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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN UNITED STATES

-- 2001 --

This annual report by the American Delegation is submitted FOR INFORMATION to the Competition Committee at its forthcoming meeting on 5-6 June 2002.

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UNITED STATES

(From 1 October 2000 to 30 September 2001)

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Summary of Highlights

In June 2001, Charles A. James was confirmed as Assistant Attorney General for the Antitrust Division and Timothy J. Muris was sworn in as Chairman of the Federal Trade Commission.

The Commission charged Warner Communications, Inc, and several subsidiaries of Vivendi Universal S.A., with illegally agreeing to fix prices for audio and video products featuring The Three Tenors. According to the FTC complaint, in an effort to shield new products from competition from earlier recordings, the companies agreed not to discount and not to advertise certain of their catalog products for a period of time. A proposed settlement was reached with Warner and an administrative trial of the charges against Vivendi was completed and is awaiting decision.

A consent agreement that required significant divestitures allowed the merger of Chevron Corporation and Texaco Inc., two of the world's largest integrated oil companies, to proceed. Under the terms of the Commission's order, the combined company was required to divest all of Texaco's interests in two joint ventures, as wells as Texaco's interests in a natural gas pipeline in the Gulf of Mexico, a fractionating plant, and its general aviation businesses in 14 states.

The DOJ concluded that the proposal for United Airlines to acquire US Airways would reduce competition, raise fares, and harm consumers on airline routes throughout the United States. The DOJ expressed its intent to file suit to block the merger and indicated that it would be joined in its suit by the Attorneys General of several states. The parties abandoned the transaction before a suit was filed.

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, 2000 through September 30, 2001)

Introduction

1. This report describes federal antitrust developments in the United States for the period October 1, 2000, through September 30, 2001 ("FY2001"). It summarizes the activities of both the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Bureaus of Competition and Economics of the Federal Trade Commission ("Commission" or "FTC").

2. On June 14, 2001, Charles A. James was confirmed by the U.S. Senate as Assistant Attorney General for the Antitrust Division. On July 19, 2001, the Division named three new Deputy Assistant Attorneys General: Michael L. Katz for Economic Analysis, Deborah P. Majoras for Civil Enforcement, and R. Hewitt Pate for Regulatory Matters. On October 12, 2001, the Division named William J. Kolasky as Deputy Assistant Attorney General for International Antitrust and Policy Enforcement.

3. Timothy J. Muris was sworn in June 4, 2001 as Chairman of the Federal Trade Commission. Muris, the Commission's 55th Chairman, has held three previous positions at the Commission: Assistant Director of the Planning Office (1974-1976), Director of the Bureau of Consumer Protection (1981-1983), and Director of the Bureau of Competition (1983-1985).

I. Changes in law or policies

A. Changes in Antitrust Rules, Policies or Guidelines

4. A number of significant changes were implemented regarding the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a) ("HSR Act"), which requires parties to notify the Federal Trade Commission and the U.S. Department of Justice before completing transactions such as mergers and acquisitions. Chief among these changes was an increase from $15 million to $50

2) FTC Staffing and Enforcement Statistics

16. At the end of fiscal year 2001, the FTC's Bureau of Competition had 271 employees: 176 attorneys, 45 other professionals, 45 paralegals, and 22 clerical staff. The FTC also employs about 40 economists who participate in its antitrust enforcement activities. In FY 2001, $37,558,300 was allocated to the Commission's competition mission.

17. During fiscal year 2001, the Commission brought a total of 28 competition enforcement actions. Based on its review of premerger notification filings, the Commission staff opened 195 initial phase investigations and issued requests for additional information ("second requests") in 27 transactions. The(0

D. Significant DOJ and FTC Enforcement Actions

1) DOJ Criminal Enforcement

26. Sotheby's/Christie's Auction Houses: In October 2000, Sotheby's Holdings, one of the world's largest auction houses, agreed to plead guilty and pay a $45 million fine for fixing the price of commission rates charged to sellers of art, antiques, and other collectibles at auctions. Its former president and chief executive officer, Ms. Diana Brooks, also agreed to plead guilty to price fixing charges. The Department also confirmed the announcement by Christie's International plc, another major auction house, that it had been cooperating with the investigation under the Antitrust Division's Corporate Leniency Program. Id4o 1 Tf 0.3di(

Germany, was charged in a separate indictment with participating in the same conspiracy. The indictments were part of an ongoing investigation; Philipp Holzmann AG, a German construction company, was fined $30 million in August 2000, and American International Contractors Inc. was fined $4.2 million in September 2000.

30. Graphite Electrodes: On February 12, 2001, the Mitsubishi Corporation of Tokyo, Japan, was convicted after a two-week jury trial in U.S. District Court in Philadelphia of aiding and abetting a conspiracy among the world's major manufacturers of graphite electrodes to fix prices in the U.S. and elsewhere, beginning at least as early as March 1992 and continuing until at least June 1997. On May 10, 2001, Mitsubishi was fined $134 million after being convicted for its role in the international cartel. The fine was the second-highest fine imposed in the ongoing graphite electrodes investigation and was the fourth-largest fine ever imposed in an antitrust case.

31. Food Distribution Industry: On August 7 and 8, DiCarlo Distributors Inc. of Holtsville, NY, its president and co-owner, Mr. Vincent DiCarlo, and its vice president and co-owner, Mr. John DiCarlo, were sentenced for their role in a scheme to rig bids on New York City Board of Education (NYCBOE) food contracts. Mr. Vincent DiCarlo was sentenced to five and a half months in prison and five and a half

33. Moody's Investors Service: On April 10, 2001, Moody's Investors Service Inc., one of the largest credit ratings agencies in the United States, pleaded guilty and was sentenced to pay a $195,000

dollars to induce them to delay launching their generic versions of the drug beyond any delay to which they might have agreed without such payments. The agreements, according to the complaint, have cost consumers more than $100 million. (D-9297) An earlier case based on similar charges has been settled. The respondents were Hoechst Marion Roussel, now Aventis, and Andrx Corp. (D-9293)

38. Warner Communications: The Commission charged Warner Communications, Inc., and several subsidiaries of Vivendi Universal S.A., with illegally agreeing to fix prices for audio and video products featuring The Three Tenors. According to the FTC complaint detailing the charges, in 1997, Warner and

- X a proposal from the Promotion Marketing Association (PMA) — a New York based

Department filed a lawsuit in U.S. District Court in Washington, D.C. to block the proposed transaction; at

Postal Service, to process letter mail and flat mail, which includes over-sized envelopes, catalogs, and magazines. These highly integrated systems are able to cancel stamps or meter marks, read addresses using optical character recognition technology, translate addresses into destination barcodes, and use these barcodes to sort mail by country, state, city and/or street. Under the terms of the proposed order, Siemens and Vodafone will be required to divest Vodafone's Mannesmann Dematic Postal Automation business to Northrop Grumman Corp. (C-4011)

55. Lafarge/Blue Circle: The Commission accepted a consent order designed to remedy the allegedly anticompetitive effects of the merger of Lafarge S.A. (Lafarge) and Blue Circle Industries PLC (Blue Circle). Lafarge, a French corporation with global operations manufacturing and selling cement and other building materials, is one of the top three cement manufacturers in the world. It also has an ownership interest in a joint venture with Carmeuse North America Group B.V. (Carmeuse) to manufacture and sell lime. Blue Circle, based in England, also manufactures and sells cement worldwide. It is one of the top five cement manufacturers in North America, and participates in a joint venture with Chemical Lime Company (Chemical) to manufacture and sell lime. Through the order, which is subject to public comment and final approval, the companies would be required to divest Blue Circle's cement business serving the Great Lakes Region (including all or parts of Ohio, Michigan, Illinois, Wisconsin and New York); Blue Circle's cement business in the Syracuse, New York area; and Blue Circle's lime business in the southeast United States. The Syracuse cement business will be divested to Glens Falls Lehigh Cement Company (Glens Falls). The other assets will be divested to a Commission-approved acquirer. The Commission has also accepted an order to hold separate and maintain assets, which requires the companies to hold assets to be divested as separate entities and maintain them as viable, competitive and ongoing operations until the divestitures are completed. The proposed divestitures were developed in coordination with the Canadian Competition Bureau, which had required divestitures as a condition of approving the merger. (C-4014)

56. Chevron/Texaco: Through a proposed consent agreement reached with the Commission, the merger of Chevron Corp. (Chevron) and Texaco Inc. (Texaco), two of the world's largest integrated oil companies, was allowed to proceed, with significant divestitures required to remedy the likely anticompetitive impacts of the transaction as proposed. Under the terms of the proposed order, the combined Chevron/Texaco was required to divest all of Texaco's interests in two joint ventures, Equilon Enterprises, LLC (Equilon), which is currently owned by Texaco and Shell Oil Company (Shell), and Motiva Enterprises, LLC (Motiva), which is currently owned by Shell, Texaco, and Saudi Refining, Inc.

58. Dow/Union Carbide: The Commission accepted a consent order that would remedy the likely

Ennis, Sean, *Competition and Price Dispersion in International Long Distance Calling*, EAG 01-3, April 23, 2001.

Danger, Kenneth, and H.E. Frech III, *Critical Thinking about "Critical Loss" in Antitrust*, EAG 01-4, May 18, 2001.

Romeo, Charles and Andrew R. Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*, EAG 01-5, May 24, 2001.

Greenlee, Patrick and Alexander Raskovich, *Vertical Ownership Without Control*, EAG 01-6, August 1, 2001.

Pittman, Russell, *Vertical Restructuring of the Infrastructure Sectors of Transition Economies*, EAG 01-7, September 28, 2001.

Reitman, David, *Mergers in Durable Goods Markets with Rational Customers*, EAG 01-8, September 7, 2001.

Capps, Cory, David Dranove and Mark Satterthwaite,

73. Electric Power Regulatory Reform Report: A new staff report examined which features of various state retail electricity programs appear to have resulted in consumer benefits and which have not. The report, "Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition," updated a July 2000 FTC Staff Report and highlighted certain jurisdictional limitations on the states' authority to design successful retail competition plans and discusses whether there is a need for federal legislative or regulatory action in this regard. The text of the report is available at http://www.ftc.gov/reports/elec/electricityreport.pdf.

2) Economic Working Papers

74. The following may be obtained from the FTC home page, http://www.ftc.gov/be/econwork.htm:

Evidence on Mergers and Acquisitions (WP# 243) Paul A. Pautler, September 25, 2001.

Collusion and Optimal Reserve Prices in Repeated Procurement Auctions (WP# 242), Charles J. Thomas, July 30, 2001.

The Use of Exclusive Contracts to Deter Entry (WP# 241), John Simpson and Abraham Wickelgren, June 27, 2001.

The Economic Effects of Withdrawn Antidumping Investigations: Is There Evidence of Collusive Settlements (WP# 240) Christopher T. Taylor, August 23, 2001.

Moral Hazard, Mergers, and Market Power (WP# 239) Abraham L. Wickelgren, June 2001.

Targeted Consumer Information and Prices: The Private and Social Gains to Matching Consumers with Products (WP# 238) David Reiffen, April 2001.

Geographic Markets in Hospital Mergers: A Case Study (WP# 237) John Simpson, January 26, 2001.

Publicity and the Optimal Punitive Damage Multiplier (WP# 236) John M. Yun, January 31, 2001.

The Effect of Exit on Entry Deterrence (WP# 235) Abraham L. Wickelgren, December 4, 2000.

Optimal Agency Relationships in Search Markets (WP# 234) Christopher Curran and Joel Schrag, October 2000.

Import Competition and Market Power: Canadian Evidence (WP# 232) Aileen J. Thompson, January 2001.

Pricing Behavior of Multi-Product Retailers (WP# 225) Daniel Hosken and David Reiffen, March 1999, Revised: May 2001.

R&D Activity and Acquisitions in High Technology Industries: Evidence from the U.S. Electronic and Electrical Equipment Industries (WP# 222) Bruce A. Blonigen and Christopher T. Taylor, May 2001.

Appendices

Department of Justice: Fiscal Year 2001 FTE and Actual Amount by Enforcement Activity[1]

	FTE	AMOUNT
Merger Enforcement	**306**	**$42,975,000**
Civil Non-Merger Enforcement	**127**	**$17,789,000**
Criminal Enforcement	**234**	**$32,863,000**
Competition Advocacy	**20**	**$3,475,000**
TOTAL	**687**	**$97,102,000**

[1] Actual FY2001 data is from the FY2003 Congressional Submission.

	FTE	AMOUNT
Nonmerger Enforcement	97.7	$10,473.7