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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN THE UNITED STATES**

-- From 1st October 1998 to 30 September 1999 --

This report is submitted by the United States Delegation to the Competition Law and Policy Committee FOR CONSIDERATION at its forthcoming meeting on 5-6 June 2000.

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Summary of Highlights

1. The Department of Justice in FY99 obtained record criminal fines totaling more than \$865 million in an ongoing investigation of a worldwide price-fixing and market allocation conspiracy in the vitamins market. The investigation has thus far resulted in convictions against Swiss, German, Canadian, and Japanese firms; Hoffmann-LaRoche agreed to plead guilty and pay a record \$500 million fine, the largest fine ever imposed in any DOJ proceeding under any statute. Ongoing investigations in the graphite electrodes and food additives markets resulted in significant fines, and three former high-ranking executives of the Archer Daniels Midland Company were sentenced to serve prison sentences ranging from 24 to 30 months for their participation in the lysine cartel.

2. During FY99, the DOJ and Federal Trade Commission received over 4,600 pre-merger filings. The Commission initiated 291 merger investigations and investigated 45 transactions with a second request for information. It challenged 30 transactions, leading to 18 consent orders; twelve transactions were abandoned prior to the filing of a complaint. The Division investigated 229 mergers and challenged 21; 25 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announced intent to challenge. Noteworthy among merger cases was the Commission challenge to the proposed \$48.2 merger between The British Petroleum Company p.l.c. and Amoco Corporation. The Commission alleged that the transaction raised competitive concerns in the wholesale sale of gasoline and the terminaling of gasoline and other light petroleum products in a number of local markets. The Commission challenge culminated in a consent order under which the companies agreed to divest 134 gas stations in eight markets and nine light petroleum products terminals and to free up more than 1 600 gas stations in 30 markets, allowing independent retail dealers to switch to other brands. In another consent order, Albertson's and American Stores agreed to the largest retail divestiture in Commission history -- 144 supermarkets and five supermarket sites -- to settle Commission concerns that the merger would substantially lessen supermarket competition in three states. The DOJ filed suit to block Northwest Airlines from buying a controlling stake in Continental Airlines, and undertook a number of enforcement actions directed at mergers in the telecommunications, software, banking, radio, publishing, and agricultural sectors.

In the non-merger area, the FTC brought five enforcement actions, four of which were resolved by consent agreements, challenging a variety of anticompetitive conduct. In the pending action, the Commission sued Mylan Laboratories and three other companies in federal court, alleging that their exclusive supply agreements for key active ingredients of two widely prescribed anti-anxiety drugs, lorazepam and clorazepate, resulted in unlawful restraints of trade, monopolization, attempted monopolization, and conspiracy to monopolize the market for generic versions of those drugs. The Commission alleges that the violations charged allowed Mylan to raise the price of these drugs by 2,000 to 3,000 per cent. The FTC is seeking both permanent injunctive relief and, for the first time in a Commission antitrust case, the disgorgement of ill-gotten gains and/or restitution of \$120 million to injured consumers. The Commission also issued its final decision upholding charges that Toys AR@ Us, the nation's largest toy retailer, violated Section 5 of the FTC Act by inducing toy manufacturers to agree, both with Toys AR@ Us and among themselves, to deal with warehouse clubs, a new competitive threat, on less favorable terms. The Commission found that the effect of these agreements was to eliminate the pricing pressure that the clubs were putting on Toys AR@ Us. The case is on appeal in the Seventh Circuit Court of Appeals.

The Division filed seven non-merger civil complaints, including challenges to alleged predatory conduct by American Airlines in monopolizing its Dallas-Fort Worth hub, to exclusionary conduct by the dominant manufacturer of false teeth which had the effect of depriving foreign entrants of effective distribution networks, and to joint control of the two largest credit card networks (Visa and Mastercard) and to certain exclusionary rules adopted by both networks. The DOJ also completed the trial of

Microsoft, and the judge has now issued conclusions of law holding that Microsoft abused its monopoly power and attempted to monopolize the internet browser market.

In FY99, the U.S. negotiated cooperation agreements with Japan, Brazil, and Israel, and signed the first Antitrust Mutual Assistance Agreement under the International Antitrust Enforcement Assistance Act with Australia. The FTC and DOJ also issued Antitrust Guidelines for Collaborations Among Competitors. The guidelines describe an analytical framework addressing a broad range of horizontal agreements, including joint ventures, strategic alliances, and other competitor collaborations. They are designed to assist businesses in assessing the possible antitrust implications of such transactions and should encourage procompetitive collaborations, deter collaborations likely to harm competition, and facilitate the Agencies' investigations.

The Commission, on August 6, released a staff report entitled AA Study of the Commission's Divestiture Process⁶ and invited members of the public to submit their views on the report. The report evaluates 35 divestiture orders entered between 1990 and 1994. The report discusses factors that make divestitures more likely to succeed, and concludes with recommendations to ensure more effective divestitures in the future.

Public documents, including more detailed descriptions or full texts of many of the matters referred to in this report, are available at *<http://www.ftc.gov> and <http://www.usdoj.gov/atr>.*

**ANNUAL REPORT ON COMPETITION POLICY
DEVELOPMENTS IN THE UNITED STATES**

(October 1, 1998 through September 30, 1999)

Introduction

1. This report describes federal antitrust developments in the United States for the period October 1, 1998 through September 30, 1999. It summarizes the activities of both the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Bureaus of Competition and Economics of the Federal Trade Commission ("Commission" or "FTC").

I. Changes in law or policies

A. Changes in Antitrust Rules, Policies, or Guidelines

2. Digital Millennium Copyright Act (Pub. Law 105-304, signed Oct. 28, 1998). This legislation implements the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty. It contains an antitrust exemption for joint negotiation of copyright royalties and license terms among copyright owners of sound recordings and transmitting organizations entitled to a statutory license under the Act.

3. Curt Flood Act of 1998 (Pub. Law 105-297, signed Oct. 27, 1998). This legislation narrowed the nonstatutory antitrust exemption for baseball by providing that major league baseball players have the same rights under the antitrust laws as do other professional athletes in their employment relations. The Act makes clear that the antitrust exemption is otherwise unaffected, including with respect to the minor leagues and minor league players, franchise relocation or expansion, product marketing, intellectual property licensing, sports broadcasts, and umpires and other employees. The Act also makes clear that only a major league baseball player has standing to sue under the Act, and that the nonstatutory labor exemption from the antitrust laws is unaffected.

4. Year 2000 Information and Readiness Disclosure Act -- (Pub. Law 105-271, signed Oct. 19, 1998). This legislation contains temporary antitrust exemption (for conduct before July 14, 2001) for joint conduct for the purpose of correcting or avoiding a failure of year 2000 computer processing. The exemption does not apply to boycotts or to market allocation or price-fixing agreements.

5. Ocean Shipping Reform Act of 1998 (Pub. Law 105-258, signed Oct. 14, 1998). This legislation amended the Shipping Act of 1916. It changed the rules governing shipping conference agreements so as to make shipping contracts more competitive, while maintaining the antitrust exemption for conduct covered by the Act.

6. On April 13, 1999, the Division announced a new protocol designed to expedite the review process for parties seeking to terminate or modify outstanding consent decrees. The protocol was effective immediately.

7. The Premerger Notification Office of the FTC, with the concurrence of the Antitrust Division, issued a Formal Interpretation under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”) and implementing rules pertaining to limited liability companies (LLCs). The interpretation states that the creation of an LLC to which two or more pre-existing, separately controlled businesses will be contributed may be subject to the reporting requirements of the HSR Act, if the thresholds of the HSR Act are met and at least one of the members will control the LLC.

8. The FTC and the Antitrust Division have issued Antitrust Guidelines for Collaborations Among Competitors. The guidelines describe an analytical framework addressing a broad range of horizontal agreements, including joint ventures, strategic alliances, and other competitor collaborations. They are designed to assist businesses in assessing the possible antitrust implications of such transactions and should encourage procompetitive collaborations, deter collaborations likely to harm competition, and facilitate the Agencies’ investigations.

B. Proposals to Change Antitrust Laws, Related Legislation or Policies

9. DOJ officials testified on several occasions before Congressional Committees considering legislation related to antitrust issues. DOJ testimony in FY99 included:

- support for comprehensive restructuring of the electricity sector through legislation that addresses the important issue of market power and other competitive issues that will arise in a restructured market, and establishes a framework through which truly competitive markets can thrive
- opposition to proposed legislation that would immunize independent-contractor doctors and other health care professionals in private practice from antitrust prohibitions
- general support for competition-enhancing provisions of postal reform proposals
- support for elimination of statutory antitrust immunity for ocean carriers, or increasing the scope for competitive negotiation of tariffs
- a proposal to raise the \$10 million statutory ceiling for corporate fines under the Sherman Act to \$100 million, so as to match the scope of cartel activity uncovered in the international marketplace.

10. FTC Chairman Pitofsky testified before the House Judiciary Committee in opposition to a proposed antitrust exemption to allow physicians and other health care professionals to engage in collective bargaining with health plans. Chairman Pitofsky underscored the necessity for antitrust enforcement to block price fixing and boycotts designed to increase health plan payments to health care professionals.

11. FTC Commissioner Thompson testified before a House Subcommittee on deregulation and competition in the electric power industry, emphasizing that strong merger enforcement is needed in the industry so that restructuring does not result in an abuse of market power.

C. International Antitrust Cooperation Developments

12. On May 3, 1999, President Clinton and Prime Minister Obuchi announced that the United States and Japan had reached substantive accord on an antitrust cooperation agreement. On October 7, 1999, representatives of the DOJ, FTC, and Government of Japan signed the agreement, which contains

provisions for notification of enforcement activities, enforcement cooperation and coordination, conflict avoidance and consultations, positive comity, and confidentiality and use limitations. The U.S.-Japan agreement is similar to existing cooperation agreements between the U.S. agencies and the EU and Canada.

13. On September 30, the DOJ hosted a two-day International Cartel Enforcement Workshop in Washington for senior DOJ anti-cartel litigators and nearly fifty anti-cartel enforcers from twenty-nine other jurisdictions. The subjects discussed included leniency and fining policies, investigatory and prosecutorial mechanisms and policies, cooperation among antitrust agencies in cartel cases, and methods of building an anti-cartel enforcement program.

14. On April 27, 1999, the DOJ, FTC, and Government of Australia signed the first antitrust mutual assistance agreement under the International Antitrust Enforcement Assistance Act of 1994. The agreement allows U.S. and Australian antitrust agencies to exchange evidence on a reciprocal basis for use in antitrust enforcement, and to assist each other in obtaining evidence located in the other's country. The agreement provides for assistance in both civil and criminal antitrust matters, and applies regardless of whether the conduct underlying a request would violate the laws of the requested party. The agreement contains strict confidentiality requirements that will protect sensitive business information.

15. In April 1999 the European Commission's Director-General responsible for competition policy and the chairman of the FTC and Assistant Attorney General exchanged letters confirming arrangements whereby representatives of the U.S. authorities would be permitted to attend as observers, in certain circumstances, the hearings organized by the European Commission in competition cases and, in a reciprocal manner, EU officials could attend, under the same conditions, certain meetings between senior U.S. officials and the parties to enforcement proceedings of the DOJ or FTC. The arrangements provide that a request for attendance at a hearing or "pitch" meeting will be granted in appropriate cases, subject to satisfactory arrangements concerning confidentiality and use of any information and to the express consent of the concerned parties, and the arrangements do not limit in any way the rights of the parties concerned.

16. On March 15, 1999, representatives of the DOJ, FTC, and the Government of Israel signed an antitrust cooperation agreement containing provisions for enforcement cooperation and coordination, notification of enforcement actions that may affect the other country, conflict avoidance with respect to enforcement actions, positive comity, and effective confidentiality protections.

II. Enforcement of antitrust laws and policies: actions against anticompetitive practices

A. *Department of Justice and FTC Statistics*

1) *DOJ Staffing and Enforcement Statistics*

17. At the end of FY99, the Division employed 763 individuals: 351 attorneys, 59 economists, 123 paralegals, and 230 other professional staff. For FY99, the Division was allocated \$101,640,000.

18. During FY99, the Antitrust Division opened 293 investigations and filed 86 antitrust cases, both civil and criminal, in federal court. The Division was a party to 6 antitrust cases decided by the federal Courts of Appeals and one Supreme Court case.

19. During FY99, the Division filed 57 criminal cases in which it charged 17 corporations and 46 individuals. Twenty-five corporate defendants and 50 individuals were assessed fines totaling \$972 million and 30 defendants were sentenced to a total of 8,102 days of incarceration. Another 25 individual defendants were sentenced to spend a total of 2,850 days in some form of alternative confinement.

20. During FY99, 4,642 proposed mergers and acquisitions were reported for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). The Division investigated 229 mergers and challenged 21; an additional 25 transactions were restructured or abandoned prior to the filing of a complaint as a result of the Division’s announcement that it would otherwise challenge the transaction. The Division also screened a total of 1,698 bank mergers. The Division opened 285 civil investigations, both merger and non-merger, and issued 919 civil investigative demands (a form of compulsory process). The Division filed 7 non-merger civil complaints. Also during FY99, the Division responded to 9 requests for review of written business proposals.

2) *FTC Staffing and Enforcement Statistics*

21. At the end of fiscal year 1999, the FTC's Bureau of Competition had 245 employees: 151 attorneys, 40 other professionals, 25 honors paralegals and 29 clerical staff. The FTC also employs about 40 economists who participate in its antitrust enforcement activities. In FY99, \$22,949,400 was allocated to the Commission’s competition mission.

22. During fiscal year 1999, the Commission brought a total of 37 enforcement actions. In the merger area, 4,679 proposed mergers and acquisitions were reported for review under the notification requirements of the HSR Act.

23. Based on its review of premerger notification filings, the Commission staff opened 291 initial phase investigations and investigated 45 transactions with second requests for information (“second requests”). The Commission challenged 30 transactions, leading to 18 consent orders. Twelve transactions were abandoned after the issuance of the second requests. A final decision and order were issued in 19 of the matters settled by consent agreements during the fiscal year. Final decisions were pending in six cases; one of the transactions was abandoned.

24. In the non-merger area, the Commission brought five enforcement actions challenging a variety of anticompetitive conduct, four of these were resolved by consent agreements. Of these, three consent agreements were issued as final decisions and orders by the end of FY 99 and one was pending. In the remaining enforcement action, *Mylan Pharmaceuticals*, the Commission filed in federal district court a complaint for a permanent injunction which was pending as of the end of FY99.

25. The Commission filed two civil penalty enforcement actions under Section 7A of the Clayton Act for violations of the premerger notification requirements. The total civil penalties assessed in these cases were \$3.285 million.

26. Staff of the Bureau of Competition provided guidance to industry through two advisory opinion letters on whether specific health care arrangements might violate antitrust laws.

B. Antitrust Cases in the Courts

1) *United States Supreme Court*

27. In *NYNEX Corp. v. Discon, Inc.*, 119 S. Ct. 493 (1998), the Supreme Court held that an agreement between a buyer and a supplier to purchase goods or services from that supplier rather than another is not a *per se* illegal boycott under Section 1 of the Sherman Act. Antitrust law does not permit the application of a *per se* rule in the boycott context in the absence of a horizontal agreement.

28. In *California Dental Ass'n v. FTC*, 119 S.Ct. 1604 (1999), the U.S. Supreme Court vacated the judgement of the Ninth Circuit Court of Appeals which had upheld an FTC decision that the CDA was unlawfully restricting price and quality of care advertising by its members, who represent about 75% of the state's dentists. The Court remanded the case to the Circuit Court for further consideration. The Supreme Court held that the CDA's rules restricting price and quality advertising by members should not have been invalidated on antitrust grounds under an abbreviated rule of reason analysis because where, as in this case, the anticompetitive effects of the given restraints are not obvious, the rule of reason demands a more thorough inquiry into the consequences of the restraints. The Supreme Court also held that the FTC has jurisdiction over the non-profit CDA because the CDA provides substantial economic benefits to its for-profit members.

2) *U.S. Court of Appeals Cases*

a. Significant DOJ Cases Decided in FY99

29. There were six dispositions by the Courts of Appeals in Antitrust Division cases in FY99, and five of these resulted in published opinions. One of the published opinions involved civil discovery matters, and another affirmed the termination, upon joint motion of the parties, of a long-standing civil antitrust decree. The remaining published decisions were in criminal antitrust cases. Two of these criminal cases are described below.

30. In *In re Impounded*, 178 F.3d 150 (3d Cir. 1999), the court held that immunized witnesses could not refuse to testify before a federal grand jury investigating possible antitrust violations on the constitutional ground that their statements might tend to incriminate them in a foreign prosecution. The witnesses failed to show either a real and substantial fear of prosecution abroad, or to demonstrate that there was, in effect, a joint antitrust prosecution between the United States and a foreign government.

31. In *United States v. Tucor Int'l, Inc.*, 189 F.3d 834 (9th Cir. 1999), the court construed Section 7(a)(4) of the Shipping Act of 1984, which provides an antitrust exemption for "any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade." The court held that the section exempts from criminal prosecution those engaged in trucking household goods to and from points entirely within a foreign country as part of "through transportation" to the United States. The court rejected the government's argument that Section 7(a)(4) encompasses only the agreements of ocean common carriers and marine terminal operators. It declined to consider relevant legislative history, because it concluded that the statute was clear on its face.

32. *FTC v. Tenet Health Care Corp.*, 186 F.3d 1045 (8th Cir. 1999) involved an appeal of a preliminary injunction issued by the United States District Court for the Eastern District of Missouri. The district court had granted the Commission's motion to enjoin a merger between two hospitals in Poplar

Bluff, Missouri. The Court of Appeals reversed the district court and dissolved the preliminary injunction, finding that the district court's determination of the relevant geographic market was unsupported by the record. The Court held that the Commission had failed to meet its burden of proving a well-defined geographic market, and that the district court had improperly assessed the record evidence. The Commission sought rehearing *en banc*, which was denied (with three judges dissenting from the denial of rehearing).

33. *Surgical Care Ctr. v. Hospital Serv. Dist. No. 1*, 171 F.3d 231 (5th Cir. 1999) (*en banc*) is a private antitrust action initiated under the Sherman Act in which the Commission and the Department of Justice filed a brief as *amicus curiae*. The plaintiff, a private hospital, alleged that the defendant, a competing hospital owned by a subordinate unit of the state government, had attempted to extend a monopoly in the provision of one kind of medical treatment to another in violation of the Sherman Act and certain state antitrust statutes. The district court had dismissed the case, holding that Louisiana had granted the defendant immunity from the Sherman Act. A panel of the Fifth Circuit had affirmed but the Court, sitting *en banc*, reversed the district court, finding that Louisiana had not expressed any intent to displace competition, and that the conduct was therefore not immune from the antitrust laws. The Court remanded the case to the district court.

3) *Private Cases Having International Implications*

34. In *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716 (9th Cir. 1999), Simula, the U.S. inventor of an air bag system, had entered into agreements with Autoliv, a foreign car parts manufacturer, covering joint development, cooperation, and licensing. The agreements contained a clause stating that "all disputes arising in connection with this Agreement shall be finally settled" by the Swiss Arbitral Tribunal. Simula sued Autoliv alleging various causes of action, including Sherman Act claims of "anti-competitive conduct, creating a monopoly by illicit means, and unreasonably restraining trade." The Court upheld a trial court order compelling arbitration and dismissing the complaint, holding that resolution of the antitrust claims would require interpreting the agreements to see whether they suppress competition as alleged, and that this was a job for the arbitrator, not the courts. Noting that "the emphatic federal policy in favor of arbitral dispute resolution applies with special force in the field of international commerce," the Court rejected Simula's arguments that the Swiss Arbitral Tribunal would not apply U.S. antitrust law and deprive it of remedies supplied solely by U.S. law, to the detriment of U.S. automotive safety and a "national interest in open and competitive markets."

35. In *Laker Airways, Inc. v. British Airways, PLC*, 182 F.3d 843 (11th Cir. 1999), Laker had sued BA under federal and state antitrust laws, alleging that BA conspired with Airport Coordination Ltd. ("ACL"), a private English corporation appointed by the UK government to coordinate requests for landing and take-off slots at UK airports, to prevent Laker from being allocated desirable slots at London's Gatwick Airport for London-Miami service. The Court upheld the trial court's dismissal of these claims for failure to join ACL, an indispensable party. ACL was considered indispensable because resolution of Laker's claims would "inevitably comment upon the neutrality and independence" of the slot allocation process, thereby implicating ACL and prejudicing its interests. In addition, Laker had alternative remedies: a complaint to the UK's Secretary of State for Transport or to the U.S. Department of Transportation and Federal Aviation Administration. The Court reversed the trial court's dismissal of Laker's antitrust complaint concerning BA's refusal to enter interline ticketing and baggage agreements with Laker, alleged to be necessary for effective competition. According to the Court, "[a]n interline agreement, in contrast to slot allocation, is simply a contract between airline carriers and involves no other authorizing parties."

36. In *Filetech S.A. v. France Telecom S.A.*, 157 F.3d 922 (2d Cir. 1998), a French corporation and its U.S. subsidiary sued France Telecom and its U.S. subsidiary alleging monopolization under the Sherman Act for failure to make available to Filetech usable information on French telecom subscribers for use in preparing a data base to be sold as a direct marketing tool. The district court described a long history of litigation, much of it ongoing, concerning competition and data privacy issues involving Filetech, France Telecom, and other parties before French commercial and criminal courts and competition authorities. The district court had granted France Telecom's motion to dismiss on grounds of international comity (*see* U.S. Annual Report for FY97, ¶30). On appeal, the Court of Appeals remanded the case for reconsideration of factual issues relating to subject matter jurisdiction. France Telecom, as an agency or instrumentality of a foreign state, would be immune from suit under the Foreign Sovereign Immunities Act unless the "commercial activity" exception applied, and the pleadings and submissions of the parties sharply disagreed over the extent of relevant commercial activity by France Telecom in the U.S. Similarly there were disagreements over the existence of sufficient effects from France Telecom's conduct to support jurisdiction under the Sherman Act. The Court held that if the trial court resolved these jurisdictional question in favor of Filetech, dismissal on grounds of international comity would be appropriate only on a clear demonstration that "compliance with the regulatory laws of both France and the United States would be impossible."

37. In *Blomkest Fertilizer, Inc. v. Potash Corporation of Saskatchewan*, 176 F.3d 1055 (8th Cir. 1999), purchasers of potash, a mineral used in the manufacture of fertilizers, had alleged that Canadian and U.S. potash producers had conspired to fix prices in the period from 1987 to 1994. The allegations centered on the conduct of a Canadian producer, privatized in 1989, whose price increases were matched by the other defendants during a period when antidumping proceedings eventually culminating in a suspension agreement were underway in the U.S. Plaintiffs pointed to numerous communications between the defendants, to parallel pricing behavior allegedly against defendants' self-interest, and to opportunities and motive for unlawful price-fixing. The district court had entered summary judgment for defendants, concluding that in the oligopolistic potash market, none of the inferences reasonably drawn from the evidence demonstrated more than independent "follow the leader" behavior (*see* U.S. Annual Report for FY97, ¶26). The Court of Appeals reversed, holding that although solicitations to enter a price-fixing agreement alone did not "tend to exclude the possibility of independent action, ... the evidence of price verification communications among competitors does establish a prima facie case, when combined with the structure of this industry and supracompetitive pricing." The Court found that the evidence did not support defendants' theory "that the price rises are explained entirely by the suspension agreement and the spectre of Saskatchewan prorationing legislation."

38. In *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119 (3rd Cir.), *cert den.* 68 U.S.L.W. 3192 (U.S. Oct. 4, 1999)(No. 99-72), plaintiff was a producer of bulk ibuprofen in India that exited the U.S. market after preliminary administrative determinations in favor of dumping and countervailing duty (AD/CVD) petitions filed by defendant. The defendant shortly thereafter withdrew its AD/CVD petitions stating that it no longer believed it could succeed based on its new profit figures and plaintiff's decision to exit the market. Plaintiff then sued on antitrust and other grounds, alleging that defendant could not have prevailed in its AD/CVD petitions because it would not have been able to demonstrate material injury and alleging that defendant included intentional misrepresentations in its petitions and responses to administrative questionnaires. The district court judge granted summary judgment for defendant, noting that under the Noerr-Pennington doctrine, a defendant invoking administrative and judicial processes has broad antitrust immunity irrespective of anticompetitive intent. The exception for "sham" transactions was not applicable because defendant had an objective basis for its AD/CVD allegations, and even if defendant had misrepresented its financial documents, the findings of the International Trade Commission on material injury relied equally on factors unrelated to defendant's financial status, such as domestic consumption and market share. The Court of Appeals affirmed the summary judgment, noting that only material misrepresentations that affect the very core of a litigant's case would preclude Noerr-Pennington

immunity by undermining the objective basis for the petition. A dissenting judge argued that use of knowing and material misrepresentations should form an independent ground for denying antitrust immunity to defendant.

C. *Statistics on Private and Government Cases Filed*

39. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 684 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in FY99.

D. *Significant DOJ and FTC Enforcement Actions*

1) *DOJ Criminal Enforcement*

40. Vitamins. In FY99 the DOJ obtained record fines -- a total of more than \$875 million -- in an ongoing investigation into a worldwide price-fixing and market allocation conspiracy in the vitamins market. The conspiracy, beginning as early as 1990 and continuing into 1999, affected more than \$5 billion in U.S. commerce, and is the most pervasive and harmful criminal antitrust conspiracy ever uncovered by the Division. The members of the vitamin cartel reached agreements on everything from how much product each company would produce, to how much they would charge, to which customers they would supply. The direct victims of this conspiracy were the purchasers of the vitamins most commonly used as nutritional supplements or to enrich human food and animal feed, but indirectly consumers around world suffered higher prices for their vitamins or vitamin-enriched foods.

41. The vitamin investigation has thus far resulted in convictions against Swiss, German, Canadian, and Japanese firms. On March 2, 1999, the DOJ announced that Lonza AG, a Swiss corporation, and five U.S. executives (two of whom have agreed to serve twelve month jail terms) of other vitamin producers agreed to plead guilty and cooperate with the DOJ's investigation. Lonza agreed to pay a \$10.5 million fine. On May 20, the Swiss pharmaceutical firm F. Hoffmann-La Roche Ltd agreed to plead guilty and pay a record \$500 million fine, the largest fine ever imposed in any Department of Justice proceeding under any statute, and the German firm BASF Aktiengesellschaft agreed to plead guilty and pay a \$225 million fine. A Swiss citizen and former Hoffman-La Roche executive also agreed to plead guilty, pay a \$100,000 fine and serve a four-month prison term in the U.S. A second Swiss former executive on August 19 agreed to plead guilty, serve a five-month jail sentence, and pay a \$150,000 fine for his role in the conspiracy. On September 9, three Japanese pharmaceutical companies -- Takeda Chemical Industries Ltd., Eisai Co. Ltd., and Daiichi Pharmaceutical Co. Ltd. -- agreed to plead guilty and pay a total of \$137 million in fines. Finally, on September 29, 1999, Chinook Group Limited, a Canadian vitamin company, agreed to plead guilty and pay a \$5 million fine for its participation in the vitamins conspiracy.

42. Graphite Electrodes. The DOJ's ongoing investigation of price-fixing and market allocation in the graphite electrodes industry has yielded almost \$300 million in criminal fines. In September 1999, two former U.S. executives of UCAR International, Inc. agreed to plead guilty, serve jail terms of 17 and nine months respectively, and pay fines of \$1.25 million and \$1 million for participation in a worldwide conspiracy from 1992 to 1996, during which U.S. sales of graphite electrodes exceeded \$1.7 billion. As reported in the FY98 Annual Report (¶37), UCAR agreed to pay a \$110 million fine in April 1998. On May 4, 1999, SGL Carbon Aktiengesellschaft, a German corporation, agreed to plead guilty and pay a then-record \$135 million fine, and its chief executive officer agreed to pay a \$10 million fine, the largest antitrust fine ever imposed on an individual. On April 29, 1999, Tokai Carbon Co. Ltd., a Japanese firm,

agreed to plead guilty and pay of \$6 million fine. Graphite electrodes are a component of steel mills used to generate the intense heat necessary to melt and refine steel.

43. Food Additives. On July 14, 1999, Nippon Ghosei, a large Japanese chemical producer, agreed to plead guilty and pay a \$21 million criminal fine for participating in a 17-year (1976-1996) international conspiracy to suppress and eliminate competition in the sorbates industry. Sorbates, chemical preservatives used as food additives, account for about \$200 million in annual sales worldwide. On May 5, Hoechst AG, the German chemical and pharmaceutical firm, agreed to plead guilty and pay a \$36 million fine for participating in the same conspiracy. Former executives of Nippon Ghosei and Hoechst also agreed to plead guilty and pay individual fines of \$350,000 and \$250,000, respectively. On July 19, 1999, Pfizer Inc, the fourth largest U.S. pharmaceutical company, agreed to plead guilty and pay fines totaling \$20 million for participating in two international price-fixing conspiracies in the food additives industry. The conspiracies affected more than \$65 million in U.S. commerce, and involved the food preservative sodium erythorbate (price-fixing and market allocation from 1992 to 1994) and the flavoring agent maltol (customer and territorial allocation from 1989 to 1995).

44. Sentencing in ADM Lysine Trial. The jury trial of three former, high-ranking executives of the Archer Daniels Midland Company (ADM) for their participation in the lysine cartel was described in the FY98 report (¶36). In September 1998, after a 10-week trial, a Chicago jury returned guilty verdicts against all three executives. They were subsequently sentenced to serve prison sentences ranging from 24 to 30 months and two of the executives were fined \$350,000 each.

45. Advertising and Display Materials. An ongoing federal investigation of bid-rigging, commercial bribery, and tax-related offenses in the point-of-purchase advertising and display industry led to several guilty pleas in FY99. In all 21 individuals and 9 corporations have pleaded guilty, including personnel from Philip Morris Inc., Heublein Inc., Hiram Walker & Sons Inc., Warner-Lambert Co., and Lorillard Tobacco Co. Inc. Advertising and display materials include display stands, posters, banners, counter cards or sell sheets, used for the advertising or promotion of consumer goods, primarily in retail stores. Defendants have included both the executives of the companies victimized by the bribery and kickback schemes and executives of the firms supplying the advertising and display materials and services. One individual was sentenced to thirty months incarceration and ordered to pay \$750 thousand in restitution.

46. Marine Construction Services. The ongoing investigation into collusion among major providers of marine construction services was described in the FY98 Report (¶39). On October 19, 1998, a federal grand jury in Houston returned a one-count indictment charging Vincenzo Oliveri, an Italian citizen, with criminal contempt for failing to appear before the grand jury in response to a subpoena. While in Houston in May 1998, Oliveri was served with the subpoena requiring his appearance to testify in relation to the conspiracy. Criminal contempt is punishable by fine or imprisonment, at the discretion of the court.

47. The government's suit in *United States v. Nippon Paper Industries Co.*, after denial of certiorari in an interim appeal in January 1998, was tried before a jury. The jury was unable to reach a verdict, and the trial court thereafter granted the defense's motion for a judgment of acquittal. *United States v. Nippon Paper Industries Co.*, 62 F.Supp.2d 173 (D.Mass. 1999). The court held that the government's evidence had failed to show that the charged conspiracy continued through November 15, 1990; the statute of limitations required such a showing. The court also held that the government's evidence failed to show that the conspiracy, even if it continued into the limitations period, had a substantial effect on commerce in the United States during that time.

2) *DOJ Non-Merger Civil Enforcement*

48. The DOJ's complaint against Microsoft Corporation was described in last year's report (¶43). Trial began on October 19, 1998. The Division and Microsoft each submitted the direct testimony of twelve witnesses in written form as directed by the court. Cross-examination of these witnesses was heard in open court. On rebuttal, each side presented three witnesses. On November 15, 1999, Judge Jackson issued his findings of fact, and on April 3, 2000, he issued his conclusions of law, holding that Microsoft violated the antitrust laws by abusing its monopoly power and attempting to monopolize the internet browser market. The court then scheduled a hearing for the remedy phase of the case.

49. On May 13, 1999, the DOJ filed a lawsuit against American Airlines Inc. for monopolizing and attempting to monopolize airline passenger traffic service to and from Dallas/Ft. Worth International Airport (DFW). American dominates DFW, the third largest airport in the U.S., with more than seventy percent of all nonstop passengers. The suit alleges that American, when confronted with new, low-cost and low-fare competition on routes in and out of its DFW hub, responded with a predatory strategy designed to protect its monopoly. This strategy included flooding the newly competitive routes with additional flights and slashing fares until the entrant withdrew; American then curtailed service and raised fares. The suit was filed in the U.S. District Court in Wichita, Kansas, where trial is currently scheduled for October 2000.

50. On January 5, 1999, the DOJ sued Dentsply International Inc., the dominant manufacturer of false teeth in the U.S., for unlawfully maintaining its monopoly and restricting most tooth distributors from selling products made by its competitors. Dentsply sells approximately seventy percent of the artificial teeth used in the U.S., and is alleged to have limited competition by depriving its rivals, in particular foreign entrants, of effective distribution networks through exclusive dealing arrangements with independent dealers, the primary channel of distribution to dental laboratories. The suit was filed in U.S. District Court in Delaware.

51. On January 25, 1999, the Division filed in the U.S. District Court for the Middle District of Florida a complaint and proposed consent decree, alleging that the Federation of Certified Surgeons and Specialists, Inc. ("FCSSI"), a corporation formed by 29 independent general and vascular surgeons in the Tampa, Florida, area, who made up the vast majority of the local general and vascular surgeons, to obtain higher fees from managed care plans; and an accounting and consulting firm that represented FCSSI physicians in negotiations with managed care plans, had conspired to negotiate jointly with various managed care plans to obtain higher fees for the services of FCSSI's otherwise competing surgeons. The Department alleged that the accounting firm informed health plans that FCSSI surgeons would terminate their contracts and refuse to participate in the plans' networks unless the plans contracted with all FCSSI surgeons at higher rates. The parties entered into a settlement agreement whereby FCSSI and the accounting firm were prohibited from jointly negotiating on behalf of FCSSI surgeons and from engaging in various other anticompetitive activities. The consent decree was entered on June 1, 1999 (1999-1 Trade Cas. (CCH) ¶72,549).

52. On November 10, 1998, the Division filed lawsuits and proposed consent decrees against three wireless communications firms which allegedly agreed with rivals not to bid against each other in an auction for radio spectrum licenses conducted by the Federal Communications Commission. Each of the defendants on occasion had coded the final three digits of its bid for licenses for a particular city or region to the FCC number for that particular city or region, thereby inviting other firms to cease bidding for those licenses in exchange for an agreement not to bid against them in markets they wanted. Consent decrees prohibiting such conduct were entered on February 24, 1999 (1999-1 Trade Cas. (CCH) ¶72,472-473) and on April 29, 1999.

53. On October 7, 1998, the Division sued Visa and MasterCard, the two largest credit card networks accounting for 75 percent of all credit card purchases, challenging the joint control of both networks by the same group of banks, known in the industry as “duality,” which lessens competition between the networks. The complaint also challenged exclusionary rules adopted by both networks to restrict the ability of banks to do business with other credit card networks, such as American Express and Discover. The law suit was filed in the U.S. District Court for the Southern District of New York and is scheduled for trial in October 2000.

54. On Wednesday April 28, 1999, the Antitrust Division filed a civil antitrust action in United States District Court in Washington, D.C., to terminate a joint sales agreement (JSA) between Citadel Communications Corporation and Triathlon Broadcasting Company. Under the JSA, Citadel set prices and sold radio advertising time for not only its own radio stations in Colorado Springs, Colorado, and Spokane, Washington, but also for competing stations owned by Triathlon. In both markets, Citadel and Triathlon had been direct competitors, and the JSA between them ended competition to the detriment of advertisers. In Colorado Springs, the Complaint alleges that Citadel set prices for stations constituting 58 percent of the radio advertising market and also attempted to eliminate certain discounts by agreements with its remaining com-petitors. In Spokane, the Complaint alleges that Citadel set prices for 44 percent of the radio advertising market under the JSA with Triathlon. In addition, Triathlon then bought more stations, representing an additional 26 percent of the market. Competition between these new Triathlon stations and the Citadel/Triathlon JSA was substantially diminished because of Triathlon’s common ownership and because Triathlon received part of the revenue from the JSA. When the Division filed the action, it also filed a negotiated final judgment requiring Citadel and Capstar Broadcasting Corporation (Triathlon’s successor) to terminate the JSA and requiring Capstar to divest one station in Spokane. Under the terms of the final judgment, neither Citadel nor Capstar will own stations representing more than approximately 40 percent of the radio advertising market in either Colorado Springs or Spokane. The final judgment also prevents both Citadel and Capstar from acquiring additional stations or entering JSAs in either market without notice to the Division. The judgment was entered on August 26, 1999 (CCH ¶72,717).

3) *Modification or Termination of DOJ Consent Decrees*

55. On December 23, 1998, the DOJ consented to termination of a consent decree involving British Telecommunications plc (“BT”) and MCI Communications Corp. (“MCI”). The original 1994 decree addressed the competitive effects of BT’s acquisition of a twenty percent interest in MCI, with provisions aimed at preventing BT from using its market power in the UK to discriminate in favor of MCI or of a BT/MCI joint venture, at the expense of competing carriers in the market for international telecommunications services between the U.S. and the UK, and around the world. In 1997 the decree was strengthened in response to BT’s plans to acquire the remaining eighty percent of MCI. In late 1997 BT and MCI terminated their agreement and any remaining financial interests in one another, and the DOJ concluded that the decree was no longer necessary to safeguard competition.

56. On April 13, 1999 the DOJ petitioned the U.S. District Court in Chicago to find Interstate Bakeries Corporation (“IBC”) in civil contempt for violating a 1996 consent decree. The Division filed a civil lawsuit in 1995 to block the merger of IBC and Continental Baking Company, two of the three largest producers of white pan bread. Pursuant to the Court’s 1996 Final Judgment and consent decree, IBC was required, inter alia, to grant a perpetual, royalty-free, assignable, transferable, exclusive license to use its Weber label. When the original licensee was purchased in March 1999, however, IBC threatened to sue the licensee and its new owner if they continued to use the assets. The DOJ requested that the Court find IBC in contempt and fine it for each day it was in violation of the order to comply, but later withdrew its petition when IBC agreed to drop its claim.

57. On June 14, the Division announced it had tentatively agreed to modify a 1995 consent decree that had resolved an antitrust case alleging that the merger of the dispatch service businesses of Nextel Communications, Inc. and Motorola, Inc. would reduce competition. Dispatch service is a “push-to-talk” two-way radio service that allow mobile units, like taxicabs, to communicate with each other as a group. The proposed modification would allow Nextel and Motorola to increase the number of channels of 900 MHz spectrum in cities where the consent decree had limited the channels they could hold, but would bar Nextel from acquiring spectrum sold in the Geotek Communications, Inc. bankruptcy proceedings, to ensure that new competitors could enter the business. The consent decree would expire on October 31, 2000, in light of expected entry in the future by firms using another frequency band and cellular or PCS providers.

58. On July 23, 1999, the DOJ agreed to modify a 1957 consent decree with the Kansas City Star that had settled monopolization charges against the newspaper. The original decree contained provisions aimed at preventing The Star from monopolizing the dissemination of news and discriminating against advertisers who used competing media. Some of these provisions prevented The Star from passing on to advertisers savings produced by recent advances in publishing technology and from engaging in other procompetitive conduct. The changes agreed to included elimination of the absolute prohibition on acquisitions of radio and television stations and publishing interests (although acquisitions over \$5 million must still be notified to the DOJ), and elimination of the prohibition on price discrimination, which prevented procompetitive discounting.

4) *FTC Non-merger Enforcement Actions*

a. Commission Administrative Decisions¹

59. The Commission issued its final decision upholding charges that Toys “R” Us, the nation’s largest toy retailer, used its dominant position as a toy distributor to extract agreements from and among toy manufacturers to stop selling the same toys to warehouse clubs, which sold at substantially lower prices, as those displayed and sold at Toys “R” Us stores. The Commission found that Toys “R” Us conduct prevented consumers from making price comparisons, thereby reducing the effectiveness of the clubs as competitors and leading to increased prices and reduced consumer choice. The Commission’s order is tailored to stop and prevent the repetition of Toys “R” Us illegal conduct. The case is currently on appeal in the Seventh Circuit Court of Appeals. *Toys “R” Us*, Docket No. 9278.

60. Intel Corp., the world’s largest manufacturer of microprocessors, settled charges that it used its monopoly power to cement its dominance over the microprocessor market. The FTC alleged in its administrative complaint that Intel illegally used its market power when it denied three of its customers, Digital Equipment Corp., Integraph Corp., and Compaq Computer Corp., continuing access to technical information necessary to develop computer systems based on Intel microprocessors, and took other steps to punish them for refusing to license key patents on Intel’s terms. As a result of these practices, Intel allegedly impeded innovation and stifled competition. The consent order remedies all of the concerns outlined in the complaint without interfering with Intel’s rights to withhold its information or microprocessors for legitimate business reasons. *Intel Corp.*, Docket No. 9288.

61. The Commission charged Mylan Laboratories, the nation’s second largest generic drug manufacturer, and three other companies with conspiring to obtain monopoly power for Mylan in the U.S. markets for two widely-prescribed anti-anxiety drugs, lorazepam and clorazepate. The complaint also charges monopolization and restraint of trade in these markets through exclusive licensing agreements for the supply of the raw materials needed to produce these drugs. The FTC complaint, filed in U.S. district

court, seeks to enjoin the alleged illegal agreements as well as to obtain consumer redress and disgorgement of profits in the amount of at least \$120 million from Mylan and other defendants. *Mylan Laboratories, Inc. et al.*, File No. 981-0145, Civ. No.1: 98CV003114 (D.D.C., filed Dec.22,1998).

62. An FTC Administrative Law Judge issued an initial decision dismissing charges that VISX, one of the first companies to develop laser eye surgery equipment, acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office by withholding certain articles, patents, and patent applications which they knew were material "prior art." The Judge held that Complaint Counsel had not satisfied their burden of establishing by clear and convincing evidence that the prior art was withheld with intent to deceive. The case is currently on appeal before the Commission. *VISX*, Docket No. 9286.

63. The Asociacion de Farmacias Region de Arecibo (AFRA), an association of 125 pharmacies in northern Puerto Rico, and its former President agreed to settle Commission charges that they fixed prices and engaged in an illegal boycott in order to obtain higher reimbursement rates for pharmacy goods and services under the Puerto Rican government managed care plan for the indigent. Under the settlement, AFRA's members would be prohibited from jointly negotiating prices or other economic terms for pharmacies and jointly boycotting, threatening to boycott or refusing to provide pharmacy goods and services to any payer or provider. *Association de Farmacias Region de Arecibo*, Docket No. C-3855.

64. An association of marine pilots in Oregon, Columbia River Pilots (COLRIP) settled Commission charges that it monopolized and unreasonably restrained competition in the market for pilotage services on the Columbia River. The consent order prohibits COLRIP from imposing unreasonable noncompete agreements on its members, allocating customers with any competing pilotage group, limiting any competing pilotage group's size or restricting its ability to enter exclusive dealing contracts with customers or to submit rate proposals. *Columbia River Pilots*, Docket No. C-3854.

65. Other proposed or final consent orders include: *Pools by Ike, Inc.*, Docket No. C-3902 (price-fixing and boycotting conspiracy in swimming pool construction); and *Northern Lake Tahoe Medical Group, Inc.*, File No. 981-0261 (price-fixing of physicians services).

b. Federal District Court Decisions

66. None.

E. Business Reviews Conducted by the Department of Justice

67. On September 23, 1999, the DOJ approved a proposal by the Securities Industry Association (SIA), an association of nearly 800 securities firms, to organize an information exchange program designed to facilitate the conversion of equity securities and options trading from fractional to decimal-based systems. The DOJ concluded that anticompetitive effects from the proposal were unlikely because of the limited nature of the information to be exchanged and provisions ensuring that no transaction-specific price, cost or marketing information would be exchanged among rivals. Competitively sensitive information necessary to facilitate the conversion would be communicated only to SIA personnel who, in turn, would only distribute it in aggregated form masking firm-specific information. The DOJ noted in its business review letter that the conversion could have procompetitive effects by reducing investor costs and improving market efficiency.

68. On June 17, the DOJ approved a proposal by a group of electric power firms to establish and enforce reliability standards relating to the interchange of electric power over interconnected systems. The

Western Systems Coordinating Council (WSSC), one of ten electric reliability councils in North America, is a voluntary organization responsible for promoting electric system reliability and coordinating operating and planning activities for its 107 member systems. WSSC members, who represent all segments of the electric industry, provide power in 14 states, two Canadian provinces, and portions of one Mexican state. Under the proposal, WSSC for the first time would establish a mandatory reliability system for transmission operators who choose to participate in the program. Procedures for establishing Reliability Criteria and for monitoring compliance were established with an important role for the Federal Energy Regulatory Commission. The DOJ's business review letter indicated that the proposal did not appear to raise significant risks to competition.

69. On June 10, 1999, the DOJ approved a proposal by six firms to license jointly patents to other companies for the production of discs and players that comply with the Digital Versatile Disc-Video and Read-Only-Memory standards. The DOJ's business review letter noted that the proposed patent pool was designed to capture efficiencies that may come from joint licensing of complementary technologies, and that the proposal provided for retention of patent experts to review the patents to ensure that they were all essential and that the patent pool did not combine patents that would otherwise be competing with each other. On December 17, 1998 the DOJ approved in an earlier letter another patent pool for DVD technology involving three other firms.

70. Other business reviews in FY99 included approval of (1) a joint venture to create a physician network in Virginia, whose members shared substantial financial risk in all network contracts and accounted for less than ten percent of the physicians in any specialty (letter dated July 23, 1999), (2) a proposal by an association of independent privately-owned funeral homes, accounting for six percent of funeral home locations in the U.S., to engage in joint purchasing of caskets (letter dated January 13, 1999), and (3) a proposal by an association of independent corrugated paper packaging manufacturers accounting for 15-20 percent of sales in the U.S. to allow joint selling through entities established to bid for national and regional accounts, where the entities would include members who were not competitors and could not individually meet a customer's demand (letter dated December 23, 1999).

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

A. Enforcement of Premerger Notification Rules

71. The Commission and the Department have enforced the filing requirements of the Hart-Scott-Rodino (HSR) Act by bringing cases in federal court to obtain civil penalties. In FY 99, the Commission brought a civil penalty action against Input/Output Inc. and The Laitrim Corporation for failing to observe the waiting period required by the Hart-Scott-Rodino Act before combining Input/Output's operations with those of Laitram's subsidiary, DigiCOURSE. Each company agreed to pay civil penalties of \$225,000 to settle the charges. *Input/Output*, Civ. No.1:99CV00912 (D.D.C. 1999), 1999-1 Trade Cas. (CCH) ¶72,528.

72. The Commission settled its first civil penalty case imposing individual liability for improper certification of an HSR filing. Blackstone Capital Partners II Merchant Banking Fund L.P. agreed to pay \$2.875 million, the maximum civil penalty under the HSR Act, and one of its general partners, Howard Lipson, agreed to pay \$50,000 to settle FTC charges that they failed to file required documents with the antitrust enforcement agencies in a timely manner before acquiring a chain of funeral homes. At least one of the documents was key and would have alerted the agencies to potential antitrust violations. According

to the complaint, Lipson knew or should have known that his certification of the premerger filing was inaccurate. *Blackstone*, Civ. No. 1:99CV00795, 1999-1 Trade Cas. (CCH) ¶72,484.

B. Significant Merger Cases

1) *DOJ Merger Challenges or Cases*

73. United States v. Northwest Airlines Corp. and Continental Airlines, Inc. (10/23/98): the Division filed suit to block Northwest Airlines from buying a controlling stake in Continental Airlines. Northwest and Continental are the fourth and fifth largest U.S. airlines respectively and compete to provide air transportation services on thousands of routes across the country. The proposed acquisition would allow Northwest to acquire voting control over Continental, as well as to share in Continental's profits, diminishing substantially both Northwest's and Continental's incentives to compete against each other. The complaint alleged that Northwest and Continental are each other's most significant competitor -- if not the only competitor -- for nonstop airline service between the cities where they operate hubs. According to the complaint, Northwest plans to acquire stock representing 14 percent of Continental's equity but carrying 51 percent of its voting rights. Although a related agreement with Continental required Northwest to place its stock in a "voting trust" for six years, the complaint alleged that the voting trust would not prevent the competitive harm likely to result from the acquisition. Northwest has gone ahead with its acquisition, and litigation is pending in U.S. District Court in Detroit, Michigan. Trial is scheduled to commence September 19, 2000.

74. United States v. Pearson, plc, Pearson, Inc., and Viacom International, Inc. (11/23/98): the Division challenged Pearson's \$4.6 billion acquisition of educational, professional, and reference publishing businesses from Viacom. The complaint alleged that the acquisition would have lessened competition, and a proposed final judgment, filed simultaneously with the complaint, required Pearson to sell off an elementary school science textbook program and textbooks used in 32 college courses. Pearson and Viacom were two of only four publishers of major comprehensive elementary school science programs (which include textbooks and related materials and services) and two of only a few publishers of textbooks and educational materials for over 30 college courses. 2000-1 Trade Cas. (CCH) ¶72,790.

75. Monsanto Company/DeKalb Genetics Corp. (11/30/98): the Division did not oppose Monsanto's \$2.3 billion acquisition of DeKalb Genetics after Monsanto agreed to modify the deal. The Division's concerns focused on maintaining competition in biotechnology developments in corn. Monsanto agreed to spin off its claims to a recently developed technology used to introduce new genetic traits into corn seed (agrobacterium-mediated transformation technology) to the University of California at Berkeley. Monsanto also entered into binding commitments to license its Holden's corn germplasm, the type of genetic material that is used by biotech companies to introduce new transgenic traits in corn to breed the hybrid seed that farmers plant. Transgenic corn is corn that has been genetically altered so that it has certain traits, such as insect resistance or herbicide tolerance.

76. United States v. AT&T Corp. and Tele-Communications, Inc. (12/30/98): the Division challenged the \$48 billion merger between AT&T and TCI and simultaneously filed a proposed final judgment that would settle the suit. The decree required complete divestiture of TCI's interests in Sprint PCS over a five-year period. AT&T was the largest provider of mobile wireless telephone services in the United States, and TCI owned approximately 23.5 percent of the stock of Sprint's mobile wireless telephone business, Sprint PCS. Both AT&T and Sprint operated wireless networks that offered nearly complete nationwide geographic coverage. Under the terms of the settlement, the parties were required to transfer the Sprint PCS stock to an independent trustee before closing their merger. The trustee would then

have approximately five years to complete the sale. The settlement was structured to minimize any risk that the divestiture of Sprint PCS stock would harm competition by interfering with Sprint's ability to issue new stock or otherwise raise capital in order to continue to construct its wireless network. 1999-2 Trade Cas. (CCH) ¶72,632.

77. United States v. SBC Communications, Inc. and Ameritech Corp. (3/23/99): the Division challenged SBC's \$62 billion acquisition of Ameritech Corporation and Comcast Cellular Corporation. The acquisitions, as originally proposed, would have led to a loss of head-to-head competition in wireless mobile telephone service in 17 markets in Illinois, Indiana, and Missouri. A proposed final judgment, filed simultaneously with the complaint, required Ameritech to divest its cellular telephone systems in St. Louis and other markets in Missouri, as well as its cellular telephone systems in three markets in Illinois where it competed with Comcast. 1992-2 Trade Cas. (CCH) ¶72,631.

78. United States v. Bell Atlantic Corp. and GTE Corp. (5/7/99): the Division's complaint challenged Bell Atlantic's merger with GTE and alleged that the merger, as originally structured, would have led to a loss of head-to-head competition in wireless mobile telephone services in 65 markets in nine states. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Under the decree, the parties agreed to sell one of their two interests in overlapping wireless telephone systems. At the time, this was one of the largest divestiture packages involving a merger ever required by the Division and the second largest telecommunications merger in history. 7 Trade Reg. Rep. (CCH) ¶50,865.

79. United States v. Computer Associates International, Inc. and Platinum *technology* International, Inc. (5/25/99): this complaint challenged the acquisition of Platinum *technology* International by Computer Associates International and alleged that the proposed transaction, as originally structured, would have reduced competition in five mainframe systems management product markets. Computer Associates was the dominant competitor in the job accounting products software business. Platinum was a major competitor in mainframe systems management products and had been one of the few substantial competitors to Computer Associates in a number of markets. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Under the decree, Computer Associates was required to sell six Platinum mainframe systems management software products and related assets. 2000-1 Trade Cas. (CCH) ¶72,805.

80. United States and the State of Texas v. Aetna, Inc. and The Prudential Insurance Company of America (6/21/99): the Division challenged the \$1 billion proposed acquisition of The Prudential Insurance Company of America's health care business by Aetna. The complaint alleged that the proposed transaction would have made Aetna the dominant provider of health maintenance organization (HMO) and HMO-based point-of-service (POS) plans in Houston and Dallas-Fort Worth, Texas. The transaction, as originally structured, would have also resulted in increased prices or reduced quality of those health care plans. HMO plans generally compete in local areas on the basis of the breadth and quality of their physician and hospital networks, their benefits structure, and their prices. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required Aetna to divest its NYL Care Health Maintenance Organization (HMO) businesses in Houston and Dallas-Fort Worth. 1999-2 Trade Cas. (CCH) ¶72,730.

81. United States v. Cargill Incorporated and Continental Grain Company (7/8/99): the Division filed suit challenging Cargill Incorporated's acquisition of Continental Grain Company's Commodity Marketing Group. Cargill and Continental operated nationwide distribution networks that annually move millions of tons of grain and soybeans to customers throughout the United States and around the world. The transaction, as originally structured, would have decreased competition for the purchase of grain (such as wheat and corn) and soybeans from farmers and other suppliers, resulting in farmers' getting less money for major crops they produced. The complaint alleged that the combination of the merging firms'

competing port elevators in the Pacific Northwest, Central California, and the Texas Gulf would have harmed competition, and that the combination of their competing river elevators and rail terminals in Midwestern states, such as Illinois, Iowa, Kansas, Missouri, and Ohio, would have been anticompetitive. In addition, the consolidation of Cargill and Continental river elevators along the Illinois River would have concentrated ownership of delivery points authorized by the Chicago Board of Trade (CBOT) for settlement of corn and soybean futures contracts under the control of Cargill and one other firm. This concentration would have increased the risk that prices for CBOT corn and soybean futures contracts could be manipulated. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required Cargill to divest grain and soybean facilities in various states. 2000-1 Trade Cas. (CCH) ¶50,869.

82. Bank Mergers: The Department opened ten preliminary investigations of proposed bank mergers in FY99. The most significant investigation was the merger of equals, Fleet and BankBoston. The merger, announced in the spring of 1999, created the eighth largest bank in the country with about \$180 billion in assets. The divestiture in Fleet/BankBoston was the largest bank divestiture in history. The parties divested 306 branches with approximately \$13.2 billion in deposits across four New England states. Fleet additionally agreed to divest all off-premise ATMs except those specifically exempted by the Department. Also in FY99 there were divestitures in six bank mergers which resulted in a total divestiture of 55 branches with almost \$2 billion in deposits, in eight states. In one proposed merger, the parties withdrew their application with the Federal Reserve Bank after the Department wrote to advise Chairman Greenspan that it had concluded that the acquisition of branches in this transaction raised competitive concerns in small business lending in a particular market. Another transaction proceeded after the parties reached agreements with the Department on other conditions that resolved the competitive concerns, and one matter was closed without conditions after a lengthy investigation.

83. Radio mergers: In FY99, the Division filed two lawsuits against radio companies, each resulting in a consent decree requiring that the transaction be restructured. In *U.S. v. Citadel Communications Corporation et. al.*, 99-CV-01043 (D.D.C. Apr. 28, 1999), the Division filed a complaint challenging a joint sales agreement between Citadel and Triathlon in Colorado Springs, Colorado and Spokane, Washington. The lawsuit also challenged Triathlon's acquisition of three radio stations in Spokane. Under the terms of a consent decree filed simultaneously with the complaint, the parties were required to unwind their joint sales arrangement in both markets and divest a radio station in Spokane. In *U.S. v. Capstar Broadcasting Corp. and Triathlon Broadcasting Company*, 1:99 CV-00993 (D.D.C. Apr. 21, 1999), the Division filed a complaint and consent decree allowing Capstar to go forward with its acquisition of Triathlon Broadcasting Company so long as it divested five radio stations in Wichita, Kansas. In three radio investigations, the Division reached fix-it-first agreements with the parties to the acquisitions. Under these arrangements, the parties were required to sell several radio stations to independent third-parties before being allowed to proceed with their acquisitions. Finally, four radio acquisitions were abandoned after the Division expressed concern that they would have resulted in a loss of competition.

2) FTC Merger Challenges or Cases

a. Preliminary Injunctions Authorized

84. None.

b. Commission Administrative Decisions²

85. In *LaFarge Corporation/Holnam, Inc.*, the complaint alleged that the proposed acquisition by LaFarge Corporation of Holnam's Seattle cement plant and related assets in the state of Washington would substantially lessen competition in the Puget Sound cement market. LaFarge, one of the largest suppliers of cement for residential, commercial, institutional and public works construction, and Holnam, the number one supplier of cement in the United States, are two of five competitors in the Portland cement market in the Puget Sound area. According to the complaint, a provision of the sales agreement between LaFarge and Holnam would have imposed a penalty on LaFarge if it produced quantities of cement in excess of 85 percent of the Holnam plant's capacity. This allegedly would encourage LaFarge to restrict the output of cement at the Seattle plant to avoid the production penalty, preventing an increase in supply and a reduction in price for cement in the Puget Sound area. Under the order, the parties were required to restructure their agreement to drop the production penalty clause and also agreed not to enter into any agreement relating to the purchase of Holnam's Seattle cement plant and related assets where payment will be affected by, or dependent on, the quantity of cement produced or sold at the Seattle cement plant. *LaFarge, S.A.*, Docket No. C-3852.

86. The Commission challenged the proposed \$48.2 billion merger between The British Petroleum Company p.l.c. ("BP") and Amoco Corporation ("Amoco"), alleging that it would lessen competition (1) in the wholesale sale of gasoline in 30 cities or metropolitan areas in the eastern United States and (2) in the terminaling of gasoline and other light petroleum products in nine specified geographic markets. According to the complaint, both BP and Amoco are major producers of gasoline and other petroleum products in the United States, and entry into the market is difficult. The order required BP and Amoco to divest 134 gasoline stations in eight markets in which the companies' ownership overlap³ and the divestiture of nine petroleum products terminals to an acquirer approved by the Commission. The order also required that unless retail gasoline sellers representing a specified volume of sales in Toledo and Youngstown, Ohio, agree to switch to other brands, the companies must divest retail gasoline stations with an equivalent volume of sales to an acquirer acceptable to the Commission. *British Petroleum Co., p.l.c.*, Docket No. C-3868.

87. In *ABB/Elsag Bailey Process Automation N.V.*, the complaint alleged that ABB's proposed \$1.1 billion acquisition of Elsag Bailey Process Automation N.V. would substantially increase concentration in the process gas chromatograph market. The proposed acquisition allegedly would combine the two leading firms marketing process gas chromatographs worldwide, resulting in a combined market share of almost 70 percent. The complaint alleged that by eliminating competition between the top two competitors in this highly concentrated market, the proposed acquisition would allow ABB to unilaterally exercise market power, thereby increasing the likelihood that process gas chromatograph customers would be forced to pay higher prices and innovation in the market would decrease. Under the order, ABB was required to divest the Analytical Division of Elsag's Applied Automation, Inc. subsidiary, which is involved in the manufacture and sale of process gas chromatographs, and the research and development of a process mass spectrometer to a Commission-approved buyer. *ABB AB*, Docket No. C-3867.

88. Zeneca Group PLC settled Commission charges that its proposed \$30.5 billion acquisition of Astra AB would lessen competition in the U.S. market for long-acting local anesthetics. According to the complaint, while Zeneca did not currently sell long-acting anesthetics, it entered into an agreement with Chiroscience Group plc, the developer of levobupivacaine, a new long-acting local anesthetic that represents the only potential new competition in the long-acting local anesthetic market for the foreseeable future. Thus, Zeneca was an actual potential competitor in the U.S. market. Astra is the leading supplier in the U.S. and worldwide, and is one of only two companies with Food and Drug Administration approval for the manufacture and sale of long-acting local anesthetics in the U.S. Therefore, the FTC alleged that the proposed merger was likely to lead to anticompetitive effects by eliminating Zeneca as the only source of new competition in the long-acting local anesthetics market. The order required Zeneca to transfer and surrender all of its rights and assets relating to levobupivacaine to Chiroscience. The order also required

that Zeneca divest its approximately three percent investment interest in Chiroscience. *Zeneca Group PLC*, Docket No. C-3880.

89. In *CMS Energy Corporation/Panhandle Eastern Pipeline/Trunkline Pipeline*, the complaint alleged that the proposed \$1.9 billion acquisition by CMS Energy Corporation of Panhandle Eastern Pipeline and Trunkline Pipeline from Duke Energy Company would lessen competition and drive up consumer prices for natural gas and electricity in 54 counties in Michigan. According to the complaint, Consumers Energy, a subsidiary of CMS Energy, provides natural gas to residential and industrial consumers in the relevant market and owns and operates the only intra-state natural gas transmission system through which consumers can buy natural gas from other suppliers for their own use or in producing electricity. Five major pipelines, two of which CMS Energy proposed to acquire, provide the natural gas consumed in the 54-county area. Each pipeline has one or more points of interconnection with the Consumers Energy system, and competition among the pipelines has resulted in rates well below the maximums established by the regulatory agencies. As a customer of interstate transportation services, Consumers Energy has had an incentive to maintain competitive access into its system to maintain maximum flexibility and minimum prices for the delivery of gas into its system. But after the acquisition, CMS allegedly would have an incentive to restrict the other pipelines' access to the Consumer Energy system to support increases on Panhandle and Trunkline which allegedly would increase the price of natural gas and electricity for consumers and industrial users. The case was settled by a consent order that prevents CMS from restricting or eliminating interconnection capacity available to the pipelines that compete with Panhandle and Trunkline. It also requires that CMS give shippers the choice of two options if the interconnection capacity with competing pipelines falls below historical levels. *CMS Energy Corp.*, Docket No. C-3877.

90. Albertson's, Inc. settled Commission charges that its proposed acquisition of American Stores Company would substantially lessen supermarket competition in California, Nevada and New Mexico. According to the complaint, Albertson's, the nation's fourth largest supermarket chain, operates approximately 994 supermarkets in 25 Western, Midwestern, and Southern states. American Stores, the second largest supermarket chain in the US, operates approximately 802 supermarkets and 773 stand-alone pharmacies in 31 states. After the merger, Albertson's would become the second largest supermarket chain in the US. Under the order, the companies were required to sell 104 Albertson's supermarkets, 40 American Stores supermarkets, three Albertson's sites and two American Stores sites in 57 local markets. *Albertson's, Inc.*, File No. 981-0039.

91. Associated Octel Company Limited settled Commission charges that its proposed acquisition of Oboadler Company Limited would lessen competition and raise prices of lead antiknock compounds that are added to aviation fuel for piston engine airplanes and to certain gasoline used in racing cars in the US. According to the complaint, the market for the manufacture and sale of lead antiknock compounds is highly concentrated, and Octel and Oboadler are two of only three firms in the world that manufacture them. Under the consent order Octel will enter a long-term supply agreement with Allchem Industries Inc. Oboadler's US distributor, to provide Allchem's requirements for lead antiknock compounds for resale in the US. Octel is required to supply the product to Allchem for 15 years. *Associated Octel Co. Ltd.*, File No. 991-0288.

92. Other proposed or final consent orders include: *Service Corp. Int'l.*, Docket No. C-3869 (funeral homes and cemeteries); *Medtronic, Inc.*, Docket No. C-3879 (non-occlusive arterial pumps); *Rohm & Haas Co.*, Docket No. C-3883 (acrylic water-based polymers used in floor care products); *Quexco Inc.*, consent order withdrawn and transaction abandoned (lead smelting, refining and recycling services); *Koninklijke Ahold nv*, Docket No. C-3861 (supermarkets); *SMA S.p.A.*, Docket No. C-3889 (heart-lung machines); *Provident Companies, Inc.*, Docket No. C-3894 (disability insurance); *Kroger Co.*, Docket No. C-3917 (

supermarkets); *Shaw's Supermarkets, Inc.*, File No.991-0075 (supermarkets); *Kroger Co.*, Docket No. C-3905 (supermarkets); *Ceresin Corp.*, File No. 981-0030 (trucking fleet cards and reading systems).

IV. Regulatory and trade policy matters

A. Regulatory Policies

1) DOJ Activities: Federal and State Regulatory Matters

93. On October 21, 1998, the DOJ filed comments with the Securities and Exchange Commission ("SEC") on a proposed rule change by the Chicago Board Options Exchange, Inc. ("CBOE") relating to the collective setting of fee and payment obligations for the purpose of creating funds for floor brokerage subsidies which in turn might allow greater competition with other options exchanges. The DOJ suggested that the SEC should not approve the proposal until the CBOE adequately explained why the rule would not adversely affect competition and provided a full explanation of how it would promote competition between exchanges. The DOJ was concerned that the rule would allow market makers to agree on matters that could affect prices the public pays for securities and/or securities transactions.

94. On October 19, 1998, the DOJ filed comments with the Federal Communications Commission ("FCC") in connection with Capstar Broadcasting Partner Inc.'s ("Capstar") proposed acquisition of Triathlon Broadcasting Company ("Triathlon"). Noting the FCC's statutory responsibility to consider antitrust issues in approving the transfer of a station license, the DOJ identified potentially significant anticompetitive effects of the transaction in the Wichita, Kansas radio broadcasting market, and suggested that the FCC hold a hearing to determine whether sufficient competition would exist after the acquisition and whether the transfers serve the public interest. On March 4, 1999, the DOJ withdrew its comment and petition for hearing after reaching a satisfactory divestiture agreement with Capstar in its own investigation of the acquisition (*see above* ¶85).

95. On January 14, 1999, the DOJ filed comments with the FCC to support a proposed transaction that would allow direct broadcast satellite ("DBS") provider Echostar Communications Corp. to acquire the license to use a valuable high-power DBS orbital location. The DOJ's conclusion that the transaction would enhance Echostar's ability to compete with other distributors of multichannel video programming, including the cable companies that dominate these distribution markets, was based largely on evidence uncovered earlier during litigation initiated by the DOJ that eventually led the parties to abandon a proposed transfer of these satellite assets to Primestar, a satellite television provider owned and controlled by five of the largest U.S. cable companies (*see* FY98 Annual Report ¶75).

96. On April 20, 1999, the DOJ wrote to the U.S. Department of State, the U.S. representative to the Universal Postal Union (UPU), with comments on the upcoming UPU Congress in Beijing in August, 1999. The DOJ urged the Department of State to advance and support proposals that would lead to cost-based terminal dues and that would promote competition in outbound international mail from the United States.

97. On June 11, 1999, the DOJ issued a letter urging the Kentucky Bar Association Board of Governors to reject a proposed opinion that would prevent non-lawyers from competing with lawyers to perform real estate closings. The DOJ letter noted that eliminating this competition would likely raise real estate closings costs and leave consumers with fewer choices, and questioned the need to adopt the opinion to protect consumer interests.

98. In FY99, the Division reviewed five applications for new Export Trade Certificates submitted under the Export Trading Company Act and its implementing regulations and concurred in the Department of Commerce's issuance of five new certificates.

2) **FTC Staff Activities: Federal and State Regulatory Matters**

99. The goal of the Commission's advocacy activities is to prevent or reduce harm to consumers and competition by informing appropriate governmental and self-regulatory bodies about the potential effects, both positive and negative, of proposed legislation, rules or industry guides or codes. The following are examples of FY 99 advocacies. All of the complete comments filed are available at <http://www.ftc.gov/be/advofile.htm>.

100. Order on Standards of Conduct, Massachusetts Department of Telecommunications and Energy (MATE): FTC staff filed a comment outlining issues the MATE might wish to consider as it reviews its rules governing transactions between a regulated electric utility and its unregulated affiliates. The comment noted, among other things, fundamental trade-offs between preventing discriminatory behavior by a parent utility and preserving economies of vertical integration with its affiliate. File No. V980029.

101. Regional Transmission Organizations, Federal Energy Regulatory Commission: FTC staff commented on FERC proposals to encourage formation of regional transmission organizations (RTOs) to further competition in wholesale electric power markets. Among other things, staff agreed with FERC's four minimum characteristics and seven minimum functions of RTOs needed to ensure robust wholesale competition and encouraged FERC to consider an "efficient operations" characteristic and methods to encourage RTOs to facilitate conversion to real-time metering as a integral part of the process of increasing competition in electric power markets. File No. V990011.

102. Proposed Legislation to Amend the Wine Franchise Law to Provide for Exclusive Territories, North Carolina Legislature: FTC staff opposed state legislation that would make "airtight" exclusive territorial arrangements between wineries and wholesalers in the wine industry, arguing that there was no evidence establishing the need for this exemption from the antitrust laws and that the legalization of such agreements might have anticompetitive effects with no offsetting consumer benefits. File V990003.

103. Texas Physician Collective Bargaining, Texas Legislature: FTC staff expressed concerns about the potential adverse impact on consumer welfare likely to arise from proposed state legislation authorizing competing physicians to jointly negotiate contractual terms with health plans under certain circumstances. File V 99009.

B. *DOJ Trade Policy Activities*

104. The Division is extensively involved in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade policy. The Division participates in interagency trade policy discussions chaired by the Office of the U.S. Trade Representative and is a participant in the trade policy activities of the National Economic Council (ANEC@), a cabinet-level advisory group. The Department provides antitrust and other legal advice to U.S. trade negotiators. Both DOJ and FTC participate in bilateral and multilateral discussions and work projects to improve cooperation in the enforcement of competition laws.

105. The Division and FTC participate in a number of negotiations and working groups related to regional trade agreements. The Division participates with the Office of the U.S. Trade Representative, the Federal Trade Commission, and State and Commerce Departments in competition policy groups associated with the Free Trade Area of the Americas and Asia-Pacific Economic Cooperation. The antitrust agencies also have played an important role in the working group established in 1997 by the World Trade Organization to study issues relating to the interaction between trade and competition policy.

106. The Division represents the Department on the Committee on Foreign Investment in the United States ("CFIUS"), an interagency group chaired by Treasury that advises the President on enforcement of the Exon-Florio provision, a 1988 statute that permits the President to block or suspend foreign acquisitions of U.S. assets that "threaten to impair the national security."

107. The Department and the FTC have an extensive program to provide technical assistance in antitrust development to countries with emerging market economies. In addition to advancing the adoption of competition policies that incorporate sound economic principles and effective enforcement mechanisms, these programs create long-term cooperative relationships with policy and enforcement officials in the countries involved.

108. The Division co-chairs (with the Office of the U.S. Trade Representative) the Structural Issues Working Group under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy. In these discussions, the United States has urged the Japanese government to strengthen its enforcement of Japan's antimonopoly law, to make its administrative procedures fair and open, and to accelerate an effective program of deregulation to open markets to competition.

V. New studies related to antitrust policy

A. *Antitrust Division Economic Analysis Group Discussion Papers*

109. The Economic Analysis Group issued no discussion papers during FY99. Copies of reports from previous years may be obtained by contacting Janet Ficco at 600 E Street, N.W., Suite 10000, Washington, D.C. 20530 or at (202) 307-3779 (janet.ficco@usdoj.com). Other Division public materials may be obtained through the Antitrust Documents Group of the Division's Office of Operations. Requests should be directed to Ms. Janie Ingalls, Room 221, Liberty Place Building, 325 7th Street, N.W., Washington, D.C. 20530. Ms. Ingalls may be reached at (202) 514-2481.

B. *Commission Studies, Reports and Economic Working Papers*

110. The following may be obtained from the FTC home page,
<http://www.ftc.gov/os/1999/9908/index.htm#6>:

1. *Commission Studies and Reports*

A Study of the Commission's Divestiture Process, Staff of the Bureaus of Competition and Economics, August 1999.

The Pharmaceutical Industry: Competitive and Antitrust Issues in an Environment of Change, Roy Levy, March 1999.

2. *Economic Working Papers*

R&D Activity and Acquisitions in High Technology Industries: Evidence from the U.S. Electronic and Electrical Equipment Industries, Bruce Blonigen and Christopher Taylor, January 1999.

Price Competition and Advertising Signals - Signaling by Competition Senders, Mark Hertzendorf and Per Baltzer, January 1999.

Multimarket Contact and Imperfect Information, Charles Thomas, January 1999.

Pricing Behavior of Multi-Product Retailers, Daniel Hosken and David Reiffen, March 1999.

The Competitive Effects of Not-For-Profit Hospital Mergers, Michael Vita and Seth Sacher, June 1999.

Regulatory Restrictions on Vertical Integration and Control: The Competitive Impact of Gasoline Divorcement Policies, Michael Vita, August 1999.

Appendices

Federal Trade Commission: Fiscal Year 1999 FTE and Budgeted Amount by Program/Bureau

	FTE	AMOUNT
Total Direct Mission	467.5	\$55,738.8
Bureau of Competition	247.0	\$23,796.9
Bureau of Economics	58.2	\$5,444.4
Regional Offices	41.3	\$3,959.5
Mission Support	121.0	\$22,538.0
Premerger Notification	34.1	\$2,909.8
Bureau of Competition	32.9	\$2,800.9
Bureau of Economics		
Regional Offices	1.2	\$108.9
Merger & Joint Venture Enforcement	172.4	\$16,486.3
Bureau of Competition	112.9	\$10,974.5
Bureau of Economics	34.2	\$3,146.4
Regional Offices	25.3	\$2,365.4
Merger & Joint Venture Compliance	10.9	\$945.6
Bureau of Competition	10.8	\$932.5
Bureau of Economics	0.1	\$9.2
Regional Offices	--	\$3.9
Nonmerger Enforcement	90.5	\$8,591.6
Bureau of Competition	70.9	\$6,782.4
Bureau of Economics	7.6	\$701.8
Regional Offices	12.0	\$1,107.4
Nonmerger Compliance	14.7	\$1,560.1
Bureau of Competition	8.9	\$1,027.6
Bureau of Economics	3.1	\$284.7
Regional Offices	2.7	\$247.8

	FTE	AMOUNT
Antitrust Policy Analysis	7.1	\$656.1
Bureau of Competition		
Bureau of Economics	7.1	\$656.1
Regional Offices		
Other Direct Mission Resources	16.8	\$2,051.3
Bureau of Competition	10.6	\$1,279.0
Bureau of Economics	6.1	\$646.2
Regional Offices	0.1	\$126.1

Department of Justice: Fiscal Year 1999 FTE and Budgeted Amount by Enforcement Activity

	FTE	AMOUNT
Merger Enforcement	261	\$31,834,000
Civil Non-Merger Enforcement	147	\$17,891,000
Criminal Enforcement	254	\$30,867,000
Competition Advocacy	27	\$3,794,000
TOTAL⁴	689	\$84,386,000

NOTES

1. Copies of the complaint, the consent order, and related documents can be obtained from the FTC's web site at: <http://www.ftc.gov> utilizing the "search" button on the home page and inserting the respondent's name.
2. Id.
3. BP would divest its retail gasoline stations in Charleston and Columbia, South Carolina; Charlotte, North Carolina; Jackson and Memphis, Tennessee; and Savannah, Georgia. Amoco would divest its gasoline stations in Tallahassee, Florida; and Pittsburgh, Pennsylvania.
4. The 689 FTE and \$84,386,000 totals reflect full time employees and budget allocation in the areas of Merger, Civil Non-Merger, Criminal, and Competition Advocacy only. These figures are not to be confused with those in ¶17 above which cite the total number of positions and total budget allocation for the entire Antitrust Division.