

ANNUAL REPORT
OF THE
FEDERAL
TRADE
COMMISSION

For the Fiscal Year Ended
September 30, 1982

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FEDERAL TRADE COMMISSION

JAMES C. MILLER III, Chairman
DAVID A. CLANTON, Commissioner
MICHAEL PERTSCHUK, Commissioner
PATRICIA P. BAILEY, Commissioner
GEORGE W. DOUGLAS, Commissioner

CAROL M. THOMAS, Secretary

LETTER OF TRANSMITTAL

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the sixty-eighth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1982.

By direction of the Commission.

JAMES C. MILLER III
Chairman

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

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SUMMARY

Fiscal 1982 was a year of change for the Commission. With the appointment of Chairman James C. Miller III, the Commission undertook a restructuring of priorities and management policy for the agency.

While the Commission continued its commitment in carrying forward its statutory responsibilities, it also pursued three major goals:

I. IMPROVED MANAGEMENT OF THE COMMISSION

During fiscal 1982, the Commission placed a high priority on improving the management of the agency. To this end, a reorganization plan was developed and implemented to maximize the utilization of agency resources. The reorganization established direct lines of authority from professional staff to senior managers, increased accountability of senior managers to the Commission, consolidated overlapping and duplicative programs, and reduced the top-heavy management structure. The Bureau of Economics' reorganization enhanced its ability to provide support for the agency's law enforcement missions and to provide advice on economic matters to the Commission more effectively. The Commission's information resources were consolidated from different sources into a single office headed by a new Deputy Executive Director. This office will handle and coordinate all information resources.

In an effort to improve the effectiveness of the Commission's law enforcement program, the Commission has successfully integrated economic analysis into all aspects of the Commission's planning, case selection, rule analysis, and prosecution of cases. Integration of economic analysis at all steps in the decisions-making process has focused staff resources on the most promising cases, i.e., those with real potential for consumer or competitive benefits, thereby making the most efficient use of the taxpayer's investment.

III. IMPROVEMENT OF RELATIONS BETWEEN THE COMMISSION, MEMBERS OF CONGRESS AND THE PUBLIC

In recent years, the Commission's relations with Congress and the public had taken on an overly adversarial tone. Growing Congressional and public criticism over the Commission's directions were reflected in the 1980 FTC Improvements Act, which restricted the agency's law enforcement activities in certain areas and forbade them altogether in others.

The Commission has worked toward continually improving its relationship with Congress and the public. The agency's Office of Congressional Relations was upgraded and new lines of communication were opened with private groups interested in or affected by the FTC's activities. Outreach programs were expanded to include business education projects to encourage voluntary compliance with laws and rules administered by the FTC.

The organization of the Commission is divided into three bureaus which carry out the Congress' two mandates maintaining competition in the marketplace and protecting the consumer. The following is a summary of the Federal Trade Commission's accomplishments in fiscal 1982.

MAINTAINING COMPETITION MISSION

The mission of the Commission's Bureau of Competition is to enhance the welfare of consumers by maintaining the competitive operation of our economic system of private enterprise. The Bureau carries out its mission by enforcing the antitrust provisions of the Clayton Act and the Federal Trade Commission Act, as well as by serving as a vigorous advocate of competition before Congress and other governmental bodies.

In fiscal year 1982, several organizational changes were made in the Bureau to improve its management and make it more effective in achieving the goals of the FTC Act. These include restructuring the "Deputy Director" position to allocate responsibility for each of the Bureau's litigating units to a particular Deputy Director, allowing each Deputy to maintain day-to-day contact with the segment of Bureau activities under his or her supervision. In addition, responsibility for regional office competition activities was shifted into the Office of the Director. Further, in response to the scarcity of enforcement resources, attorneys were reassigned to make a higher proportion of them available for direct law enforcement efforts.

SUMMARY OF ENFORCEMENT ACTIVITIES

During fiscal 1982, the Commission initiated 160 investigations of possible violations of the antitrust laws. Many of the investigations pur-

sued possible multiple law violations, totaling 289 possible violations in all. The Commission issued two administrative complaints, accepted eight consent agreements and voted to seek three preliminary injunctions relating to competition matters. The U.S. Courts of Appeals issued decisions in three appeal

divestiture by Lehigh Portland Cement Co. of its Hannibal, Mo., cement making facility. The divestiture resulted from settlement of charges in the Commission's 1981 complaint that Lehigh's acquisition of U.S. Steel's cement-producing Universal Atlas Division would substantially reduce competition in the manufacture and sale of portland cement in the Midwest.

DISTRIBUTION RESTRAINTS

The Commission also maintained an effective presence in the enforcement of antitrust prohibitions against distribution restraints which cause injury to consumers, including vertical restraints and violations of Robinson-Patman prohibitions against price discrimination. In a final decision, the Commission reversed a 1981 finding by an administrative law judge and held that Russell Stover Candies Inc. had violated the antitrust laws by coercing retailers to sell candy at "suggested" retail prices with threats to terminate dealers who failed to comply. Germaine Monteil Cosmetiques Corp. agreed to a consent order, and an order was issued in final form against Onkyo U.S.A. Corp. prohibiting resale price maintenance. In addition, new initial phase investigations were opened concerning some 23 possible Robinson-Patman violations and 47 possibly illegal vertical restraints.

HEALTH CARE

The Commission has devoted major resources to an effort to detect and prosecute antitrust violations in the health-care industry, which accounts for nearly 10 percent of the nation's gross national product. During fiscal 1982, the Texas Dental Association agreed to an order prohibiting it from obstructing insurance companies' efforts to minimize dental care costs. The Commission also issued a complaint against Hospital Corp. of America (discussed above), charging that its acquisition of two hospital chains in Chattanooga would reduce competition in the provision of health care services in that city.

The health care effort also resulted in Commission acceptance of two consent orders prohibiting professional organizations from interfering with competition by means of truthful advertising. In a consent order issued in final form, the Broward County Medical Society was required to abandon restrictions on its members' advertising, including advertising by physicians that they accepted Medicaid or spoke Spanish, and the Association of Independent Dentists also agreed to a consent order prohibiting interference with truthful advertising. Finally, an evenly divided Supreme Court upheld without written opinion a Commission order prohibiting the American Medical Association from interfering with truthful advertising by its members.

CASE GENERATION INITIATIVES

In addition to continuing the present level of effort in ongoing enforcement initiatives, several new and complementary approaches to case generation were implemented to foster competition and increase consumer welfare. First, the Bureau instituted a one-month intensive project, enlisting the efforts of attorneys: from all of the Bureau's divisions, to identify promising areas for investigation and evaluate case generation techniques. Second, the Bureau carried out a cooperative effort with the Bureau of Economics to target industries for investigation which, based on an analysis of economic data, appeared likely to have a significant probability of collusion or market power. Finally, increased emphasis was given to case generation activity as an element of the Bureau's ongoing workload. These new approaches have resulted in an enhanced ability to identify and investigate competitive trouble-spots in the economy.

INTEGRATION OF ECONOMIC ANALYSIS

In accordance with the Commission's stated desire to increase the integration of economic analysis into the agency's activities, the Bureau has increasingly evaluated its competition activities from an economic perspective. In particular, the Bureau has taken steps to obtain and incorporate the comments of the Commission's Bureau of Economics at every important stage of case development. Economists sit on the Bureau's merger screening and evaluation committees and also have input prior to the initiation of preliminary and full-phase investigations. An economic advisor now assists the Director in each major decision, and works with other attorneys within the Bureau as well. Also, a course in legal principles for economists and courses and specialized colloquia on economics for lawyers have enhanced understanding and increased communication between lawyers and economists. Evaluative discussions and written analysis in the Bureau clearly reflect this effort.

works

The study analyzed the degree of concentration and possibilities for anticompetitive restrictions at all stages of petroleum production, including exploration, refining, transportation and marketing. The Commission also analyzed the motives behind merger activity in the petroleum industry, concluding that tax considerations, efficiencies in production and management, and differing valuations for crude oil reserves were the dominant causes. In the bid for MeE4 0 TD -06046.16

with American Motors Corp., new jeep CJ models will carry stickers warning prospective buyers that the vehicles handle differently than ordinary passenger cars.

Many of the agreements approved concern dissemination of energy-related information. For example, two companies, Great North American Industries Inc. and Ball-Matic Corp. Inc., agreed to discontinue allegedly misleading advertising concerning fuel economy improvement claims for their products. The Renuzit Home Products Co. agreed to test its motor oil to ensure that it is properly labeled and classified. Two leading manufacturers of vinyl siding, Mastic Corp. and Vinyl Improvement Products Co., agreed not to make energy savings claims about their products.

The Commission published the periodic cigarette report listing the tar, nicotine, and carbon monoxide content of 200 varieties of cigarettes. The FTC contributed comments to the Department of Energy concerning possible consumer protection and competition problems of public utilities in connection with the Residential Conservation Service Program.

CREDIT PRACTICES

The Credit Practices decision unit enforces legislation addressing problems in the consumer credit market.

The Commission obtained civil penalty judgments in five credit-related matters. Collegiate Recovery and Credit Assistance Programs Inc. (CRI) agreed to pay \$32,500 in civil penalties to settle FTC charges concerning violations of the Fair Debt Collection Practices Act.

The nation's two largest car rental companies agreed to pay civil penalties settling charges that each failed to civil

The FTC has also filed a complaint requesting civil penalties against Iowa Credit Syndicate of Ft. Dodge Inc. for alleged violations of the Fair Debt Collection Act.

In the debt collection area, the Commission gave final approval to a consent agreement with Aldens Inc., the nation's fifth largest mail order firm. Aldens agreed not to contact third parties in attempts to collect delinquent accounts. The Commission also obtained a preliminary injunction against the Bureau of Collections and its owner to prevent violations of the Fair Debt Collection Practices Act.

The Commission submitted comments to the Federal Reserve Board (FRB) on proposals dealing with credit related regulations. FTC staff comments concerned: proposed interpretations of Regulation B relating to credit scoring systems; proposed updates of the official FRB staff commentary on Regulation Z; proposals concerning preemption of state laws under the Truth-In-Lending Act (TILA), and Maine's exemption from the TILA.

SERVICE INDUSTRY PRACTICES

The Service Industry Practices decision unit deals with unfair, deceptive, Tj 17.28 02 00mpeti4.1614.16 T.024 .006

In the product information area, the Commission gave final approval to three consent agreements. The American Honda Motor Co. Inc. agreed to repair or replace rusted front fenders on qualifying 1975-1978 Honda cars. The Chrysler Corp. agreed to provide 700,000 owners of 1971-1980 Japanese-made Chrysler cars and trucks with accurate information on the need to use special replacement oil filters to avoid engine damage. Under an agreement with Volkswagen of America, approximately 400,000 owners of 1977-1981 diesel Volkswagens and Audis were notified of oil filter installation procedures, and offered reimbursement for engine damage caused by oil filter leaks.

An administrative law judge issued an initial decision upholding FTC charges in the International Harvester Co. litigation. The administrative law judge ruled that the company knew or should have known by 1963 that certain of its gasoline-powered tractors were subject to a fire hazard, but did not institute an "effective" operator notification program until 1980. The judge did not, however, enter an order against International Harvester. This decision is on appeal to the Commission.

The warranties program deals with the comprehensibility and availability of warranty information, as well as with warranty performance.

The Commission issued an administrative complaint against R.E. Ward Corp., a major Washington, D.C., area home builder, charging it with a substantial pattern of warranty abuses that led to costly buyer injury. This is the first time the Commission has issued such a complaint.

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In addition to the matters mentioned previously, the following companies have been assessed civil penalties: Ivy International, a wool importer, \$25,000; RJR Foods Inc., the maker of Hawaiian Punch, \$70,000; Womack Nursery Co., a mail order plant company, \$10,000; National Dynamics, a mail order firm, \$100,000; Van Schaack & Co., a real estate company, \$30,000; Starcrest Products of California Inc., a mail order firm, \$50,000; and R.J. Reynolds Co., a cigarettes producer, \$100,000.

The Supreme Court left intact a \$1.75 million fine against Reader's Digest for violating a 1971 FTC order. The company distributed misleading contest materials similar to those which resulted in the issuance of the original order.

A women's clothing and enamel giftware franchisor, Enamelcraft Inc., agreed to a permanent injunction. Under the injunction, Enamelcraft agreed to comply with the FTC's Franchise Rule and not to misrepresent the services and merchandise it offers. The Commission also obtained a permanent injunction against Marketing Associates Inc. from misrepresenting video game business opportunities in violation of the Franchise Rule.

A consent judgment filed by the FTC requires West Branch Ltd., a bankrupt mail-order firm, or its president to set up a fund to ensure refunds to customers who paid for, but did not receive, merchandise offered by the company.

An amicus curiae brief was filed in U.S. District Court involving SMM Mail Order Marketing Inc., a mail order firm. The brief described the Mail Order Rule, and suggested that the court allow the company to ship paid orders and return new orders.

The Commission filed a complaint in U.S. District Court seeking civil penalties and permanent injunctions against Hosiery Corp. of America, for alleged violations of the Mail Order Rule, the Unordered Merchandise Sec. 205 Synopsis, and postal regulations.

The Commission modified three previously issued FTC orders: a 1978 order with Charles E. Boone and Cooga Mooga Inc.; a 1973 order with Credit Card Services Corp; and a 1982 order with Litton Industries Inc. A Commission advisory opinion will allow Paccar Inc. to designate the same year for all trucks in a fleet when production straddles changeover of a model year.

The Commission approved proposed amendments to the Care Labeling Rule clarifying the language of required instructions.

Tentative partial exemption for the R-Value (Insulation) Rule for cellulose insulation manufacturers was revoked after the Commission accepted public comments. The Commission issued a temporary partial stay of parts of the Rule applicable to new home sellers pending the receipt of public comments. In addition, the Commission approved a proposal to put into effect requirements for measuring thick insulation samples and to lift the stay on this section of the rule.

The Commission also sought public comment on proposed guidelines designed to assist creditors under existing Commission orders in complying with revisions to the Truth-In-Lending Act and its implementing rules. FTC staff prepared and released to the public a booklet entitled Civil Penalties: A Policy Review Session. Its general purpose is to structure Commission discussion and review of the role and determinants of civil penalties in the Consumer Protection Mission.

OFFICE OF CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education coordinates an education program aimed at providing information to consumers and industry on major Commission decisions, programs, statutes, and rules. This allows informed choices and competitive business practices to function freely in the marketplace.

In fiscal year 1982, three public service announcements were produced for television on creative financing of home mortgages. In addition, a public service announcement campaign is being developed for radio concerning used car sales.

Other consumer business education activities include the publication of various brochures, booklets, and fact sheets. For example, the Commission produced material for business on "Buying By Phone," "How To Advertise Consumer Credit," and "Discounts for Cash." For consumers, publications covered such subjects as timesharing, buying by mail, creative financing, and "bargain" jewelry.

IMPACT EVALUATION UNIT

The Commission continued to assess the economic effects of its activities through various studies coordinated by the Impact Evaluation Unit staff. Among the studies completed in fiscal year 1982 was a baseline and validation study on the proposed Funeral Rule, a baseline study of the Care Labeling Amendment which was also a retrospective evaluation of the Care Labeling Rule, a survey of mortgage bankers regarding the costs of Truth-In-Lending Act compliance, and a study of the quality of contact lens fittings which will be incorporated into a FTC staff report.

Several studies were begun in fiscal year 1982 including Regulatory Flexibility Act studies (small business impact) of the Mail Order Rule and the Pre-Sale Availability of Warranties Rule. Follow-up impact studies were initiated on the Commission's Insulation (R-Value) Rule, Appliance Energy Labeling Rule, and Pre-Sale Availability of Warranties Rule.

Through these studies, the FTC continues to adjust its plans and enforcement activities to maximize consumer and business benefits at the least cost to all parties involved.

CONSUMER ADVOCACY

The Federal Trade Commission has long been aware that government initiatives, as well as private action, may, in some cases, decrease competition and consumer welfare. Instances of government action adverse to competition and consumer welfare come to the Commission's attention in the course of investigatory and monitoring activities directed at private industry. Thus, in addition to its rulemakings, cases, and other activities to remedy problems arising in the private sector, the Commission has traditionally been active in supporting pro-competitive and proconsumer actions by government agencies. A few of the Commission's fiscal year 1982 filings and testimony in which the Bureau of Consumer Protection, as well as the Bureaus of Competition and Economics participated are summarized below.

The FTC contributed joint bureau comments in response to requests from the Federal Communications Commission on three separate occasions. The first set of staff comments dealt with the costs involved in the current allocation

Consumer Protection Bureau Director Timothy J. Muris testified before a House subcommittee regarding the provision of telecommunications and information services by the federal government in competition with the private sector. Muris concluded that the special conditions that might justify government enterprise in these areas appeared to be absent.

ECONOMIC ACTIVITIES

The FTC's Bureau of Economics has three main responsibilities to provide economic support to the agency's antitrust and consumer protection activities; to advise the Commission about the impact of government regulation on competition; and to gather and analyze information on the American economy.

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In 1982, the Bureau of Economics continued to provide guidance and support to those activities. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. The primary function here was to distinguish situations where the marketplace performed reasonably well from situations where consumer welfare might be augmented by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding and to devise remedies that would facilitate competition. In a new role, economists who are not involved in the investigation or prosecution of cases also provided advice to the Commissioners in matters at the adjudication stage.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer run effects on price and product variety. Bureau economists provided internal advice on the competitive impact of various governmental laws, regulation, and proposed trade rules. Using expertise derived from studies of various industries and trade practices, economists helped to evaluate credit practices, advertising, product defects, warranties, and a wide variety of other consumer protection issues.

Although the FTC is primarily a law enforcement agency, it also collects, analyzes, and publishes information about the nation's business firms. Much of this work is conducted by the Bureau of Economics. In 1982, economists did research and statistical studies concerning a broad array of topics in antitrust, consumer protection, and regulation.

In the antitrust area, economists released reports on mergers in the petroleum industry and on deep seabed mining. In addition, economists studied the effectiveness of structural antitrust remedies and analyzed theories regarding resale price maintenance and relevant market defini-

tion for antitrust purposes. Economists played an important part in analyses which resulted in the Commission issuing, for the first time, its own statement of principles on merger guidelines. Finally, numerous research projects using the Commission's Line of Business data were initiated, and several papers were released; economists also began working on an extensive analysis of the benefits and costs of the Line of Business program.

In the consumer protection area, work continued on studies of the effects of state drug substitution laws, the impact of state advertising restrictions on the prices of legal services, and the effects of the regulation of retail milk prices by states. New studies initiated, during 1982, included research on consumer expectations in the market for

ment activities best suited to the economic conditions of their areas. The regional offices helped to monitor federal antitrust and consumer protection laws, provided important guidance and education to businesses and consumers, and coordinated efforts with local and state law enforcement agencies.

The regional offices made significant contributions to the Commission's law enforcement efforts. They were responsible for handling some of the more significant litigation and for achieving some of the more important settlements during this fiscal year. In addition, the regional offices handled tens of thousands of inquiries and complaints from consumers, businesses, and members of Congress. These offices provided important law enforcement guidance and education to members of the public, small business associations, and local interest groups of numerous types.

EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT

The Office of the Executive Director is responsible for executing Commission decisions and providing overall administrative support for agency functions.

plemented other management actions to monitor spending. A cost reduction program was implemented that covered all areas of discretionary spending. In addition, reviews of agency-performed services that could be contracted out were completed, and contracts were placed when significant savings were achievable. Along with other steps taken to manage and reduce costs, the agency began a review of internal control mechanisms where the focus was on vulnerability to waste, fraud and abuse.

In a period of declining resources and transition, personnel management efforts were devoted to maintaining employee morale and monitoring agency employment activities. The agency was in its second full year of operation under the newly developed merit pay system.

The use of this program and the incentives provided for employees were being assessed. Continued emphasis was placed on vital employee training and development programs.

The Commission's planning and budgeting process was used throughout the year to respond to several new estimates of the fiscal 1982 budget, and special budget review sessions were held to consider these proposals. Other management steps were taken to consolidate headquarters office space and to utilize existing office space more efficiently.

As the Commission completed the year, all financial commitments had been met, and the agency returned approximately \$400,000 to the Treasury.

Part II (Investigative Stage)
CONSENT AGREEMENTS ACCEPTED
AND PUBLISHED FOR PUBLIC COMMENT

COMPETITION MISSION

Germaine Monteil Cosmetiques Corp.

A leading manufacturer of prestige cosmetics, fragrances, soaps and accessories was prohibited from trying to set retail prices for its products. The complaint accompanying the consent agreement alleges that Germaine Monteil established and maintained the resale price at which retailers advertised and sold its products. Under the agreement, Germaine Monteil cannot take any action against retailers to retaliate for discounting, and is prohibited from recommending suggested retail prices for two years in some of its product lines. During that time, the company is required to print ads and promotional materials utilizing the prices specified by the individual retailers. Thereafter, Monteil may suggest resale prices, provided they stipulate that final resale price decisions are within the discretion of individual retailers.

Batus Inc.

Batus agreed to divest one of its retail department stores in the Milwaukee, Wisc. area. The complaint accompanying the consent agreement alleges that Batus' acquisition of Marshall Field & Co. violated antitrust laws because it eliminated competition between the two firms in the Milwaukee area. Batus was the largest department store retailer in Milwaukee, while Marshall Field was the eighth largest. The complaint also alleges that the merger reduced competition in a highly concentrated market and discouraged possible market entrants. Under the agreement, if Batus sells the Marshall Field store to comply with the order, Batus must open or build another Marshall Field store within two years to preserve a wider range of consumer choice by ensuring Marshall Field's continued presence in the market. In addition, the agreement prohibits Batus from making further acquisitions of department stores in the Milwaukee area without Commission approval.

ConAgra Inc.

ConAgra, a major U.S. grain miller, has agreed to divest several production and distribution facilities in the western United States. The

Part II (Investigative Stage)
CONSENT AGREEMENTS ISSUED IN FINAL FORM

COMPETITION MISSION

Gifford-Hill-American Inc.

Gifford-Hill-American Inc. agreed to divest a concrete pressure-pipe manufacturing plant to offset alleged anticompetitive effects of Gifford Hill's acquisition of the Lock Joint Products DivisionLock

Onkyo U.S.A. Corp.

Onkyo agreed to a consent order which prohibits it from forcing stores to sell its audio components at manufacturer-determined prices. The complaint accompanying the consent charged that the company engaged in resale price maintenance, thereby reducing competition among dealers. Onkyo agreed to inform its dealers that its suggested prices are only guidelines and that they are free to set their own prices.

Broward County Medical Association

This consent agreement bars the Broward County Medical Association (BCMA), an American Medical Association affiliate, from prohibiting truthful advertising by its members. The complaint issued in conjunction with the agreement alleges that BCMA restrained competition by declaring truthful advertising to be unethical, and by taking other measures to prohibit its members from distributing information regarding their services and fees. The agreement will permit BCMA to promulgate and enforce "reasonable ethical guidelines" governing deceptive advertising.

CONSUMER PROTECTION MISSION**Aldens Inc.**

Aldens has agreed that in collecting debts it will not contact third parties, or any consumer at any unusual or inconvenient time or place, or at the consumer's place of employment if the employer prohibits such contacts unless the consumer consents.

Great North American Industries Inc.

This company has agreed to cease claiming that its engine oil additive will or may result in substantial fuel economy improvement unless such claims are based on competent scientific tests, and to send customers who purchased over 12 cans of the product copies of the consent agreement.

Ball-Matic Corp. Inc.

This company has agreed to cease claiming that its "automobile retrofit device" will result in increased fuel economy unless such claims are based on competent scientific tests.

Worthington Ford of Alaska Inc.

This company has agreed to make written warranties available to potential buyers and to honor implied warranties.

Tomy Corp.

In

Volkswagen of America

This company has agreed to notify owners of 1977-1981 diesel Volkswagens and Audis about how to install replacement oil filters properly and how they can receive reimbursement for engine repairs caused by oil filter leaks.

American Motors Corp.

This company has agreed to place stickers on new jeep CJ models and send stickers to current owners warning that the vehicles handle differently from ordinary passenger cars and that sharp turns may cause the driver to lose control.

National Association of Scuba Diving Schools, Inc.

This association has agreed not to represent that any diving equipment or product bearing their seal meets an objective standard of safety or reliability unless such equipment has been competently and completely tested.

American Diamond Co. and Thomas L. Baker

This company and its president have agreed not to misrepresent the investment value of gemstones and the past or potential appreciation of gemstones.

CONSUMER PROTECTION MISSION

Paradise Palms Vacation Club

This timeshare marketing company was enjoined from making false claims and misrepresentations to buyers about the nature and location of vacation units and exchange privileges.

Don H. Sly - Bureau of Collections

Respondent was preliminarily enjoined from further violating the Fair Debt Collection Practices Act. A subsequent contempt citation was obtained.

Enamelcraft Inc.

This company was enjoined from violations of the Franchise Rule and from misrepresenting the availability of its product.

CIVIL PENALTY ACTIONS

COMPETITION MISSION

Foremost-McKesson Inc.

Foremost-McKesson agreed in a consent judgment to pay \$175,000 civil penalty to settle charges that its 1977 acquisition of Super Specials, Inc., a wholesale distributor of drug store promotional merchandise including drugs, toiletries, housewares and sundries, violated a 1967 Commission order which required prior Commission approval of certain acquisitions. According to the complaint, Foremost-McKesson violated an order requiring the company to seek Commission approval before acquiring any firm engaged in the wholesale distribution of drugs, drug proprietaries, druggists' sundries, toiletries, housewares or related products.

The Anaconda Co.

The Anaconda Co. agreed to a consent judgment providing for payment of \$100,000 in civil drug

Starcrest Products

This company agreed to pay \$50,000 in civil penalties, and to notify former customers of their eligibility for replacement merchandise or cash refunds, for allegedly violating the Mail Order Rule.

R.J. Reynolds Tobacco Co.

This company agreed to a \$100,000 civil penalty consent decree for allegedly violating a 1972 Commission order requiring clear and conspicuous lettering in disclosing the health warning.

CRI

This company agreed to a \$32,000 civil penalty consent decree for allegedly violating the Fair Debt Collection Practices Act.

Hertz Corp.

This company agreed to a \$70,000 civil penalty consent decree for allegedly violating the Holder-in-Due-Course Rule.

Avis Rent-a-Car Systems Inc.

This company agreed to pay a \$30,000 civil penalty for allegedly violating the Holder-in-Due-Course Rule, and to prepare and distribute public service announcements about the rule.

Lender Service Inc.

This company agreed to pay \$10,000 in civil penalties, review all applicants rejected since August 1978, send the required ECOA and FCRA notices, and give reasons for denying credit.

Beall's Department Stores Inc.

This company agreed to pay \$10,000 in civil penalties, and send to applicants, rejected since July 1978, a package which includes an ECOA notice, a request form to obtain a new credit application, and specific reasons for credit denial.

Talent Inc.

This company agreed to refrain from violations of a 1974 Commission order concerning misrepresentations in the advertising of phonograph records and song sheets. The

Commission did not request civil penalties.

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ADMINISTRATIVE COMPLAINTS

COMPETITION MISSION

B.F. Goodrich

The Commission charged that B.F. Goodrich's \$131 million acquisition of the assets of Diamond Shamrock Plastics Corp. would substantially lessen competition and increase concentration in the production of polyvinyl chloride (PVC) and vinyl chloride monomer (VCM) materials used to make plastics. If the Commission concludes that the acquisition violated the law, Goodrich may be required to divest the Diamond Shamrock assets it acquired and to refrain from acquiring stock or assets of other PVC or VCM companies without the Commission's prior approval.

Hospital Corp. of America

The Commission charged that Hospital Corp. of America's 1981 acquisition of two hospital chains in the Chattanooga, Tenn., area reduced competition in the provision of health services in that area. According to the complaint, the nation's largest proprietary hospital chain's acquisition of Hospital Affiliates International Inc. and Health Care Corp. may have eliminated actual and potential competition and increased market concentration in both the acute care and psychiatric hospital markets in Chattanooga. If the Commission finds that the Hospital Corp. of America violated the law, it may order the company to divest facilities acquired in the Chattanooga area, and to refrain from acquiring other competing facilities without the Commission's prior approval.

CONSUMER PROTECTION MISSION

Ward Corp.

The complaint charges Ward, a new home builder, with engaging in a pattern of warranty abuses and other misrepresentations.

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PART III (Adjudicative Stage)
CONSENT AGREEMENTS ACCEPTED
AND PUBLISHED FOR PUBLIC COMMENT

COMPETITION MISSION

Texas Dental Association

Under the terms of this consent agreement, the Texas Dental Association (TDA) may not impede insurance companies efforts to minimize

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PART III (Adjudicative Stage)
CONSENT AGREEMENTS ISSUED IN FINAL FORM

COMPETITION MISSION

Lehigh Portland Cement Co.

Lehigh Portland Cement Co. will divest its Hannibal, Mo., cement making facility in compliance with this consent agreement. The complaint alleged that Lehigh's 1980 acquisition of U.S. Steel's Universal Atlas Division would violate antitrust laws by reducing competition or tending to create a monopoly in the manufacture and sale of portland cement, an ingredient in cement and concrete products, in the midwest. The FTC approved Continental Cement Co., as the buyer of the divested plant and of several cement distribution terminals owned by Lehigh.

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INITIAL DECISIONS

COMPETITION MISSION

General Foods Corp.

An administrative law judge dismissed the complaint against General Foods Corp., one of the nation's two largest coffee makers. The complaint had charged that General Foods, through its Maxwell House Division, used its dominant market position to frustrate the growth of smaller coffee producers, limit entry into its markets and prevent competition in the industry. The decision covers "regular" coffee, which includes all types except instant. The judge ruled that General Food's conduct did not reveal an intent to use unfair methods of competition or to monopolize the regular coffee market industry, but instead was calculated to defend its market shares by meeting prices and promotions of Procter & Gamble's Folger brand, and thus, was not unlawful.

Grand Union Co.

A decision by an administrative law judge ruled that the 1978 merger between Grand Union Co. and Colonial Stores violated the antitrust laws. The complaint alleged that the merger would lessen competition in the industry by eliminating Grand Union as a potential competitor in certain southeast U.S. markets. The order requires Grand Union to divest its interest in Colonial, within one year, to an acquirer approved by the Commission and to obtain prior approval of acquisitions of any other company in the food retailing industry for a period of 10 years.

BASF Wyandotte

An administrative law judge dismissed a complaint against BASF Wyandotte Corp., a New Jersey subsidiary of BASF AG, a West German company. The Commission's complaint charged that BASF Wyandotte's acquisition of Allegheny Ludlum International's Chemetron Pigments Division would give BASF Wyandotte a market share in excess of 10 percent in the organic pigment market. The judge found that the increase in concentration would not threaten competition in an industry that has had significant over-capacity for some years and has relatively low barriers to entry. Thus, despite the combined market share of 10 percent, other factors demonstrated that market shares did not adequately describe the economic characteristics of the industry.

Massachusetts Furniture & Piano Movers Association

In a decision rendered by an administrative law judge, the Massachusetts Furniture and Piano Movers Association was found to have violated the antitrust laws by illegally conspiring to fix rates in the moving industry in certain geographic areas. Massachusetts Furniture is an association of some 300 common carriers representing 80 percent of the carriers certified by the Massachusetts Department of Public Utilities to move household goods and office furniture. The order requires the association, within three months, to cancel and withdraw all tariffs (uniform rates for service agreed upon by competing movers and approved by state regulators) which it has filed with the Massachusetts Department of Public Utilities. Although joint tariffs are authorized by the Department of Public Utilities, the judge found that they were not required by Massachusetts law, and neither the regulation authorizing joint tariffs, nor administrative review for "reasonableness" were adequate grounds for exempting the association from the federal antitrust laws.

CONSUMER PROTECTION MISSION

International Harvester

An administrative law judge upheld a 1980 complaint that this company failed to disclose to operators that their gasoline-powered tractors have a safety hazard of "fuel-geysering."

Southwest Sunsites Inc.

An administrative law judge dismissed a complaint which alleged that this company misrepresented and unlawfully induced purchasers to make payments for land of "little or no value."

was offset by a showing of substantial business justification for the distribution system.

Times Mirror Co.

The Commission rejected a consent agreement it had provisionally accepted to settle charges made in a 1977 complaint that Times Mirror discriminated in price among competing retailers who purchased advertising space. The Commission dismissed the charges and closed the case based on staff recommendations and public comment which suggested that if it was made a model for antitrust enforcement throughout the industry, the agreement might have imposed rigid structures and high compliance costs on newspapers in their competition with other advertising media and had little beneficial effect on smaller advertisers.

Exxon Corp.

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The Commission dismissed a 1979 complaint challenging Exxon's proposed acquisition of Reliance Electric Co. as anticompetitive. The complaint charged that the acquisition would eliminate Exxon as a potential competitor in the electronic variable data processing (media) market.

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CONSUMER REDRESS ACTIONS

CONSUMER PROTECTION MISSION

West Branch Ltd

This company has agreed to set up a \$15,000 account to provide refunds to consumers for undelivered merchandise to settle charges that it violated the Mail Order Rule.

General Development Corp. *

This company has agreed to give buyers the option of selling their lots back, changing the location of their lots, using their lots as an exchange, or listing their lots for resale with a subsidiary of the company at no charge.

*

General Development Corp. location0 Tc 0 Tw (_____) Tj 36 -14.16 TD (*) Tj 36 0 TD

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ORDER MODIFICATIONS

COMPETITION MISSION

ABC Vending Corp.

The 1964 Commission order, among other things, prohibited respondent from (1) entering theater concessioning contracts with a length of more than five years and (2) inducing or receiving illegal price allowances. Ogden Food Service Corporation, a successor to the original respondent, in 1981, petitioned the Commission to either set aside both order provisions, or in the alternative, to eliminate the restriction on the length of its contracts. Ogden said that market conditions had changed dramatically since the order was issued and that it no longer possesses the dominant market position that allegedly enabled it to impose anticompetitive contracts on motion picture exhibitors. Ogden also stated that because of changed conditions concession contracts that were less than five years old were often unprofitable, and the restraints imposed on it by the Commission's order thus threatened its existence as a viable competitor. The Commission agreed, and it deleted the order provision that involved contractual restraints. The Commission denied the petition with respect to the inducing of illegal price discriminations stating that the order only required respondent to comply with existing law.

Ash Grove Cement Co.

The order, among other things, required Ash Grove, which is a cement company to divest a ready mix concrete company it had acquired. Ash Grove completed the divestiture, but because it was forced to institute foreclosure proceedings against the acquirer, it reacquired the divested assets. The order provided that in such a case, Ash Grove was to redinvest the assets. Ash Grove petitioned the Commission to delete these requirements from the order. Ash Grove argued that changed economic conditions, specifically a depressed market, and the acquired company's consequent poor financial condition, made it impossible for it to divest the company. It requested that the Commission permit Ash Grove to retain the company and attempt to restore it as an effective competitor. In granting Ash Grove's request, the Commission determined that it would be in the public interest to allow Ash Grove to retain the company and continue its operations.

Bayer AG

The order originally required Miles Laboratories, Inc., to divest the assets it used in manufacturing and selling allergenic extracts. Miles twice petitioned the Commission to modify the order to relieve

against resale price maintenance and the existence of widespread discounting. However, Lenox claimed that the prohibition of non-price customer restrictions significantly impeded intrabrand competition by interfering with effective distribution of Lenox products; the inability to prevent transshipping resulted in free-rider problems for Lenox dealers and impaired the efforts by Lenox to foster the proper "prestige image" of its products; and that Lenox was at a competitive disadvantage because its competitors are free to prevent transshipping under the current law. The Commission modified the order to delete the transshipping provision, but also added a provision making clear that Lenox cannot discipline dealers who had transshipped Lenox products either before the order was modified or before receiving notice that Lenox may restrict transshipping by its dealers.

National Dairy Products Corp.

The National Dairy order prohibits respondent from charging different prices to customers at the same level of distribution. Kraftco, the successor to National Dairy, petitioned the Commission to either vacate the order or modify it to prohibit Kraftco from charging different prices to

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Credit Card Service Corp., et al.

A petition by the firm to modify a 1973 FTC order was granted in part and denied in part. The Commission approved a wording change for a notice required in ads that alerts consumers to the fact that they are protected from unauthorized use of their credit cards. The Commission denied the request to drop John F. Ferry, Chairman of the CCSC Board of Directors from the order.

American Home Products

A petition by C.T. Clyne Company, Inc., an advertising agency, to reopen the proceeding and vacate the order entered against it was denied. The Commission denied the request on grounds that it failed to show that changed conditions of fact or law required the order to be modified.

ENFORCEMENT POLICY STATEMENTS
AND ADVISORY OPINIONS

COMPETITION MISSION

Statement Concerning Horizontal Mergers

The Commission issued its first general policy statement concerning merger enforcement. The statement emphasizes the factors the Commission will consider in assessing whether a horizontal merger is anticompetitive and

Oil Merger Policy Statement

The Commission issued a report to Congress recommending against enactment of proposed legislation that would impose a legislative ban on oil company mergers. Members of the Senate and the House had asked the FTC to investigate the petroleum companies' recent increase in merger activity. Although the Commission could find no single reason for the increased activity, three possible influences on the industry were suggested: the rapid escalation of crude oil prices, windfall profit tax and the corporate tax provisions enacted by Congress. The Commission concluded that the recent large mergers in the industry had neither a significant effect on concentration nor endangered competition and that a merger ban could discourage the industry from exploiting opportunities for the development of additional supplies of petroleum.

APPELLATE COURT REVIEW
OF COMMISSION ORDERS

Borden Inc.

On February 24, 1982, the Court of Appeals for the Sixth Circuit affirmed the Commission's decision and order, holding that the respondent manipulated prices in such a way as to exclude equally efficient competitors from the reconstituted lemon juice market. Borden petitioned for certiorari.

Equifax Inc.

On June 18, 1982, the Court of Appeals for the Eleventh Circuit set aside challenged paragraphs of the Commission's order in Docket No. 8954, holding that the record did not support the Commission's finding that Equifax's quality control audit procedures would likely result in inaccurate information about consumers, and therefore violate the Fair Credit Reporting Act.

H.R. Gibson, Sr. et al.

On August 13, 1982, the Court of Appeals for the Fifth Circuit affirmed and enforced the Commission's order, holding, inter alia, that there was substantial evidence supporting the Commission's findings of a group boycott and payments of illegal brokerage fees.

Litton Industries Inc.

On May 3, 1982, the Court of Appeals for the Ninth Circuit enforced, as modified, the Commission's order, holding that it was within the allowable discretion of the Commission to impose "all consumer products" coverage with respect to the order provision banning deceptive use of surveys in advertising.

Sears, Roebuck & Co.

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SUPREME COURT REVIEW
OF COMMISSION ORDERS

American Medical Association

On March 23, 1982, the Supreme Court affirmed the judgment of the Court of Appeals for the Second Circuit by an equally divided Court. The Court of Appeals enforced as modified the Commission's order requiring the American Medical Association to cease and desist from regulating certain business aspects of the medical profession and to disaffiliate any component medical society that fails to comply with the order.

Brunswick Corp.

On April 5, 1982, the Supreme Court denied Brunswick Corp.'s petition for a writ of certiorari, thus letting stand the decision of the Court of Appeals for the Eighth Circuit, upholding the Commission's determination that a joint venture between Brunswick and Yamaha Motor Co. concerning the production and sale of outboard motors may substantially lessen competition under Sec. 7 of the Clayton Act.

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Mobility Among the 200 Largest Manufacturing Firms: 1948-1978 by Lawrence Rens, June 1982.

Defects in Disneyland: Quality Control as a Two-Part Tariff by A. Braverman, J.L. Gauch, and S. Salop, June 1982,

A Review of the Economic Basis for Broad-Based Horizontal Merger Policy by Paul Pautler, June 1982.

Advertising Intensity, Market Share, Concentration and Degree of Cooperation by William Long, June 1982.

Vertical Restraints and Economic Efficiency by Robert Steiner, June 1982.

Economic Efficiency of Liability Rules for Joint Torts with Uncertainty by Edward Golding, September 1982.

Disclosure of Product Quality under Imperfect Information by Edward Golding, July 1982.

Warranties as Signals of Product Quality When Some Consumers Do Not Seek Redress by Edward Golding, July 1982.

Product Differentiation and Imperfect Information: Policy Perspectives by Carl Shapiro, July 1982.

An Empirical Analysis of the Boston Consulting Group's Portfolio Model by Malcolm Coate, August 1982.

An Experimental Test of the Consistent-Conjectures Hypothesis by Charles Holt, Jr., August 1982.

Practices That (Credibly) Facilitate Oligopolistic Coordination by Steven Salop, August 1982.

INTERVENTIONS BEFORE OTHER
FEDERAL AND STATE AGENCIES

COMPETITION, CONSUMER PROTECTION,
AND ECONOMICS MISSIONS

Motor Carrier-Ratemaking Study Commission

Testimony by James C. Miller III, "Antitrust Immunity for Collective Rulemaking in the Motor Carrier Industry," before the Motor Carrier Ratemaking Study Commission. (11/8/81)

Federal Communications Commission

Federal Trade Commission joint bureau comments submitted in Federal Communications Commission Gen. Dkt. No. 81-768, Selection of Initial Licensees Using Random Selection or Lotteries Instead of Comparative Hearings. (12/20/81)

Interstate Commerce Commission

Federal Trade Commission joint bureau comments submitted in Interstate Commerce Commission Ex Parte No. 346, Sub. No. 8, Regulation-Boxcar Traffic. (03/01/82)

Federal Communications Commission

Federal Trade Commission joint bureau comments submitted in Federal Communications Commission BC Dkt. No. 81-897, Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfer of Control). (03/01/82)

Motor Carrier Ratemaking Study Commission

Comments of Dr. Denis A. Breen of the Bureau of Economics on "Regulatory Reform and the Trucking Industry: An Evaluation of the Motor Carrier Act of 1980," submitted to the Motor Carrier Ratemaking Study Commission. (03/04/82)

Federal Communications Commission

Federal Trade Commission joint bureau comments submitted in Federal Communications Commission CC Dkt. No. 82-45, Domestic Fixed Satellite Transponder Sales. (04/16/82)

Interstate Commerce Commission

Federal Trade Commission joint bureau reply comments submitted in Interstate Commerce Commission Ex Parte No. 346, Sub. No. 8, Exemption from Regulation-Boxcar Traffic. (04/30/82)

International Trade Commission and Department of Commerce

Comments and briefs submitted on alleged subsidies and dumping of foreign steel in the U.S., to the International Trade Commission and the Department of Commerce, May 27, 1982; July 21, 1982; July 26, 1982; July 28, 1982; August 11, 1982; August 27, 1982; September 14, 1982. (05/28/82 - 09/14/82)

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MISCELLANEOUS ECONOMIC POLICY PAPERS

Regulatory Reform and the Trucking Industry: An Evaluation of the Motor Carrier Act of 1980, submitted to the Motor Carrier Ratemaking Study Commission, Denis Breen, March 1982.

According to the paper, the post-Motor Carrier Act experience provides a useful empirical test of alternative rationales for trucking regulation. It reports that available evidence on market structure, conduct and performance in the less-regulated environment does not lend support to the market failure arguments for regulation; the evidence suggests instead that regulation has served primarily to suppress competition in the

Efficiency Considerations in Merger Enforcement, Yale Law Journal, Alan Fisher and Robert Lande, forthcoming.

The role that efficiency considerations should play in merger enforcement policy is analyzed by assessing congressional intent, econometric and case-study evidence, and theoretical properties of the welfare trade-off between improved efficiency and increased market power attributable to mergers. A benefit-cost model is developed to critique alternative enforcement policy options and to provide a basis for recommending changes in current merger enforcement consideration of efficiencies.

An Economic Analysis of Vertical Merger Enforcement Policy, Alan Fisher and Richard Sciacca, March 1982

This paper combines a review of the economics literature on vertical integration and vertical mergers with consideration of legal and political constraints in formulating realistic vertical merger enforcement guidelines. Particular attention is given to recent advances in the theory of vertical integration. Economically rational enforcement guidelines consistent with these advances and with the costs and benefits of alternative enforcement efforts are proposed.

A Guide to the Herfindahl Index for Antitrust Attorneys, Paul Pautler, August 1982.

This paper presents the Herfindahl Index and its characteristics in a simple format. Several numerical examples are used to explicate the characteristics of the index and to indicate how it compares with use of a four-firm concentration ratio as a summary measure of market structure. In addition, some discussion of the usefulness of any summary market structure measure in merger guidelines is included.

Mergers in the Petroleum Industry, Bureau of Economics and Bureau of Competition Staff, September 1982.

This report presents statistics on the domestic merger activity of the largest U.S. oil companies over the period 1971-1981. The study compares the merger activity of a sample of large companies not having substantial oil-related assets. It indicates an increase in large oil company merger activity during 1979-1981 when compared with the period 1971-1981. The study also shows a higher rate of merger activity for the large oil companies than the sample of large companies

having no oil-related interests. The study also examines the likely effects of the petroleum industry mergers on crude oil extraction, refining, transportation and marketing. According to the report, merger activity of the large oil companies has not significantly altered competitive relationships within any of these segments.

The Random Character of Merger Activity, William Shughart and Robert Tollison, May 1982.

The report observes that it is commonly accepted that merger activity has historically occurred in "waves." Nevertheless, according to the paper despite the wide endorsement of this proposition, the simple fact is that the "wave" hypothesis has not been tested heretofore. This paper reports the results from time series analyses of acquisition statistics. Using annual U.S. merger data covering the period 1895-1979 and observations on firm disappearances in British manufacturing during the years 1880 to 1918, the authors report that they were unable to reject the hypothesis that merger levels are generated by a white noise process. The empirical findings imply that the economy-wide diffusion of efficient-firm-size-augmenting innovation does not occur in a systematic pattern. According to the paper, it is concluded that public policy concern with merger trends is unwarranted.

A Welfare Defense of the "Failing Company" Doctrine. William Shughart and Robert Tollison, May 1982.

Judicial precedent allows an otherwise illegal merger to escape injunction if one of the parties can demonstrate that it would fail in the absence of the proposed takeover. In this paper, an economic defense is provided of the so-called failing company doctrine. A model was developed showing that the output restriction will be smaller and the welfare loss corresponding less if the failed company's assets are acquired by an industry insider than if those resources are dispersed by a bankruptcy proceeding. The authors conclude that the defense should be applied expeditiously without protracted searches for the "least anticompetitive" buyer and that mergers between failed firms and their former rivals should go through with minimal delay.

Antitrust Recidivism in Federal Trade Commission Data: 1915-1982, William Shughart and Robert Tollison, August 1982.

In this paper, an analysis is made of data about cases involving firms who repeatedly violate the laws ~~violated~~ is

the Commission involve repeat offenders. An illustrative sample of the characteristics of recidivist cases includes: the majority of repeat offenses involved violations of Sec. 5 of the FTC

LINE OF BUSINESS PROGRAM RESEARCH PAPERS

The Effects of Inter-Firm Cooperation and Economies of Scale on Product-Improving Research and Development Expenditures by William Long.

Collusion, Rivalry, Scale Economies and Line of Business Profitability by John Kwoka and David Ravenscraft.

Modeling Profitability at the Line of Business Level by Stephen Martin.

Market, Firm, and Economic Performance: An Empirical Analysis by Stephen Martin.

On the Profitability of Wholesale Trade by Stephen Martin.

Aggregation and Studies of Industrial Profitability by Stephen Martin and David Ravenscraft.

Profitability and the Cost of Capital by George Pascoe and John Scott.

Structure-Profits Relationships at the Line of Business and Industry Levels by David Ravenscraft.

Transfer Pricing and Profitability by David Ravenscraft.

Concentration, Regulation, R&D, and Productivity Change by F.M. Scherer.

Technological Change and the Modern Corporation by F.M. Scherer.

The Propensity to Patent by F.M. Scherer.

The Effects of Conglomerate Mergers on Profits and Growth by Leonard Weiss.

Extent and Permanence of Market Dominance by Leonard Weiss and George Pascoe.

Adjusted Concentration Ratios in Manufacturing 1972 by Leonard Weiss and George Pascoe.

The Size of Selling Costs by Leonard Weiss, George Pascoe, and Stephen Martin.