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ANNUAL REPORT ON DEVELOPMENTS IN COMPETITION IN THE UNITED STATES (1993)

This report is submitted by the Delegate for the United States to the meeting on Competition Law and Policy to be held on 11th and 12th April 1994.

COMPLETE DOCUMENT AVAILABLE ON OLIS IN ITS ORIGINAL FORMAT

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REPORT TO THE OECD ON UNITED STATES ANTITRUST AND COMPETITION DEVELOPMENTS FOR THE PERIOD JANUARY 1 TO DECEMBER 31, 1993

Introduction

1. This report describes federal antitrust developments in the United States for calendar year 1993, including the activities of the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Bureau of Competition of the Federal Trade Commission ("FTC" or "Commission").

2. Anne K. Bingaman, President Clinton's choice to head antitrust enforcement at the Department of Justice, was sworn into office in June 1993 as Assistant Attorney General in charge of antitrust. AAG Bingaman appointed the following individuals as Deputy Assistant Attorneys General (DAAG) in the Antitrust Division: John W. Clark, DAAG for litigation; Richard Gilbert, DAAG for economic analysis; Robert E. Litan, DAAG for regulatory affairs; Steven C. Sunshine, DAAG for policy and legislation; and Diane P. Wood, DAAG for international antitrust. Joseph H. Widmar was named DAAG for litigation after Mr. Clark's retirement from government service.

I. Changes in law or policies

A. Changes in Antitrust Rules, Policies or Guidelines

3. On September 15, 1993, the FTC and DOJ announced six Statements of Antitrust Enforcement Policy in the Health Care Area. The Statements address six areas of joint activities among health care providers: hospital mergers; equipment joint ventures; physicians' provision of information to purchasers of health care services; hospital participation in information exchanges; joint purchasing arrangements; and physician network joint ventures. The Statements clarify how the two agencies will enforce antitrust laws governing joint activities within the health care industry by (a) delineating "safety zones" for conduct that the agencies generally will not challenge under the antitrust laws, and (b) outlining the analysis that the agencies will apply in reviewing conduct that falls outside the safety zones. In conjunction with the release of the Statements, the FTC and the Department announced a plan for an expedited business review procedure for health care matters. Under the new procedure, the agencies will respond within 90 days, after all necessary information is received, to requests for guidance from businesses about topics covered by the Statements, and within 120 days to requests regarding antitrust health care matters not covered by the Statements.

4. On June 10, 1993, President Clinton signed into law H.R. 1313, the "National Cooperative Production Amendments of 1993" (Pub. L. No. 1033-42)(NCRPA). The amendments: extend the provisions of the National Cooperative Research Act of 1984 to joint ventures for production; clarify the application of the antitrust rule-of-reason to research, development and production joint ventures; and make available a special

attorneys' fee rule when such ventures are challenged. The NCRPA also provides joint venturers the opportunity to limit potential antitrust damages to actual damages, as opposed to treble, by notifying a venture to the DOJ and FTC. The damage limitation provision is subject to restrictions on place-of-production and nationality requirements.

are exempt as well from the Act if the competitive sales of the corporations are less than $1 million. Under the 1990 amendment, the FTC is required to adjust the threshold levels based on the change in the level of the gross national product. The new threshold figures announced by the FTC are $11,367,699.81 in capital, surplus and undivided profits and $1,136,769.98 in competitive sales.

Enrolled Bill S. 664 which was passed by the House and the Senate on November 22, 1993 and amended section 8(a)(5) of the Clayton Act (15 U.S.C. §19(a)(5)). As noted above, a 1990 amendment established two threshold figures for defining a violation of Section 8 of the Clayton Act, which prohibits interlocking directorates, and required the Commission to adjust such threshold figures based on an amount equal to the percentage increase or decrease of the gross national product (GNP), as determined by the Department of Commerce. This section required the FTC to publish the adjusted amounts no later than October 30 of each year. The enrolled bill would change the required date of publication of new figures from October 30 to January 31. The Commission supported the amendment because the Department of Commerce does not publish the required GNP data, on which to base such figures, until after October 30. The President subsequently signed Enrolled Bill S. 664 into law.

II. Enforcement of antitrust laws and policies: actions against anticompetitive practices

A. Department of Justice and FTC Statistics

1) DOJ Staffing and Enforcement Statistics

16. Beginning in the early 1990’s and continuing under the leadership of AAG Bingaman, the Division has been engaged in a process of increasing substantially its staffing. In 1993, the Division increased its ranks by 20 additional lawyers and 24 paralegals. At the end of 1993, the Division had 614 employees, comprised of 300 attorneys; 49 economists; 75 paralegals and 190 support staff. Current plans call for additional personnel in all categories.

17. In 1993, the Antitrust Division opened 281 investigations and filed 92 antitrust cases, both civil and criminal, in federal court. The Division participated in 15 U.S. antitrust cases on appeal before the U.S. Supreme Court or federal courts of appeals, and it appeared as amicus curiae in one matter before the Supreme Court. In connection with its competition advocacy role, the Division appeared in four competition-related matters under consideration by federal regulatory agencies.

18. In 1993, the Division filed 84 criminal cases against 71 corporations and 51 individuals. Penalties for criminal violations were at record levels, with 61 corporate defendants assessed fines totalling $40,337,071 and eleven individual defendants sentenced to a total of 3,673 days of incarceration. Another 20 individual defendants were sentenced to spend an average of four and a half months in some form of alternative

19. In 1993, the Division reviewed 1,967 notified merger proposals, as well as a number of structural transactions that did not fall under the Hart-Scott-Rodino pre-merger notification requirements. The Division’s investigation of 67 mergers and its challenge to 16, represented the highest level of merger enforcement activity at the Division since 1981.

20. The Division opened 44 civil investigations in 1993, both merger and non-merger, and issued 449 civil investigative demands (a form of compulsory process). During the year, the Division filed nine civil complaints accompanied by seven proposed consent decrees or final judgments. Nine of the Division’s consent decrees were entered in 1993, some of which had been proposed and filed in earlier years.

2) FTC Staffing and Enforcement Statistics

21. At the end of 1993, the FTC's Bureau of Competition had 221 employees: 153 attorneys, 35 other professionals and 33 clerical staff. The FTC also employs economists who participate in its antitrust enforcement activities.

B. Antitrust Cases in the Courts

1) United States Supreme Court

a) DOJ or FTC Cases

22. There were no cases decided in the United States Supreme Court in 1993 that directly involved the Department or FTC as a party. The Court decided five private antitrust cases.

b) Private Cases

23. In Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc., 113 S. Ct. 1920 (1993), the Court ruled that the "sham exception" to the Noerr-Pennington doctrine -- a doctrine immunizing petitions of government, including civil lawsuits, from challenge under the antitrust laws -- is not available solely upon a showing that a petitioner is not motivated by a subjective expectation of success. The unanimous decision of the Court held that litigation cannot be deprived of Noerr-Pennington protection under the "sham exception" unless it satisfies a two-pronged test. First, under the objective prong, a plaintiff alleging a sham petition must prove that the suit is baseless as a matter of law -- i.e., that a claimant lacked probable cause to institute a successful civil lawsuit, with "probable cause" requiring no more than a "reasonable belief" that a claim may be held valid upon adjudication. Proof of the objective prong of the test is a necessary condition for proceeding to the second, subjective prong: whether a claimant instituted a suit in order to interfere directly with the business relationships of a competitor. In its amicus brief filed with the Court in 1992, the Department advocated the development of objective standards for identifying sham litigation, taking the position that the availability of Noerr immunity should not depend solely on a subjective test of intent.

24. The Court's decision in Spectrum Sports, Inc. v. McQuillan, 113 S. Ct. 884 (1993) rejected the validity of a rule that the Ninth Circuit had developed and articulated in Le ssig v. Tidewater Oil Co., 327 F.2d 459 (9th Cir. 1964). The Lessig rule permitted a finding of antitrust liability for attempted monopolization based on specific anticompetitive intent and acts, but without direct proof of the probability of success, such as the defendant's market power. The Department argued in amicus briefs filed with the Court in 1992 that the Lessig rule, which has been widely criticized by commentators and which was followed in no circuit outside the Ninth, is erroneous. The Court agreed, specifically rejecting the Lessig rule and holding that proof of attempted monopolization requires three elements: (a) specific intent to harm competition; (b) acts or conduct intended to accomplish the unlawful objective; and (c) dangerous probability of success based on evidence of a relevant product and geographic market and of the defendant's power in that market.

25. The Court addressed comity issues in its decision of Hartford Fire Ins. Co. v. State of Cal., 113 S. Ct. 2891 (1993), a consolidated case arising from antitrust claims filed by numerous states and private plaintiffs alleging that domestic and foreign reinsurers had conspired with London-based reinsurers to limit the availability of certain kinds of insurance coverage. One question before the court was whether U.S. antitrust

its dealers conspired to drive independent marketers out of the market by engaging in predatory pricing. In Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328 (1990), the Court ruled that a vertical, maximum price-fixing agreement -- while unlawful under Section 1 of the Sherman Act -- does not cause antitrust injury unless it results in predatory pricing.

2) Court of Appeals Cases

a) DOJ Cases Decided in 1993

29. Fourteen antitrust cases involving the Department as a party were decided in 1993 at the appellate level. Nine of the decisions were in connection with appeals of criminal convictions or sentencing, focusing generally

original co-defendants, and to adhere to written standards of conduct when dealing with other colleges. The text of the proposed decree appears at 1993-2 Trade Cas. (CCH) ¶ 70,391.

32. Many of the Department's civil appeals involve interpretations or modifications of restrictions imposed on telecommunications service providers by the Modified Final Judgment (MFJ), the 1982 consent decree settling the Department's monopoly case against AT&T. In U.S. v. Western Electric Co., 1993-2 Trade Cas. (CCH) ¶ 70,449 (D.C. Cir. Dec. 28, 1993), the D.C. Circuit rejected an appeal by MCI and other nonparties to the AT&T decree from the district court's decision permitting a modification of the MFJ that would allow the BOCs to provide information services. The primary issue before the D.C. Circuit was the proper interpretation of the MFJ's "public interest" standard when applied to motions for modification that are unopposed by the parties to the MFJ. The court ruled that a district court may reject an uncontested modification to a government antitrust consent decree only if it has "exceptional confidence that adverse antitrust consequences will result". The ruling was in fundamental agreement with the Division's position on the issue.

33. On behalf of the FTC, the Department appealed a lower court decision dismissing the FTC's complaint in a Hart-Scott-Rodino enforcement action because of the FTC's refusal to produce internal FTC documents protected by work product and deliberate process privileges. In U.S. v. William Farley, 1993-2 Trade Cas. (CCH) ¶ 70,441 (7th Cir. Dec. 15, 1993), t he Seventh Circuit reversed the district court decision, reaffirming the crucial role of the deliberative process privilege in fostering frank discussion of legal and policy matters in government decision making. The Court remanded the matter back to the district court for further consideration on the merits of the case.

b) FTC Cases Decided in 1993

34. Adventist Health Sys. v. FTC, 114 S. Ct. 88 (1993), cert. denied, No. 91-2320 (D.D.C.); No. 93-70387 (9th Cir.), is a suit to enjoin an ongoing FTC adjudicatory proceeding th-447(ak)-C'Weins]TJ±¼T*±¼priÁ47(ion)-wi

37. Ticor Title Ins. Co. v. FTC, 998 F.2d 1129 (3d Cir. 1993), is a petition for review of an FTC decision holding that collective rate-setting activities of title insurance companies for title search and title examination services constitute an unfair method of competition (price-fixing). The companies contend that their conduct is protected by the "state action" doctrine and is also immune from federal antitrust challenge because it is "the business of insurance." In October 1991, the Supreme Court granted certiorari to review a February 1991 decision of the United States Court of Appeals for the Third Circuit, which held that the companies' conduct was protected by the "state action" doctrine. On June 12, 1992, the Court entered an order reversing the decision of the court of appeals, holding that the Commission had properly rejected the "state action" defense with respect to the states of Montana and Wisconsin, and remanded the case to the court of appeals for further proceedings. On July 15, 1993, the court of appeals, on remand from the Supreme Court, held that the sale of title search and examination services was not the "business of insurance" and was therefore subject to antitrust liability. On November 29, 1993, the companies filed a petition for certiorari seeking review of this decision. The Supreme Court will resolve the petition in 1994.

C. Statistics on Private and Government Cases Filed during 1993

38. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 724 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in the fiscal year ending September 30, 1993.

D. Significant DOJ and FTC Enforcement Actions

1) DOJ Criminal Enforcement

39. The Division filed 84 criminal antitrust cases against 71 corporations and 51 individuals in 1993. Sentences resulted in $41,817,571 in total fines, 3,673 days of actual incarceration, and 2,704 days of alternative forms of confinement.

40. Following a 1993 grand jury investigation, the Division filed a three-count indictment under seal in U.S.v. Detia-Degesch, Crim. No. 93-20078-01 (D. Kan., filed Oct. 26, 1993) charging seven corporations and four individual defendants with conspiring to fix a minimum price for the sale in the United States of aluminum phosphide, a chemical used to protect flour and other foodstuff from insect infestation. Four of the seven corporate defendants and three of the four individual defendants were foreign. Counts two and three separately charged two of the individual defendants with obstruction of justice by inducing a witness to lie. The protective seal was lifted by the court on November 1, 1993.

41. The Division filed a two-count felony information in U.S. v. Gestiones Y Transportes de Burgos, S.A ., Crim. No. 93-112 (D. Fla., filed Mar. 5, 1993) charging the defendant, a Spanish corporation, with conspiring to rig bids on the sale of an aircraft at an auction conducted by the U.S. Bankruptcy Court in Miami and with bankruptcy fraud. The information charged, in relevant part, that Gestiones Y Transportes and others agreed not to compete in bidding for the purchase of a jet aircraft, in exchange for payment of an agreed upon sum of money. Gestiones was fined $100,000 following entry of its guilty plea.

42. The Division's successful prosecution of price-fixing by manufacturers of steel wool scouring pads was initiated after a corporate co-conspirator came forward under the Division's Corporate Amnesty Program and supplied information about an ongoing conspiracy to fix prices in the $100 million-a-year steel wool scouring pad industry. When confronted with the evidence amassed in the investigation, the informant's co-conspirator agreed to plead guilty and to pay a fine of $4.5 million. The government's information in U.S. v. Miles, Inc. was filed in the district court for the Northern District of Illinois on October 28, 1993.

43. The past year bore further witness to the impact the Federal Sentencing Guidelines and stricter statutory penalties have had on sentencing. The Division's criminal enforcement actions for 1993 generally resulted in higher fines and longer jail terms for criminal violations of Section 1 of the Sherman Act and related criminal violations.

44. For example, the individual defendant in U.S. v. Urethane Applications, Inc., (E.D. Pa., filed Feb. 23, 1993) was sentenced to 7 months of jail and fined $160,000 after pleading guilty to charges of bid-rigging on polyurethane roofing contracts in a three-state area over a four year period. A fine of $800,000 was assessed against the corporate defendant in that case.

45. In another case, the individual defendant in U.S. v. Robert Shulman, (D. Md., filed Dec. 9, 1992) was sentenced to serve 21 months in jail and fined $20,000 after pleading guilty to charges of fixing prices of a generic drug prescribed for the treatment of high blood pressure. The drug is no longer on the market, but during the life of the conspiracy it brought in sales of over $65 million for at least one of the co-conspirators.

46. The Division's investigation and prosecution of price-fixing in the industrial hardware industry resulted in a record criminal fine. Following a plea of *nolo contendere* to a single-count indictment alleging a conspiracy to fix prices on architectural hinges, the two corporate defendants in U.S. v. The Stanley Works, (E.D. Mo., filed May 22, 1990) were fined a total of $10 million. The $8 million fine assessed against The Stanley Works is the highest criminal fine for a single-count violation in the Division's history.

47. Stricter penalties are also apparent in U.S. v. Russell-Stanley Corporation, (E.D. Pa., filed June 8, 1993), where the corporate defendant was fined $1.8 million after pleading guilty to charges of price-fixing, mail fraud and obstruction of justice in connection with the sale of steel drums sold in several U.S. east-coast states. In a related steel-drum case, the individual defendant in U.S. v. Louis J. Gaev, (E.D. Pa., filed Aug. 12, 1992) was sentenced to serve 15 months in jail, 90 days house arrest and fined $50,000. The Division's prosecution of price-fixing in the steel drum industry has resulted in 10 criminal cases filed against 12 companies and 13 individuals, with fines totalling more than $9 million.

48. The Division's milk price-fixing cases continued in 1993, resulting in criminal convictions of another four corporations and two individuals. The 1993 milk convictions resulted in additional criminal fines of $26.5 million, and jail sentences totalling 17 months. Since its inception in 1988, the Division's investigation and prosecution of regional milk price-fixing has resulted in the conviction of 57 corporate and 53 defendants; in criminal fines totalling $54.7 million; and jail terms totalling 4,684 days.

2) DOJ Non-merger Civil Enforcement

49. In March 1993, the Division filed a civil complaint in U.S. v. Canstar Sports USA, Inc., No. 2-93CV77 (D. Vt.), its first resale price maintenance case since the Cuisinart case in 1980. Defendant Canstar Sports USA, the U.S. subsidiary of a foreign parent, was charged with conspiring with its dealers to fix the retail price of its premium line of hockey skates. The case was settled on September 17, 1993 by entry of a consent decree, prohibiting Canstar from directly or indirectly conspiring with retail dealers. Canstar is permitted however, to adopt suggested prices, to communicate such prices to its dealers, and to unilaterally terminate dealers that depart from the suggested price. The text of the consent decree can be found at 1993-2 Trade Cas. (CCH) ¶ 70,372.

50. On June 9, 1993 the Division filed simultaneously a civil complaint and proposed consent decree in U.S. v. Primestar Partners, L.P. (S.D.N.Y. 1993). The Division's complaint named Primestar Partners L.P., a joint-venture partnership, its ten joint-venture partners and the parent companies of those partners as co-conspirators in an agreement to block other firms from entering the direct broadcast satellite business (DBS) by restricting access to programming owned or controlled by Primestar members. DBS transmits directly to consumers via a medium-power satellite. The signal is picked up by relatively small home satellite "dishes" that are less expensive to install than large home satellite dishes and are a potential substitute for cable television service. The proposed consent decree, which is pending entry by the court, contains injunctions preventing the defendants from exercising their control of cable programming or cable delivery systems to deny programming to any rival provider of multichannel subscription television at competitive prices. The text of the proposed decree appears at 7 Trade Reg. Rep. (CCH) ¶ 50,747.

51. On September 8, 1993, in connection with a complaint filed by the Department on behalf of the FTC, Stephan Schmidheiny, a Swiss citizen and the individual defendant in U.S. v. Anova Holding AG, CA No. 93-1852 (D.D.C. 1992) agreed to pay $414,650 in civil penalties settling charges that he did not comply with HSR premerger notification requirements. The government's complaint alleged that Schmidheiny failed to comply with HSR notification requirements at the time of acquisitions giving the defendant control of two Swiss firms with substantial sales in the United States, and that an inexcusable period of delay ensued between the defendant's subsequent discovery of the failure to file and compliance with the pre-merger notification requirements. The text of the settlement in this case appears at 1993-2 Trade Cas. (CCH) ¶ 70,383 (D.D.C., Sept. 13, 1993)

3) *Modification or Termination of Consent Decrees*

52. The Division announced on November 4, 1993, that it had informed the Eastman Kodak Company of its opposition to Kodak's motion filed in the U.S. District Court in Rochester, New York, to terminate decrees entered in 1921 and 1954. The Division objected to the removal of provisions prohibiting exclusive dealing in film, the sale of "fighting brands" of film, and connecting the sale of color film to its processing. After an extensive investigation, the Division determined that the provisions were still necessary to protect against the danger that Kodak, which in 1992 accounted for 75 percent of U.S. dollar sales of amateur color film, would exercise market power in that market.

53. The Division informed the presiding judge in U.S. v. National Broadcasting Co., Inc., CV74-3600-R (C.D. Cal., filed Nov. 10, 1993) that it supported the motion of three television networks, NBC, ABC and CBS, to lift decree restrictions that prevented their participation in non-network syndicated programming. In 1993,

the Federal Communications Commission rescinded regulations restricting networks from holding a financial interest in or ownership rights to non-network syndicated programs. The Division advised then, as it did in its recommendation to the district court, that changed market conditions justified lifting restrictions on network participation. The district court subsequently granted the networks' motion and ordered modification of the decrees in accordance with the Division's recommendation. The court order appears at 1993-2 Trade Cas. (CCH) ¶ 70,418.

54. The Division consented to orders terminating consent decrees entered in U.S. v. Linen Supply Inst. of Greater N.Y., Inc., 1993-1 Trade Cas. (CCH) ¶ 70,271 (S.D.N.Y. May 26, 1993) and United States v. Reno Merchant and Plumbing Contractors Inc., 1993-1 Trade Cas. (CCH) ¶ 70,272 (D. Nev. May 21,

1993). In both cases, changes in the relevant markets removed the threat of further abuse. Both decrees were over thirty years old, reflecting the long abandoned policy of seeking to impose decree conditions in perpetuity.

4) FTC Non-merger Enforcement Actions

55. The Commission charged in an administrative complaint issued in July, l993 that the California Dental Association (CDA), whose 15,000 members comprise 75 percent of the dentists in the state, illegally prevented California dentists from informing consumers about the price and quality of the service they provide. The Commission alleged that the CDA prohibited announcements of senior citizen discounts and all other across-the-board discount offers. The Commission charged that these activities deprive customers of truthful information useful to select a dentist and decrease the incentives to offer services and prices that consumers want. The matter has been referred to an administrative law judge for trial. See California Dental Assoc., Docket No. D-9259, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,422.

56. The Commission issued a complaint in September, l993 alleging that the Maryland Pharmacists Association (MPhA) and the Baltimore Metropolitan Pharmaceutical Association (BMPA) illegally conspired to boycott the prescription drug plan for Baltimore city government employees to force the plan to increase its reimbursement rates. The matter was referred to an administrative law judge for trial and subsequently withdrawn from adjudication for purpose of negotiating a settlement. The Commission then accepted for public comment a proposed consent agreement under which the two associations would be prohibited from entering into, organizing, or encouraging any agreement among pharmacy firms to refuse to participate in these kinds of prescription drug reimbursement plans in the future. See Baltimore Metro. Pharmaceutical Assoc., Docket No. D-9262, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,499.

57. The Commission granted the request of Clinique Laboratories Inc., to delete a provision of a 1980 consent order which restricts the company’s ability to prescribe to dealers the prices at which they should

59. The Commission modified a 1990 consent order with Promodes S.A., the parent of The Red Food Stores Inc., to allow the company to divest a different supermarket than the one required in the 1990 consent order. In addition, the Commission ended Red Food's obligation under the 1990 consent order to divest grocery stores located in Tennessee and Georgia. This modification followed a May 13, 1993 Commission order to show cause why the FTC should not delete these divestiture requirements. The 1990 order settled charges that Red Food's 1989 acquisition of several retail grocery stores in the Chattanooga area could have substantially reduced competition among grocery stores in that area. See Promodes S.A., Docket No. D-9228, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,400.

60. The Commission gave final approval to a consent agreement with three school bus transportation companies concerning their "joint ventures" called Kansas City School Transportation and their bid on a three-year contract to provide bus service for children in the Kansas City Missouri School District. The agreement settles allegations that the joint venture was set up to restrain competition and to allow the firms to allocate among themselves the areas of the district each would serve. The companies are B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc. and Mayflower Contract Services, Inc. The final consent order prohibits each company from entering into similar arrangements with any other school bus transportation company that restrain competition for school bus service in the Kansas City area. It also prohibits the companies, for the next three years, from communicating to past, present or likely future providers of bus service in the Kansas City school district their plans to bid, or not to bid, for those services. See B & J School Bus Service, Inc., Docket No. C-3425, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,315.

61. The Commission gave final approval to a consent agreement with AE Clevite Inc., a manufacturer of locomotive engine bearings, settling charges that the company invited a competitor to fix prices. Under the final consent order, AE Clevite and T&N PLC, AE Clevite's parent company, are both prohibited from requesting, proposing or advocating that a competitor fix or raise prices, price levels or service levels for locomotive engine bearings in the United States. The order also prohibits the companies from entering into agreements with competitors that would have the effect of fixing or raising prices, price levels or service levels for these products. Additionally, the order prohibits the two companies from inviting a competitor to raise prices or service levels for these products by their stating a willingness to match the increase. Finally, the order requires the companies to provide copies of the Commission complaint and consent order to current company directors and officers, as well as to officers and directors of current subsidiaries of and divisions of T&N engaged in the design, manufacture, marketing or sale of locomotive engine bearings in the United States. See AE Clevite Inc., Docket No. C-3429, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,354.

62. The Commission gave final approval to a consent agreement with YKK, Inc., the country's largest zipper manufacturer, settling charges brought in July 1988, that YKK invited its chief competitor, Talon, Inc., to eliminate certain discounts to customers. YKK offered to stop providing free installation equipment for its zippers if Talon would do the same. Talon's provision of free installation equipment to customers is a form of discounting. The Commission charged that an agreement between YKK and Talon to cease this form of discounting would constitute an unreasonable restraint of competition. Under the final consent order, YKK is prohibited from asking a competitor to fix, raise, or stabilize prices or price levels and entering into any agreement or conspiracy with any competitor to fix, raise, or stabilize prices, price levels or service levels for

zippers. The order does allow YKK to request that a competitor refrain from engaging in illegal conduct. See YKK (U.S.A.) Inc., Docket No. C-3445, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,355.

63. The Commission gave final approval to a consent agreement with the National Society of Professional Engineers (NSPE), settling charges that it restricted certain types of truthful advertising by its members. NSPE is a professional organization based in Alexandria, Virginia, with over 75,000 members in 54 state and territorial chapters. According to the Commission complaint, the NSPE adopted and maintained a Code of Ethics that stated, in part, that engineers should refrain from making statements that contain an opinion as to the quality of the engineers' services and should not employ advertising that was intended to attract clients by the use of showmanship, puffery or self-laudation or the use of slogans, jingles or sensational language or format. The order prohibits the NSPE from restricting truthful and nondeceptive advertising by its members or from encouraging or inducing any non-governmental person from engaging in any practice that would violate the Commission order. See Nat'l Soc'y of Professional Eng'rs, Docket No. C-3454, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,398.

64. The Commission gave final approval to a consent agreement with the Association of Engineering Firms Practicing in the Geosciences (ASFE). The agreement settles charges that ASFE conspired with some of its members to restrain competitive bidding and to induce its members, through insurance and peer-review programs, not to bid or give favorable prices or credit terms for civil engineering services. ASFE is a national professional association of geotechnical engineers based in Silver Spring, Maryland. Under the final consent order, ASFE is prohibited from using a peer-review procedure to review or evaluate an engineering professional's fees or pricing and bidding policies, disseminating materials concerning any engineering professional's intention not to bid, disclosing to an insurer any information about a member's fees, pricing, bidding or advertising, and stating that competitive bidding, advertising, low prices, or liberal credit terms affect any engineer's ability to obtain or keep insurance. See Association of Eng'g Firms Practicing in the Geosciences, Docket No. C-3430, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,350.

65. The Commission gave final approval to a consent agreement settling charges that United Real Estate Brokers of Rockland, Ltd., also known as Rockland County Multiple Listing System (Rockland MLS) restrained competition in residential real estate brokerage services within Rockland County, New York. Specifically, in its complaint, the Commission alleges that Rockland MLS refused to publish listings if they permitted homeowners to advertise their property in any manner; refused to allow property owners who enter into exclusive agency listings to specify that all appointments to show the property to potential buyers must be made through the listing broker's office; limited the listing broker's share of the commission for any exclusive agency listings where another member broker sold the property to less listings; and included neither the photograph nor the property description normally accompanying an exclusive right to sell listing in its weekly listing book when it published exclusive agency listings. Under the proposed settlement agreement, Rockland MLS would be prohibited from restricting exclusive agency listings(which homeowners pay a reduced fee or commission, or no fee or commission, if they sell the properties themselves); restricting brokers from soliciting homeowners with current listings for future business; interfering with the cancellation of a listing; and excluding from membership brokers who do no operate a full-time office in Rockland County. See United Real Estate Brokers of Rockland, Ltd., Docket No. C-3461, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,420.

66. The Commission gave final approval to a consent agreement with The Industrial Multiple and its parent organization, the American Industrial Real Estate Association, settling charges that they restrained competition among industrial real-estate brokers in the Los Angeles area by unreasonably restricting access to the multiple listing service (MLS), limiting the contract options member brokers could offer to their clients and reducing the likelihood of discount commissions or other price competition among brokers. The Industrial Multiple is the sole Los Angeles area MLS specializing in Industrial properties. Under the final consent order, the respondents are prohibited from, among other things, requiring that applicants for membership be engaged primarily in industrial real-estate brokerage, receiving a specified percentage of their income from industrial real-estate commissions, having a specified percentage of their real-estate transactions involve industrial property, having minimum number or dollar volume of industrial real-estate sales or leases over any period of time, or having been engaged in industrial real-estate brokerage over any period of time. See American Indus. Real Estate Assoc., Docket No. C-3449, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,090.

67. The Commission gave final approval to a consent agreement with Southeast Colorado Pharmacal Association (SCPhA), settling charges that it illegally conspired to boycott a prescription drug program offered through a state retirees health plan in an attempt to force the program to increase its reimbursement rate for prescriptions filled by its pharmacy members. Under the final consent order, SCPhA is prohibited from the following: entering into or otherwise encouraging or cooperating in any agreement between or among pharmacies to withdraw from, or refuse to enter into, a "participation agreement" (an agreement between a third-party payer and a pharmacy over the reimbursement for dispensing prescription drugs); continuing, for the next five years, a formal or informal meeting of pharmacy representatives if any two persons at the meeting make statements concerning one or more firms' intentions to withdraw from any participation agreement; communicating, for the next five years, to any pharmacy any information concerning any other pharmacy's decision or intention either to enter into or refuse to enter into, any participation agreement; providing, for the next five years, comments or advice to any pharmacy on whether to participate in any participation agreement; and soliciting, for the next five years, any information from any pharmacy concerning that firm's or any other pharmacy's intention or decision either to enter into, or refuse to enter into, any participation agreement. See Southeast Colo. Pharmacal Assoc., Docket No. C 3410, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,277.

68. The Commission gave final approval to a consent agreement with the National Association of Social Workers (NASW) settling charges that NASW restrained competition among social workers in the United States. According to the Commission complaint, the NASW adopted a Code of Ethics that prohibited its members from soliciting the clients of colleagues, but did not limit the prohibition to the uninvited, personal solicitation of patients who might be vulnerable to undue influence. The ethics code also prohibited members from paying a fee for a referral, thus deterring the use of some types of patient-referral services. Under the final consent order, NASW is prohibited from banning truthful, non-deceptive advertising by its members. Specifically, it prohibits restrictions against testimonials from clients or other consumers and bars restrictions against the solicitation of the actual or prospective clients of another professional. NASW is permitted, however, to adopt and enforce guidelines to prevent social workers from soliciting business or testimonials from

69. The Commission accepted for public comment a proposed consent agreement to settle charges announced in a June 1992 complaint that Abbott Laboratories, the leading U.S. manufacturer of infant formula, conspired with competitors to restrict mass media advertising of infant formula directly to consumers, thus depriving consumers of the benefits of competition. The Commission alleged that Abbott Labs conducted discussions at meetings of the Infant Formula Council (the industry trade association) to draft guidelines that would have prohibited the use of such advertising, agreed to exchange information of their advertising plans with competitors and requested health-care professionals to ask other infant formula manufacturers to stop consumer advertising. The proposed consent agreement would prohibit the company from exchanging with other infant formula manufacturers information relating to mass media advertising directly to consumers in the United States, agreeing, attempting to agree, or enforcing an agreement, with another infant formula manufacturer to refrain from or restrict legal marketing practices and soliciting competitors to adopt or adhere to any provision restricting consumer mass media advertising. See Abbott Laboratories, Docket No. 9253, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,488.

70. The Commission accepted for public comment a proposed consent agreement to settle charges that Keds Corporation, which manufactures athletic and casual shoes, agreed with some dealers to maintain resale prices, and that the alleged conduct raised consumer prices for the shoes and restricted price competition among its dealers. Under the proposed settlement agreement, Keds would be prohibited from fixing prices at which any dealer may advertise or sell the products, coercing or pressuring any dealer to adopt or adhere to any resale price, attempting to secure commitments from any dealer about the prices at which they will advertise or sell

Medical Equipment Company, Homecare Oxygen & Medical Equipment Company and their physician owners that would settle charges that the physician joint ventures violated the antitrust laws in gaining their high market shares. The FTC challenged the joint venture because the venture would allow a group of specialists to gain control of the market for an ancillary service by controlling patient access to the service. The joint venture creates a barrier to entry by other entities, thereby inhibiting competition in the relevant market. The ancillary service at issue in these cases is the provision of oxygen systems prescribed for home use by patients with lung, heart or other diseases who cannot obtain sufficient oxygen through normal breathing. In general, patients who require oxygen systems receive the services of pulmonologists who have the ability to influence the choice of which oxygen systems supplier will service such patients. Under the proposed consent agreements, the physicians in each partnership would be required to reduce their collective ownership so that 25 percent or less of the physicians in the relevant geographic market would by affiliated with the partnership.

court was whether COMSAT's private conduct as a common carrier could be separated sufficiently from its official role to support an antitrust claim, or whether all claims against COMSAT were necessarily barred by

2) FTC Review of Premerger Notifications

79. Based on its review of premerger notification reports, the FTC investigated 40 transactions with second requests for information.

3) Enforcement of Premerger Notification Rules

80. The Commission and the Department actively have enforced the filing requirements of the HSR Act and in this connection, have brought charges in federal court and have obtained civil penalties. The FTC requests the Department to file its complaints. The complaints and settlements typically are filed in the U.S. District Court for the District of Columbia.

81. On September 8, 1993, in connection with a complaint filed by FTC attorneys acting as special attorneys to the U.S. Attorney General, Stephan Schmidheiny agreed to pay $414,650 in civil penalties settling charges that he did not comply with HSR premerger notification requirements when he acquired two Swiss firms that do business in the United States. The complaint alleged that Schmidheiny acquired control of Landis

Case No. 3951, for a summary of the Department's complaint, and 1993-2 Trade Cas. (CCH) ¶ 70,363 for the text of the decree.

84. On February 16, 1993, the Division announced its intention to file a civil antitrust suit challenging the proposed acquisition by Coflexip S.A., a French corporation, of the assets of Wellstream Corporation, a U.S. firm headquartered in Florida. Coflexip and Wellstream are the only two significant manufacturers in the world of unbonded flexible pipe, which is used in offshore oil and gas production. Worldwide sales of unbonded flexible pipe in 1992 were approximately $200 million. Coflexip accounts for about $190 million and Wellstream about $12 million of those sales. After its review of the proposed transaction, the Division concluded that the merger would substantially lessen competition and tend to create a monopoly in the unbonded flexible pipe market. The parties abandoned the transaction.

85. On March 15, 1993, the Division filed a civil antitrust complaint and proposed consent decree in connection with the proposed transaction between USAir Group Inc. of Arlington, Virginia, and British Airways Plc (BA) of London, England. On January 21, 1993, BA acquired approximately 20 percent of the voting stock of USAir for $300 million, and acquired an option to purchase an additional 25 percent of USAir's equity for an additional $450 million. USAir and BA also agreed to conduct joint operations on scheduled airline passenger service to London via USAir's Philadelphia, Baltimore and Charlotte gateways using shared airline designator codes, coordinated schedules, and integrated advertising and reservations. The Division's complaint alleged that the transaction would substantially lessen competition in the provision of scheduled airline passenger service between interior US points and London, and in the provision of nonstop scheduled airline passenger service in the Philadelphia-London and Baltimore/Washington-London markets. Under the terms of the consent decree, which was approved by the court and entered on September 30, 1993, USAir must transfer its authority from each of its gateways to an approved purchaser within 45 days of its initiation of code-sharing services with BA from that gateway. If USAir is unable to complete a sale, it is required to

transaction would raise significant antitrust concerns. In a statement issued after the termination, AAG Bingaman observed that the proposed combination of ChipSoft and MECA would have given Chipsoft control over the two most popular brands of consumer tax preparation software, resulting in substantially reduced competition and higher prices for popular and useful computer software.

88. In another proposed acquisition involving competing tax preparation software, TaxCut and Turbotax, the Division announced in December 1993, that Intuit, Inc. had terminated on option to purchase Legal Knowledge Systems, Inc. (LKS), the producer of TaxCut. Intuit had been advised that its proposed purchase of LKS would raise serious antitrust concerns if it were to proceed also with its proposed parallel acquisition of Chipsoft, the producer of Turbotax. Together, Turbotax and Taxcut account for 75 percent of the U.S. market for consumer tax preparation software.

89. On November 2, 1993, the Division announced that Goldman Sachs, a New York investment banking firm which manages the Water Street Corporate Recovery Fund, also of New York, agreed to sell shares of the National Gypsum Company to avoid antitrust concerns. Water Street became the owner of approximately 20 percent of National Gypsum and 43 percent of USG Corporation, National Gypsum's leading competitor, when those firms emerged from bankruptcy proceedings earlier in 1993. Over half of the country's gypsum wallboard is made by the National Gypsum and USG. In order to address the Department's concerns regarding the potential joint ownership of both firms, Goldman Sachs offered not to take any management role with National Gypsum and to divest quickly all of Water Street's shares in the firm.

90. On November 8, 1993, the Division approved divestitures by Cyprus Minerals Company of Colorado and Amax, Inc. of New York, that would resolve antitrust concerns relating to Cyprus' proposed acquisition of all the voting securities of Amax. The Division had indicated to the parties that the transaction posed serious antitrust concerns in the molybdenite mining and processing industry. The divestitures preserve competition in molybdenite mining and roasting and provide for previously unavailable capacity for U.S. companies.

91. On November 16, 1993, the Division filed a complaint in U.S. v. General Motors Corp. CA No. 93-530 (D. Del.), a civil antitrust suit to block the sale of General Motors Corporation's (GM) automatic transmission division (Allison Transmission Division) to ZF Friedrichshafen AG, a German company with American operations headquartered in Chicago. Allison and ZF are each other's main competitors in the United States for the manufacture of medium and heavy automatic transmissions for trucks and buses. The proposed transaction had the potential to substantially lessen competition in three markets: (a) the manufacture and sale of automatic transmissions for transit buses in the United States; (b) the manufacture and sale of automatic transmissions for heavy refuse trucks in the United States; and (c) worldwide technological innovation in the design and production of automatic transmissions for medium and heavy duty commercial and military vehicles. Shortly after the Division filed its complaint, the parties abandoned plans for the acquisition. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,093, Case No. 4027.

92. On December 23, 1993, the Division filed a complaint in U.S. v. Baroid Corp., CA No. 93-2621 (D.D.C.) a civil antitrust suit to block the $900 million merger of Baroid Corporation by Dresser Industries Inc., two of the nation's largest oil field service companies. At the same time, the Division filed a proposed consent decree to settle the suit. The government's complaint alleged that the proposed transaction would substantially lessen competition in two markets: (a) the production and sale of drilling fluids in the United States, and (b) the manufacture and sale of diamond drill bits in the United States. Under the proposed consent decree, which

is pending before the court, the parties must divest either Dresser's or Baroid's drilling fluid business, plus divest DBS's domestic assets and license its patents and other technology to a new competitor for sale of DBS diamond drill bits domestically and to a significant extent throughout the world. See U.S. v. Baroid Corp., Baroid Drilling Fluids, Inc., DB Stratabit (USA), Inc. and Dresser Industries, In c., 6 Trade Reg. Rep. (CCH) ¶ 45,093, Case No. 4032, for a summary of the Division's complaint.

2) Merger Cases Brought by the FTC

93. Free markets for capital and corporate assets are vital to the efficient functioning of the United States' economy. Most mergers and acquisitions allow those assets to be reorganized efficiently, and they improve consumer welfare by reducing costs and prices. Some mergers, however, may substantially lessen competition and result in price increases to consumers. In the past calendar year, the Commission authorized its staff to seek to block two mergers in federal district court. The Commission issued one administrative complaint to challenge a proposed acquisition. Further, there was one Commission decision upholding the decision of an administrative law judge and one initial decision by an administrative law judge upholding a Commission complaint. Additionally, the Commission entered into seven final consent agreements, and six proposed consent agreements to settle the anticompetitive concerns raised by proposed merger transactions. These efforts illustrate the Commission's commitment to challenge potentially anticompetitive mergers without preventing transactions that can increase productivity.

a) Preliminary injunctions authorized

94. In September 1993, the Commission authorized its staff to seek a federal court order temporarily blocking the General Electric Company's proposed acquisition of the Chrysler Corporation's boxcar fleet. The FTC alleged that the acquisition would significantly decrease competition in the United States and Canada boxcar operating lease market. The transaction was abandoned after the Commission voted to authorize the staff to seek a temporary restraining order and preliminary injunction. GE Boxcar, File No. 931 0025.

95. In January 1993, the Commission authorized its staff to seek a federal court order temporarily blocking Columbia Hospital Corporation's proposed acquisition of Medical Center Hospital, a hospital owned by Adventist Health System in Florida. Both hospitals are located in Charlotte County, in southwest Florida. The FTC alleged that the acquisition would significantly decrease competition for acute care hospital services in the Charlotte County area as there is only one other hospital in this area and entry is difficult and time-consuming. The FTC specifically alleged that the proposed acquisition would increase the likelihood that Charlotte County hospitals will raise prices or reduce the quality of their services. The Commission's request for a temporary restraining order was granted by a federal district court in Florida. The Commission subsequently issued an administrative complaint in February, l993. In May, the federal court granted the Commission's request for a preliminary injunction. The matter was referred to an Administrative Law Judge for trial. [A provisional consent agreement was announced in February, l984]. See Columbia Hospital Corp., File No. 931 0025, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,319.

b. Commission Administrative Decisions

Binder FTC Complaints and Orders] ¶ 23,447.

99. The Commission granted in part and denied in part a petition from KKR Associates and other respondents to modify a 1989 consent order that settled FTC charges stemming from KKR's acquisition of RJR Nabisco, one of the nation's leading food companies. The Commission denied KKR's request to delete entirely a provision of the order that, for a 10-year period, prohibits KKR from acquiring the assets of companies involved in the production of certain relevant products without prior approval of the Commission. The Commission, however, modified the order to require only notification to the Commission, instead of prior approval, for acquisitions of relevant products if respondents are not at that time engaged in that relevant product market. The Commission also denied KKR's request that the order be modified to include a "poison pill" provision that would permit KKR to acquire, without prior Commission approval, an interest in a company not involved in the production or marketing of packaged nuts at the time the proposed acquisition is announced, even if that company subsequently acquired a packaged nuts business (as a way to avoid acquisition of KKR). See KKR Associates, L.P., Docket No. C 3253, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,393.

100. The Commission granted a request from General Motors Corporation and Toyota Motor Corporation to set aside a 1984 consent order limiting the duration of their joint venture to produce small cars in Fremont, California. GM and Toyota each own 50 percent of the venture, New United Motor Manufacturing, Inc. (NUMMI). Under the terms of the order GM and Toyota were required to discontinue NUMMI by December 1996. In its order granting the petition, the Commission said that the respondents have shown that changed conditions in the industry eliminate the need for the order and make its continued application to the respondents inequitable and harmful to competition. See General Motors Corp. and Toyota Motor Corp., Docket No. C-3132, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,491.

101. The Commission approved the request of S.C. Johnson & Son, Inc., a major U.S. manufacturer of home care products, to reopen and modify a 1993 order settling charges that Johnson's acquisition of certain assets of the Drackett Company, a wholly owned subsidiary of Bristol-Myers Squibb Company, could substantially lessen competition. The FTC charged that the acquisition could substantially lessen competition or tend to create a monopoly in the manufacture and sale of continuous action and aerosol air-freshener products and furniture care products marketed in the United States. In approving Johnson's request to reopen and modify the 1993 order, the Commission concluded that Johnson made a sufficient showing that public interest considerations support removing the requirements that Johnson hold separate and divest the international Renuzit assets to a Commission approved acquirer. See S.C. Johnson & Son, Inc., Docket No. C-3418, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,494.

102. The Commission gave final approval to a consent agreement with the Monsanto Company, a major U.S. manufacturer of chemicals, including lawn and garden products, settling charges that its acquisition of the Ortho Consumer Products Division of Chevron Corporation would substantially lessen competition in the U.S. market for residential "non-selective" herbicides. Under the final consent order, Monsanto, must divest certain assets, including the Kleenup brand name and product line, to no more than three FTC approved purchasers within one year after the date of the final order. See Monsanto Co., Docket No. C 3458, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,391.

103. The Commission gave final approval to a consent agreement settling charges arising from a proposed acquisition by McCormick & Company, Inc., of Haas Foods. The FTC alleged that McCormick and Haas Foods were competitors in the U.S. dehydrated onion business prior to the acquisition. The FTC charged that the acquisition increases the likelihood that the remaining firms in the market will increase prices and restrict output, both in the near future and in the long term, in violation of the antitrust laws. Under the consent agreement, McCormick is be required to divest, within four months to an FTC approved acquirer, a seed bank with enough seeds to produce at least 5,000 pounds of additional onion seed for future planting. See McCormick & Co., Inc., Docket No. C-3468, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,433.

104. The Commission gave final approval to a consent agreement with Columbia Hospital Corporation and Galen Health Care, Inc., settling charges that Columbia's proposed acquisition of Galen would substantially lessen competition for acute-care inpatient hospital services in Osceola County, Florida, by combining the owners of two competing hospitals located in Kissimmee in Osceola County. In compliance with the order, Columbia divested Kissimmee Memorial Hospital, previously owned by Columbia, to Adventist Health System. The consent order also requires Columbia and Galen, for 10 years, to obtain FTC approval before acquiring any acute care hospital in Osceola County. This prior approval requirement also will have to be met before Columbia or Galen permits any hospital they operate in the county to be acquired by an entity that already owns a hospital there or intends to operate any other hospital there after such an acquisition. See Columbia Hospital Corp., Docket No. C-3472, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,450.

105. The Commission gave final approval to a consent agreement settling charges arising from a acquisition by Cooper Industries Inc. of Fusegear Group from BTR PLC, a British company. The FTC charged that the proposed acquisition would substantially lessen competition in the highly concentrated U.S. market for low voltage industrial fuses. The settlement would require Cooper to license certain technology to manufacture the fuses and to divest the necessary tooling, equipment and machinery to the FTC approved licensee. Also, the settlement would prohibit Cooper from acquiring, without prior FTC approval, any interest in any firm with more than $3.5 million in annual U.S. sales of low voltage industrial fuses and would require the company to notify the FTC and wait a specified period before acquiring any firm selling less than that amount of fuses. See Cooper Industries, Inc., Docket No. C-3469, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,414.

106. The Commission gave final approval to Service Corporation International's (SCI) requests to divest seven funeral homes in Georgia and Tennessee to CFS Funeral Services, Inc. Both companies are based in Houston, Texas. In addition, the FTC gave final approval to a consent agreement with SCI, settling charges that its acquisition of Sentinel Group, Inc., would substantially lessen competition among funeral home establishments in certain areas of Georgia and Tennessee. See Service Corp. Int'l, Docket No. C 3440, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,409.

107. The Commission gave final approval to a consent agreement with Dentsply International, Inc., settling charges that the firms proposed acquisition of certain Johnson & Johnson dental supply assets could raise prices and restrict supply in the U.S. market for premium silver alloy, a product used to fill cavities. Dentsply is a manufacturer of professional dental care products. Under the final consent order, Dentsply can proceed with

the acquisition, but it must divest to an FTC approved purchaser within 9 months all of its American assets related to the manufacturing and marketing of its "Valiant" line of silver alloy products. Dentsply must appoint individuals to manage the Valiant assets independently of its other business, and to maintain the viability and marketability of the assets until they can be sold. In addition, the consent order contains a 10-year requirement that Dentsply obtain FTC approval before acquiring any silver alloy manufacturer of distributor. See Dentsply Int'l, Inc., Docket No. C-3407, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,268.

108. The Commission gave final approval to a consent agreement with Alliant Techsystems, Inc., settling charges that its proposed acquisition of certain Olin Corporation assets would substantially reduce competition or tend to create a monopoly in the U.S. market for systems contracting for ammunition used by the Abrams tank and Apache helicopter. The assets Alliant had proposed to acquire relate to the production of various types of ammunition used by the Abrams tank and the Apache helicopter. Under the final consent order, Alliant is prohibited - without first obtaining FTC approval - from acquiring the assets or stock of any company that is a defense systems contractor providing 120mm tank ammunition or 30mm lightweight ammunition. Alliant must also obtain FTC approval before selling or transferring its own stock or assets to a company engaged in systems contracting for these types of ammunition. These prior approval requirements last for ten years. Finally, the order requires Alliant to terminate its proposed acquisition of Olin and to stipulate that any confidential documents exchanged between the companies be destroyed or returned. See Alliant Techsystems, Inc., Docket No. D-9254, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,302.

109. The Commission accepted for public comment a proposed consent agreement settling charges that the proposed acquisition of QVC Network Inc. by Tele-Communications, Inc. (TCI) and Liberty Media Corporation

111. The Commission accepted for public comment a proposed consent agreement settling charges arising from the 1989 Textron, Inc. acquisition of Avdel PLC. Both companies manufacture blind rivets for use in ground transportation vehicles. The Commission filed an administrative complaint in 1989 charging that Textron's acquisition of Avdel would substantially lessen competition in the U.S. and world markets for both aerospace blind rivets and non-aerospace structural blind rivets. In October, 1991, an Administrative Law Judge dismissed the FTC complaint. Complaint counsel appealed the ALJ's decision, and, following oral argument before the Commission, the matter was subsequently withdrawn from adjudication so that the Commission could consider a proposed consent agreement. The settlement would require Textron to license to a Commission approved entity the right to manufacture and sell rivets, to divest to the licensee certain Monobolt manufacturing assets and to provide technical assistance to the licensee for five years. See Textron, Inc., Docket No. D-9226, Trade Reg. Rep. (CCH) [1987-1993 Transfer Binder FTC Complaints and Orders] ¶ 23,489.

112. The Commission accepted for public comment a proposed consent agreement with Consol, Inc. that would settle charges that Consol's proposed acquisition of Island Creek Coal, Inc., would substantially lessen competition in the Baltimore, Maryland market for coal exportcd

c) District Court Actions

115. Dr Pepper/Seven-Up and Harold Honickman v. FTC, No. 91-2712 (D.D.C.), No. 92-5308 (D.C. Cir.) is a suit seeking review of a Commission decision denying prior approval for Harold Honickman to acquire the assets of Seven-Up Brooklyn Bottling Co., pursuant to the terms of a consent order. The complaint was filed on October 22, 1991. On July 20, 1992, the district court granted the Commission's motion for summary

120. On November 15, 1993, the Division declined to state that it would not challenge the South Suburban

interagency process to develop and implement the President's plan for a comprehensive telecommunications infrastructure.

125. In 1993 the Division reviewed three applications submitted under the Export Trading Company Act and its implementing regulations and concurred in the issuance of three certificates. The goods and services covered by the certificates included fruit, metals, and trade facilitation services.

2) FTC Activities with Respect to Regulatory and State Legislative Matters

126. The Commission, in fulfilling its competition and consumer protection mission, seeks to prevent or lessen consumer injury that may be caused by private or governmental activities that interfere with the proper functioning of the marketplace. In some instances, laws, regulations or self-regulatory standards may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms or wasting resources. The goal of the advocacy program, therefore, is to reduce such possible harms to consumers by advising appropriate governmental and self-regulatory entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking.

127. Advocacy comments on antitrust issues are prepared by the Staffs of the Bureaus of Competition and Economics, and the ten Regional Offices under the general supervision of the Office of Consumer and Competition Advocacy. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review and information for the staff's work in this area. In calendar year 1993, the Commission staff submitted comments or amicus briefs to federal, state and self-regulatory entities on antitrust-related issues in such areas as telecommunications and health.

a) Federal Agencies

128. The Bureau of Economics filed comments in response to an FCC Notice of Proposed Rulemaking concerning proposals to revise price cap rules for AT&T. The comment, based on a BE study of the extent to which individual firms, and particularly AT&T, could exert market power for long distance services, supported proposals that would remove price caps from, and streamline FCC regulation of, optional long distance calling plans and commercial long distance services. Staff suggested that some benefits could include savings in administrative costs, expedition of new services and price reductions, a decrease in regulatory delay, an increase in flexible pricing, competition and incentives to initiate pro-consumer price and service changes. Staff also submitted the same BE study in a second FCC Notice of Proposed Rulemaking, seeking comment on an AT&T petition to remove its classification as a "dominant" carrier. AT&T requested to be classified as a "nondominant" carrier and regulated in the same manner as its interexchange competitors. Staff asked that the FCC consider the BE study in its deliberations on this issue.

129. The Bureau of Economics filed comments in response to an FCC Second Notice of Proposed Rulemaking to extend to "switched access" service some rules about rates and access recently adopted for "special access" service. The rules would increase competition to the local transport element of the switched access market by requiring certain local exchange carriers (LECs) to offer expanded opportunities to interconnect with their switched access networks to provide for interstate switched transport. FTC staff supported the proposal, suggesting that permitting non-LEC firms to provide local transport services, combined

with requiring LECs to provide the local loop access to end users necessary to complete long distance calls, would benefit consumers, and that permitting LECs greater flexibility to price their services according to their costs will help ensure efficient entry.

130. The Bureau of Economics filed comments in response to an FCC Notice of Proposed Rulemaking on a proposal to require that television receivers be capable of receiving both standard National Television Systems Committee (NTSC) broadcasts and the new advanced television (ATV) signals. Staff suggested that requiring television manufacturers to produce "dual-mode" television receivers capable of both NTSC and ATV reception during the transition period prior to full conversion to ATV is undesirable. Such a requirement may harm consumers by limiting their choices and forcing them to purchase equipment they would not otherwise purchase. Staff concluded that consumers' interests can best be served by permitting the production of different types of television receivers, so that consumers can choose for themselves the equipment they prefer when viewing ATV broadcasts.

b) States

131. The Chicago Regional Office submitted comments to the Illinois State Senate on a bill to amend the Illinois Ambulatory Surgical Treatment Center Act. The bill would authorize a pilot program to establish alternative health care facilities, birth centers and postsurgical recovery care centers, for relatively healthy patients who are receiving treatments that are not expected to lead to complications. Birth centers would specialize in childbirth services for healthy mothers without complications, and would only require a maximum stay of 24 hours. Postsurgical recovery care centers would provide recovery care for generally healthy patients

currently prohibit physicians from advertising board certification in a specialty unless the certifying agency is recognized by the Board of Medical Examiners. Staff noted that programs to certify competence can help consumers differentiate among professionals, because they convey information about the services being offered and the professional's recognized competence. However, staff recommended that programs to regulate advertising of certifications should help ensure that claims about certification are not deceptive and that they do not unnecessarily deny consumers information about a certification that is true and not deceptive. Staff also suggested that the Board consider some regulation, short of a complete ban, such as a disclaimer, on advertising of certification by entities not on the approved list.

135. The Office of Consumer and Competition Advocacy submitted comments in response to a request from the Office of the Attorney General of the State of North Dakota on Senate Bills 2295 and 2426, which would authorize certain cooperative agreements among hospitals or other health care providers and immunize those agreements from antitrust liability. FTC staff recommended caution in proceeding with the legislation, questioning whether granting antitrust immunity is necessary to achieve the goals sought. According to the comment, statutory antitrust exemptions could permit behavior that injures consumers and the economy because it may eliminate competition and harm consumers' interests without producing clear countervailing benefits. Rather, staff supported competition as being an important factor in bringing about beneficial change in how health care services are delivered to consumers. To ensure that the agreements, once authorized, continue to operate as intended, staff recommended that measures be taken to make it easier to terminate agreements that fail to achieve specified goals.

136. The Office of Consumer and Competition Advocacy submitted comments in response to a request from the South Carolina Legislative Audit Council on the statutes and regulations of the Boards of Optometry and Opticianry, Dentistry, Psychology, Speech and Audiology, Physical Therapy, Podiatry, and Occupational Therapy. For optometry and opticianry, the staff recommended removing prohibitions against offering eye examinations as premiums, discounts or bonuses, using positions with professional organizations for advertising purposes, locating optometric offices in commercial locations, displaying licenses, diplomas or certificates where they are visible outside optometric offices, and claims of superiority. Staff also suggested that mandatory price advertising disclosures be removed. For dentists, the staff recommended that referral fee controls not impair legitimate provider arrangements, and called for lifting certain restraints on how dentists may represent themselves in advertisements. Staff also suggested that the Council consider a more flexible "general supervision" approach for dental hygienists. For several professions, the staff recommended removing prohibitions on guarantees, or statements implying unique or unusual abilities. Staff cautioned the Board of Psychologists that the American Psychological Association's ethical principles contained provisions that could lead to significant competition problems.

137. The Cleveland Regional Office testified before the Committee on Health Policy and Senior Citizens of the Michigan State Senate on a bill that would remove Michigan's current prohibition against cross-ownership between funeral establishments and cemeteries. Staff supported the bill, but suggested that those aspects of the legislation that prohibit the offer of bundled goods and services at a discount may prevent the

a cemetery. Staff supported an alternate proposal that would eliminate such restrictions concluding that permitting joint ownership or operation could make possible new business formats and improvements in efficiency, which might in turn lead to lower prices and better service to consumers.

138. Staff submitted comments to South Carolina, Massachusetts, New Jersey, Pennsylvania, Texas, and Montana on "any willing provider" requirements that would limit the ability of several kinds of health benefit plans to arrange for services through contracts with providers, by requiring that services be available through any provider willing to meet the plan’s terms. Staff suggested that the proposals may have the unintended effect of denying consumers the advantages of cost-reducing arrangements and limiting their choices in the provision of health care services.

B. Department of Justice Trade Policy Activities

Rigging on Prices?" EAG 93-2, January 28, 1993; forthcoming in *Economics Letters*.

93-3 Nye, William W., "Some Economic Issues in Licensing of Music Performance Rights: Controversies in Recent ASCAP-BMI Litigation," EAG 93-3, February 1, 1993.

93-4 Werden, Gregory J. and Froeb, Luke M., "The Effects of Mergers in Differentiated Products Industries: Logit Demand and Structural Merger Policy," EAG 93-4, August 23, 1993.

93-5 Froeb, Luke M., Werden, Gregory J., and Tardiff, Timothy J., "The Demsetz Postulate and the Effects of Mergers in Differentiated Products Industries," EAG 93-5, August 24, 1993.

93-6 Malueg, David A. and Schwartz, Marius, "Parallel Imports, Demand Dispersion, and International Price Discrimination," EAG 93-6, August 25, 1993.

93-7 Alexander, Cindy R. and Reiffen, David, "Vertical Contracts as Strategic Commitments," EAG 93-7, August 30, 1993.

93-8 Kodres, Laura E. and O'Brien, Daniel P., "The Existence of Pareto Superior Price Limits," EAG 93-8, September 1, 1993.

93-9 Brennan, Timothy J., "Is Cost-of-Service Regulation Worth the Cost?" EAG 93-9, September 10, 1993.

93-10 Ordover, Janusz A. and Pittman, Russell W., "Restructuring the Polish Railway for Competition," EAG 93-10, September 13, 1993.

93-11 Raskovich, Alex, "Vertical Control with Costly Free-Riding," EAG 93-11, September 14, 1993.

around the time of key points in the case which took place in the early 1970s. The authors conclude that Corning likely used RPM to enhance its distribution of consumer glass products. This conclusion flows from the empirical analysis indicating that the stock market reactions and changes in sales following the events are not consistent with any of the theories that characterize RPM as an anticompetitive device.

2) Working Papers

Telecommunications Bypass and the "Brandon Effect", (WP#199), Steven G. Parsons and Michael R. Ward, February 1993.

Fight, Fold or Settle?: Modeling the Reaction to FTC Merger Challenges, (WP#200), Malcolm Coate, Andrew Kleit, and Rene Bustamante, February 1993.

Product Variety and Consumer Search, (WP#201), Jeffrey H. Fischer, February 1993.

3) Miscellaneous Studies

Economies of Scale, Scope of Integration, Richard A. D'Aveni and David J. Ravenscraft, December 1992.

Core Competencies and Cost Structure: A Study of Line of Business-Level Competitive Advantage Associated with Diversification Strategies, Richard A. D'Aveni and David J. Ravenscraft, December 1992.