

1989  
ANNUAL  
REPORT

U.S. FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

Annual  
Report  
of the FEDERAL  
TRADE  
COMMISSION of the 118th. Fiscal 2018. FenAtr8sale by8scalSuper

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\* From April 21, 1986 to August 10, 1989.5 Tw N 03Z\_

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LETTER OF TRANSMITTAL

July 13, 1990

The Honorable Dan Quayle  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas Foley  
The Speaker of the House  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-fifth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1989.

By direction of the Commission.

Janet D. Steiger  
Chairman

FEDERAL TRADE COMMISSION  
1989 ANNUAL REPORT

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## SUMMARY

The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general the Commission's efforts are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to inform the public.





make policy recommendations and to produce reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics in fiscal 1989, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection and regulatory topics. This work resulted in published reports on sham litigation, mergers in the US petroleum industry, and health claims policy. These major reports provide insight into the effects of government regulation on competition and consumer welfare.

#### ADMINISTRATION AND MANAGEMENT

A number of organizational changes during fiscal 1989 were designed to improve the delivery of ADP support services to Commission staff. The Automated Systems Division implemented three new central records systems, and also completed work on a utility to enable personal computer users to print documents on any printer attached to the Commission's local area network. The staff also improved internal controls over property, information, and telephone usage.

The Commission's budget declined in real terms in fiscal 1989, resulting in the expenditure of about 10 percent fewer workyears than in fiscal 1988. The tight budget required a reduction-in-force ("RIF") during the year and virtually no hiring activity. In addition to RIF-related activities, the Division of Personnel devoted much of its attention to an alternative work schedule program and revision of the agency's merit promotion plan. Two regional offices moved to new offices in fiscal 1989, and work was accomplished on a number of renovations and improvements to the Headquarters building.

#### MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is charged with preventing unfair methods of competition and promoting competition. The major goal of this mission is to detect and eliminate antitrust violations, including collusion, anti-competitive mergers, predatory single firm conduct, injurious vertical arrangements, and other anticompetitive practices in the private sector. The Bureau of Competition is primarily responsible for conducting the activities of this mission. Activities are grouped into the following program areas: premerger notification, mergers and joint ventures, horizontal restraints, distributional restraints, single firm violations, and antitrust policy analysis. The premerger notification program investigates possible violations of the

reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act and administers the operation of the statutory premerger notification rules. The other program areas-review violations of the antitrust laws in the petroleum, health care, transportation and food areas as well as suspected violations among licensed occupations. In addition, the Bureau provides procompetitive analysis and comment in government proceedings that affect competition.

#### PREMERGER NOTIFICATION

The Premerger Notification Program administers the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires that certain mergers, acquisitions, and joint ventures must be reported to the Commission prior to their consummation.

During fiscal year 1989, 2,883 transactions were reported under the program, an increase of 5 percent over fiscal year 1988. The Commission opened 35 investigations to issue "requests for additional information" relating to 42 of those transactions. In addition, the Premerger Notification staff responded to approximately 17,000 inquiries regarding application and interpretation of the Hart-Scott-Rodino Act and the premerger rules.

In August 1989, the Commission published the second Premerger Notification Sourcebook, an update of the 1987 reference manual that compiles in a single volume the text of the Hart-Scott-Rodino Act, the Commission's premerger notification rules including revisions and amendments, all rule interpretations issued formally by the Commission, and various other documents relevant to the premerger notification program.

At the request of the Commission, the Department of Justice filed a complaint and settlement in one matter involving a violation of the Hart-Scott-Rodino Act. In the Great Atlantic & Pacific Tea Co., Inc., the complaint charged that A&P structured its acquisition of Waldbaum, Inc., as an acquisition by a general partnership for the purpose of avoiding the notification and waiting requirements of the Hart-Scott-Rodino Act. The complaint charged that the substance of the transaction was an acquisition of Waldbaum by A&P. A&P agreed to settle the charges by paying a civil penalty of \$3 million. This is the largest civil penalty obtained for a violation of the Hart-Scott-Rodino Act.

#### MERGERS AND JOINT VENTURES

This program monitors and investigates mergers, acquisitions, and joint ventures that may reduce competition, tend to create monopoly, or cause other harm to consumers. The Commission has the authority to seek to enjoin mergers preliminarily under Section 13(b) or the FTC Act

when the Commission deems such action appropriate to prevent violations of the antitrust laws. In fiscal year 1989, the Commission authorized seven preliminary injunction actions: General Electric/Union Carbide, Textron/Avdel, BOC/Varian Associates; Red Food Stores/Kroger, U.S. Can/Armstrong Industries, Autoclave Engineers/Tylan Corp.; and Elf Aquitaine/Pennwalt. In carry-over matters, the parties to two acquisitions-McNesson-Alco and, McKesson/Northwest abandoned the transactions after the Commission had authorized injunction actions in fiscal 1988.

In the General Electric/Union Carbide, BOC/Varian Autoclave Engineers/Tylan, U.S. Can/Armstrong matters, the transactions were abandoned when the Commission voted to seek injunctions. Shortly after the Commission authorized the staff to seek injunctive relief in Elf Aquitaine/Pennwalt - but before the filing of the Commission's preliminary injunction application in federal court the Commission entered into a consent agreement pursuant to which Elf Aquitaine agreed to divest Pennwalt's polyvinylidene fluoride/vinylidene fluoride plant in Thorofare, New Jersey.

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cities and towns in Vermont and New York State, imposes a moratorium on future acquisitions, and provides for other relief. The agreement negotiated in Elf Aquitaine/Pennwalt provided for, the divestiture of a PVDF/VF2 plant in Thorofare, New Jersey, and other relief. Finally, in the litigation against Coca-Cola Bottling Southwest, the Commission reached a consent agreement with the Dr Pepper/Seven-Up-Company, providing that Dr. Pepper/Seven-Up will take no action that would interfere with the Commission's ability to fashion relief against Coca-Cola Bottling.

There was also considerable activity involving Commission orders in the merger area. B.P. Goodrich Co. requested Commission approval of the divestiture of a vinyl chloride monomer plant in Calvert City, Ky., to Sterling Chemicals Inc.; more recently, Goodrich filed a substitute proposal involving the divestiture of the Calvert City plant to a different acquirer. In L'Air Liquide S.A., the Commission modified the consent order to permit the consolidation of L'Air Liquide with Big Three Industries and also approved L'Air Liquide's proposal to divest certain interests in the production of argon from the Geismar plant in Louisiana. The Commission also approved an acquisition pursuant to the order in Great Lakes Chemical; meanwhile, Great Lakes filed a still-pending request for approval of another acquisition. In Flowers Industries, the Commission granted prior approval to an acquisition involving Winn-Dixie; another request by Flowers for prior approval of an acquisition is pending before the Commission. Flowers also requested that the Commission reopen and modify the order so as to eliminate the prior approval requirement.

In other matters, the Commission approved two proposed divestitures in InterNorth, Inc., and prevailed in a federal court action concerning a third party's right of first refusal in property subject to the divestiture order. The plaintiff's appeal of that federal court ruling is pending in the U.S. Court of Appeals for the Fifth Circuit. In Sun Co./Atlantic Petroleum the Commission approved Sun's divestiture of the Binghamton terminal and related assets to Amerada Hess and the divestiture of the Williamsport properties to subsidiaries of Coastal Corp. The Commission also granted prior approval of an acquisition in General Electric. In LaFarge Canada Inc., the Commission approved a proposed acquisition and also



agreements in eight matters involving collective or coercive activities by professionals. In Certain Sioux Falls Obstetricians, a consent agreement settled charges that obstetricians in South Dakota engaged in collective, coercive activities that interfered with the residency program of the University of South Dakota School of Medicine. Related to that consent agreement, the Commission accepted a proposed consent agreement in Lee M. Mabee, M.D., to settle charges in an administrative complaint that he also participated in the illegal boycott of the residency program of the school of medicine. The New York State Chiropractic Association entered into a consent agreement under which it will not conspire to deal with third-party payers on collectively determined terms. Brooks Drug, Carl's Drug Co., and Genovese Drug Stores, three pharmacy chains related to the Chain Pharmacy case, separately entered into consent agreements settling charges that they restrained competition among pharmacy firms by boycotting a third-party prescription benefit plan. Under a final consent agreement in Memorial Staff of Dickinson County Memorial Hospital which was related to the Robert G. Koski, M.D., matter, doctors in Dickinson County, Michigan, agreed not to interfere with medical facilities that compete with the private practice of physicians. The Iowa Chapter of the American Physical Therapy Association agreed not to restrict physical therapists from working for physicians, and fourteen physicians in Huntsville, Texas, agreed not to conspire against health maintenance organizations in Eugene M. Addison, M.D.. Under terms of a consent agreement, the Cleveland Automobile

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imposing horizontal restraints.

and thereby injure competition. The Commission staff is examining additional circumstances in which nonprice predation may be an effective anticompetitive tool. Additionally, Commission staff considers all complaints it receives alleging predatory pricing although such complaints seldom entail violation of applicable legal standards.

#### ANTITRUST POLICY ANALYSIS PROGRAM

During fiscal 1989, the Bureau of Economics undertook a number of research projects in support of the Antitrust Division of the Commission. In addition, the Bureau completed the following projects: (1) released staff reports on (1) the cost of trade restrictions on textiles, steel, and automobiles, (2) mergers in the US petroleum industry, and (3) sham litigation.

Diabetes Association, the American Cancer Society, and the American Heart Association for research in nutrition, obesity, or physical fitness.

Associated Mills was charged with having no basis for claiming that its Pollenex Bottled Water Maker Reverse Osmosis System could remove certain hazardous organic chemicals from tap water for a year. The company agreed to have substantiation for future similar claims. Coleco Industries agreed not to misrepresent the availability of its computer-related products. The company was charged with falsely claiming that additional modules for its "My Talking Computer" were available, when the modules were not yet for sale.

Alamo Rent-A-Car agreed to settle charges that its operators failed to disclose to consumers the existence and amount of airport surcharges and mandatory fuel charges when consumers inquire about possible rental of Alamo's vehicles. To settle similar charges, the Commission accepted a consent agreement with General Rent-A-Car. The company was also charged with failing to inform consumers of the car models they are renting even though, under General's vehicle classification system, consumers could receive a smaller automobile than expected. General agreed to disclose orally all mandatory charges to every consumer who inquires about its prices, and to disclose to consumers the car models they would receive under the car size classification the consumer selects.

The Commission gave final approval to a consent agreement with JS&A Group, and its president and owner, Joseph Sugarman. The consent group prohibits the company from claiming that its program-length ad for sunglasses, called BluBlockers, is an investigative consumer program that conducted an objective investigation of the sunglasses the company sells. The order also prohibits JS&A from misrepresenting that any paid advertisement is an independent consumer or news program.

Two additional consent agreements were accepted by the Commission. An-Mar International, makers of Solar Gold  
 by prices 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 415, 420, 425, 430, 435, 440, 445, 450, 455, 460, 465, 470, 475, 480, 485, 490, 495, 500, 505, 510, 515, 520, 525, 530, 535, 540, 545, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615, 620, 625, 630, 635, 640, 645, 650, 655, 660, 665, 670, 675, 680, 685, 690, 695, 700, 705, 710, 715, 720, 725, 730, 735, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 830, 835, 840, 845, 850, 855, 860, 865, 870, 875, 880, 885, 890, 895, 900, 905, 910, 915, 920, 925, 930, 935, 940, 945, 950, 955, 960, 965, 970, 975, 980, 985, 990, 995, 1000 (Prices) 2041

in sodium and that diets high in sodium may increase the risk of heart disease.

Complaints against two companies selling baldness cures were filed in federal district court. California Pacific Research was charged with falsely advertising "New Generation" baldness preventative and remedy. The court issued a preliminary injunction against the company. Pantron I was charged with falsely advertising that "Helsinki-Formula" products will cure or prevent baldness. Both companies used various means of advertising, including 30-minute program-type television commercials that suggested that the performance claims were accurate and supported by scientific substantiation. The Commission requested that the court issue preliminary and permanent injunctions and order the defendants to pay refunds to consumers.

An Administrative

\$1.55 million to settle charges it made false claims and failed to provide required disclosures to prospective buyers.

In addition, four complaints charging violations of the Franchise Rule were filed in federal district court. Temporary restraining orders and asset freezes were issued in all four cases, including: Investment Developments and its affiliated corporations and principals, marketers of amusement game machine franchises; American Safe Marketing, seller of distributorships to sell fire extinguishers; 7-Day Appraisal Services, seller of real estate appraisal franchises, and National Business Consultants, seller of business opportunities for business consulting services.

Civil penalties of \$120,000 were ordered from four companies charged with violating the Funeral Rule. The Rule requires that funeral providers give detailed and accurate information about prices and legal requirements to persons who are arranging funerals. Lucas Funeral Home agreed to pay \$20,000, and Errington Memorial Chapel and the James H. Turner Funeral Home will each pay \$10,000 in civil penalties to settle charges.

The Commission won its first contested lawsuit brought under the Funeral Rule. A federal district court ruled that Dudley M. Hughes, Jr., owner of Dudley Hughes Funeral Company, must pay \$80,000 in civil penalties for violating the Rule. Hughes was also permanently prohibited from future violations. This was the largest civil penalty amount imposed in a case involving the Funeral Rule.

The Commission accepted a consent agreement, subject to final approval, with Robert Lewis Wilks, the former owner of the Barbers Funeral Home. The complaint charged Wilks with failing to provide his customers with goods and services they selected and paid for. Wilks agreed to stop doing business as a funeral service provider, or having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

The Commission accepted a consent agreement with Batesville Casket Co., the nation's largest casket maker, settling charges the company made false claims about the length of time its caskets will keep-out air, water, and other gravesite substances.

Administrative complaints were issued against The Hensley Group, a timeshare promoter, and Outdoor World Corporation, a campground promoter. The Commission also filed complaints in federal court against the two companies, and David and Annette Defusco, who owned and operated the companies. Comment: End of Report - 12/10/00 TTD - 11/20/01 TD (B) (a) (6)

and Outdoor World, prohibiting them from misrepresenting that consumers have won specified prizes. The Hensley Group agreed to a stipulated injunction that contains the same prohibitions.

The Commission issued an administrative complaint charging TK-7 Corp, and its president, Moshe Tal, with making false and unsubstantiated advertising claims concerning the performance characteristics of gasoline additives. According to the complaint, the company claimed that its products can improve engine performance by extending engine life, and increasing power, octane, and mileage.

Mytel International a telemarketer of photocopy supplies, agreed to pay \$250,000 to settle charges it deceptively marketed supplies directly and through other sales companies. Mytel agreed to stop doing business with telemarketers that make misrepresentations in their sales presentations.

Traditional Industries was charged with making false claims concerning the quality and value of photographic processing packages it sold to consumers for \$300 to \$1,500. In a consent decree filed in federal court, the company agreed to settle the charges by changing its sales practices and by permitting some consumers to cancel their contracts.

A complaint was filed charging Case Equipment Co. and its president with making false and deceptive claims in the marketing of machines that allegedly copy color pictures onto textiles and other surfaces. At the Commission's request, a federal court issued a temporary restraining order forbidding further misrepresentations, and froze the defendants' assets.

Vaughn Management was charged with falsely telling consumers they would receive an "award" for no cost, when in fact consumers had to pay a "processing fee" of \$24.50 to \$26.50 to obtain their awards. The Commission also alleged that defendants failed to tell consumers who paid the processing fee that they were required to spend hundreds of dollars more to use the airfare vouchers they received as awards. A federal court issued a temporary restraining order halting such misrepresentations and also froze the defendants' assets.

Complaints were filed in federal district court charging two Florida telemarketers with misrepresenting the capabilities of water purifiers they sell and the return or replacement policies for the purifiers. U.S. Consumer Promotions (USCP) was also charged with falsely telling consumers they would receive an award without making a purchase and failing to disclose to consumers that they would have to pay substantial additional sums of money to obtain the award. The court issued temporary restraining orders against USCP and Environmental Protection Systems and froze the defendants' assets. Responding to an increase in marketing abilities in the sale of home-water purifiers, the Commission also prepared a brochure, with assistance from EPA, to help consumers



apply for an exemption if they have existing laws that cover the same business practices as the Commission rule.

#### CREDIT PRACTICES

Complaints filed in federal district courts resulted in \$3,756,000 ordered returned to consumers and \$36,000 in civil penalties paid to the U.S. Treasury. BankCard Travel Club has agreed to pay up to \$2.5 million in consumer redress to settle charges that it deceptively billed customers for membership fees. In addition, one defendant, Lee Franklin, will



John Wanamaker Philadelphia, a department store, agreed to pay a \$90,000 civil penalty to settle charges it illegally discriminated against some married women who applied for credit, in violation of the Equal Credit Opportunity Act. Wanamaker also agreed not to violate the Act in the future.

A complaint filed in federal district court charged Credit Repair, Inc. with misleading consumers by falsely and deceptively claiming that it could substantially improve their credit records and by failing to honor its 100 percent money-back guarantee. The Commission requested that the court order defendants to pay consumer redress and to permanently prohibit them from the challenged practices.

American Credit Services was charged with misrepresenting its credit establishment and credit improvement services in a complaint filed in federal district court. The Commission is seeking a permanent injunction enjoining the company from such misrepresentations in the future and to obtain redress for consumers.

The Commission accepted a consent agreement, subject to final approval, with Heilig-Meyers Co. settling charges the company understated its annual percentage rates to consumers in five states. Heilig offers installment contracts to finance the purchase of furniture that it sells. Under the agreement, Heilig agreed to calculate and disclose accurately the APRs that it discloses in connection with future extensions of consumer credit.

The Commission initiated a review of its Holder In Due Course Rule to determine what impact it has on small businesses. The Rule requires sellers to include specific language in sales contracts and loan agreements when consumers finance their purchases. The Commission also terminated a proceeding to amend the Holder Rule by extending it to cover third-party creditors.

The Commission staff issued its Commentary on the Fair Debt Collection Practices Act. The purpose of the commentary is to replace nearly 1,000 pages of informal staff interpretations. The Act regulates certain activities of debt collectors and prohibits a variety of unfair, deceptive, or abusive practices.

## SERVICE INDUSTRY PRACTICES

Law enforcement actions taken under the Service Industry Practices program resulted in several orders being entered in federal district court, including judgments totaling over \$12.7 million.

The Commission previously charged Federal Sterling Galleries with misrepresenting the authenticity and investment value of the Salvador Dali art work they offered for sale. In fiscal year 1989, a federal court granted the Commission's motion for summary judgment against the remaining n r r 4 o r k t h e

injunction and \$4.6 million in consumer redress. The order enjoins the defendant from future misrepresentations in connection with the sale of art work or any other investment offering.

In the case of Rainbow Enzymes, defendants Roy Standridge and Jimmy Standridge agreed to settle charges that they engaged in unfair and deceptive practices in connection with the recruitment of "licensed submanufacturers" to make an ingredient that was allegedly used to make a patented enzyme cleaner. Roy Standridge agreed to pay \$20,000 into a consumer redress fund, and a company controlled by him paid in \$70,000. Jimmy Standridge agreed to pay \$25,000 in consumer redress. The settlements also contained injunctive relief against future misrepresentations.

Dr. Cecil B. Jacobson, who ran the Reproductive Genetic Center Ltd., agreed to settle charges that he misrepresented the likelihood that his patients would become pregnant as a result of his treatments and that women who underwent his infertility treatments had, in fact, become pregnant. Under a consent decree, Jacobsen agreed to pay up to \$250,000 in consumer redress and also agreed to a permanent injunction forbidding future misrepresentations relating to his infertility practices.

Rare Coins of Georgia, and three other defendants, agreed to pay his

sales. A judgment was entered against Abrash in the amount of \$125,000, plus a cash payment of approximately \$20,000 from the liquidation of certain assets.

Nancy Murphy, an officer of Lynn Murphy & Co., settled charges that she engaged in unfair and deceptive acts in the sale of rare gold coins and silver and platinum bullion for investments. A complaint was filed against the company and three individual defendants in 1988. Mrs. Murphy agreed to an injunction, and also agreed to "fully cooperate" with the Commission in preparation for future trials and to testify if necessary.

A federal judge entered permanent injunctions against Lynn Murphy and Company, Lynn Murphy and Brad Kaye prohibiting them from misrepresenting gold and bullion investments. The court also awarded the Commission a judgment of \$6.3 million to redress consumers who bought investments from the defendants. At present, the defendants have no known assets with which to satisfy the judgment.

A federal district court issued preliminary injunctions against Pannos Mining Co. and three other companies as a result of an action filed by the Commission. The defendants and four individuals were charged with a bogus investment scheme in which consumers were likely to lose their entire investment. Pannos Mining offered investors deferred delivery contracts for gold and silver at prices substantially below the current market price. The Commission is seeking permanent injunctions and redress for consumers who invested in the project.

The Commission charged Security Rare Coins, a New York firm that sells coins for investment, with misrepresenting the value and investment potential of its coins, over grading them by at least one grade, and failing to honor its buy-back- policy. The court issued a temporary restraining order and a limited asset freeze against Security and its president, James J. Duggan.

A complaint was filed in federal district court charging Uni-Vest Financial Services and five individual defendants with misrepresenting to consumers the risk of investing in precious metals they offered. The Commission also charged that the company failed to follow clients' instructions to sell, or not to sell, their investments. The Commission asked the court to issue a permanent injunction blocking future unfair or deceptive acts or practices and to order the defendants to pay refunds to consumers.

Continental Communications was charged with misleading potential investors in connection with its marketing of an application preparation service for the Federal Communications Commission's lottery of licenses to build and operate cellular telephone systems in Rural Service Areas. A federal court ordered the defendants to stop misrepresenting the investment potential of participating in the lottery. The court also froze

defendants' assets in an attempt to secure refunds for consumers at the end of the court case,

order with Ronby was also modified by the Commission. The modified order gives students significantly increased protection by providing them with absolute cancellation and refund rights.

SILO, Inc. was charged with illegally removing EnergyGuides from appliances it sold, in violation of the Energy Policy and Conservation Act and the Appliance Labeling Rule. SILO agreed to pay a \$45,000 civil penalty, under a consent order. This was the first Commission enforcement action of both the Rule and the Act.

Milcon the Act.

business titles, including Spanish translations, from which consumers and businesses can order new materials.

#### ECONOMIC SUPPORT

During the fiscal year, the Bureau of Economics provided economic support to Consumer Protection casework and rulemakings. In addition, the Bureau began several studies of consumer related issues and completed work on several long term studies.

#### ECONOMIC ACTIVITIES

The Bureau of Economics provides economic support to the FTC's antitrust and consumer protection activities, advises the Commission about the impact of government regulation on competition, and analyzes economic phenomena in the American economy as they relate to antitrust, consumer protection, and regulation.

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In 1989, 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. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

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, product variety, and overall consumer welfare.

Although the FTC is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In 1989, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation.

#### ANTITRUST

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. Economists also advised the Commission on all proposed

antitrust actions.

Director administers these functions through a series of divisions, including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems and the Library. in fiscal 1989 major management initiatives included:

#### OFFICE AUTOMATION

An organizational change was made to improve information systems support services and to increase litigation support by merging ADP support staff from OFFICE AUTOM..0204 2Econ



pc to basic phone training. New classes were added to the training schedule to introduce staff to the changing ADP environment at the FTC. The staff also performed over 5,500 records check searches in response to 999 questions for information. A records check system which will allow FTC staff to do their own records check searching is in the final stages of development. In addition, the Information Center formed several pc user groups, held an open house, and issued several publications.

#### BUDGET AND FINANCE

The fiscal 1989 appropriation for the Federal Trade Commission was frozen at the preceding year's level. This forced the Commission to undertake a severe cost reduction program, including personnel reductions through early retirement and reduction-in-force programs. The Commission spent \$66.2 million and used 894 workyears in fiscal 1989. The workyears used were about 10 percent fewer than in fiscal 1988. Finally, two audits of agency activities were completed prior to April, 1989, at which time responsibility for audit activities was transferred to the newly established Office of the Inspector General.

#### HUMAN RESOURCES

The Commission experienced a reduction-in-force during fiscal 1989 and consequently little recruiting was done and other human resource initiatives were drastically decreased. However, a comprehensive study of alternative work schedules was conducted and it was

PART II (INVESTIGATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

American Institute of Certified Public Accountants

The American Institute of Certified, Public Accountants agreed not to restrict certified public accountants from accepting contingent fees or commissions for professional services to clients for whom they are not providing financial statement reviews or other attest services. The complaint accompanying the agreement charged that the association restricted CPAs from providing services to clients under either a fixed fee or contingent fee arrangement. According to the complaint, the association barred CPAs who prepared financial plans from accepting commissions on a client's purchase of any products recommended by the CPA and barred CPAs from offering assistance to clients for a fee contingent on the amount of the client's recovery. In addition, the complaint further alleged that the association restricted CPAs use of truthful advertising, the solicitation of clients and acceptance of payments for client referrals, and the use of nondeceptive trade names. The complaint alleged that these actions restrained competition among CPAs and deprived consumers of information about available services.

Arkla, Inc.

Arkla, Inc., entered into a proposed consent agreement concerning its 1986 acquisition of Transark Transmission Co. The Commission charged the CPAs and CPAs (and (6) by 24-0634-0290410a

(See - Carl's Drug Co., Inc., page 35.)

(See - Genovese Drug Stores, Inc., page 35.)

Cleveland Automobile Dealer's Association

(See page 36.)

KKR Associates

(See page 37.)

engaged in the sale of veterinarians I services to the public. According to the complaint, these actions hurt competition and deprived consumers of the benefits of lower prices for veterinarian services that could result from more efficient business arrangements.

Panhandle Eastern Corp.

(See page 38.)

PepsiCo, Inc.

(See page 38.)

Societe Nationale Elf Aquitaine

Societe Nationale Elf Aquitaine (SNEA) was permitted to acquire the Pennwalt Corp. under terms of a proposed consent agreement. Under the agreement, SNEA agreed to divest within twelve months Pennwalt's Thorofare, New Jersey, chemical plant to a Commission approved acquirer. In addition, SNEA entered into a hold separate agreement, requiring that Pennwalt's fluorochemicals division be operated independent of any other companies owned by SNEA. The complaint accompanying the agreement alleged that the acquisition would reduce competition in the production and sale of polyvinylidene fluoride and vinylidene fluoride. The agreement also requires SNEA to obtain prior Commission approval before acquiring any company that manufactures or sells either of the two chemicals for a period of ten years. The Commission's staff had been authorized to block the acquisition with a motion for a preliminary injunction if SNEA had refused to divest the assets that had raised antitrust concerns.

Structural Engineers Association of Northern California, Inc.

Under the terms of a proposed consent agreement, the Structural Engineers Association of Northern California, Inc., agreed not to interfere with its members' use of truthful advertising and competitive pricing policies for structural engineering services. According to the complaint issued with the agreement, the Association's code of ethics prohibited structural engineers from advertising their services and charging competitive prices, and from providing a second opinion on the work of another structural engineer. The complaint alleged that these methods restrained competition by depriving



**Nutronics Corp.**

The Commission charged Nutronics with making false and unsubstantiated claims in advertising its fuel saving device known as the Alter-Brake System. The company has agreed not to misrepresent the device in the future.

**Robert Lewis Wilks (Barbers Funeral Home)**

The Commission charged Wilks, former owner of Barbers Funeral Home, with failing to provide his customers with goods and services that they selected and paid for. According to the complaint, Wilks misrepresented to consumers that he provided the caskets, burial vaults, and other goods and services, but in numerous instances, Wilks buried deceased persons without the caskets and/or burial vaults selected and paid for, and desecrated the bodies and graves of the deceased by dumping trash into the caskets or graves. Wilks agreed to stop doing business as a funeral service provider, or having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

**PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED**

**MAINTAINING COMPETITION MISSION****Brooks Drug, Inc.; Carl's Drug Co., Inc.; Genovese Stores, Inc.**

Three members of the Chain Pharmacy Association of New York State, Inc. have separately agreed not to enter into any agreement with any pharmacy firms to boycott any prescription plan to increase the reimbursement rate for prescriptions. According to the complaints issued with the consents, Brooks Drug Inc., Carl's Drug Co., Inc., and Genovese Stores, Inc. conspired with others to refuse to participate in a New York State prescription plan program that would reduce the level of reimbursement for prescription drugs. The complaints charged that these actions hurt consumers in New York by reducing price competition among pharmacies after the state was forced to increase its payments paid to pharmacies under the program. The Commission issued a separate administrative complaint against the chain association. (See - Chain Pharmacy Association of New York State, Inc., page 42.)

Carl's Drug Co., Inc.

(See page 35.)

#### Certain Sioux Falls Obstetricians

Eleven obstetricians in the Sioux Falls, South Dakota area agreed not to engage in collective, coercive activities that interfere with the residency program of the University of South Dakota School of Medicine. The complaint accompanying the agreement charged that a conspiracy among the doctors began when the medical school recruited the area's first perinatologist for its full-time faculty. It charged that when the perinatologist began advertising for patients, and the medical school continued recruiting additional practicing obstetricians, the obstetricians threatened a boycott of the OB/GYN residency program. The complaint alleged that a twelfth obstetrician acted in combination with them. That doctor refused to sign the consent agreement and a separate administrative complaint was issued against him. The Commission accepted a proposed consent agreement with him during the year. (See - Lee M. Mabee, M.D., page 47.)

#### Cleveland Automobile Dealer's Association

The Cleveland Automobile Dealer's Association agreed not to enforce a limitation on members' showroom hours. The agreement settled charges in an accompanying complaint that the association adopted a policy that restricted auto dealers from conducting business on Sundays and curtailed the hours of operation during certain week nights. According to the complaint, the limitation on hours hurt competition among car dealers in the Cleveland area and reduced consumers' opportunities for comparative shopping.

#### Eugene M. Addison, M.D.

Fourteen physicians in the Huntsville, Texas, area agreed not to deal collectively with health maintenance organizations or health plans, boycott them, or deny hospital staff privileges because the applicant for privileges is associated with them. The agreement settled charges in an accompanying complaint that the physicians first acted collectively in negotiations with HMOs to obtain more advantageous terms of participation, and then when those efforts were unsuccessful, collectively refused to participate with HMOs. The complaint also charged that the physicians engaged in an effort

to restrict the hospital privileges of physicians affiliated with HMOs. The complaint alleged that these actions limited competition and increased prices to consumers.

#### Genovese Stores Inc.

(See page 35.)

#### Iowa Chapter of the American Physical Therapy Association

The Iowa Chapter of the American Physical Therapy Association agreed not to restrict member therapists from being employed by physicians. The complaint issued with the consent agreement charged that the association adopted a resolution saying it was illegal and unethical for physical therapists to work for doctors, called on its members to report any such therapists and threatened disciplinary action against such therapists. According to the complaint, these actions hurt competition and deprived consumers of the choice of providers and the convenience of choosing physicians and physical therapy services at the same location.

#### KKR Associates

KKR Associates entered into a consent agreement under which it could acquire RJR Nabisco, Inc. The agreement requires KKR to divest within twelve months to an approved Commission acquirer either its Beatrice division of the RJR assets used in the production and sale of packaged nuts, ketchup and oriental food. Under a hold separate agreement issued with the order, KKR is required to operate RJR separately, and its ability to participate in the business decisions of RJR are limited until all of the divestitures are completed. The complaint charged that the acquisition would reduce competition in the production of branded ketchup, shelf-stable oriental entrees, shelf-stable oriental noodles, and , shelf--stable oriental vegetables, soy sauce and packaged nuts. Finally, the order requires KKR to obtain prior Commission approval before acquiring any significant interest. in a company engaged in the production or sale of products named in the complaint.

#### Medical Staff of Dickinson County Memorial Hospital

The Medical Staff of Dickinson County Memorial Hospital and twelve doctors who practiced in the upper Peninsula of Michigan, in Dickinson County, agreed to settle charges that they conspired



with others to prevent Marquette General Hospital from opening a proposed new medical clinic, which would offer competing medical services in a neighboring county. According to the complaint issued with the order, the medical staff and doctors, solicited other area doctors to join in their threatened refusal to refer patients to the proposed clinic and to agree not to practice at the new facility. The complaint alleged that these actions hindered competition among physicians and hospitals and deprived consumers of their ability to choose among a variety of alternative types of health care facilities and services. The order prohibits the medical staff and others involved in the conspiracy from withholding patient referrals from any physician, hospital, clinic or other health care provider. The consent order covers the medical staff, twelve doctors and two medical societies. A separate administrative complaint was issued against one other Dickinson County doctor. (See - Robert G. Koski, D.O., page 44.)

#### Panhandle Eastern Corporation

The consent agreement required Panhandle to divest its fifty percent interest in Stingray Pipeline Co. The complaint accompanying the consent alleged that the acquisition by Panhandle Eastern Corporation of Texas Eastern Transmission Corp. would create a monopoly in the transportation of natural gas out of Southern Texas and Western Louisiana. Under terms of the agreement, Panhandle must obtain prior Commission approval before acquiring any natural gas pipeline in that area.

#### PepsiCo, Inc.

The Commission accepted a consent agreement resolving the acquisition by PepsiCo, Inc. of seventeen bottling companies from General Cinema Corporation. The complaint accompanying the consent agreement, alleged that the acquisition could lessen competition and increase the possibility of collusion among bottlers of carbonated soft drinks in Staunton, Virginia, and in the Fort Lauderdale area of Florida. According to the complaint, after the acquisition PepsiCo would become both a bottler of non-PepsiCo brands and a supplier of PepsiCo brand

sion approval is required for additional transfers by General Cinema of soft drink assets in the two areas

An-Mar International Ltd., Inc.

An-Mar, maker of Solar Cold suntanning devices, was charged with falsely advertising that its products provide health benefits and that use of its machines by consumers does not pose a risk

the Commission's complaint. Cooper Rand agreed not to make false claims about its products in the future and to notify approximately 131,000 purchasers of the Auto Starter about the limitations of the Auto Starter, including its inability to start a vehicle as quickly as jumper cables.

#### General-Rent-A-Car, Inc.

General-Rent-A-Car, the seventh largest rental car company, was charged with failing to disclose to consumers the existence and amount of airport surcharges and mandatory fuel charges when, consumers inquire about possible renting of their vehicles. The complaint also charged that the company's "800" operators fail to inform consumers of the car models they are renting even though, under General's vehicle classification system, consumers could receive a smaller car than expected. General agreed to disclose orally to every consumer who inquires all mandatory charges, as well as the car models they would receive under the car classification the consumer selects.

#### JS&A Group, Inc.

JS&A Group and its owner, Joseph Sugarman, agreed to settle charges that they falsely claimed that their program-length video advertisement was an objective investigation of their BluBlocker sunglasses. JS&A is prohibited from falsely claiming that any product for personal or household use has been independently investigated or evaluated. In addition, for the next ten years, JS&A must disclose clearly and prominently in any program-length advertisement that it is an advertisement or 'commercial.

#### Montgomery Ward & Co.

Montgomery Ward was charged with making false and unsubstantiated claims in selling its service contracts. Ward is prohibited from misrepresenting service contract coverage and the need for buying a service contract, including the need for maintenance, adjustment and servicing also prohibited from making unsubstantiated

that its electric muscle stimulation treatments produced the same effects as exercises. The club and owners agreed not to misrepresent any diet, strength development or fitness program in the future.

SILO, Inc.

SILO agreed to pay a \$45,000 civil penalty for violations of the Energy Policy and Conservation Act and the Appliance Labeling Rule. The Commission charged the defendants with illegally removing EnergyGuides, which disclose energy usage information, and allow consumers to comparison shop for the most energy-efficient product, from appliances it sold.

Ujena, Inc.

Ujena agreed not to misrepresent any term or condition of a money-back guarantee. It also agreed to honor all valid refund requests to consumers who paid by cash, check or money order within 10 days of



Promodes, S.A.

The Commission issued an administrative complaint challenging the acquisition by Red Food Stores, Inc., of all the supermarket assets of Kroger Co. in Chattanooga, Tennessee. The complaint charged that the acquisition by Red Foods, a subsidiary of a French grocery company, Promodes, S.A., would eliminate direct competition between the two firms and would increase the retail prices of food and grocery items in supermarkets in Chattanooga. Red Foods consummated the acquisition after the Eleventh Circuit upheld a District Court decision that denied the Commission's motion for a preliminary injunction.

Putnam Berkley Group, Inc., The

(See page 43.)

Random House, Inc.

(See page 43.)

Robert G. Koski, D.O.

The Commission issued a complaint alleging that Robert G. Koski, a doctor of osteopathy, conspired with the Dickinson County Memorial Hospital medical staff and others in Dickinson County, Michigan, to prevent a competing medical facility from opening in the area. According to the complaint, Dr. Koski and others threatened to refer patients to physicians practicing at Marquette General Hospital's medical office in Dickinson County. The complaint further alleged that Dr. Koski solicited other physicians in the area to join the conspiracy to deny patient referrals to the new medical facility. A consent agreement settled charges against twelve Dickinson County doctors, two medical societies and the hospital medical staff. (See - Medical Staff of Dickinson County Memorial Hospital, page 37.)

Simon & Schuster, Inc.

(See page 43.)

Textron Inc.

The Commission charged in an administrative complaint that the

acquisition



consumers were unable to receive some prizes without paying additional costs.

Revlon, Inc. and Charles Revson, Inc.

The Commission charged Revlon and a subsidiary with making unsubstantiated claims about the effectiveness of its Ultima II ProCollagen Anti-cellulite body complex. According to the complaint, Revlon does not have a reasonable basis for its claims that the product significantly reduces cellulite and reduces the skin's bumpy texture, ripples, or slackness caused by cellulite, that its product helps to disperse toxins and excess water from areas where cellulite appears and increases subskin tissue strength and tone.

Schering Corp.

Schering, a subsidiary of Schering-Plough Corp., a major national pharmaceut 0 Tc ( ) TTW (l p886-0 Tc 0 Tw (S



future advertisements the purpose or results of

or diesel fuel in the state. Under the agreement, Pacific must obtain Commission approval before acquiring certain terminalling, refining or gasoline retail marketing assets in Hawaii. It must also obtain approval before entering into any terminalling agreement, such as a long-term lease, for more than 50 percent of a terminal's capacity.

PPG Industries, Inc.

PPG Industries, Inc. agreed to obtain prior Commission approval before acquiring certain firms engaged in the manufacture of aircraft transparencies. The consent settled a 1986 administrative complaint that charged that PPG's proposed ~~transportation~~ ~~refining~~ ~~operations~~ Tc (that) Tj 16.68 0 TD 0 Tc356

1988 administrative complaint alleging Owen's acquisition of Brockway would substantially reduce competition in the manufacture and sale of glass containers in the United States. According to the decision, the merger eliminated Owen's strongest competitor and made Owens the largest domestic glass container manufacturer with a 38 percent market share. The order also requires Owens, for a period of ten years, to obtain the prior approval of the Commission before acquiring any firm engaged in the manufacture or sale of glass containers in the United States.

#### CONSUMER PROTECTION MISSION

Kraft, Inc.

An Administrative Law Judge ruled that Kraft falsely advertised that its Kraft Singles cheese slices contain as much calcium as five ounces of milk and more calcium than do most imitation slices. The judge also found that the milk equivalency and imitation cheese superiority claims were unsubstantiated. The ALJ ordered the company not to misrepresent the nutrient content of its individually wrapped slices of cheese in the future.

#### FINAL COMMISSION ORDERS

#### MAINTAINING COMPETITION MISSION

Detroit Motor Vehicle Dealers

The Commission upheld a 1984 complaint that charged that car dealers in the Detroit area had conspired to limit the hours of operation for the sale and lease of motor vehicles. According to the decision, the agreement of the dealerships, individuals and dealer association to limit showroom hours restricted competition by limiting comparison shopping. The ruling requires the dealerships to remain open a minimum of 64 hours a week for one year and requires the Detroit Auto Dealers Association to advertise that the expanded shopping hours are available under the Commission order.

MidCon Corp.

The Commission, upheld the 1988 decision of an Administrative Law Judge that dismissed charges challenging the merger, of MidCon Corp. and United Energy Resources, Inc. The 19,85 administrative complaint charged that the merger would substan-

tially lessen competition in the transportation of natural gas from offshore areas in the Gulf of Mexico. The Commission ruled that the evidence did not prove a likelihood of anticompetitive effects in any of the relevant geographic markets identified in the complaint. Pursuant to a 1986 consent agreement, MidCon divested its interest in the Arcadian Gas Pipeline System to settle charges concerning the New Orleans/Baton Rouge, Louisiana, area.

#### Motor Transport Association of Connecticut, Inc.

The Commission dismissed a 1984 complaint that charged that the Motor Transport Association of Connecticut restricted competition among motor carriers by fixing collective rates for the intrastate transportation of property in the State of Connecticut. The Commission found that the association's collective ratemaking activities were protected from the FTC supervision by the Connecticut Department of Public Utility Control. According to the Commission's opinion, the Department exercises its delegated authority to regulate motor common carriers and reviews and evaluates proposed tariffs within agency guidelines. The Commission's order upheld the 1987 decision of an Administrative Law Judge.

#### New England Motor Rate Bureau, Inc.

The Commission upheld an Administrative Law Judge's decision that the New England Motor Rate Bureau, Inc. hindered competition by illegally setting prices to be charged by member motor carriers for the intrastate transportation of goods in Massachusetts and New Hampshire. The Commission found that the bureau's collective ratemaking was not exempt from the antitrust laws under the state action doctrine, which requires that the state clearly articulate its intent to displace competition with regulation and supervise the collective activities. According to the 1983 complaint, the bureau conspired with others to fix prices by collectively formulating and filing rates for the transportation of commodities within the states of Massachusetts, New Hampshire, Rhode Island, and Vermont. The Commission ordered the bureau to cancel and withdraw all filed tariffs and to terminate all its existing agreements with carriers concerning the filing of established rates in states that do not actively supervise collective ratemaking. In addition, the bureau is prohibited from fixing prices and filing collective rates in Massachusetts and New Hampshire. Charges against activities in Vermont were dismissed in 1986 after the State of Vermont deregulated the intrastate transportation of freight and the bureau

ceased to formulate and file rates in that state. As to activities in the State of Rhode Island, the Commission found that the bureau's rulemaking activities were supervised by the Division of Public Utilities and Carriers and were therefore immune from antitrust liability by virtue of the state action doctrine.

Swedlow, Inc.

The Commission dismissed its complaint against Swedlow, Inc., which challenged the company's proposed acquisition by PPG Industries, Inc. Swedlow's shareholders accepted an offer from Pilkington Brothers PLC after the District of Columbia Circuit Court of Appeals directed the district court to enjoin PPG's merger attempt. Swedlow was acquired by Pilkington in 1986. The Commission accepted a consent agreement with PPG prohibiting

misrepresent the performance of the Clean Water Machine or any other electric powered consumer appliance. Under the order the company is also prohibited from misrepresenting any test or study of its products.

#### Removatron International Corp.

The Commission upheld an Administrative Law Judge's ruling that Removatron, the largest maker of high-frequency, tweezer-type hair-removal devices, made false and deceptive claims that its devices permanently remove hair, and that the company lacked a reasonable basis for making such permanency claims. The order prohibits the company from making unsubstantiated claims about its product and requires it to possess clinical testing as substantiation for future permanency claims. The order also requires that ads that make hair removal claims include a disclosure that there is no reliable evidence that the device provides anything more than temporary hair removal.

### ORDER MODIFICATIONS

#### MAINTAINING COMPETITION MISSION

##### Adolph Coors Company

The Commission set aside the provisions of a 1975 order against Adolph Coors Company that imposed territorial restraints and certain customer restrictions on distributors of its products. One provision was modified to prohibit Coors from refusing delivery of products that would be sold at unauthorized prices.

##### Atlantic Richfield Co.

The Commission set aside a 1961 order that prohibited Arco, the successor to Atlantic Richfield Co., from entering into sales commission agreements with suppliers of tires, batteries and accessories. The order settled charges that the sales agreement between Atlantic Richfield and The Goodyear Tire & Rubber Co. was an unfair method of competition.

##### Lafarge Canada Inc.

The Commission granted in part a request to modify a 1982 order with Lafarge Canada, Inc., formerly Canada Cement Lafarge Ltd.,



by setting aside the provision requiring Lafarge to obtain Commission approval before acquiring any cement manufacturing plants, grinding plants, or distribution terminals in Florida. The Commission

and Co. to use

consumers who build their homes without professional assistance, the market the order was directed at. The Commission also found Lindal's other changed conditions of fact and law arguments to be unpersuasive.

National Indemnity Company, Inc.

A petition to vacate or modify a 1978 consent order was denied. Respondent sells property and liability insurance. The order was issued because the respondent failed to notify consumers that an investigative consumer report might be requested. The request to vacate or modify was based on the fact that respondent no longer requested investigative consumer reports, and had an exemplary record of compliance for ten years. 77 Fed. Reg. 16780, 16781 (Apr. 11, 2012) (C.A. No. 12-1001) (FTC).

tion to block Autoclave Engineers Inc.'s proposed tender offer for Tylan Corp. on grounds that the acquisition would substantially lessen competition in the manufacture and sale of mass flow controllers used to control the flow of process gases used in the manufacture of semiconductors. Before the filing of the injunction action, the transaction was abandoned.

#### The BOC Group, Inc.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by The BOC Group, Inc. of the Vacuum Products Division of Varian Associates, Inc. The Commission believed that the acquisition would substantially reduce competition in the production and sale of helium mass spectrometer leak detectors, which are used to discover leaks in products systems. The parties abandoned the transaction before the injunction action was filed.

#### General Electric Co.

The Commission authorized its staff to seek a preliminary injunction to block a proposed joint venture between General Electric and Union Carbide Corp. The Commission believed that the proposed joint venture would substantially reduce competition in the production and sale of silicone products. Before court papers were filed, the joint venture was abandoned.

#### Promodes, SA.

(See page 44.)

#### Societe Nationale Elf Aquitaine

(See page 33.)

#### Textron Inc.

(See page 44.)

#### U.S. Can Co.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by U.S. Can Co. of Armstrong Industries, Inc., on the grounds that the acquisition would substan-

tially reduce competition in the production and sale of one-gallon metal paint cans. The transaction was

consumers are likely to lose their entire investment, because there is such a small amount of gold in Axiom's mines and the defendants are

virtually everyone who has male pattern baldness and will promote new hair growth in a substantial number of individuals who have male pattern baldness. The Commission is seeking pre and permanent injunctions and an order requiring the company to pay refunds to consumers.

#### Case Equipment Co.

The Commission filed a complaint in federal district court charging Case Equipment Co. with making false and deceptive claims in the marketing of machines that allegedly copy color pictures onto textiles and other surfaces. The court issued a temporary restraining order and froze the defendants' assets.

#### Cecil B. Jacobson, M.D.

The Commission filed a federal district court complaint against Cecil Jacobson and the Reproductive Genetic Center Ltd. charging that the defendants misrepresented that women who underwent defendants' medical treatment were virtually certain to have successful pregnancies and later had, maor0e25.92 TD 0o1at

request for a temporary restraining order, asset freeze and the appointment of a temporary receiver.

#### Creative Advertising Specialty House, Inc.

This company has agreed to pay \$5,000 in refunds to consumers. In addition, the company, which falsely represented \$70 rubber dinghies as "Power motorboats" worth more than \$1000 to consumers, has agreed to a permanent injunction prohibiting it from engaging in direct mail or telemarketing solicitations that misrepresent the facts. The company also agreed not to debit consumers' credit card accounts unless specifically authorized to do so by consumers.

#### Credit Clinic Corporation

Steven Leff, former president of Credit Clinic Corp., agreed to settle charges that he misled consumers by falsely claiming that the company could improve consumers credit records and by failing to honor the company's money-back guarantee. The court approved a consent decree Prohibiting Leff from misrepresenting his ability to improve consumers' credit reports or profiles.

#### Credit Repair, Inc.

In a complaint filed in federal court, the Commission charged that the Credit Repair "clinic" misled consumers by falsely and deceptively claiming that it could substantially improve their credit records and by failing to honor, its 100 percent money-back guarantee. The Commission asked the court to order Credit Repair and its two principals to pay consumer redress and to permanently prohibit them from engaging in the challenged practices.

#### Credit-Rite, Inc.

This company and individual defendants agreed to cease misrepresenting their ability to improve consumers' credit bureau reports and to honor any refund promises they make to consumers. The two principals pled guilty to federal criminal charges in New Jersey and were sentenced to serve prison terms and to pay fines and restitution to consumers who were injured by their practices.



David and Annette DeFusco

The Commission filed a complaint in



Magui Publishers, Inc.

The Commission filed

policy. The court granted a temporary restraining order prohibiting further misrepresentations, appointing a receiver, and freezing defendants' assets.

#### National Business Consultants, Inc.

The Commission filed a complaint in federal district court charging National Business Consultants with making false and misleading claims in the sale of business opportunities for business consulting services. The court issued a temporary restraining order and froze the defendants assets.

#### North American Enterprises

The Commission filed a complaint in federal district court charging the company with misrepresenting a \$1,000 government bond prize offered as part of a promotion to sell vitamins and with failing to honor money-back guarantees.

#### North American Office Systems

A civil contempt action was filed for nonpayment of a civil penalty judgment awarded in 1987. The court found the judgment debtors in contempt and ordered them to be held in the custody of the U.S. Marshall until the judgment is paid.

#### Numismatic Certification Institute

The Commission filed a federal district court complaint alleging that NCI misled consumers as to the grade of coins it certified for sale by coin retailers. The complaint alleges that NCI's affiliate, Heritage Capital Corp., provided substantial assistance to a coin retailer, Certified Rare Coin Galleries, Inc. (CRCG), knowing that CRCG was misrepresenting the security and profit potential of its coins to investors. The Commission's case against NCI settled for injunctive relief and \$1.2 million.

#### Outdoor World Corp.

A federal court issued a preliminary injunction, pending resolution of an administrative complaint, against Outdoor World Corp., a membership campground promoter. The preliminary injunction prohibited the company from misrepresenting that consumers have won specified prizes. The Commission alleged that Outdoor World

mailings indicating that a named consumer had won one or more specified prizes were false and misleading because the named consumer has not won the specified prizes.

#### Pannos Mining Company

The Commission filed a complaint in federal district court charging that Pannos Mining, which sold contracts for delivery of gold and silver from an Arizona mine, was a bogus investment scheme in which consumers are likely to lose their entire investment. The court issued a temporary restraining order against defendants, froze their assets, and appointed a temporary receiver to secure a fund for any redress award. Preliminary injunctions were also issued against defendants.

#### Pantron I Corp.

The Commission filed a complaint against Pantron in federal district court charging the company with falsely claiming that Helsinki Formula products will cure or prevent baldness. The Commission is seeking preliminary and permanent injunctions and an order requiring the company to pay refunds to consumers.

#### Rainbow Enzymes, Inc.

The Commission obtained three redress judgments against defendants in the Rainbow Enzymes matter. The complaint charged that the defendants misled people into paying \$3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these people to recruit others to take part. Separate permanent injunctions and redress orders were issued against two Rainbow salesmen. James Standridge was ordered to pay \$20,000 in redress and Roy Standridge was ordered to pay \$25,000. Standridge, Inc., a farm implement dealership owned by Roy Standridge, was ordered to pay \$50,000 in redress. In addition, in cooperation with the U.S. Attorney, criminal charges were brought against Stan Massie, the principal in the Rainbow case. Prior to trial, Mr. Massie pled guilty to the charges and received a four year sentence.

#### Rare Coins of Georgia

The Commission obtained a settlement with the defendants in which they agreed to, pay \$150,000 to settle charges that they had

misrepresented the grade and investment quality of coins they wholesaled to telemarketers for resale to the public as investments. The settlement also prohibits further misrepresentations about the value of coins and other investments they sell.

**Richard J. Wiley (Certified Security Systems)**

Wiley has agreed to settle charges that he used deceptive practices to sell distributorships for energy-saving devices and home burglar alarms. Wiley agreed not to misrepresent any business ventures he offers for sale in the future. Wiley is currently in federal prison on a criminal conviction relating to the sales of distributorships.

a Florida manufacturer of loose-fill cellulose insulation, for violating the R-Value Rule. The complaint alleges the defendants violated the Rule by overstating the R-value and coverage of their insulation, and by failing to base R-value claims on required tests.

Vacation Travel Club of America, Inc.

The Commission filed suit in federal district court alleging that this company deceptively marketed their travel-related services at no charge as a prize or award, failed to provide refunds to consumers, made unaut



**MidCon Corp.**

MidCon Corp. agreed, to pay \$100,000 in civil penalties to settle charges that MidCon violated a 1986 order by failing to divest its interest in the Arcadian Gas Pipeline System by February 1987.

**Tengelmann Warenhandelsgesellschaft (The Great Atlantic & Pacific Tea Company, Inc.)**

The Great Atlantic & Pacific Tea Company, Inc., and its parent, Tengelmann Warenhandelsgesellschaft, agreed in a consent judgment to pay \$3 million to settle charges that they violated the premerger notification requirements of the Hart-Scott-Rodino Act. The complaint accompanying the judgment charged that A&P purposely avoided the filing obligation and statutory waiting period requirements

Dudley Hughes Funeral Co.

Dudley M. Hughes, Jr., owner of Dudley Hughes Funeral Company, must pay \$80,000 in civil penalties for violating the Funeral Rule. Hughes is also permanently enjoined from violating the Rule through failure to provide consumers with price information and required disclosures. This was the first contested lawsuit under the 1984 Funeral Rule.

Eastside Motors

Eastside Motors

Goodman Buick-GMC Trucks, Inc.

Goodman Buick-GMC Trucks agreed to pay \$17,500 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to properly complete and display required Buyers Guides on vehicles offered for sale to consumers. The consent decree prohibits future violations of the Rule.

Green Tree Acceptance, Inc.

This company agreed to pay civil penalties of \$115,000 for allegedly discriminating against the elderly by requiring larger down payments of them and for failing to give some consumers a reason for denying them credit in violation of the Equal Credit Opportunity Act. In addition, Green Tree, when it denied credit on the basis of information obtained from credit bureaus, failed to tell consumers it did so, in violation of the Fair Credit Reporting Act. The company agreed not to violate the FCRA or the age discrimination and notification provisions of the ECOA in the future.

James H. Turner Funeral Home, Inc.

Turner agreed to pay \$10,000 in civil penalties to settle charges it violated the Funeral Rule by TD 0.m9 Tc (the) dai

purchasers, and failing to include required disclosures in its warranty documents.

Lucas Funeral Home

Funeral Corporation of Texas d/b/a, Lucas Funeral Home has agreed to pay \$20,000 in civil penalties to settle charges that it failed to provide consumers with required information concerning funeral goods and services.

MFM Auto Sales, Inc,

MFM Auto Sales agreed to pay \$15,000 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to display properly completed Buyers Guides on used vehicles it offered for sale to consumers.

Milcon Industries, Inc.

Milcon Industries, d/b/a Blue Ridge Insulation, agreed to install additional insulation in residential and commercial buildings and to pay a civil penalty of \$10,000 to settle charges it violated the R-Value Rule. The complaint charged the defendants with misrepresenting the amount of insulation Installed. The defendants will not have to pay any civil penalty if 50 percent of the affected purchasers participate in the redress program.

Niday Funeral Home

Niday Funeral Home agreed to pay civil penalties of \$25,000 to settle charges that it violated the Funeral Rule. The complaint alleged that Niday violated the Funeral Rule by failing to provide price lists and an itemized statement of goods and services Rule.

agreed to pay civil penalties to settle charges it violated the

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Plaza Motors, Inc.

Plaza Motors was ordered to pay \$10,000 in civil penalties for violations of the Used Car Rule and the Warranty Disclosure Rule. The complaint charged the defendants with failing to post required Buyers Guides on cars offered for sale to consumers, failing to include required disclosures in the sales contracts, and failing to disclose in warranty documents required statements concerning limitations on the duration of implied warranties.

Ronby Corporation (Fred Astaire Dance Studios)

Ronby Corporation, national licensor of Fred Astaire Dance Studios, agreed to pay \$105,000 in civil penalties over a three year period to settle charges that it violated a 1964 FTC order.

Ron Price Motors, Inc.

Ron Price Motors agreed to pay \$20,000 in civil penalties to settle charges it violated the Used Car and the Warranty Disclosure Rules. The defendants were charged with failing to display Buyers Guides on used cars offered for sale and to provide them to purchasers and failing to provide consumers with warranty disclosures.

and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

The Impact of State Price and Entry Regulations on Intra-State Long Distance Telephone Rates, Alan D. Mathios and Robert P. Rogers, November 1988. The study finds that states using price cap regulation have 7-10 percent lower long-distance rates than states using rate-of-return regulation. In addition, state regulatory entry barriers tend to increase the price of long-distance telephone service.

Local Building Codes and the Use of Cost-Saving Methods, Richard Duke, January 1989. The study finds that locally-drafted building codes no longer significantly increase building costs since almost all localities have adopted national model codes that provide for cost-saving techniques. However, the study also finds that many builders do not use most cost-saving methods permitted by the codes, in part because purchasers of new homes apparently believe that houses built with older techniques are of higher quality.

A General Equilibrium Analysis of the Welfare and Employment Effects Of US Quotas in Textiles, Autos, and Steel, David G. Tarr, February 1989. Using state-of-the-art modeling techniques, this report examines the costs of trade restraints in three industries. Findings indicate that voluntary export restraints in these industries cost the U.S. \$21 billion in 1984 while "protecting" 174,000 jobs in the three industries. Thus, the annual cost of each job, protected was approximately \$120,000.

Economics of Sham Litigation: Theory, Cases, and Policy, Christopher C. Klein, April 1989. The report examines court records on public and private Sherman Act "countersuits" entailing allegations of sham litigation, between 1972 and 1985. Using an empirical approach, the report seeks to answer the question of "whether case law involving Sherman Act countersuits alleging sham litigation has developed in a way that appropriately discourages the use of adjudicative proceedings to produce anticompetitive outcomes."

Mergers in the U.S. Petroleum Industry, 1971-1984: An Updated Comparative Analysis, Jay S. Creswell, Jr., Scott M. Harvey, and Louis Silvia, May 1989. The report reviews recent evidence on oil industry mergers and concludes that conglomerate mergers have become less important and that mergers have had little impact on industry concentration.

Health Claims in Advertising and Labeling: A Study of the Cereal Market, Pauline M. Ippolito and Alan D. Mathios, August 1989. The report presents an empirical examination of the effects of the health claims in fiber cereals which began in 1984. Evidence indicates that health claims in advertising significantly alter consumer behavior and reach groups not otherwise reached by government and general health information.

#### ECONOMIC ISSUES SERIES

Economic Issues Papers are literature reviews or policy analyses (rather than original empirical or theoretical work) in a subject area relevant to the Commission's mission.

How Should Health Claims for Foods Be Regulated? An Economic Perspective, John E. Calfee and Janis K. Pappalardo, September 1989. This is a policy analysis examining the application of a cost/benefit approach to health claims. The analysis focuses on the problem that regulators tend not to ask one of the right questions; "How much will it harm consumers if we do not allow a claim that turns out to be true?"

#### WORKING PAPERS

Economic Working Papers are preliminary, unpublished work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses, often requiring very minor allocations of staff time.

Deregulation by Vertical Integration, (WP#166), John R. Morris, October 1988.

A Theory of Minimum Quality Standards: Quacks, Lemons & Licensing Revisited, (WP#167), Michael R. Metzger, November 1988.

The Relationship Between Industrial Sales Prices and Concentration of Interstate Natural Gas Pipelines, (WP#168), John R. Morris, November 1988.

Do Government-Imposed

The Impact of Tariffs and Quotas on Strategic R & D Behavior, (WP#170), James Reitzes, January 1989.

Predation, Entry and the Diversified Firm, (WP#171), David Levy, January 1989.

Terminal Railroad Revisited: Foreclosure of an Essential Facility or Simple Horizontal Monopoly, (WP#172), David Reiffen and Andrew Kleit, April 1989.

Regulation, Market Structure, and Hospital Costs: A Comment on the Work of Mayo and McFarland, (WP#173), Keith B. Anderson, May 1989.

A Recalculation of Cline's Estimates of the Gains to Trade Liberalization in the Textile and Apparel Industries, (WP#174), Michael R. Metzger, May 1989.

#### MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research and explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission. These papers may be prepared by FTC staff economists or by outside individuals who have been granted access to economic data compiled by the FTC.

Looking for a Profitability-Concentration Relation: Applying a U.X Test to U.S. Data, David R. Ross, November 1988.

Characteristics of Divested Lines of Business, Habir Singh and Kathleen Saul, December 1988.

Empirical Studies of Innovation and Market Structure, Wesley M. Cohen and Richard C. Levin, January 1989.

Innovation and Learning: The Two Faces of R&D - Implications for the Analysis of R&D Investment, Wesley M. Cohen and Daniel A. Levinthal, January 1989.

Industry Determinants and Differences in U.S. Intrafirm Exports, Anita M. Benvignati, February 1989.



Business Relatedness and Business Performance, Richard Klavans, February 1989.

Industry Heterogeneity and Its Effect on the Observed Determinants of Profitability, David R. Ross and Ralph M. Bradburd, February 1989.

proposed a relaxation of restrictions on promotional activity of attorneys, such as use of direct mail. The comment applauded the proposal, stating that it would benefit consumers. The comment further says the proposal may unduly restrict some forms of telephone solicitation to the detriment of consumers and should define more clearly the term "recorded communication."

#### National Association of Attorneys General

The Association of state Attorneys General requested that the Commission comment on proposed guidelines for the car rental industry. The comment noted that the Commission agreed with the guidelines' general conclusions that deception and unfairness in the advertising and marketing of rental cars should not be tolerated, but expressed concern that certain provisions of the guidelines could discourage advertising which might provide useful information, as well as advertising that was unfair and deceptive.

In an additional letter to the National Association of Attorneys General, the Commission said that several of the provisions found in the guidelines could discourage or prevent non-deceptive, fair and competitive conduct. This could injure consumers, the comment noted.

#### FEDERAL AGENCIES

##### Bureau of Alcohol, Tobacco and Firearms

In response to a Bureau of Alcohol, Tobacco and Firearms (BATF) Federal Register Notice, the Commission commented on two alternative proposals to revise its regulation governing the advertising and labeling of "light" or "lite" alcoholic beverages. The comment suggested that the BATF first determine through consumer testing whether consumers are deceived by current labeling practices in the industry. If consumers are deceived, BATF should also consider using market research to find the best means of curing the deception, the staff comment noted.

##### Department of Agriculture

The Commission staff commented on the Department of Agriculture's Food Safety and Inspection Service (FSIS) proposal to make an exception to its rules requiring the disclosure of mechanically separated meat in ingredient lists. The comment did not take a position on the merits of the proposed change, but did identify

specific market and consumer survey information that FSIS might want to examine to determine whether

necessary and third, the proposed requirement that ATV be compatible with existing television receivers could impose future costs on society that exceed any benefits.

#### International Trade Commission

The staff commented on an antidumping and countervailing duty petition against antifriction bearings and similar parts, from nine countries. The comments stated that an economically sound approach to defining such terms as "like product" and "domestic industry" would likely have a beneficial effect in this and future trade cases.

The Commission staff also commented on the International Trade Commission investigation into the effects of significant limits on imports of manufactures, agricultural and natural resource products and services. The comment discussed several models and concluded that annual gains to the U.S. economy and to consumers from removing all tariffs on manufactured imports are between \$0.6 and \$1.3 billion per year. In addition, both wage and income of workers and rental income of capital owners are situated to increase slightly if these tariffs are removed.

#### Office of Personnel Management

The Commission commented on the Office of Personnel Management's proposals to adjust severance pay regulations. The proposal would pay benefits to Federal employees involuntarily separated through reductions in force, who accept employment with the private contractor who provides the service previously performed by the separated employee. The proposal, according to the comment, would likely improve efficiency by smoothing transitions from Federal to private provision of commercial services and help private suppliers compete to supply commercial services to the government.

#### Postal Rate Commission

In response to a Postal Rate Commission (PRC) rulemaking concerning the Postal Service's request for greater flexibility in setting rates for Express Mail to meet private competition, the Commission recommended granting the postal service greater flexibility in pricing Express Mail. The Commission staff proposed that the Postal Service be free to set Express Mail rates at any point

within the zone of discretion established by the PRC without additional extended hearings and review. The comment also said the change could harm consumers if regulatory advantages enjoyed by the Postal Service were not simultaneously reduced or removed. The current advantages might pose a risk of increased costs from inefficient and anti-competitive pricing.

In response to another PRC Federal Register notice, the Commission staff said that the PRC proposals to improve statistical information the PRC receives from the Postal Service could offer substantial benefits in return for relatively modest costs. The PRC could use the information to make better decisions concerning postal rates and services. The comment stated that under PRC regulations, statistical studies would sometimes fail to have documentation of the sources of data, the assumptions made, and the statistical techniques that had been used. An improvement in the reporting procedures could offer better statistical information for improved decisions at very little cost, the staff comment concluded.

The Commission staff, in an additional comment provided more detailed suggestions on two methods of assessing statistical information that the PRC received from other parties. The FTC staff had raised the option of incorporating these two methods in the PRC's proposed regulations when it commented on the proposed regulations designed to improve the statistical information that the PRC receives. The comment suggested tests to assess the sensitivity of postal demand forecasts to small changes in the data, in the variables used to explain postal demand, and in the forms of the explanatory variables that are used.

The Commission staff commented to the Postal Rate Commission that it believes a study of the costs and benefits of exempting addressed third class mail from the U.S. Postal Service's delivery monopoly would be useful. Substantial benefits to consumers through improved mail service, lower postal costs, and perhaps lower prices on advertised goods generally, could result from implementation of the proposed exemption, the comment said.

The Commission staff commented to the Postal Rate Commission concerning advances in the economic theory of regulated monopolies since the reorganization of the Postal Service in 1971. The comment discussed two theoretical developments that are particularly relevant to the policy of maintaining the government monopoly on letter mail.

Securities and Exchange Commission

The Securities and Exchange Commission proposed some changes to its rules covering mutual funds that use fund assets to pay costs associated with the distribution of fund shares, known as 12b-1 plans. The Commission staff commented on these amendments to rules concerning certain fees charged by mutual funds. The staff comment stated that the proposed amendments that would define payments made under a 12b-1 plan as an "asset based sales load" may improve investor welfare. However, the amendments that require 12b-1 payments to be made on a current-year basis may not be in the best interest of mutual fund investors, the comment noted.

U.S. Customs Service

The Commission staff suggested in a comment on a Customs Service proposal to require permanent country-of-origin marking only on those jewelry items in the imported American-style. The Customs Service proposed regulations concerning such labeling for Native American style jewelry to address the problems of imported jewelry being passed off as Native American products. Regulatory efforts, the comment said, shouldj 2.04 0d jewelry being passed off as Native Amy being pa 0.024.TD 0 Tc ( ) Tj 3.36 0 TD j 2.

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industry. Deregulation appears to have brought lower prices and higher quality service to shippers, the staff commented. Also, there is little reason to believe that deregulation brings predatory pricing or loss of service to small communities. Eliminating or decreasing economic regulation of intrastate trucking can result in significant benefits to California, the testimony further stated.

The Commission

competition and increase costs without providing countervailing benefits to consumers. The comment suggested that the Florida Bar Association consider modifying the rules to allow a wider range of truthful communications and to ban only those that are likely to be unfair and deceptive.

The Commission staff commented on several provisions of a bill that would require that virtually all fees be reflected in the total advertised price of car rentals rather than being stated separately. Because studies have shown that price advertising enhances competition and lowers prices, the comment suggested that the legislature be cautious in imposing any requirements that may discourage price advertising. The comment said a provision that would mandate that car rental companies assume responsibilities for losses over \$200 would restrict consumer choice in whether or not to accept collision damage waiver provisions. According to the comment, providing consumers with information on the collision damage waiver provision may be more effective than requiring that collision damage waiver be sold to all whether all consumers want it.

### Georgia

The Commission staff commented on five bills before the Georgia legislature dealing with health care certificate of need regulation and concluded that they might benefit Georgia consumers. The bills propose to relax Georgia's requirements that health care facilities prove that new facilities and equipment are needed before they can be constructed or purchased. The comment said a relaxation of the requirements may lead to greater diversity and better quality in health care services and increased price competition.

### Illinois

The Commission staff commented on a proposal to restrict auto manufacturers in Illinois from licensing repair shops or opening franchises. The proposal would most likely harm consumers by reducing competition and increasing costs. The bill would prevent automobile manufacturers from licensing repair shops to operate in areas where their new car dealers provide repair services and would reduce the ability of manufacturers to franchise more than one dealer in any market. This could result in higher prices for some types of repair services and for new cars.



The Commission staff commented on a bill that proposed to reduce the ability of acquirers of corporations to engage in business combinations for three years after acquiring 15% of the target firm's shares. The comment noted that vigorous takeover activity enhances economic efficiency and therefore benefits consumers, workers and shareholders. The bill's enactment, the comment stated, is likely to deter takeovers that may actually increase economic welfare.

The Commission staff commented on an Illinois bill that would prohibit credit unions and buying clubs that assist consumers in purchasing new and used autos at discount prices from licensed dealers from doing so. The bill would prohibit this "brokering" activity and require a dealers' license in order to perform many of the activities that can now be performed without a license. The proposal could limit competition among automobile dealers and increase prices that consumers pay for automobiles.

The Commission staff commented on an Illinois bill that would limit the methods car rental companies can use to calculate base rental charges and in advertising those charges, alter the allocation of costs and risks of damage or theft, and ban long-term leasing on Sundays. The provisions could increase costs, make it more difficult to obtain information about price and comparison shop, the comment noted. This could lead to increased prices.

#### Louisiana

The Commission staff commented on a bill that would prohibit below cost gasoline pricing and prohibit price discrimination in gasoline sales. The proposal would deny businesses the flexibility to adjust their prices in response to supply and demand. It would likely add costs to the distribution of gasoline in the state of Louisiana that do not exist in other states and the costs would be borne by Louisiana consumers and visitors.

#### Massachusetts

The Commission staff commented on a Massachusetts bill that would amend state law to regulate certain business combinations involving toto

shareholders of a corporation determine whether restraints on the transfer of corporate control are in the interests of the corporation. In addition, to prevent managers from protecting their own interests with poison pills, the comment suggests that such requirements be approved by a vote of the majority of the outstanding shares.

The Commission staff also commented on a Massachusetts bill that would require many prepaid health care programs that offer pharmaceutical benefits to let any pharmacy participate may increase costs to consumers, reduce competition and restrict consumers freedom to choose health benefits programs that they believe best meet their needs.

The FTC staff commented to the Massachusetts Department of Public Utilities that issuance of additional taxicab medallions for the city of Boston would benefit consumers. As a result of the restrictions, the comment pointed out, consumers pay \$14.5 million per year in excess of the costs of the service they receive. Consumers would gain significantly from an increase in the number of cabs that would be permitted to operate in the city, the comment stated.

The Commission staff commented to the Massachusetts Attorney General's office concerning proposed revisions to the state's retail advertising regulations. The overall effect of several of the regulations may be to unnecessarily restrict some forms of truthful advertising, particularly price advertising. They might have the practical effect of chilling the dissemination of truthful advertising and this could harm consumers.

## Michigan

In response to a notice by the Michigan Department of Licensing and Registration, the Commission staff commented on a proposal to change the administrative rules of the Michigan Board of Optometry. The rule change would prohibit optometrists from delegating specified procedures to non-licensed qualified eye-care professionals unless a licensed professional supervised the performance of the procedure. This would prohibit opticians from performing various procedures that they routinely would do on their own, unless supervised. These restrictions would harm consumers by limiting competition and increasing costs and in the case of cosmetic contact lenses, not improve the quality of care.

## Missouri

The FTC staff commented on a bill before the Missouri legislature that would prohibit physical therapists from accepting wages or any other form of payment from a physician or other health care provider who refers patients to the therapist. The comment said the bill would ~~not~~ injure consumers by reducing

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that would require, in effect, that collision damage waiver be purchased as part of all rental transactions, ending the choice of consumers whether or not to purchase such coverage. The comment said this will restrict consumer choice and will force consumers to pay higher costs, primarily in the form of higher base prices. In situations in which consumers suffer from insufficient information, remedies that require the disclosure of better information may resolve the problem rather than such a requirement.

In testimony before the New Jersey Division of Consumer Affairs, the Commission staff commented on proposed rules implementing the Public Warehousemen Licensing Act. The proposed rules reflect interpretations of the Act by state regulators that may unnecessarily inhibit mover pricing flexibility. If somewhat revised, the rules might better accomplish this laudable goal and better realize the pro-competitive objectives of the Act.

The Commission staff commented on a proposed rule that would make it unlawful for anyone to advertise or sell any merchandise as "new" when in fact it was not "new" as defined in the rule. The comment expressed the view that even though there was support for the effort to ensure that misuse of the term "new" did not result in consumer injury, the proposed rule would prohibit all merchandise that has been returned from being sold as "new" making the definition overly broad and in some instances, prohibiting nondeceptive competitive activity and thereby possibly injuring consumers.

#### New York

The Commission staff commented on several provisions of a New York state bill covering rental car transactions. The comment said the portion of the bill that included new restrictions on the ability of car rental companies to advertise and charge for certain specified items may increase the cost of price advertising and harm the ability of car rental companies to advertise nationally. This is a proposed ( ) Tj 2.28 0 w-.96



need regulation, the staff also the increasing ability of the health care markets to function in an unregulated, competitive way.

The Commission staff commented on a North Carolina bill that would prohibit distributors of household furniture from using a variety of distributional restraints and require furniture distributors who sell to North Carolina dealers to establish uniform wholesale prices and retailing standards. Legislation that restricts the ability of manufacturers to control the distribution of their products is likely to harm consumers since consumers can benefit from suppliers' placement of restrictions on retailing prices.

#### Ohio

Commission staff, in testimony before an Ohio State Senate Committee, stated that certificate of need health care regulation has been unsuccessful in containing health care costs. The state Senate is reviewing the state's certificate of need regulation which requires a health care establishment to demonstrate that new facilities

tion about accounting services thereby adversely affecting consumers' ability to obtain accounting services on the terms they want. The prohibitions, the comments said, would restrict competition more than is reasonably necessary to protect consumers against conflicts of interest.

Commission staff commented about a bill in the Oregon State Senate that would prohibit suppliers of "heavy equipment" from discontinuing supply relationships with any Oregon dealer unless the supplier is withdrawing from the state, or the dealer breaches a "reasonable and material" provision of its contract with the supplier. By denying businesses the flexibility to tailor their supply contracts to the market, the bill would tend to create an excessively rigid distribution system unresponsive to market conditions. This could lead to increased prices for consumers, the comment noted.

#### Pennsylvania

The Commission staff commented on Pennsylvania's restrictions on advertising by dentists during a review of the state's Board of Dentistry regulations being conducted by the state's Independent Regulatory Review Commission. The comment said the regulations should only prohibit false, misleading or deceptive advertising. The elimination of the Board's restrictions governing advertising, by dentists in the state could enhance the dissemination of truthful information to the public. Consumers would benefit through improved information and lower dental prices created through increased

gas prices could therefore rise to an inflated level in the state of South Carolina.

The Commission staff commented to the South Carolina Legislative Audit Council on the restrictive or anticompetitive effects of the state's statutes or regulations governing the activity of six state agencies that deal with occupational licensing programs. Certain provisions in the regulation could have anticompetitive effects and the Council may wish to consider alternatives to these provisions, the comment stated.

The Commission staff commented on a Board of Architectural Examiners regulation prohibiting competitive bidding. The comment suggested there are other public and private means for protecting health and safety that are less restrictive of competition, adding that restrictions on competitive bidding may not be necessary to protect the public's health and safety. The Council, the staff recommended, should consider the costs imposed by this regulation in light of its limited benefits.

#### Texas

Commission staff commented on a bill in Texas that would provide for voluntary state licensure of electricians and electrical contractors. The comment said the proposal would probably eliminate some of the existing barriers to practice and in this way benefit consumers by reducing prices and increasing consumer choices. The proposal would establish a state licensing board and provide for the voluntary testing of electricians. The decrease in barriers to entry may increase competition and lower prices, the comment said.

The Commission staff commented on a proposal in the Texas State House that would partially deregulate the tow truck industry in the state of Texas. The comments said a significant body of evidence suggests that deregulation of trucking services lowers rates and improves services. The proposal is important, the comments stated, because it could move Texas toward a more competitive tow truck industry. This would result in significant benefits for consumers and competition.

Commission staff commented on a Texas bill that would ban certain forms of below cost pricing. The



competition. This proposal, the comment stated, could chill price competition that would benefit consumers.

Commission staff commented on a Texas bill that would regulate corporate acquisitions and certain business combinations



offering of a separate collision damage waiver charge. Such a proposal would restrict consumer choice and result in some consumers having

of charges that the defendants had violated the Securities and Exchange Act, could be held in constructive trust for the benefit of injured investors, free of tax liens.

In an amicus brief to the Supreme Court in *Peel v. Attorney Registration Disciplinary Commission of Illinois* on the question of whether the professional qualifications of an attorney on his business letterhead constitute commercial speech, the Commission said the State's categorical prohibition of all certification and specialization claims violated the standards governing regulation of commercial speech under the First Amendment.

In an amicus to the Eleventh Circuit in *Bolt v. Halifax Hospital Medical Center*, the Commission stated that the court should hold that the review afforded Florida courts for hospital privilege terminations does not constitute "active supervision" for purposes of the state action doctrine.

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