national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605 (d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five

seeking restitution even if the conduct at issue does not otherwise meet our definition of a ''clear'' violation.

[10] Although there are some disagreement among the Commissioners in . on whether seeking disgorgement resulted in the optimal payment from the defendants, there was general agreement that the conduct at issue was egregious. It is axiomatic that a merger of the only significant competitors in a market (absent unusual circumstances such as proof of the ''failing firm'' criteria of Section 5 of the Horizontal Merger Guidelines) violates the letter of the Clayton and Sherman Acts. v. , 148 F.2d 416, 429 (2d Cir. 1945); Areeda, Hovenkamp & Solow, IV ANTITRUST LAW section 14.12 (2002 ed.). The case is further bolstered when, as in , such conduct is paired with evidence of specific intent to monopolize. v. , 253 F.3d 34, 59 (D.C. Cir.), (en banc), , 534 U.S. 952 (2001); Statement of Chairman Pitofsky and Commissioners Anthony and Thompson (Apr. 2001) (available at

[11] According to the Commission's complaint in , the parties' exclusive arrangements covered 90% of the supply of the ingredient necessary to produce one of the drugs at issue, and 100% with respect to a second drug. The Commissioners all characterized the conduct alleged as ''egregious,'' with one Commissioner observing that the facts alleged described ''a clear cut antitrust violation.'' Statement of Commissioner Thomas B. Leary, Dissenting in Part and Concurring in Part (available at

[12]

[13] Several commentors suggested that the mere availability of treble damage actions or other avenues of relief will ordinarily render disgorgement unnecessary, implying that ultimately such other actions will have extracted the full amount of unjust enrichment from violators and will provide adequate deterrence against future violations. On the current state of the record we cannot share this confidence. We have not been directed to empirical evidence indicating that existing remedies routinely achieve these goals, let alone evidence that antitrust defendants have been subjected to excessive, ''duplicative'' damage awards. In fact it appears that the issue has been the subject of considerable debate. , , Richard Posner, ANTITRUST LAW 47 (2d ed. 2001); John Lopatka & William Page, , 69 Geo. Wash. L. Rev. 829 (2001); Robert Lande, , 54 Ohio St. L.J. 115 (1993); Steven Salop & Lawrence White, , 74 GEO. L.J. 1001, 1033–39 (1986); Walter Erickson, , 5:4 Antitrust L. & Econ. Rev. 101 (1972); Alfred Parker, , 16 Antitrust Bull. 483 (1971); Joseph Gallo

, 486 U.S. 1014–15 (1988); v. , 87 F.3d 466, 470 (11th Cir. 1996).

The Commission is sensitive to the interest in avoiding duplicative recoveries by injured persons or ''excessive'' multiple payments by defendants for the same injury. Thus, although a particular illegal practice may give rise both to monetary equitable remedies and to damages under the antitrust laws, when an injured person obtains damages sufficient to erase an injury, we do not believe that equity warrants restitution to that person. We will take pains to ensure that injured persons who recover losses through private damage actions under the Clayton Act not recover doubly for the same losses via FTC-obtained restitution. Similarly, in cases involving both disgorgement and restitution, we would apply any available disgorged funds toward restitution and credit any funds paid for restitution against the amount of disgorgement.

We do not, however, consider it appropriate to offset a civil penalty assessment against disgorgement or restitution. As noted above, disgorgement is an equitable remedy whose purpose is simply to remove the unjust gain of the violator. Penalties are intended to punish the violator and reflect a different, additional calculation of the amount that Tf6.fsere tsoillnt ofoasesTj69370624 0 TD0 D()Tj/F12 1 T27.3328 0 sGulf 6j-1 -1.1111 Tc-0.0045 TD(interestoptimtiode Assing haocedurtiomtttowevinmove the

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[16] Courts routinely allows ''set-offs'' and credits, for example, to avoid duplicative payments. , v. , 101 F. 3d 1450, 1475 (2d Cir. 1996), , 552 U.S. 812 (1997); v. , 425 F. Supp. 593, 599 (E.D. Pa. 1976); v. , 446 F.2d 1301, 1307 (2d Cir.) (establishing escrow fund to prevent ''double liability''), , 404 U.S. 1005 (1971).