

1986
ANNUAL
REPORT

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

Annual
Report
of the

FEDERAL
TRADE
COMMISSION

For the Fiscal Year Ended

September 30, 1986

For sale by the Superintendent of Documents, U.S. & Government Printing Office
Washington, D.C. 20402

FEDERAL TRADE COMMISSION

DANIEL OLIVER, Chairman*
TERRY CALVANI, Acting Chairman**
PATRICIA P. BAILEY, Commissioner
MARY L. AZCUENAGA, Commissioner
ANDREW J. STRENIO, JR. Commissioner

EMILY H. ROCK, Secretary

* Took oath of office April 21, 1986.

** From October 7, 1985 to April 20, 1986.

EXECUTIVE OFFICES OF THE FEDERAL TRADE COMMISSION

Pennsylvania Avenue at Sixth Street, N.W.
Washington, D.C. 20580

Regional Offices

Atlanta, Georgia
Room 1000
1718 Peachtree Street, N.W.
Zip Code: 30367

Denver, Colorado
Suite 2900
1405 Curtis Street
Zip Code: 80202

Boston, Massachusetts
Room 1184
10 Causeway Street
Zip Code: 02222-1073

Los Angeles, California
Room 13209
11000 Wilshire Boulevard
Zip Code: 90024

Chicago, Illinois
Suite 1437
55 East Monroe Street
Zip Code: 60603

New York, New York
Room 2243-EB Federal Building
26 Federal Plaza
Zip Code: 10278

Cleveland, Ohio
Suite 500 - Mall Building
118 St. Clair Avenue
Zip Code: 44114

San Francisco, California
901 Market Street
Suite 570
Zip Code: 94103

Dallas, Texas
Suite 140
8303 Elmbrook Drive
Zip Code: 75247

Seattle, Washington
28th Floor - Federal Building
915 Second Avenue
Zip Code: 98174

Field Station

Honolulu, Hawaii
Room 6324
300 Ala Moana Blvd.
Zip Code: 96850

LETTER OF TRANSMITTAL

October 20, 1988

The Honorable George Bush
President of the Senate
United States Senate
Washington, D.C. 20510

The Honorable Jim Wright
The Speaker of the House of Representatives
House of Representatives
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-second Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1986.

By direction of the Commission.

Daniel Oliver
Chairman

FEDERAL TRADE COMMISSION
1986 ANNUAL REPORT

Table of Contents

	Page
Summary	1
Maintaining Competition Mission	3
Mergers	3
Energy and Natural Resources	5
Health Care	6
Transportation	7
Horizontal Restraints	7
International Antitrust	8
Market Power	9
Distributional Restraints	9
Food	10
Evaluation, Planning and Development	10
Compliance	10
Consumer Protection Mission	11
Advertising Practices	11
Marketing Practices	14
Credit Practices	16
Service Industry Practices	18
Enforcement	20
Office of Consumer and Business Education	22
Economic Activities	23
Antitrust	24
Consumer Protection	24
Regulatory Analysis	24
Line of Business	25
Executive Direction, Administration and Management, and Regional Offices	25

Appendix

Part II (Investigative Stage) Consent Agreements
Accepted and Published for Public Comment

Maintaining Competition Mission	29
Consumer Protection Mission	29

Part II (Investigative Stage) Consent Orders
Issued

Maintaining Competition Mission	31
Consumer Protection Mission	34

Part III Administrative Complaints

Maintaining Competition Mission	38
Consumer Protection Mission	39

Part III (Adjudicative Stage) Consent Agreements
Accepted and Published for Public Comment

Maintaining Competition Mission	40
Consumer Protection Mission	41

Part III (Adjudicative Stage) Consent Orders
Issued

Maintaining Competition Mission	42
Consumer Protection Mission	43

Initial Decisions

Maintaining Competition Mission	45
Consumer Protection Mission	46

Final Commission Orders

Maintaining Competition Mission	47
Consumer Protection Mission	48

Order Modifications

Maintaining Competition Mission	49
Consumer Protection Mission	51

Preliminary and Permanent Injunctions

Maintaining Competition Mission	52
Consumer Protection Mission	53

Civil Penalty Actions

Maintaining Competition Mission	60
Consumer Protection Mission	61

Supreme Court Decision	64
Economic Reports Completed	65
Working Papers	66
Miscellaneous Economic Policy Papers	67
Congressional Testimony and Comments	68
Consumer and Competition Advocacy	70
Table of Cases Listed in Appendices	81

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 are competitive, function vigorously and efficiently, and are free from undue governmental as well as private restrictions. The Commission also seeks to improve the operation of the marketplace by eliminating deceptive and unfair practices, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise of informed choice by consumers. The Commission's economic analysis activities support this law enforcement effort and contribute to the economic policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

During Fiscal Year 1986, the Commission continued efforts to reshape policy to meet the needs of consumers more effectively and to increase staff effectiveness. The major focus was on case-by-case enforcement. The staff also was active in developing and presenting comments in response to requests from other government bodies in connection with the Commission's competition and consumer advocacy program. Efforts continued in the area of consumer and business education. These efforts included:

CASE SELECTION

The Commission continued its strategy of selecting cases to ensure that agency resources were allocated to activities that promised the best possible return for consumers. Antitrust resources were devoted to detecting and eliminating antitrust law violations such as collusion, anticompetitive mergers, predatory single firm conduct, injurious vertical restraints, and other anticompetitive practices in the private sector. Consumer Protection resources were devoted to efforts to improve market performance so that consumers could make informed choices. The remedies employed were those considered most likely to achieve the goals of ending unfair or deceptive practices without also chilling procompetitive conduct. Combating national investment fraud continued to be an important priority. Six consumer redress orders were obtained, and a total of \$6,035,000 in redress was ordered.

ECONOMIC ANALYSIS

Economic analysis activities continued to play an important role in the selection of antitrust and consumer protection cases. Early analysis of the economic policy issues raised by proposed law enforcement initiatives allowed the Commission to focus on the injury resulting from

different practices and to weigh whether the initiatives would result in a net benefit to consumers. In addition, the Bureau of Economics completed several economic reports providing useful in-depth insight into areas of particular concern to the Commission.

RULE ENFORCEMENT

The FTC continued to commit resources carefully to its rulemaking proceedings. As in the past six years, this process involved analysis of whether individual cases or industry-wide enforcement offered the most appropriate remedies for eliminating conduct harmful to consumers. During the fiscal year, the Commission amended the Pre-sale Availability and Appliance Labeling Rules, issued a Notice of Proposed Rulemaking for the Retail Food Store Advertising and Marketing Practices Rule, and proposed regulations under the Smokeless Tobacco Act.

COMPETITION AND CONSUMER ADVOCACY

The Commission continued its program of responding to requests for evaluations of the consumer welfare implications of proposed government action. Staff comments were submitted to several federal, state, and local government bodies presenting views in areas in which the Commission staff has special expertise or experience. For example, the staff submitted comments at the request of the Illinois state legislature concerning proposed legislation to permit competing physicians to determine jointly the price at which they would participate in PPOs, HMO, and other health care programs. Although it is difficult to measure the extent to which the staff's comments influenced the result, one press report characterized the staff's comments as "a development critical to the defeat of S.B.2202 thus far."

CONSUMER AND BUSINESS EDUCATION

The Commission, through its Bureau of Consumer Protection and regional offices, maintained an active consumer and business education program. The program provided information to consumers and industry on major Commission decisions, enforcement programs, statutes, and rules, and continued to be a cost-effective way of obtaining compliance with the law.

The staff developed several new consumer booklets in cooperation with private organizations, including Money Matters, which won a Blue Pencil Award from the National Association of Government Communicators, and was developed in cooperation with the American Association of Retired Persons (AARP). The Commission also worked in cooperation with two other organizations in developing consumer information. Over

a million copies of these and other FTC publications were distributed during the fiscal year.

MANAGEMENT IMPROVEMENTS

The Commission expended 1,107 workyears and \$62.7 million in fiscal 1986. The agency expended virtually all of its regular appropriation. It returned \$87,000 to the Treasury from its 1985 space consolidation appropriation of \$3.8 million.

Consolidation of the FTC's five satellite buildings in Washington, D.C. into the 601 Pennsylvania Avenue Building was planned and orchestrated to a large extent in this fiscal year. A major upgrading and expansion of the agency's telecommunication system was part of the consolidation effort. In addition, the Commission advanced its multi-year plan to make electronic workstations available to all professional staff.

MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is devoted to preventing unfair methods of competition and promoting competition. The Bureau of Competition is primarily responsible for conducting the activities of this mission. Activities are grouped into ten program areas: mergers, energy and natural resources, health care, transportation, horizontal restraints, compliance, international antitrust, market power, distributional restraints, and food. In addition, the Bureau is responsible for evaluation, planning, and development.

MERGERS

The Mergers program is directed to litigation to prevent or eliminate anticompetitive mergers. It also includes administration of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, under which certain mergers and acquisitions must be reported in advance to the Commission and the Department of Justice.

During fiscal 1986 notices of 1,949 transactions were filed with the Commission pursuant to the Hart-Scott-Rodino Premerger Notification Program. This is an increase of 21.6% over the fiscal 1985 volume. The Commission issued "requests for additional information" relating to 43 of those transactions. The merger enforcement program relies heavily on the ability to seek preliminary injunctions against anticompetitive mergers and acquisitions. In fiscal 1986, the Commission obtained injunctions against PPG Industries, Inc.'s acquisition of Swedlow, Inc., and Coca Cola's acquisition of the Dr Pepper Company. Administrative complaints were issued in both matters. The Commission voted to seek

to enjoin the acquisition by PepsiCo of the United States assets of Philip Morris Co.'s Seven-Up division. Thereafter, the parties abandoned the transaction. The Commission also voted to seek a preliminary injunction against Occidental Petroleum's acquisition of Tenneco Polymers, Inc. Following the court's grant of a temporary restraining order and notwithstanding its subsequent denial of a preliminary injunction, the Commission issued an administrative complaint.

The Commission accepted seven final consent agreements in merger cases during fiscal 1986. In Warner/Polygram, the Commission had obtained an injunction during the previous year and in June 1986 settled the administrative complaint's charges. The two companies separately agreed to seek prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with such companies. In Columbian Enterprises, the Commission accepted a consent order in November 1985, in which Columbian agreed not to acquire, for a period of five years, U.S. rubber carbon black assets of a specified size, unless it obtained prior Commission approval. In Bass Brothers and Ashland Oil, Inc., the Commission accepted final consent orders whereby Ashland agreed not to sell its carbon black business to Bass, and both agreed for four years to give the Commission prior notice of certain sales and transfers and observe a waiting period before consummation. In MidCon, the Commission issued a final consent order in February 1986 prohibiting MidCon, for a ten-year period, from acquiring any interest in additional pipelines that sell a substantial volume of natural gas in the Baton Rouge area without prior Commission approval. The Commission issued a final consent order in Occidental Petroleum which would allow Occidental to consummate its acquisition of MidCon after Occidental agreed to divest MidCon's pipeline subsidiary that transports gas from the Gulf Coast to St. Louis.

On March, 26, 1986, the Commission amended the Premerger Notification and Report Form to require the submission of 1982 revenue data instead of 1977 revenue data in response to certain items on the form. The form requires data for two time periods: the most recent year for which the requested information is available, and the "base-year" that coincides with the Bureau of the Census' most recently available quinquennial economic census of manufactures and mineral industries. The Commission and the Department of justice compare these statistical data to the reporting persons' revenue data to determine whether a proposed transaction may raise antitrust concerns. This revision allows the agencies to conduct an antitrust analysis based upon more recent, accurate, and relevant statistical data. Additionally, after seeking and receiving 26 public comments on 13 proposed amendments to the premerger notification rules, the staff prepared rules changes for final action by the Commission.

ENERGY AND NATURAL RESOURCES

Resources devoted to this program are employed for the investigation and prosecution of anticompetitive mergers and acquisitions in the petroleum and other natural resource industries. In addition, the Commission examines antitrust issues under this program relating to the Outer Continental Shelf Lands Act, the National Energy Conservation Policy Act, and the International Energy Program.

The Commission continued its active involvement in maintaining competition in both petroleum and non-petroleum energy industries. During the 1986 fiscal year, several non-public investigations were initiated or continued. In addition, the Commission authorized the Bureaus of Competition and Economics to respond to a number of Congressional requests for analysis and advice on energy competition issues.

The Commission also reviewed several significant proposed energy acquisitions. In one of these, MidCon/United, the likelihood of anticompetitive results attributable to horizontal overlaps between certain natural gas pipelines in Louisiana led to a divestiture of assets pursuant to a consent order against the acquiring company. The Commission is also seeking through an administrative proceeding a divestiture of certain offshore gulf coast natural gas pipelines that were combined into one company as the result of the MidCon/United merger.

Another acquisition involving natural gas pipelines was Occidental's acquisition of MidCon. This acquisition combined a large natural gas producer with a large pipeline company. The acquisition raised a significant possibility that the combined companies could exercise market power to evade rate-of-return regulation. To avoid this result, the Commission accepted a consent order requiring Occidental to divest a natural gas pipeline serving the St. Louis, Missouri area.

The Commission and its staff also provided advice and comments, where requested, to state and other federal government bodies concerning regulatory activities in energy markets.

Finally, the Commission continued to discharge its responsibilities under the Energy Policy and Conservation Act with regard to the International Energy Program by monitoring industry meetings, providing antitrust advice to other federal agencies, and preparing and issuing reports on the competitive impact of the International Energy Program to the President and Congress. The Commission also continued to fulfill its obligations under the Deep Seabed Hard Mineral Resources Act, the National Energy Conservation Policy Act and the Power Plant and Industrial Fuel Use Act, and conducted several investigations in various resource industries. The Commission concluded an investigation of the

lithium industry by issuing a consent order against Lithium Corporation of America.

HEALTH CARE

This program covers investigation and prosecution of antitrust violations in the health care industry, including boycotts against cost-containment plans of medical insurers and agreements among hospitals or other health care professionals to restrict truthful price advertising or other forms of competition.

During fiscal 1986, the Commission continued its efforts to promote competition in the health care sector of our economy. The Commission was particularly active in law enforcement efforts to prohibit providers from collectively coercing higher fees from third-party payers. In the Supreme Court, the Commission obtained affirmance (reversing the Seventh Circuit) of its decision that Indiana dentists violated the antitrust laws when they collectively refused to submit x-rays to insurers who need them for cost-containment purposes.

In other areas, the Commission pursued law enforcement actions to eliminate private and public restraints on competition in the health care areas. The Commission issued complaints against state regulatory boards of optometry, dentistry and podiatry, alleging restrictions on truthful advertising, such as discount advertising, by such providers. Consent settlements were obtained in several of these matters, and at the end of the fiscal year another was before the Commission on appeal from an Administrative Law Judge's finding of a violation. In another advertising matter, the Commission issued a consent order settling charges that a national optometric association has illegally restricted truthful advertising and certain aspects of commercial practice by optometrists.

The Commission has also been active in preventing collective activities by physicians to restrain competition from allied health professionals and alternative delivery systems. The Commission approved a consent order prohibiting a medical staff of a hospital from threatening to boycott the hospital as a means of forcing it to stop operating an urgent care center in competition with the physicians. The Commission also accepted a consent settlement in a matter charging that physicians had unreasonably restricted the granting of hospital privileges to podiatrists. The Commission also upheld an Administrative Law Judge's decision finding a violation of antitrust laws and issued an order to remedy the anticompetitive effects of Hospital Corporation of America's acquisition of competing hospitals in Chattanooga, Tennessee. Finally, the Commission's staff investigated allegations of abuse of the certificate-of-need regulatory process to exclude competitors from health care markets.

In addition to traditional law enforcement activity, the Commission and its staff provided advisory opinions and informal guidance to health care professionals seeking to insure that their proposed activities, including new forms of health care marketing and delivery, and dispute resolution services, conform to the requirements of the antitrust laws. The Commission and its staff also provided advice and comments to the Congress, the states, and the public on matters involving competition in the health care field.

TRANSPORTATION

This program focuses on investigation, litigation, and advocacy in regulated and non-regulated transport industries, including automobile retailing.

During fiscal 1986, the Commission continued a program of advocating a greater role for competition in taxicab markets, chiefly through staff testimony. Chicago was among the cities where Commission views were presented. In the Amerco matter (U-Haul), staff continued an antitrust action involving allegations of sham litigation. Several investigations into collusion in automobile retailing were pursued.

HORIZONTAL RESTRAINTS

The Horizontal Restraints program is responsible generally for the investigation of and litigation against collusion among competitors. This program includes analysis of the structure and conduct of bid depositories, the activities of trade associations and standards-setting organizations, and the impact of government regulatory activities on competitors.

During fiscal 1986, the Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially among professionals. The Commission has focused its efforts on regulations issued by state boards and private professional and trade associations that may have the purpose, or the effect, of fixing or stabilizing prices or reducing output and that may cause substantial injury to consumers. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means: intervention and advocacy, cooperative efforts resulting in voluntary compliance, consent orders, and litigation. The Commission issued decisions and orders in eleven matters in fiscal year 1986: a litigated order in Superior Court Trial Lawyers Association (SCTLA), involving a concerted refusal by attorney-respondents and other members of SCTLA to accept appointment to represent indigent criminal defendants in the District of Columbia in order to coerce the District to increase the fees for the attorneys' services; a litigated order in The Electrical Bid Registration Service of Memphis, Inc., involving the rules and practices

of a bid depository in the construction industry that restricted price competition by preventing certain kinds of price negotiations; a consent order in Rhode Island Board of Accountancy, involving the adoption by a state regulatory board of an absolute prohibition against advertising and solicitation of business by certified public accountants; a consent agreement in Roswil, Inc., involving a conspiracy among competing grocery chains to prevent the collection and dissemination of comparative retail grocery prices to consumers; a consent order in Michigan Watchmakers Guild, Inc., involving the publication and dissemination by a trade association of suggested minimum price lists for the cleaning and repair of watches, clocks and jewelry; a consent order in Independent Insurance Agents of America, and two other related groups, involving boycotts by associations of insurance company agents; and a consent order against members of the wall covering trade association involving a conspiracy to restrain competition in the sale of wallpaper. The Commission also continued litigation in several other alleged horizontal restraint cases initiated in fiscal year 1985. The Commission contributed to efforts leading to repeal of several other restrictions on commercial activities of state-licensed professionals.

INTERNATIONAL ANTITRUST

This program includes investigation and prosecution of antitrust violations that have international features, as well as international liaison activities with foreign antitrust officials.

During this reporting period a total of twenty-seven full phase and initial phase investigations were conducted under the international antitrust program involving such matters as: possible horizontal price fixing in fine art sales, imported and domestic semiconductor chips, imported light bulbs, and alcoholic beverages; possible attempted monopolization of the markets for heat expansion tanks and indomethacin; and potential anticompetitive restraints from a transnational joint venture involving melamine manufacturers. Also, as already noted, in a case against National Decorating Products Association, the Commission issued a consent order to conclude a case involving alleged horizontal restraints in the wallcovering industry.

The international program participated in a variety of intervention matters and international liaison activities involving transnational competition and antitrust law enforcement issues that affect the domestic economy. For example, the Commission intervened in several trade law proceedings involving such products as imported apple juice, 256K computer chips, and softwood lumber, and provided legal and economic analyses which sought to identify and quantify the economic costs to consumers and the national economy of proposed trade relief measures. Through its international liaison activities, the Commission

staff ensured compliance with the notification provisions of bilateral and multilateral international antitrust cooperation agreements and understandings with foreign nations. These agreements minimize international law and policy conflicts as well as facilitate United States antitrust law enforcement efforts involving international commercial transactions and/or the acquisition of evidence located abroad. The total number of international notifications and cooperative contacts and requests for assistance with foreign antitrust officials continued to increase in fiscal 1986. In addition, the Commission, in cooperation with the Department of Justice and the State Department, continued its participation on the OECD Committee of Experts on Restrictive Trade Practices, and, at the request of the United States Trade Representative, the interagency MOSS initiative, and two subcommittees of the Interagency Committee on Service Industries Development.

MARKET POWER

This program is directed to the investigation and prosecution of conduct involving monopolization and attempts to monopolize, and to potentially anticompetitive conduct by firms that possess market power.

The Commission staff continued investigations into possible abuses of market power, including two investigations of attempted monopolization in fiscal year 1986.

During the year, the Bureau of Economics and the Bureau of Competition also continued to study whether various public utilities were improperly extending their monopoly authority.

DISTRIBUTIONAL RESTRAINTS

This program includes the investigation and prosecution of anticompetitive resale price maintenance, price discrimination, and other unlawful vertical practices.

The Commission issued a decision in Boise Cascade Corp., finding that a distributor of office supplies knowingly received discriminatory prices from various vendors of such supplies in violation of the Robinson-Patman Act. Boise Cascade appealed this decision to the United States Courts of Appeals for the District of Columbia.

As already noted, the Commission issued a consent order against Lithium Corp. of America that prohibits it and other respondents from maintaining any arrangement under which it would be the exclusive buyer of lithium extracted in the People's Republic of China. The Commission also accepted a consent agreement in Max Factor & Co. that would settle Robinson-Patman Act charges that Max Factor granted discriminatory promotional allowances to certain purchasers of its

cosmetic products. Finally, the Commission continued a number of other investigations involving possible distributional restraints.

FOOD

This program is directed to the investigation and prosecution of anticompetitive mergers and other antitrust violations in the food and beverage industries.

During fiscal 1986, the staff conducted several investigations in the soft drink industry. As the result of two of these, already discussed in greater detail under the "Mergers" heading, the Commission authorized the staff to seek preliminary injunctions and authorized the issuance of administrative complaints. The other investigations in this sector are continuing. As noted previously, the staff also settled a case, Roswil, Inc., in administrative litigation involving a conspiracy to suppress dissemination of comparative price information to consumers.

Work continued on the retail grocery pricing study, a project to examine the effect of new retail formats on price competition among retail grocers. The staff has investigated acquisitions at all levels of the food industry and practices in this industry that may violate the Robinson-Patman Act and the FTC Act.

EVALUATION, PLANNING AND DEVELOPMENT

This program includes five areas: evaluation of current Competition Mission initiatives, coordination of Mission activities in competition advocacy matters, development of new initiatives, planning of future Mission activities, and Mission resource management in ongoing matters.

During fiscal 1986, the Bureau of Competition staff wrote, and the Commission filed, several amicus curiae briefs taking positions designed to encourage and foster competition. In addition, the Commission authorized the staff to file several briefs before the International Trade Commission to present the FTC's views on particular cases before that body.

COMPLIANCE

The Compliance Program is directed to monitoring compliance with, and assessing the continuing utility of, outstanding Commission antitrust orders.

During fiscal 1986, the Commission filed two civil penalty complaints and obtained consent judgments in both cases: a complaint against Amway Corp., Inc., which alleged violations of a Commission order prohibiting deceptive earnings claims, was settled by a consent judgment providing for a \$100,000 civil penalty; a complaint against Sunkist

Growers, Inc., which charged a violation of a Commission order as a result of Sunkist's failure to divest a citrus processing plant on time, resulted in a consent judgment requiring a \$375,000 civil penalty. Additionally, *United States v. Bell Resources Ltd.* was settled by a civil penalty consent judgment of \$450,000 from Bell Resources' subsidiary, Weeks Petroleum, in a case alleging violation of the Hart-Scott-Rodino premerger reporting statute and rules. The Commission also issued findings in *Louisiana-Pacific Corp.* in response to a federal district court's order of remand. The Commission also acted on numerous petitions to modify orders and applications for approval of divestitures and acquisitions. In addition, compliance staff conducted investigations of possible order violations and possible violations of the Hart-Scott-Rodino premerger reporting statute and rules.

CONSUMER PROTECTION MISSION

The Bureau of Consumer Protection directs its efforts to eliminating unfair or deceptive acts or practices in or affecting commerce, with emphasis on those practices that may unreasonably restrict or inhibit the free exercise of consumer choice. The Bureau's activities can be grouped into five program areas: Advertising Practices, Marketing Practices, Credit Practices, Service Industry Practices, and Enforcement. In addition, the Bureau has a Policy and Evaluation Unit, and an Office of Consumer and Business Education.

ADVERTISING PRACTICES

The Advertising Practices program is directed toward ensuring that advertising is truthful and not misleading, thereby protecting the informational benefits of advertising. The program also includes administration of two federal statutes regulating the advertising and labeling of cigarettes and smokeless tobacco and requiring that mandated health warnings be provided to purchasers of these products.

The Commission entered into several consent orders concerning advertising practices. National Energy Associates, a manufacturer and marketer of home energy-controlling devices, was ordered not to make claims of energy savings associated with the product "Cyclematic" or any energy-control device without competent and reliable substantiation. North American Phillips Corporation, marketer of Norelco Clean Air Machines, was ordered not to misrepresent the ability of air cleaners to eliminate or help eliminate indoor pollutants or the irritation they cause. The company was also ordered not to misrepresent the results of tests, surveys, or demonstrations of air cleaning appliances and to have competent and reliable evidence for all future claims about the air

cleaners' performance. Sunbeam Corporation, marketer of Oster brand air cleaners, was ordered not to misrepresent the ability of air cleaners to eliminate indoor pollutants. In addition, the company must have competent and reliable evidence for all future claims about any air cleaner's strength, capacity, speed of operation, or other performance factors. The Commission issued a consent order with Blue Lustre Home Care Products, Inc., manufacturer and seller of chemical products and equipment for the home and car care markets. The company was ordered to stop making unsubstantiated efficacy claims for "Rinsenvac 5," a carpet cleaning fluid sold to retailers in connection with the sale of rental do-it-yourself carpet cleaning machines.

Three consent agreements were accepted subject to final approval by the Commission. GCS Electronics, Inc., and its president Gene Comfort, agreed not to make misleading claims about the capabilities of the portable Mark II Executive Phone. The company agreed not to misrepresent the range of radiotelephone communications devices or their ability to transmit and receive messages simultaneously. Cosmo Communications Corp., a manufacturer and seller of telephones nationwide, agreed not to misrepresent the capabilities of its phones and to disclose that its touch-pulse phones do not generate tones necessary for tone-accessed telephone services, Viobin Corp., and its parent company A.H. Robins Co., Inc., agreed to an order settling charges that Viobin made false and unsubstantiated claims about its wheat germ oil products. Under the agreement, Viobin must inform consumers that the benefits claimed in its long-running advertising campaign are not supported by scientific evidence, and both companies are prohibited from misrepresenting the ability of their wheat germ oil products to improve physical fitness or performance. The Commission also resolved several matters in adjudication with consent agreements. Weider Health and Fitness, Inc., manufacturer and distributor of nutrient-supplements, agreed to stop making unsubstantiated claims that its products promote muscular development, or produce human-growth hormone, or that its products are unique. The company is required to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence" nutrients. If the refunds total less than \$400,000, the company is required to donate the difference to fund research on the relationship of nutrition to muscle development. Buckingham Productions, Inc., marketers of the "Rotation Diet" and several related weight-reduction plans, signed a consent agreement subject to final approval settling charges that they made false, misleading, and unsubstantiated claims in advertising for their mail-order programs and products.

The Commission issued administrative complaints charging Electro Tech Manufacturing, Inc. and Electronic Systems International, Inc., with falsely advertising that consumers could save from 15 to 40 percent

on their heating and air conditioning bills by installing duty cyclers energy control devices. Electro Tech Manufacturing, Inc., entered into an agreement with the Commission to settle these charges, and the Commission has accepted a consent agreement subject to final approval with Electronic Systems International, Inc., to settle the charges.

The Commission also issued an administrative complaint charging that R.J. Reynolds Tobacco Co., Inc. misrepresented the purpose and results of a major government-funded study in an advertisement. An Administrative Law Judge subsequently ruled that the challenged statement on smoking and health is not subject to the Commission's jurisdiction. The judge issued an order granting the company's request to dismiss the complaint and stayed the proceedings pending a Commission ruling. Complaint counsel appealed the ALJ's ruling to the Commission.

An administrative complaint was also issued against Pittsburgh Penn Oil Co. The company was charged with misrepresenting its automotive oils, automatic transmission fluids, and antifreeze by falsely claiming the products met established standards. After the complaint was issued, the company agreed to a permanent injunction prohibiting it from making any claims concerning the standard, performance, or quality of its products, unless the claim is true and the company has a reasonable basis for it. The Commission then withdrew the matter from adjudication and resolved its charges with a consent agreement.

The Commission filed two separate complaints in federal district court charging Solar America, Inc. and Solar Michigan, Inc. With falsely claiming that their solar energy heating systems can significantly reduce residential heating fuel consumption and will pay for themselves in a short time. The Commission sought injunctions forbidding such misrepresentations and orders requiring that the companies send refunds to consumers.

An Administrative Law Judge issued a ruling prohibiting General Nutrition, Inc. from making false and unsubstantiated advertising claims in the future for any product marketed for its ability to prevent or reduce the risk of any disease in humans. The ruling upholds a 1984 complaint charging that General Nutrition's ads claiming that its dietary supplement "Healthy Greens" reduced the chances of contracting cancer were deceptive. While pending appeal to the Commission, the matter was withdrawn from adjudication to consider a consent agreement.

The Commission solicited additional comments on proposed amendments to the Guide Concerning Fuel Economy Advertising for New Automobiles. The changes are intended to make the guide consistent with the Environmental Protection Agency's revised fuel economy labeling rules for new automobiles.

The Commission sought comments on its proposal to change the way

it tests cigarettes' tar, nicotine, and carbon monoxide content. The new procedures are designed to identify and measure accurately those cigarettes which cannot be tested satisfactorily by the current method. The Commission authorized new ratings for the tar and nicotine content of Brown & Williamson's Barclay cigarettes that have a modified filter. Brown & Williamson can use these ratings until the Commission implements the modified testing procedures or until the company changes the tar and nicotine content of the Barclay cigarettes by 20 percent or more.

Congress passed the Comprehensive Smokeless Tobacco Health Education Act of 1986 requiring health warnings on smokeless tobacco packaging and in its advertising. As the Act directs, the Commission proposed regulations concerning format and display of three mandated warnings.

MARKETING PRACTICES

The goals of the Marketing Practices program are to identify, halt, and redress injury caused by unfair and deceptive practices in the marketing and sale of a variety of products and services and to ensure that companies honor warranty and other contractual commitments.

The Commission issued three consent orders in the deceptive sales practices area. In two separate consent orders, Larry Brog, former chief executive officer, and Roy Brog, former chairman of the board, of Meadow Fresh Farms, Inc., were ordered to have scientific evidence for any future claims they make about Meadow Fresh, a dry milk substitute, or other food products. Saga International, Inc., manufacturer and marketer of "Home Free," an ultrasonic pest-control device, was ordered to refund the full purchase price of the product to consumers who bought the product in 1984 or later.

In the product information area, a consent order was entered into with Saab-Scania of America, Inc. The company was ordered to make repairs or reimburse consumers for costs they incurred because of paint problems with Saab cars. Cassette Library, Inc. agreed to a federal court injunction to settle charges that the company falsely represented its plan under which consumers paid from \$1,260 to \$1,700 to buy audio cassette tapes from a catalog. Under the injunction, the company agreed to pay refunds to certain customers and will not misrepresent any merchandise or service it offers.

Network Marketing, Inc., a nationwide mail-order marketer of watches, agreed to a \$45,000 civil penalty consent decree to settle charges it violated the FTC Mail Order Rule and did not honor its warranties in a timely manner.

The Commission filed a complaint in federal district court against DuraSeal International, Inc. for falsely representing that consumers who

bought its "DuraSeal" asphalt-sealant franchises could expect to earn up to \$60,000 the first year. The court issued a preliminary injunction prohibiting the practices and freezing the assets of an officer of the company, so that the assets may be used for possible future consumer redress.

The Commission also filed a suit against North American Office Systems, Inc., charging that the company deceptively markets and sells photocopy supplies through a telephone "boiler room" operation. The complaint charges that, as a result, consumers have paid excessive prices for goods, have unknowingly paid hidden charges, and have suffered other injury. The Commission is seeking preliminary and permanent injunctions and refunds for customers of the company.

Moksha Wendell Smith, a defendant in the Commission's suit against Paradise Palms Vacation Club, agreed to settle charges that he misrepresented vacation timeshare interests in Ocean Shores, Washington, and Lake Tahoe, Nevada. Under the settlement, Smith would be permanently enjoined from making misrepresentations in future timeshare, real estate, or recreation program sales.

The Commission ruled that Figgie International, Inc., violated the FTC Act by representing that its Vanguard heat detectors do not provide consumers with the necessary warning to escape from most residential fires. The Commission said that claims that Vanguard heat detectors give "immediate early warning" are deceptive, and ordered the manufacturer not to misrepresent the devices' ability to provide such warning. Figgie was also ordered to notify past purchasers of heat detectors that smoke detectors give earlier warning than heat detectors in nearly all residential fires, and to include this fact in any future promotional materials.

The Commission voted to modify the Pre-Sale Availability of Written Warranty Terms Rule. The amendment will reduce the costs of complying with the Rule by providing retailers with a choice of displaying the warranty text near the product or making it readily available to any customer upon request. The modifications will ensure that consumers receive warranty information before a sale, but will encourage retailers to take a more innovative and flexible approach to warranty disclosure. Staff estimates that the changes made in the rule will reduce retailers' paperwork compliance burden by almost 3.5 million work-hours per year. In another warranty-related matter, the Commission has formed an advisory committee to develop recommendations for amending its rule on Informal Dispute Settlement Procedures. The advisory committee will use a negotiated rulemaking process to develop specific recommendations for amending the rule. These amendments will encourage wider use of informal procedures, such as

mediation and arbitration, for settling warranty disputes between businesses and consumers.

CREDIT PRACTICES

The Credit Practices program encompasses enforcement of a variety of credit statutes that protect consumers from unlawful practices in the granting of credit, the maintenance of credit information, the collection of debts, and the operation of credit systems.

The Commission issued two consent orders related to alleged violations of the Fair Credit Reporting Act (FCRA). Foley's, a division of Federated Department Stores, was ordered to notify credit applicants when they have been denied credit on the basis of information from credit reporting agencies, and to provide the applicant with the name and address of the agency. Wright-Patt Credit Union was ordered to notify credit applicants who were denied credit because of insufficient information in their credit reports, and to give consumers the name and address of any credit bureau that provided the reports used as the basis for denying credit.

The Commission also issued a consent order for alleged violations of Section 5 of the FTC Act. Service One International Corp., a national credit-counseling service doing business as First Credit Services, was ordered not to misrepresent its ability to assist consumers in obtaining MasterCard or Visa credit cards. The company was also ordered not to misrepresent the terms or amounts of refunds it offers, and to give previous customers denied credit the option of receiving full refunds or participating in a new credit-counseling service without additional charges.

The Commission approved consent orders against six former officials of Credit Establishing Bureau charged with misleading consumers by falsely and deceptively claiming the company could improve their credit records and arrange for them to receive major credit cards. In addition, the consent orders issued against company founders Steven Hull and George Tannous require them to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

Consumers will receive \$2.4 million in redress from Evans Products Co. and Evans Financial Corp. (EFC) in a bankruptcy court settlement. A complaint issued in 1985 charged that Evans and EFC deceptively and unfairly represented that they would provide buyers of thousands of pre-cut homes with guaranteed long-term mortgage loans. The companies allegedly failed to provide the promised loans, or provided the loans at higher than promised interest rates, causing economic injury to consumers and the loss of many homes.

Strawbridge & Clothier, a chain of department and discount stores,

agreed to a \$70,000 civil penalty in a consent decree to settle charges that it violated provisions of the Equal Credit Opportunity Act and the Fair Credit Reporting Act. Under the decree, the company agreed to comply with these laws, and to provide all credit applicants it rejected in 1984 with the notices these statutes require.

The Commission filed a complaint in federal district court against Green Tree Acceptance, Inc. for allegedly violating the Fair Credit Reporting Act by not telling consumers why they were denied credit. The company provides financing in 25 states to consumers purchasing mobile homes.

As a result of a comprehensive monitoring program of automobile credit advertisers, the Commission obtained civil penalty judgments against two automobile dealerships and filed complaints against three others who had failed to comply voluntarily with the law. Boch Oldsmobile, Inc. and Boch Toyota, Inc. agreed to a \$70,000 civil penalty in a consent decree to settle charges they violated the Truth In Lending Act (TILA) by giving consumers incomplete credit information in their advertisements. Complaints were filed in federal district court charging Freeway Dodge, Inc., Hopkins Dodge Sales, Inc., and Walser Motors, Inc. with violating the TILA. According to the complaints, the dealers advertised certain credit terms, such as the down payment or monthly payment, without also stating other required information, including the annual percentage rate or the repayment period. The Commission is seeking civil penalties and injunctions against future violations of the law.

The Commission's real estate credit advertising project resulted in civil penalty judgments against a real estate broker, two marketers of housing developments and two home builders. Each of the above companies had been notified that its ads violated the TILA prior to filing of the complaints and had not come into voluntary compliance. Mesa Realty, Inc. agreed to a \$30,000 civil penalty for violating the TILA by failing to disclose required information, such as the annual percentage rates and higher payments required in the later years of advertised loans, in its ads for home mortgages. The marketing agents for A. P. Orleans, which builds and markets residential real estate, agreed to a \$80,000 civil penalty for violating the TILA by not including required credit information in their ads. Hooker Homes, Inc. and its subsidiary, Hooker Bames Homes, Inc., agreed to a \$250,000 civil penalty to settle charges it violated the TILA when advertising credit for its homes. KRSS Development Corp. consented to pay a \$15,000 civil penalty for violating the TILA when advertising credit for home mortgages.

Under a consent decree entered in federal court, Donald A. Schwab agreed not to misrepresent the rates or availability of mortgage loans he could obtain for his customers. He was charged with falsely advertising

he could obtain home mortgages at rates substantially below prevailing market rates for potential homeowners, when, in fact, he did not have commitments for the mortgage funds at the advertised rates.

The Commission granted a request from the state of Wisconsin for an exemption from the Credit Practices Rule for transactions in which the amount financed does not exceed \$25,000. The rule is designed to protect consumers from unfair or deceptive practices by creditors regulated by the FTC, and applies to any loan or extension of credit for personal, family, or household purposes, except for real estate purchases. The Commission also granted a request from the state of New York for an exemption from the provision of the rule that pertains to cosigners. Comments were sought on a request from the state of California for an exemption from the rule's cosigner provision.

The Commission staff proposed a guide to consolidate and organize nearly 1,000 pages of informal staff interpretations of the Fair Debt Collection Practices Act. Since the Act was passed in 1977, the Commission staff has issued hundreds of informal staff interpretations of the statutory provisions in response to requests from industry and consumers. After public comments are considered, the guide will be published in final form and become the official guide to staff interpretation of the Act.

SERVICE INDUSTRY PRACTICES

The goals of the Service Industry Practices program are to further informed consumer choice and increase the availability of less expensive, safe and reliable services and products that consumers desire; facilitate fair competitive opportunities for smaller manufacturers in the standards-setting process; and reduce consumer losses based on false or misleading information.

The Commission approved two consent orders concerning restrictive regulations. The American Society of Sanitary Engineering (ASSE) was ordered to stop using certain specific conditions as a basis for refusing to extend standards coverage to certain new plumbing products. ASSE was also ordered to issue new standards or modify existing ones more readily in the future. A consent order issued against the Wyoming Board of Podiatry prohibits the Board from restricting or discouraging podiatrists from truthfully advertising their services and products.

Under a consent order, John William Costello Associates, Inc., an employment counseling service, and four corporate officers, may not misrepresent the basis on, which clients are accepted, the number of clients who had obtained interviews, job offers and jobs through their services, or the chances that the employer would pay the finder's fee. In addition, the consent order prohibits respondents from accepting job placement fees in advance, unless they make certain disclosures. A

separate, identical order was issued against Roy B. Kelly, a former officer of the firm.

The Commission obtained a \$2.5 million settlement against Leland Industries, Inc. resolving Commission charges that Leland and related defendants misrepresented to investors crucial information about lotteries for oil and gas rights on federal lands. As part of the settlement, three Leland officers also agreed to pay \$10,000 each to reimburse part of the government's legal costs. Between 1981 and 1983, approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services. Under a separate agreement, Peter LaBarrie, a former Leland salesman, is bound by provisions similar to the Leland settlement, but is not obligated to pay restitution.

In the first case the Commission has brought against allegedly deceptive investment schemes involving cellular telephone lotteries, the Commission filed a complaint in federal district court against American National Cellular Corp. The Commission obtained a temporary restraining order prohibiting the company from misleading potential investors about the chances and profitability of winning lotteries for the right to build cellular telephone systems. The Commission charged that the company failed to disclose crucial information to potential investors and misrepresented such information. The Commission has also instituted criminal contempt proceedings against three defendants, Premier Cellular, Inc., Charles Michael Fischer, and Gerald Woods, charging violations of court orders, including asset freeze provisions.

Another application-preparation service, The Cellular Corp., agreed not to misrepresent the sale of cellular telephone license application services in a stipulated injunction filed in federal district court. The Commission had charged the company, two related companies, and three individuals with misleading potential investors about the chances and profitability of winning lotteries for the right to build cellular telephone systems. The defendants must establish a fund of \$400,000 to pay for the preparation, completion, and filing of applications for the FCC's cellular telephone lottery. In addition, defendant Kent Maerki must pay a \$100,000 fine within one year. The Commission accepted a consent agreement in which Albert Schneider, an officer of the Cellular Capital Corp., one of the related companies, agreed not to misrepresent the services he provides, or the chances and profitability of winning lotteries.

A complaint was filed in federal court charging Rare Coin Galleries of America, Inc., a related company, and two individuals with misrepresenting the grade and investment value of coins they have sold nationwide. The complaint alleges that the defendants significantly over graded their coins, and that many of the coins were worth substantially less than the price the customers paid for them. The court

granted the Commission's request for a temporary restraining order and asset freeze.

Michael Peter Nissen and David J. Swain, defendants in the suit against Trans-Alaska Energy Corp., were sentenced to serve 60 days in prison for violating a court order the Commission obtained to preserve assets for consumer redress. These were the first such judgments the Commission has ever won for violations of asset freeze orders arising from its cases. In addition, Nissen was placed on probation for three years and ordered to repay the \$10,000 he diverted from the redress fund. Robert A. Kobek, another defendant in the suit, agreed to a stipulated permanent injunction and final order to settle charges against him. A fourth defendant, Alan F. Goda, pled guilty to criminal contempt charges and will pay \$50,000 into a restitution fund for violating the court-imposed asset freeze.

The Commission issued a Notice of Proposed Rulemaking and convened public hearings on the Retail Food Store Advertising and Marketing Practices Rule, which requires that retail food stores have any advertised item in stock and readily available at or below the advertised price. Under the proposed amendments, grocers would be able to comply with the rule by offering rain checks or substitutes of comparable value when they run out of advertised items, or by advertising that the items are available only in limited quantities.

The Commission terminated the Health Spa Rulemaking and directed its staff to explore additional law enforcement initiatives in this area.

ENFORCEMENT

The Enforcement program includes enforcement of Commission orders and several statutes and Commission rules addressing consumer protection issues. The primary goal of the program is to promote a free and competitive market in which consumers can obtain and make use of truthful purchasing information and benefit from fair market practices.

As required by a consent order issued in 1984, General Motors Corp. established a nationwide mediation/arbitration program to allow consumers with engine or transmission problems the opportunity to obtain reimbursement for repair expenses. During the first thirteen months of the program, GM paid 75,458 consumers more than \$27.9 million, with the average consumer complaint being resolved in 40 days. This data represents the results from the 142 Better Business Bureaus handling the program. The results compiled may understate the full benefits of the program to consumers because they do not reflect payments for all engine and transmission problems covered by the order, payments made directly by GM to consumers who did not participate in the program, or the cash value of many repairs performed by GM under the program.

The Commission approved amendments to the Appliance Labeling

Rule to include coverage of central air conditioners, including heat pumps, and pulse combustion and condensing furnaces.

The Regulatory Flexibility Act requires the Commission to conduct a periodic review of its rules to determine whether they have a significant economic impact on small businesses. The Commission completed reviews of the Commission's Mail Order Rule, Octane Rule, and Care Labeling Rule under the Regulatory Flexibility Act and concluded that no modifications to the rules were required. Reviews of the Negative Option Plans Rule and the Franchise Rule were initiated.

The Commission granted two applications for new generic fiber names submitted by Phillips Fibers Corp. and Celanese Corp. under the Textile Fibers Products Identification Act. The generic name "Sulfar" was approved for the fiber produced by Phillips, and the generic name "PBI" was approved for Celanese.

The Commission released a study of the FTC's Franchise Rule. The study focused on the impact of the rule on franchisors.

The Commission granted Wisconsin an exemption from the Used Car Rule. Wisconsin has state regulations that protect consumers substantially as well as the federal rule. Petitions for exemption filed by sixty-one automobile leasing companies and one automobile rental company are under consideration.

A settlement agreement between the Commission and four companies deleted the television advertising disclosure provisions of the Home Insulation (R-Value) Rule. The companies challenged this part of the rule when it was adopted in 1979, and the ad provisions have never gone into effect.

Four companies paid civil penalties for violating prior Commission orders. National Talent Associates agreed to a \$150,000 civil penalty to settle charges it violated a consent order issued in 1975 by misrepresenting its ability to place children in paid modeling positions. Dixie Readers' Service, Inc., a nationwide door-to-door seller of magazine subscriptions, will pay a \$53,000 civil penalty for failing to make timely and full refunds and failing to inform customers of their rights to cancel subscriptions, as well as for violating an earlier order. Northern Feather International, Inc. agreed to pay \$100,000 in civil penalties to settle charges it misrepresented the down and feather content of its pillows and comforters in violation of a 1956 order. New York Feather Co. also agreed to pay a \$100,000 civil penalty to settle charges it mislabeled its down pillows in violation of a 1951 order. The latter two actions are part of the government's ongoing effort to ensure compliance with the Commission's guidelines for the feather and down industry.

Del Monte Corp. agreed to pay a \$100,000 civil penalty to settle charges it violated the Commission's Mail Order Rule in a coupon promotion program. The Commission charged that the company

violated the rule by failing to send consumers timely and proper notices telling them of their rights under the rule when the company could not ship "Country Yumkin" dolls on time. Leisure Time Electronics, Inc., settled charges that it misrepresented video and pinball game franchises in violation of the Franchise Rule. Under a consent decree, the company agreed not to misrepresent its franchises or the services it would provide to franchisees.

Three complaints filed by the Commission in federal district court are awaiting final action. Thermo Products Co. was charged with overstating the amount of protection its home insulation provided. The Commission is seeking civil penalties and an injunction barring future misrepresentations by the company. The Commission charged TS Industries, Inc., Thermal Systems, Inc., Energy Thermal Systems, Inc., and TSI, Inc. with misrepresenting the effectiveness of their thermal insulation products. The Commission is seeking civil penalties and an order prohibiting such misrepresentations. Three related New Jersey auto leasing franchisors, Engage-A-Car Services, Inc., Engage-A-Car People, Inc, and Coastal Funding Corp., were charged with misrepresenting the profitability of their franchises and the services they offered potential franchisees. The Commission estimates consumer injury from these practices at approximately \$24 million and is seeking redress in addition to injunctive relief.

The Commission modified an order against Chesebrough-Pond's, Inc., maker of Vaseline petroleum jelly, to allow claims that Vaseline provides a protective barrier to the skin and is effective for relief of itching. The Commission released General Mills, Inc. from its responsibilities under an order issued in 1979 prohibiting misrepresentations in advertising by its toy producing subsidiary, General Mills Fun Group, Inc., but said the order remains binding on the subsidiary's successor, Kenner Parker Toys, Inc. The Commission reopened and modified a consent order issued in 1975 against National Talent Associates, Inc., amending the provisions that describe the disclosures the company must make to consumers about its success in obtaining paid employment for clients. An order against American Home Products, originally issued in 1970, was modified to remove some restrictions on the company's advertising for Preparation H. The Commission modified its consent order issued, in 1971, with Beecham Inc., concerning representations regarding Proslim's value as a weight-reduction product. The Commission terminated a perpetual obligation that the company file advertising and labeling with the FTC at six month intervals.

OFFICE OF CONSUMER AND BUSINESS EDUCATION

The Office of Consumer and Business Education coordinates an education program aimed at providing information to consumers and

industry on major Commission decisions, programs, statutes, and rules. Increased information about goods and services assists consumers to make informed choices and encourages competitive business practices. The Commission considers the consumer and business education program to be a cost-effective way of obtaining compliance with the law.

In cooperation with the American Association of Retired Persons (AARP), the Office developed and co-produced television video features promoting the consumer booklet, *Money Matters*. The booklet suggests how to select and use professionals who provide financial services, including attorneys, financial planners, real estate brokers, and tax consultants. It won a Blue Pencil Award from the National Association of Government Communicators.

Two other consumer booklets were developed and distributed in fiscal 1986. *How To Buy A Manufactured Home* was done in cooperation with the Manufactured Housing Institute. *A Consumer Guide To Vehicle Leasing*, which explains the Consumer Leasing Act, was produced in cooperation with the National Vehicle Leasing Association and the New Car Dealers Association of Metropolitan Dallas. The Office also developed and distributed a business booklet, *Offering Layaways*, and is completing production on three other business booklets. These include: *Making Business Sense Out Of Warranty Law*; *Using The Credit Practices Rule*; and *Writing Readable Credit Forms*.

Twenty-seven new and revised publications were developed and distributed in fiscal 1986. The Commission distributed over one million copies of various publications. In addition, the Office participated in approximately 30 consumer conferences and exhibits, primarily on the subject of health fraud.

ECONOMIC ACTIVITIES

The FTC's Bureau of Economics provides analytical support to the agency's antitrust and consumer protection activities, advises the Commission on the possible effects of government regulation and private restraints on competition, and gathers and analyzes information on the American industrial economy.

In 1986, the Bureau of Economics 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 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 1986, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation. Research economists also provided Commissioners with economic advice in pending matters.

ANTITRUST

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. These activities absorbed the bulk of the Bureau's resources assigned to support directly the Commission's antitrust responsibilities.

Several studies undertaken by the Bureau also support the Commission's antitrust activities. During 1986, economists investigated and published reports on: concentration, integration, and diversification in the grocery retailing industry; the role of collective ratemaking on auto insurance premiums; antitrust policy for declining industries; and the effects of mergers on profitability and other firm performance characteristics.

CONSUMER PROTECTION

In the consumer protection area, economists evaluated proposals for full phase investigations, consent negotiations, consent settlements, and complaints. In addition, economists routinely provided day-to-day guidance on individual matters and made policy recommendations directly to the Commission.

In addition to the Bureau's direct support for individual consumer protection matters, staff economists studied and produced reports on a variety of consumer protection topics. These included investigations of: consumer information in various markets; advertising and product quality; and optimal civil penalties. In addition, the Bureau published the proceedings of a conference entitled, "Empirical Approaches to Consumer Protection Economics."

REGULATORY ANALYSIS

Staff economists actively participated in the Commission's Consumer

and Competition Advocacy Program, contributing to several staff comments on a variety of regulations that were filed with government agencies. These submissions, some of which have been mentioned earlier included: comments filed with the Federal Communications Commission concerning a rule mandating carriage of local television stations by cable systems; comments to the National Highway Traffic Safety Commission on proposed changes in the average fuel economy standards for automobiles; a brief submitted to the International Trade Commission concerning the injury to the U.S. semiconductor industry as a result of imports from Japan; and filings with the International Trade Commission in connection with that agency's investigation of subsidies for the Canadian lumber industry.

Several major reports published by the Bureau of Economics during 1986 provide insight into the effects of government regulation on competition and consumer welfare, such as: state regulation of entry into retail automobile markets; certificate of need regulation of entry into home health care; and cigarette advertising, health information, and regulation.

LINE OF BUSINESS

During 1986, economists, mainly unpaid Commission consultants, compiled several "line of business" reports using existing Line of Business data as source material. Studies completed included work in the following areas: the effects on R&D effort of firm size, diversification, and mergers; market structure; and the elements of business risk.

EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT, REGIONAL OFFICES

The Office of the Executive Director is the central management and administrative organization of the Federal Trade Commission. The Executive Director is responsible for providing essential services and advisory functions including those related to personnel, budget and finance, information management, library, etc. The Executive Director is also responsible for providing management direction to the Commission's ten regional offices and its field station and works in conjunction with bureau and office heads to ensure optimal resource use and integration with headquarters activities.

In fiscal 1986, the office directed major management initiatives toward maintaining service levels with lower resources, placing emphasis on finding economies in each functional area. These economies included increased operating efficiencies through staffing changes and

capital improvements, enhanced use of contractual services, elimination of redundant or unnecessary procedures, and the strengthening of existing programs.

The agency's planned space consolidation was completed in 1986 within the \$3.8 million appropriated by Congress for this purpose. A lease was signed with the management of the 601 Pennsylvania Avenue Building in Washington, D.C. for sufficient space to permit the long-awaited consolidation of staff activity previously located in four satellite buildings. Substantial effort was directed toward developing physical layouts for office and joint use space, preparing moving contracts (including the technical aspects for moving various types of equipment) and planning and coordinating the actual move of nearly one half the Washington, D.C. staff. This included the planning for and installation of a new and enhanced telecommunication system that is operated by a newly acquired digital switch (PBX).

Additionally, the General Services Administration delegated operational and maintenance authority and responsibility to the FTC for the Headquarters Building beginning July 1, 1986.

The agency used approximately 1107 workyears and spent \$62.7 million for the fiscal year. The workyears used were 7.8 percent fewer than in fiscal 1985. Careful control of funding levels and workyears were once again necessary to accomplish objectives with decreased resources.

This year's human resource program was focused on developing and retaining employees. Specific human resource initiatives included an extensive training program for our secretaries; a retirement planning program; an individual computer analysis of each employee's benefits; and the appointment of an employee assistance counselor to provide short term counseling or referral to an appropriate agency for longer term counseling.

Efforts were continued to integrate EEO principles and policy into the human resource management process. As part of these efforts, the Minority Advisory Committee and management played a major role in planning and developing more focused affirmative employment initiatives. These initiatives included refinement in performance management training, with emphasis on the importance of feedback and the link between EEO and effective performance management. Substantial efforts were also initiated to expand development opportunities, such as rotational assignments. In addition, the Commission placed more emphasis on establishing systems for monitoring progress and resolving problems. Some of these initiatives included refinement of data reflecting employment trends and accomplishments and strengthening guidance and management's accountability in problem-solving activities.

Regional offices continued to function as miniature FTC's in fiscal year 1986. Emphasis was on the implementation of a broad range of enforcement, competition advocacy, and outreach activities.

The Executive Director's Office coordinated consumer and competition advocacy initiatives addressing issues in a number of areas, including professional services, occupational licensure, health fraud, and transportation. The Commission's regional offices are frequently contacted by officials of state and local government agencies to identify appropriate areas for comment because of their ongoing relationships with these agencies.

Finally, several management initiatives were undertaken. Office automation efforts were begun in a number of offices and managers established specific objectives for drawing on the agency's management information system and for integrating personal computers into offices. Changes were made in the planning and evaluation process to convey information to headquarters more effectively and to reduce the administrative burden on regional offices.

{This Page Intentionally Left Blank}

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

MAINTAINING COMPETITION MISSION

Champion International Corp.

The Commission accepted a consent agreement with Champion International Corp. settling antitrust charges stemming from champion's acquisition of St. Regis Corp. According to the proposed complaint accompanying the agreement, the acquisition could have reduced competition in the West Coast liner board market. The agreement required Champion to divest a St. Regis liner board mill in Tacoma, Washington, and not to acquire for 10 years any interest in any company involved in manufacturing liner board in the West Coast market without prior Commission approval. The consent agreement was later withdrawn by the Commission.

Max Factor & Co.

Max Factor & Co. agreed to make promotional allowances available on proportionally equal terms to all of its customers, and to make alternatives available to customers for whom its basic promotional plans are not usable or economically feasible. A proposed complaint accompanying the agreement charged that Max Factor violated the Robinson-Patman Act by not making promotional allowances available, on proportionally equal terms, to all of its customers. Under the order, Max Factor must offer specific alternatives, such as handbills or other in-store promotional activities, to stores that cannot use allowances. It also agreed to notify all its customers that the promotional payments and alternatives are available.

CONSUMER PROTECTION MISSION

C&D Electronics, Inc.

C&D Electronics agreed not to sell its cable television decoders to unauthorized persons in the future. Under the agreement, C&D must state in its catalogs and sales materials that the unauthorized use of cable television equipment is against the law. The company

also agreed not to make any representations contrary to that statement.

Cosmo Communications Corp.

Cosmo Communications, a manufacturer and seller of telephones, agreed not to misrepresent the capabilities of its phones and to disclose that its touch-pulse telephones do not generate tones. Cosmo's push-button telephones look like touch-tone but produce only pulses like rotary dial telephones. The agreement prohibits the company from misrepresenting the compatibility of its telephones with tone-accessed services, including alternative long-distance service and home-accessed computer services.

GCS Electronics, Inc.

GCS Electronics agreed not to, make misleading claims about the capabilities of its portable Mark II Executive Phone. GCS has agreed not to misrepresent the range of radiotelephone communication devices or their ability to transmit and receive messages simultaneously. The company is also prohibited from making range-related claims using phrases such as "up to," unless the range can be obtained by an appreciable number of consumers.

Viobin Corp.

Viobin, a subsidiary of A. H. Robins, agreed not to make false and unsubstantiated claims about its wheat germ oil products. Under the agreement, Viobin must inform consumers that the benefits claimed in its long-running advertising campaign are not supported by scientific evidence. Both companies are prohibited from misrepresenting the ability of their wheat germ oil products to improve physical fitness or performance.

PART II (Investigative Stage)
CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

American Academy of Optometry

The American Academy of Optometry was ordered not to restrict its members' and prospective members' truthful advertising or choice of office location. The complaint accompanying the agreement alleged that these restrictions may deprive consumers of the benefits of vigorous price and service competition and also deprive them of truthful information about optometrists' prices, products, services and qualifications. It further alleged that restrictions, preventing practice in commercial locations such as retail stores may deprive consumers of the potential cost savings and conveniences of commercially located optometric practices. The order does not prohibit the Academy from adopting reasonable standards regarding false or deceptive advertising or unfair solicitation.

Health Care Management Corp.

Health Care Management Corp., which owns and operates North Mobile Community Hospital near Mobile, Ala., and the hospital's medical staff have been ordered not to impose unlawful restrictions on podiatrists practicing at the hospital. The complaint accompanying the orders alleged that the hospital and its medical staff conspired to prevent a podiatrist already on the staff, as well as podiatrists who applied for hospital privileges, from performing surgery at the hospital. Under the agreement, the hospital and medical staff also agreed not to conspire to unreasonably restrict the practice of podiatry at the hospital by coercing or encouraging any staff member not to co-admit podiatrists' patients; enacting any bylaw or policy that requires an amount of residency training for podiatrists that is not reasonably related to legitimate quality-of-care grounds for the specific procedure requested, or prohibiting podiatrists with hospital privileges from attending medical staff meetings.

Independent Insurance Agents of America, Inc.

Independent Insurance Agents and Brokers of California, Inc.

Independent Insurance Agents Association of Montana, Inc.

Under consent orders the Independent Insurance Agents of Ameri-

ca Inc. (IIAA) and the Independent Insurance Agents Association of Montana agreed not to encourage their members to refuse to deal with companies based on the companies' sales policies. In a draft complaint accompanying the order, the Commission alleged that IIAA and its Montana affiliate attempted to prevent The Hartford from bypassing Hartford agents and selling homeowners and automobile insurance directly to members of the American Association of Retired Persons. In a related complaint and order, the FTC charged that the Independent Insurance Agents and Brokers of California urged its members to refuse to deal With Reliance Insurance Co. when Reliance, through its United Pacific Co. subsidiary, developed a plan to sell low-priced auto insurance directly to consumers. The California group agreed not to urge its members to take action against insurance companies who use direct marketing.

Lithium Corp. of America

Lithium Corp. of America (LCA) was ordered not to enter into any agreement fixing prices or restricting sales of any lithium product. The complaint accompanying the order alleged that LCA conspired with two Chinese companies to eliminate competition among these firms and with other chemical traders in the sale of lithium. It also alleged that this conspiracy deprived buyers of lithium products of the benefits of free and open competition. In addition, the complaint alleged that the conspiracy restrained imports of lithium products into the United States. The order also prohibits Lithium from acting as an agent for any lithium producer when such action might unreasonably restrain competition.

Michigan Optometric Association.

The Michigan Optometric Association was ordered not to impose membership restrictions on or terminate any member for providing optometric services in a retail location or through optical chains or other corporate practices that are not affiliated with a hospital clinic, health maintenance organization or professional corporation. The complaint accompanying the order alleged that the association restrained competition by depriving consumers of the potential cost savings and convenience of retail locations and corporate practices that generally charge lower prices than traditional optometrists or independent opticians operating in sole proprietorships or partnerships. Under the terms of the order, the association also must not

interfere with its members' use of truthful, non-deceptive advertising about optometric goods and services.

Michigan Watchmakers Guild

Under a consent order the Michigan Watchmakers Guild agreed not to establish minimum or other prices in the future. The Guild is a trade association whose members clean and repair watches, clocks and jewelry. In the complaint accompanying the consent agreement, the Commission charged that the Guild unlawfully conspired with its members to fix nationwide prices for cleaning and repairing watches, clocks and jewelry by establishing suggested minimum prices.

National Association, of Temporary Services, Inc.

The National Association of Temporary Services, Inc., (NATS) was ordered to cease from restricting its members from soliciting employees or clients of other temporary help firms. The complaint accompanying the order alleged that the NATS code of ethics reduced competition. Under terms of the Commission's order, NATS may not affiliate with any organization of temporary help firms that engages in the practices prohibited by the order. NATS represents approximately 400 firms nationwide that provide temporary help to businesses engaged primarily in the office/clerical, technical/professional, industrial, and medical fields.

North Carolina Orthopaedic Association

The North Carolina Orthopaedic Association was ordered not to discriminate unreasonably against podiatrists who seek to gain surgical privileges or access to hospitals in North Carolina. A complaint accompanying the order charged that, as part of a conspiracy, the group passed two resolutions opposing the practice of podiatry in hospitals and urged its members to review or change hospital bylaws to prevent podiatrists from obtaining hospital privileges. The complaint alleged that these actions may have lessened competition based on price, quality and service in the delivery of professional health services and hindered consumers' ability to select a licensed practitioner of their choice.

Occidental Petroleum Corp.

The Commission issued a consent order against Occidental Petrole-

um Corp. in settlement of charges that Occidental's proposed acquisition of MidCon Corp. would violate section 7 of the Clayton Act. The complaint accompanying the agreement alleged that the originally proposed \$3 billion acquisition could substantially lessen competition in pipeline transportation and the sale of natural gas in the St. Louis area, because MidCon would have an incentive to purchase natural gas from Occidental at inflated prices and the ability to pass those added costs on to consumers. MidCon is the sole supplier of natural gas to the St. Louis area. Occidental was ordered to divest MidCon's subsidiary, Mississippi River Transmission Corp. (MRT), which operates a natural gas pipeline from the Gulf Coast to St. Louis, to a Commission-approved acquirer within one year after the order becomes final.

CONSUMER PROTECTION MISSION

Albert Schneider

Albert Schneider, President of Cellular Capital Corp., was ordered not to make misrepresentations about the sale of cellular telephone license application services. Schneider was also ordered to disclose that the purchase of a cellular application is a high-risk investment, and that an operating cellular system is unlikely to return any profits to its owners in the first three years of operation.

American Society of Sanitary Engineering

The American Society of Sanitary Engineering, which develops standards for plumbing equipment, was ordered to change certain policies which might bar consideration of new products. The society must change its policy of not granting standards coverage to products that are patented or produced by one or a limited number of manufacturers, and to consider products with innovative designs.

Blue Lustre Home Care Products, Inc.

Blue Lustre Home Care Products, one of the country's largest producers of carpet cleaning products, was ordered not to make false and unsubstantiated claims about its products. The complaint alleged that the company misrepresented the effectiveness of its "Rinsenvac 5" product.

Federated Department Stores, Inc.

Federated Department Stores, one of the nation's largest retailers,

was ordered to tell credit applicants when it uses information from credit reporting agencies as a basis for denying credit. Under the order, Federated must also tell rejected applicants the name and address of the credit reporting agencies it contacted. The order settles issues outlined in the draft complaint that Foley's, a Federated division operating 14 department stores in Texas, repeatedly violated the Fair Credit Reporting Act when denying credit applications.

George Tannous
James F. Herndon
John C Anderson

Peter S. Everts
Steven M. Hull
Victor J. Hakim

Six separate consent orders were issued in which former officials of Credit Establishing Bureau, a credit repair clinic, were ordered not to mislead consumers with claims the company could improve their credit records and, arrange for them to receive major credit cards. Those individuals are also required to provide consumer redress in the form of a six-week consumer education program directed at people with credit problems similar to those of the company's clients.

John William Costello Associates, Inc.
Roy B. Kelly

John William Costello Associates, a career counseling firm, and Roy B. Kelly, a former official of the firm, were ordered in separate orders, not to misrepresent the basis on which clients are accepted, the number of clients who have obtained interviews, job offers, or jobs, and the chances that clients' fees would be refunded because an employer paid a finder's fee. The company charged job-seeking clients \$2,500 to \$25,000 or more for their services. Under the order, the company and Mr. Kelly are prohibited from accepting a fee until a client has obtained employment through the company's efforts.

Larry Brog

Larry Brog, former chief executive officer of Meadow Fresh Farms, a company that marketed a dry milk substitute, was ordered to have scientific evidence for any future claims about the product's shelf life and its ability to reduce cardiovascular disease. The company sold its product, Meadow Fresh White, a powdered, dairy-based milk substitute, through a distributor network. Brog agreed not to

exclude certain distributors in computing "average" distributor earnings unless he explains the exclusion.

National Energy Associates, Inc.

National Energy Associates was ordered not to falsely advertise that its duty cyclers could save consumers from 15 to 40 percent on their home energy bills. The company was also ordered not to make unsubstantiated claims for any energy-control device. Duty cyclers are devices that allegedly increase the efficiency of home heating and cooling units by causing the thermostat to turn the units on and off more frequently than it would ordinarily, while continuously operating the blower fan.

North American Philips Corporation

North American Philips Corporation, marketer of Norelco Clean Air Machines, was ordered not to misrepresent the ability of air cleaners to eliminate or help eliminate indoor pollutants or the irritation they cause. The order requires Norelco to have competent and reliable evidence for all future claims about the air cleaners' performances.

Saab-Scania of America, Inc.

Saab-Scania of America was ordered to make repairs or reimburse consumers for up to \$2,000 of costs they incurred because of paint problems with Belgian-made Saab cars assembled between 1976 and 1978 and purchased after December 31, 1977.

Saga International, Inc.

Saga International was ordered to give full refunds to consumers who purchased its "Home Free" ultrasonic pest control device. The company is prohibited from making performance or efficacy claims about any ultrasonic pest-control product without competent and reliable evidence, to substantiate its claims.

Service One International Corp.

Service One International, a national credit-counseling service doing business as First Credit Services (FCS), agreed not to misrepresent its ability to assist consumers in obtaining MasterCard or Visa credit cards. FCS must send, to all customers who paid for

the service and did not receive a credit card, a notice giving them the option of receiving a full refund or participating in FCS' new credit counseling service without additional charges.

Sunbeam Corporation

Sunbeam Corporation, marketer of Oster brand air cleaners, agreed not to misrepresent the ability of air cleaners to eliminate indoor pollutants. In addition, the company must have competent and reliable evidence for all future claims about any air cleaner's strength, capacity, speed of operation, or any other performance factors.

Wright-Patt Credit Union, Inc.

Wright-Patt Credit Union, one of the nation's largest credit unions, agreed to tell consumers who are denied credit because of insufficient information in their credit reports, that the adverse action was taken on the basis of such information. The agreement requires the company to comply with the Fair Credit Reporting Act.

Wyoming Board of Podiatry

The Wyoming Board of Podiatry agreed not to prohibit its members from truthfully advertising their services and products. Under the agreement, the board cannot restrict or discourage podiatrists from truthfully advertising their goods and services by adopting rules or policies prohibiting such advertising, by suspending or revoking a podiatrists's license as a result of such advertising, or by declaring such advertising illegal or unethical. This agreement is the first Commission agreement to settle charges of anticompetitive conduct with a state board of podiatry.

PART III ADMINISTRATIVE COMPLAINTS

MAINTAINING COMPETITION MISSION

Coca-Cola Co.

The Commission issued a complaint challenging Coca-Cola Co.'s proposed acquisition of Dr Pepper Co. The complaint alleged that the merger could reduce competition in the production, distribution, and sale of carbonated soft drinks and soft-drink concentrates in the United States. According to the complaint, Coca-Cola and Dr Pepper directly compete in the carbonated soft-drink industry, which is very difficult and time-consuming to enter. The Commission charged that the proposed acquisition would substantially lessen competition in the market by increasing the likelihood of collusion, and by making it more difficult for new firms to enter and more costly for current firms to compete in the market. The Commission alleged that these factors would likely lead to increased prices and restricted output of carbonated soft drinks.

Occidental Petroleum Corp.

The Commission challenged Occidental Petroleum Corp.'s proposed \$70 million acquisition of PVC manufacturing assets of Tenneco Polymers, Inc., a subsidiary of Tenneco Inc. It alleged that Occidental Chemical and Tenneco Polymers are substantial producers of PVC resins. The administrative complaint charged that the acquisition could lessen competition in the production of three polyvinyl chloride (PVC) resin product markets: mass and suspension PVC; suspension PVC copolymer, and dispersion PVC. The complaint also alleged that the acquisition would increase the likelihood that Occidental and the remaining firms in the industry could collude to increase prices in PVC markets.

PPG Industries, Inc.

The Commission challenged PPG Industries, Inc.'s proposed \$41.8 million acquisition of Swedlow Inc. The administrative complaint alleged the merger could substantially reduce competition in the manufacture and sale of aircraft transparencies - windows, windshields and canopies used in private, commercial and military airplanes and helicopters. PPG and Swedlow are currently two of the largest firms in the industry. According to the complaint, if the acquisition were consummated, PPG would become the dominant

firm in the industry and could remain so for a substantial period of time. The Commission alleged that the acquisition could also make it possible for PPG and the remaining firms in the industry to collude, resulting in the possibility of lower output, higher prices or both.

CONSUMER PROTECTION MISSION

Electro Tech Manufacturing, Inc.

The Commission's complaint charged that Electro Tech Manufacturing falsely advertised that consumers could save 20 percent or more on heating and air conditioning bills by installing a duty cyclers. Duty cyclers are devices that allegedly increase the efficiency of home heating and cooling units by causing the thermostat to turn the units on and off more frequently than it would ordinarily. The complaint further alleged that the company claimed to have reliable tests to substantiate energy savings claims, when it did not.

Electronic Systems International, Inc.

The Commission's complaint alleged Electronic Systems International falsely advertised that consumers could save from 20 to 40 percent on their home energy bills by installing duty cyclers.

Pittsburgh Penn Oil Co.

The Commission's complaint alleged that Pittsburgh Penn Oil Co. misrepresented its automotive oils, transmission fluids, and antifreeze by falsely claiming the products met certain established standards. The Commission also alleged the company falsely represented that the oils were suitable for engines manufactured in model years 1980 to the present, and that its antifreeze would protect engine cooling systems down to a temperature of 34 degrees Fahrenheit below zero.

R. J. Reynolds Tobacco Co., Inc.

The Commission's complaint charged that R. J. Reynolds Tobacco Co. allegedly misrepresented the purpose and results of a major government-funded study in an advertisement. The ad, titled "Of Cigarettes and Science," ran from March to June 1985 in leading newspapers and magazines. The complaint also alleged that in light of claims made in the ad, the omission of certain information about the study's results made the ad deceptive.

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

MAINTAINING COMPETITION MISSION

Detroit Auto Dealers Association

Fifty Detroit-area motor vehicle associations, dealerships, or dealers, from the more than 200 respondents identified in the complaint issued by the Commission, agreed to settle charges that they had illegally conspired not to advertise in the classified sections of newspapers or to advertise any vehicle prices. The consent agreements settled Commission charges that the advertising restrictions injured consumers by illegally reducing competition among the dealers. Such restrictions can reduce consumers' access to important information and increase dealers' ability to maintain higher prices. The dealerships, associations, and individuals agreed not to restrict or conspire to restrict any motor vehicle advertising in the classified section of any newspaper or the advertising of any price, term, or condition of sale of any motor vehicle. Litigation on other parts of the Commission's complaint continued against the respondents who settled the advertising charges, as well as against the other respondents named in the complaint.

Roswil, Inc.

Roswil, Inc. agreed to refrain from engaging in concerted action that restricts the gathering or reporting of comparative grocery-price data. The consent agreement settled charges that the grocers conspired to suppress price competition and deprive consumers of comparative price information. According to the complaint, Roswil and two other area grocers had agreed to prevent an independent firm from conducting comparative price surveys in their Springfield, Missouri stores unless the survey firm bought the items it checked. The Commission alleged that the requirement to pay for items whose prices it checked made the survey prohibitively expensive, and the grocers' concerted action led to the termination of the program. Under the consent order Roswil may not: require price checkers to buy the surveyed items; deny price checkers the same access to Roswil's stores as customers; or coerce any price checker, publisher or broadcaster into discontinuing price reporting. Roswil must also take several steps to increase the likelihood price surveys will be resumed in Springfield. According to the proposed order, the

company must reimburse the local cable television station up to \$1,000 of its costs if it decides to broadcast a comparative grocery-price program. Roswil must also notify the public that such a program is being aired.

CONSUMER PROTECTION MISSION

Buckingham Productions, Inc.

Buckingham Productions, marketers of the "Rotation Diet" and several other weight-reduction plans, agreed not to misrepresent the effectiveness of its programs, products, and services. The agreement also restricts Buckingham's use of endorsements and requires that it disclose any relevant relationship between an endorser and the company.

Electronic Systems International, Inc.

Electronic Systems International, maker of "Savit" duty cyclers, agreed to stop making allegedly unsubstantiated efficacy claims about its products and services. Duty cyclers are devices that allegedly increase the efficiency of home heating and cooling units by causing the thermostat to turn the units on and off more frequently than it would ordinarily. Duty cyclers retail for \$400 to \$500.

PART III (Adjudicative Stage)
CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

Ashland Oil, Inc.

Ashland Oil, Inc. was ordered to cancel the proposed sale of its carbon black assets to Bass Brothers Enterprises, Inc. Ashland, the nation's third-largest carbon black producer, was also ordered to obtain Commission approval before selling any of its domestic carbon black plants to a major competitor. The consent order resolved Commission charges that Ashland's sale of carbon black assets to Bass Brothers would substantially lessen competition in the market. Under the order, for the next four years Ashland must notify the Commission before selling one or more of its plants. However, it does not have to provide prior notification if it sells only a single plant to a competitor with less than 15 percent of the U.S. production capacity or if the transaction is subject to Hart-Scott-Rodino Act reporting requirements.

Bass Brothers Enterprises

The Commission also issued a consent order against Bass Brothers Enterprises Inc. and its subsidiary, Sid Richardson Carbon & Gasoline Co., settling charges that Bass Brothers' acquisition of Ashland Oil Inc.'s carbon black assets would substantially lessen competition in the market and violate federal antitrust laws. The companies canceled the merger. The order requires that for five years Bass Brothers obtain prior Commission approval for the acquisition of securities or assets of any company over a certain size in the U.S. carbon black business.

Columbian Enterprises, Inc.

The consent order settled charges that Columbian's acquisition of the Continental Carbon Co., a subsidiary of Conoco, Inc., could lessen competition by creating the nation's second largest producer of carbon black. Under terms of the order, for a period of five years, Columbian is required to obtain prior Commission approval if an acquisition of the stock or assets of a competitor would increase its annual domestic carbon black production capacity by more than 130 million pounds.

MidCon Corp.

MidCon Corp. agreed to sell its interest in the Acadian Gas Pipeline System, which serves markets in Louisiana and Texas, to settle charges that its acquisition of United Energy Resources, Inc. would increase concentration in the transportation and sale of natural gas in the Baton Rouge-New Orleans corridor of Louisiana. According to the complaint, MidCon and United Resources are competitors; MidCon, through its 50 percent interest in the Acadian system, transports natural gas to users in the Baton Rouge-New Orleans corridor; United Resources owns an extensive gas transmission system serving the same area. In addition to the required divestiture, the order prohibits MidCon from acquiring, without prior Commission approval, any interest in additional pipelines that sell a substantial volume of natural gas in the Baton Rouge area for a period of ten years.

Oklahoma Optometric Association

The 300 member Oklahoma Optometric Association was ordered to cease restricting its members from operating franchises and branch offices and from advertising truthfully their products and services. The order settled charges that the association adopted rules that unlawfully restrained competition among its members and deprived consumers of the convenience and potential cost savings benefits of retail optical franchises and branch offices in their purchases of optometric services, optical goods and services. The association represents the interests of approximately 90 percent of the practicing optometrists in Oklahoma.

Rhode Island Board of Accountancy

The Rhode Island Board of Accountancy was ordered not to prohibit accountants in the state from seeking business by truthful advertisements or other non-deceptive forms of solicitation. The consent order settled Commission charges that the board's regulatory practices deprived individuals and businesses of information about accountants' services, unreasonably restrained competition among accountants and injured consumers. The board also allegedly prevented accountants from offering to provide services to other accountants' clients. The board, which is the sole licensing authority for certified public accountants (CPAs) and public accountants (PAs) in the state, was ordered to notify all state-licensed CPAs and PAs and applicants for licenses about the agreement. However, the

board may continue restrictions authorized by the state legislature against dishonest or fraudulent practices and against persons who falsely identify themselves as accountants. The order permits the board to seek state legislation concerning the practice of accounting.

Wallcovering Trade Associations

The Commission issued orders against National Decorating Products Association Inc. (NDPA), of St. Louis, Mo.; Eastern Decorating Products Association, of Westport, Conn., NDPA's New England regional affiliate; and Decorating Products Dealers of Greater New York Inc., a local affiliate of NDPA based in Bayside, N.Y., settling charges that the groups conspired to fix prices of wall coverings. The Commission's complaint charged the wallcovering industry trade association and its affiliates with illegally conspiring to prevent price discounting of wallcoverings. As one means of preventing discounting, they allegedly attempted to pressure manufacturers to publish wallcovering samples books without suggested prices and urged members to remove, code or conceal manufacturers' suggested prices. Such activities prevented retail discounting, stabilized the price of wallcoverings and made it more difficult for consumers to comparison shop, according to the complaint. The three groups were ordered not to try to fix the prices, terms or conditions of sale of wallcoverings. They were also ordered not to coerce any seller or supplier of wallcovering to use or not use any prices, terms or conditions of sale, distribution methods or policy of choosing customers.

Warner Communications, Inc.

Warner Communications, Inc. and PolyGram Records, Inc. agreed to settle Commission charges that their proposed merger could lessen competition in the prerecorded music industry and a consent order was issued by the Commission. The two companies were ordered to seek prior Commission approval before acquiring any interest in each other or in any other specified major record company and to notify the Commission about distribution agreements planned with such companies. Both the prior approval and prior notice requirements last five years.

CONSUMER PROTECTION MISSION

Electro Tech Manufacturing, Inc.

Electro Tech Manufacturing was ordered not to misrepresent the

energy-savings capability of their "Energy Computer" duty cyclers. The order settles charges that the company made allegedly false claims that consumers could save 20 percent or more on their heating and air conditioning bills by installing the duty cyclers. Electro Tech sold its duty cyclers for approximately \$400.

Pittsburgh Penn Oil Co.

Pittsburgh Penn Oil Co. was ordered not to make false representations that its automotive ads, transmission fluids, and antifreeze meet standardized industry ratings.

Roy Brog

Roy Brog, former chairman of the board of Meadow Fresh Farms, a company that marketed a dry milk substitute, was ordered to have scientific evidence for any future claims about the product's shelf life and its ability to reduce cardiovascular disease. The company sold its product, Meadow Fresh White, a powdered, dairy-based milk substitute, through a distributor network. Brog was also ordered not to exclude certain distributors in computing "average" distributor earnings unless he explains the exclusion.

Weider Health and Fitness, Inc.

Weider Health and Fitness and Joseph Weider were ordered to pay a minimum of \$400,000 in refunds to consumers and research grants to settle charges that they misrepresented two nutrient supplements. Weider was also ordered not to falsely claim that the supplements, "Anabolic Mega Pak" and "Dynamic Life Essence," are effective substitutes for anabolic steroids or help build muscles. If refunds to purchasers of these products total less than \$400,000, Weider is required to donate the difference to fund research on the relationship of nutrition to muscle development.

INITIAL DECISIONS

MAINTAINING COMPETITION MISSION

Electrical Bid Registration Service of Memphis, Inc.

An Administrative Law Judge ruled that a bid depository set up by electrical subcontractors in the greater Memphis, Tennessee, area unreasonably restrains competition and increases the cost of

electrical subcontracting work. He ordered The Electrical Bid Registration Service of Memphis Inc., known as the "registry," to stop the practices that he found to be illegal. The Judge found that a general contractor who wants to use these bids in developing proposals on construction contracts must agree to select one of the registry's bidders and may not try to negotiate lower bids from subcontractors not using the registry. The Judge ruled that the system splits the electrical subcontracting market between those in the registry and those outside, thereby effectively restraining open price competition. The Judge found no procompetitive justification for the system and no evidence that the bidding system is necessary for quality, safety or other reasons. The Judge also upheld charges against the Memphis chapter of the National Electrical Contractors Association. The Memphis chapter first formed a bid depository in 1956 and in 1976 created the registry.

Massachusetts Board of Registration in Optometry

An Administrative Law Judge ruled that the Massachusetts Board of Registration in Optometry illegally restricted truthful advertising by optometrists, resulting in higher consumer prices for eye-care goods and services. The Judge issued an order requiring the board to cease restricting truthful advertising by its members. The ruling upheld a complaint charging that the Massachusetts board unlawfully conspired to prohibit optometrists from truthfully advertising discounts from their usual prices and fees. He also upheld charges that the board unlawfully prohibited optical and other commercial establishments from advertising the names of optometrists or the availability of their services and prohibited the use of ads containing testimonials or ads that were "sensational" or "flamboyant." The Massachusetts board, a state agency, is the sole licensing authority for almost 2,000 optometrists in the state.

CONSUMER PROTECTION MISSION

General Nutrition, Inc.

An Administrative Law Judge ruled that advertisements by General Nutrition claiming that its dietary supplement "Healthy Greens" reduced the chances of contracting cancer were knowingly false, misleading, and deceptive. The Judge issued an order prohibiting the company from making false and unsubstantiated advertising claims in the future for any product marketed for its ability to prevent or reduce the risk of any disease in humans. The decision was appealed to the Commission.

R. J. Reynolds Tobacco Company, Inc.

An Administrative Law Judge dismissed a complaint against R. J. Reynolds Tobacco Company ruling that its statement on smoking and health was an editorial and therefore not subject to the Commission's jurisdiction. The Commission's complaint charged that the company misrepresented the purpose and results of a major government-funded study in an advertisement. The complaint also alleged that in light of claims made in the ad, the omission of certain information about the study's results made the ad deceptive. The ruling was appealed to the Commission by complaint counsel.

FINAL COMMISSION ORDERS

MAINTAINING COMPETITION MISSION

Boise Cascade Corp.

The Commission ruled that Boise Cascade Corp., the largest distributor of office products in the United States, knowingly received unlawful discounts from office-products suppliers in violation of the Robinson-Patman Act, and ordered Boise not to accept knowingly from any supplier a net price for office products that is lower than the price at which the supplier sells the products to other retailers with whom Boise competes. Boise sells office products both as a wholesaler and as a retailer. The Commission's 1980 complaint alleged Boise had received from certain suppliers a wholesaler's discount on products it resold at retail in competition with other retailers to whom this wholesalers' discount was not available.

Electrical Bid Registration Service of Memphis, Inc.

The Commission upheld an Administrative Law Judge's finding that a bid depository set up by electrical subcontractors in Memphis, Tennessee unreasonably restrains competition and increases the prices of electrical subcontracting work and affirmed an order requiring The Electrical Bid Registration Service of Memphis, Inc., referred to as "the registry," to stop the illegal practices that required subcontractors bidding for a specific project to submit sealed bids and not to change them after a set deadline. General contractors who wanted to use these bids were required to agree to select one of the registry's bidders and could not negotiate lower bids from subcontractors outside the registry.

Hospital Corporation of America

The Commission ordered Hospital Corporation of America (HCA) to divest two hospitals and one hospital management contract in the Chattanooga, Tennessee, area on the ground that the acquisitions may substantially lessen competition in the general hospital market in that area. The order requires that, within 12 months, HCA divest North Park Hospital and Diagnostic Center Hospital, both in Hamilton County, Tennessee and any medical office buildings associated with the hospitals. The divestitures must be approved by the Commission and must be to different acquirers. HCA must also, within a year, terminate its management contract with Downtown General Hospital, also in Hamilton County, and divest related real estate to a Commission-approved acquirer.

Superior Court Trial Lawyers Association

The Commission ruled that the District of Columbia Superior Court Trial Lawyers Association conducted an illegal boycott to coerce the city government into raising the fees it paid for their legal services. The Commission ordered the group not to conduct such a fee-related boycott in the future. An Administrative Law Judge had ruled that while the association had engaged in an illegal boycott to raise prices, special circumstances in the case warranted dismissing the complaint. The association's members are private lawyers who compete with each other to represent indigent criminal defendants before the D.C. Superior Court. The court appoints the lawyers to individual cases and the D.C. government sets and pays their fees.

CONSUMER PROTECTION MISSION

Figgie International, Inc.

The Commission ruled that Vanguard heat detectors, manufactured by Figgie International, do not provide consumers with the necessary warning to escape from most residential fires. The order prohibited such claims and also required Figgie to provide notification that smoke detectors give earlier warning than heat detectors in nearly all residential fires to past purchasers of its heat detectors. Figgie must also disclose that fact in any future promotional materials that make claims about the residential fire protection provided by heat detectors.

ORDER MODIFICATIONS

MAINTAINING COMPETITION MISSION

Allied Corp.

The Commission modified a consent order issued in 1980 concerning Allied Corp. and its subsidiary Bendix Corp. by deleting a requirement for prior approval of acquisitions of any interest in companies that make or sell certain machine-tool products. The order settled charges that Bendix's acquisition of Warner & Swasey Co. had anticompetitive effects in several areas of machine-tool production. Allied Corp. became subject to the order when it acquired Bendix in January 1983. The Commission ruled that the provision was no longer necessary since Bendix and Allied have discontinued the manufacture or sale of the machine-tool product referred to in the order.

American Medical International, Inc.

The Commission approved a request by American Medical International, Inc. (AMI) to modify an order issued in 1984 requiring the divestiture of French Hospital in San Luis Obispo, California. The Commission modified the order so that AMI can retain a security interest in French Hospital until the acquirer finishes payment. However, AMI must redivest the hospital if it is reacquired under that security interest. The modified order also does not require AMI to divest the stock of French Hospital Corp., which ran the hospital, or the data processing equipment that AMI installed in the hospital.

Atlantic Richfield Co.

The Commission set aside a 1979 order which settled a complaint issued in 1976 challenging Atlantic Richfield's (ARCO) acquisition of Anaconda Copper Co. The original order required the company, among other things, to divest five Anaconda copper interests, including Anamax. ARCO has divested the other properties. The Commission said that the Anamax divestiture was no longer necessary because of developments in the copper industry.

Atlas Supply Co.

The Commission denied a request from Atlas Supply Co. and its parent companies to set aside a 1951 order but modified the order

by deleting one provision. The deleted provision restricted the joint purchasing activities of Atlas and its parent companies. The Commission denied the request to set aside portions of the order which require the companies to comply with the Robinson-Patman Act. Those provisions prohibit the companies from obtaining illegal allowances or discriminatory prices in their purchase of automotive products.

Flowers Industries, Inc.

The Commission modified a 1983 consent order with Flowers Industries, Inc., a Georgia-based baker, by appointing a trustee to divest two bakeries and extending for six months the deadline for the divestitures. The order required Flowers to divest its plants in High Point, North Carolina and Gadsden, Alabama by May 14, 1986. The divestitures must be made to companies that will continue operating the plants as bakeries and the transactions must receive prior Commission approval. The order was modified because Flowers did not find buyers for these plants.

Hospital Corp. of America

The Commission modified a 1985 consent order with Hospital Corp. of America (HCA) by setting aside the requirement that HCA divest a parcel of land that is the location for a planned hospital in Midland, Texas provided the acquirer owns a different site and therefore chooses not to acquire HCA's parcel of land. Approval of the divestiture was required by a consent order issued in 1985 setting charges that HCA's acquisition of the hospital could increase concentration and reduce competition in the general acute care hospital services market in the Midland/Odessa area. HCA asked the Commission to delete the requirement to divest the land because the acquirer already owned land upon which it could build the hospital and therefore did not need to acquire HCA's land.

United Brands Co.

The Commission set aside a 1975 order requiring United Brands Co. to file special reports with the Commission about the company's access to land commercially suitable for lettuce cultivation. The order stemmed from a complaint issued in 1971 challenging United Brands' acquisition of several firms in the fresh produce industry. The Commission set aside the order because United Brands is no longer in the lettuce cultivation business.

U.S. Steel Corp.

The Commission modified an order issued in 1924 with U.S. Steel Corp. by deleting a requirement that the company include specific price and transportation information on its contracts and invoices. The order settled a complaint that was issued in 1921 charging that U.S. Steel's pricing methods artificially increased prices.

CONSUMER PROTECTION MISSION**American Home Products Corp.**

The Commission modified an order with American Home Products removing some restrictions on the company's advertising for Preparation H. The Commission noted that the Food and Drug Administration, which has jurisdiction over labeling, has proposed allowing companies to make specified relief claims for hemorrhoids or their symptoms on package labels. The FTC modified its order to allow the company to use in its advertising any claims that the FDA has tentatively approved.

Beecham, Inc.

The Commission modified an order with Beecham concerning representations regarding Proslim's value as a weight reduction product. The modification terminates a perpetual obligation that the company file advertising and labeling with the Commission at six-month intervals. The Commission concluded that it was in the public interest to relieve Beecham of the costs of compliance with this provision.

Chesebrough-Pond, Inc.

The Commission modified an order with Chesebrough-Pond prohibiting the company from making several specific claims about Vaseline's use and effectiveness. The modifications will allow the company to claim that Vaseline provides a protective barrier to the skin and is effective for relief of itching. The Commission modified another order provision to allow the company to compare Vaseline's effectiveness to that of other products as long as it has a reasonable basis for such comparison.

General Mills Fun Group, Inc.

The Commission released General Mills from its responsibilities

under an order issued in 1979 prohibiting misrepresentations in advertising by its toy producing subsidiary, General Mills Fun Group. The Commission stated however that the order remains binding on the subsidiary's successor, Kenner Parker Toys, Inc. General Mills spun off the toy producing subsidiary and stated it had no intention of reentering the business. Kenner Parker Toys became an independent business in November 1985.

National Talent Associates, Inc.

The Commission modified a consent order with National Talent Associates by eliminating some information the Commission considers less significant from the disclosures National Talent makes to prospective clients. The consent order permanently prohibits the company from misrepresenting its ability to place children as models and requires National Talent to disclose specified information.

PRELIMINARY AND PERMANENT INJUNCTIONS

MAINTAINING COMPETITION MISSION

Coca-Cola Co.

The Commission authorized its staff to seek a preliminary injunction to bar Coca-Cola Co.'s acquisition of Dr Pepper Co. The Commission alleged the proposed acquisition could reduce competition in the distribution and sale of carbonated soft drinks in the United States. The acquisition was enjoined by the federal courts.

Occidental Petroleum Corp.

The Commission sought a preliminary injunction barring Occidental Petroleum Corp.'s \$70 million acquisition of certain plastic-production assets of Tenneco Inc. The Commission alleged that the proposed acquisition could substantially reduce competition in the production of three polyvinyl chloride (PVC) resin product markets: mass and suspension PVC; suspension PVC copolymer; and dispersion PVC. Although the federal district court declined to issue the injunction, the Commission initiated administrative litigation challenging the transaction.

Occidental Petroleum Corp.

In a separate matter, the Commission also authorized its staff to file an enforcement action under section 7A(g)(2) of the Hart-Scott-Rodino Act to seek a temporary restraining order and a preliminary injunction preventing Occidental Petroleum from proceeding with its cash tender offer for MidCon Corp. shares until it complied with the HSR second request and the extended HSR waiting period expired. Prior to filing the injunction action the Commission accepted a consent agreement with Occidental Petroleum that resolved the matter.

PepsiCo, Inc.

The Commission authorized its staff to seek preliminary injunctions to block PepsiCo, Inc.'s proposed acquisition of The Seven-Up Co. The Commission alleged the proposed acquisition could reduce competition in the distribution and sale of carbonated soft drinks in the United States. Prior to the filing of the injunction action PepsiCo abandoned its intention to acquire Seven-Up.

PPG Industries, Inc.

The Commission authorized its staff to seek a preliminary injunction to, prohibit PPG Industries, Inc.'s \$41.8 million acquisition of Swedlow, Inc. The Commission alleged the merger could substantially reduce competition in the manufacture and sale of aircraft transparencies: windows, windshields and canopies used in private, commercial and military airplanes and helicopters. PPG and Swedlow are two of the largest firms in the industry. The federal court of appeals entered a preliminary injunction enjoining consummation of the defendants' merger pending completion of the Commission's administrative proceeding.

CONSUMER PROTECTION MISSION

American National Cellular, Inc.

The Commission filed a complaint seeking preliminary and permanent injunctions, an asset freeze, and consumer redress against American National Cellular and five other defendants. The complaint charges the two corporate defendants and four individual defendants with allegedly misleading potential investors about the chances and profitability of winning lotteries for the right to build cellular telephone systems. This is the first case the Commission has

brought against allegedly deceptive investment schemes involving cellular telephone lotteries. The federal court ordered a temporary restraining order and preliminary injunction against defendants and froze the defendants' assets and appointed a temporary receiver.

Cassette Library, Inc.

The Commission obtained a settlement with Cassette Library providing refunds of up to \$200 to certain customers, and prohibiting the company from misrepresenting any merchandise or service it offers. The complaint charged that Music Library Associates, Inc. allegedly falsely represented its Cassette Library plan under which consumers paid from \$1260 to \$1700 to buy audio cassette tapes from a catalog.

Cellular Corp.

The Commission obtained a settlement with five defendants prohibiting misrepresentations about the sale of cellular telephone license application services and requiring disclosure of critical facts to consumers. The agreement also requires that the defendants notify consumers who signed promissory notes for a portion of the purchase price that the notes only have to be paid out of profits from the operation or sale of a cellular system. The defendants must also establish a fund of \$400,000 to pay for the preparation, completion, and filing of cellular telephone lottery applications. In addition, one defendant, Kent Maerki, was required to pay \$100,000 to the U.S. Treasury.

Donald A. Schwab

The Commission obtained a settlement with Donald A. Schwab, an Ohio mortgage broker. Under the consent decree, Schwab agreed not to misrepresent the rates or availability of mortgage loans in the future. The complaint alleged that Schwab falsely advertised that he could obtain home mortgages for his customers at rates substantially below prevailing market rates. Further, the complaint charged that none of the consumers who applied for mortgages through Schwab received loans at the promised rates.

DuraSeal International, Inc.

The Commission filed a complaint charging DuraSeal International with allegedly violating the Commission's Franchise Rule. The court

issued a preliminary injunction and froze the assets of a company officer. The complaint charges the company with falsely representing that consumers who bought its "DuraSeal" asphalt-sealant franchises could expect to earn up to \$60,000 in their first year of operation.

Engage-A-Car Services, Inc.

The Commission filed a complaint seeking a temporary restraining order, an asset freeze, preliminary and permanent injunctions and consumer redress against Engage-A-Car Services. The complaint charged seven defendants with allegedly misrepresenting the profitability of their auto leasing franchises and the services they offered potential franchisees. The Commission estimates consumer injury from these practices at approximately \$24 million. The federal court granted a temporary restraining order against the defendants and an order freezing the assets of one corporate defendant and the four individual defendants to preserve the possibility of restitution to consumers, which could include refunds of franchising fees.

Evans Products Co.

The Commission obtained a bankruptcy court settlement in this matter. Under the settlement, several thousand eligible buyers of pre-cut homes will receive \$2.4 million in redress. The Commission had charged that the defendants made allegedly deceptive and unfair representations that they would provide buyers with guaranteed long-term mortgage loans. The companies allegedly failed to provide the promised loans, or provided the loans at higher than promised interest rates, causing severe economic injury to consumers and the loss of many homes.

Freeway Dodge, Inc.

The Commission filed a complaint seeking a permanent injunction and civil penalties against Freeway Dodge. The complaint charged that the automobile dealer allegedly violated federal credit laws by giving consumers incomplete credit information in its ads. The complaint also alleged that the dealer's advertisements failed to comply with the Truth in Lending Act even after Commission staff alerted the dealer of the problems. This matter and that involving Hopkins Dodge Sales, Inc. are the first two enforcement actions resulting from a comprehensive ad-monitoring and industry-educational

tion program to improve automobile credit advertisers' compliance with the Truth in Lending Act.

Green Tree Acceptance, Inc.

The Commission filed a complaint against Green Tree Acceptance for allegedly violating federal credit laws by not telling consumers why they were denied credit. The Commission asked the court to require the company to pay civil penalties, to prohibit future violations of the laws and to provide correct notices to certain consumers. The company provides financing in 25 states to consumers purchasing mobile homes. The complaint charged the company with violating the disclosure requirements of the Equal Credit Opportunity Act and the Fair Credit Reporting Act.

Hopkins Dodge Sales, Inc.

The Commission sought a permanent injunction and civil penalties against Hopkins Dodge Sales. The FTC complaint charged that the automobile dealer allegedly violated federal credit laws by giving consumers incomplete credit information in its ads. The Commission also alleged that the dealer failed to bring its advertising into compliance with the Truth in Lending Act after being contacted by the FTC staff.

Intra-Medic Formulations, Inc.

The Commission obtained a permanent injunction against Intra-Medic Formulations, its president, and three wholly-owned subsidiaries. The complaint charged the four mail order companies with making false and deceptive claims about their weight-control and baldness-cure products.

Leland Industries, Inc.

The Commission obtained a settlement against Leland Industries in which consumers will share \$2.5 million in refunds. In 1983, the Commission sought an injunction based upon charges that defendants allegedly misrepresented important information to investors in lotteries for oil and gas rights on federal lands. Approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services.

Moksha Wendell Smith

The Commission obtained a permanent injunction against Moksha Wendell Smith, a defendant in an action seeking relief in connection with the promotion and sale of vacation timeshares. Smith was permanently enjoined from assigning, transferring, or soliciting payment on any Paradise Palm Vacation Club or Harbor Village Club consumer credit contracts he holds or controls.

North American Office Systems, Inc.

The Commission filed a complaint against North American Office Systems seeking preliminary and permanent injunctions and consumer redress. The Commission alleged that defendants deceptively marketed and sold photocopy supplies through a telephone "boiler room" operation. The complaint charged that, as a result, consumers have paid excessive prices for goods, have unknowingly paid hidden charges and have suffered other injury.

Peter LaBarrie

The Commission obtained an injunction permanently enjoining Peter LaBarrie, a former Leland Industries salesman, from making false and deceptive representations in the future-sale of services for oil and gas lotteries.

Pittsburgh Penn Oil Co.

The Commission obtained an injunction against Pittsburgh Penn Oil Co. The complaint charged the company with misrepresenting its automotive oils, transmission fluids, and antifreeze by falsely claiming the products met established standards. The injunction, to which the company agreed, prohibits the company from representing that its products meet any standard or make any other performance or quality claim, unless the claim is true and the company has a reasonable basis for it.

Premier Cellular, Inc., Charles Michael Fischer, and Gerald Woods

The Commission instituted criminal contempt charges against three defendants in the American National Cellular federal court action. Premier Cellular, Charles Michael Fischer, and Gerald Woods were charged with violating the temporary restraining order and preliminary injunction issued by the federal court.

Rare Coin Galleries of America, Inc.

The Commission filed a complaint seeking preliminary and permanent injunctions, and consumer redress against Rare Coin Galleries of America. The court granted a temporary restraining order and an asset freeze also requested by the Commission. The defendants, who have sold thousands of rare coins nationwide, allegedly misrepresented the grade and investment value of the coins. Consumers were sold coins for between \$100 and \$3,000 each, when according to the complaint, many of the coins were worth substantially less.

Rocky Mountain Circulation, Inc.

The Commission filed a complaint charging that Rocky Mountain Circulation and its two officers allegedly accepted money for magazine subscriptions without placing the orders. The court issued a temporary restraining order against the defendants and froze their assets. The complaint also alleged that the company violated the Commission's Cooling-Off Rule, which requires companies to provide a three-day cancellation period for door-to-door sales.

Solar America, Inc.

The Commission filed a complaint seeking a temporary restraining order, an asset freeze, and preliminary and permanent injunctions against Solar America. The Commission requested that the company be barred from making any future misrepresentations about its solar energy heating systems and ordered to make refunds to consumers who bought the system. The complaint charged that the company falsely claimed that its solar energy heating systems could significantly reduce residential heating fuel consumption and would pay for themselves in a short time.

Solar Michigan, Inc.

The Commission filed a complaint in federal court seeking consumer redress, and preliminary and permanent injunctions against Solar Michigan. The complaint charged the company with falsely claiming that its solar energy heating systems can significantly reduce residential heating fuel consumption and will pay for themselves in a short time.

Thermo Products Company

The Commission filed a complaint seeking civil penalties and an injunction against Thermo Products Company for violating the "R-Value" Rule. The complaint charged that the company overstated the amount of protection its home insulation provided.

Trans-Alaska Energy Corp.

The Commission obtained criminal contempt convictions against three Trans-Alaska Energy defendants, Alan F. Goda, David J. Swain, and Michael Peter Nissen, for violating a federal court order aimed at preserving assets for consumer redress. In addition, Goda was ordered to pay \$50,000 into a restitution fund. A stipulation containing a permanent injunction and final order as to a fourth defendant, Robert A. Kobek, was entered in federal court. In 1984, the Commission charged that Trans-Alaska and several corporate and individual defendants allegedly defrauded and misled a substantial number of investors about the potential value of oil and gas leases in Alaska and Wyoming.

TS Industries, Inc.

The Commission filed a complaint charging TS Industries with misrepresenting the effectiveness of its thermal insulation products. The Commission sought injunctive relief and civil penalties for violations of the "R-Value" Rule.

Unnamed Adoption Services

The Commission entered into a proposed settlement with defendant, Bryan M. Hall, including a permanent injunction prohibiting him from misrepresenting his ability to arrange adoptions and his role in the adoption process. The settlement is subject to court approval. In 1983, the Commission charged Hall and two other defendants with falsely claiming they could help couples adopt children from Mexico.

Volcano Mining Project

The Commission filed a complaint seeking consumer redress and injunctions against Volcano Mining Project charging that it was a bogus investment scheme in which consumers lost \$1.7 million. The complaint charged that although a return of at least \$45,000 and

possibly as much as \$100,000 on a \$9,600 investment was promised, consumers did not receive any return on their investments. Volcano Mining has never processed any ore itself, despite its claims that it did, and did not develop any type of system to recover gold and silver from the ore, according to the complaint.

Walser Motors, Inc.

The Commission filed a complaint seeking civil penalties against Walser Motors for violating federal credit statutes by giving consumers incomplete information in its ads. The complaint charges that Walser advertised certain credit terms, such as the monthly payment, without also stating other required information, including the annual percentage rate. This action was a result of a comprehensive ad monitoring and industry education program to improve automobile credit advertisers' compliance with the Truth-in-Lending Act.

William D. Jones d/b/a Liquid Assets

The Commission obtained a permanent injunction prohibiting William D. Jones from making advertising claims that a mouth-wash, Breath Fresh 502, will sober persons who have consumed large amounts of alcohol and will allow them to pass breath analyzer tests. The injunction also prohibits similar claims about counteracting the effects of alcohol consumption, unless the claims are substantiated by competent and reliable scientific evidence before they are made.

CIVIL PENALTY ACTIONS

MAINTAINING COMPETITION MISSION

Amway Corp.

Amway Corp. agreed, under a consent decree filed in federal court, to pay a \$100,000 civil penalty to settle Commission charges it violated a 1979 Commission order that prohibits Amway from misrepresenting the amount of profit, earnings or sales its distributors are likely to achieve. According to a complaint filed with the consent decree, Amway violated the 1979 order by advertising earnings claims without including in it clear and conspicuous disclosures of the average earnings or sales of all distributors in any

recent year or the percent of distributors who actually achieved the results claimed.

Bell Resources, Ltd.

Weeks Petroleum Ltd., a subsidiary of Bell Resources, Ltd., agreed to pay \$450,000 in civil penalties to settle charges that Weeks violated the Hart-Scott-Rodino Act by making certain acquisitions of Asarco shares without filing the notification and observing the waiting period required by the Act. The Commission had alleged that these acquisitions were not made solely for the purpose of investment and therefore did not qualify, for the Act's investment only exemption.

Sunkist Growers

Sunkist agreed to pay \$375,000 in civil penalties to settle the charge that it violated a 1981 consent order with the Commission. Sunkist had agreed to divest its Yuma citrus processing facility to a Commission-approved acquirer by November 1982. The Commission later extended the deadline until February 1983, but Sunkist allegedly did not divest the property until August 1984.

CONSUMER PROTECTION MISSION

A.P. Orleans, Inc.

A.P. Orleans, a Philadelphia-based marketer of housing developments, agreed to pay \$80,000 in civil penalties to settle charges it violated federal credit advertising laws. The complaint charged the company with violating the Truth In Lending Act by not including required information in their advertisements. The Commission brought charges against this company as part of its real estate credit advertising project.

Boch Oldsmobile, Inc. and Boch Toyota, Inc.

Boch Oldsmobile and Boch Toyota, two Boston automobile dealerships, will pay a total of \$70,000 in civil penalties under consent decrees settling Commission charges they violated federal laws by giving consumers incomplete credit information in their advertisements. This action was taken as part of a comprehensive ad monitoring and industry education program to improve automobile credit advertisers' compliance with the Truth In Lending Act.

Del Monte Corp.

Del Monte agreed to pay a \$100,000 civil penalty to settle charges it failed to send consumers timely and proper notices telling them of their rights under the Mail Order Rule in a coupon promotion program.

Dixie Readers' Service, Inc.

Dixie Readers' Service, a nationwide seller of magazine subscriptions, agreed to pay a \$55,000 civil penalty for allegedly violating the Door-To-Door Sales Rule and an order issued in 1972. The company was charged with failing to make timely and full refunds and to inform customers of their rights to cancel subscriptions.

Hooker Homes, Inc.

Hooker Homes agreed to pay \$250,000 in civil penalties to settle charges it violated credit advertising laws. The complaint charged the company with failing to comply with the Truth In Lending Act after being repeatedly notified by Commission staff that it was required to do so. This action resulted from the Commission's real estate credit advertising project.

KRSS Development Corp.

KRSS Development, a Chicago-area builder, agreed to a \$13,000 civil penalty consent decree to settle charges it violated federal credit advertising laws. Under the consent decree, KRSS must comply with the Truth In Lending Act requirement that sellers disclose the annual percentage rate in credit advertisements for home mortgage loans when they state an interest rate.

Leisure Time Electronics, Inc.

Leisure Time Electronics agreed to pay a \$157,500 civil penalty to settle charges it misrepresented video and pinball game franchises. Under the consent decree, the individual respondents also agreed to provide prospective franchisees with required written disclosure documents, a copy of the contract, and an earnings claim document, within the time limits required by the FTC's rule. They further agreed not to misrepresent the services they would provide to purchasers or make any income or sales projections without a reasonable basis.

Leland Industries, Inc.

Three Leland officers, Stephen M. Thompson, H. Joel Stanley and Paul R. Colavecchi, agreed to pay \$10,000 each in a settlement in which consumers share \$2.5 million in refunds. In 1983, the Commission sought an injunction based upon charges that defendants allegedly misrepresented important information to investors in lotteries for oil and gas rights on federal lands. Approximately 5,000 customers invested between \$4,000 and \$100,000 in such lotteries using Leland's services.

Mesa Realty, Inc.

Mesa Realty agreed to a \$30,000 civil penalty consent decree to settle Commission charges that it violated the Truth In Lending Act by failing to disclose required information in its ads for home mortgages. The Commission took this action as part of its real estate credit advertising project, designed to increase compliance with federal credit laws.

National Talent Associates, Inc.

National Talent Associates agreed to pay a \$150,000 civil penalty to settle charges they violated a consent order issued in 1975. The company was charged with misrepresenting its ability to place children in paid modeling positions.

Network Marketing, Inc.

Network Marketing, a nationwide mail-order marketer of watches, paid a \$45,000 civil penalty to settle charges it violated the law by failing to ship merchandise on time, by not providing timely refunds to consumers, and by not honoring its warranties in a timely manner.

New York Feather Co., Inc.

New York Feather agreed to pay \$100,000 in civil penalties to settle charges it violated both federal law and a Commission order issued in 1951 against the company by misrepresenting the amount of down filling in its pillows. This consent resulted from the ongoing effort to ensure compliance with the Commission's feather and down industry guidelines.

Northern Feather International, Inc.

Northern Feather International agreed to pay \$100,000 in civil penalties to settle charges it misrepresented the down and feather content of its pillows and comforters in violation of an order issued in 1956. Northern Feather was charged with labeling and its products as containing down or a specific percentage of down, when the products actually contained substantially less down than stated.

Strawbridge and Clothier

Strawbridge and Clothier, a chain of department stores, agreed to pay a \$70,000 civil penalty to settle charges it violated the Equal Credit Opportunity Act by failing to tell applicants why it turned them down for credit. The complaint also alleged that the company violated the Fair Credit Reporting Act by failing to provide all credit applicants it rejected in 1984 with the notices required by the statute.

Tuff-Tire America, Inc.

Ross Artus, president of Tuff-Tire America, agreed to pay \$13,000 in civil penalties to settle charges he misrepresented his tire sealant franchises in violation of the Franchise Rule and the FTC Act. Under the consent decree, Artus agreed to comply with the Franchise Rule and to have a reasonable basis for any future earnings claims. He further agreed not to misrepresent the performance of any tire sealant product.

SUPREME COURT DECISION

Indiana Federation of Dentists

The Supreme Court of the United States reinstated a Commission decision finding that the Indiana Federation of Dentists engaged in unlawful anticompetitive practices. The Court held: "The factual findings of the Commission regarding the effect of the Federation's policy of withholding X-rays are supported by substantial evidence, and those findings are sufficient as a matter of law to establish a violation of § 1 of the Sherman Act, and, hence, § 3 of the Federal Trade Commission Act. * * * The judgment of the Court of Appeals is accordingly reversed."

ECONOMIC REPORTS COMPLETED

Economic reports usually entail a substantial commitment of resources and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

The Effect of State Entry Regulation on Retail Automobile Markets, Robert P. Rogers, January 1986. This report estimates the effect on consumer welfare of state laws restricting the establishment of new automobile dealerships in the vicinity of present dealers selling cars of the same make. The author concluded that these laws apparently raise new automobile prices about six percent.

Certificate of Need Regulation of Entry into Home Health Care, Keith B. Anderson and David I. Kass, January 1986. This report examines the justification for requiring Certificate-of-Need approval for home health care providers. The authors find no evidence that home health firms located in states with these regulations achieve available economies of scale to a greater degree than firms in states without such regulations.

Investigating Oligopolies within the Laboratory, Daniel Alger, January 1986. The author uses experimental methods to investigate competitive theories that form the basis of antitrust policy.

Product Quality & Information in the Used Car Market, James M. Lacko, June 1986. The author assesses evidence on product quality problems in the used car market and looks at the effects of various state laws that attempt to improve the market.

Empirical Approaches to Consumer Protection Economics, Pauline M. Ippolito and David T. Scheffman, June 1986. This volume comprises the proceedings of a conference on consumer protection regulation and includes twelve papers by academic and government economists dealing with various advertising and product quality problems.

Concentration, Integration, and Diversification in the U.S. Grocery Retailing Industry, Russell Parker, June 1986. This statistical report on grocery retailing for Census years 1954-1977 contains SMSA concentration data and other profit and sales data.

Experimental Studies of Markets with Buyers Ignorant of Quality Before Purchase: When Do Lemons Drive Out High Quality Products?,

Michael Lynch, September 1986. These experiments were designed to determine conditions under which sellers would develop reputations that would cause them to supply high quality goods despite the fact that buyers are unaware of quality before purchase. The author concluded that if sellers could not develop reputations for poor quality, then the market would consist entirely of poor quality products. The need to attract repeat customers is not sufficient incentive for the seller to build a reputation for supplying good quality, while the imposition of a requirement for truthful advertising or labeling is sufficient.

WORKING PAPERS

Economic Working Papers are preliminary, published work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses. The papers usually entail relatively minor allocations of official time.

On the Extent of the Market: Wholesale Gasoline in the Northeastern United States, (WP #135), Pablo T. Spiller and Cliff J. Huang, January 1986.

The Profitability of Mergers, (WP #136), David J. Ravenscraft and F.M. Scherer, January 1986.

Mergers and Managerial Performance, (WP #137), David J. Ravenscraft and F.M. Scherer, January 1986.

Optimal Civil Penalties, (WP #138), John Nash, February 1986.

Life After Takeover, (WP #139), David J. Ravenscraft and F.M. Scherer, March 1986.

The Efficacy of Minimum Quality Certification in the Used Vehicle Market, (WP #140), Michael D. Pratt and George E. Hoffer, July 1986.

Cost-Raising Strategies, (WP #146), Steven C. Salop and David T. Scheffman, July 1986.

A Theory of Input Exchange Agreements, (WP #147), Charles Holt and David T. Scheffman, July 1986.

The "Steiner Effect": A Prediction from a Monopolistically Competitive Model Inconsistent with any Combination of Pure Monopoly or Competition, (WP #141), Michael Lynch, August 1986.

Market Definition Under 1984 Merger Guidelines: Critical Demand Elasticities, (WP #142), Frederick I. Johnson, August 1986.

Dual Distribution as a Vertical Control Device, (WP #143), Malcolm B. Coate and Mark R. Fratrik, September 1986.

Retail Featuring as an Entry or Mobility Barrier in Manufacturing, (WP#144), Philip B. Nelson and John C. Hilke, September 1986.

MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research, and generally entail small amounts of agency resources. 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. These papers usually explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission.

Contributions of Diversification, Promotion, and R&D to the Value of Multiproduct Firms: A Tobin's Q Approach, Len Nichols, February 1986.

Elements of Business Risk and the Decomposition of Systematic Risk, Len Nichols and Jerry L. Stevens, March 1986.

Two Tests of George's Resource Control and Market Power Hypothesis, David R. Ross, March 1986.

In Search of Industry Effects of Large Conglomerate Mergers, Robert Feinberg, October, 1985.

Strategic Choice as an Element of Market Structure, Ralph M. Bradburd, October 1985.

Firm Size and R&D Intensity: A Re-Examination of the Stylized Facts, Wesley M. Cohen, Richard C. Levin, and David C. Mowery, October 1985.

The Commodity Composition of U.S. Intra-Firm Exports, Anita M. Benvignati, December 1985.

Looking for Rivalry in Structure Performance Studies, David R. Ross, October 1985.

Does Firm Size Affect R&D Intensity?, Wesley M. Cohen and David C. Mowery, December 1985.

Purposive Diversification of R&D in Manufacturing, John T. Scott and George A. Pascoe Jr., January 1986.

PIMS and the FTC Line of Business Data: A Comparison, Cheri T. Marshall, February 1986.

Adjusted Concentration Ratios in Manufacturing, 1972 and 1977, Leonard W. Weiss and George A. Pascoe Jr., July 1986.

Collusion Versus Market Share, Len Nichols, Jerry L. Stevens, and Manuel L. Jose, August 1986.

CONGRESSIONAL TESTIMONY AND COMMENTS

During 1986, the Commission and its staff was requested by both houses of Congress to provide testimony related to several different subject areas. The testimony and written comments analyzed the impact and implications of 9 separate pieces of proposed legislation.

HOUSE

Commission testimony delivered by Anne Fortney before the House Banking, Finance and Urban Affairs subcommittee on Consumer Affairs and Coinage. The testimony opposed H.R.237, which sought to repeal the attorney exemption of the Fair Debt Collection Practices Act, and recommended instead that Congress clarify the extent of the exemption.

Staff testimony before the House Subcommittee on General Oversight and the Economy opposing H.R.3824, the "Motor Fuel Sales Competition Improvements Act of 1985." The testimony pointed out that the proposed statutory alteration of existing gasoline supply contracts and vertical divorcement of retail gasoline stations by wholesale dealers would increase fuel distribution costs,

eliminate legitimate price competition, and raise the prices of motor fuels to consumers.

Commission comments to the House Subcommittee on Commerce, Transportation and Tourism on H.R.1140, the "Railroad Antimonopoly Act of 1986." The comments opposed the bill because its provisions would conflict with existing antitrust laws and would have a significant adverse impact on the rail transportation system.

Commission comments to the House Committee on Energy and Commerce on certain provisions of 5.863, the "National Highway Traffic Safety Administration Authorization Act of 1985." The comments addressed the bill's proposal of developing a program for annual crash worthiness ratings for new automobiles. The comments suggested several factors that Congress should examine in determining whether the additional information that crash worthiness tests could provide to consumers justifies the expense of such tests.

SENATE

Staff testimony presented by Ronald Rowe to the Senate Judiciary Committee on S.1140, the "Motor Fuel Sales Competition Improvements Act of 1985." The testimony summarized the Commission's July 9, 1985 letter to Senator Strom Thurmond opposing the bill because of its likely harmful effects on consumers and on competition in the retail gasoline market.

Commission comments to the Senate Judiciary Committee on S.1655, the "Unfair Foreign Competition Act of 1983." The comments reiterated opposition the Commission had previously expressed to a similar measure, S.236, in a letter to the same committee dated June 17, 1985. The comments argued against passage of S.1655 because of its potential to injure consumers by discouraging competition between domestic producers and importers and by complicating enforcement of the Clayton Act and the antidumping and countervailing duty laws.

Commission comments on S.1849, a bill to "protect consumers and franchised automobile dealers from unfair price discrimination by the manufacturer of new motor vehicles, and for other purposes." The comments opposed the proposed legislation because its absolute ban on price differences would limit manufacturers' ability to

adjust prices and incentives to competitive levels, and, hence, would likely injure consumers and competition.

Commission comments to the Senate Judiciary Committee on S.1445, the "Retail Competition Enforcement Act of 1985." The bill would amend the Sherman Act to include within its proscriptions an explicit ban on agreements between a seller and a competing reseller to fix prices or to terminate or refuse to supply another reseller. The comments opposed enactment of S.1445 principally because it would permit a jury to infer conspiracy from possibly procompetitive communications and because the bill could encourage manufacturers to alter their distribution methods for reasons other than efficiency.

Commission comments to the Senate Committee on Banking, Housing and Urban Affairs on S.1908, the "Consumer Lease and Lease-Purchase Agreement Act." In supporting S.1908, the purpose of which is to simplify the Consumer Leasing Act, the comments addressed the proposal's specific provisions that would affect compliance with the existing act.

CONSUMER AND COMPETITION ADVOCACY

During 1986, the staff of the Commission continued its efforts to ensure that government regulatory changes or initiatives at the federal, state, or local level did not inhibit competition or diminish consumer welfare. The staff of the Bureaus of Consumer Protection, Competition, and Economics and of the Regional Offices prepared 42 comments on a variety of regulatory proposals and changes in areas where the staff had experience or expertise.

FEDERAL AGENCIES

DEPARTMENT OF COMMERCE

Staff comments to DOC's International Trade Administration concerning possible relaxation or repeal of export restrictions on crude oil from Alaska's North Slope. The comments summarized a Bureau of Economics staff report that estimates the gains to producers, taxpayers, and the U.S. economy, as well as the losses to shipowners and consumers resulting from the total or partial repeal of the existing ban on the exportation of Alaskan North Slope crude oil.

Commission preheating brief to assist the DOC in determining the size of dumping margins for dynamic random access memory semiconductors of 256 kilobits and above imported from Japan. The brief recommended that DOC use actual sales prices in Japan rather than an estimate of Japanese production costs to make its final dumping margin determination.

Commission brief following the Post-Conference Brief the Commission filed with the International Trade Commission on June 12, 1986 to assist the ITC in making its preliminary finding of injury to the U.S. softwood lumber industry from the importation of softwood lumber from Canada. The brief to the DOC offered a legal and economic analysis for application of the countervailing duty statute and concludes that various Canadian government practices are not subsidies to Canadian lumber producers that justify imposing a U.S. tariff.

DEPARTMENT OF ENERGY

Commission comments for the DOE's annual report to Congress regarding utilities' financing, supply, and installation activities in connection with the Residential Conservation Service Program. The comments reported the Commission's review of two utility waiver petitions and its activities concerning regulated utility diversification.

FEDERAL COMMUNICATIONS COMMISSION

Staff comments in the FCC proceedings concerning reimposition of a rule requiring cable systems to carry all local television stations. The reply comments recommend that the FCC not reimpose a mandatory carriage rule and seek repeal of the compulsory license.

FEDERAL ENERGY REGULATORY COMMISSION

Staff comments in the FERC proceedings on the regulation of electricity sales for resale and transmission services. The comments encouraged FERC to urge or require the use of marginal cost pricing in the wholesale market rather than average cost pricing under current regulations. The comments also suggested that FERC persuade states to implement peak load or marginal cost pricing in setting retail rates.

INTERNATIONAL TRADE COMMISSION

Commission preheating brief to the ITC on the electric shaver escape clause investigation. The brief proposed an economic framework to assist the ITC in determining whether increased imports are a substantial cause of the injury the domestic industry has experienced. Although the brief concluded on the basis of the evidence then available that rising imports may not be a substantial cause of injury, the brief also suggested alternative remedies if the ITC finds serious injury.

Commission posthearing brief to the ITC on the electric shaver escape clause investigation. The brief restated the FTC's view that increased imports may not be a substantial cause of any injury that the domestic electric shaver may have industry incurred. The brief also reiterated a recommendation that the ITC consider adjustment assistance to workers as the least harmful remedy to consumers when compared to tariffs and quotas.

Commission preheating brief to the ITC on the apple juice escape clause investigation. The brief suggested that U.S. juice reconstitutors and apple growers are not experiencing, nor are threatened by, serious injury as a result of imports. While the brief acknowledged that apple crushers may be suffering serious injury, imports may not be a substantial cause of that injury.

Commission prehearing brief to the ITC to assist in making a final determination on whether the U.S. semiconductor industry is being materially injured by 64 kilobit and 236 and above kilobit dynamic random access memory semiconductors imported from Japan. The brief stated that predation is unlikely to be occurring in the domestic DRAM market and that the ITC should compare the prices of DRAMs in Japan and in the U.S. in determining the extent of any injury to U.S. firms.

Commission posthearing brief to the ITC on the 64K DRAM semiconductor antidumping investigation. The brief summarized some of the arguments made in the FTC's preheating brief and responded to questions the ITC Commissioners posed to staff at hearings held on April 30, 1987.

Commission post-conference brief to the ITC on the preliminary countervailing duty investigation concerning Canadian softwood lumber products. The brief urged the ITC to conclude that there is

no injury to domestic softwood lumber producers resulting from Canada's stumpage fee systems.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Staff comments on NHTSA's proposal to change the average fuel economy standard for automobiles manufactured in model years 1987 and 1988. The comments described the substantial short-term costs to society of meeting the statutory goal of 27.5 miles per gallon and recommends that NHTSA retain the current standard of 26 miles per gallon.

POSTAL RATE COMMISSION

Staff comments to assist the PRC in its study of the subsidization of preferred classes of mail. The comments pointed out that the current pricing policy for preferred mail encourages excessive use of subsidized mail services and leads to an inefficient allocation of resources.

STATES AND THE DISTRICT OF COLUMBIA

Alabama

Staff comments to the Alabama House of Representatives on its proposed Funeral Bill, which would allow only licensed funeral establishments to sell funeral goods and services. The comments discussed the ways in which the legislation's restrictions could harm consumers by impeding the development of new providers of funeral goods and services. The letter also outlined the possible conflict between the bill and the FTC's Funeral Rule.

Alaska

Staff comments to the Alaska House of Representatives opposing a proposed bill that would allow municipalities to regulate the entry of taxicabs and to impose minimum fares. The staff comments noted that regulation of taxicab entry and fares usually leads to higher fares. The comments also urged municipalities to limit taxicab regulation to issues such as safety, competency, and the required level of liability insurance.

Arizona

Staff comments to the Arizona Board of Optometry supporting the Board's plan to adopt a regulation to permit optometrists to practice in retail stores and other businesses. The comments, however, objected to other proposed regulations that would prohibit optometrists from paying referral fees or splitting fees with others, which might encourage the development of alternative health-care delivery systems, such as health maintenance or preferred provider organizations.

District of Columbia

Staff comments to the D.C. City Council on a bill that would impose strict licensing requirements on nurse-anesthetists, nurse-midwives and other similar health care providers. The bill would also establish specific guidelines for the collaboration of such nurses with doctors. The comments stated that staff favors competition among all health care providers because consumers potentially pay lower prices and receive better service.

Staff comments to the D.C. City Council on the proposed "Wine, Beer and Spirits Franchise Act of 1986." The comments criticized the bill because it would regulate the contractual relations between suppliers and wholesalers of alcoholic beverages, thereby raising distribution costs and retail prices to consumers.

Florida

Staff comments to the Florida Board of Dentistry to assist the Board in interpreting a state statute that prohibits dentists from exploiting patients for their own financial gain by, among other things, accepting rebates or splitting fees in return for patient referrals. The comments recognized the potential conflict of interest that could arise from dentists' referrals to other practices they may partially own, but points out that such referrals could benefit consumers. In the absence of additional evidence of abuse, staff urges the Board to consider construing the Florida law to require dentists to disclose to patients their financial interests in any practices to which they refer such patients.

Hawaii

Commission comments to the Hawaii House of Representatives

opposing H.B. 1376, which would prohibit producers, refiners, or their affiliates from establishing and operating new retail gas stations in Hawaii. The comments stated that the proposed legislation would prevent potentially efficiency-enhancing vertical integration between gasoline refining and distribution, which would raise the price of motor fuel to consumers.

Staff comments to the Hawaii State Office of the Auditor advocating repeal of certain restrictions on optometric practice because they raise the prices of such goods and services without any offsetting benefits to consumers. The comments urged the state to remove restraints on truthful advertising and on in-person solicitation. The comments also recommended that the state eliminate regulations limiting optometrists' commercial practices, such as, for example, prohibitions that restrict ownership of optometric practices to licensed optometrists, and that forbid the use of trade names.

Illinois

Staff comments to the Illinois Department of Registration and Education restating the staff's views set forth in a letter dated May 31, 1985 concerning restrictions on funeral home ownership to licensed persons and on pre-need solicitation of funeral goods and services. The comments opposed the restraints on funeral home ownership because they may inhibit the development of more efficient, lower-cost service providers. The comments noted that restrictions on pre-need solicitation may unnecessarily impede the flow of truthful commercial information.

Staff comments to the Illinois Department of Registration and Education on proposed amendments to rules administering the Funeral Directors and Embalmers Licensing Act. The comments suggested that the state consider whether the restrictions on telephone solicitation and solicitation by those other than licensed funeral directors may excessively restrict competition in the market for pre-need funeral goods and services. The comments also opposed existing state rules that could inhibit truthful and non-deceptive advertising.

Staff comments to the Illinois Senate opposing provisions in a proposed bill that would allow physicians to jointly determine the price at which they will participate in group health care delivery systems and other programs that third-party payers offer. The

comments discussed how the planned measure's antitrust exemption could harm competition and raise consumers' health care costs.

Staff testimony before the Chicago City Council's Committee on Local Transportation supporting a proposal that would ease entry restrictions on taxicabs, eliminate minimum fares, legalize jitney services and package deliveries, and remove limitations on shared rides. The testimony addressed the procompetitive benefits of relaxing existing taxicab regulation.

Indiana

Commission amicus brief to the Seventh Circuit Court of Appeals in *Lombardo, et al. v. Our Lady of Mercy Hospital, et al.*, on behalf of two osteopathic surgeons who had alleged that private physicians at a hospital in Dyer, Indiana helped to implement a policy that unfairly restricts competition by osteopathic doctors. The brief argued that the hospital's action was not exempt from antitrust scrutiny under the state action doctrine. The hospital had denied surgical privileges to plaintiffs because their training was not approved by the American Board of Surgery.

Kansas

Staff comments to the Kansas legislature on two measures to amend existing state laws regulating the funeral industry. The staff comments urged the legislature to apply the same regulatory standards to cemeteries and funeral homes, which are competing sellers of the same goods and services. As an alternative to trust requirements, the comments also suggest performance bonds as a means of protecting consumers without impeding competition. Finally, the comments encouraged the legislature to adopt whatever methods it deems appropriate to permit truthful pre-need solicitation of funeral, goods and services.

Kentucky

Commission amicus brief before the Sixth Circuit Court of Appeals in *Parker v. Kentucky Board of Dentistry, et al.*, on behalf of the plaintiff, Dr. Parker, who had advertised his areas of practice in the local yellow pages. The brief argued that because Dr. Parker's advertising is commercial speech and not misleading, the state cannot prohibit it. Additionally, the brief noted that the advertisement contained additional information that prevented it from

misleading consumers and that unnecessary restrictions on advertising inhibit competition and the flow of useful information to consumers.

Massachusetts

Staff comments to the Massachusetts Board of Registration in Medicine endorsing a proposal to eliminate existing prohibitions on advertisements that use testimonials, guarantee customer satisfaction, and offer free services or discounts. The comments stated that such information, when truthful, can help increase competition and improve the efficiency with which doctors deliver their services.

Staff comments to the state House of Representatives Committee on Health Care opposing statutory revisions that would prohibit dentists from advertising certain non-price information and would require dentists to disclose specific additional information when advertising prices. Instead of enacting provisions that could harm competition and consumers by restricting truthful communications, the comments suggested that the legislature outlaw only deceptive advertising practices.

Michigan

Staff comments to the Michigan Senate State Affairs, Veterans, and Transportation Committee on measures to regulate the sale of funeral goods and services. The comments cautioned the legislature to recognize the anticompetitive potential of regulations on pre-need sales of funeral goods and services and urges that it adopt the least restrictive alternatives to protect consumers. The comments also advocated use of performance bonds instead of trust requirements and removal of limitations on the identity of escrow agents and on the amount of interest paid on pre-need contracts.

Mississippi

Staff comments to the Mississippi State Board of Optometry generally supporting the Board's proposals to relax certain advertising rules. The staff comments also suggested some modifications that would further broaden the scope of permissible advertising and recommended that the Board amend several of its rules on commercial practice that unduly limit optometrists' ability to market their services in the most cost-efficient manner.

New Jersey

Staff comments to the New Jersey Senate Labor, Industry, and Professions Committee opposing a proposed bill that would prevent most hostile takeovers of New Jersey corporations. The comments noted that federal law provides adequate protection to shareholder interests in takeovers and states that such acquisitions, including hostile ones, can increase productivity and stimulate managerial excellence. The comments pointed out that the New Jersey proposal could harm shareholders by depriving them of gains they might otherwise realize through acquisitions.

New York

Staff comments to the New York State Assembly Agriculture Committee recommending that the state remove its territorial licensing restrictions on milk dealers. The comments stated that the restrictions are unnecessary to protect consumers' health and welfare and that they increase the retail price, of milk by raising processing and distribution costs. The comments also explained that the restrictions limit competition among milk dealers and curtail the industry's ability to respond to changes in the market.

Staff comments to the Assembly Republican Task Force on Health Fraud and the Elderly expressing the Commission's concerns about health fraud and outlining its law enforcement, consumer and business education, and other activities in this area. The comments discussed the Commission's various activities in combating fraudulent marketing and selling of health products. These activities include monitoring advertising, obtaining legal orders against specific 'companies, cooperating with other federal agencies, and producing consumer education materials.

Ohio

Staff comments to the Ohio State Dental Board generally endorsing the Board's proposal to broaden the scope of permissible advertising. The comments brought to the Board's attention additional ways to achieve this goal and urged that the Board reevaluate certain of its rules and amend them to ban only false or misleading advertising-

Texas

Staff testimony before the Texas Motor Vehicle Commission opposing a proposal to prohibit invoice advertising by auto dealers. The testimony noted that such a prohibition deprives consumers of valuable information that can assist them in comparison shopping. If the state commission is concerned that invoice advertising will confuse consumers, then the staff recommended that the state require dealers to disclose that the invoice price may not be the same as the dealer's actual costs.

Virginia

Staff comments to the Virginia State Board of Dentistry suggesting additional modifications to proposed amendments relaxing regulations on advertising by dentists. The comments recommended modifying the proposed provisions concerning discount and fee advertising for non-routine services, as well as eliminating restrictions on commercial practice, the use of trade names, and the functioning of prepaid dental plans.

Staff comments to the Virginia Board of Veterinary Medicine endorsing the Board's proposed regulations prohibiting only false, deceptive or misleading advertising and removing prohibitions against business relationships with non-veterinarians and against veterinarians' leasing space from commercial establishments. However, the comments recommended that the Board clarify two provisions that could affect non-veterinarians' employment of veterinarians.

Staff comments to the Virginia State Board of Optometry resubmitting previous comments and addressing restrictions concerning advertising, trade names, commercial practices and prepaid optometric plans that staff still consider problematic. The comments explained that continued restrictions in these areas could deprive consumers of truthful information and inhibit optometrists from providing their services in the most efficient manner.

Washington

Staff testimony before the Washington legislature's Sub-committee on Regulation of the Legislative Transportation Committee endorsing a proposal to deregulate intrastate trucking. The testimony stated that trucking deregulation would result in lower shipping costs and increased efficiency.

Table of Cases Listed in Appendices

<u>Matter Name</u>	<u>Pages</u>
Albert Schneider	34
Allied Corp.	49
American Academy of Optometry	31
American Home Products Corp.	51
American Medical International, Inc.	49
American National Cellular, Inc.	53
American Society of Sanitary Engineering	34
Amway Corp.	60
A.P. Orleans, Inc.	61
Ashland Oil, Inc.	42
Atlantic Richfield Co.	49
Atlas Supply Co.	49
Bass Brothers Enterprises	42
Beecham, Inc.	51
Bell Resources, Ltd.	61
Blue Lustre Home Care Products, Inc.	34
Boch Oldsmobile, Inc. and Boch Toyota, Inc.	61
Boise Cascade Corp.	47
Buckingham Productions, Inc.	41
C&D Electronics, Inc.	29
Cassette Library, Inc.	54
Cellular Corp.	54
Champion International Corp.	29
Chesebrough-Ponds, Inc.	51
Coca-Cola Co.	38,52
Columbian Enterprises, Inc.	42
Cosmo Communications Corp.	30
Del Monte Corp.	62
Detroit Auto Dealers Association	40
Dixie Readers' Service, Inc.	62
Donald A. Schwab	54
DuraSeal International, Inc.	54
Electrical Bid Registration Service of Memphis, Inc.	45,47
Electro Tech Manufacturing, Inc.	39,44
Electronic Systems International, Inc.	39,41
Engage-A-Car Services, Inc.	55
Evans Products Co.	55
Federated Department Stores, Inc.	34
Figgie International, Inc.	48
Flowers Industries, Inc.	50

Freeway Dodge, Inc.	55
GCS Electronics, Inc.	30
General Mills Fun Group, Inc.	51
General Nutrition, Inc.	46
George Tannous	35
Green Tree Acceptance, Inc.	56
Health Care Management Corp.	31
Hooker Homes, Inc	62
Hopkins Dodge Sales, Inc.	56
Hospital Corporation of America	48,50
Independent Insurance Agents and Brokers of California, Inc.	31
Independent Insurance Agents Association of Montana, Inc.	31
Independent Insurance Agents of America, Inc.	31
Indiana Federation of Dentists	64
Intra-Medic Formulations, Inc.	56
James F. Herndon	35
John C. Anderson	35
John William Costello Associates, Inc.	35
KRSS Development Corp.	62
Larry Brog	35
Leisure Time Electronics, Inc.	62
Leland Industries, Inc.	56,63
Lithium Corp. of America	32
Massachusetts Board of Registration in Optometry	46
Max Factor & Co.	29
Mesa Realty, Inc.	63
Moksha Wendell Smith	57
Michigan Optometric Association	32
Michigan Watchmakers Guild	33
MidCon Corp.	43
National Association of Temporary Services, Inc.	33
National Energy Associates, Inc.	36
National Talent Associates, Inc.	52,63
Network Marketing, Inc.	63
New York Feather, Co., Inc.	63
North American Office Systems, Inc.	57
North American Philips-Corporation	36
North Carolina Orthopaedic Association	33
Northern Feather International, Inc.	64
Occidental Petroleum Corp.	33,38,52,53
Oklahoma Optometric Association	43
PepsiCo, Inc.	53

Peter LaBarrie	57
Peter S. Everts	35
Pittsburgh Penn Oil Co.	39,45,57
PPG Industries	38,53
Premier Cellular, Inc., Charles Michael Fischer, and Gerald Woods	57
R.J. Reynolds Tobacco Co., Inc.	39,47
Rare Coin Galleries of America, Inc.	58
Rhode Island Board of Accountancy	43
Rocky Mountain Circulation, Inc.	58
Roswil; Inc.	40
Roy Brog	45
Roy B. Kelly	35
Saab-Scania of America, Inc.	36
Saga International, Inc.	36
Service One International Corp.	36
Solar America, Inc.	58
Solar Michigan, Inc.	58
Steven M. Hull	35
Strawbridge and Clothier	64
Sunbeam Corporation	37
Sunkist Growers	61
Superior Court Trial Lawyers Association	48
Thermo Products Company	59
Trans-Alaska Energy Corp.	59
TS Industries, Inc.	59
Tuff-Tire America, Inc.	64
United Brands Co.	50
Unnamed Adoption Services	59
U.S. Steel Corp.	51
Victor J. Hakim	35
Viobin Corp.	30
Volcano Mining Project	59
Wallcovering Trade Associations	44
Walser Motors, Inc.	60
Warner Communications, Inc.	44
Weider Health and Fitness, Inc.	45
William D. Jones d/b/a Liquid Assets	60
Wright-Patt Credit Union, Inc.	37
Wyoming Board of Podiatry	37