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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED STATES

-- From 1st October 1998 to 30 September 1999 --

This report is submitted by the United States Delegation to the Competition Law and Policy Committee FOR

Or. Eng.

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Summary of Highlights

1. The Department of Justice in FY99 obtained record criminal fines totaling more than $865 million in an ongoing investigation of a worldwide price-fixing and market allocation conspiracy in the vitamins market. The investigation has thus far resulted in convictions against Swiss, German, Canadian, and Japanese firms; Hoffmann-LaRoche agreed to plead guilty and pay a record $500 million fine, the largest fine ever imposed in any DOJ proceeding under any statute. Ongoing investigations in the graphite electrodes and food additives markets resulted in significant fines, and three former high-ranking executives of the Archer Daniels Midland Company were sentenced to serve prison sentences ranging from 24 to 30 months for their participation in the lysine cartel.

2. During FY99, the DOJ and Federal Trade Commission received over 4,600 pre-merger filings. The Commission initiated 291 merger investigations and investigated 45 transactions with a second request for information. It challenged 30 transactions, leading to 18 consent orders; twelve transactions were abandoned prior to the filing of a complaint. The Division investigated 229 mergers and challenged 21; 25 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announced intent to challenge. Noteworthy among merger cases was the Commission challenge to the proposed $48.2 merger between The British Petroleum Company p.l.c. and Amoco Corporation. The Commission alleged that the transaction raised competitive concerns in the wholesale sale of gasoline and the terminaling of gasoline and other light petroleum products in a number of local markets. The Commission challenge culminated in a consent order under which the companies agreed to divest 134 gas stations in eight markets and nine light petroleum products terminals and to free up more than 1 600 gas stations in 30 markets, allowing independent retail dealers to switch to other brands. In another consent order, Albertson's and

Microsoft, and the judge has now issued conclusions of law holding that Microsoft abused its monopoly power and attempted to monopolize the internet browser market.

In FY99, the U.S. negotiated cooperation agreements with Japan, Brazil, and Israel, and signed the first Antitrust Mutual Assistance Agreement under the International Antitrust Enforcement Assistance Act with Australia. The FTC and DOJ also issued Antitrust Guidelines for Collaborations Among Competitors. The guidelines describe an analytical framework addressing a broad range of horizontal agreements, including joint ventures, strategic alliances, and other competitor collaborations. They are designed to assist businesses in assessing the possible antitrust implications of such transactions and should encourage procompetitive collaborations, deter collaborations likely to harm competition, and facilitate the Agencies' investigations.

The Commission, on August 6, released a staff report entitled AA Study of the Commission's Divestiture Process@ and invited members of the public to submit their views on the report. The report evaluates 35 divestiture orders entered between 1990 and 1994. The report discusses factors that make divestitures more likely to succeed, and concludes with recommendations to ensure more effective divestitures in the future.

Public documents, including more detailed descriptions or full texts of many of the matters referred to in this report, are available at *http://www.ftc.gov* and *http://www.usdoj.gov/atr*.

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED STATES

(October 1, 1998 through September 30, 1999)

Introduction

7. The Premerger Notification Office of the FTC, with the concurrence of the Antitrust Division, issued a Formal Interpretation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") and implementing rules pertaining to limited liability companies (LLCs). The interpretation states that the creation of an LLC to which two or more pre-existing, separately controlled businesses will be contributed may be subject to the reporting requirements of the HSR Act, if the thresholds of the HSR Act are met and at least one of the members will control the LLC.

8. The FTC and the Antitrust Division have issued Antitrust Guidelines for Collaborations Among Competitors. The guidelines describe an analytical framework addressing a broad range of horizontal agreements, including joint ventures, strategic alliances, and other competitor collaborations. They are designed to assist businesses in assessing the possible antitrust implications of such transactions and should

provisions for notification of enforcement activities, enforcement cooperation and coordination, conflict avoidance and consultations, positive comity, and confidentiality and use limitations. The U.S.-Japan agreement is similar to existing cooperation agreements between the U.S. agencies and the EU and

19. During FY99, the Division filed 57 criminal cases in which it charged 17 corporations and 46 individuals. Twenty-five corporate defendants and 50 individuals were assessed fines totaling $972 million and 30 defendents were sentenced to a total of 8,102 days of incarceration. Another 25 individual defendants were sentenced to spend a total of 2,850 days in some form of alternative confinement.

20. During FY99, 4,642 proposed mergers and acquisitions were reported for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"). The Division investigated 229 mergers and challenged 21; an additional 25 transactions were restructured or abandoned prior to the filing of a complaint as a result of the Division's announcement that it would otherwise challenge the transaction. The Division also screened a total of 1,698 bank mergers. The Division opened 285 civil investigations, both merger and non-merger, and issued 919 civil investigative demands (a form of compulsory process). The Division filed 7 non-merger civil complaints. Also during FY99, the Division responded to 9 requests for review of written business proposals.

2) FTC Staffing and Enforcement Statistics

B. Antitrust Cases in the Courts

1) United States Supreme Court

27. In *NYNEX Corp. v. Discon, Inc.*, 119 S. Ct. 493 (1998), the Supreme Court held that an agreement between a buyer and a supplier to purchase goods or services from that supplier rather than another is not a *per se* illegal boycott under Section 1 of the Sherman Act. Antitrust law does not permit the application of a *per se* rule in the boycott context in the absence of a horizontal agreement.

28. In *California Dental Ass'n v. FTC* , 119 S.Ct. 1604 (1999), the U.S. Supreme Court vacated the judgement of the Ninth Circuit Court of Appeals which had upheld an FTC decision that the CDA was unlawfully restricting price and quality of care advertising by its members, who represent about 75% of the state's dentists. The Court remanded the case to the Circuit Court for further consideration. The Supreme Court held that the CDA's rules restricting price and quality advertising by members should not have been invalidated on antitrust grounds under an abbreviated rule of reason analysis because where, as in this case, the anticompetitive effects of the given restraints are not obvious, the rule of reason demands a more thorough inquiry into the consequences of the restraints. The Supreme Court also held that the FTC has jurisdiction over the non-profit CDA because the CDA provides substantial economic benefits to its for-profit members.

2) U.S. Court of Appeals Cases

a. Significant DOJ Cases Decided in FY99

29. There were six dispositions by the Courts of Appeals in Antitrust Division cases in FY99, and five of these resulted in published opinions. One of the published opinions involved civil discovery matters, and another affirmed the termination, upon joint motion of the parties, of a long-standing civil antitrust decree. The remaining published decisions were in criminal antitrust cases. Two of these criminal cases are described below.

30. In *In re Impounded*, 178 F.3d 150 (3d Cir. 1999), the court held that immunized witnesses could not refuse to testify before a federal grand jury investigating possible antitrust violations on the constitutional ground that their statements might tend to incriminate them in a foreign prosecution. The witnesses failed to show either a real and substantial fear of prosecution abroad, or to demonstrate that there was, in effect, a joint antitrust prosecution between the United States and a foreign government.

31. In *United States v. Tucor Int'l, Inc.*, 189 F.3d 834 (9th Cir. 1999), the court construed Section 7(a)(4) of the Shipping Act of 1984, which provides an antitrust exemption for "any agreement or activity

Bluff, Missouri. The Court of Appeals reversed the district court and dissolved the preliminary injunction, finding that the district court's determination of the relevant geographic market was unsupported by the record. The Court held that the Commission had failed to meet its burden of proving a well-defined geographic market, and that the district court had improperly assessed the record evidence. The Commission sought rehearing *en banc*, which was denied (with three judges dissenting from the denial of rehearing).

33. S*urgical Care Ctr. v. Hospital Serv. Dist. No. 1*, 171 F.3d 231 (5th Cir. 1999) (*en banc*) is a private antitrust action initiated under the Sherman Act in which the Commission and the Department of Justice filed a brief as *amicus curiae*. The plaintiff, a private hospital, alleged that the defendant, a competing hospital owned by a subordinate unit of the state government, had attempted to extend a monopoly in the provision of one kind of medical treatment to another in violation of the Sherman Act and certain state antitrust statutes. The district court had dismissed the case, holding that Louisiana had granted the defendant immunity from the Sherman Act. A panel of the Fifth Circuit had affirmed but the Court, sitting *en banc*, reversed the district court, finding that Louisiana had not expressed any intent to displace competition, and that the conduct was therefore not immune from the antitrust laws. The Court remanded the case to the district court.

3) Private Cases Having International Implications

34. In *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716 (9th Cir. 1999), Simula, the U.S. inventor of an air bag system, had entered into agreements with Autoliv, a foreign car parts manufacturer, covering joint development, cooperation, and licensing. The agreements contained a clause stating that "all disputes arising in connection with this Agreement shall be finally settled"

"

36. In *Filetech S.A. v. France Telecom S.A.*, 157 F.3d 922 (2d Cir. 1998), a French corporation and its U.S. subsidiary sued France Telecom and its U.S. subsidiary alleging monopolization under the Sherman Act for failure to make available to Filetech usable information on French telecom subscribers for use in preparing a data base to be sold as a direct marketing tool. The district court described a long history of litigation, much of it ongoing, concerning competition and data privacy issues involving Filetech, France Telecom, and other parties before French commercial and criminal courts and competition authorities. The district court had granted France Telecom's motion to dismiss on grounds of international comity (*see* U.S. Annual Report for FY97, ¶30). On appeal, the Court of Appeals remanded the case for reconsideration of factual issues relating to subject matter jurisdiction. France Telecom, as an agency or instrumentality of a foreign state, would be immune from suit under the Foreign Sovereign Immunities Act unless the "commercial activity" exception applied, and the pleadings and submissions of the parties sharply disagreed over the extent of relevant commercial activity by France Telecom in the U.S. Similarly there were disagreements over the existence of sufficient effects from France Telecom's conduct to support jurisdiction under the Sherman Act. The Court held that if the trial court resolved these jurisdictional question in favor of Filetech, dismissal on grounds of international comity would be appropriate only on a clear demonstration that "compliance with the regulatory laws of both France and the United States would be impossible."

37. In *Blomkest Fertilizer, Inc. v. Potash Corporation of Saskatchewan*, 176 F.3d 1055 (8th Cir.

immunity by undermining the objective basis for the petition. A dissenting judge argued that use of knowing and material misrepresentations should form an independent ground for denying antitrust immunity to defendant.

C. Statistics on Private and Government Cases Filed

39. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 684 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in FY99.

D. Significant DOJ and FTC Enforcement Actions

1) DOJ Criminal Enforcement

40. Vitamins. In FY99 the DOJ obtained record fines -- a total of more than $875 million -- in an ongoing investigation into a worldwide price-fixing and market allocation conspiracy in the vitamins market. The conspiracy, beginning as early as 1990 and continuing into 1999, affected more than $5 billion in U.S. commerce, and is the most pervasive and harmful criminal antitrust conspiracy ever uncovered by the Division. The members of the vitamin cartel reached agreements on everything from how much product each company would produce, to how much they would charge, to which customers they would supply. The direct victims of this conspiracy were the purchasers of the vitamins most commonly used as nutritional supplements or to enrich human food and animal feed, but indirectly consumers around world suffered higher prices for their vitamins or vitamin-enriched foods.

41. The vitamin investigation has thus far resulted in convictions against Swiss, German, Canadian, and Japanese firms. On March 2, 1999, the DOJ announced that Lonza AG, a Swiss corporation, and five U.S. executives (two of whom have agreed to serve twelve month jail terms) of other vitamin producers agreed to plead guilty and cooperate with the DOJ's investigation. Lonza agreed to pay a $10.5 million fine. On May 20, the Swiss pharmaceutical firm F. Hoffmann-La Roche Ltd agreed to plead guilty and pay a record $500 million fine, the largest fine ever imposed in any Department of Justice proceeding under any statute, and the German firm BASF Aktiengesellschaft agreed to plead guilty and pay a $225 million fine. A Swiss citizen and former Hoffman-La Roche executive also agreed to plead guilty, pay a $100,000 fine and serve a four-month prison term in the U.S. A second Swiss former executive on August 19 agreed to plead guilty, serve a five-month jail sentence, and pay at $150,000 fine for his role in the conspiracy. On September 9, three Japanese pharmaceutical companies -- Takeda Chemical Industries Ltd., Eisai Co. Ltd., and Daiichi Pharmaceutical Co. Ltd. -- agreed to plead guilty and pay a total of $137 million in fines. Finally, on September 29, 1999, Chinook Group Limited, a Canadian vitamin company, agreed to plead guilty and pay a $5 million fine for its participation in the vitamins conspiracy.

42. Graphite Electrodes. The DOJ's ongoing investigation of price-fixing and market allocation in the graphite electrodes industry has yielded almost $300 million in criminal fines. In September 1999, two former U.S. executives of UCAR International, Inc. agreed to plead guilty, serve jail terms of 17 and nine months respectively, and pay fines of $1.25 million and $1 million for participation in a worldwide conspiracy from 1992 to 1996, during which U.S. sales of graphite electrodes exceeded $1.7 billion. As reported in the FY98 Annual Report (¶37), UCAR agreed to pay a $110 million fine in April 1998. On May 4, 1999, SGL Carbon Aktiengesellschaft, a German corporation, agreed to plead guilty and pay a then-record $135 million fine, and its chief executive officer agreed to pay a $10 million fine, the largest antitrust fine ever imposed on an individual. On April 29, 1999, Tokai Carbon Co. Ltd., a Japanese firm,

57. On June 14, the Division announced it had tentatively agreed to modify a 1995 consent decree that had resolved an antitrust case alleging that the merger of the dispatch service businesses of Nextel Communications, Inc. and Motorola, Inc. would reduce competition. Dispatch service is a "push-to-talk" two-way radio service that allow mobile units, like taxicabs, to communicate with each other as a group. The proposed modification would allow Nextel and Motorola to increase the number of channels of 900 MHz spectrum in cities where the consent decree had limited the channels they could hold, but would bar Nextel from acquiring spectrum sold in the Geotek Communications, Inc. bankruptcy proceedings, to ensure that new competitors could enter the business. The consent decree would expire on October 31, 2000, in light of expected entry in the future by firms using another frequency band and cellular or PCS providers.

58. On July 23, 1999, the DOJ agreed to modify a 1957 consent decree with the Kansas City Star that had settled monopolization charges against the newspaper. The original decree contained provisions aimed at preventing The Star from monopolizing the dissemination of news and discriminating against advertisers who used competing media. Some of these provisions prevented The Star from passing on to advertisers savings produced by recent advances in publishing technology and from engaging in other procompetitive conduct. The changes agreed to included elimination of the absolute prohibition on acquisitions of radio and television stations and publishing interests (although acquisitions over $5 million must still be notified to the DOJ), and elimination of the prohibition on price discrimination, which prevented procompetitive discounting.

4) FTC Non-merger Enforcement Actions

a. Commission Administrative Decisions[1]

59. The Commission issued its final decision upholding charges that Toys "R" Us, the nation's largest toy retailer, used its dominant position as a toy distributor to extract agreements from and among toy manufacturers to stop selling the same toys to warehouse clubs, which sold at substantially lower prices, as those displayed and sold at Toys "R" Us stores. The Commission found that Toys "R" Us conduct prevented consumers from making price comparisons, thereby reducing the effectiveness of the clubs as competitors and leading to increased prices and reduced consumer choice. The Commission's order is tailored to stop and prevent the repetition of Toys "R" Us illegal conduct. The case is currently on appeal in the Seventh Circuit Court of Appeals. *Toys "R" Us*, Docket No. 9278.

60. Intel Corp., the world's largest manufacturer of microprocessors, settled charges that it used its monopoly power to cement its dominance over the microprocessor market. The FTC alleged in its administrative complaint that Intel illegally used its market power when it denied three of its customers, Digital Equipment Corp., Integraph Corp., and Compaq Computer Corp., continuing access to technical information necessary to develop computer systems based on Intel microprocessors, and took other steps to punish them for refusing to license key patents on Intel's terms. As a result of these practices, Intel allegedly impeded innovation and stifled competition. The consent order remedies all of the concerns outlined in the complaint without interfering with Intel's rights to withhold its information or microprocessors for legitimate business reasons. *Intel Corp.*

court, seeks to enjoin the alleged illegal agreements as well as to obtain consumer redress and disgorgement of profits in the amount of at least $120 million from Mylan and other defendants. *Mylan Laboratories, Inc. et al.*, File No. 981-0145, Civ. No.1: 98CV003114 (D.D.C.,filed Dec.22,1998).

62. An FTC Administrative Law Judge issued an initial decision dismissing charges that VISX, one of the first companies to develop laser eye surgery equipment, acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office by withholding certain articles, patents, and patent applications which they knew were material "prior art." The Judge held that Complaint Counsel had not satisfied their burden of establishing by clear and convincing evidence that the prior art was withheld with intent to deceive. The case is currently on appeal before the Commission. *VISX*, Docket No. 9286. .

63. The Asociacion de Farmacias Region de Arecibo (AFRA), an association of 125 pharmacies in 6(int)7.8(e6-0.2(nsern)1.35cic

competing port elevators in the Pacific Northwest, Central California, and the Texas Gulf would have harmed competition, and that the combination of their competing river elevators and rail terminals in Midwestern states, such as Illinois, Iowa, Kansas, Missouri, and Ohio, would have been anticompetitive. In addition, the consolidation of Cargill and Continental river elevators along the Illinois River would have concentrated ownership of delivery points authorized by the Chicago Board of Trade (CBOT) for settlement of corn and soybean futures contracts under the control of Cargill and one other firm. This concentration would have increased the risk that prices for CBOT corn and soybean futures contracts could be manipulated. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required Cargill to divest grain and soybean facilities in various states. 2000-1 Trade Cas. (CCH) ¶50,869.

82. Bank Mergers: The Department opened ten preliminary investigations of proposed bank mergers in FY99. The most significant investigation was the merger of equals, Fleet and BankBoston. The merger, announced in the spring of 1999, created the eighth largest bank in the country with about $180 billion in assets. The divestiture in Fleet/BankBoston was the largest bank divestiture in history. The parties divested 306 branches with approximately $13.2 billion in deposits across four New England states. Fleet additionally agreed to divest all off-premise ATMs except those specifically exempted by the Department. Also in FY99 there were divestitures in six bank mergers which resulted in a total divestiture of 55 branches with almost $2 billion in deposits, in eight states. In one proposed merger, the parties withdrew their application with the Federal Reserve Bank after the Department wrote to advise Chairman Greenspan that it had concluded that the acquisition of branches in this transaction raised competitive concerns in small business lending in a particular market. Another transaction proceeded after the parties reached agreements with the Department on other conditions that resolved the competitive concerns, and one matter was closed without conditions after a lengthy investigation.

83. Radio mergers: In FY99, the Division filed two lawsuits against radio companies, each resulting in a consent decree requiring that the transaction be restructured. In *U.S. v. Citadel Communications Corporation et. al.*, 99-CV-01043 (D.D.C. Apr. 28, 1999), the Division filed a complaint challenging a joint sales agreement between Citadel and Triathlon in Colorado Springs, Colorado and Spokane,

85. In *LaFarge Corporation/Holnam, Inc.*, the complaint alleged that the proposed acquisition by LaFarge Corporation of Holnam's Seattle cement plant and related assets in the state of Washington would substantially lessen competition in the Puget Sound cement market. LaFarge, one of the largest suppliers of cement for residential, commercial, institutional and public works construction, and Holnam, the number one supplier of cement in the United States, are two of five competitors in the Portland cement market in the Puget Sound area. According to the complaint, a provision of the sales agreement between LaFarge and Holnam would have imposed a penalty on LaFarge if it produced quantities of cement in excess of 85 percent of the Holnam plant's capacity. This allegedly would encourage LaFarge to restrict the output of cement at the Seattle plant to avoid the production penalty, preventing an increase in supply and a reduction in price for cement in the Puget Sound area. Under the order, the parties were required to restructure their agreement to drop the production penalty clause and also agreed not to enter into any agreement relating to the purchase of Holnam's Seattle cement plant and related assets where payment will be affected by, or dependent on, the quantity of cement produced or sold at the Seattle cement plant. *LaFarge, S.A.*, Docket No. C-3852. .

86. The Commission challenged the proposed $48.2 billion merger between The British Petroleum Company p.l.c. ("BP") and Amoco Corporation ("Amoco"), alleging that it would lessen competition (1) in the wholesale sale of gasoline in 30 cities or metropolitan areas in the eastern United States and (2) in the terminaling of gasoline and other light petroleum products in nine specified geographic markets. According to the complaint, both BP and Amoco are major producers of gasoline and other petroleum products in the United States, and entry into the market is difficult. The order required BP and Amoco to divest 134 gasoline stations in eight markets in which the companies' ownership overlap[3] and the divestiture of nine petroleum products terminals to an acquirer approved by the Commission. The order also required that unless retail gasoline sellers representing a specified volume of sales in Toledo and Youngstown, Ohio, agree to switch to other brands, the companies must divest retail gasoline stations with an equivalent volume of sales to an acquirer acceptable to the Commission. *British Petroleum Co., p.l.c.*, Docket No. C-3868.

87. In *ABB/Elsag Bailey Process Automation N.V.*, the complaint alleged that ABB's proposed $1.1 billion acquisition of Elsag Bailey Process Automation N.V. would substantially increase concentration in the process gas chromatograph market. The proposed acquisition allegedly would combine the two leading firms marketing process gas chromatographs worldwide, resulting in a combined market share of almost 70 percent. The complaint alleged that by eliminating competition between the top two competitors in this highly concentrated market, the proposed acquisition would allow ABB to unilaterally exercise market power, thereby increasing the likelihood that process gas chromatograph customers would be forced to pay higher prices and innovation in the market would decrease. Under the order, ABB was required to divest the Analytical Division of Elsag's Applied Automation, Inc. subsidiary, which is involved in the manufacture and sale of process gas chromatographs, and the research and development of a process mass spectrometer to a Commission-approved buyer. *ABB AB*, Docket No. C-3867.

88. Zeneca Group PLC settled Commission charges that its proposed $30.5 billion acquisition of Astra AB would lessen competition in the U.S. market for long-acting local anesthetics. According to the

that Zeneca divest its approximately three percent investment interest in Chiroscience. *Zeneca Group PLC*, Docket No. C-3880.

89. In *CMS Energy Corporation/Panhandle Eastern Pipeline/Trunkline Pipeline*, the complaint alleged that the proposed $1.9 billion acquisition by CMS Energy Corporation of Panhandle Eastern Pipeline and Trunkline Pipeline from Duke Energy Company would lessen competition and drive up consumer prices for natural gas and electricity in 54 counties in Michigan. According to the complaint, Consumers Energy, a subsidiary of CMS Energy, provides natural gas to residential and industrial consumers in the relevant market and owns and operates the only intra-state natural gas transmission system through which consumers can buy natural gas from other suppliers for their own use or in producing electricity. Five major pipelines, two of which CMS Energy proposed to acquire, provide the natural gas consumed in the 54-county area. Each pipeline has one or more points of interconnection with the Consumers Energy system, and competition among the pipelines has resulted in rates well below the

supermarkets); *Shaw's Supermarkets, Inc.*, File No.991-0075 (supermarkets); *Kroger Co.*, Docket No. C-3905 (supermarkets); *Ceresin Corp.*, File No. 981-0030 (trucking fleet cards and reading systems).

IV. Regulatory and trade policy matters

A. Regulatory Policies

1) DOJ Activities: Federal and State Regulatory Matters

93. On October 21, 1998, the DOJ filed comments with the Securities and Exchange Commission ("SEC") on a proposed rule change by the Chicago Board Options Exchange, Inc. ("CBOE") relating to the collective setting of fee and payment obligations for the purpose of creating funds for floor brokerage subsidies which in turn might allow greater competition with other options exchanges. The DOJ suggested that the SEC should not approve the proposal until the CBOE adequately explained why the rule would not adversely affect competition and provided a full explanation of how it would promote competition between exchanges. The DOJ was concerned that the rule would allow market makers to agree on matters that could affect prices the public pays for securities and/or securities transactions.

94. On October 19, 1998, the DOJ filed comments with the Federal Communicationentacata(acata(ac413 T8.2(t)

98. In FY99, the Division reviewed five applications for new Export Trade Certificates submitted under the Export Trading Company Act and its implementing regulations and concurred in the Department of Commerce's issuance of five new certificates.

2) FTC Staff Activities: Federal and State Regulatory Matters

99. The goal of the Commission's advocacy activities is to prevent or reduce harm to consumers and competition by informing appropriate governmental and self-regulatory bodies about the potential effects, both positive and negative, of proposed legislation, rules or industry guides or codes. The following are examples of FY 99 advocacies. All of the complete comments filed are available at http://www.ftc.gov/be/advofile.htm.

100. Order on Standards of Conduct, Massachusetts Department of Telecommunications and Energy (MATE): FTC staff filed a comment outlining issues the MATE might wish to consider as it reviews its rules governing transactions between a regulated electric utility and its unregulated affiliates. The comment noted, among other things, fundamental trade-offs between preventing discriminatory behavior by a parent utility and preserving economies of vertical integration with its affiliate. File No. V980029.

101. Regional Transmission Organizations, Federal Energy Regulatory Commission: FTC staff commented on FERC proposals to encourage formation of regional transmission organizations (RTOs) to further competition in wholesale electric power markets. Among other things, staff agreed with FERC's four minimum characteristics and seven minimum functions of RTOs needed to ensure robust wholesale competition and encouraged FERC to consider an "efficient operations" characteristic and methods to encourage RTOs to facilitate conversion to real-time metering as a integral part of the process of increasing competition in electric power markets. File No. V990011.

102. Proposed Legislation to Amend the Wine Franchise Law to Provide for Exclusive Territories, North Carolina Legislature: FTC staff opposed state legislation that would make "airtight" exclusive territorial arrangements between wineries and wholesalers in the wine industry, arguing that there was no evidence establishing the need for this exemption from the antitrust laws and that the legalization of such agreements might have anticompetitive effects with no offsetting consumer benefits. File V990003.

103. Texas Physician Collective Bargaining, Texas Legislature: FTC staff expressed concerns about the potential adverse impact on consumer welfare likely to arise from proposed state legislation authorizing competing physicians to jointly negotiate contractual terms with health plans under certain circumstances. File V 99009.

B. DOJ Trade Policy Activities

105. The Division and FTC participate in a number of negotiations and working groups related to regional trade agreements. The Division participates with the Office of the U.S. Trade Representative, the Federal Trade Commission, and State and Commerce Departments in competition policy groups associated with the Free Trade Area of the Americas and Asia-Pacific Economic Cooperation. The antitrust agencies also have played an important role in the working group established in 1997 by the World Trade Organization to study issues relating to the interaction between trade and competition policy.

106. The Division represents the Department on the Committee on Foreign Investment in the United States ("CFIUS"), an interagency group chaired by Treasury that advises the President on enforcement of

The Pharmaceutical Industry: Competitive and Antitrust Issues in an Environment of Change, Roy Levy, March 1999.

2. Economic Working Papers

R&D Activity and Acquisitions in High Technology Industries: Evidence from the U.S. Electronic and Electrical Equipment Industries, Bruce Blonigen and Christopher Taylor, January 1999.

Price Competition and Advertising Signals - Signaling by Competition Senders, Mark Hertzendorf and Per Baltzer, January 1999.

Multimarket Contact and Imperfect Information, Charles Thomas, January 1999.

Pricing Behavior of Multi-Product Retailers, Daniel Hosken and David Reiffen, March 1999.

The Competitive Effects of Not-For-Profit Hospital Mergers, Michael Vita and Seth Sacher, June 1999.

Regulatory Restrictions on Vertical Integration and Control: The Competitive Impact of Gasoline Divorcement Policies, Michael Vita, August 1999.

Appendices

Federal Trade Commission: Fiscal Year 1999 FTE and Budgeted Amount by Program/Bureau

	FTE	AMOUNT
Total Direct Mission	**467.5**	**$55,738.8**
Bureau of Competition	247.0	$23,796.9
Bureau of Economics	58.2	$5,444.4
Regional Offices	T	

	FTE	AMOUNT
Antitrust Policy Analysis	**7.1**	**$656.1**

NOTES

1. Copies of the complaint, the consent order, and related documents can be obtained from the FTC's web site at: *http//www.ftc.gov* utilizing the "search" button on the home page and inserting the respondent's name.

2. Id.

3. BP would divest its retail gasoline stations in Charleston and Columbia, South Carolina; Charlotte, North Carolina; Jackson and Memphis, Tennessee; and Savannah, Georgia. Amoco would divest its gasoline stations in Tallahassee, Florida; and Pittsburgh, Pennsylvania.

4. The 689 FTE and $84,386,000 totals reflect full time employees and budget allocation in the areas of Merger, Civil Non-Merger, Criminal, and Competition Advocacy only. These figures are not to be confused with those in ¶17 above which cite the total number of positions and total budget allocation for the entire Antitrust Division.