger Investigations (June 27, 2002) Washington, DC
- Workshop on Accounting and Financial Data (July 10, 2002) Washington, DC

Business-to-Business (Report Announced October 26, 2000): A staff report, “*Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces*” discusses information gathered and antitrust issues addressed at the public workshop held at the headquarters building of the Federal Trade Commission in Washington, D.C. June 29 - 30, 2000. Business-to-Business (B2B) electronic marketplaces use the Internet to electronically connect businesses with each other, primarily for the purposes of buying and selling a wide variety of goods and services.

- Public Workshops held May 7 - 8, 2001 explored certain competition issues that arise in connection with B2B and business to consumer (B2C) e-commerce. The workshop continued the dialogue initiated at the June 2000 workshop.

Clayton Act – Section 8 (Effective January 29, 2003): Changes in two threshold figures, based on the change in the Gross National Product, define when it is unlawful for an individual to serve as an officer or director of two or more competing corporations: (1) each of the two companies has capital, surplus and undivided profits in excess of \$18,193,000; and (2) the competitive sales of each corporation exceed \$1,819,300.

A Study of the Commission’s Divestiture Process (Released for Comments August 6, 1999): The staff report evaluates divestiture orders entered between 1990 and 1994 and

discusses factors that make divestitures more successful. The report, released for public comment, concludes with recommendations designed to ensure more effective divestitures in the future

Guidelines for Merger Investigations (Announced by Joseph Simons, Director, Bureau of Competition, December 11, 2002 at the Conference on “Current Topics in Merger and Antitrust Enforcement”, Washington, DC): The Guidelines represent the first outcome of the ***Best Practices Workshop*** which began March 2002. www.ftc.opa/2002/12/mergerguides
Primary components:

- Witnesses will be able to obtain investigational hearing transcripts.
- Documents will no longer have to be sorted or identified by specification.
- Second sweeps will be avoided whenever possible.
- Copies of opinions issued by the Commission’s General Counsel in appeal situations stemming from failed negotiations between staff and the parties involved in a second request will be posted on the Federal Trade Commission’s Web site. In addition, certain second requests and modification letters will also be posted to provide guidance for future investigations.
- In response to second requests, parties will be able to submit documents and other materials in an electronic format rather than in hard copy.
- Sample products are no longer required by Specification 5(a) of the Model Second Request.

Merger Efficiency Roundtable (December 9 - 10, 2002; Washington, DC): Experts in mergers and acquisitions from the academic, consulting, and business communities gave presentations on how to determine whether a proposed transaction is likely to generate efficiencies.

Merger Remedies - Second Workshop (October 23, 2002; New York, New York): Workshop, co-hosted by the Antitrust and Trade Regulation Committee of The Association of the Bar of the City of New York, was designed to gather information from a broad range of interested parties regarding consent order remedies in merger and acquisition matters.

II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement

A. Court Decisions

The Hearst Trust and The Hearst Corporation (October 11, 2001): Hearst and its subsidiary paid a \$4 million civil penalty to settle charges that they failed to include required documents in the notification and report form file in 1998 for the proposed acquisition of Medi-Span International, Inc. The complaint alleged that the omitted documents hindered the antitrust agencies in their review and analysis of the proposed acquisition. The complaint, stipulation and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General. During fiscal year 2001, the Commission filed a related complaint for a permanent injunction alleging that Hearst and First DataBank created a monopoly through the acquisition of Medi-Span, First DataBank's only other competitor selling software and data detailing information for pharmaceutical prices, descriptions, dosages, and interactions. The Final Order and Stipulation requiring divestiture and disgorgement of profits was entered December 18, 2001.

B. Consent Orders

Blackstone Capital Partners II Merchant Banking Fund L.P. (March 31, 1999): Blackstone and one of its general partners, Howard A. Lipson, paid \$2,835,000 to settle charges that they failed to file notification before acquiring the *Prime Succession, Inc.* chain of funeral homes. When the Blackstone notification and report form was submitted, Mr. Lipson certified the filing to be "true, correct and complete". That filing contained no documentation relating to the Prime acquisition, later discovered by the antitrust agencies through documentation submitted by another filing person in an unrelated transaction. Under terms of the settlement, Blackstone will pay \$2,785,000; Mr. Lipson will pay \$50,000. This is the first time HSR civil penalties have been imposed on an individual for improper certification of an HSR Notification and Report Form. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.

The Laitram Corporation (April 12, 1999): Input/Output, Inc. and The Laitram Corporation each paid \$225,000 in civil penalties to settle charges that Input/Output merged its operations with Laitram's DigiCOURSE subsidiary before observing the statutory waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. According to the complaint, the parties filed notification under HSR in October 14, 1998, but Input/Output began its control over DigiCOURSE on October 10, 1998. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.

C. Complaints (Complaints filed as part of a consent agreement not listed separately)

None

D. Rules and Formal Interpretations

Hart-Scott Rodino Reform (Amended Final Rules, Published March 12, 2002):

- Amendments to Parts 801 and 802 of the Premerger Notification Rules.
- Amendments to Section 802.21: Acquisitions of voting securities not meeting or exceeding greater notification threshold.

Hart-Scott-Rodino Reform (Effective February 1, 2001): Significant changes in the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

- The size of transaction threshold increases from \$15 million to over \$50 million. The 15 percent size of transaction threshold is eliminated.
- Transactions valued at more than \$200 million will be reportable without regard to “size of person”. The current size of person test will continue to be in place for transactions valued at \$200 million or less.
- All dollar thresholds will be adjusted each fiscal year, beginning with fiscal year 2005, to reflect changes in the gross national product during the previous year.
- A tiered fee structure replaces the standard \$45,000 filing fee for all reportable transactions. Companies will now pay \$45,000 for transactions valued at less than \$100 million, \$125,000 for transactions valued at \$100 million to less than \$500 million, and \$280,000 for transactions valued at \$500 million or more.
- The length of the waiting period that follows substantial compliance with a second request for additional information will become 30 days for most transactions (instead of 20 days under the current law).
- Whenever the end of any waiting period falls on a Saturday, Sunday or legal holiday, the official end of the waiting period will end on the next regular business day.

Second Requests Procedures (Effective April 5, 2000): Four new procedures and initiatives adopted to improve the handling of second request investigations issued by the Commission.

- Prior to issuance, all second requests will be reviewed by the senior management staff of the Bureau of Competition.
- Within five business days following the issuance of a second request the Bureau of competition and the parties in the proposed transaction will conference to discuss the competitive issues raised in the proposed acquisition.
- The Bureau of Competition staff will respond to party requests for modifications of the second requests within five business days.

- The parties will have recourse to the Commission's General Counsel for resolution of second request modification issues not resolved after discussion with staff.

Affidavits and Certifications - Formal Interpretation 16 (Effective **September 24, 1999**): The number of originally signed and notarized affidavits and certification pages required with each premerger notification filing has been changed. Parties were required to submit five original affidavits and certifications. Under new Formal interpretation 16, only one original and four duplicate copies of affidavits and certification pages are now required.

Limited Liability Companies – Formal Interpretation 15 (Effective **March 1, 1999**): Creation of an LLC which unites two or more independently-owned business under common control may be subject to the reporting requirements of the HSR Act, if the size thresholds of the HSR Act are met.

- Minor amendments announced **March 20, 2001**: The changes reflect the new \$50 million filing threshold and the revision of a footnote to reflect the size-of-person test for transactions valued at more than \$200 million.

E. Other

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (March 1999): Twenty-first Annual Report (Fiscal Year 1998).

1999 Premerger Notification Source Book (April 1999): A compilation of the Hart-Scott-Rodino Rules and Regulations; Federal Register Publications; Form Filing Information; Formal Interpretations; Press Releases; Speeches; Annual Report and the 1997 Horizontal Merger Guidelines. The 1999 Source Book replaces the 1990 version. Available from the U.S. Government Printing Office (stock number 018-000-00361-9).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (August 18, 2000): Twenty-second Annual Report (Fiscal Year 1999).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (April 30, 2001): Twenty-third Annual Report (Fiscal Year 2000).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (September 27, 2002): Twenty-fourth Annual Report (Fiscal Year 2001).

III. Non-Merger Enforcement

HORIZONTAL ENFORCEMENT

A. Commission Opinions/Initial Decisions

PolyGram Music Group (The Three Tenors) (June 28, 2002): An administrative law judge upheld the administrative complaint generally known as *The Three Tenors* and involving respondents PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation. The complaint charged PolyGram with entering into an illegal price fixing agreement not to advertise or discount earlier albums and video recordings of concerts featuring the Three Tenors in an effort to promote the latest concert, thought to be less appealing to the public. The judge ordered the respondents to cease and desist from entering into “any combination, conspiracy, or agreement” - with producers or sellers at wholesale of audio or video products - to “fix, raise, or stabilize prices or price levels” in connection with the sale in or into the United States of any audio or video product.

Schering-Plough Corporation (July 2, 2002): An administrative law judge dismissed all charges of anticompetitive conduct cited in an administrative complaint issued in March 2001. According to the judge’s opinion, complaint counsel did not “prove or properly define” the relevant product market and Schering did not exercise monopoly power in the relevant market described in the complaint. The complaint charged that Schering illegally paid Upsher-Smith Laboratories millions of dollars to delay the entry of generic versions of Schering’s branded K-Dur 20, a widely prescribed potassium chloride supplement.

Summit Technology and VISX (February 7, 2001): On June 4, 1999 an administrative law judge dismissed charges against VISX, a key developer of laser eye surgery equipment and technology, known as photo refractive keratectomy (PRK). According to the 1998 administrative complaint, VISX and Summit Technology, the only two firms legally able to market equipment for PRK, placed their competing patents in a patent pool and shared the proceeds each and every time a Summit or VISX laser was used. The administrative law judge also dismissed charges that VISX acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office, ruling that complaint counsel failed to present evidence that an act of fraud was committed since information was not willfully withheld from the patent office. A final order settled the price fixing allegations in the 1998 complaint. On February 7, 2001, the Commission dismissed its complaint after the U.S. patent and Trademark Office issued a Reexamination Certificate of U.S. Patent No. 5,108,388.

B. Court Decisions

California Dental Association (September 5, 2000): The Court of Appeals for the Ninth Circuit by a vote of 3-0 issued an opinion that the Commission failed to prove that the association of dentist in California engaged in anticompetitive advertising restrictions under the rule-of-reason analysis. The court vacated and remanded the complaint with instructions that the Commission dismiss the 1993 administrative complaint against the association. The administrative complaint was dismissed February 15, 2001.

C. Authorizations to Seek Preliminary/Permanent Injunctions

None

D. Consent Orders

Abbott Laboratories and Geneva Pharmaceuticals, Inc. (Final Orders May 22, 2000): Abbott and *Geneva Pharmaceuticals* settled charges that the two firms entered into an illegal agreement to stop the marketing and development of a competing generic drug. According to the complaint, Abbott, manufacturer of Hytrin – the brand name for terazosin HCL, a prescription drug used to treat hypertension and benign prostatic hyperplasia, entered into an agreement with Geneva Pharmaceuticals whereby Abbott would pay Geneva millions of dollars not to market a generic version of Hytrin. The orders barr Abbott and Geneva, among other things, from entering into agreements in which a generic company agrees with a manufacturer of a branded drug to delay or stop the production of a competing drug. This provision remains in effect for a period of ten years.

Alaska Healthcare Network (Final Order April 25, 2001): An association of 86 physicians practicing in the Fairbanks, Alaska area settled charges that the Alaskan Healthcare Network illegally formulated a fee schedule based on its members' current prices for use in negotiations with third-party payers in an effort to obtain higher prices for medical services.

American Home Products Corporation (Final Order April 5, 2002): A consent order settled charges that American Home Products entered into an anticompetitive agreement with Schering-Plough Corporation to delay the entry of a low-cost generic drug that would be in direct competition with a branded version developed and manufactured by Schering. According to the complaint issued with the consent, Schering illegally paid American Home millions of dollars to delay the entry and sale of its generic version of Schering's K-Dur 20, a drug used to treat patients who suffer from insufficient levels of potassium, a condition that could lead to cardiac problems. The consent order, which expires in 10 years, prohibits American Home from entering into such agreements in the future. On July 2, 2002, an administrative law judge issued an initial decision dismissing the administrative complaint that challenged Schering's agreement

with American Home and a similar anticompetitive agreement with Upsher-Smith Laboratories.

American Institute for Conservation of Historic and Artistic Works (Final Order October 30, 2002): A consent order settled charges that the American Institute for Conservation of Historic and Artistic Works adopted and enforced provisions in its rules of conduct that prohibited professional conservators to work for free or at reduce fees. The association agreed to remove all provisions from its Code of Ethics, and its Commentaries to the Guidelines for Practice that are inconsistent with the order. Professional conservators manage and preserve cultural objects (including historical scientific, religious, archaeological and artistic objects).

Asociacion de Farmacias Region de Arecibo (Final Order March 2, 1999): A pharmacy association in northern Puerto Rico and Ricardo Alvarez Class settled charges that they engaged in an illegal boycott in an attempt to obtain higher reimbursement rates for pharmacy goods and services under the government's managed care plan for the indigent. The consent order prohibits the members of the association and Mr. Class from engaging in joint negotiations for prices and from threatening to boycott or refusing to provide pharmacy services.

Aurora Associated Primary Care Physicians, L.L.C. (Final Order July 19, 2002): A consent order settled charges that the organization of internists, pediatricians, family physicians and general practitioners in the Aurora, Colorado area engaged in boycotts and entered into collective negotiations with health care insurers in an effort to increase the costs of physician services. The order prohibits the organization from entering into any agreement with insurance payers or providers to negotiate fees on behalf of the physicians group.

Bertlesmann Music Group, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs (CD) at or above the minimum advertised price (MAP) set by distribution companies in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Bertlesmann and four other firms, *Universal Music and Video Distribution Corporation and UMG Recordings, Inc., Time-Warner Inc., EMI Music Distribution, and Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Biovail Corporation (Final Order October 2, 2002): The Commission charged Biovail Corporation with illegally acquiring an exclusive patent license for Tiazac, a pharmaceutical used to treat high blood pressure and chronic chest pain. The complaint further alleged that Biovail, in an effort to maintain its monopoly, wrongfully listed the acquired patent license in the U.S. Food and Drug Administration's "Orange Book" for the purpose of blocking generic competition to its branded Tiazac. The consent order requires Biovail to divest part of its exclusive rights to DOJ; prohibits the firm from taking any action that would trigger additional statutory stays on final

FDA approval of a generic form of Tiazac; and also prohibits Biovail from wrongfully listing any patents in the Orange Book for a product for which the company already has a New Drug Application from the FDA.

Biovail Corporation and Elan Corporation (Final Order August 20, 2002): A consent order settled charges that Biovail and Elan Corporation entered into an agreement that contain substantial monetary incentives not to compete in the market for specified dosages of generic forms of Adalat CC, a drug used to treat hypertension. The final consent order requires the companies to terminate their agreement and prohibits them from entering into similar agreements in the future. *This is the Commission's first enforcement action involving an allegedly anticompetitive agreement between two competing generic drug manufacturers.*

Bristol-Myers Squibb Company (Proposed Consent Agreements Accepted for Public Comment): Bristol-Myers Squibb Company (BMS) agreed to settle charges that it engaged in illegal business practices to delay the entry of three low price generic pharmaceuticals that would be in direct competition with three of its branded drugs. The complaint alleged that BMS purposely made wrongful listings with the U.S. Patent and Trademark Office and that it also paid a potential competitor over \$70 million to delay the entry of its generic drug. The three drugs involved in the complaint are: *Taxol* (containing the active ingredient paclitaxel) – used to treat ovarian, breast, and lung cancers; *Platinol* (containing the active ingredient cisplatin) – used for the treatment of various forms of cancer; and *BuSpar* (containing the active ingredient buspirone) – used to manage anxiety disorders.

Capitol Records, Inc. dba "EMI Music Distribution" (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. *EMI Music Distribution*, and four other firms, *Bertlesmann Universal Music and Video Distribution Corporation* and *UMG Recordings, Inc., Time-Warner Inc.,* and *Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Chrysler Dealers (Final Order October 22, 1998 - ***Fair Allocation System***): An association of 25 automobile dealerships settled charges that they agreed to boycott Chrysler if the manufacturer continued to allocate vehicles based on total sales. Competing dealers marketed vehicles offering lower prices on the Internet and were taking substantial sales from other dealers in the Northwest. The consent order prohibits the dealers from threatening to enter into any boycott or refusal to deal with any automobile manufacturer or consumer.

Colegio de Cirujanos Dentistas de Puerto Rico (Final Order June 12, 2000): The dental

association with a membership of more than 1800 dentists practicing in Puerto Rico agreed not to encourage its members to enter into agreements that set or fixed the fees charged or terms and conditions under which dentists would deal with health insurance plans or other payers in an attempt to obtain higher reimbursement rates for dental services.

Columbia River Pilots (Final Order March 1, 1999): A consent order prohibits licensed marine pilots in the State of Oregon from imposing unreasonable noncompete agreements, allocating customers and engaging in exclusive dealing contracts for the provision of piloting services on the Columbia River.

Dentists of Juana Diaz, Cuamo and Santa Isabel, Puerto Rico (Final Order February 12, 1999): Dentists in three communities in Puerto Rico settled charges that they refused to provide dental services under the government's managed care plan for the indigent unless they received certain prices. Under the terms of the consent order, the dentists are prohibited from jointly boycotting or refusing to deal with any third party payer to obtain higher reimbursement rates for dental services.

FMC Corporation and Asahi Chemical Industry Co. Ltd. (Final Order June 12, 2002): A consent order settled charges that FMC and Asahi Chemical Industry Co. Ltd. of Japan entered into a conspiracy to divide the world market for microcrystalline cellulose (MCC), a binder used in making pharmaceutical tablets, into two territories. According to the complaint, FMC allegedly agreed not to sell the pharmaceutical to customers in Japan or East Asia without Asahi Chemical's consent, while Asahi Chemical agreed not to sell the pharmaceutical to customers in North America or Europe without the consent of FMC. The final order prohibits such behavior in the future and restricts FMC from acting as the U.S. distributor for any competing manufacturer of microcrystalline cellulose (including Asahi Chemical) for 10 years. In addition, for five years, FMC is prohibited from distributing in the United States any other product manufactured by Asahi Chemical.

Geneva Pharmaceuticals (Final Order May 22, 2000): Refer to discussion under Abbott Laboratories.

Hoechst Marion Roussel (recently renamed Aventis as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.) (Final Order April 2, 2001): A consent order settled allegations in an administrative complaint that charged that Hoechst agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Hoechst's branded Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina. The consent order prohibits the companies from entering into agreements designed to restrict the entry of generic competitors in an attempt to monopolize relevant markets .

Mesa County Physicians IPA (Final Order May 4, 1999): A Colorado physicians' organization settled charges issued in an administrative complaint alleging that the Mesa County IPA conspired with its members to increase prices for physician services and thereby prevented

third party payers such as preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives from offering alternative health insurance programs to consumers in Mesa County.

Michael T. Berkley, D.C. and Mark A. Cassellius, D.C. (Final Order April 11, 2000): A consent order settled charges that Drs. Michael T. Berkley and Mark A. Cassellius conspired to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan in an attempt to obtain higher reimbursement for chiropractic services in the La Crosse, Wisconsin area.

National Academy of Arbitrators (Final Order January 13, 2003): The National Academy of Arbitrators is prohibited from adopting policies that restrict its members from advertising truthful information about their services including prices and conditions of services under terms of a consent order. The association is required to remove all provisions that do not conform to the provisions in the consent order from: (1) its Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; (2) its Formal Advisory Opinions; (3) any Statements of Policy; and (4) its Web site.

Nine West Group Inc. (Final Order April 11, 2000): Nine West Group Inc. settled charges that it entered into agreements with retailers; coerced other retailers into fixing the retail prices for their shoes; and restricted periods when retailers could promote sales at reduced prices. The order prohibits Nine West from fixing the price at which dealers may advertise, promote or sell any product. Nine West is one of the country's largest suppliers of women's shoes.

North Lake Tahoe Medical Group, Inc. (Final Order July 21, 1999): Physicians practicing in the North and South Lake Tahoe areas settled charges that they conspired to fix the prices and terms for professional services. The consent order prohibits the IPA from engaging in collective negotiations to fix prices; refusing to deal with third party payers; and coercing payers into accepting IPA fee schedules and minimum reimbursement rates.

Obstetrics & Gynecology Medical Corporation of Napa Valley (Final Order May 14, 2002): A doctors' group consisting of nearly every obstetrician and gynecologist with active medical staff privileges at the two general acute care hospitals in Napa County, California settled charges that they restrained price and other competition by engaging in illegal agreements to fix fees and other terms of dealing with health care insurance plans. According to the complaint issued with the consent order, the doctors refused to deal with the third party payers except on collectively determined terms. The consent order not only prevents the doctors from engaging in similar practices in the future but also requires the dissolution of the group.

Professional Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia A. Brauchler (Final Order July 19, 2002): A consent order settled charges that a Denver, Colorado physician organization and its members, its president, Dr. M. J. Guese, and its non-physician consultant, M. A. Brauchler, increased fees for services through collective boycotts and

agreements in a effort to fix the prices they would receive from health care insurance payers. The order prohibits the organization and its members and other respondents from entering into any agreement with insurance payers or providers to negotiate on behalf of the physicians group.

Sensormatic Electronics Corporation (Final Consent Order April 6, 1998): Refer to the discussion under Checkpoint Systems, Inc.

Professionals in Women's Care (Final Order October 2, 2002): Eight Denver, Colorado physician groups specializing in obstetrics and gynecology and their non-physician agent settled allegations that the practice group and other physicians entered into collective contracts in an effort to increase prices and terms of services when dealing with health insurance firms and other third-party payers. The consent order prohibits the following respondents from entering into such agreements in the future: R.T. Welter and Associates, Inc.; R. Todd Welter; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OG/GYN Associates, P.C.; The OB-GYN, P.C.; The Women's Health Group, P.C.; Cohen and Womack, M.D., P.C.; and Westside Women's Care, L.L.P.

Sony Music Entertainment (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy, the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Sony Music Entertainment and four other firms, *Bertlesmann*, *Universal Music and Video Distribution Corporation* and *UMG Recordings, Inc.*, *Time-Warner Inc.*, and *EMI Music Distribution*, represent approximately 85 percent of all CD's purchased in the United States.

South Lake Tahoe Lodging Association (Final Order October 7, 1998): Consent order prohibits the association from entering into agreements that restrict its members from posting or advertising room rates for lodgings in the South Lake Tahoe area of Northern California and Nevada.

Southern Valley Pool Association (Final Order November 1, 1999): A consent order prohibits fourteen Bakersfield, California pool construction contractors from entering into any agreement or conspiracy to substantially raise and set swimming pool construction prices. The order also prohibits the contractors from refusing to deal with owner-builders or home construction contractors or developers.

Summit Technology, Inc. (Final Order February 23, 1999): Summit Technology and VISX, Inc., two ophthalmic laser manufacturers, settled charges that they fixed prices by establishing a patent pool to share their proceeds. The consent order prohibits each firm from engaging in any

price fixing practices and from restricting each other's sales or licensing of their photorefractive keratectomy, eye surgery that uses lasers to correct vision.

System Health Providers (Final Order August 20, 2002): System Health Providers and its parent corporation, Genesis Physicians Group, Inc., settled charges that they collectively bargained with health insurance firms to accept proposed fee schedules; discouraged members from entering into contracts directly with payers; and refused to deal with health insurance firms and other third-party payers except on collectively agreed upon terms. The order prohibits the recurrence of the alleged practices and actions.

Texas Surgeons, P.A. (Final Order May 18, 2000): General surgeons and six competing general surgery practice groups in the Austin, Texas area settled charges that they collectively refused to deal with two health plans, forcing the plans to accept the surgeons' demands to raise surgical rates.

Time Warner, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Time-Warner Inc. and four other firms, Bertlesmann, *Universal Music and Video Distribution Corporation and UMG Recordings, Inc., EMI Music Distribution, and Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Universal Music and Video Distribution Corporation and UMG Recordings, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Universal Music and Video Distribution and four other firms, Bertlesmann,, *Time-Warner Inc., EMI Music Distribution, and Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Warner Communications Inc. (Final Order September 17, 2001): Warner Communications, Inc. and Vivendi Universal S.A. settled charges that they entered into agreements to fix prices and restrict advertising. According to the complaint issued with the consent order, the two firms formed a joint venture to distribute compact discs, cassettes, videocassettes of the public

performances of the *Three Tenors*. The venturers agreed not to advertise or discount the 1990 and 1994 concerts of the *Three Tenors* in an effort to restrict competition with the 1998 concert. The 1998 concert was thought to be less appealing and not as popular as the earlier performances. The consent order prohibits the firms from restraining competition by entering into agreements fix prices or restrict advertising in the future.

Wisconsin Chiropractic Association (Final Order May 18, 2000): The Wisconsin Chiropractic Association and its executive director, Russell A. Leonard, settled charges that they conspired to fix the prices for chiropractic goods and services and to boycott third party payers in an attempt to obtain higher reimbursement rates for services and contracts in the La Crosse, Wisconsin area.

E. Complaints

Hoechst Marion Roussel (March 16, 2000): An administrative complaint charged that Hoechst Marion Roussel (recently renamed *Aventis* as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.), the manufacturer of Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina, agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Cardizem CD. According to the complaint, Hoechst and Andrx conspired to create a monopoly in the market for diltiazem. A consent order entered May 11, 2001 settled the charges.

PolyGram Music Group (The Three Tenors) (July 30, 2001): An administrative complaint charged that the Warner and PolyGram Music Group joint venture agreed not to discount or advertise the 1990 and 1994 *Three Tenors* albums and videos in an attempt to promote the 1998 Three Tenors concert. The complaint further alleged that the parties to the venture, formed to distribute compact discs, cassettes and video cassettes, was concerned that the 1998 performance would not be as well received as the earlier recordings. An initial decision upheld the complaint.

Rambus, Inc. (June 19, 2002): An administrative complaint charged that between 1991 and 1996, Rambus joined and participated in the JEDEC Solid State Technology Association (JEDEC), the leading standard-setting industry for computer memory. According to the complaint, JEDEC rules require members to disclose the existence of all patents and patent applications that relate to JEDEC's standard-setting work. While a member of JEDEC, Rambus observed standard-setting work involving technologies which Rambus believed were or could be covered by its patent applications, but failed to disclose this to JEDEC. In 1999 and 2000, after JEDEC had adopted industry-wide standards incorporating the technologies at issue and the industry had become locked in to the use of those technologies, Rambus sought to enforce its patents against companies producing JEDEC-compliant memory, and in fact has collected substantial royalties from several producers of DRAM (dynamic random access memory).

Schering - Plough Corporation (March 30, 2001): The complaint alleged that Schering -

Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with *Upsher-Smith Laboratories* and *American Home Products Corporation* to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher-Smith \$60 million and paid American Home \$15 million to keep the low-cost generic version of the drug off the market. Litigation was conducted in January before an administrative law judge. The charges against American Home were settled by a proposed consent agreement accepted for comment on February 19, 2002. An initial decision filed July 2, 2002 dismissed all charges against Schering - Plough, Upsher-Smith Laboratories and American Home Products Corporation.

Union Oil Company of California (March 4, 2003): An administrative complaint charged that Union Oil Company of California (Unocal) made misleading statements concerning its emissions results for the production of “summer-time” gasoline mandated by the California Air Resources Board (CARB) for use March through October. According to the complaint, Unocal lead producers of the CARB gasoline to believe that its research was non-proprietary and in the public interest, while at the same time it failed to disclose that it had patent pending claims on the research results with the U.S. Patent and Trademark Office. As a result of the patent being allowed, Unocal is now in a position to enforce its patent rights – requiring companies that produce the “summer-time” CARB gasoline to pay substantial royalties to Unocal if they use the patented technology.

F. Other

Public Documents/Policy Statements/Conferences

FTC Antitrust Actions in Pharmaceutical Services and Products (November 8, 2002): Summary of health care antitrust matters involving the pharmaceutical industry and enforcement policy prepared by the FTC Health Care Services and Products Division Staff.

Second Public Conference on the U.S. Oil and Gasoline Industry (May 2002): From May 6 - 9, 2002, the Commission held a second public conference to examine factors that affect prices of refined petroleum products in the United States. The goal of the conference was to solicit information and views on the major factors affecting the prices of refined petroleum products, along with the relative importance of such factors.

Refined Petroleum Products in the United States (Public Conference August 2, 2001): A public conference was held to examine factors that affect prices of refined petroleum prices in the United States. The participants included consumer groups, industry participants, and independent experts - parties that can focus on domestic and international aspects of gasoline industry.

Midwest Gas Price Investigation (March 30, 2001): The final Commission Report found that there was no evidence of collusion or other anticompetitive conduct by the oil industry to cause gasoline price spikes during the spring and summer of 2000. The nine-month investigation identified several key factors that contributed to the price increases: refinery production problems; errors in estimating the potential for supply shortages in the Midwest.

Commission Studies/Guidelines

Generic Drug Entry Prior to Patent Expiration: An FTC Study (Released July 30, 2002): The Commission recommends changes to the Hatch-Waxman Amendments to permit only one automatic 30-month stay per drug product, per generic entry application, and to resolve infringement disputes over patents listed in the “Orange Book” prior to the filing of a generic’s entry application. By limiting the availability of 30-month stays to one per drug product, per generic application, the report concludes that generic entry by other firms would be facilitated. In addition, the Commission supports S.754, The Drug Competition Act, to require brand-name companies and first generic applicants to provide copies of certain agreements to the Federal Trade Commission and the Department of Justice.

Study of U.S. Generic Drug Competition (Proposed Study Announced in the Federal Register Notice February 23, 2001): The Commission proposes to conduct a study of generic drug competition to study the business relationships between brand-name and generic drug manufacturers to ensure that agreements between the two do not delay competition from generic versions of patent-protected drugs. In addition, the proposed study would enable the Commission to provide a more complete picture of how generic competition has developed under the Hatch-Waxman Act.

Antitrust Guidelines for Collaborations Among Competitors, Issued by the Federal Trade Commission and the United States Department of Justice (April 2000): Guidelines explain how the Agencies analyze certain antitrust issues raised by collaborations among competitors. Also included are separate statements by Commissioner Thompson and Commissioner Leary.

Advisory Opinions

PriMed Physicians (February 6, 2003): Proposal by physician group to create with other Dayton, Ohio area physicians an advocacy group to undertake “a campaign to inform and educate the general public” of policies and procedures by third party payers in Dayton.

Joint FTC and DOJ letter urging Council of the North Carolina State Bar to approve a proposed opinion that would explicitly permit non-lawyers to compete with lawyers to perform real estate closings. (July 11, 2002)

MedSouth, Inc. (February 21, 2002): A multi-specialty physician practice association in Denver, Colorado intends to operate a nonexclusive physician network joint venture.

Connecticut Hospital Association (December 20, 2001): The applicability of the Non-Profit Institutions Act to sales of pharmaceuticals by its member hospitals to their retired employees.

Harvard Vanguard Medical Associates, Inc. (December 18, 2001): Sale of pharmaceuticals by non-profit, multi-specialty medical clinic to employees and to patients treated at the clinic.

Northeast Pharmacy Service Corporation (July 27, 2000): Network of independent pharmacies in Massachusetts and Connecticut offering a package of medication-related patient care service.

BJC Health System (November 9, 1999): Sale of pharmaceuticals by non-profit hospital system to the system's employees, affiliated managed care program enrollees, and home care subsidiary.

Orange Pharmacy Equitable Network (May 19, 1999): Network of retail pharmacies and pharmacists offering drug product distribution and disease management services.

Wesley Health Care Center, Inc. (April 29, 1999): Sale of pharmaceuticals by non-profit skilled nursing facility to volunteers working at the facility.

Advocacy Filings

Competition and the Effects of Price Controls in Hawaii's Gasoline Market (January 28, 2003)

In the Matter of Application for FDA Approval to Market a New Drug; Patent Listing Requirements; Comments of the FTC Before the HHS and FDA (December 23, 2002)

FTC/DOJ Comments on the American Bar Association's Proposed Model Definition of the Practice of Law (December 20, 2002)

Ohio House Bill 325 - Physician Collective Bargaining (October 16, 2002)

Bill No.S04522 (New York Motor Fuel Marketing Practices Act); /Bill No. A06942 (An Act to Amend the General Business Law, in Relation to the Operation of Retail Service Stations) (August 8, 2002)

Proposed North Carolina State Bar Opinions Concerning Non-Attorneys' Involvement

in Real Estate Transactions (July 11, 2002)

Proposed Bill H.7462, Restricting Competition from Non-Attorneys in Real Estate Closing Activities (March 29, 2002)

The Threat of Consumer Harm Resulting from Physician Collective Bargaining Under Alaska Senate Bill 37 (March 22, 2002)

Virginia Senate Bill No. 458, "Below-Cost sales of Motor Fuels" (February 15, 2002)

Washington House Bill 2360, Physician Antitrust Immunity (February 8, 2002)

Alaska Senate Bill 37, Physician Antitrust Immunity (January 18, 2002)

North Carolina State Bar Opinions Restricting Involvement of Non-Attorney in Real Estate Closings and Refinancing Transactions (December 14, 2002)

Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform (July 20, 2002)

Arkansas Public Service Commission: Market Power Analysis (April 14, 2000)

FDA: Citizen Petitions (March 2, 2000)

Response to Chairman Bliley: Electricity Competition and Reliability Act (January 14, 2000)

Texas Physician Collective Bargaining Letter to the Texas Legislature (May 13, 1999)

FDA: 180-Day Marketing Exclusivity for Generic Drugs (November 4, 1999)

District of Columbia City Counsel - Letter to D.C. City Counsel on Bill to Permit Physicians to Collectively Bargain with Health Plans (October 29, 1999)

Market Power and Consumer Protection Issues Involved with Encouraging Competition in the U.S. Electric Industry: A Public Workshop (Federal Register Notice April 15, 1999) Primary topics of discussion: market power -- evaluating and addressing horizontal market power concerns in generation-- and consumer protection -- disclosures by electric service providers of environmental attributes of power they are selling. The workshop provided a forum for discussing the experience under policies that have been implemented at the state level and did not attempt to provide all of the answers to a complex set of issues that vary by region and locale.

Workshops/Hearings

Healthcare

Healthcare Impact of Competition Law & Policy on the Cost, Quality and Availability of Healthcare and the Incentives for Innovation in the Field. September 9 - 10, 2002 Workshop, Washington, DC. www.ftc.gov/ogc/healthcare

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. February 26 - 28, 2003, Washington, DC. Examined the state of the healthcare market place and the role of competition, antitrust, and consumer protection in satisfying citizens' preferences for high-quality, cost-effective healthcare. *DOJ Internet Site*

Intellectual Property and Patent Law

Intellectual Property Law and Policy - Roundtable Discussion (October 25, 2002)

- Competition, Economic, and Business Perspectives on Patent Quality and Institutional Issues: Competitive Concerns, Prior Art, Post-Grant Review, and Litigation

- Competition, Economic, and Business Perspectives on Substantive Patent Law Issues: Non-Obviousness and Other Patentability Criteria

- Antitrust Law and Patent Landscapes

- Standard Setting Organizations: Evaluating the Anticompetitive Risks of Negotiating Intellectual Property Terms and Conditions Before a Standard is Set

- Relationships Between Competitors and Incentives to Compete: Cross Licensing of Patent Portfolios, Grantbacks, Reach-Through royalties, and Non-Assertion Clauses

www.ftc.gov/opp/intellect/index

Antitrust and Intellectual Property Law and Policy

- Patent Pool and Cross-Licensing: When Do They Promote or Harm Competition? (April 17, 2002)

- Standard-Setting Practices: Competition, Innovation and Consumer Welfare to Deal? (April 18, 2002)

- The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal? (May 1, 2002)

- Patent Settlements: Efficiencies and Competitive Concerns (May 2, 2002)

- Antitrust Analysis of Licensing Practices (May 14, 2002)

- An International Comparative Law Perspective on the Relationship Between Competition and Intellectual Property, Parts I and II (May 22 - 23, 2002)

Competition and Intellectual Property Policy

- Cross-Industry Perspectives on Patents (April 9, 2002)

- Substantive Standards of Patentability (April 10, 2002)

- Patenting Procedures, Presumptions, and Uncertainties (April 10, 2002)
- Patentable Subject Matter - Business Method and Software Patents (April 11, 2002)
- Patent Criteria and Procedures - International Comparisons (April 11, 2002)

Hearings to Focus on the Implications of Competition and Patent Law and Policy (February 6, 2002): The Commission and the Antitrust Division of the Department of Justice announced joint hearings to examine the implications of competition and patent law and policy for innovation and other aspects of consumer welfare.

- Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy (February 6, 2002)
 - Patent Law for Antitrust Lawyers (February 8, 2002)
 - Antitrust Law for Patent Lawyers (February 8, 2002)
 - Economic perspectives on Intellectual Property; Competition and Innovation (February 20, 2002)
 - Business and Economic Perspectives on Real-World Experiences with Patents (February 25 - 28, 2002)
 - Business and Other Perspectives on Real-World Experiences with Patents (March 19 - 20, 2002)

Other

Anticompetitive Efforts to Restrict Competition on the Internet - A Workshop (October 8 - 10, 2002 Washington, DC): Public workshop explored possible anticompetitive efforts to restrict competition on the Internet.

Federal Circuit Jurisprudence: Jurisdiction, Choice of Law, and Competition Policy Perspectives (July 11, 2002)

Slotting Allowances (May 31; June 1, 2000): Commission held two public workshops on “Slotting Allowances” – lump sum and up-front payments that food manufacturers pay to get new products placed on supermarket shelves. The workshop provided manufacturers, retailers and other interested persons who have had actual-hands on experience with grocery marketing practices with a forum to discuss the nature of slotting allowances to assess whether they raise competitive concerns.

- ***Report on Slotting Allowances and Other Grocery Marketing Practices*** (Announced February 20, 2001): Staff report on information gathered and antitrust issues addressed at the public workshops held in 2000. Commission staff recommended that the agency gather basic data on current grocery marketing practices and continue to pursue anticompetitive conduct on a case-by-case basis. In addition, staff recommended that the agency refrain from issuing slotting allowance guidelines at the present time.

VERTICAL ENFORCEMENT

A. Commission Opinions/Initial Decisions

Toys “R” Us (Commission Decision November 1, 2000 - Final Order; Initial Decision September 30, 1997): An Administrative Law Judge issued an initial decision that, if made final, would prohibit Toys “R” Us from entering into agreements with toy manufacturers and others that result in restrictions on sales to warehouse clubs. TRU threatened to stop buying products that were sold to warehouse clubs, which resulted in major toy makers halting the sale of certain products to clubs. The ALJ found that these practices reduced competition and led to higher toy prices. The initial decision would prohibit the toy chain from entering into any agreement with a supplier to restrict sales to any toy discounter; from facilitating agreements among suppliers that would limit sales to any retailer; and for five years, from refusing to or announcing it will refuse to purchase from a supplier because the supplier sells to a toy discounter. On October 14, 1998 the Commission issued its decision that Toys R Us had orchestrated horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs. On December 7, 1998, Toys R Us filed a notice of appeal in the U.S. District Court for the Seventh Circuit. In August 200, the Commission’s complaint was upheld by Seventh Circuit Court of Appeals.

B. Court Decisions

Toys R Us (August 1, 2000): The United States Court of Appeals for the Seventh Circuit unanimously affirmed the 1998 Commission decision. The Court found that the nation’s largest toy retailer engaged in horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs.

C. Authorization to Seek Preliminary/Permanent Injunctions

Mylan Laboratories, Inc. (December 22, 1998): Complaint filed in the U.S. District Court for the District of Columbia charged Mylan with restraint of trade, monopolization and conspiracy to monopolize the market for two generic drugs used to treat anxiety, lorazepam and clorazepate, through exclusive dealing arrangements. The complaint seeks consumer redress of at least \$120 million and to enjoin the alleged illegal exclusive licensing agreements. Federal District Court Judge Hogan released a 46 page decision upholding the Commission’s authority to seek restitution in antitrust injunction actions under Section 13(b) of the Federal Trade Commission Act. November 29, 2000: Commission approved a \$100 million settlement—the largest monetary settlement in Commission history. The opinion settled Commission concerns that Mylan, Gyma Laboratories of America, Inc., Cambrex Corporation and Profarmaco S.R.L. conspired to deny Mylan’s competitors ingredients necessary to manufacture lorazepam and

clorazepate. On April 27, 2001, the U.S. District Court for the District of Columbia granted preliminary approval to a plan of distribution to injured consumers who paid the increased prices and state agencies, including Medicaid programs, that purchased the drugs while the illegal agreements were in effect. The court granted final approval of the settlement February 1, 2002. The funds were distributed by the states.

D. Consent Orders

McCormick & Company (Final Order April 27, 2000): McCormick & Company agreed to settle charges that it violated the Robinson-Patman Act when the firm charged some retailers higher net prices for its spice and seasoning products than it charged other retailers. According to the complaint, McCormick, the world's largest spice company, offered its products to some retailers at substantial discounts using a variety of different discounting schemes, such as slotting allowances, free goods, off-invoice discounts and cash rebates. The order prohibits McCormick from engaging in price discrimination and from selling its products to any purchaser at a net price higher than McCormick charged the purchaser's competitor.

E. Complaints

None

F. Other

None

SINGLE FIRM ENFORCEMENT

There were no enforcement actions under the Single Firm Enforcement category between fiscal year 1999 and March 15, 2003.

IV. International Activities

Cooperation in Enforcement and Policy Development

Cooperation with competition agencies of other jurisdictions is a key component of an effective enforcement program. The FTC has broadened and deepened its cooperation with agencies around the world on individual cases and on policy issues. The FTC's relationships with counterparts in Brussels, Ottawa, and other capitals remain active as our staffs continue to work closely on investigations and policy issues of mutual interest. For example:

- In *Bayer/Aventis CropScience*, FTC, European Commission, and Canadian Competition Bureau staffs, aided by the parties' confidentiality waivers, cooperated in analyzing the likely effects of the merger on a number of crop protection markets and obtaining remedies tailored to the concerns in each jurisdiction that avoid subjecting the parties to conflicting demands.

- In the Cruise Line cases, the FTC worked closely with the EC on Carnival's bid for P&O Princess lines and simultaneously with the United Kingdom's Office of Fair Trading and Competition Commission regarding Royal Caribbean's competing bid. Officials from each of these agencies later met to analyze the handling of the cases with a view toward further improving our coordination.

- The European Commission and the U.S. agencies published merger process best practices in order to institutionalize and make more transparent the means by which we, along with the parties, can effectively cooperate in merger cases subject to review on both sides of the Atlantic. We believe that these best practices are a model for such cooperation between the U.S. agencies and other agencies as well.

- So long as policy differences remain, there is potential for conflicting outcomes in cases reviewed by two or more jurisdictions. Given differences in laws, cultures, and priorities, it is unrealistic to expect complete convergence in the foreseeable future. However, areas of agreement far exceed those of divergence, and instances in which differences result in conflicting outcomes are likely to remain rare. We and our bilateral partners remain committed to addressing and minimizing policy divergences. For example, the U.S. agencies and the European Commission have established several working groups that have contributed to a greater understanding and convergence in areas including competitive effects in conglomerate mergers, efficiencies, and remedies, and is continuing as the EC pursues its reform program. We are similarly working with the Canadian Competition Bureau on a number of policy and procedure initiatives.

Multilateral Competition Fora

The FTC participates actively in various multilateral competition fora that further international cooperation and convergence.

The International Competition Network (ICN) provides a venue for antitrust officials worldwide to achieve consensus on proposals for procedural and substantive convergence on best practices in antitrust enforcement and policy. The FTC and the Department of Justice were among the sixteen agencies that founded the ICN in 2001; its membership has since grown to seventy-seven agencies from sixty-seven jurisdictions.

In September 2002, the ICN hosted its inaugural annual conference to showcase its work on multi-jurisdictional merger control and the role of competition advocacy. Based on recommendations of the Merger Working Group's Subgroup on Notification and Procedures, which the FTC chairs, the members adopted a set of guiding principles for merger notification and review and endorsed three detailed recommended practices on merger notification, concerning jurisdictional nexus, clear and objective notification thresholds, and notification timing. In November 2002, the U.S. antitrust agencies hosted a successful two-day conference on merger investigative techniques which was attended by nearly one-hundred staff lawyers from forty-one jurisdictions.

In preparation for the ICN's June 2003 annual conference, the Merger Working Group is preparing new recommended practices on the timing of review, initial information requirements, transparency, and periodic review of the merger regime, a paper and template on merger guidelines, and a manual on recommended practices in investigative techniques. The Competition Advocacy Working group is developing an online information and resource center, preparing a compilation of advocacy provisions, conducting sectoral studies of advocacy, and assembling a "tool kit" of competition advocacy mechanisms. The new working group on Capacity Building and Competition Policy Implementation is preparing an report on the challenges developing countries face in implementing competition policies and establishing credible enforcement agencies.

The OECD is an important forum for competition officials from developed countries to share experiences and promote best practices. During the past year, the FTC has participated actively in the OECD's continuing work on, *inter alia*, merger process convergence, regulatory reform, and examining the issues at the trade and competition intersection. We also promote sound competition policies in regional fora such as the Asia-Pacific Economic Cooperation.

Trade/Competition Fora

Trade agreements increasingly involve competition issues. In the WTO, the FTC and the Department of Justice participate in the Working Group on the Interaction between Trade and Competition Policy, which is examining the issues specified in the Doha Ministerial Declaration relating to the possible negotiation of a competition chapter to the WTO Agreement. The FTC has, with the Antitrust Division and other US agencies, been working with the other nations of

our hemisphere to develop competition provisions for a Free Trade Agreement of the Americas. We have completed negotiating competition chapters of proposed bilateral Free Trade Agreements with Chile and Singapore.

Technical Assistance

There is an understandably high demand for assistance from the United States in drafting new antitrust laws, establishing antitrust agencies, and assisting newer agencies with antitrust law enforcement. With funding principally from the Agency for International Development, the FTC is proud to have shared our experience and expertise with nations around the world. Examples of our work include: assistance with analytical techniques in South Africa; programs on investigative methods for agencies in Latin America, Southeastern Europe, and the Former Soviet Union; assistance in launching a new competition agency in Indonesia; drafting a competition law for Egypt; and, most recently, conducting a seminar on competition enforcement and policy for officials of the People's Republic of China.

V. Competition Speeches

“Advertising and Unfair Competition: FTC Enforcement” (March 21, 2003) Thomas B. Leary, Commissioner, 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

“Vertical issues: The Federal View,” (March 20, 2003) Thomas B. Leary, Commissioner, 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

“New Trends in Antitrust Oversight of Mergers,” (March 18, 2003) Joseph J. Simons, Director, Bureau of Competition, 2003 Conference Board Antitrust Conference, New York, New York.

“Hot Topics in Economics; Using New Arguments and Economic Evidence in Antitrust Investigation and Litigation,” (March 18, 2003) David Scheffman, Director, Bureau of Economics, 2003 Conference Board Antitrust Conference, New York, New York.

“The Use of Economics in EC Competition” (January 30, 2003) David T. Scheffman, Director, Bureau of Economics, IBC Global Conferences, Brussels, Belgium.

“Discussion of Generic Drug Study” (January 29, 2003) Michael S. Wroblewski, Assistant General Counsel for Policy Studies, Office of General Counsel, Generic Pharmaceutical Association Annual Meeting, Rio Grande, Puerto Rico.

“Improving the Transitional Process: Key Issues and Recommendations” (January 21, 2003) Mozelle W. Thompson, Commissioner, American Antitrust Institute’s 3rd Annual Energy Roundtable Workshop “Getting From Here to There: Transitional Competition Issues in U.S. Electric Industry Restructuring”, National Rural Electric Cooperative Association, Arlington, Virginia.

American Bar Association Antitrust Section Mid Winter Meeting (January 20, 2003) Timothy J. Muris, Chairman, Participant, Puerto Rico.

“Industrial Organization and Antitrust Enforcement: Will Modern Industrial Organization Move Out of the Classroom and into the Courthouse?” (January 15, 2003) William E. Kovacic, General Counsel, Office of General Counsel, Panel Discussion, George Mason University Winter 2003 Antitrust Symposium, Washington, DC.

“Coordinated Interaction: Is There a Need For More Vigor?” (January 15, 2003) Mary Coleman, Deputy Director for Antitrust, Bureau of Economics, George Mason University Winter 2003 Antitrust Symposium; and Timothy J. Muris, Chairman, Keynote Address, Washington,

DC.

“Twenty Years of Raising Costs: Is There Support for Enforcement?” (January 15, 2003) David T. Scheffman, Director, Bureau of Economics, George Mason University Winter 2003 Antitrust Symposium, Washington, DC.

Organization for Economic Co-operation and Development Global Business Forum on Ecommerce: ICT’s Untapped Resources and Opportunities for Continued Growth (January 13, 2003) Mozelle W. Thompson, Commissioner, Participant, Waikiki, Hawaii.

“American Bar Association Brown Bag Lunch/The FTC’s Amicus Program” (December 12, 2002) Ted Cruz, Director, Office of Policy Planning, Drinker, Biddle & Reath, Washington, DC.

Institute of Public Utilities’ 34th Annual Regulatory Policy Conference (December 10, 2002) Thomas B. Leary, Commissioner, Keynote Speaker, Tampa, Florida.

“Antitrust Implications Under Hatch-Waxman” (December 6, 2002) Thomas B. Leary, Commissioner, Food and Drug Law Institute Hatch-Waxman Update Conference, Washington, DC.

“Competition” (October 30, 2002) Thomas B. Leary, Commissioner, International Chamber of Commerce, Department of Policy and Business Practices, ICC Commission, New York, New York.

“The Federal Trade Commission Perspective” (October 31, 2002) Timothy J. Muris, Chairman, Fordham Corporate Law Institute’s International Antitrust Policy Forum, New York, New York.

2002 Global Business Dialogue on Electronic Commerce (October 28, 2002) Mozelle W. Thompson, Commissioner, Participant, Annual Meeting, Brussels, Belgium.

American Bar Associations Antitrust Masters Course (October 25, 2002) Thomas B. Leary, Commissioner, Remarks, Sea Island, Georgia.

Tenth Annual Golden State Antitrust/Unfair Competition Law Institute (October 24, 2002) Joseph J. Simons, Director, Bureau of Competition, Luncheon Speaker, Santa Monica, California.

“Current Developments in EC & US Antitrust Law” (October 10, 2002) Thomas B. Leary, Commissioner, Cleary, Gottlieb and European Law Research Center at Harvard Law

School, Cambridge, Massachusetts.

“Generic Drugs” (October 9, 2002) Timothy J. Muris, Chairman, Testimony before the Subcommittee on Health, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

Anticompetitive Efforts to Restrict Competition on the Internet Workshop (October 8, 2002) Timothy J. Muris, Chairman, Opening Remarks. Comments by Thomas B. Leary, Commissioner. October 10, 2002 Session, Opening Remarks by Sheila F. Anthony, Commissioner; and Concluding Remarks by Ted Cruz, Director, Office of Policy Planning, Washington, DC.

“Oversight of Enforcement of the Antitrust Laws” (September 19, 2002) Timothy J. Muris, Chairman, Testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition, and Business and Consumer Rights, Dirksen Senate Office Building, Washington, DC.

Dallas Bar Association Antitrust Section (July 30, 2002) Timothy J. Muris, Chairman, Luncheon Speaker, Dallas, Texas

European Foreign Affairs Review (July 23, 2002) Timothy J. Muris, Chairman, Speaker, Brussels, Belgium.

“New Directions in Antitrust Enforcement” (July 4, 2002) Thomas B. Leary, Commissioner, National Economic Research Associates 22nd Annual Antitrust and Trade Regulation Seminar, Santa Fe, New Mexico.

Computer & Communications Industry Association 2002 Washington Caucus (June 24, 2002) Mozelle W. Thompson, Commissioner, Featured Speaker, Washington, DC.

Eurelectric CEO Meeting: Merger Acquisitions, Competition Policy (June 24, 2002) Thomas B. Leary, Commissioner, Keynote Speaker, Conference on World-wide Energy Liberalism, Leipzig, Germany.

National Energy Marketers Association’s Annual Membership Meeting and National Restructuring Conference (June 21, 2002) Mozelle W. Thompson, Commissioner, Keynote Speaker, Washington, DC.

Factors Affecting Prices of Refined Petroleum Products - Public Conference (May 8, 2002) Timothy J. Muris, Chairman, Opening Remarks, Washington, DC.

Research Workshop and Conference on Marketing and Antitrust Competition

Policy, University of Notre Dame, Mendoza School of Business (May 3, 2002) Thomas B. Leary, Commissioner, Keynote Luncheon Speaker, South Bend, Indiana.

New York State Bar Association Antitrust Law Section Executive Committee Meeting (March 30, 2002) Mozelle W. Thompson, Commissioner, Speaker, New York, New York.

ABA 2002 Annual Antitrust Spring Meeting (April 26, 2002) Timothy J. Muris, Chairman, Participant in Roundtable Discussion, Washington, DC.

“E-Commerce” (April 25, 2002) Mozelle W. Thompson, Commissioner, 1st Annual eOne Global Beyond Payments Conference, Napa Valley, California.

“Crises and Transitions: Is Competition Policy Responsive to Market Power Issues in Restructuring Energy Markets?” (April 25, 2002) Thomas B. Leary, Commissioner, ABA 2002 Annual Antitrust Spring Meeting, Washington, DC.

“The Future of Leadership In a Competitive Environment” (April 24, 2002) Mozelle W. Thompson, Commissioner, Panel Discussion before the American Bar Association Antitrust Section’s Women & Minority Leadership Planning Group Task Force, Washington, DC.

“Domestic Gasoline Markets” (April 23, 2002) William Kovacic, General Counsel, Office of General Counsel, Testimony before the House Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, Rayburn House Office Building, Washington, DC.

“Generic Pharmaceutical Marketplace Access” (April 23, 2002) Timothy J. Muris, Chairman, Testimony before the Senate Committee on Commerce, Science, and Transportation, Senate Russell Office Building, Washington, DC.

Center for Health Law Studies and the St. Louis University Law Journal. (April 12, 2002) Thomas B. Leary, Commissioner. 14th Annual Health Law Symposium, Keynote Speaker, St Louis, Missouri.

“Competition Advocacy” (April 12, 2002) Ted Cruz, Director, Office of Policy Planning, Heritage Foundation’s 25th Annual Resource Bank Meeting, Philadelphia, Pennsylvania.

“Anti-Competitive Activities in the Pharmaceutical Industry” (April 9, 2002) Ted Cruz, Director, Office of Policy Planning, Generic Pharmaceutical Association International Generic Pharmaceutical Fifth Annual Meeting and Education Conference, Coral Gables, Florida.

Baltimore Academies Business Professionals Breakfast. (March 13, 2002) Orson Swindle, Commissioner. Discussion of Consumer Protection and Competition Issues, Pikesville,

Maryland.

“Advertising and Unfair Competition: FTC Enforcement” (March 8, 2002) Sheila F. Anthony, Commissioner, 17th Annual Advanced American Law Institute-American Bar Association (ALI-ABA) Course Study, San Francisco, California.

The Conference Board’s 2002 Antitrust Conference. (March 7, 2002) Timothy J. Muris, Chairman, Participant as a Panelist during the General Session, New York, New York.

“Vertical Issues: The Federal Law” (March 7, 2002) Sheila F. Anthony, Commissioner, 17th Annual Advanced American Law Institute-American Bar Association (ALI-ABA) Course Study, San Francisco, California.

“New Trends in Antitrust Oversight of Mergers” (March 7, 2002) Thomas B. Leary, Commissioner, Conference Board 2002 Antitrust Conference, New York, New York.

“Perspectives from the FTC: Remarks on the Enforcement Agenda” (March 1, 2002) Thomas B. Leary, Commissioner, Antitrust in Deer Valley: New Challenges/Cutting Edge Solutions, ABA Section of Antitrust Conference, Park City, Utah.

“The Essential Stability of Merger Policy in the United States” (January 17, 2002) Thomas B. Leary, Commissioner, *Guidelines for Merger Remedies: Prospects and Principles*, Joint U.S./E.U. Conference, University of California at Berkeley School of Law, Berkeley Center for Law & Technology, and Ecole Nationale Supérieure des Mines de Paris, Paris, France.

“Merger Enforcement in a World of Multiple Arbiters” (December 4, 2001) Timothy J. Muris, Chairman, Brookings Institution, Roundtable of Trade and Investment Policy, Washington, DC.

“Three Hard Cases and Controversies: The FTC Looks at Baby Foods, Colas and Cakes” (December 4, 2001) Thomas B. Leary, Commissioner, Association of the Bar of the City of New York’s Milton Handler Annual Antitrust Review, New York, New York.

“Competition and Intellectual Property Policy: The Way Ahead” (November 15, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Fall Forum, Washington, DC.

“A Comment on Merger Enforcement in the United States and in the European Union” (October 11, 2001) Thomas B. Leary, Commissioner, Transatlantic Business Dialogue Principals Meeting, Washington, DC.

“Antitrust Issues in the Settlement of Pharmaceutical Patent Disputes, Part II” (May

17, 2001 and for publication in the December 2001 edition of the *Journal of Health Law*), Thomas B. Leary, Commissioner, American Bar Association Antitrust Healthcare Program, Washington, DC.

“Antitrust Enforcement at the Federal Trade Commission: In a Word – Continuity” (August 7, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Annual Meeting, Chicago, Illinois.

“The Need for Objective and Predictable Standards in the Law of Predation” May 10, 2001) Thomas B. Leary, Commissioner, Steptoe & Johnson and Analysis Group/Economics 2001, Antitrust Conference, Washington, DC.

“The Patent-Antitrust Interface” (May 3, 2001) Thomas B. Leary, Commissioner, American Bar Association’s Section of Antitrust Law Program, “Intellectual Property and Antitrust: Navigating the Minefield,” Philadelphia, Pennsylvania.

“Between Competition and Cooperation—Changing Business-to-Business” (April 4, 2001) Orson Swindle, Commissioner, The 8th World Business Dialogue, University of Cologne, Cologne, Germany.

“Antitrust and Intellectual Property Law: From Adversaries to Partners” (Winter 2000) Sheila F. Anthony, Commissioner, Article Published in AIPLA Quarterly Journal.

“Antitrust Economics: Three Cheers and Two Challenges” (November 15, 2000) Thomas B. Leary, Commissioner. Paper based on talks given at a conference sponsored by the economic consulting firm of Charles River Associates and July 7, 2001 at the meeting of the Western Economic Association.

“Antitrust Issues in Settlement of Pharmaceutical Patent Disputes” (November 3, 2000) Thomas B. Leary, Commissioner, Sixth Annual Health Care Antitrust Forum, Northwestern University School of Law, Chicago, Illinois.

“Antitrust in the Emerging B2B Marketplace” (July 19, 2000) Orson Swindle, Commissioner, Forum for Trust in Online Trade, Princeton Club, New York, New York.

“Use Your Time Wisely: Do’s and Don’t’s for Effective Advocacy Before the Federal Trade Commission” (July 11, 2000) Sheila F. Anthony, Commissioner, Published in the *Antitrust Report 2000*. ABA Section of Antitrust Law’s 2000 Annual Meeting, New York, New York

“Riddles and Lessons from the Prescription Drug Wars: Antitrust Implications of Certain Types of Agreements Involving Intellectual Property” (June 1, 2000) Sheila F.

Anthony, Commissioner, The ABA Antitrust and Intellectual Property: The Crossroads Program, San, Francisco, California.

“Advertising and Unfair Competition” (March 10, 2000) Sheila F. Anthony, Commissioner, The American Law Institute-American Bar Association, Product Distribution and Marketing Meeting, Scottsdale, Arizona.

“Enforcement Cooperation Among Antitrust Authorities” (May 19, 1999): John J. Parisi, IBC UK Conferences Sixth Annual London Conference on BC Competition Law.

VI. Statistics

Fiscal Year 2003 (through March 15, 2003)

Part III Administrative Complaints ***Mergers and Joint Ventures - 0***

Nonmergers - 1

Union Oil Company of California

Part II Consent Agreements Accepted for Comment ***Mergers and Joint Ventures - 4***

Baxter International Inc. (Wyeth Corporation)
Dainippon Inc and Chemicals, Inc. (Bayer Corporation)
Quest Diagnostics Inc. (Unilab Corporation)
Wal-Mart Stores, Inc. (Supermercados Amigo, Inc.)

Nonmergers - 4

Bristol-Myers Squibb Company (BuSpar)
Bristol-Myers Squibb Company (Platinol)
Bristol-Myers Squibb Company (Taxol)
National Academy of Arbitrators

Civil Penalty Actions Filed ***None***

Preliminary Injunctions Authorized ***Mergers and Joint Ventures - 3***

Kroger Company, The (Raley's Supermarkets)
Nestle Holdings, Inc./Dreyer's Grand Ice Cream
Vlasic Pickle Company (Claussen Pickle Company)

Merger Transactions Abandoned - 4

**Total Merger and Nonmerger Enforcement (October 1, 2002 - March 15,
2003) - 16**

Fiscal Year 2002

Part III Administrative Complaints

Mergers and Joint Ventures - 2

Chicago Bridge & Iron Company N.V./Water Division and Engineered Construction Division of Pitt-Des Moines, Inc.

Libby Inc. and Anchor Hocking (*Note: Preliminary Injunction Authorized during fiscal year - case counted under PI's Authorized*)

MSC. Software Corporation/Universal Analytics, Inc. and Computerized Structural Analysis and Research Corp.

Nonmergers - 1

Rambus, Inc.

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 10

Airgas, Inc./Puritan Bennett Medical Gas Business from Mallinckrodt, Inc.

Amgen Inc./Immunex Corp

Bayer AG/Aventis CropScience Holdings S.A.

INA-Holding Schaeffler KG and FAG Kugelfischer Georg Schaefer AG

Koninklijke Ahold NV/Bruno's Supermarkets, Inc.

Nestle Holdings, Inc./Ralston Purina Company

Phillips Petroleum/ Conoco

Shell Oil Company/Pennzoil-Quaker State Company

Solvay S.A./Ausimont S.p.A.

Valero Energy Corporation/Ultramar Diamond Shamrock Corporation

Nonmergers - 8

American Institute for Conservation of Historic and Artistic Works

Aurora Associated Primary Care Physicians

Biovail Corporation

Biovail Corporation and Elan Corporation

Obstetrics & Gynecology Medical Corporation of Napa Valley

Professional Integrated Services of Denver

Professional's in Women's Care

System Health Providers

Fiscal Year 2002

(Continued)

Civil Penalty Actions Filed ***Premerger Notification - 1***

First Data Bank/Medi Span

Preliminary Injunctions Authorized ***Mergers and Joint Ventures - 5***

Deutsche Gelatine-Fabriken Stoess AG/Leiner Davis Gelatin Corporation and Goodman Fielder USA, Inc.

Diageo plc/Pernod Ricard S.A.

Libby, Inc./Anchor Hocking

Meade Instruments/Tasco Holdings

Cytoc Corporation/Digene Corporation

Merger Transactions Abandoned - 7 ***(HSR and Non-HSR matters)***

Total Merger and Nonmerger Enforcement - 34 **(includes 1 civil penalty action)**

Fiscal Year 2001

Part III Administrative Complaints

Mergers and Joint Ventures - 0

H.J. Heinz Company/Milnot Holding Corporation, owner of Beech-Nut Nutrition Corporation
Swedish Match AB/National Tobacco Company, L.P.

Note: Preliminary injunctions authorized during fiscal 2000 for each transaction.

Nonmergers - 2

Schering-Plough Corporation, Upsher-Smith Laboratories and American Home Products Corporation
PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation, subs of Vivendi Universal S.A.; and Warner Communications, Inc. (consent agreement accepted for comment)

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 18

AOL Online, Inc./Time Warner Inc
Chevron Corporation/Texaco Inc.
Computer Sciences Corporation/Mynd Corporation
Dow Chemical Company, The/Union Carbide Corporation
El Paso Energy Corporation/Coastal Corporation, The
El Paso Energy Corporation/Pacific Gas & Electric (PG&E Gas Transmission Teco, Inc. and PG&E Gas Transmission Texas Corporation)
Koch Industries, Inc./Entergy Corporation
Lafarge S.A./Blue Circle Industries PLC
Manheim Auctions, Inc./ADT Automotive Holdings, Inc.
MCN, parent of Michigan Consolidated Gas Company/DTE - parent holding company of The Detroit Edison Company
Metso Oyj/Svedala Industri AB
Novartis AG/AstraZeneca PLC
Philip Morris Companies, Inc./Nabisco Holdings Corp.
SmithKline plc/Glaxo Wellcome plc.
Siemens AG/Atecs Mannesmann
Tyco International, Ltd./Mallinckrodt, Inc
Valspar Corporation/Lilly Industries, Inc.
Winn-Dixie Stores, Inc./Jitney-Jungle Stores of America, Inc.

Fiscal Year 2001

(Continued)

Part II Consent Agreements Accepted for Comment *(Continued)*

Nonmergers - 1

FMC Corporation and Asahi Chemical Industry Co. Ltd.

Civil Penalty Actions Filed

Order Violation - Mergers and Joint Ventures - 1

Boston Scientific Corporation

Permanent Injunctions Authorized - 1

Mergers and Joint Ventures

The Hearst Trust/The Hearst Corporation/First DataBank

Merger Transactions Abandoned - 4

Total Merger and Nonmerger Enforcement Fiscal Year 2001 - 27

(includes 1 civil penalty action)

Fiscal Year 2000

Part III Administrative Complaints

Nonmergers - 1

Hoechst Marion Roussel (now called Aventis)

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 18

Agrium, Inc./Union Oil Company of California (Unocal)
Boeing Company, The/Hughes Space and Communications subsidiary of General Motors Corporation
Delhaize Freres et cie "Le Lion" S.A./Hannaford Bros. Co.
Dominion Resources, Inc./Consolidated Natural Gas
Duke Energy Corp./Phillips Petroleum
El Paso Energy Corp./Sonat Inc.
Exxon Corporation/Mobil Corporation
Fidelity National Financial/Chicago Title Corporation
FMC Corp./Solutia Inc.
Hoechst AG/Rhone-Poulenc
MacDermid, Inc./Polyfibron Technologies, Inc.
Precision Castparts Corporation/Wyman-Gordon Company
Pfizer Inc./Warner-Lambert Company
Reckitt & Colman plc/NRV Vermögensverwaltung GmbH/Benckiser N.V.
RHI AG/Global Industrial Technologies, Inc.
Rhodia, Donau Chemie AG/Albright & Wilson PLC
Service Corporation International/LaGrone Funeral Home
VNU N.V./Nielsen Media Research, Inc

Nonmergers - 8

Abbott Laboratories and Geneva Pharmaceuticals
Alaska Healthcare Network
Wisconsin Chiropractic Association and Berkley and Cassellius, MD's
Bertelsmann Music Group; EMI Music Distribution; Sony Corp. of America; Time-Warner Inc.;
Universal Music and Video Distribution
Colegio de Cirujanos Dentistas de PR
McCormick & Company
Nine West Group Inc.
Texas Surgeons, P.A.

Fiscal Year 2000

(Continued)

Preliminary Injunctions Authorized *Mergers and Joint Ventures - 5*

BP Amoco/ARCO

Conso International Corp.(owner of Simplicity)/McCall Pattern Co.)

H.J. Heinz Co./Milnot Holding Co. (owner of BeechNut Nutrition Corp.)

Kroger Company/Winn-Dixie

Swedish Match AB/National Tobacco Company, L.P.

Merger Transactions Abandoned - 9

Total Merger and Nonmerger Enforcement Fiscal Year 2000 - 41

Fiscal Year 1999

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 18

ABB/Elsag Bailey Process Automation N.V.
Albertson's/American Stores
Associated Octel Company Limited/Oboadlez Company
British Petroleum Company p.l.c., The/AMOCO Corporation
Ceridian Corp./NTS Corp./Trendar Corp
CMS Energy Corp./Panhandle Eastern Pipeline/Trunkline Pipeline/Duke Energy Company
Koninklijke Ahold nv/Giant Food, Inc.
Kroger Company/Fred Meyer Stores, Inc.
Kroger Co./John C. Groub Company, The
LaFarge Corporation/Holnam, Inc.
Medtronic, Inc./Avecor Cardiovascular, Inc.
Provident Companies, Inc./UNUM Corporation
Quexco Inc./Pacific Dunlop GNB Corporation
Rohm & Haas Company/Morton International, Inc.
Service Corporation International/Equity Corporation International
Shaw's Supermarkets, Inc./Star Markets, Inc
SNIA S.p.A./COBE Cardiovascular, Inc.
Zeneca Group PLC/Astra AB

Nonmergers - 4

Asociacion de Farmacias Region de Arecibo and Ricardo Alvarez Class
Columbia River Pilots Association
North Lake Tahoe Medical Group, Inc.
Southern Valley Pool Association

Civil Penalty Actions Filed

Premerger Notification - 2

Howard A. Lipson/Blackstone Capital Partners II Merchant Banking Fund L.P.
Laitram Corporation, The

Fiscal Year 1999

(Continued)

Permanent Injunctions Authorized

Nonmergers - 1

Mylan Laboratories, Inc.

Merger Transactions Abandoned - 12

Total Merger and Nonmerger Enforcement Fiscal Year 1999 - 37
(includes 2 civil penalty actions)