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**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN THE UNITED STATES

-- 2010 --



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Introduction

1. This report describes federal antitrust developments in the United States for the period October 1, 2009, through September 30, 2010 (“FY 2010”). It summarizes the competition enforcement and policy activities of both the Antitrust Division (“Division”) of

additional information that is needed to help the agencies during their initial review of transactions. The Commission believes the proposed changes will make the premerger notification process more efficient, and the form easier to complete. The FTC solicited public comments on the proposed, and expects to release the revised form during 2011. See

10. The Commission filed briefs in five cases, including one submitted jointly with the United States and two before the Federal Circuit. The FTC provided 4 advisory letters and submitted 11 advocacy filings.

11. At the end of FY 2010, the Division employed 787 persons: 354 attorneys, 55 economists, 170 paralegals, and 208 other professional staff. For FY 2010, the Division received an appropriation of \$163.2 million.

12. During FY 2010, the Division opened 158 investigations and filed 74 civil and criminal cases in federal district court. In FY 2009, the Division was party to three antitrust cases decided by the federal courts of appeals.

13. During FY 2010, the Division filed 60 criminal cases in which it charged 21 corporations and 63 individuals. Eleven corporate defendants and 19 individuals were assessed fines totalling \$343 million and 29 individuals were sentenced to a total of 26,046 days of incarceration. Another six individuals were sentenced to spend a total of 1,295 days in some form of alternative confinement.

14. The Division investigated 64 mergers and challenged 10 of them in court; eight transactions were restructured or abandoned prior to the filing of a complaint as a result of the Division's announcement that it would otherwise challenge the transaction. In addition, the Division screened a total of 379 bank mergers. The Division opened 102 civil investigations (merger and non-merger), and issued 480 civil investigative demands (a form of compulsory process). The Division filed four non-merger civil complaints. Also during FY 2010, the Division issued three business review letters.

3.2 *Antitrust Cases in the Courts*

15. In *Ohio v. American Express Co.*, 130 S. Ct. 2201 (May 24, 2010), the Supreme Court addressed the issue of whether a sports league structured as a joint venture of separately owned teams should be considered a single economic entity for purposes of the Sherman Act Section 1 concerted action requirement. On May 24, 2010, the Court held that the NFL teams compete in the market for intellectual property and hence collective licensing decisions by the NFL teams deprive the marketplace of

however, inform the FDA (by what is called a “Paragraph IV certification”) and the firm with the approved NDA that it believes either that the relevant patent is invalid, or that the generic does not infringe the relevant patent. In instances involving Paragraph IV certifications, approval to market is withheld for two and a half years (or until the patent litigation is resolved against the branded firm) and the branded firm is permitted to sue the generic firm for patent infringement even before the generic attempts to market its drug. To encourage generic firms to challenge drug patents, Congress provided for the first firm to file an ANDA and Paragraph IV certification with respect to a particular branded drug to be the exclusive generic marketer for a 180-day “exclusivity period” once it begins marketing.

17. In many instances, the branded and generic firms have chosen to settle their patent litigation instead of carrying it through to judgment. In a number of these instances, the settlement has provided that the generic firm will not market its generic product for some time but then is permitted to market it, in

3.3 *Statistics on Private and Government Cases Filed*

20. According to the 2010 Annual Report of the Director of the Administrative Office of the U.S. Courts, 544 new civil antitrust actions, both government and private, were filed in the Federal district courts during fiscal year 2010. See page 145 of the Report, available at

24. By the end of FY 2010, a total of 18 airlines and eight executives had been charged in the ongoing investigation into price fixing in the air transportation industry. More than \$1.6 billion in criminal fines had been imposed and four executives had been sentenced to serve prison time. Charges were pending against the remaining four executives. The airlines that had pleaded guilty, or agreed to plead guilty, were: British Airways Plc, Korean Air Lines Co. Ltd., Qantas Airways Limited, Japan Airlines International Co. Ltd., Martinair Holland N.V., Cathay Pacific Airways Limited, SAS Cargo Group A/S, Société Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM Royal Dutch Airlines), EL AL Israel Airlines Ltd., LAN Cargo S.A., Aerolinhas Brasileiras S.A., Cargolux Airlines International S.A., Nippon Cargo Airlines Co. Ltd., Northwest Airlines LLC, Asiana Airlines Inc., Polar Air Cargo LLC., and China Airlines Ltd. Airline executives from the following airlines had pleaded guilty: British Airways, Qantas Airways, Martinair, and SAS Cargo; other executives from SAS Cargo, Asiana, and Martinair Holland N.V., had been indicted.

25. **Municipal Finance Contracts:** The Division announced in FY 2010 a series of indictments and guilty pleas in its ongoing investigation of bid-rigging and fraud conspiracies related to contracts for the investment of municipal bond proceeds and other related municipal finance contracts. The conduct, which took place between approximately 1998 and 2006, involved companies that provide a type of contract, known as an investment agreement, to state, county, and local governments and agencies throughout the United States. These government entities seek to invest money from a variety of sources, primarily the proceeds of municipal bonds that they had issued to raise money for, among other things, public projects. The companies were hired to act as brokers and conduct a competitive bidding process primarily for contracts for the investment of the money raised when municipal bonds are issued. The Division alleged that the companies and their executives secretly manipulated and controlled the bidding process in numerous ways to enrich themselves and the co-conspirator providers of the investment agreements: designating in advance which providers would be the winning bidder for certain investment agreements, submitting intentionally losing bids, paying kickbacks, and unlawfully sharing information about prices or conditions in competitors' bids.

26. By the end of FY 2010, seven individuals had pled guilty in the ongoing municipal bonds investigation. A former employee of a national bank and three former employees of CDR Financial Products Inc. (CDR), a California-based financial products and services firm, had pled guilty to bid-rigging and fraud conspiracies, and three other individuals had pled guilty to related charges. In addition, three former financial services executives were indicted on July 27, 2010, for participating in fraud schemes and conspiracies related to the bidding for investment agreements. In October 2009, CDR, two of its employees and one former employee were charged for participating in bid-rigging and fraud conspiracies and related crimes. Trial is scheduled for September 12, 2011.

27. **Liquid Crystal Displays:** In FY 2010, the Division announced that two companies and four individuals had agreed to plead guilty, and one company and six of its executives had been indicted, in the ongoing investigation of price-fixing in the thin-film transistor-liquid crystal display (TFT-LCD) panels market during the period 2001-2006. TFT-LCD panels are used in computer monitors and notebooks, televisions, mobile phones and other electronic devices. In 2006, the worldwide market for TFT-LCD panels 2(et f011.)12.8()a

announced that Taiwan-based HannStar Display Corporation had agreed to pay a \$30 million criminal fine for its role in the conspiracy. On June 10, 2010, the Division announced that a federal grand jury had indicted AU Optronics Corporation, the largest Taiwanese TFT-LCD panels producer and seller, its U.S. subsidiary, and six of its Taiwan-resident executives for participation in the conspiracy.

29. **Carbon Brushes – Obstruction Conviction:** On July 27, 2010, a federal jury in Philadelphia convicted Ian P. Norris, the former CEO of The Morgan Crucible Company plc, a UK corporation, of conspiring with others to obstruct justice. In 2004, a federal grand jury indicted Norris, a UK citizen, on one count of fixing prices of carbon brushes and other carbon products, one count of conspiring to obstruct justice, and two counts of obstructing justice in connection with the price-fixing investigation in the carbon products industry. Carbon products are used to transfer electrical current in automobiles, trains, public transit vehicles and consumer products and are used in pumps and compressors to contain liquids and gases.

30. Norris was extradited to the U.S. in March 2010 on the three obstruction charges. The jury returned a guilty verdict on the conspiracy to obstruct justice count and not guilty verdicts on the witness tampering count and the count of corruptly persuading others to destroy or conceal documents. The conspiracy count carries a maximum penalty of five years in prison and a \$250,000 fine. On December 10, 2010, Norris was sentenced to serve 18 months in prison and to pay a criminal fine of \$25,000.

31. The Division alleged that Norris had conspired with his subordinates to obstruct the grand jury's investigation. Morgan Crucible employees conspired with Norris to create a false "script" that employees of both Morgan Crucible and a competitor were to follow when questioned in the investigation. Also, a "document destruction task force" was formed to collect and destroy or conceal documents from the grand jury.

32. More than \$11 million in criminal fines have been obtained and four executives and two companies have pleaded guilty or have been convicted as a result of this investigation. Morgan Crucible Company plc, based in the U.K., pleaded guilty in 2002 to one count of tampering with witnesses and one count of document destruction. The company paid a \$1 million criminal fine. A U.S.-based former subsidiary of the company, Morganite Inc., pleaded guilty in 2002 to fixing prices of carbon products and paid a \$10 million fine. In addition, three subordinates of Norris previously pleaded guilty to obstruction charges.

33. **Iowa Ready-Mix Concrete:** On May 24, 2010, the Division announced that the president of an Iowa ready-mix concrete company had pleaded guilty to participating in a conspiracy to fix prices and rig bids for the sale of ready-mix concrete sold to various companies in 2008 and 2009. The defendant participated in a conspiracy in which he engaged in discussions concerning project bids for sales of ready-mix concrete in Iowa, submitted rigged bids at collusive and noncompetitive prices, and accepted payment for sales of ready-mix concrete at collusive and noncompetitive prices. In the same investigation of the concrete industry in Iowa, a former executive of an Iowa concrete company pled guilty on May 4, 2010, and was sentenced to serve 19 months in jail and pay a criminal fine of \$100,000 for his participation in conspiracies to fix prices and rig bids.

34. **High Technology Companies and No Solicitation Agreements:** On September 24, 2010, the Department announced that it had reached a settlement with six high technology companies – Adobe

that the companies' actions reduced their ability to compete for high tech workers and interfered with the proper functioning of the price-setting mechanism that otherwise would have prevailed in competition for employees. The settlement, which will be in effect for five years, prohibits the companies from engaging in anticompetitive no solicitation agreements. The settlement prohibits the companies from entering, maintaining, or enforcing any agreement that prevents any person from soliciting, cold calling, recruiting,

38. **Daily Gazette Company/MediaNews Group Inc.:** On January 20, 2010, the Department

required MRHC to renegotiate all existing contracts with health plans and to submit any revised contracts for state approval. See <http://www.ftc.gov/opa/2010/06/ruralhealth.shtm>.

42. **Amerco-Avis Budget Group.** U-Haul International, Inc. and its parent company settled Federal Trade Commission charges that they violated the FTC Act by inviting U-Haul's closest competitor, Avis Budget Group, Inc., to collude on prices for truck rentals. U-Haul and Budget control more than 70 percent of the "do-it-yourself" one-way truck rental business in the United States. The FTC's complaint alleged that on several occasions between 2006 and 2008, U-Haul tried to increase rates for one-way truck rentals by privately and publicly communicating with Budget, the second largest truck rental company in the United States. However, the complaint did not allege that U-Haul and Budget actually reached an agreement, but according to the FTC, if U-Haul would had succeeded in its price-fixing plan, the two companies could have imposed higher prices on truck-rental consumers. The FTC order, approved in July 2010, bars U-Haul and its parent company AMERCO from colluding or inviting collusion. Specifically, the companies are prohibited from inviting a competitor to divide markets, allocate customers, or fix prices, as well as participating in, maintaining, organizing, implementing, enforcing, offering, or soliciting any other company to engage in such conduct. The order also includes monitoring and compliance provisions to ensure that U-Haul and AMERCO comply with its terms. See <http://www.ftc.gov/opa/2010/06/uhaul.shtm>.

43. **North Carolina Dental Board.** The FTC issued an administrative complaint on July 17, 2010 alleging that the North Carolina Board of Dental Examiners (the "Dental Board") harms competition by blocking non-dentists from providing teeth-whitening services in the state. The FTC charged that the Dental Board impermissibly ordered non-dentists to stop providing teeth-whitening services, thereby making it more difficult and expensive for North Carolina consumers to obtain these services. According to the FTC's administrative complaint, teeth-whitening services are much less expensive when performed by non-dentists than when performed by dentists. The case was appealed to an Administrative Law Judge for hearing, including on state action grounds. See <http://www.ftc.gov/opa/2010/06/ncdental.shtm> and <http://www.ftc.gov/os/adjpro/d9343/index.shtm>.

44. **Transitions Optical, Inc.** Transitions Optical, Inc. the nation's leading manufacturer of photochromic treatments that darken corrective lenses used in eyeglasses, agreed to stop using anticompetitive practices to maintain its monopoly and increase prices, under a settlement with the FTC. Photochromic treatments are applied to eyeglass lenses to protect the eyes from harmful ultraviolet (UV) light. Treated lenses darken when exposed to UV light and fade back to clear when the UV light

her individual capacity. The Commission complaint and consent order settling the FTC's charges named the Executive Director individually, and will prevent her from orchestrating or implementing price-fixing agreements among the group's competing physicians. See <http://www.ftc.gov/opa/2010/02/bouldervlly.shtm>.

46. **Roaring Fork Valley Physicians, IPA, Inc.** Roaring Fork Valley Physicians, IPA, Inc., a

3.6 Business Reviews Conducted by the Department of Justice

50. Under the Department's business review procedure, an organization may submit a proposed action to the Department and receive a statement as to whether the Department would likely challenge the action under the antitrust laws. The Department issued three business review letters in FY 2010. These business review letters can be found at <http://www.usdoj.gov/atr/public/busreview/letters.htm>.

On February 24, 2010, the Department announced it would not challenge a proposal by MyWire Inc. to form the Global News Service, an online subscription news aggregation service. The service would provide interconnections among different publishers' online content, such as news articles and video and audio clips, that relate to the same topic. Based on representations made by MyWire, the Department concluded that the formation and operation of the news service would not be likely to reduce competition among Internet publishers and could provide procompetitive benefits to both publishers and consumers.

On April 1, 2010, the Department announced it would not challenge a proposal by The Associated Press (AP) to develop and operate a voluntary news registry to facilitate the licensing and Internet distribution of news content created by the AP, its members, and other news originators. The Department said that the development and operation of the registry is not likely to reduce competition among news content owners and could provide procompetitive benefits to both participating content owners and content users.

On April 26, 2010, the Department issued a business review letter stating it would not object to an information exchange program of Hospital Value Initiative (HVI), a coalition of three organizations in California representing group purchasers of health care services for more than 7 million people. HVI proposed to provide data on the relative costs and resource efficiency of more than 300 hospitals in California. HVI would collect, analyze and distribute aggregated comparative data on the level of reimbursement received, and the resources used, by California hospitals in providing inpatient and outpatient services. The Department determined that HVI's proposal was not likely to produce anticompetitive effects because the exchange would involve data that was at least 10 months old and the program would not disclose disaggregated data or any hospital's actual service fees. HVI's data exchange program could potentially benefit consumers by increasing the transparency of the relative costs and resource efficiency of hundreds of California hospitals.

4. Enforcement of antitrust laws and policies: mergers and concentrations

4.1 Enforcement of Pre-merger Notification Rules

51. In *United States v. Smithfield Foods, Inc. and Premium Standard Farms, LLC*,² the government's complaint alleged that prior to the expiration of the statutory waiting period applicable to Smithfield's acquisition of Premium Standard, Premium Standard ceased to exercise independent business judgment in its hog purchases. Instead, it submitted for Smithfield's consent each of the contracts for hog purchases from independent producers that arose during the HSR waiting period. These hog procurement contracts were necessary to Premium Standard's ongoing business and entered into in the ordinary course. Through this conduct, Smithfield exercised operational control over Premium Standard's hog procurement and thereby acquired beneficial ownership of a significant segment of Premium Standard's business. Such "gun jumping" is prohibited by the Act. Under the terms of a consent decree entered by the Court on

² *United States v. Smithfield Foods, Inc. and Premium Standard Farms, LLC*, No.1:10-CV-00120 (D.D.C. filed January 21, 2010).

from Ovation's sales of Indocin and NeoProfen. On August 31, 2010, the district judge held that the plaintiffs had not proved that NeoProfen and Indocin compete in the same product market, and, therefore, had failed to demonstrate that the acquisition substantially lessened competition or maintained a monopoly. As a result, the court dismissed both actions. See <http://www.ftc.gov/os/caselist/0810156/index.shtm>. The case is on appeal to United States Court of Appeals for the Eighth Circuit.

56. **NuFarm / A.H. Marks Holdings, Ltd.** Australian chemical company Nufarm Limited agreed to sell certain assets and modify some of its business agreements to settle charges that its 2008 acquisition of rival A.H. Marks Holding Limited hurt competition in the U.S. market for three herbicides that are relied upon by farmers, landscapers, and consumers. Under the settlement, Nufarm will sell rights and assets associated with two of the herbicides to competitors and will modify agreements with two other companies to allow them to fully compete in the market for the other herbicide. According to the FTC's complaint, Nufarm's acquisition of United Kingdom-based A.H. Marks gave Nufarm monopolies in the U.S. markets for two herbicides called MCPA and MCPP-P, which also are known as phenoxy herbicides, and the transaction also left only two competitors in the market for a third phenoxy herbicide, called 2,4DB. See <http://www.ftc.gov/opa/2010/07/nufarm.shtm>.

57. **Fidelity / LandAmerica.** To settle FTC charges that its 2008 acquisition of three LandAmerica Financial, I

60. **Varian, Inc. / Agilent, Inc.** To settle anticompetitive concerns arising from their \$1.5 billion merger, Agilent Technologies, Inc. and Varian, Inc., two leading global suppliers of high-performance scientific measurement instruments, agreed to sell three of their product lines. According to the FTC's complaint, Agilent's acquisition of Varian would have allowed Agilent to raise prices, decrease innovation

access to this information likely would have harmed competition in the U.S. markets for carbonated soft drinks. See <http://www.ftc.gov/opa/2010/02/pepsi.shtm> and <http://www.ftc.gov/opa/2010/09/coke.shtm>.

65. **Agrium / CF Industries.** Agricultural products supplier Agrium Inc. agreed to a settlement that will allow the company to move forward with its acquisition of competitor CF Industries Holdings, Inc. The proposed consent order settles charges that the acquisition would have eliminated competition between the two firms, in the Pacific Northwest and two Illinois markets, in the anhydrous ammonia fertilizer market. To address the FTC's concerns, Agrium agreed to divest identified anhydrous ammonia terminals in the Pacific Northwest and Northern Illinois and to rescind its rights to market anhydrous ammonia produced by Rentech at Rentech's East Dubuque, Illinois manufacturing facilities. See <http://www.ftc.gov/opa/2009/12/agrium.shtm>.

66. **Watson Pharmaceuticals / Arrow Group.** The Commission alleged that Watson Pharmaceuticals, Inc.'s acquisition of Robin Hood Holdings Limited, owner of Arrow Pharmaceuticals, would have harmed consumers by eliminating future competition for important generic drugs used to treat Parkinson's disease (cabergoline) and the side effects of chemotherapy (dronabinol). The Commission's order, issued on January 7, 2010, required the firms to sell assets related to the two drugs to FTC-approved buyers and to ensure that the acquirers have the means to compete effectively in the future. See <http://www.ftc.gov/opa/2009/12/watsonarrow.shtm>.

67. **SCI / Palm Mortuary.** The Commission challenged Service Corporation International's (SCI) proposed acquisition of Las Vegas rival Palm Mortuary, Inc. The Commission required that SCI, the nation's largest cemetery operator and the third-largest provider of cemetery services in Las Vegas, Nevada, to sell a cemetery and related funeral home in Las Vegas to complete its proposed acquisition of Palm. See <http://www.ftc.gov/opa/2009/11/sci.shtm>.

68. **Panasonic / Sanyo.** Major consumer electronics manufacturers Panasonic Corporation and Sanyo Electric Co., Ltd. agreed to sell Sanyo's portable nickel metal hydride (NiMH) battery business related assets, including a premier manufacturing facility in Japan, to allow the firms to proceed with their proposed \$9 billion transaction. NiMH batteries power two-way radios, among other products, which are used by police and fire departments nationwide. The FTC alleged that the transaction combined the world's two largest manufacturers and sellers of these batteries, and ordered Sanyo to sell the assets to FDK Corporation, a subsidiary of Fujitsu Ltd. See <http://www.ftc.gov/opa/2009/11/sanyo.shtm>.

69. **Merck / Schering-Plough.** The Commission challenged Schering-Plough's proposed \$41.4 billion acquisition of Merck & Co., and required divestitures to preserve competition in markets for certain human and animal pharmaceuticals in order that the transaction could proceed. The FTC's complaint alleged that the companies were the two leading animal health suppliers in the U.S., and that the acquisition raised significant concerns in markets in which Merck, through Merial Limited, and Schering-Plough competed directly. It also alleged that the transaction raised competitive concerns with regard to human drugs identified as NK 1 receptor antagonists, with Merck having the first and only such drug approved for human use to treat common side effects of both chemotherapy and surgery and Schering-Plough in the process of licensing its drug to a third party. The FTC believed it likely that the transaction would have reduced the combined firm's incentives to launch Schering-Plough's drug. The parties agreed to a consent order requiring that Merck sell its interest in Merial Limited, an animal health joint venture with Sanofi-Aventis S.A., and that Schering-Plough sell its assets related to significant drugs for nausea and vomiting in humans. See <http://www.ftc.gov/opa/2009/10/merck.shtm>.

70. **Pfizer Inc. / Wyeth.** The Commission challenged Pfizer Inc.'s proposed \$68 billion acquisition of Wyeth and required significant divestitures to preserve competition in multiple U.S. markets for animal pharmaceuticals and vaccines. The FTC's complaint alleged that the proposed transaction would harm

industry participants. As part of the EC's merger review process, Cisco made commitments to facilitate interoperability between its telepresence products and those of other companies. The commitments were designed to foster the development of open operating standards, which lower barriers to entry and can be especially procompetitive in rapidly evolving high technology markets. The Division concluded that the proposed deal was not likely to be anticompetitive, given the evolving nature of the videoconferencing market and the commitments that Cisco made to the EC to facilitate interoperability. See http://www.justice.gov/atr/public/press_releases/2010/257173.htm.

75. **Election Systems & Software/Premier Election Solutions: In**

, the Division, joined by nine state attorneys general (Arizona, Colorado, Florida, Maine, Maryland, Massachusetts, New Mexico, Tennessee and Washington), challenged the 2009 acquisition of Premier Election Solutions, Inc. and PES Holdings, Inc. (collectively, "Premier") by Election Systems and Software, Inc. ("ES&S"). The complaint alleged that the acquisition substantially lessened competition in the market for voting equipment systems, as it combined the two largest providers of systems used to tally votes in federal, state and local elections in the United States. As a result of the acquisition, which did not require notification under the HSR Act because its \$5 million value fell below the Act's size threshold, ES&S became the provider of more than 70 percent of the voting equipment systems in the United States. The Division filed a proposed consent decree-2.9(2(c)h(2(c)hg.9(laiuh.3(s)-18.9(r9

on July 13, 2010. See United States v. Bemis Compan

81. On November 10, 2009, the Agencies signed a Memorandum of Understanding (MOU) on antitrust cooperation with the Russian Federal Antimonopoly Service (FAS). See a more complete discussion in the 2009 Annual Report on Competition Policy Developments in the U.S, at

5.2 *Outreach*

87. In FY 2010, the Agencies continued to provide technical assistance on competition law and policy matters to their international antitrust enforcement counterparts. The FTC's international technical assistance antitrust programs conducted 31 missions in almost 30 countries. As part of U.S. efforts to assist China as it implements its new antitrust laws, senior FTC and DOJ officials and staff held discussions with the Chinese antitrust agencies in the United States and China. The Agencies' staff, together with U.S.

90. **Gasoline Prices.** On September 24, 2010, the FTC provided comments in support of a New Jersey State Senate Bill that would modify current law to allow gasoline retailers to set their prices below cost to meet competition. The FTC encouraged the passage of the Bill explaining that, if adopted, the Bill would permit gasoline retailers to meet a rival's price even if that price fell below the retailer's costs. The FTC stated the Bill would likely encourage more aggressive price competition, which would benefit New Jersey consumers through lower gasoline prices. See <http://www.ftc.gov/opa/2010/09/gasolinepepsi.shtm>.

91. **Veterinarians.** On August 20, 2010, the FTC filed a comment with the Texas Board of Veterinary Medical Examiners concerning the Board's proposed rule on animal teeth floating – the practice of filing the outer contours of an animal's teeth. The FTC comment observed that: 1) the rule would prohibit any non-veterinarian from floating the teeth of animals with motorized or air-powered files except under the direct supervision of a licensed veterinarian; 2) under the current rules, no such

structural safeguards against the range of adverse competitive effects associated with partial acquisitions. See <http://www.ftc.gov/opa/2010/04/boulderelectric.shtm>.

94. **Utilities, Electricity.** On March 19, 2010, the FTC submitted a comment to FERC on regional transmission organization (RTO) and independent system operator (ISO) performance metrics. The FTC recommended that FERC select performance metrics that will accurately evaluate the degree to which RTOs display required characteristics and perform their required functions. The FTC further urged FERC to explicitly address the risk of potential distortions in RTO performance that may result from flawed or incomplete performance metrics. The FTC also recommended that FERC consider adding to the minimum characteristics and functions of RTOs a requirement to operate efficiently, including being responsive to grid users and the retail customers they serve. See <http://www.ftc.gov/opa/2010/04/boulderelectric.shtm>.

95. **Health Care.** On January 28, 2010, in response to a request from Kentucky Cabinet for Health and Family Services (“Cabinet”), the FTC filed a comment on the proposed regulation of limited service clinics (LSCs) in Kentucky. The FTC comment observed that a proposed rule contains three categories of regulatory provisions that were likely to raise competitive concerns. The first involves limits on the scope of professional services that may be provided at an LSC – limits that do not apply to the same c0.(9nth)12.5()10.7(uod(9
97.

98. **Utilities, Electricity.** On December 3, 2009, the FTC submitted a comment concerning issues of transmission planning and transmission cost allocation, in response to FERC's request for comment. In its comment, the FTC explained that transmission planning is most likely to be effective when the geographic scope of the planning process matches the geographic scope of power flows. The FTC encouraged FERC to require ongoing transmission planning at the Interconnection level in order to facilitate the most effective and efficient transmission planning regime for the U.S. The FTC urged FERC to foster consistent,

7. New Studies Related to Antitrust Policy

7.1 *Joint Conferences and Reports*

107.

entry for 48 months. On average, agreements with compensation from the brand company to the generic producer prohibit generic entry for nearly 17 months longer than agreements without payments. Most of

well as to listen to and learn from parties with real-world experience in the agricultural sector. The workshops addressed the dynamics of competition in agriculture markets, including buyer power (monopsony) and vertical integration. They examined legal doctrines and jurisprudence, as well as current economic learning, and provided an opportunity for farmers, ranchers, consumer groups, processors, agribusiness, and other interested parties to provide examples of potentially anticompetitive conduct and to discuss any concerns about the application of the antitrust laws to the agricultural sectors.

115. The DOJ Economic Analysis Group issued the following papers during FY 2010. The papers are available at http://www.usdoj.gov/atr/public/eag/discussion_papers.htm.

The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years,
(Published in 77 701, (2010)).

Cumulative Innovation and Competition Policy, Alexander Raskovich and Nathan H. Miller,
EAG 10-5, September 2010.

A Theory of Quality Competition in Newspaper Joint Operating Agreements,

Filling Out the Instrument Set in Mixed Logit Demand Systems for Aggregate Data,

Competition Among Spatially Differentiated Firms: An Empirical Model with an Application to
Cement,

The Economics of Railroad “Captive Shipper” Legislation,
(Published in (2010)).

The Entry Incentives of Complementary Producers: A Simple Model with Implications for
Antitrust Policy,

Competition Issues in Restructuring Ports and Railways, Including Brief Consideration of these
Sectors in India, (Published in
(2009)).

APPENDICES

	FTE	Amount (\$ in thousands)
Antitrust Policy Analysis	7.3	\$1,205.6
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	7.3	\$1,205.6
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Other Direct	21.6	\$4,833.4
	15.9	\$3,641.7
	4.5	\$877.8
	1.2	\$313.9
Support	135.6	\$55,458.5