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ANNUAL REPORT ON DEVELOPMENTS IN COMPETITION IN THE UNITED STATES

(JANUARY 1 - SEPTEMBER 30, 1994)

This report is submitted by the Delegate of the United States to the meeting of the Committee on Competition Law and Policy on 18 and 19 May 1995.

SUMMARY OF HIGHLIGHTS FROM FY 1994 REPORT

In fiscal year 1994, the Division and FTC pursued important initiatives designed to provide guidance to the business community. In September, the FTC and DOJ issued updated and expanded joint guidelines regarding application of the antitrust laws to the health care industry, clarifying how the agencies would analyze joint ventures, networks, and other joint activities. Drafts of enforcement guidelines for international operations and the licensing of intellectual property were released for public comment, and the agencies participated in a study of defense mergers which did not endorse antitrust exemptions in that sector.

In July, the Commission announced a new policy for terminating FTC competition orders, referred to as the "sunsetting" policy, pursuant to which core injunctive provisions of FTC orders in future antitrust cases ordinarily will be terminated after 20 years, and supplemental provisions after not more than 10 years.

In the legislative area, the key development was the signing into law by President Clinton on November 2, 1994 of the International Antitrust Enforcement Assistance Act of 1994 ("IAEAA"). The law permits the DOJ and the FTC to provide antitrust evidence to, and conduct investigations to obtain antitrust evidence for, a foreign antitrust authority, pursuant to a reciprocal antitrust mutual assistance agreement in effect with the foreign antitrust authority. The law sets forth requirements that such agreements must fulfil and permits the disclosure of otherwise confidential information, except Hart-Scott-Rodino premerger information, pursuant to such agreements.

The Division filed 57 criminal antitrust cases; sentences resulted in over $40 million in fines, 1,497 days of actual incarceration, and 2,475 days of alternative forms of confinement. Important criminal cases were pursued in the plastic dinnerware, thermal fax paper, industrial diamonds, and residential flush door markets. The first two investigations benefitted from crucial assistance provided by the Canadian authorities. Critical civil enforcement actions were brought in the defense procurement, health care, airline tariff, automated teller machine, flat glass technology, computer software, and household insecticide markets.

The FTC initiated thirteen non-merger and twenty merger cases, for a total of 33 - the highest number since 1980. In the non-merger area, the Commission’s thirteen cases involved challenges alleging anticompetitive conduct such as boycotts, price-fixing, resale price maintenance and other restraints of competition by, among others, medical professionals, associations of interpreters, automobile dealers, and cable TV systems. In addition, one company paid the second highest civil penalty ever - $2.6 million - to settle charges that it failed to properly notify antitrust authorities under the Hart-Scott-Rodino Act before consummating a large acquisition. In another settlement, two companies agreed to pay $400,000 to settle allegations that they violated several provisions of a 1988 divestiture order.

The agencies reviewed 2,301 transactions reported under the premerger notification provisions of the Hart-Scott-Rodino Act, an increase of 25 percent over the previous year. Important DOJ cases were filed in the telecommunications, health care, and waterjet industries. The Commission’s twenty merger cases involved challenges of allegedly anticompetitive mergers in a wide variety of industries, including pharmaceuticals, defense, hospitals, telecommunications, computer software, financial services, chemicals, and consumer goods. Another eight mergers were abandoned after the staff raised concerns that the

transactions might injure competition or consumers. In total 25 percent more proposed mergers were examined by staff than in the previous fiscal year.

In FY 94 the Division began a policy of making available on the Internet all public documents issued by the Division. The address is *gopher@justice.usdoj.gov* or *http://www.usdoj.gov*. The Division can be contacted by means of Internet E-mail at *antitrust@justice.usdoj.gov*.

REPORT TO THE OECD ON UNITED STATES ANTITRUST AND COMPETITION DEVELOPMENTS FOR THE PERIOD JANUARY 1 TO SEPTEMBER 30, 1994

INTRODUCTION

1. This report describes federal antitrust developments in the United States for the period January 1, 1994 through September 30, 1994.[1] It summarizes the activities of the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and of the Bureau of Competition of the Federal Trade Commission ("FTC" or "Commission").

2. Deborah K. Owen and Dennis A. Yao resigned their positions as FTC Commissioners in August and September 1994, respectively. Christine Varney was sworn in as Commissioner in October 1994.

I. CHANGES IN LAW OR POLICIES

A. Changes in Antitrust Rules, Policies or Guidelines

3. The Division participated with the FTC and the Department of Defense on the Defense Services Board Task Force on Defense Mergers, which analyzed the effect of the antitrust laws on consolidation of the defense industry. Although some observers had called for special defense industry exceptions to the antitrust laws, the Task Force concluded that it was important to preserve competition wherever feasible in defense production industries and that the antitrust laws were sufficiently flexible to take into account the changing economics of those industries. Consequently, the Task Force's report, issued in April 1994, did not endorse antitrust exemptions for defense industry mergers. Instead, it focused on ways that the Department of Defense could communicate its industry expertise to the antitrust enforcement agencies with respect to specific defense industry mergers.

4. On July 29, 1994 the Commission announced a new policy for terminating FTC competition orders. Under the "sunsetting" policy, core injunctive provisions of FTC orders in future antitrust cases ordinarily will be terminated after 20 years, and supplemental provisions in these orders ordinarily will be terminated after not more than 10 years. Additionally, the Commission announced that, in considering petitions to reopen and set aside existing competition orders that are more than 20 years old, it will presume that the public interest requires terminating such orders. The new policies were effective immediately.

5. On August 8, 1994, the Division issued for public comment proposed *Guidelines for the Licensing and Acquisition of Intellectual Property*. The proposed Guidelines explain the generally complementary relationship between the antitrust laws and the laws that protect intellectual property and the circumstances in which an attempt to exploit intellectual property rights can raise antitrust concerns. The proposed Guidelines replace those provisions and examples in the 1988 International Guidelines that related to intellectual property licensing. A Division task force drafted the proposed Guidelines after extensive consultation with academic, business and legal experts. The Guidelines recognize that antitrust policy and intellectual property protection share the common goal of fostering innovation as a means of advancing consumer welfare and that antitrust analysis is sufficiently flexible to accommodate the special

characteristics of intellectual property. They acknowledge that the licensing of intellectual property is generally procompetitive and that ownership of intellectual property does not by itself constitute the possession of market power. To provide greater certainty where antitrust risks are small, the proposed Guidelines announce a "safety zone" within which the Division generally will not challenge most licensing arrangements if the parties collectively account for no more than 20 percent of each relevant market. The Guidelines are to be issued in final form after consideration of public comments.[2]

6. On August 10, 1994, AAG Bingaman announced an expansion of the Division's 1993 Corporate Leniency Policy called the Individual Leniency Policy. The new policy is designed to encourage individuals to come forward with information regarding criminal antitrust violations. Under the policy, "leniency" means not charging such an individual criminally for the activity being reported. Such assurances are contingent on the individual's meeting three criteria: (a) at the time the individual comes forward to report the illegal activity, the Division has not received information about the alleged activity from any other source; (b) the individual reports the wrongdoing with candor and completeness and provides full, continuing and complete cooperation to the Division throughout the investigation; and (c) the individual did not coerce another party to participate in the illegal activity and clearly was not the leader in, or originator of, the activity.

7. On August 26, 1994, the President signed into law the "Federal Trade Commission Act Amendments of 1994," Pub. L. No. 103-312, 108 Stat. 1691 ("the Amendments") re-authorizing the Commission through FY 1996. The Amendments contain a number of changes to the Federal Trade Commission Act, including procedural improvements such as: (1) authorization to use civil investigative demands (CIDs) in competition investigations; (2) authorization to obtain tangible items through the use of CIDs; (3) expansion of venue, joinder of parties, and service of process options available to the FTC in federal court injunction actions; and (4) elimination of the automatic stay of Commission orders upon appeal, except in a few circumstances. Additionally, the Amendments codify certain existing restrictions on the Commission's authority regarding agricultural cooperatives and marketing orders.

8. To lessen the uncertainty of business participants about the antitrust implications of adapting their businesses to the changing economics of health care, the Division and the FTC jointly issued *Statements of Antitrust Enforcement Policy in the Health Care Area* in September 1993, and revised and expanded these Statements in September 1994. These Policy Statements provide detailed guidance to businesses and their counsel as they adjust to the rapidly changing health care market. As revised, the 106-page Policy Statements provide antitrust guidance with respect to nine separate areas that play an important role in the emerging health care system:

- -- mergers among hospitals;
- -- hospital joint ventures involving high-technology or other expensive health care equipment;
- -- hospital joint ventures involving specialized clinical or other expensive health care services;
- -- providers' collective provision of non-fee-related information to purchasers of health care services;
- -- providers' collective provision of fee-related information to purchasers of health care services;
- -- provider participation in exchanges of price and cost information;

-- joint purchasing arrangements among health care providers;

-- physician network joint ventures; and

-- multi-provider networks.

The two agencies also committed to providing expedited 90-day business reviews for the health care industry. During FY 94, the Division provided such expedited guidance in response to twelve inquiries involving the health care industry.

9. The Division reorganized a number of sections to ensure that adequate resources would be devoted to specific sectors. At the end of FY 94, the Division reorganized the Communications and Finance Section into a Computers and Finance Section and a Telecommunications Task Force. The new Task Force includes lawyers with extensive telecommunications experience and will specialize in telecommunications issues. To combat anticompetitive conduct that does not rise to the level of criminal violation, but that unreasonably raises prices for consumers or otherwise harms the competitive process, the Division created a Civil Task Force dedicated to cases of national and international importance. The Division also established a New Cases Unit with the responsibility of reviewing and assessing potential cases. The Unit hands off promising leads to the Civil Task Force or to other appropriate litigating sections for further investigation. As a result of these changes and efforts, the Division issued compulsory process in 54 new civil non-merger investigations in FY 94, a large increase over FY 93. This increase in investigations paralleled an increase in the number of civil nonmerger cases filed.

10. During FY 94, the Division and the FTC drafted proposed *Antitrust Enforcement Guidelines for International Operations* to replace those issued by the Division in 1988. The proposed Guidelines were published for public comment in October 1994. The new Guidelines articulate the agencies' resolve to protect both American consumers and American exporters from anticompetitive restraints where such restraints have direct, substantial and reasonably foreseeable effects on U.S. commerce. As more countries have adopted national antitrust laws, cooperation between national antitrust enforcement agencies has increased, and the proposed Guidelines emphasize the importance of such international cooperation. The Guidelines also recognize that comity-based doctrines such as sovereign compulsion may counsel against antitrust enforcement in some circumstances (outlined in the Guidelines) or indicate that U.S. agencies should work with foreign agencies.[3]

11. In FY 94, the Division stepped up its efforts to coordinate with State Attorneys General in the enforcement of state and federal antitrust laws. One aspect of these efforts was the appointment of a Senior Counsel to the Assistant Attorney General with direct responsibility for liaison with state enforcement authorities. In addition to increased communication and understanding between the Division and the states, these efforts produced tangible results in the form of joint and coordinated prosecutions and reduced compliance costs for business. For example, the Division joined the Arizona Attorney General in challenging exclusionary practices by that state's largest dental insurance plan and joined the Florida Attorney General in challenging a hospital merger that would have increased health care costs in that state. Similarly, the Division coordinated its challenge to price information exchanges by Utah hospitals with the Utah Attorney General. Increased state-federal cooperation avoids unnecessary duplication of enforcement efforts and harmonizes the application of the state and federal antitrust laws, thus creating greater certainty for businesses and their counsel and lowering compliance costs. The Division currently has six on-going joint investigations with State Attorneys General.

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

1) Department of Justice

12. AAG Bingaman appeared before the Economic and Commercial Law Subcommittee of the House Judiciary Committee on January 26, 1994, and the Telecommunications and Finance Subcommittee of the House Energy and Commerce Committee on January 27, 1994, to present the views of the Department on proposed legislation that would accelerate the telecommunications revolution and the completion of the National Information Infrastructure (NII). AAG Bingaman voiced the Department's support for the "Antitrust Reform Act," which would enable the Regional Bell Operating Companies (RBOCs) that are now barred from competing in long-distance telephone services to enter the market, but only if the telephone companies satisfy both the Federal Communications Commission and the Department that their entry will not harm competition in other markets. In addition, the proposal would permit the RBOCs to research, develop, and manufacture telecommunications equipment unless the Department challenges such activity as posing undue threats to competition. AAG Bingaman also stated the Department's support for the National Communications Competition and Information Infrastructure Act which would allow for more competition in both local telephone and cable service by stripping away regulations that impede the development of at least "two wires" to the home and opening the telephone companies' "local loop" to full and fair competition. AAG Bingaman also testified on September 20, 1994, on S.1822, the Senate's companion telecommunications bill.

13. AAG Bingaman appeared before the Economic and Commercial Law Subcommittee of the House Judiciary Committee on June 15, 1994, to discuss antitrust-related provisions in the Health Security Act, the Clinton Administration's health care reform proposal. The Health Security Act includes a provision which would repeal the antitrust exemption provided by the McCarran-Ferguson Act for the business of health insurance. Another provision in the Act with antitrust implications would allow providers to jointly negotiate with insurance providers on the fee schedule for "fee-for-service" health plans.

14. To enable the agencies to cope with the enforcement challenges inherent in economic globalisation, the Division and FTC supported the *International Antitrust Enforcement Assistance Act of 1994*, which was introduced with strong bipartisan support in both houses of Congress on July 19, 1994. Congress passed the Act in October with overwhelming support, and it was signed into law by the President on November 2, 1994. The new law authorizes the Department of Justice and the FTC to negotiate reciprocal assistance agreements with foreign antitrust enforcement authorities, provided those authorities protect law enforcement information with the same degree of confidentiality accorded it in the United States. The law greatly expands the ability of the DOJ and the FTC to cooperate with foreign antitrust authorities. It does so by permitting the agencies to use their investigative powers in response to a request from a foreign antitrust authority, and to exchange most forms of confidential information, all in accordance with the terms of the mutual assistance agreement. The law also permits the U.S. Attorney General to apply to a U.S. court for an order requiring the production of evidence by a person in the United States to assist a foreign antitrust authority. The assistance may be given without regard to whether the conduct under investigation violates U.S. antitrust laws, but the foreign antitrust law must prohibit conduct similar to conduct prohibited under U.S. antitrust law. The law permits the disclosure of most otherwise confidential information, except for Hart-Scott-Rodino premerger notification information and certain other categories of information related to national security.

2) FTC Comments on Proposed Legislation

15. The Commission commented on the proposed Health Care Antitrust Improvements Act which would create certain exemptions from the normal application of the federal antitrust laws for joint conduct by health care providers under certain circumstances. The Commission opposed enactment of the revised bill, stating that it would: i) immunize various forms of anticompetitive conduct by health care professionals that yield no procompetitive benefit to consumers; ii) eliminate the flexibility that the enforcement agencies need in applying the antitrust laws; and iii) create an unnecessary, elaborate, and costly regulatory scheme. The bill was not passed.

II. ENFORCEMENT OF ANTITRUST LAWS AND POLICIES: ACTION AGAINST ANTICOMPETITIVE PRACTICES

A. Department of Justice and FTC Statistics

1) DOJ Staffing and Enforcement Statistics

16. During FY 1994 the Division continued its increase in personnel, adding 25 attorneys and 56 paralegals. At the end of FY 1994, the Division had 719 employees, comprised of 325 attorneys; 51 economists; 131 paralegals and 212 support staff.

17. In FY 1994, the Antitrust Division opened 366 investigations and filed 78 antitrust cases, both civil and criminal, in federal court. The Division was a party to 13 U.S. antitrust cases decided by the federal Courts of Appeals, and filed amicus curiae briefs in one Supreme Court case and two Court of Appeals cases.

18. In FY 1994, the Division filed 57 criminal cases against 55 corporations and 50 individuals. Ninety-two corporate defendants were assessed fines totalling $40,236,000 and nine defendants were sentenced to a total of 1,497 days of incarceration. Another 22 individual defendants were sentenced to spend a total of 2,475 days in some form of alternative confinement.

19. In FY 1994, the Division reviewed 2,301 notified merger transactions, as well as a number of structural transactions that did not fall under the Hart-Scott-Rodino pre-merger notification requirements. The Division investigated 105 mergers and challenged 22.

20. The Division opened 84 civil investigations in FY 1994, both merger and non-merger, and issued 1,135 civil investigative demands (a form of compulsory process). During the year, the Division filed 21 civil complaints and 19 proposed consent decrees or final judgments. Nine of the Division's consent decrees were entered in FY 1994, some of which had been proposed and filed in earlier years.

2) FTC Staffing and Enforcement Statistics

21. At the end of FY 1994, the FTC's Bureau of Competition had 213 employees: 152 attorneys, 33 other professionals and 28 clerical staff. The FTC also employs 40 economists who participate in its antitrust enforcement activities.

22. During FY 1994, 2,301 proposed mergers and acquisitions were submitted for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), representing a 25% increase over the number reported in the previous fiscal year. Twenty enforcement cases were initiated against allegedly anticompetitive mergers in a wide variety of industries. The Commission authorized the staff to seek preliminary injunctions in federal district court to block three proposed mergers, accepted 15 consent agreements for public comment to settle anticompetitive concerns raised by proposed transactions, and issued two administrative complaints. In addition, acting on cases begun during previous years, the Commission found antitrust violations in two cases and dismissed one complaint on jurisdictional grounds.

23. In the non-merger area, 13 enforcement cases were brought during FY 1994 involving allegedly anticompetitive conduct by, among others, medical professionals, interpreters, automobile dealers, and cable TV systems. Nine of these cases concerned cases of alleged horizontal restraints that were settled by consent agreements. The Commission also accepted two consent agreements settling charges of alleged monopolization activities. The Commission obtained $400,000 in civil penalties for violations of an outstanding order and $2.6 million in civil penalties against a U.S. company for its failure to observe the premerger notification requirements and waiting periods under the HSR Act before consummating a notifiable acquisition.

B. Antitrust Cases in the Courts

1) United States Supreme Court

a. DOJ or FTC Cases

24. *Ticor Title Insurance Co. v. FTC,* 998 F.2d 1129 (3d Cir. 1993), *cert. denied*, 114 S.Ct. 1292 (1994), was a petition for review of an FTC decision holding that collective rate-setting activities by title insurance companies for title search and title examination services constitute an unfair method of competition (price-fixing). The companies contended that their conduct was protected by the "state action" doctrine and was also exempt from the antitrust laws, because it was "the business of insurance." On June 15, 1992, the U.S. Supreme Court issued an opinion holding that the Commission had properly rejected the "state action" defense with respect to the states of Montana and Wisconsin, and remanded the case to the court of appeals for further proceedings. On July 15, 1993, the court of appeals held that the sale of title search and examination services was not the "business of insurance" and was therefore subject to antitrust liability. On November 29, 1993, the companies filed a petition for certiorari seeking review of this decision. The Supreme Court denied the petition on March 21, 1994.

25. *Olin Chemical Co. v. FTC,* 986 F.2d 1295 (9th Cir.), *cert. denied*, 114 S.Ct. 1051 (1994), was a petition for review of an FTC decision requiring divestiture in a case involving a merger of manufacturers of swimming pool chlorinating products. On February 26, 1993, the court of appeals affirmed and enforced the Commission order in its entirety. On November 5, 1993, Olin filed a petition for certiorari seeking review of the Ninth Circuit's decision. On February 22, 1994, the Supreme Court denied the petition for certiorari.

b. Private Cases

26. There were no private antitrust cases decided in the Supreme Court in the same period.

2) Court of Appeals Cases

a. DOJ Cases Decided in 1994

27. Thirteen antitrust cases involving the Department as a party were decided in FY 1994 at the Court of Appeals level. Nine of the cases involved criminal appeals, and four were civil matters. Most of the appeals involved criminal procedure, sentencing, or evidentiary issues, and none had major international policy implications. In *U.S. v. Porat*, 17 F.3d 660 (3rd Cir. 1994), the parties appealed the defendant's sentence following his conviction for making material false declarations before the grand jury. The Court upheld the Department's argument that following his five month imprisonment, the defendant be required to serve his five month period of home detention under supervised release in the United States, and not, as the lower court had allowed, in Israel.

b. FTC Cases Decided in 1994

28. *FTC v. Hospital Board of Directors of Lee County*, 38 F.3d 1184 (11th Cir. 1994), is a suit to enjoin the acquisition by Lee Memorial Hospital of the assets of Cape Coral Hospital pending an FTC administrative adjudication to determine the legality of the acquisition under Section 7 of the Clayton Act, 15 U.S.C. sec. 18. The complaint was filed on April 28, 1994 and the district court granted a temporary restraining order preventing the acquisition. On May 16, 1994, the district court granted defendants' motion to dismiss the complaint and dissolve the temporary restraining order, on the ground that the acquisition was immunized from antitrust liability by the "state action" doctrine. On May 18, 1994, the court of appeals stayed the district court's order pending appeal, thereby enjoining the acquisition temporarily. On November 30, 1994, the court of appeals affirmed the district court's order. On December 14, 1994, the Commission filed a suggestion of rehearing *en banc*, requesting that the entire Eleventh Circuit reconsider the case. The Commission's petition was denied. The parties subsequently abandoned the transaction.

3) Private Cases Having International Implications

29. *In re Dual-Deck Video Cassette Recorder Antitrust Litigation.*, 1993-2 Trade Cas. (CCH) ¶ 70,445 (9th Cir. Dec. 15, 1993), a dual-deck video cassette recorder ("VCR") patentee selling VCRs with two decks sued various multinational consumer electronics manufacturers alleging that they (1) conspired to prevent introduction of dual-deck VCRs to the U.S. by agreeing that they would refuse to manufacture such VCRs or deal with manufacturers or sellers of dual-deck VCRs, and (2) conspired to monopolize the market for consumer electronics products in general, other than VCRs. The Court of Appeals upheld a district court judgment in favour of the defendants. On the first claim, the plaintiff was collaterally estopped by reason of an earlier jury verdict finding no conspiracy: although the claim alleged a later time period from the earlier complaint, it asserted no change in facts or circumstances of the alleged conspiracy to differentiate the later conduct. On the second claim, the plaintiff failed to demonstrate antitrust injury and lacked standing: even if the defendants had conspired to monopolize the vaguely defined "market for consumer products," there was no evidence that the plaintiff had ever marketed or sold products in this market, or had taken any steps to enter that market.

30. In *Gushi Brothers Co. v. Bank of Guam*, 28 F.3d 1535 (9th Cir. 1994), the Court held that the anti-tying provisions of the Bank Holding Company Act did not apply where all conduct related to the alleged tie (between a loan and a requirement that the debtor remove its funds from another bank) occurred in the independent Republic of Marshall Islands. Relying on the presumption against extraterritoriality, the Court determined that Congress did not intend to extend the reach of the Act to conduct occurring wholly within the Republic of Marshall Islands. The Court also noted that the Act's antitrust provisions are analogous to those of the Sherman and Clayton Acts. The Court did not decide, however, whether the jurisdictional reach of the Bank Company Holding Act is as broad as that of the Sherman Act with respect to the effects doctrine because even if it were, there were no allegations of anticompetitive effects within the territory of the United States.

C. Statistics on Private and Government Cases Filed During FY 1994

31. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 748 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in the calendar year ending December 30, 1994.

D. Significant DOJ and FTC Enforcement Actions

1) DOJ Criminal Enforcement

32. The Division filed 57 criminal antitrust cases against 55 corporations and 50 individuals in FY 1994. Sentences resulted in $40,236,000 in total fines, 1,497 days of actual incarceration, and 2,475 days of alternative forms of confinement. Significant cases are discussed below; more detailed summaries of indictments and information can be found at 6 Trade Reg. Rep. (CCH) ¶ 45,094.

33. On February 11, 1994, the Division in *U.S. v. Exolon-ESK Co., et al.* filed a four-count indictment charging Exolon-ESK and Washington Mills Electro Minerals Corp and three corporate executives with conspiring to fix the prices of artificial abrasive grain sold in the United States. Artificial abrasive grains are used in the manufacture of bonded, coated, and refractory abrasive products, including grinding wheels and sandpaper. The second count charges Exolon-ESK with violation of a 1948 consent decree that enjoined Exolon-ESK from fixing prices. The case is still pending in district court.

34. On February 17, 1994, the Division obtained an indictment in the district court for the Southern District of Ohio against General Electric, DeBeers Centenary and two individuals charging them with conspiring to raise list prices in the $500 million-a-year industrial diamond industry. The two corporate defendants account for 80 percent of the industrial diamond market and allegedly fixed prices by secretly exchanging information about intended price hikes. Price increases went into effect worldwide in February and March of 1992. DeBeers and the two individuals remained overseas and beyond the reach of the U.S. Courts. The trial of General Electric began in October 1994, but charges were dismissed after the presentation of the Government's case.

35. On June 9, 1994, the Division filed information and obtained indictments against three companies and seven of their corporate executives, alleging price-fixing and conspiracy to drive up the price of plastic cups and glasses and other products in the $100 million-a-year disposable plastic dinnerware industry.

According to the information filed, executives of Plastics, Inc., Polar Plastics Mfg. Ltd., and Comet Products Inc. which produce over 90 percent of the plastic dinnerware used in the United States, secretly telephoned and met with each other to further a conspiracy that lasted from December 1991 to December 1992. To date, two of the corporate defendants have been fined $8.36 million. Additional fines and possible jail sentences are expected. The information and indictments were filed in the district court for the Eastern District of Pennsylvania. This investigation depended on crucial assistance from Canadian authorities, who searched the Canadian offices of one of the defendants pursuant to the Mutual Legal Assistance Treaty between the U.S. and Canada.

36. On June 14, 1994, the Division in *U.S. v. Premdor Corp.* charged Premdor, one of the two leading manufacturers of flush doors, with conspiring with other companies to fix the price of doors sold for installation in residences. The sales of such doors, sold to door distributors, wholesalers, home improvement centers and residential construction companies, amount to $600 million annually. Premdor agreed to pay a $6 million in criminal fines. On June 23, 1994, the Division obtained a second indictment against Steves & Sons Inc., another flush door manufacturer. On July 1, 1994, Steves & Sons pled guilty and was fined $650,000.

37. After a two year investigation coordinated with Canadian antitrust officials, the Division and its Canadian counterpart on July 14, 1994, brought criminal charges under their respective laws against an international cartel that had fixed prices in the $120 million-a-year thermal fax paper market. The Division's criminal information charged a Japanese corporation, two U.S. subsidiaries of Japanese firms and an executive of one of the firms with conspiring to charge higher prices to thermal fax paper customers in North America. Thermal fax paper is used primarily by small businesses and home fax machine owners. The defendants pleaded guilty and agreed to pay $6.4 million in fines. This case was the Division's first criminal prosecution to be coordinated with Canadian authorities under the authority of the Mutual Legal Assistance Treaty.

38. As of September 30, 1994, the Division had filed 124 criminal cases against 73 corporations and 78 individuals in the milk and dairy products industry. To date, 63 corporations and 57 individuals have been convicted, and fines imposed total approximately $59 million. Twenty-seven individuals have been sentenced to serve a total of 4,774 days in jail, or an average of approximately six months. Civil damages assessed total approximately $8 million. In FY 1994, the Division filed 18 criminal cases against 14 corporations and 11 individuals in the milk and dairy products industry. Seventeen grand juries in 14 states continue investigations in this industry.

2) DOJ Non-Merger Civil Enforcement

39. The Division filed simultaneously a civil complaint and proposed consent decree in *U.S. v. Alliant Techsystems Inc. and Aerojet-General*, No. 94-1026 (C.D. Ill. filed Jan. 19, 1994). The complaint charged Alliant and Aerojet, who are the only two U.S. suppliers of a particular type of cluster bomb, with entering into a "teaming" arrangement that eliminated competition between the two companies supplying the Department of Defense with those bombs. Under the arrangement, the companies agreed between themselves to submit one bid for the bombs contract instead of submitting two separate bids. The consent decree, which was entered on May 13, 1994, prohibits further teaming by Alliant and Aerojet in response to government solicitations for competitive offers to supply these munitions. The text of the consent decree appears at 1994-1 Trade Cas. (CCH) ¶ 70,595.

40. As part of its efforts to combat anticompetitive exchanges of price and wage information, the Division, in *U.S. v. Utah Society for Healthcare Human Resources Administration, et al.*, No. 94C282G (D. Utah filed Mar. 14, 1994), charged eight Utah hospitals and two related associations with violations of Section 1 of the Sherman Act. The government alleged that the defendants exchanged information about current and prospective wage rates for registered nurses, thus short-circuiting competition for nurses' services. The Division negotiated a consent decree that prohibits the defendants from fixing the wages paid to nurses and exchanging information about current or future wages. Simultaneously, the Utah Attorney General entered a consent decree with the University of Utah, which had not been named as a defendant in the Division's suit. That decree contains the same relief with respect to the University's involvement in nurse compensation agreements, as well as injunctions against allocating hospital services with competing facilities and requiring pediatricians to negotiate contracts with managed health care plans exclusively through the University. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4044. The text of the consent decree appears at 7 Trade Reg. Rep. (CCH) ¶ 50,751.

41. In 1992 the Division alleged that eight major airlines and the Airline Tariff Publishing Co. (ATP), a computerized fare information system owned by the airlines, had conspired to raise consumers' prices from April 1988 to December 1992. Two airlines accepted a consent decree when the complaint was filed in December 1992. In March 1994, after extensive pretrial litigation, the remaining seven defendants in *U.S. v. Airline Tariff Publishing Co., et al.*, No. 92-2854 (D.D.C. 1994) accepted a consent decree that allows the airlines to continue to use ATP for legitimate purposes, but eliminates the information exchange features that let the airlines negotiate prices with each other. The text of the consent decree appears at 1994-2 Trade Cas. (CCH) ¶ 70,687.

42. The Division filed a complaint and consent decree in *U.S. v. International Ass'n of Machinists and Aerospace Workers, et al.*, C.A. No. 94-0690 (D.D.C. filed Mar. 30, 1994). According to the Division's complaint, the defendants violated Section 8 of the Clayton Act, which prohibits the same person from serving as an officer or director of competing companies. Under the terms of the consent decree, the International Association of Machinists (IAM) is permitted to appoint union members to the boards of two competing airlines. Union members are prohibited, however, from exchanging confidential information, and the consent decree restricts communications between IAM representatives relating to competitively sensitive subjects such as pricing. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4050. The text of the consent decree is located at 1994-2 Trade Cas. (CCH) ¶ 70,813.

43. The Division in *U.S. v. Electronic Payment Services, Inc.*, No. 94-208 (D. Del. filed Apr. 21, 1994), charged Electronic Payment Services (EPS), the operator of the largest regional automated teller machine (ATM) network in the nation, with exclusionary practices that raised the price of ATM processing for banks in Pennsylvania, New Jersey, Delaware, West Virginia, New Hampshire and Ohio. The complaint alleged that EPS monopolized the market for ATM processing in its service area by requiring all members of its ATM Network to purchase their data processing services from it. The use of this vertical restrictive practice -- tying -- prevented the member banks of the ATM network from using alternative suppliers of data processing services. The tying arrangement not only retarded the development of a competitive processing market, it made it more difficult for the banks to connect with competing ATM networks, thus entrenching EPS's dominant position in the market. At the same time, the Division filed a consent decree which requires EPS to open its ATM network to independent processors and prohibits it from discriminating in pricing to its members based on the processor selected. A summary of the

Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4053, and the text of the consent decree is located at 1994-2 Trade Cas. (CCH) ¶ 70,796.

44. On May 25, 1994, the Division, in *U.S. v. Pilkington plc.and Pilkington Holdings Inc.*, No. CV 940-345 (D. Ariz. 1994), filed a civil antitrust suit charging Pilkington, a British firm, and its U.S. subsidiary with monopolizing the flat glass market. The complaint alleged that Pilkington, which dominates the $15 billion a year international flat glass industry, foreclosed U.S. firms from foreign markets. Flat glass is used for windows and architectural panels by the construction industry and for windshields and windows by the automobile industry. The complaint alleged that Pilkington entered into unreasonably restrictive licensing arrangements with its most likely competitors, then over the course of almost three decades used these arrangements and threats of litigation to prevent American firms from competing to design, build and operate flat glass plants in other countries. By the time the Division filed its complaint, Pilkington's patents had long since expired and its technology was in the public domain. A consent decree accepted by Pilkington to settle the case will bar it from restraining American and foreign firms who desire to sell their technology outside the United States. A summary of the Division's complaint appears at 6 Trade Reg, Rep. (CCH) ¶ 45,094, Case No. 4061, and the text of the consent decree is located at 1994-2 Trade Cas. (CCH) ¶ 70,842.

45. On July 15, 1994, the Division in *U.S. v. Microsoft Corp.*, No. 94-1564LFO (D.D.C. filed July 15, 1994), charged Microsoft, the world's largest computer software company, with violating Sections 1 and 2 of the Sherman Act. Microsoft licensed its MS-DOS and Windows technology on a "per processor" basis that required personal computer manufacturers to pay a fee to Microsoft for each computer shipped, even if the computer did not contain Microsoft's software. The Division's complaint further alleged that Microsoft's licensing contracts bound computer manufacturers to the contracts for an unreasonably long period of time. Microsoft also imposed overly restrictive nondisclosure agreements on software companies that participated in trial testing of new software, thereby impeding the ability of those firms to work with Microsoft's operating system rivals. The Division filed a consent decree in which Microsoft is enjoined from conducting these and other restrictive practices. The tentative settlement was reached in close cooperation with the competition authorities of the European Commission, made possible by Microsoft's decision to waive its rights to confidentiality as between the two authorities. The European Commission had been investigating Microsoft's conduct since 1993. This case was the first coordinated effort of the two enforcement bodies in initiating and settling an antitrust case. *See* 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4088, for a summary of the Division's complaint. The text of the proposed consent decree is located at 7 Trade Reg. Rep. (CCH) ¶ 50,764.[4]

46. The Division, in *U.S. v. S.C. Johnson & Son, Inc. and Bayer A.G.*, No. 94 C 50249 (N.D. Ill. filed Aug. 4, 1994), filed a civil antitrust lawsuit against Bayer A.G. and S.C. Johnson & Co. Inc. to block an exclusive licensing arrangement between S.C. Johnson, the dominant manufacturer of household insecticides in the United States, and Bayer, a large German chemical manufacturer. Johnson accounts for 45 to 60 percent of total market sales, while none of its major competitors has more than 12 percent. According to the complaint, in March 1988, Johnson persuaded Bayer not to enter the U.S. market, but, instead, to license cyfluthrin, a newly developed and patented insecticide ingredient, exclusively to Johnson. Johnson also acquired a right of first refusal of any other active ingredient that Bayer later developed. Bayer's agreement to license rather than enter the U.S. household insecticide market enabled Johnson to maintain its dominance of a highly concentrated market. The Division negotiated a consent decree that ensures that Johnson's competitors will have access to Bayer's active ingredient on terms and conditions that are at least as favourable as those accorded to

Johnson. The proposed relief, among other things, also ensures that the Department will receive prior notice of any exclusive or co-exclusive license arrangement between Johnson and any active ingredient manufacturer other than Bayer. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4089. The text of the proposed consent decree is located at 7 Trade Reg. Rep. (CCH) ¶ 50,765.

47. In a case challenging an illegal resale price maintenance agreement, the Division filed a civil antitrust action and proposed consent decree in *U.S. v. California SunCare, Inc.*, No. 94-5522 (C.D. Cal. filed Aug. 12, 1994). According to the complaint, California SunCare conspired from November 1992 through April 1994 to fix and maintain the resale price of indoor tanning products at an amount set by the company. The Division negotiated a consent decree that prohibits California SunCare, the country's largest manufacturer of indoor tanning products, from fixing and maintaining the price at which its distributors resell its indoor tanning products. The consent decree also imposed appropriate remedial sanctions designed to preserve the pricing independence of the defendant's distributors. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4091. The text of the consent decree is located at 1994-2 Trade Cas. (CCH) ¶ 70,843.

48. In a joint action with the State of Arizona, the Division, in *U.S. and State of Arizona, by and through its Attorney General Grant Woods v. Delta Dental Plan of Arizona, Inc.*, (D. Ariz. filed Aug. 30, 1994), filed a civil antitrust suit and proposed consent decree challenging the Delta Dental Plan's use of a "most favoured nation" clause in contracts with Arizona dentists. Delta is the dominant dental plan in Arizona and has affiliation contracts with approximately 85 percent of the state's dentists. The "most favored nation" provision discouraged dentists from offering other dental plans more favourable fee arrangements than they offered to Delta. The case has nationwide implications because such contract provisions are widely used in the health care industry. The consent decree prohibits Delta's use of the "most favored nation" clause and enjoins other practices by Delta that could discourage Delta-affiliated dentists from offering different fee arrangements to competing dental plans. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4092, and the text of the proposed consent decree appears at 7 Trade Reg. Rep. (CCH) ¶ 50,767.

3) Modification or Termination of Consent Decrees

49. In May 1994, a district court terminated two consent decrees against Eastman Kodak Co. over the Division's objection. *United States v. Eastman Kodak Co.*, 1994-1 Trade Cas. (CCH) ¶ 70,598. The decrees, entered in 1921 and 1954, related to the sale and processing of amateur color film. The court found that the decrees were no longer necessary because there was now a world market in film, and Kodak no longer had market power in the United States. The Division disagreed, and the case is now awaiting decision by the Court of Appeals (2d Cir. No. 946190), where it was argued in February 1995.

50. In documents filed on June 16, 1994, the Division agreed to terminate a 1957 consent decree in *U.S. v. Combustion Engineering, Inc.* (S.D.N.Y. filed June 16, 1994). In this case, significant changes in the relevant market removed the threat of further abuse. In addition, none of the offending license agreements that were in effect in 1957 remained operative.

51. The Division filed documents in *U.S. v. Broadcast Music Inc.* (S.D.N.Y. filed June 29, 1994), agreeing to a proposed modification of a 1966 consent decree involving licensing to broadcasters of music performance rights by Broadcast Music Inc. The proposed modification provides a mechanism to enable

the court to set an appropriate licensing fee when BMI and a potential licensee are unable to agree on a fee. The complaint which initiated the BMI case in 1964, alleged that BMI and its broadcaster-owners had combined to restrain and monopolize the business of acquiring and licensing to broadcasters copyrighted music rights.

4) FTC Non-Merger Enforcement Actions

52. The district court for the District of Columbia dismissed a Commission complaint filed in June 1992 against Abbott Laboratories for alleged price-fixing in the sale of infant formula in bids to supply formula to the Commonwealth of Puerto Rico under the U.S. Government's Special Supplement Food Program for Woman, Infants and Children. The Commission sought a permanent injunction and monetary equitable relief. The Commission's complaint was filed at the same time as settlements with two other infant formula companies. Abbott contested the charges. Following a trial, the district court granted judgment for the defendant, ruling that the Commission failed to prove that Abbott was acting in collusion with its competitors. During the course of the proceeding, the court ruled, however, that the Commission could properly seek monetary relief for the victims of violations of the antitrust laws enforced by the Commission in a suit under section 13(b) of the FTC Act. *See FTC v. Abbott Laboratories, Inc*, 853 F. Supp. 526 (D.D.C. 1994).

53. The Commission dismissed a 1990 complaint charging the College Football Association (CFA) and Capital Cities/ABC, Inc. with illegally restraining competition in the marketing of college football telecasts and among telecasters of college football games through agreements which gave ABC exclusive rights to televise certain college football games. In July 1991, an Administrative Law Judge (ALJ) issued an Initial Decision dismissing the complaint against CFA without prejudice, finding that CFA did not carry on business for its own profit or that of its members and therefore, under sections 4 and 5 of the FTC Act, was not subject to the Commission's jurisdiction. Complaint counsel appealed the decision to the Commission which subsequently affirmed the ALJ's decision. In its decision, the Commission announced a two-pronged jurisdictional test requiring analysis of both (1) the profit/nonprofit nature of the entities to which an organization distributes its income, and 2) the profit/nonprofit nature of the activities from which it derived that income. The Commission dismissed the complaint against CFA with prejudice and the complaint against Capital Cities/ABC without prejudice. *See College Football Assn*., Docket No. 9242, 5 Trade Reg. Rep. (CCH) ¶ 23,631.

54. After nearly a decade of litigation, the Commission issued final consent orders in the *Detroit Auto Dealers Association* case settling 1984 charges that the association and nearly 200 other respondents, including new car dealerships and other dealer associations, had illegally conspired to limit the hours of operation of new car dealerships in the Detroit, Michigan area. The consent orders follow a decision by the Sixth Circuit affirming the Commission's 1989 administrative decision finding a violation of section 5 of the FTC Act. The consent orders are notable since they go beyond cease-and-desist orders and require affirmative relief by ordering the respondent dealerships to remain open a minimum of 62 hours a week and to disclose their hours of operation in all advertising for a one-year period. The association is subject to a requirement that it advertise that certain dealers are required by FTC consent order to maintain extended shopping hours. The case against the few remaining respondents who have not settled is before the Commission on remand. *See Detroit Auto Dealers Assn.*, Docket No. 9189, 5 Trade Reg. Rep. (CCH) ¶ 23,532.

55. In *McLean County Chiropractic Association*, the Commission charged that the association had engaged in collective fee setting. The complaint specifically alleged that the association not only set the maximum fees its members could charge patients and third-party payors for their services, but also attempted to negotiate collectively on behalf of its members the terms and conditions of agreements with third-party payors, with the result that consumers and third-party payors were deprived of the benefits of competition of the services of chiropractors in the relevant market. Under the final consent order the association is prohibited from entering into, or attempting to enter into, or acting in any way to further any agreement or combination with any chiropractors to discuss or collectively determine their fees, or deal with payors on collectively-determined terms. *See McLean County Chiropractic Assn.*, Docket No. C-3491, 5 Trade Reg. Rep. (CCH) ¶ 23,524.

56. In another price-fixing case, the Commission issued in final consent orders against the American Society of Interpreters (ASI) and the American Association of Language Specialists (TAALS) settling charges that the groups conspired or combined to fix the fees their members could charge for services, and engaged in illegal efforts to otherwise restrain competition among their members. Under the final orders, ASI and TAALS are prohibited, among other things, from creating, distributing or endorsing any list of fees for interpretation, translation or other language services; entering into or maintaining any agreement or plan to fix or otherwise interfere with fees; and recommending or encouraging interpreters, translators or other language specialists to charge certain fees. ASI and TAALS are additionally prohibited from maintaining any agreement or plan to restrict the length of time any language specialist can work in a given period, the time for which specialists are paid for preparation or study, or the number of language specialists hired for a job. *See American Society of Interpreters*, Docket No. C-3491, 5 Trade Reg. Rep. (CCH) ¶ 23,538.

57. In *Arizona Automobile Dealers Association (AADA)*, the Commission gave final approval to a consent agreement settling charges that AADA agreed with its member dealerships to restrict non-deceptive comparative advertising, and non-deceptive advertising of price discounts and the terms and availability of consumer credit, thereby depriving Arizona consumers of the benefits of competition in the sale of new cars and trucks. The order prohibits AADA from, among other things, restricting, regulating, or interfering with the truthful, non-deceptive comparative, discount, or price advertising, or non-deceptive advertising concerning the terms and availability of consumer credit of its members, or others, and from interfering with, or advising them against such advertising. *See Arizona Auto Dealers Assn.*, Docket No. C-3497, 5 Trade Reg. Rep. (CCH) ¶ 23,560.

58. The Commission issued a final consent order against the Community Associations Institute (CAI), which manages condominiums and other homeowner's associations, settling charges that enforcement of CAI's code of ethics restricted competition among its members by limiting the solicitation of clients. The consent order prohibits CAI from interfering in any way with the truthful advertising and solicitation efforts of its members. *See The Community Associations Institute*, Docket C-3498, 5 Trade Reg. Rep. (CCH) ¶ 23,561.

59. The Commission accepted for public comment a proposed consent agreement settling 1988 charges that Boulder Ridge Cable TV and Weststar Communications, Inc., two California-based cable companies, entered into an illegal agreement not to compete with one another as part of Boulder Ridge's acquisition of Three Palms, Ltd. The FTC alleged that the agreement was not limited to the area in which the acquisition occurred, but would restrain competition unreasonably in other areas. The proposed consent agreement would prohibit the respondents from enforcing any rights they may have under certain paragraphs of the agreement not to compete and would permanently prohibit the respondents from agreeing not to

compete with the seller or buyer of a cable television system or cable television service in any geographic area. *See Boulder Ridge Cable TV*, Docket No.C-3537, 5 Trade Reg. Rep. (CCH) ¶ 23,642.

60. The Commission issued for public comment a consent agreement settling charges of a 1992 complaint that Trauma Associates of North Broward, Inc. and ten physicians in Florida conspired to fix the fees for their services at the trauma centers of two area hospitals and forced one trauma center to close by staging a walkout when one of the hospitals refused to meet their terms. The settlement requires the dissolution of Trauma Associates, which allegedly served as the vehicle for conspiracy, and prohibits the ten physicians from entering into similar agreements to reduce competition in the future. *See Trauma Associates of North Broward, Inc.*, Docket No. C-3541, 5 Trade Reg. Rep. (CCH) ¶ 23,644.

61. Also in the health care area, the Commission accepted for public comment a proposed consent agreement settling charges of an alleged boycott of an alternative health care service. The proposed complaint charged that the medical staff of Good Samaritan Regional Medical Center conspired to boycott the hospital in an effort to force it to end its involvement in a potentially cost-containing multi-specialty physician's clinic that would have competed with the medical staff. The proposed consent agreement would prohibit members of the medical staff from agreeing to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health-care provider. Specifically, the settlement would prohibit any agreement among the medical staff members, or between medical staff members and other health-care providers, medical societies, or hospitals, to refuse (or threaten to refuse) to deal with others offering health care services, or to withhold (or threaten to withhold) patient referrals. *See Medical Staff of Good Samaritan Regional Medical Center*, Docket No. C-3554, 5 Trade Reg. Rep. (CCH) ¶ 23,661.

62. In addition, the Commission gave final approval to consent agreements accepted for public comment in the previous year in the following nonmerger matters:

-- *Baltimore Metropolitan Pharmaceutical Assn., Inc.*, Docket No. 9262, 5 Trade Reg. Rep. (CCH) ¶ 23,510.

-- *Personal Protective Armor Assn., Inc.*, Docket No. C3481,Trade Reg. Rep. (CCH) ¶ 23,521.

-- *The Keds Corp.*, Docket No. C-3490, 5 Trade Reg. Rep. (CCH) ¶ 23,463, 1994-1 Trade Cas. (CCH) ¶ 70,549.

-- *Homecare Oxygen & MedicalEquipment Co.*, Docket No. C-3530, 5 Trade Reg. Rep. (CCH) ¶ 23,678.

E. Business Reviews Conducted by the Department of Justice

63. From January 1 to September 30, 1994, the Antitrust Division responded to 18 requests for review of written business proposals, indicating in each of the 18 responding letters that it would not challenge the proposed conduct.

64. On January 25, 1994, the Division stated that it would not challenge a proposal submitted by the Insurance Services Office Inc. to create a computer database to permit users to compare the prices charged by insurers within a state for personal automobile and homeowners insurance. The Division explained that the proposed conduct falls under the McCarran-Ferguson Act, which provides an exemption from the

antitrust laws to state-regulated insurance business. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-1.

65. On January 25, 1994, the Division stated that it would not challenge a proposal submitted by the Association of Independent Television Stations to continue a voluntary program of guidelines and viewer advisories for independent television stations in an effort to reduce the negative impact of violence on television. The Division stated that the proposal, which would allow the association and its members to discuss, collect and disseminate information on the effect of the guidelines program as well as coordinate the production of a series of anti-violence messages, is unlikely to be anticompetitive because it is voluntary and no joint activity is intended to result in the boycott of any person. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-2.

66. On February 15, 1993, the Division announced that it would not challenge a proposal submitted by the National Association of Credit Management to create its own department to disseminate to businesses in the leasing industry credit information specifically designed to combat fraud within the industry. The Division stated that the proposal will not be anticompetitive because the credit history information will be used only to assist members in implementing unilateral credit policies. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-3.

67. On February 18, 1994, the Division approved a proposal submitted by the Bay Area Business Group on Health (BBGH) to form a group purchasing project for health care benefits. Under the proposal, the BBGH will ask several health maintenance organizations (HMOs) to bid on two standard benefit plans and negotiate prices. The Division stated that the proposal has the potential to create efficiencies in the delivery of HMO services that could result in lower health care costs. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-4.

68. On February 18, 1994, the Division stated that it would not challenge a proposal submitted by the New Jersey Hospital Association to produce a survey and report of employee wages and salaries paid by hospitals in New Jersey. The Division explained that the proposal met substantially all of the antitrust safety zone conditions for hospital participation in exchanges of price and cost information, as outlined in the Division's Enforcement Policy Statements for the Health Care Industry. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-5.

69. On March 8, 1994, the Division stated that it would not challenge a proposal submitted by the National Telecommunications Data Exchange Inc. and its member long-distance telecommunications carriers to exchange information about defaulted commercial accounts. The proposal would lower costs to consumers by reducing the amount of uncollectible business accounts experienced by long-distance carriers. The Division stated that the proposal was designed with sufficient safeguards so that it was unlikely to facilitate collusion. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-6.

70. On March 23, 1994, the Division stated that it would not challenge the Houston Health Care Coalition's proposal to contract with health care providers to deliver health services to members' employees and their dependents at predetermined rates. The Division believes that by jointly negotiating health care prices, the association will help ensure that health care services are provided at cost-effective rates. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-7.

71. On April 19, 1994, the Division stated that it would not challenge a proposal by the Automobile Transport Fleet Affiliation (ATFA) to create a separate group to offer customers centralized marketing and contract administration services and act as a common purchasing agent for its members. The Division stated that the proposed joint venture would not reduce competition because it contains sufficient safeguards to prevent the exchange of information between individuals, and it may enhance efficiency by lowering administrative costs. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-8.

72. On April 20, 1994, the Division approved the Fuel Cell Commercialization Group's proposal to help Energy Resource Corporation of Danbury, Connecticut, to overcome the technical and economic barriers to the commercial use of molten carbonate fuel cells (MCFC) as a source of clean and reliable electrical power. The Division stated that the proposal would not reduce competition or facilitate price-fixing in the MCFC market and may facilitate research and development of MCFC power plants. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-9.

73. On May 20, 1994, the Division stated that it would not challenge a proposal by the Hotel Employees and Restaurant Employees International Union Welfare Fund, to provide an historical claims report to the preferred provider organization with which it contracts to provide health coverage to the unit's participants. The Division stated that the information exchange could potentially enable physicians to make more informed decisions about selling their services to the union. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-10.

74. On June 7, 1994, the Division stated that it would not challenge a proposal by four Annapolis, Maryland banks to act jointly in making home equity loans to low and middle-income households. The Division explained the four banks combined only possess 18.2 percent of the relevant market and that to the extent that the joint venture allows the member banks to reduce the risks of below-market rate lending to poor and middle-income households, it may have the pro-competitive effect of increasing output. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-11.

75. On June 20, 1994, the Division approved the Alabama Healthcare Council's proposal to develop the Cooperative Clinical Benchmarking Demonstration Project. The project will evaluate certain health care services provided by hospitals in Birmingham, Alabama. The Division believes that this collaboration will promote efficiency and effectiveness and could lower costs to consumers. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-12.

76. On June 29, 1994, the Division stated that it would not challenge a proposal by Seeskin, Paas, Blackburn and Company, a Cincinnati public accounting firm, to compile and publish information on prices the firm's Cincinnati area dental clients charge for certain procedures. The Division stated that the proposal contained sufficient safeguards so that it was unlikely that the participating dentists could collude on prices. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-13.

77. On July 5, 1994, the Division stated that it would not challenge the Portable Engine Manufactures Association's (PEMA) proposal to participate with other groups on an Environmental Protection Administration advisory committee that will draft recommendations on feasible and cost-effective emission control standards for engines manufactured by PEMA members. The Division explained that the proposal contains safeguards to significantly reduce the risk of any anticompetitive effects resulting from PEMA's

participation in the rulemaking process. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-14.

78. On July 6, 1994, the Division stated that it would not challenge a proposal by the Des Moines General Hospital and 177 physicians in south-central Iowa to create the Collaborative Provider Organization Incorporated (CPO). The CPO will offer a health care plan to business-owners seeking new ways to cover their workers' medical needs. The Division explained that the proposal will provide an additional alternative health care delivery system and could increase competition and lower health care costs for consumers. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-15.

79. On August 24, 1994, the Division approved a plan, at the request of the Securities and Exchange Commission, which would permit major securities brokerage firms to participate in the preparation and publication of a report on how to reduce possible conflicts of interest between brokers and their customers that result from the various salary, commission and bonus formulas by which brokers are compensated by their brokerage firms. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-16.

80. On September 14, 1994, the Division stated that it would not challenge a proposal by the Preferred Podiatric Network Incorporated, a subsidiary of the New York State Podiatric Medical Association, to serve as an intermediary in enrolling association members to provide foot-care service as part of managed care plans. The Division believes that the proposal was designed with sufficient safeguards so that it was unlikely to facilitate anticompetitive behaviour by the network. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-17.

81. On September 22, 1994, the Division approved a proposal by the Mortgage Asset Research Institute to establish a clearinghouse to provide information to its subscribers about private complaints it receives of fraud and misrepresentation in the industry. The Division stated that the proposal would not promote collusion and that the exchange of this type of information could have the pro-competitive effect of reducing costs in mortgage-related businesses. The text of the business review letter may be found at 6 Trade Reg. Rep. (CCH) ¶ 44,094, Letter No. 94-18.

III. ENFORCEMENT OF ANTITRUST LAWS AND POLICIES: MERGERS AND CONCENTRATIONS

A. Department of Justice and FTC Merger Statistics

82. The Department and the Commission maintain statistics respecting the mergers and acquisitions reported under the Hart-Scott-Rodino Act (HSR). The HSR Premerger Notification Program was enacted to provide the enforcement agencies with a meaningful opportunity to review proposed transactions and to take enforcement action, if appropriate, to prevent consummation of transactions that violate the antitrust laws. Only those mergers meeting certain size or other criteria are required to be reported under the Act. During FY 1994, the two agencies received 4,403 filings for 2,301 reported transactions under the notification and filing requirements of the HSR Act. This represents a 25% increase over the number reported in the previous fiscal year.

1) DOJ Review of Premerger Notifications

83. The Division reviewed 2,301 notified transactions, and initiated 57 HSR merger investigations.

2) FTC Review of Premerger Notifications

84. Based on its review of premerger notification reports, the FTC investigated 46 transactions with second requests for information.

3) Enforcement of Premerger Notification Rules

85. The Commission and the Department actively have enforced the filing requirements of the Hart-Scott-Rodino (HSR) Act by bringing cases in federal court to obtain civil penalties. The complaints and settlements typically are filed in the United States District Court for the District of Columbia. On September 27, 1994, in connection with a complaint filed by the FTC, the Pennzoil Company agreed to pay a $2.6 million civil penalty to settle FTC charges that it did not comply with HSR premerger notification and waiting period requirements when it acquired $15 million worth of voting securities of the Chevron Corporation. According to the complaint, Pennzoil filed the required premerger notification 10 months after the acquisition. *See Pennzoil Company*, FTC File No. 901-0154.

B. Merger Cases

1) DOJ Merger Challenges or Cases

86. On January 31, 1994, the Antitrust Division announced that it would not file a suit to challenge the acquisition by Eaton Corporation of Cleveland, Ohio, of the Distribution and Control Business Unit of the Westinghouse Corporation of Pittsburgh, Pennsylvania, subject to divestiture by Eaton of certain assets. Under the divestiture, Eaton would sell a package of assets used in the manufacture of circuit breakers and switches to a third party, Thomas & Betts, of Memphis, Tennessee. The Division stated that the divestiture preserves competition for the sale of basic products that are essential for the safe use of electricity.

87. On February 14, 1994, the Division announced that it would not file a suit to challenge a restructured transaction between Ashland Oil Incorporated of Russel, Kentucky, and Peter Kiewit Sons' Incorporated, of Omaha, Nebraska. To respond to the Division's antitrust concerns, Ashland would sell its APAC-Arizona construction businesses to Peter Kiewit Sons' Incorporated, but would retain, and not sell, its concrete and aggregate businesses in Tucson, Arizona. The Division expressed its belief that the restructuring would preserve competition in the construction materials markets in Tucson by promoting the continued viability of an independent competitor.

88. On April 4, 1994, the Division filed a civil antitrust suit in U.S. District Court in Detroit, challenging the proposed acquisition by Flow International Corporation of Ingersoll-Rand's Waterjet Cutting Systems Division. Flow International and Ingersoll-Rand are the two dominant U.S. producers in the $34 million waterjet industry and combined would have acquired a market share of about 90 percent. The suit alleged that the merger would result in a dominant waterjet manufacturer that would likely raise prices, reduce service and lesson innovation. The parties abandoned the transaction on May 2, 1994. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4051.

89. On April 14, 1994, the Division announced that it would not file a suit to challenge a proposed merger between Valley Bancorporation and Marshall & Ilsley, two of the largest banking organizations in Wisconsin, on the condition that Marshal & Ilsley would sell branches in Madison, Oshkosh, Mayville, New Holstein, and Rhinelander.

90. On April 28, 1994, the Division filed a civil antitrust suit and proposed consent decree in connection with the proposed merger of Tele-Communications Incorporated (TCI), the country's largest cable operator, and Liberty Media Corporation, a major cable programmer. The Division's suit alleged that the proposed merger would decrease competition among video programmers and multichannel program distributors. Under the terms of the consent decree, the merged firm is prohibited from discriminating against independent video programmers with respect to the terms and conditions of carriage on its cable systems and against its multichannel subscription television competitors with respect to the terms and conditions of licensure of its video programming, where the effect of such actions would be unreasonably to retrain competition. A summary of the Division's complaint appears at 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4054 and the text of the proposed consent decree is located at 7 Trade Reg. Rep. (CCH) ¶ 50,757.

91. In its first case filed jointly with a State Attorney General, the Division joined the Florida Attorney General in challenging on May 5, 1994, the proposed merger of two central Florida hospitals. The combination would have accounted for nearly 60 percent of general acute care hospital services in North Pinellas County, a market in excess of $300 million. The complaint alleged that the merger would create a dominant provider of general acute care hospital services, thereby reducing options for managed care plans that have been instrumental in containing hospital costs. The consent decree preserves competition between the two hospitals for most services, while allowing them to act jointly where such action will not harm competition. The parties are allowed to combine certain administrative functions and the performance of certain high technology medical services, but they must market the latter independently. Most acute care hospital services will continue to be provided by the two parties independently. *See* 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4056, for a summary of the Department's complaint. The consent decree was entered on September 29, 1994 and the text is located at 1994-2 Trade Cas. ¶ 70,759.

92. The Division filed a complaint in *U.S. v. Mercy Health Services and Finley Tri-States Health Group, Inc.*, No. C94-1023 (N.D. Ia., filed June 10, 1994), a civil antitrust suit challenging the proposed merger of Mercy Health Center and The Finley Hospital in the Dubuque, Iowa area. The complaint alleged that the merger would create a monopoly provider of general acute care hospital services, reduce competition, and lead to higher prices for hospital services in Dubuque. The case is pending in District Court, awaiting judgment following a trial concluded in October 1994. *See* 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4074, for a summary of the Division's complaint.

93. On June 15, 1994, the Division filed a complaint in *U.S. v. MCI Communications Corporation and BT Forty-Eight Company*, No. 94-1317 (D.D.C., filed June 15, 1994), a civil antitrust suit to block British Telecommunications' (BT) proposal to purchase $4.3 billion of stock in MCI and to form a joint venture with MCI to provide global telecommunications services. At the same time, the Division filed a proposed consent decree. The complaint alleged that the proposed BT-MCI joint venture could substantially reduce competition because the company could obtain an unfair advantage over other competitors through superior access to BT's United Kingdom network, potentially causing the price of international telecommunications services to increase. Under the consent decree, MCI and the joint venture must publish rates, terms and conditions under which they gain access to the British Telecommunications network and

are prevented from gaining proprietary information or pricing data about their U.S. competitors. *See* 6 Trade Reg. Rep. (CCH) ¶ 45,094, Case No. 4076, for a summary of the Division's complaint and 1994-2 Trade Cas. (CCH) ¶ 70,730, for the text of the consent decree.

94. On July 15, 1994, the Division filed a civil antitrust suit in *U.S. v. AT&T and McCaw Cellular Communications, Inc.*, C.A. No. 1:94-CV01555 (D.D.C., filed July 15, 1994), challenging a proposed acquisition by AT&T Corporation of McCaw Cellular Communications Incorporated that would harm competition in the cellular service, inter-exchange and equipment markets. Under a proposed consent decree, McCaw must provide long distance competitors with equal access to its cellular systems and AT&T must ensure that its cellular equipment customers are not disadvantaged. *See* 6 Trade Reg. Rep. (CCH) 45,094, Case No. 4087 for a summary of the complaint and 7 Trade Reg. Rep. (CCH) ¶ 50,763 for the text of the proposed consent decree.

95. On September 8, 1994, the Division filed a complaint in *U.S. v. Outdoor Systems, Incorporated*, No. 94-2393 (D.Ga.), a civil antitrust suit to block the merger of Capitol Outdoor Advertising Incorporated by Outdoor Systems Incorporated, Atlanta's two largest outdoor advertising firms. At the same time, the parties filed a proposed consent decree to settle the suit. The proposed merger would have substantially reduced competition by creating a firm with about 63 percent of Atlanta's billboards. Under the consent decree, Outdoor Systems must divest its existing outdoor advertising business in Atlanta in order to operate Capitol's Atlanta business. *See* 1994-2 Trade Cas. (CCH) ¶ 70,807 for the text of the consent decree.

96. On September 26, 1994, the Division announced that it would not file a suit to challenge the acquisition of Parsons Technology Corporation by Intuit Inc. after Intuit agreed to license Parson's Personal Tax Edge software and related assets to Novell Corporation's WordPerfect division. Intuit entered into early licensing negotiations after being advised by the Division that its proposed purchase of Parsons would raise serious antitrust concerns.

2) Merger Cases Brought by the FTC

a. Preliminary Injunctions Authorized

97. In January 1994, the Commission authorized its staff to seek a federal court order to enjoin, pending the outcome of an administrative trial, a proposed transaction that would combine the only two general acute care hospitals in Pueblo County, Colorado. The FTC alleged that the acquisition of Parkview Episcopal Medical Center hospital by the Sisters of Charity Healthcare Systems, Inc., which already owned St. Mary-Corwin Hospital in Pueblo, would lessen competition for, or tend to create a monopoly in, general acute care hospital services in Pueblo County. The parties abandoned the proposed transaction before a complaint was filed. *See Parkview Episcopal Medical Ctr.*, File No. 931-0125.

98. In March, the Commission authorized its staff to seek a federal court order preventing the consummation of a proposed acquisition by Healthtrust Inc.-The Hospital Co. of three hospitals from Holy Cross Health Services of Utah. The FTC alleged that the proposed acquisition would significantly lessen competition for inpatient acute-care hospitals services in three counties in the Salt Lake City-Ogden metropolitan area. Before the complaint was filed, the matter was resolved by a proposed consent agreement that would allow Healthtrust to acquire some assets of Holy Cross Health Services of Utah, including Holy Cross-Jordan Valley Hospital in Salt Lake County and St. Benedicts' Hospital in Weber

County, but would require divesture of other assets, including Holy Cross Hospital in downtown Salt Lake City. *See Healthtrust, Inc.-The Hospital Co.*, Docket No. C-3538, 5 Trade Reg. Rep. (CCH) ¶ 23,638.

99. In April, the Commission authorized its staff to seek a federal court order blocking Lee Memorial Hospital's proposed acquisition of Cape Coral Hospital, in Lee Country Florida. The FTC alleged that the acquisition would significantly decrease competition for inpatient, acute-care hospital services in the Lee County area as the acquisition would reduce from four to three the number of hospital competitors in the relevant market and the combined entity would have an approximate 67% market share. On April 28, the FTC's request for a temporary restraining order was granted by a federal district court in Florida. On May 16, 1994, the district court granted defendants' motion to dismiss the complaint and dissolve the temporary restraining order, on the ground that the acquisition was immunized from antitrust liability by the "state action" doctrine. As noted above, the Commission appealed that decision to the Eleventh Circuit. The Commission also issued an administrative complaint in this matter. The parties abandoned the transaction. *See Hospital Board of Directors of Lee County*, 38 F.3d 1184 (11th Cir. 1994), Docket No. 9265, 5 Trade Reg. Rep. (CCH) ¶ 23,608, 1994-1 Trade Cas. (CCH) ¶ 70,593.

b. Commission Administrative Decisions

100. The Commission upheld a 1986 administrative complaint, affirming in part and reversing in part a November, 1990 decision by an ALJ that Coca-Cola Company's acquisition of the Dr. Pepper Company was likely to lessen competition in the production and distribution of carbonated soft drink concentrate in the U.S. The transaction was abandoned after the Commission obtained a preliminary injunction, but the administrative case went forward because Coca-Cola was unwilling to enter into a consent order requiring it to obtain the Commission's prior approval of future acquisitions. The ALJ upheld the complaint but did not find that a prior-approval order was in the public interest. The decision was appealed by both Coca-Cola and complaint counsel. The Commission upheld the ALJ's findings that the proposed acquisition was anticompetitive but reversed the ALJ's decision not to issue a prior-approval order, concluding that future Coca-Cola acquisitions of branded concentrate firms very likely could raise competitive concerns given market conditions. In so deciding, the Commission found that the FTC and Clayton Acts applied to unconsummated as well as completed mergers, and that the purchase agreement itself violated Section 5 of the FTC Act. The final order requires Coca-Cola to obtain approval prior to acquiring certain brand name, soft-drink concentrate manufacturers but does not affect acquisitions of bottlers. *See The Coca-Cola Co.*, Docket No. 9207, 5 Trade Reg. Rep. (CCH) ¶ 23,625.

101. The Commission reversed the 1991 dismissal by an ALJ of a 1988 complaint and ruled that Coca-Cola Bottling Company of the Southwest's acquisition of the San Antonio Dr. Pepper franchise would substantially reduce competition for branded carbonated soft drinks in the 10-county area around San Antonio Texas. In doing so, the Commission also found Coca-Cola Southwest's acquisition of the Canada Dry franchise did not violate antitrust laws as alleged in the complaint. The Commission's order requires, among other things, that Coca Cola Southwest divest the Dr. Pepper franchise and keep the assets viable and marketable prior to divestiture. *See The Coca-Cola Bottling Co. of the Southwest*, Docket No. 9215, 5 Trade Reg. Rep. (CCH) ¶ 23,681.

102. The Commission affirmed a 1992 decision of an ALJ and dismissed a 1989 complaint alleging that the 1988 acquisition of Ukiah General Hospital by Adventist Health System/West in Ukiah, California would substantially reduce competition for general acute-care hospitals in southeastern Mendocino County and western Lake County. In his 1992 decision, the ALJ dismissed the complaint finding that the

transaction had no adverse competitive effects in a geographic market that includes Santa Rosa. In dismissing the complaint, the Commission did not adopt all of the ALJ's decision but found that the evidence did not support the relevant geographic markets alleged in the complaint. *See Adventist Health System /West*, Docket No. 9234, 5 Trade Reg. Rep. (CCH) ¶ 23,591.

103. Respondent R.R. Donnelley & Sons appealed to the Commission a decision by an ALJ upholding a 1990 complaint alleging that its acquisition of Meredith/Burda L.P. could substantially lessen competition in the highly concentrated market for high-volume publication gravure printing in the United States. The ALJ ordered Donnelley to divest four printing plants, as well as all other commercial printing assets gained in the 1990 acquisition of Meredith/Burda L.P. In addition, the ALJ's order contained a 10-year prohibition against anyone with more than 1 percent of Donnelley's stock holding or controlling more than 1 percent of the stock of the acquirer. The respondent's appeal was pending before the Commission at the end of the fiscal year. *See R.R. Donnelley & Sons Co.*, Docket No. 9243, Trade Reg. Rep. (CCH) ¶ 23,156.

104. The Commission issued an administrative complaint alleging that the acquisition by Red Apple Companies, Inc. and Designcraft Industries, Inc. of 32 Sloan's supermarkets in four Manhattan residential areas between 1991 and 1993 could result in higher prices and lower quality and selection in those areas since there are relatively few competitors and entry by new companies would be difficult and not timely enough to prevent the anticompetitive effects. The matter was settled by a consent order requiring the divestiture of six supermarkets and prohibiting the respondents from limiting or preventing any purchaser from using other stores in the relevant areas as supermarkets. *See Red Apple Companies, Inc*., Docket No. 9266, 5 Trade Reg. Rep. (CCH) ¶ 23,620.

105. Occidental Petroleum Corporation agreed to a consent order to settle its appeal from the 1992 Commission decision that its 1986 acquisition of certain assets of Tenneco Polymers, Inc. likely would reduce substantially competition in the market for mass and suspensions polyvinyl chloride (PVC) homopolymer, suspension PVC copolymer and dispersion PVC in the U.S. The settlement, modified in accordance with a decision of the Second Circuit, requires divestiture to a Commission-approved acquirer (or acquirers) of Occidental's suspension PVC plant in Addis, Louisiana and a suspension and dispersion plant in Burlington, New Jersey. The original Commission order required divestiture of Occidental's larger, suspension PVC plant in Pasadena, Texas plant acquired from Tenneco and the Burlington plant. The Second Circuit approved the settlement. *See Occidental Petroleum Corp*., Docket No. 9205, 5 Trade Reg. Rep. (CCH) ¶ 23,531.

106. In the largest merger undertaken to date in the health care industry, the Commission issued a final consent order settling charges that Columbia Healthcare Corporation's proposed $4 billion acquisition of HCA-Hospital Corporation of America would substantially lessen competition in the area surrounding Augusta, Georgia and Aiken, South Carolina. The parties agreed, among other things, to divest HCA Aiken Regional Medical Centers, located in Aiken, South Carolina and to operate Aiken Regional as a separate, independent hospital until it can be sold to an FTC-approved purchaser. *See Columbia Healthcare Corp.*, Docket No. C-3505, 5 Trade Reg. Rep. (CCH) ¶ 23,547.

107. The Commission gave final approval to a consent agreement with Martin Marietta Corporation, settling charges that its $208.5 million acquisition of General Dynamics Corporation's Space Systems Division would reduce competition in the U.S. market for satellites. Martin Marietta was engaged in the manufacture of both satellites and launch vehicles; Space Systems manufactured launch vehicles. The complaint alleged that the proposed acquisition would violate federal antitrust laws by giving Martin

Marietta's launch-vehicle division greater access to competitively sensitive and non-public information of other satellite manufacturers that use launch vehicles manufactured by the merged entity. Under the final order, Martin Marietta's Expendable Launch Vehicle (ELV) division is prohibited from disclosing to its satellite division any non-public information that its ELV division receives from any other satellite manufacturer and from using such information in any capacity except as provider of launch vehicles. The order also requires Martin Marietta to give a copy of the final order to U.S. satellite owners or manufacturers before obtaining any non-public information from them. See Martin Marietta Corp., Docket No. C-3500, 5 Trade Reg. Rep. (CCH) ¶ 23,577.

108. The Commission issued in final form a consent order against Sara Lee Corporation settling charges that Sara Lee's acquisitions of Esquire and Griffin brands of shoe-care products from Knomark Inc. and Reckitt & Colman plc have substantially lessened competition and tended to create a monopoly in the U.S. market for chemical shoe-care products sold through grocery stores, drug stores and mass merchandisers. Sara Lee, through its subsidiary Kiwi Brands Inc., also manufactures and sells shoe-care products under the "Kiwi" brand name. The FTC complaint also alleged that Sara Lee made the acquisitions of the Esquire and Griffin brands with the intention of lessening competition or acquiring or maintaining market power in the relevant market. Under the final order Sara Lee, among other things, must divest its Esquire and Griffin brands of shoe-care products and related assets to Hickory Industries, Inc. *See Kiwi Brands Inc*., Docket No. C-3523, 5 Trade Reg. Rep. (CCH) ¶ 23,627.

109. The Commission gave final approval to a consent agreement with Marion Merrell Dow, Inc. and the Dow Chemical Company, settling charges that their purchase of Rugby-Darby Group Companies, Inc. would eliminate competition between the only two FDA-approved competitors in the U.S. market for dicyclomine, a medication used in the treatment of irritable-bowel syndrome. Under the final order, Marion Merrell Dow is required, among other things, to license dicyclomine formulations and production technology to a third party and to contract manufacture dicyclomine for the third party while that party awaits FDA approval to sell its own dicyclomine. *See The Dow Chemical Co*., Docket No. C-3533, 5 Trade Reg. Rep. ¶ 23,623.

110. Another final consent order requires TCH Corporation, owner of Thrifty and Bi-Mart drug store chains, to divest part of its pharmacy business in Fort Bragg, California, in addition to certain pharmacy assets in five other west-coast areas. The settlement resolves FTC allegations that TCH's $1.16 billion acquisition of the PayLess drug-store chain could increase the likelihood of higher prices or reduced customer service by retail prescription-drug outlets in these six areas. Under the final consent order, TCH and its parent company, Green Equity Investors, must divest to a Commission-approved buyer the pharmacy business in either the PayLess or the Thrifty or Bi-Mart stores in the six relevant areas. *See TCH Corp.*, Docket No. C-3519, 5 Trade Reg. Rep. (CCH) ¶ 23,559.

111. The Commission gave final approval to a consent agreement with Columbia Healthcare Corporation, settling charges in a 1993 administrative complaint that Columbia's proposed acquisition of Medical Center Hospital in Charlotte County, Florida, would significantly reduce competition for acute care hospital services in the Charlotte County, Florida area as there is only one other hospital in the area and entry is difficult and time-consuming. Under the final order, Columbia (now called Columbia/HCA Healthcare Corp.) must obtain FTC approval for ten years before consummating any partial or total merger of a Columbia hospital in the Charlotte County area with any other acute-care hospital in that area. Additionally, Columbia must give the FTC prior notice before completing a joint venture with any other

acute-care hospital in the area to establish any new hospital or hospital service or facility. *See Columbia Hospital Corp.*, Docket No. 9256, 5 Trade Reg. Rep. (CCH) ¶ 3,548.

112. In another matter, Columbia/HCA Health Care Corp. entered into a proposed consent agreement to settle charges that its proposed $692 million acquisition of Medical Care America, Inc. could result in higher prices and reduced quality for outpatient surgical services in Anchorage, Alaska. Under the proposed agreement, Columbia/HCA would be required to divest the Alaska Surgery Center to an entity that would run it independently of Columbia/HCA, thus preserving competition in the Anchorage area. *See Columbia/HCA Healthcare Corp*., Docket No. C-3544, 5 Trade Reg. Rep. (CCH) ¶ 23,672.

113. The Commission accepted for public comment a proposed consent agreement with Adobe Systems Inc. and Aldus Corporation that requires, among other things, the divestiture of Aldus' "FreeHand" professional-illustration software to settle FTC charges that the merger could lead to higher prices and reduced innovation for professional-illustration software. Under the agreement FreeHand will be divested to Altsys Corporation. *See Adobe Systems Inc.*, Docket No. C-3536, 5 Trade Reg. Rep. (CCH) ¶ 23,643.

114. To settle FTC allegations that Revco D.S., Inc.'s $600 million acquisition of Hook-SuperRx Inc.'s retail drug stores could raise prices and reduce service for prescription drugs sold in retail stores in three towns in Virginia, Revco agreed, under a proposed consent agreement, to divest either the pharmacy business it already owns or the pharmacy business it will acquire from Hook-SuperRx in each of the three relevant towns. *See Revco D.S., Inc*., Docket No. C-3540, 5 Trade Reg. Rep. (CCH) ¶ 23,636.

115. The Commission accepted, subject to public comment, a proposed consent agreement whereby First Data Corporation could acquire Western Union Financial Services, Inc. if it divested either its consumer money wire transfer business or Western Union's to an entity that will keep it operational. The FTC complaint charged that the proposed acquisition would create a monopoly by combining the only two services in the U.S. consumer money transfer market, which is very difficult for new companies to enter. The consent agreement was subsequently withdrawn when the transaction was abandoned. *See First Data Corp.*, File No. 931-0090, 5 Trade Reg. Rep. (CCH) ¶ 23,649.

116. In *Roche Holding Ltd.*, the Commission accepted for public comment a proposed consent agreement settling charges that Roche's $5.3 billion acquisition of Syntex Corporation, and its subsidiary, Syva, violated the federal antitrust laws. Both Roche and Syntex produce drug abuse testing (DAT) products, used primarily by laboratories for testing for the presence of illegal drugs, including cocaine, marijuana, and LSD. According to the FTC complaint, Roche's acquisition of Syntex could substantially lessen competition in the DAT market or tend to create a monopoly by eliminating competition between Roche and Syntex and could further enhance the likelihood of collusion in the market. The agreement requires that Roche divest Syva's DAT business to a Commission approved buyer that will operate the business in competition with Roche, thus preserving the competition for DAT business. *See Roche Holding Ltd.*, Docket No. C-3542, 5 Trade Reg. Rep. (CCH) ¶ 23,656.

117. The Commission accepted for public comment a proposed consent agreement whereby Rite Aid Corporation will divest either its own or LaVerdiere's pharmacy assets in retail outlets in three cities to resolve FTC concerns that Rite Aid's acquisition of LaVerdiere's Enterprises, Inc. would lessen competition and increase the likelihood of collusive activity between remaining competitors in the retail outlet sale of prescription drugs in the three relevant markets. Under the agreement, Rite Aid would divest the pharmacy assets to pre-approved entities that would operate them in competition with Rite Aid. In addition, Rite Aid

is prohibited from acquiring assets or stock of any company engaged in the retail outlet sale of prescription drugs in these three markets. *See Rite Aid Corp.*, Docket No. C-3546, 5 Trade Reg. Rep. (CCH) ¶ 23,659.

118. The Commission accepted for public comment a proposed consent agreement with Sulzer Limited settling charges arising from its proposed acquisition of the Metco Division of the Perkin-Elmer Corporation. The FTC charged that the acquisition would eliminate direct competition between Sulzer and Metco in the highly concentrated market for aluminum polyester powder, a substance sprayed on jet engine housings to improve the efficiency of the engines, and would increase the likelihood that Sulzer could unilaterally raise its prices to jet engine manufacturers and others who purchase this product. According to the FTC complaint, entry cannot occur quickly enough to deter anticompetitive behaviour. Pursuant to the consent agreement, Sulzer agreed to help launch a new manufacturer of aluminum polyester powder. *See Sulzer Limited*, File No. 941-0073, 5 Trade Reg. Rep. (CCH) ¶ 23,682.

119. In addition, the Commission gave final approval to consent agreements accepted for public comment in the previous year in the following merger matters:

-- *Dominican Santa Cruz Hospital*, Docket No. C-3521, 5 Trade Reg. Rep. (CCH) ¶ 23,653.

-- *Alvey Holdings Inc.*, Docket No. C-3488, 5 Trade Reg. Rep. (CCH) ¶ 23,508.

-- *Imperial Chemical Industries, PLC.*, Docket No. C-3473, 5 Trade Reg. Rep. (CCH) ¶ 23,507.

-- *Textron, Inc.*, Docket No. 9226, 5 Trade Reg. Rep. (CCH) ¶ 23,489.

-- *Consol, Inc.*, Docket No. C-3460, 5 Trade Reg. Rep. (CCH) ¶ 23,416.

-- *Valspar Corp.*, Docket No. C-3478, 5 Trade Reg. Rep. (CCH) ¶ 23,568.

c. District Court Actions

120. A settlement filed in federal district court requires Rubus Development Corporation (formerly known as Supermarket Development Corporation) and Furr's Supermarkets, Inc. (successor to Furr's Inc.) to pay $400,000 in civil penalties to settle FTC allegations that they violated several provisions of a 1988 consent order requiring divestiture of supermarkets in 12 towns in New Mexico and western Texas. Among other things, the FTC alleged that Rubus and Furr's failed to maintain the viability of six grocery store prior to divestiture and acquired grocery stores without obtaining the required prior approval from the FTC. The first installment of $150,000 was paid to the U.S. Treasury in February, 1994. *See Rubus Development Corp. et al.*, Docket No. C-3224, 5 Trade Reg. Rep. ¶ 23,527.

IV. REGULATORY AND TRADE POLICY MATTERS

A. Regulatory Policies

1) DOJ Activities with Respect to Federal and State Regulatory Matters

121. The Division participates actively in regulatory proceedings in order to promote competition. Past Division efforts influenced regulatory decisions to allow greater competition in the telephone, airline, trucking and securities industries, among others. During FY 94, the Division continued these efforts by filing comments in:

-- Federal Energy Regulatory Commission proceedings involving electric power transmission pricing and oil pipeline rulemaking;

-- Interstate Commerce Commission proceedings on the ratemaking authority of motor carrier rate bureaus;

-- Federal Maritime Commission proceedings that focused on the criteria to be used by the Commission in determining whether shipping conference agreements unreasonably raised price or decreased service; and

-- Department of Agriculture proceedings relating to the economic effects of marketing orders for citrus fruit, tart cherries and milk.

122. In September 1993, the Division recommended in a letter to the Pennsylvania Insurance Commissioner that she disapprove a plan by Blue Cross of Western Pennsylvania (BCWP) to use a "most favored nation" clause in its contracts with hospitals. The clause was similar to the one at issue in the Arizona dental care case discussed above and would have entitled BCWP to the lowest price that a hospital has negotiated with any private payer. Use of "most favored nation" clauses by a dominant insurer such as BCWP -- which accounted for almost two-thirds of private insurers in western Pennsylvania compared to less than 8 percent for its nearest rival -- actually discourages hospitals from giving discounts to smaller companies. The result is likely to be increased costs for hospital services and for health plans. The Pennsylvania Commissioner subsequently issued a decision restricting BCWP's use of the challenged clause. In New York, the New York Insurance Commission cited the Division's letter in rejecting a Blue Cross proposal to use a "most favored nation" provision in that state. Purchasers of health care plans in both Pennsylvania and New York -- that is, consumers and businesses -- likely will benefit from having more alternatives and the opportunity to share in cost savings generated by competition among those plans.

123. In 1994 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 issuance of five new certificates. The goods and services covered by the certificates included fruit, wood, and trade facilitation services.

2) FTC Activities with Respect to Regulatory and State Legislative Matters

124. As part of its competition and consumer protection mission, the Commission seeks to prevent or lessen consumer injury that may be caused by governmental activities that interfere with the proper

functioning of the marketplace. In some instances, laws or regulations may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive response of firms, or wasting resources. The goal of the advocacy program is to reduce such possible harms to consumers by advising appropriate governmental entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking.

125. Advocacy comments on antitrust issues are prepared by the Staffs of the Bureaus of Competition and Economics, and the ten Regional Offices under the general supervision of the Office of Consumer and Competition Advocacy. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review and information for the staff's work in this area. In FY 1994, the Commission staff submitted comments or amicus briefs to federal and state entities on competition issues in such areas as telecommunications, transportation, marketing, and health.

a. Federal Agencies

126. The staff of the FTC filed comments in response to a Bureau of Alcohol, Tobacco and Firearms notice of proposed rulemaking soliciting comments about proposed rules to define a prohibited "exclusion" under the Federal Alcohol Administration Act. Staff suggested that the BATF's proposal, under which exclusion of a supplier should not be found unless a threat to retailer independence is demonstrated, could be consistent with efforts to promote a competitive marketplace if the reduction in retailer independence were due to another supplier's exercise of market power. Staff recommended that the BATF not define exclusion by reference to reduction in purchases from competitors, because that fact will always be ambiguous. Instead, the focus should be on acts by suppliers that exclude their competitors by unreasonably restraining retailers' choices.

127. The staff of the Bureau of Economics filed comments with the FAA in response to a notice of proposed rulemaking seeking comments on policies to govern setting airport rates and charges. Staff recommended that a policy requiring prices to reflect historical costs could frustrate the effort to use airport resources efficiently. To promote efficient utilization of airport facilities, staff recommended that the FAA consider alternative cost-of-service ratemaking methods, such as price-cap regulation, that would permit establishment of rates and charges that better reflect opportunity costs of resources.

128. The staff of the Bureau of Economics filed its study in response to an FCC Notice of Proposed Rulemaking, which sought comment on an AT&T petition to remove its classification as a "dominant" carrier. AT&T asked to be classified as a "non-dominant" carrier and regulated in the same manner as its inter-exchange competitors. The FTC staff transmittal letter asked that the FCC consider the Bureau of Economics study, an empirical assessment of AT&T's market power in the long distance telecommunications market, in its deliberations on this issue.

129. The staff of the Bureaus of Economics and Competition filed comments with the Federal Maritime Commission, which is considering whether to issue guidelines about its competition policies under the Shipping Act of 1984. Staff recommended that the FMC consider challenging particular objectionable provisions contained in ocean-carrier rate-making agreements, rather than entire agreements; use merger and antitrust joint venture analysis in assessing competitive effects under the Shipping Act; and interpret the Shipping Act to address agreements that prevent rate reduction or service improvements.

130. The Commission filed comments in response to a Federal Reserve notice of proposed rulemaking on proposed revisions to Regulation M, which implements the Consumer Leasing Act. Staff supported the Board's proposal for a segregation requirement, stating that the segregation of lease disclosures could benefit consumers by making information readily apparent and easily accessible. And the Commission suggested that the use of a toll-free number to provide some of the required disclosures in media advertising may warrant consideration.

131. The staff of the Bureau of Economics testified before the International Trade Commission (ITC) as part of the ITC's investigation about the effects of orders in countervailing duty and dumping cases. The testimony described a BE report issued earlier this year that attempts to identify decreases in domestic industry revenues due to unfair imports. Staff surveyed 179 ITC final decisions from 1980 to 1988, and concluded that in about two-thirds of the cases there was a decline in domestic industry revenues of less than five percent, and in about one-eighth of the cases there was greater than 10 percent.

b. States

132. The San Francisco Regional Office commented to the California State Assembly on a bill that would clarify the status of businesses that offer the service of "brokering" sales of new motor vehicles. The bill would enable such businesses as individual brokers, credit unions and buying clubs to compete more effectively and benefit California consumers by saving them money and inconvenience. Staff supported the bill, but suggested that the ban on naming particular makes or models in advertisements could leave brokering services at a competitive disadvantage and increase consumers' costs.

133. The staff of the Bureau of Economics filed comments with the California Public Utilities Commission on a proposal to permit retail "wheeling" of electric power. The comments consisted of a cover letter, a study of competition issues in electric power which BE recently had submitted to South Carolina, and a copy of an earlier BE comment filed with the Illinois Commerce Commission on price-cap regulation. To promote competition in the power generation industry, staff recommended that artificial barriers to entry be removed, and that traditional rate-of-return regulation be reviewed. Staff also recommended that the regulators position themselves to deal flexibly with competition in transmission and distribution of electric power as increased competition in these areas become more feasible in the future.

134. The Chicago Regional Office commented to the Indiana House of Representatives on a bill that would ban brokering of new vehicle transactions. The bill would prevent anyone except dealers and owners from negotiating sales or leases of new cars and trucks, thereby prohibiting many of the car sales activities now sponsored by credit unions, buying clubs, and other organizations. Staff suggested that brokers can save consumers money in purchases and in search costs. Car dealers may participate with credit unions, buying clubs and referral services to offer cars at reduced prices and, in return, dealers can gain access to customers and perhaps increase volume. Staff concluded that the prohibition of these alternative methods of arranging new vehicle transactions would likely reduce competition and deprive consumers of savings that they could realize by using these methods.

135. The staff of the Bureau of Consumer Protection filed comments in response to a proposal by the Louisiana Board of Embalmers and Funeral Directors to amend its rules governing the removal of bodies from the state. The proposed rule would require that, with some exceptions, a body could not be removed from the state unless it was first embalmed (or cremated). This requirement, staff suggested, could force consumers to purchase services they neither need nor want, and it could increase the costs borne by

residents of other states arranging funerals for their relatives who die in Louisiana and those in other states. Staff urged the Board to consider other options, noting that concerns about public health might be met by rules based on the method of handling, rather than rules based simply on political boundaries.

136. The Office of Consumer and Competition Advocacy staff filed comments in response to a Mississippi Supreme Court order, seeking comments on amendments to the disciplinary rule concerning advertising that have been proposed by the state bar. Staff noted that the amendments would generally establish more restrictive standards governing attorney advertising, and that several of the proposals may restrict the flow of truthful and useful information to consumers. Staff suggested that the Court consider modifying the rules to permit a wider range of truthful communications and to narrow the prohibitions to target only those representations that pose a clear likelihood of consumer injury through material unfairness or deception, or that otherwise violate significant public policy objectives in a way that threatens to cause injury to consumers.

137. The Cleveland Regional Office submitted comments to the Pennsylvania legislature on a bill to revise the state's laws regulating pre-need sales of funeral and cemetery goods and services. Among other things, it would require deposit into a trust fund of all or nearly all of the proceeds of such sales. Staff cautioned that a "100 percent trusting approach" may unintentionally retard the introduction and development of innovative forms of competition, and that reducing the requirement to 90 percent may not necessarily be the best solution as it could still require more protection than consumers would actually want. As an alternative, staff suggested allowing pre-need sellers to post a performance bond, under which a third-party guarantor would agree to pay the contract amount if the seller did not deliver at the time of need. Staff also suggested that the legislature consider requiring only that prices for separate items in pre-need contracts be no greater than (rather than identical to) the prices on the providers' lists.

138. The staff of the Bureau of Economics filed comments with the South Carolina Legislative Audit Council, which asked for comments on the statutes and regulations pertaining to the state's Public Service Commission that govern the trucking, telecommunications, and electric power industries. Staff recommended relaxing restrictions on entry into motor carrier markets, permitting incumbent telephone utilities more flexibility to adjust prices in response to new competition, and pursuing alternatives to rate-of-return regulation for telephone utilities. In order to promote competition in the electric power industry, staff recommended revising those portions of the statutes that require traditional rate-of-return regulation and construct artificial barriers to entry.

c. National Organizations

139. The staff of the FTC submitted comments to the American Bar Association Commission on Lawyer Advertising, a private organization whose recommendations are often adopted by the states. Staff recommended that some degree of regulation may be necessary to ensure against deception, especially about aspects of legal services about which consumers are not well informed. However, the staff warned that some rules dealing with particular risks of misrepresentation seemed too broad and risked preventing communication of truthful, nondeceptive information that consumers may find useful. Staff also suggested that broad rules to enforce a dignity requirement may prevent the communication of useful, nondeceptive information and may be more restrictive than necessary. In general, the staff cautioned that restrictions which inhibit competition and consumer choice could impose costs that should be considered carefully.

B. Department of Justice Trade Policy Activities

140. 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 (NEC), a cabinet-level advisory group. The Division provides antitrust and other legal advice to U.S. trade negotiators and heads interagency discussion on the relationship of trade policy and competition policy, including the role, if any, of competition policy and enforcement principles in multilateral trade instruments. Both DOJ and FTC participate in bilateral and multilateral discussions and work projects to improve cooperation in the enforcement of competition laws.

141. 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."

142. 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.

143. The Division drafted comments on behalf of the United States Government for filing in a Japanese Fair Trade Commission (JFTC) proceeding that examined competition in public procurement in that country. The Division urged the JFTC to emphasize that the Japanese government will not tolerate bid rigging or other anticompetitive practices in the public procurement process and that practices that have the effect of unfairly excluding American and other non-Japanese firms from the Japanese public procurement market will be subjected to significant sanctions.

144. The Division, through Deputy Assistant Attorney General Diane Wood, co-chairs the Deregulation and Competition Policy portion of the U.S.-Japanese Framework discussions. In these discussions, the United States has urged the Japanese government to strengthen its enforcement of that country's antimonopoly law, to make its administrative procedures fair and open, and to accelerate an effective program of deregulation to open markets to competition.

145. The Division, with the participation of the FTC and other U.S. government agencies, chairs the Competition Policy Working Group of the U.S.-Korea Dialogue for Economic Cooperation. The working group focussed on a broad range of antitrust enforcement and competition-related topics. As a result of the discussions, the Korean Government decided to take steps toward strengthening the Monopoly Regulation and Fair Trade Law and its enforcement, applying competition principles in its deregulation efforts, improving access to television and radio advertising slots, addressing anticompetitive or unfair practices by industry association restrictions, and revising KFTC regulations and guidelines that may impede procompetitive activities.

V. NEW STUDIES RELATED TO ANTITRUST POLICY

A. Antitrust Division Economic Analysis Group Discussion Papers

146. The Division did not issue any Economic Analysis Group Discussion Papers during the period January 1 through September 30, 1994.

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

147. Although the Commission is primarily a law enforcement agency, it also collects, analyzes and publishes information about various aspects of the nation's economy. This work is done by the Bureau of Economics, and consists of studies on a broad array of topics relating to antitrust, consumer protection and regulation. A list of FTC studies that are available to the public is provided below. Studies may be obtained from the Federal Trade Commission, Division of International Antitrust, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580

1) Economic Reports

148. Ippolito, Pauline and Overstreet, Jr., Thomas, *Resale Price Maintenance: An Economic Study of the FTC's Case Against Corning Glass Works*, January 1994. The study is intended to help increase understanding of the economic motivation for RPM when the products at issue are relatively simple goods that do not fit the most well-known efficiency rationales for the practice. The study found no evidence of collusion among Corning's dealers or competitors, and stock market movements (as well as the value of sales) for Corning and some of its competitors do not support anticompetitive theories. The authors find the results "consistent with the theory that RPM may at times be used as a method of increasing distribution of 'simple' products sold through multiproduct dealers."

149. Morkre, Morris and Kelly, Kenneth, *Effects of Unfair Imports on Domestic Industries: U.S. Antidumping and Countervailing Duty Cases, 1980-1988*, February 1994. The study analyzes the effects of dumped and/or subsidized imports on the domestic industries with which they competed. The authors found that, in nearly 90 percent of the 179 cases analyzed, unfair imports caused reductions in domestic industry revenue of less than 10 percent.

2) Working Papers

150. Daniel, Timothy and Kleit, Andrew, "Disentangling Regulatory Policy: The Effects of State Regulations on Trucking Rates," WP #205, July 1994.

151. Ludwick, Richard, "Reversing Roles: Stackelberg Incentive Contract Equilibrium," WP #206, July 1994.

152. Coate, Malcolm, "Merger Analysis in the Courts," WP #207, August 1994.

NOTES

1. The U.S. annual report submitted to the Committee on Competition Law and Policy last year covered calendar year 1993. This report, and future annual reports, will cover the fiscal year ("FY"), which runs from October 1 to September 30, to conform with the normal practice of both agencies. To avoid duplication with last year's annual report, summaries of cases and other enforcement or policy-related matters will cover the period January 1, 1994 through September 30, 1994. However, statistics mentioned in this report cover the entire 1994 fiscal year.

2. The Antitrust Guidelines for the Licensing of Intellectual Property were issued by the Department and Commission in final form on April 6, 1995.

3. The Antitrust Enforcement Guidelines for International Operations were issued in final form by the Department and Commission on April 5, 1995.

4. The district court rejected the proposed consent decree in an order issued February 14, 1995. That decision is currently on appeal before the federal Court of Appeals (D.C. Circuit).