Annual Report of the

FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1965

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Letter of Transmittal

FEDERAL TRADE COMMISSION,
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit herewith the Fifty-First Annual Report of the Federal Trade Commission, covering its accomplishments during the fiscal year ended June, 30, 1965.

By direction of the Commission.

PAUL RAND DIXON,
Chairman.

THE PRESIDENT OF THE SENATE.
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

INTRODUCTION

In fiscal 1965, the Federal Trade Commission went quietly but firmly about its purpose to help businessmen comply with the trade laws, using persuasion if possible and prompt adversary action whenever persuasion failed. With its staff trained in the use of recent innovations to obtain faster, wider, and more equitable law enforcement, the Commision's usefulness gathered momentum.

As more industries were alerted to the laws' requirements as applied to their particular practices, the FTC could, by the year's end, devote ever more attention to individual firms which though given ample opportunity to understand legal requirements chose to defy them. Many are to discover that education and equitable enforcement of the law do not imply laxity in FTC's vigilance.

The year also found the Commission demonstrating increasing concern for protection of consumers, principally from false or misleading advertising. First priority as given to advertising or selling practices which could adversely affect the health or safety of consumers, and a close second priority was accorded deception inandff8.72 0 eTjacse TD4D 0336 TD

more of its money and manpower in the restraint of trade field than for its deceptive practice work. Not only did it receive 1,286 applications for complaint, principally from small businessmen who believed they were being victimized by unfair method of competition, but the Commission on its own motion initiated 242 formal investigations involving trade restraints.

Here again, the Commission's policy of guiding business into legal channels as an alternative to patternless clubing of offenders was followed whenever possible. This decision supported the increasingly obvious truth that more compliance with the law can achieved by clearly defining its requirements and persuading businessmen to abandon legal practices without the delay and cost of litigation than to strive for casework statistics. Only where persuasion promised to be fruitless did the Commission employ its mandatory procedures.

Funds available to the Commission for fiscal 1965 totaled $13,459,107. This provided for a staff of 1,175 to man Washington headquarters as well as 11 field offices and 1 suboffice. Nearly half of the funds ($6,246,000) was spent on the investigation and litigation of antimonopoly cases, and about one-fourth ($3,373,000) for deceptive practice investigation and casework, exclusive of $1,209,000 for enforcement of the textile and fur acts. A total of $850,000 was spent for economic and financial reports, and $511,000 for trade practice conferences, industry guides, and special efforts to assist small business.

The allocation for FTC's guidance program is by no means a true measure of the emphasis being given this phase of the Commission's work. The reason is that a very considerable amount of the investigational work both for deceptive practice and antimonopoly cases discloses illegalities of a character and scope that can be countered effectively at less cost by the issuance of Industry Guides, Trade Practice Rules, or Trade Regulation Rules. Thus, the investigational funds allocated to FTC's enforcement bureaus frequently serve to turn up factual information that dictates a feasible and ormoreTj 26.64 0 TD 0 Tc ( ) Tj 2.52 0 TD 0.0019 Tc (e

This is not to imply that the enforcement responsibilities of the Commission were given secondary emphasis. More than enough illegalities neither require nor lend themselves to broadscale treatment, and defiance is all too frequently the response to persuasion. For example,

of merger activity last assessed by the FTC in 1955. The study by FTC's Bureau of Economics showed that merger activity has accelerated at a rapid pace; indeed, the present rate is higher than at any time during the past 30 years. The study also revealed that acquisitions made by manufacturing and mining companies with assets of $100 million or more accounted for 25 percent of mergers in 1964 as compared to but l6 percent 10 years earlier. Firms making electrical machinery and chemical products were responsible for about one-fourth of the recorded acquisitions. Other large acquiring industries were: nonelectrical machinery, food and kindred products, and transportation equipment.

The study also showed, among other things, that over the period 1948-64, a total of 720 major mergers took place, and in the year prior to their acquisition, the acquired companies' assets totaled more than $23 billion.

During the fiscal year, the third and final report of the Commission's economic inquiry into food marketing was published. This report examines production and consumption patterns, concentration, diversification, and integration in merger activity, product promotion, and entry barriers in the canned fruit, juice, and vegetable industry. The report showed that larger canners are doing an expanding share of total business, and smaller canners are becoming less capable of offering effective competition to the leaders.

The Commission also undertook two studies for the National Commission on Food Marketing. The studies, expected to be completed in fiscal 1966, are: Market Structure, Conduct, and Performance in Food Retailing, dealing primarily with the changing market structure of grocery retailing during the past two decades, and Concentration, Integration, and Diversification in Food Manufacturing, which will describe and evaluate the structures and structural trends of food manufacturing industries including an analysis of market concentration, degrees of product differentiation, and conditions of entry. Both studies will undertake to assess the degree of monopolistic power being exercised in the two areas.

The Commission's Division of Economic Evidence continued to study current corporate mergers and investigated 50 thoroughly. The study revealed that the present merger movement is the most prolonged and serious in recent American history. The Division also undertook two comprehensive investigations to assist in planning

the merger enmforcement program for the plastics and textile industries.

A more detailed summary of the Comniission's accomplishments and objectives follows. (Particular attention is invited to section titled "Legislation Needed.")

positions, products intended primarily for home use in repairing, patching, or mending articles made of metal, plastic, porcelain, rubber, or other materials. Another draws guidelines for members of the textile industry in avoiding deceptive use of the word "Mill" in their trade names and in advertising. The third guide is directed at deception in the collection of debts.

Under the program for obtaining voluntary compliance with trade practice rules and guides, 283 violation matters were disposed of oil assurances that the unlawful practices would be discontinued. At the close of the fiscal year, 423 matters were receiving attention under this voluntary compliance program.

In addition to the regular compliance work, an industrywide compliance survey, involving nearly 1,000 firms, was initiated under the Guides for Shoe Content Labeling and Advertising.

A special compliance project concerned the failure of many advertisers to disclose the conditional nature of their guarantees in telephone directory advertising. Through the cooperation of the

ment or component is in fact "automatic" it may be so described. The third rule requires that the finished size of tablecloths and related products be stated whenever their cut size is given.

Comprehensive compliance surveys were conducted to insure that trade regulation rules are being fully observed.

At the close of fiscal 1965 there were pending a number of proceedings looking toward the promulgation of trade regulation rules, including those dealing with the following industries and subjects:

Light Bulb Industry.-Deception as to wattage, useful life, and lumens produced.

Television Industry.-Deception as to the size of television tubes and pictures.

Table Lamp Industry.-Deceptive representations as to composition.

Automobile Tire Industry.-Deception as to size and quality.

Automatic Merchandising Vending Machine Industry.--Unlawful acquisitions and mergers.

Another of the newer procedures, the advisory opinion method, was utilized more extensively than ever before. Two hundred and six requests from businessmen asking for advice as to the legality of proposed courses of action were received. This was the largest number of requests received in any year since the advisory opinion program was initiated. The 59 Commission opinions rendered also represented a substantial increase over the preceding year. In all, 211 requests were disposed of by Commission or staff action. Forty-four matters were pending for disposition at the close of the fiscal year.

The requests covered virtually the entire area of the statutes which the Commission administers. The questions presented included, among others, the legality of proposed mergers and acquisitions, cooperative buying arrangements, tripartite promotional plans, exclusive dealings proposals, cooperative advertising programs, and advertising claims for a wide variety of products.

Chapter III

COMBATING DECEPTION OF THE CONSUMER

Because deception in advertising and selling works a double hardship in not only fleecing customers but in undermining faith in legitimate claims for products and services, the Commission mounted an increasingly heavier attack on this evil during the fiscal year.

A further reason for intensification of the effort is that in the global war of ideologies, our system of free enterprise cannot tolerate an image smeared with sharp practice and deceit. And while such chicanery is very much the exception, any of it is too much, particularly when enemies of our economic system are eager to trumpet it to the world.

So that the staff's efforts would not be spread too thinly and without sufficient concentration in troublesome areas to be really effective, the enforcement program was planned carefully. Top priority was given to halting deception in the sale of products involving public health. Actions were taken not only under FTC's specific authority to prevent false advertising of food,falseand

was pending on appeal before the Commission at year end (D.8619).

The advertising of hemorrhoid remedies was attacked in five complaints (D. 8640-8644). Contrary to claims made in advertising, the Commission charged that use of the products would not shrink hemorrhoids, or relieve all pain, or do more than afford temporary relief. Some of the complaints attacked claims that the advertised product would heal piles or avoid the need of surgery as a treatment for them. Hearings had commenced in one of these cases and the others were awaiting trial at the yearend. A consent order involving similar claims

Pending at year-end for further attention were projects involving advertising of analgesics and pain relievers, arthritis and rheumatism remedies, food supplement

examined, 26,735 were set aside for further consideration. Of 265,442 newspaper and magazine advertisements which were examined, 7,372 were set aside. A total of 6,089 advertisements of alcoholic beverages were referred to the Internal Revenue Service.

TV Demonstrations.—The Supreme Court having affirmed the Commission's order in the Colgate-Palmolive case to prevent the use of deceptive television advertising of the nature or significance of

and phonograph equipment were ordered to cease use of fictitious prices, deceptive saving claims and misleading guarantees (C-788, C-869).

Used Products Sold As New

Action was taken to require disclosure of previous consumer use in the sale of reconditioned and rebuilt golf balls (D. 8528, D. 8529, C-848, C-860, C-863). A marketer of previously used motor oil was required to disclose clearly and conspicuously, on front panels of containers, the prior use of motor oil (D. 8589). Books sold under new titles without disclosure of prior publication under another title, and failure to disclose that books offered for sale were abridgements also continued to require attention. (D. 8613).

Correspondence Schools

Deceptive use of "help wanted" ads implying offer of employment with the real purpose was to obtain prospects, for sale of correspondence courses received attention during the year. False claims for the type of training offered, likelihood of employment after completion of the course, earnings achieved by graduates, and assistance offered toward job placement as used in sales talks by correspondence school field agents also were prohibited. Such claims were used to sell courses for airline stewardess, professional model, and operation of automatic data processing equipment (C-793, C-840, C-884). With the increasing use of correspondence training by legitimate institutions of learning, and the importance of permitting persons to upgrade their skills by available means, it is important to curb any chicanery that would discourage well-spent initiative. Very often these falsely touted courses are sold to poor people or the relatively uneducated who can ill afford to lose the sums involved, let alone be disillusioned in their efforts to improve themselves.

Origin and Qualities of Merchandise

False claims as to origin or qualities of merchandise, and failures to disclose the origin require an appreciable amount of time. For example, a perfume seller was ordered to cease simulating the trade name, labeling, packaging, and other distinctive characteristics of well-known brands (C-829). Sale of watch cases deceptively

colored to simulate the appearance of gold and failing to disclose the foreign origin of such cases was prohibited, as were false claims that a watch contained 110 functioning jewels (D. 8597 and C-826). Use of false testing, guarantee and "user" claims in the sale of so-called "long life" light bulbs was prohibited (C-894). Also, use of false claims that sewing machines advertised at low come-on prices were "repossessed", as part of a bait and switch scheme, required attention (C-789).

Carpeting and Other Floor Coverings

An industrywide investigation involving alleged misrepresentation of rug sizes by domestic rug and carpet manufacturers was in progress at yearend.

In the retailing of carpets, there appears to be widespread use of bait and switch advertising, especially by sellers and installers of wall-to-wall carpeting. An analysis of some 500 newspaper carpet advertisements appearing in practically every major market in the United States was made during the year to ascertain the extent of this problem and the best means of dealing with it.

Work-at-Home Opportunities

The practices of some 25 concerns engaged in the advertising of vork-at-home schemes were being investigated at yearend. This type of deception is particularly important for it exploits the aged and the poor, who can least afford to waste their funds.

Consumer Financing

Misrepresentation is to rate of interest on conditional sales contracts and amount of finance charge was involved in a hotly contested case at yearend (D.85

vey", that prospect has been specially selected to receive the product at special or reduced price, that the offering is for purposes of establishing scholarship or other nonprofit fund, are among the types of practices which continue to be used in door-to-door selling of magazine subscriptions, encyclopedias, and photographs (C-819, C-847, C-859), despite the fact that the Commission and the courts, including the Supreme Court, have condemned these practices for at least 25 years.

Assurances of Voluntary Compliance

The Commission may terminate an investigation upon acceptance of assurances of voluntary compliance when it appears that that method of disposition will fully safeguard the public interest. A total of 313 assurances were accepted to terminate deceptive practice investigations during the year.

Compliance With Deceptive Practice Orders

Newly issued orders require each respondent to submit a written report supported by relevant documentary material demonstrating the manner and form of compliance with the order. Conferences with respondents and their attorneys are frequently required, together with considerable following correspondence. In many cases the Commission directs that reports be augmented by supplemental reports or investigations.

Once an order to cease and desist has been issued all general complaints and inquiries are referred to the Compliance Division for action. Such complaints and inquiries generally refer to orders issued many years ago. In many instances a satisfactory reply requires the staff attorney to examine all appropriate files of the particular case.

Under the Commissionare

many of which will necessitate the institution of civil penalty proceedings.

The statistics regarding the Division's caseload during fiscal 1965 are as follows:

Total pending July 1, 1964	447
Received during fiscal 1965	293
Total for disposition during year	740
Disposed of during year	322
Total pending June 30, 1965	418

The 293 orders to cease and desist which were received represent 67 new orders issued during the year and 225 old orders which were activated because of complaints from outside sources indicating possible violations and for other reasons. During the year 322 cases were processed. This figure involved 788 separate reports of compliance which required analysis and disposition and 614 complaints of violations, etc.

Division of Scientific Opinions

This Division gave attention to a wide variety of foods, drugs,. cosmetics, devices and related commodities. In many areas, intensive scientific and medical investigation and research were carried out on a group of closely related preparations or devices with a view to dealing with the advertising of these articles on an industrywide basis. A number of previously initiated projects were carried forward, including those concerned with preparations offered for the treatment of hemorrhoids or piles, vitamin and mineral preparations offered as dietary supplements, with particular emphasis on such preparations represented to be of value because of their hematinic properties, and analgesic drugs, whose claims with respect to speed and duration of relief provided as well as their safety, were in question. Substantial attention was given to the advertising of products offered as cures for the smoking habit and to denture reliners and denture repair materials promoted for use by the general public.

In laying the groundwork for these industrywide projects, it was necessary to search thoroughly the published medical and scientific

literature pertinent to the problems, and also to locate and confer with medical specialists and other scientists who have firsthand knowledge of the properties and limitations of the preparations or devices under consideration. Some aspects of these projects present problems which are sufficiently unique that the authorities in a particular field are of the opinion that further laboratory or clinical testing must be conducted in order to provide a firm basis for, a regulatory position.

In addition to scientific and medical research and investigation, professional personnel of the Division participated in the drafting of complaints and other legal documents in specific cases and participated in the trial of contested cases.

A statistical summary of the Division's work follows:

Products covered in written opinions	227
Oral opinions	261
Analyses and tests	6
Hearings attended	64
Prehearing conferences attended	9
Expert witnesses secured	42

The subject matter of the written opinions was as follows:

Foods	39	Devices	41
Drugs	71	Economic poisons	37
Cosmetics	13	Miscellaneous	26

Chapter IV

THE FIGHT FOR FAIR BUSINESS COMPETITION

To maintain free and fair competition in the Nation's marketplace, presents the Commission with its most difficult responsibility.It must cope with the never ending eftorts of predatory businesses to defy or circumvent the antitrust laws in order to take unfair advantage of their competitors. The stakes are usually high, and the victims are all too frequently small businessmen.

Hard-core violations were attacked during the year with all the force FTC could muster, but when competitively engendered violations could be halted faster and more equitably on a broader scale without litigation, this course w

competitively in

resulted from enforcement of general trade restraint provisions contained in section 5 of the Federal Trade Commission Act and of sections 2, 3, 7, and 8 of the Clayton Act.

In the enforcement of the Robinson-Patman Act, continued emphasis was given to the business community and its need to take corrective action and discontinue illegal practices without the necessity of resorting to formal litigative processes. Toward that end a number of matters involving a variety of industries were handled through the execution of Assurances of voluntary compliance.

Continuing investigation in the wearing apparel industry resulted in 12 additional consent agreements and orders prohibiting manufacturers from discriminating among competing customers in the payment of promotional allowances. Efforts in this industry continue and a number of additional orders are anticipated which will result in a total of approximately 300 orders prohibiting discriminatory promotional allowances in this industry. The manner in which this project has been handled illustrates the effective results which can be achieved by the broad approach to an industry and its problems.

The Commission undertook to define and declare the requirements of the Robinson-Patman Act and to provide businessmen with a similar opportunity to comply with it while avoiding protracted legal proceedings when it set aside proceedings against 17 drug and sundry suppliers through the issuance of declaratory orders whose findings would be a blinding guide to future conduct.

Similarly, consent orders were issued by the Commission prohibiting discriminatory pricing practices in individual cases involving such diversified products as liar coloring products, Clairol, Inc., (C.832); and railroad signaling equipment, General Railway Signal Company, et al. (C. 837).

Not all Robinson-Patman Act matters were concluded without the need for formal litigation. After fully contested hearings the Commission issued final orders to cease and desist in several individual matters. These included two automotive parts cases involving discriminatory pricing practices, Monroe Auto Equipment Co., (D. 8543), and the Dayton Rubber Co., (D.7604) ; a citrus fruit and produce case involving unlawful brokerage, Garrett-Holmes & Co., Inc., (D. 8564) ; a publication case and a ladies' undergarment case, both involving discriminatory promotional allowances, Ace Books,

Inc., et al. (D. 8557) and The Lovable Company, et al. (D. 8620). A current proceeding against Associated Merchandising Corporation, et al. (D. 8651) ; charges that organization, a subsidiary, and 15 large department stores with unlawfully inducing and receiving discriminatory prices from their suppliers.

In enforcing section 5 of the FTC Act, relative to general trade restraints constituting unfair methods of competition or unfair acts or practices, the Commission's primary objectives and accomplishments involved (1) prevention of anticompetitive practices including conspiracies to fix prices and boycott; (2) prohibition of previously unchallenged restrictive selling and purchasing practices; and (3) cooperative and amicable adjustments of incipient violations of section 5 of the FTC Act through administrative procedures. Several industries received substantial attention in investigations and in formal cases. These industries included floor coverings, steel reinforcing bars, tobacco, trading stamps, television tubes and parts, ball and roller bearings, footwear, and foodrcing

association that had been the instrumentality for the collusive activities.

Substantial efforts were made to investigate and terminate illegal boycotts. One such case was litigated while two others were disposed of by consent orders. In Television Association of Delaware Valley, et al. (D. 8623), the Commission prohibited an organized boycott by the association and its television repair service dealer members to prevent and limit competition in the repair and servicing of television, radio, and electronic devices. Television Service Dealers Association of Delaware County, et al. (C. 881), involving a similar boycott by and between three associations and their memberships, also was disposed of by a consent order. In Universal Business Forms Company (C.888), involving a concerted refusal to deal in the distribution and sale of business forms, the Commission issued a consent order prohibiting such action.

In a different area of general trade restraints, several Commission matters involving previously unchallenged selling and purchasing restrictions were examined because of the possible impact on business arrangements. One such matter, Wear-Ever Aluminium Inc., (C. 842), resulted in a consent order requiring that respondent refrain from conditioning (the sale of its "Wear-Ever" brand aluminum pots and pans upon dealer purchases of the company's professional cutlery products. In another, the Commission issued a complaint charging Sun Electric Corporation (D. 8659), with an allegedly illegal attempt to monopolize the repair of its automotive testing equipment by refusing to sell needed parts and accessories for the repair of its equipment to independent repair businesses.

The Commission continued its concern with anticompetitive restrictions governing the allocation of selling time in tobacco auction warehouses. It ordered Mountain City (Tennessee) Tobacco Board of Trade, et al. (D. 8638), to cease various attempts to dominate and control the sale at auction of burley tobacco on the Mountain City market. Also during the year, the Commission, at the request of U.S. District Courts in North Carolina and Virginia, submitted advisory opinions for use by the courts as guidelines in three civil suits involving allocations of auction time in various tobacco markets.

Substantial effort continued to be devoted to competitive problems in the marketing of gasoline. An industrywide inquiry was conducted complete with public investigational hearings. At(competitivontinu.36 0 TD') Tj vU -( )72ne.

end, the information thus obtained was being studied for the purpose of determining the best course of future action.

Responding to the need for a procedure to settle small-scale antitrust violations before they assumed major and costly proportions, the Commission authorized its Division of General Trade Restraints to

The Commission issued final orders of divestiture in proceedings challenging acquisitions of producers of corrugated containers by The Mead Corp. (C. 880); Union Bag-Camp Paper Corp. (D. 7946) ; and Inland Container Corp. (D. 7993).

The first Commission merger case to reach the Supreme Court, F.T.C. v. Consolidated Foods Corp., resulted in a landslide decision holding that the acquisition by Consolidated of Gentry, Inc., violated section 7 of the Clayton Act because of the opportunities it created for the operation of anticompetitive reciprocity. Following this decision of the Supreme Court, the Commission is conducting investigations of acquisitions which may create similar opportunities for the use of reciprocity in other industries.

The Commission found that the acquisitions by Fruehauf Trailer Co. (D. 6608), of two of its largest competitors in the manufacture of truck trailers violated section 7 of the Clayton Act, and issued its order of divestiture.

During the past year the Commission has also intensified its enforcement of section 8 of the Clayton Act. Starting from a survey conducted by the Bureau of Economics, which revealed a substantial number of interlocking directorates among the Nation's 1,000 largest corporations, the Commission conducted investigations to determine which of these interlocks might violate section 8 of the Clayton Act. As a result of these investigations, a number of such interlocks have been voluntary terminated.

More than $82,000 in civil penalties for violations of restraint of trade orders was collected during the year. In addition, the Compliance Division succeeded in effecting compliance with over 100 cases with a relatively limited staff. In fiscal 1965 the Compliance Division processed over 250 inquiries relating to restraint of trade orders. It also rendered advisory opinions and effectuated divestitures of over 13 business entities pursuant to provisions of section 7 of the Clayton Act, as amended.

The Division of Accounting, during the past fiscal year, utililized, to a great extent, electronic data processing equipment for the tabulation of invoices and other accounting data showing price discrimination in the sale or purchase of various household products. The emphasis on the use of electronic data processing equipment expedited considerably the preparation of tabulations as evidence of price discrimination.

Chapter V

WOOL, FUR, AND TEXTILE ACTS ENFORCEMENT

By means of an effective combination of legal action, persuasion, and industry counseling, the 96-man staff of F.T.C.'s Bureau of Textiles and Furs undertook to protect the American consumer in his dealings with the Nation's third largest industry. This was done through enforcement of four laws: The Wood Products Labeling Act, the Textile Fiber Products Identification Act, The Fur Products Labeling Act, and the Flammable Fabrics Act.

In carrying out this responsibility the Bureau worked closely with 40 major trade associations and more than 140 smaller trade associations with a combined membership of more than 465,000 textile and fur manufacturers, distributors, and retail establishments.

Although the number of FTC's textile and fur investigators declined during fiscal 1965, the total number of inspections showed a slight increase over fiscal 1964. The number of items spot-checked increased considerably from about 46 to 67 million. This increase was brought about through inspections of larger manufacturers and larger retail stores

During fiscal 1965, the Bureau's Division of Enforcement handled 502 investigations. Two hundred and eighty-three were on hand at he start of the year and 219 new investigations were undertaken. A total of 275 cases were disposed of and 227 were carried over to fiscal year 1966.

Fifty-five recommendations for complaint were forwarded to the Commission. Sixty-nine cease-and-desist orders were issued. While the number of investigations closed rose from 177 to 215. One hundred and forty-four of this number were closed by assurances of voluntary compliance.

Efforts were continued to prevent the misbranding of imported wool products, such as mohair and wool sweaters and hand-knitting yarns. Forty-five mohair sweater cases have been

guidance of store and department managers, detailed instructions regarding compliance with the orders, and has cooperated by reviewing and correcting such instructions prior to distribution. This is an extension of the policy of counseling respondents to the end that they may avoid further violations, not only of the orders but also of matters not covered by orders.

Emphasis was placed upon the enforcement of orders involving respondentsc ( ) Tj 2.76 ow 0 a8a95l

Chapter VI

FOLLOWTHROUGH IN LAW ENFORCEMENT

The statistical profile of the General Counsel's work in fiscal 1965 reveals the Commission's greater emphasis on obtaining industry-wide voluntary compliance with the law as an alternative, where possible, to the bringing of individual lawsuits.

While the number of cases instituted and pending in the courts and the number of consent settlement negotiations declined, the quality and importance of the casework remained high. Nor was there any diminution in total work-load, for the lessened casework was more than offset by services required of in support of the industrywide approach to compliance. The General Counsel contributed importantly to the work of the operating Bureaus in their rulemaking [illegible] load,

Collateral suits challenging the Commission's

provisions of this act, associations are permitted to fix prices and quotas, pool products for shipment, and establish terms and conditions of sales to foreign markets. Thirty-four associations were registered with the Commission in 1964, and they exported $1,103,394,518.91 worth of goods.

With the acceleration of the Commission's industry guidance programs, and with the development of procedures for handling vastly increased caseloads, the General Counsel has assigned, on a selective basis, members of his staff to assist the operating bureaus in their conduct of rulemaking proceedings, preparation of subpoenas and orders to file special reports, and the development of technical procedures in the acquisition of evidence in connection with industrywide procedures and single causes.

The General Counsel's Division of Legislation furnished advice and comment to the Commission on 107 bills which were pending in Congress, 10 draft bills submitted to the Bureau of the Budget by other governmental agencies, and 6 enrolled bills pending presidential signature or veto. There has been a continuation of the introduction in Congress of proposed legislation of a regulatory nature in which the Commission is either designated singularly or jointly with another agency to administer the proposed law. Examples of such proposed legislation are the, "Truth-In-Packaging" bill and the "Truth-In-Lending" bill. Also, a number of bills, which name the Commission as administering agency, have been introduced requiring the labeling of goods imported into the United States in order to show foreign origin.

From the experience of the Commission in its daily administration of the law and from studies made in the General Counsel's Office, it appears that certain additional legislation is needed.

LEGISLATION NEEDED

The Commission has urged the enactment of laws which would:

1. Amend section 7 of the Clayton Act (15 U.S.C. 18) by requiring proper notice to the Federal Trade Commission and other appropriate agencies of proposed mergers of corporations of significant size, at least one of which is engaged in interstate commerce, and to provide adequate means of preventing illegal mergers.

2. Amend section 2(e) of the Wool Products Labeling Act (15 U.S.C. 68 (e)), which defines a wool product, so that it will read as follows:

> The term "wool product" means (1) any fiber or fibrous materials, including fibers or fibrous materials reclaimed from other products, which are, contain, or in any way are represented as containing wool, reprocessed wool, or reused wool, and (2) any yarn, fabrics or other product containing or made in whole or in part of such fibers or fibrous materials.

3. Amend section 2(d) of the Flammable Fabrics Act (15 U.S.C. 1191 (d)) so as to include blankets which are dangerously flammable.

4. Amend section 5(a) of the Clayton Act (15 U.S.C. 16 (a)) so as to include a final order of the Federal Trade Commission; that is, amend section 5(a) to read:

> A final judgment, decree or final order to cease and desist of the Federal Trade Commission heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that defendant or respondent has violated said laws shall be prima facie evidence against such defendant or respondent in any action or proceeding brought by any other party against such defendant or respondent under said laws or by the United States under section 4A, as to all matters respecting which said judgment, decree or order would be an estoppel as between the parties thereto: Provided, That this section shall not apply to

consent judgments, decrees or orders entered before any testimony has been taken or to judgments or decrees entered in actions under section 4A.

Chapter VIII

THE ROLE OF ECONOMIC STUDIES AND EVIDENCE

Some of

fiscal year 1965, two studies illustrated in some detail the extent and economic impact of recent merger activity over the period 1955-64. Following a complete reexamination of merger data for the past 10 years, the Commission released revised merger series for years since 1954. The revised series is shown in table I below.

TABLE

I below.

Chart I

MERGERS IN MANUFACTURING AND MINING
1940-64

CHART - SEE IMAGE

occurred each year. Between 1950 and 1954, this average fell slightly to 285 per year. However, an average of 673 mining and manufacturing companies were acquired between 1955 and 1959, and an average of 873 a year between 1960 and 1964. The present level of merger activity is higher than at any time during the past 30 years.

In addition to the absolute increase in merger activity, the data in table 1 show that an increased number of acquisitions were made by large companies between 1955 and 1964. In 1955, for example, companies with assets of $100 million or more made 16 percent of our recorded manufacturing and mining acquisitions. In 1964, however, this size group accounted for almost 25 percent of these mergers.

Firms engaged in the production of electrical machinery and chemical products were responsible for about 25 percent of recorded acquisitions. Other large acquiring industries include nonelectrical machinery, food, and kindred products, and transportation equipment.

Analysis of merger activity includes more than the mere counting of the number of mergers which take place, it requires their measurement. To appraise their economic significance, information is needed which shows the size and product characteristics of both acquiring and acquired firms. A report on The Scope of the Current Merger Movement, prepared in 1965 for the Senate Subcommittee on Antitrust and Monoply, contains an analysis of firms with assets

of $10 million0 TD57.4 0.96 19.4m08 re f 446.wre f bve f2o9 616.eosf 352rlion0.3284 0 TD ore616.ec

companies of that size, a number equivalent to almost 45 percent of the 1959 population, were acquired between 1959 and 1964. In total, 663 manufacturing corporations with assets of $10 million or more were acquired between 1959 and 1964; this was equal to 36.6 percent of all such firms in 1959. Between 1959 and 1964, a net increase of 299 companies with assets of $10 million or more took place.

The acquisitions of large companies were spread somewhat more evenly across American industry than was true for "all" merger activity. The six largest, in terms of values of assets acquired, were nonelectrical machinery, petroleum products, chemicals, paper products, transportation equipment, and electrical machinery in that order. These data show also that in two industries, paper and textile products, the acquisitions made were equal to more than 20 percent of the total 1959 manufacturing assets of all corporations (chart 2).

Canned Fruit and Vegetable Report.—During 1965, the third and final report of the Commission's Economic Inquiry into Food Marketing was published. This report examines production and consumption patterns, concentration, diversification, and integration in merger activity; relative costs, profits, marketing patterns, product promotion, and entry barriers in the canned fruit, juice, and vegetable industry.

This report discusses a number of interesting developments in this industry. For example, the report points out that since 1947, U.S. production of canned fruits, juices, and vegetables has increased by one-third (from 326 to 435 million cases annually). At the same time, however, there have been substantial declines in the number of canning establishments since 1947; and that during a somewhat shorter period, 1958-63, employment declined by 6.5 percent.

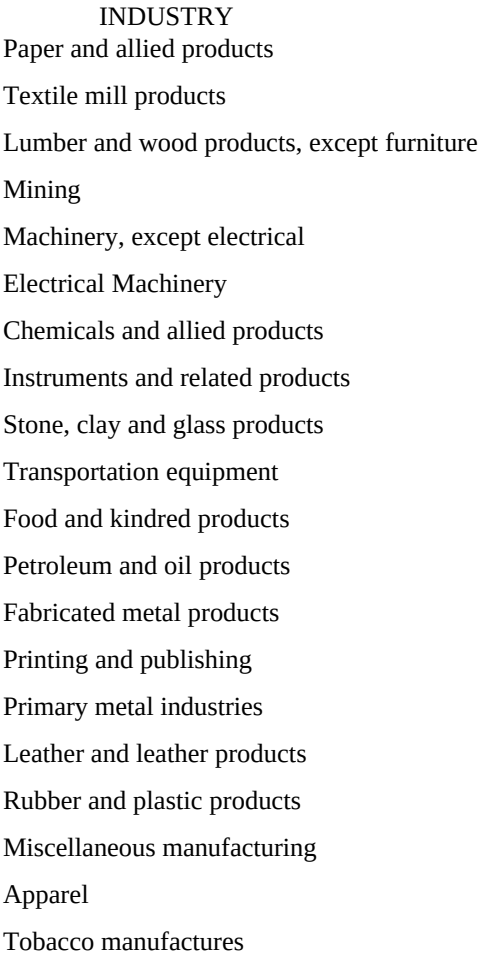
This report indicates that profitability was clearly associated with sales size of canning firms in 1959. The 12 largest canners, each with sales over $25 million, enjoyed average profits before taxes equal to 8.8 percent of their net canning sales. At the other extreme, the 343 reporting firms, each with sales under $1 million, experienced average profits equal to 0.7 percent of their net canning sales. Almost 40 percent of the smallest firms reported net operating losses.

A few large acquisitions of canning facilities by large canners were made in the 1950's; however, these acquisitions were over-

Chart 2

ACQUIRED ASSETS OF LARGE CORPORATIONS, 1948-64, AS PERCENT OF 1959 TOTAL ASSETS BY INDUSTRY

GRAPHIC - SEE IMAGE



shadowed by the merger activity in the period 1960 to 1963. During the latter period, 42 firms included in this report were acquired. And, any of the acquisitions involved relatively large canners. Almost 20 percent of the 39 firms with 1959 canning sales in excess of $10 million each were acquired during 1960-63.

Fifteen of the 42 acquisitions which occurred in the period 1960 to 1963 were made by noncanning firms, thereby increasing the number of large diversified firms in the canned fruit and vegetable industry. As result of recent acquisitions, such large and diversified

firms as Reynolds Tobacco, Nestle, R. T. French, and Coca Cola became canned fruit and vegetable producers. In addition, three large dairy firms, Pet Milk Co. (peripherally in canning prior to 1960), Carnation Co., and Borden Co. acquired large canning firms between 1960 and 1963. (By the end of 1963, the five largest dairy firms also ranked among the 20 largest canners of fruits and vegetables.)

Clearly, canned fruits and vegetables are being marketed under conditions of increasing concentration. Not only are the larger canners doing an expanding share of total business, but the competitive fringe of smaller canners is shrinking, as smaller canners are becoming less capable of offering effective competition to the leaders. Moreover, not only are the leaders strengthening their position vis-a-vis smaller firms but they also are raising the barriers to entry confronting potential entrants. These developments suggest that the canner-brand segment of the industry is becoming increasingly occupied by large, diversified firms capable of developing strong consumer acceptance for their products.

National Commission on Food Marketing.—During 1965, the Commission contracted to prepare and submit two studies to the National Commission on Food Marketing.Tc -1epare

price discrimination, restraint of trade, and monopoly; and participated in analyzing industry requests for premerger clearance. The Division assists in the review of certain false and deceptive claims where such claims were based on data collected by sampling techniques which raised questions as to their validity.

Financial Statistics

The Division of Financial Statistics develops probability samples of corporate manufacturers, and, each quarter, produces with these samples estimates of the financial condition and quarterly operation results of all manufacturing corporations. In the Bureau of the Budget's recent report War on Waste: Cost Reduction Through Better Management, the work of the Division of Financial Statistics was singled out as an example of how money, time, and effort can be saved through the shortcut of6 2.28 0 TD -0.0155 Tc (exn5.84.16 0 TDo4

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FIELD OPERATIONS

The Bureau of Field Operations through its 11 field offices completed 1,096 investigations during the fiscal year, 695 of which involved deceptive practices, 393 restraint of trade, and 8 wool, fur, or other consumer acts. This production was accomplished with an average of 158 attorneys, as compared to a total production of 1,144 completed investigations with an average of 167 attorneys employed during fiscal 1964.

The investigations completed constitute only a part of the Bureau's performance for the fiscal year. Among other things, its New York field office handled 4 contested cases under the Robinson-Patman Act. Its staff handled 162 assurances of voluntary compliance, out of a total of 489 handled by the Commission, one-third of the entire volume. Its field attorneys also negotiated with respondents on 35 consent orders, out a total of 132 handled during the year, or approximately 38 percent of the total. Members of its staff also participated in eight investigational hearings.

The disposition of matters by attorneys in the field offices, either through the obtaining of assurances of voluntary compliance or by the consent settlement method, provided an unusually suitable means of explaining to the parties involved, through direct personal contact with field office attorneys, the effect and meaning of the requirements imposed upon them by their assurances of voluntary compliance and by the terms of the cease-and-desist orders. In addition, these direct personal contacts provided them with information as to how to comply voluntarily with other laws administered by the Commission.

There has been initiated on an experimental basis in each field office a program designed to inform business men, attorneys, or members of the general public, of the nature of the laws administered by the Commission. This program is designed to supply answers to questions propounded either by telephone, writing, or personal contact; and to provide speakers, panelists, etc., to local groups having

Chapter X

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE FOR THE COMMISSION FOR THE FISCAL YEAR 1965

Funds available to the Commission for the fiscal year 1965 amounted to $13,459,107. Public Law 88-507, 88th Congress, approved August 30, 1964, provided $12,875,000 of which $15,893 was transferred to the General Services Administration for additional space rental costs, and Public Law 89-16, 89th Congress, approved April 30, 1965, provided $600,000.

Obligations by activities, fiscal year 1965

1. Antimonopoly:

Investigation and litigation	$6,246,000
Economic and financial reports	850,000
Trade practice conferences, industry guides, and small business	170,000
Compliance investigations for Attorney General	850,-0.00292 -343.6

3 conferences TD-0 reports

APPENDIX (A)
FTC Cases in the Courts

Following is a summary of the principal FTC cases before the courts during fiscal 1965, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

Probably the most significant restraint of trade decision in fiscal 1965 was that

The Commission, however, was not entirely successful in the courts in restraint of trade matters in fiscal 1965. In Brown Shoe Co. (D. 7606), the Eight Circuit (St. Louis) overturned the Commission's finding that the operation of Brown's retail store franchise program was unlawful. The Commission had found that under this method of distribution, selected shoe dealers were required to "concentrate" their purchases upon Brown products, in return for various valuable benefits and services furnished them under the franchise program. In the Commission's view, such method enabled a dominant and financially powerful manufacturer like Brown to foreclose, effectively, smaller shoe manufacturers from access to a significant number of independent retail outlets. The Commission's petition for certiorari was pending in the Supreme Court at the close of the year. In Sandura Co. (D. 7042), the Sixth Circuit (Cincinnati) likewise reversed the Commission, holding that a manufacturer's method of distribution involving a system of closed territories and other resale restraints upon its dealers was economically justified," and therefore not unlawful. The court noted that Sandura was "a relatively small concern competing with and losing ground to the giants' of the floor-covering industry."

Restraint of trade cases pending at the close of the year included: Luria Bros. & Co. (D. 6156), in the Third Circuit (Philadelphia), a highly complex matter involving illegal restrictive agreements and arrangements by several scrap iron and steel companies; and American Cyanamid Co. (D. 7211), in the Sixth Circuit (Cincinnati), involving an unlawful conspiracy in the manufacture and distribution of antibiotic drugs.

In the illegal merger field, the most significant decision in fiscal 1965 occurred in Consolidated Foods Corp. (D. 7000), wherein the Supreme Court reversed the Seventh Circuit (Chicago) and upheld the Commission's finding of violation of section 7. The Commission had found that Consolidated's acquisition of Gentry, Inc., a company engaged primarily in the production of dehydrated onion and garlic products, might have the requisite anticompetitive effects because of opportunities afforded for "reciprocal buying, "i.e., a practice whereby Consolidated could use express or implied business coercion to induce its suppliers to purchase some or all of their dehydrated onion and garlic needs from Consolidated's new Gentry Division. In upholding the Commission, the Supreme Court ruled that the court of appeals had given too much weight to "post-acquisition" evidence. Subsequently, the Seventh Circuit handed down its decision in Ekco Products Co. (D. 8122), affirming the Commission's finding that the merger of Ekco, a large diversified manufacturer, with McClintock Manufacturing Co., a small corporation with a virtual monopoly in commercial meat-handling equipment, was unlawful under section 7.

Other important merger cases pending at the close of the year included: Pillsbury Co. (D. 6000), in the Fifth Circuit (New Orleans), involving the acquisition by Pillsbury of Ballard, its most significant regional competitor in the Southeastern United States in the family-flour and flour-base home-

mixes lines of commerce, and Pillsbury's acquisition of Duff, a significant competitor in the sale of flour-base home-mixes throughout the country; and Proctor & Gamble (D. 6901), in the Sixth Circuit (Cincinnati), involving the acquisition of the Clorox Chemical Co., a manufacturer of household bleach, by Proctor & Gamble, a leading manufacturer of related products such as soaps, detergents, and cleansers. In Pillsbury, briefs have been filed and the case has been orally argued.

In the Robinson-Patman discriminatory pricing area, there were several significant decisions in cases involving the Commission. In Borden Co. (D. 7129), the Fifth Circuit (New Orleans) reversed the Commission's finding of violation of section 2(a), and held that the company had not unlawfully discriminated in price as between sales of "private label" and "Borden" brand evaporated milk, since, in its view, such products were not "of like grade and quality" as required by the statute. The Commission's petition for certiorari was pending in the Supreme Court at the close of the year. In another section 2(a) case involving the Borden Co. (D. 7474), the Seventh Circuit (Chicago) likewise reversed the Commission, holding that the evidence of record failed to satisfy the statute's interstate commerce and competitive injury requirements with regard to the company's discriminatory sales of fluid milk.

Apart from the above, the Commission obtained favorable decisions in a number of Robinson-Patman cases. In General Auto supplies, Inc.,. (D. 8039—National Parts Warehouse), the Seventh Circuit (Chicago) affirmed the Commission's finding that a group of automotive parts jobbers violated section 2(f) by knowingly inducing and receiving discriminatory discounts from their suppliers. This case is noteworthy in that the “group buying” organization involved was not a mere "bookkeeping device," but an ostensible "warehouse distributor" organized and operated by the jobbers as a "limited partnership." In Monroe Auto Equipment Co. (D. 8543), the Seventh Circuit similarly upheld the Commission's finding that a manufacturer's granting of discriminatory discounts to warehouse distributors on products which they purchased and later "resold" to their own affiliated jobber outlets violated section 2(a). The Commission held that such practice could result in injury to competing independent jobbers purchasing Monroe products from nonaffiliated warehouse distributors at regular jobber prices. In another favorable decision, Joseph 4. Kaplan & Sons, Inc. (D. 7813), the District of Columbia Circuit affirmed the Commission's findings that a manufacturer of shower curtains violated sections 2(a), (d), and (e) in connection with sales to various large department stores throughout the country. Twenty-six of these stores received discriminations on purchases from Kaplan through a wholly-owned subsidiary of an organization owned and controlled by the stores.

In Forster Mfg. Co. (D. 7207), the First Circuit (Boston) upheld the Commission's finding that a dominant manufacturer and seller of "woodenware" products had discriminated in price with the deliberate intention and with

the effect of injuring its smaller competitors. However, the court held that the Commission had applied an overly restrictive test in rejecting Forster's "meeting competition" defense, and remanded the case to the Commission for the application of a "reasonable and prudent person" standard under section 2 (b).

Robinson-Pitman matters pending at the close of the fiscal year included: Exquisite Form Brassiere, Inc. (D. 6966), in the District of Columbia Circuit, involving the merits of the company's section 2(b) defense to a charge of granting unlawful advertising and promotional allowances in violation of section 2(d) (in a previous decision, the court had ruled that such defense was applicable to a section 2(d) charge as a matter of law); and Foremost Dairies, Inc. (D. 7475), in the Fifth Circuit (New Orleans), involving issues of interstate commerce and competitive injury in connection with Foremost's discriminations in sales of fluid milk.

DECEPTIVE PRACTICE CASES

In the year's most significant deceptive practice decision, Colgate-Palmolive Co. and Ted Bates & Co. (D. 7736), the Supreme Court upheld the Col0 TD 0 Tj 15.4(year's) Tj137 Tc (fl ((D.) Tj 16

parts. The same court of appeals also upheld the Commission in Brite Manufacturing Co. (D. 8325), involving a company's failure to disclose the foreign origin of imported watchbands. In that case, the court specifically affirmed the Commission's taking of "official notice" that a substantial segment of the purchasing public prefers domestic products, and believes that products unmarked as to country of origin are made in America.

proceeding to a hearing examiner for the taking of further evidence. The court of appeals held that the Commission had not prejudged the case, and had acted with reasonable "dispatch" in its handling of the proceeding.

The district court in Minneapolis (D. Minn.) granted the Commission's motion for summary judgment and dismissed a complaint for declaratory judgment and injunctive relief filed by Nash Finch

In subpoena cases, the Commission filed for enforcement in Roytex, Inc. (File 621 0563) in the District Court for the Southern District of New York and obtained an order directing compliance. Roytex thereafter appealed to the Second Circuit (New York). After its application for stay pending appeal was denied by the court of appeals and the Supreme Court, the company complied with the Commission's subpoena. The appeal was dismissed without prejudice on consent of the parties. In A & R Agency (File 632 3604), the Commission filed for enforcement in the District Court for the Northern District of Illinois (Chicago). The court entered an order directing compliance, with satisfactory results.

CRIMINAL CONTEMPT PROCEEDING

In a noteworthy proceeding, Holland Furnace Co. (D. 6203), the Seventh Circuit (Chicago) found the company and three of its top officials guilty of criminal contempt for willfully violating an order of the court commanding obedience to the Commission's order to cease and desist from various deceptive practices in the sale of furnaces and furnace parts. Holland was fined $100,000, and its president, Mr. Cheff, was sentenced to 6 months' imprisonment. The other two company officials were each fined $500. Holland's petition for certiorari was subsequently denied. Mr. Cheff's petition for certiorari was pending at the close of the year.

American Candle Co., Inc. (E.D.N.Y.).

APPENDIX (C)

Bureau of Textiles and Furs
Civil Penalty and Criminal Cases

During fiscal 1965, one suit for civil penalties was concluded with the recovery of a $2000 penalty and an injunction against further violation of the Commission's order under the Wool Products Labeling Act of 1939.

Penalty Cases Statistics:

Pending July 1, 1964	3
Filed during year	2
Total for disposition	5
Disposed of during year	1
Pending June 30, 1965	4

Criminal Cases Statistics:

Pending July 1, 1964	2
Filed during year	0
Total for disposition	2
Disposed of during year	0
Pending June 30, 1965	2

Civil Penalty Cases Concluded

Lawrence Blanket Co. (Dist. Mass.). Misbranding wool products, blankets. Judgment for $2000 and injunction.

Civil Penalty Cases Pending

Woody Fashions, Inc. (S.D.N.Y.). Misbranding wool products, coats. H. M. Prince Textiles, Inc. (S.D.N.Y.). Misbranding wool products, yarn and fabrics.

Raymond's, Inc. (Dist. Mass.). False advertising and false invoicing of fur products and failure to maintain required records.

Asheville Textile Corp. (S.D.N.Y.). Misbranding and false invoicing of wool products, imported fabrics.

Criminal Cases Pending

Radley Furs, Inc. (S.D.N.Y.). Misbranding and false invoicing of fur products by failure to show they were dyed.

Stone & Stone, Inc. (S.D.N.Y.). Misbranding and false invoicing of fur products by failure to show they were dyed and by failure to show the true country of origin of the furs.

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