Annual Report of the

FEDERAL TRADE COMMISSION

1970

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Report
of the

FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1970

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Letter of Transmittal

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the fifty-sixth Annual Report of the Federal Trade Commission Covering its accomplishments during the fiscal year ended June 30, 1970.

By direction of the Commission.

MILES W. KIRKPATRICK,
Chairman.

THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

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A YEAR IN REVIEW

Progress was made in three major areas in fiscal year 1970:

- First, there were a number of internal improvements designed to speed up procedures at all levels of Commission activity and to establish priorities for the allocation of money and manpower resources.
- Second, there was a substantial increase in the number of points of contact between the Commission and the public, benefiting both consumers and business.
- Third, there was increased use of the Commission's statutory powers.

Internal Improvements

To improve internal procedures, a major reorganization plan was developed and adopted. The reorganization, effective July 1, 1970, divides the Commission into two principal operating bureaus, the Bureau of Competition and the Bureau of Consumer Protection. These replace the four old bureaus of Textiles and Furs, Industry Guidance, Deceptive Practices, and Restraint of Trade. The Bureau of Economics remains a staff group to serve the operating bureaus.

The establishment of these two principal operating bureaus in place of four will significantly speed up the Commission's operations at the staff level. The functions of the old bureaus of Industry Guidance and Textiles and Furs have been lodged in the two new operating bureaus as their substance indicates.

A single officer-for example, the Director of the Bureau of Consumer Protection-is now fully responsible for administering the Commission's program in any single area, whether the FTC proceeds by rulemaking or on a case-by-case basis. This consolidation according to subject matter has also ended the need for frequent meetings and consultation which were previously necessary

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in order to coordinate activities of two different bureaus with jurisdiction over a single project. The reorganization also eliminated various levels of review of a staff attorney's work.

Further, the plan established an Office of Policy Planning and Evaluation (OPPE), designed to help the FTC devote its resources to that work most likely to achieve goals quickly and to eliminate the pursuit of the trivial. This office will help the Commission establish its program and determine its priorities. By devoting its efforts to reviewing the entire scope of the Commission's responsibilities, the OPPE will act as a counterforce to individual recommendations coming from various staff members interested primarily in only one area of the Commission's activity.

To put an end to delays in formal Commission proceedings, an Advisory Council on Rules was created. Consisting of technical experts, the council will make recommendations for revising the FTC Rules of Practice.

The Commission and the Public

To increase the contacts between the Commission and the public it protects and the businessmen it regulates, a number of actions were taken. Principal among these was the expanded role the Commission gave to its 11 field offices.

Formerly, the field offices were limited to investigating cases referred to them by the central office. The Commission adopted, on February 25, 1970, a proposal empowering the field offices to: (1) Initiate preliminary investigations without reference to or from the central office; (2) recommend complaints and conduct trials, if necessary, of cases concerned primarily with problems of a local nature; and (3) negotiate settlements with respondents and make recommendations to the Commission in light of these negotiations. In short, the field office attorneys were empowered to act in much the same manner as the headquarters attorneys. This delegation of authority to field offices brought the FTC into line with modem administrative practices.

These field offices are expected to operate as the Commission's eyes and ears in detecting consumer frauds and any practices that may result in a lessening of competition, or any other violation of law.

The field offices also will be in the forefront of the Commission's expanded program of consumer education. Particularly important in this regard is the program the Commission inaugurated early in calendar year 1970, involving the employment and training of Consumer Protection Specialists. These nonlegal investigators, originally conceived of for the Truth-in-Lending Act enforcement program, now have a sufficiently broad training to enable them to detect and report on a multitude of consumer problems in the field. They also serve to educate consumers-particularly those in disadvantaged areas most in need of advice-in the ways of the marketplace, and to help businessmen understand the requirements of FTC laws. Ultimately, the Commission hopes to have some 90 consumer specialists working out of its field offices.

The FTC field offices operate as liaison between the Commission and State and local consumer protection authorities. Since January, the Commission has worked to establish Consumer Protection Coordinating Committees in all of the cities in which FTC field offices are located.

These committees operate as a one-stop complaint center for consumers, whereby a complaint submitted to any Federal, State, or local consumer protection authority is immediately referred to the particular authority best equipped to deal with it without further effort by the complainant. It is clear that this network of Consumer Protection Coordinating Committees will operate to give the Commission the information about business activities throughout the country which it needs in order to establish its priorities and most effectively develop its overall program.

In some areas, Consumer Advisory Boards are being established to assist the Commission. These boards are made up of representatives of consumer groups, business and other community groups concerned with consumer problems.

All these activities are intended to keep the Commission informed of consumer deceptions and to encourage local authorities and consumers themselves to become aware of possible deceptions. They also serve to alert businessmen to the role of the Commission and other consumer protection authorities in regulating their practices. A more informed Commission is better able to enforce its laws or advise the Congress of a need for new laws. A more visible Commission means more awareness of business practices, legiti-

mate and illegitimate, by both consumers and businessmen, which can only result in a fairer marketplace for all.

Allocation of Resources

Making the best out of its resources is essential if the Commission is to fulfill the purpose for which the Congress intended it. This may be interpreted, as it commonly has been, as requiring that the Commission act as efficiently and expeditiously as possible with the funds and manpower at its disposal. However, among the most important resources given the FTC by the Congress are its statutes.

During the past year, as in years before, every effort was made to use efficiently and effectively the statutes that set forth the Commission powers. Typifying this attitude was a Commission directive to the' staff stating that "the Commission is receptive to novel and imaginative provisions in orders seeking to remedy alleged violations for future submission to the Commission recommending issuance of complaints." In a number of cases last year proposed orders included provisions requiring the respondent to make some kind of reparation, perhaps in a monetary form, to those who may have been injured by his unfair or deceptive practice.

The imagination of proposed order provisions is matched by that shown in some of the recommendations for complaints that have come before the Commission. Here, also, the Commission has been attempting to use most effectively the statutory tools delegated to it in protecting the country's consumers and businessmen from unfair trade practices and methods of competition.

Probing the outer limits of Commission statutes and using all of its powers are not, however, always sufficient to insure fairness and truth in the marketplace. Accordingly, in appropriate instances the Commission made recommendations to the Congress for increased powers whenever it believed that these were necessary in order to remedy undesirable practices in the marketplace.

Finally, because the Commission thought that the procedures prescribed for enforcement of the Flammable Fabrics Act were inadequate to give consumers protection in this important area, it recommended to the Congress that legislative action be taken to strengthen the law.

These, then, were the three principal areas of Commission progress during the past year. Work proceeded, too, on many other fronts-in pursuing economic studies, in preparing and trying cases, and in publishing information materials. This annual report attempts, in some measure, to describe this activity.

* * *

Caspar W. Weinberger became the 41st Chairman of the Federal Trade Commission when he was sworn in on December 31, 1969. He had been nominated by President Nixon to be a Commissioner on October 2, 1969. He was confirmed by the Senate on November 19, 1969.

Mr. Weinberger resigned as FTC Chairman on August 7, 1970, to become Deputy Director of the Office of Management and Budget.

CONSUMER PROTECTION

The Bureau of Deceptive Practices is the consumer protection office of the Commission whose activities are most clearly identified with the individual consumers of the Nation. The Bureau has the responsibility for starting investigations-and following through to litigation-against deceptive and misleading advertising, and trade practices that violate the Federal Trade Commission Act, enforcing the Truth-in-Lending and Fair Packaging and Labeling Acts, as well as preparation of consumer information releases, brochures and reports, and the planning of other activities designed to educate consumers.

During the past fiscal year 10,906 communications were received from consumers, businessmen, trade associations, consumer groups, State and Federal agencies and the Commission's field offices alleging acts of unfair competition and deception. Each was considered from several standpoints, such as the danger to the public health or safety; the numbers of consumers adversely affected; indications that a particular segment of consumer population (such as the poor, the elderly, the retired) was affected, the economic magnitude and the amount or degree of financial loss suffered by consumers. On the basis of such considerations, a decision was reached as to whether Commission resources should be committed to pursuing the matter further.

In order to identify potential problem areas, the Bureau also monitored on a sampling basis, radio and television commercials and newspaper, magazine and other printed advertising. Every radio and television network and station submits advertising scripts at specified intervals. Newspapers and magazines are requested and received on a staggered schedule, permitting representative coverage of advertisements published throughout the United States. Direct monitoring of television or radio commercials and their recording is done when there is a specified need for such action.

More than 238,000 newspaper and magazine advertisements and radio and television commercial scripts were screened during the year. Of those, more than 8,000 were referred to members of the Commission's staff who bad asked to be kept advised of trends and developments in the advertising themes used to promote specific commodities.

In the area of general investigations with a view toward litigation a significant amount of effort was focused throughout the year on "pyramid selling," a variation of conventional franchising which involves recruitment of multiple levels of distributors of a product to such an extent that the number of prospects inevitably is exhausted. Attention was also given to the sale of franchises through exaggerated profit potentials or other attempts to deceive or mislead franchisees. Close liaison was maintained with the Congress in connection with the hearings on franchises which were held by the Senate Select Committee on Small Business.

A similar amount of effort was given to door-to-door magazine and encyclopedia selling that involved misrepresenting such aspects as the fact that a sales presentation was being made, or that the cost was less, than it actually was, the buyer's cancellation rights, the terms of payment and the like.

Bogus contests, instances of bait-and-switch selling, fictitious pricing of automobiles, misrepresentation of guarantees, failure to offer a refund for a discontinued magazine, exaggerations of the value to be derived from home improvements and correspondence schools and deceptive or unfair debt collection techniques were also investigated and challenged when a law violation was found.

In the field of food and drug advertising practices which might be the basis for complaint, one of the Bureau's most meaningful and effective programs was the critical screening of network television commercials. From this review, many letters that questioned the validity of claims made were sent to national advertisers. When the response to these preliminary inquiries showed that the claims were deceptive, complaints were issued and cease and desist orders were sought. In a few instances, Assurances of Voluntary Compliance were accepted. Undoubtedly, efficient operation of this program will make all national television advertisers more aware that they use questionable commercials at their peril.

The "Food Task Force" to eliminate unfair and deceptive prac-

tices in the food industry was another very important program developed during the past year. Investigations were begun concerning advertising claims for (1) high cholesterol content nondairy substitutes, (2) cereals, (3) "diet" bread, and (4) "diet" beverages. Enzyme detergents were the subject of other investigations to determine whether these products constitute a potential health hazard for users and whether stain removal claims are valid.

Other significant staff inquiries bad to do with examinations of antipollution claims being made by members of the oil industry for various gasolines; a study of sales methods for health salons and weight reducing devices, and study of advertising for cosmetics or skin preparations.

Probably the most significant complaint issued, when the precedent value is considered, charged a manufacturer of a sunburn lotion with misrepresentation in his advertising because adequate tests of the product's efficacy had not been made before such claims were made in his advertising.

In these two areas of responsibility general investigations and advertising practices-15 new complaints were issued and 10 more had been drafted during the year. Seventy-four cease and desist orders were obtained and 100 Assurances of Voluntary Compliance were accepted. Three hundred and one investigations were closed. As of the end of the year, 22 adjudicative proceedings were in progress, 75 matters slated for issuance of complaints were near completion and 193 field investigations were under way. Settlement was imminent in 31 matters either by means of consent orders or voluntary assurances.

One of the most interesting and important aspects of the Commission's work is that of providing scientific facts and opinions concerning the composition and efficacy of foods, drugs, cosmetics, medical devices, economic poisons and related commodities where questions of science have arisen in regard to advertising claims. This group of personnel, trained in science disciplines, also assists in preparing for hearings and secures the services of expert scientific witnesses as needed by staff attorneys.

Much of the advertising under investigation raised questions concerning the deceptive nature of efficacy claims made for products when such claims were based on apparently fragmentary and inconclusive medical or scientific evidence. Consequently, it was neces-

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sary to identify and locate medical specialists or other scientists who had first-hand knowledge of the therapeutic and other properties of the various commodities whose advertising was under review or being challenged.

For example, in connection with the investigation of enzyme detergents the American Academy of Allergy was contacted with the result that the study is a joint effort of the Federal Trade Commission, the Food and Drug Administration, the Office of the Special Assistant to the President for Consumer Affairs, and the Presidents Office of Science and Technology.

Similarly, in performing this function, liaison was maintained with such other agencies as the Food and Drug Administration, Bureau of Radiological Health, National Clearinghouse for Smoking and Health, National Cancer Institute, National Institute of Environmental Health Sciences, Department of Agriculture, Federal Committee on Pest Control, and National Committee on Product Safety, the American Cancer Society, American Medical Association, American Heart Association, American Public Health Association, The Arthritis Foundation, National Tuberculosis Association, and the Coordinating Conference on Health Information.

During the year, a review of the 429 National Academy of Sciences/National Research Council panel reports on nonprescription drugs for which New Drug Applications had been filed with the Food and Drug Administration was completed and comments were submitted to that agency. In connection with this activity, Bureau personnel worked with the Food and Drug Administration in formulating new patterns of labeling to be promulgated by FDA, which will be applied to the advertising of these and similar products.

Other continuing projects involved mood advertising of analgesics, weight-reducing products and devices, X-radiation emission and other hazards involving television receivers and microwave ovens, chemical weapons, evaluation of research data for mouthwashes, danger of sauna and steam baths, and toothpaste advertising. As part of the X-radiation emission project, a consumer information brochure "Color Television and the X-Ray Problem" was published. It was well received by consumers and prompted letters asking especially about X-rays emitting from color TV sets.

The cigarette industry continued to be of interest to the Bureau

from the standpoints of both public health and size. The Commission's cigarette testing laboratory completed three rounds of testing of all domestic varieties and provided the public with information as to their tar and nicotine yields. Similarly, a trade regulation rule proceeding was started to require disclosure in advertising of the tar and nicotine content of all brands and varieties of cigarette. Hearings were scheduled for early in fiscal year 1971.

In a related connection, public hearings were held on the first day of fiscal year 1970 on a proposed trade regulation rule requiring a strong health warning in connection with cigarette advertising. The law prohibiting the Commission from requiring such a warning had expired at the end of fiscal year 1969; however, the proceedings were suspended when the Public Health Cigarette Smoking Act of 1969 was introduced. That act bars cigarette advertising over broadcast media after January 1, 1971, and prohibits the Commission from requiring a health warning in cigarette advertising before July 1, 1971.

Automobile warranties were another specially handled matter having widespread interest and for which the Bureau was responsible. The Commission's Automobile Warranty Report, which proposed an Automobile Quality Control Act was issued in February 1970. Subsequently, several bills were introduced in the Congress which were designed to improve quality controls and the performance standards obtaining in the automobile industry.

Another publication of great interest, the "National Consumer Protection Hearings," was issued during the year. It contained the transcript of the oral presentations and identified the written submittal received at the Commission hearings in the fiscal year 1969. The witnesses represented a wide spectrum, ranging from Cabinet officers and Members of the Congress, to State officials and independent, small businessmen and individual consumers. Many stimulating ideas as to the role of the Federal Trade Commission, State and local governments, private organizations and individuals in protecting consumers were expressed.

Softwood lumber also continued as a special project. The proposed new standard (PS 20-70), prepared under the aegis of the Department of Commerce, was reviewed and the Bureau maintained liaison with the Department and the American Lumber Standards Committee regarding several of the provisions of the

standard and its implementation. Our interest focused on a proposed educational campaign by the industry to inform consumers as to actual versus nominal lumber sizes, the relationship between size and moisture content and the means used in determining and representing the stiffness values of softwood lumber.

An investigation of practices used in distributing so-called "free" vacation certificates was begun late in the fiscal year. The recommendations based on this comprehensive investigation are geared toward a cooperative approach to eliminate offensive trade practices and the use of litigation where appropriate. They will be forwarded to the Commission in fiscal year 1971.

Similarly, a study regarding planned obsolescence was also started late in the year. Preliminary contacts were made with industry, consumer and environmental preservation groups which led to a recommendation that a formal, extensive investigation should be undertaken.

Yet another very important project-to identify data regarding products whose labeling and/or advertising should disclose specific information as to safety, quality, durability, handling and the like (beyond that now required statutorily)-was initiated. The objective is to devise a program by enlisting the cooperation and using the expertise of the business community to maximize the use of informative disclosures in labeling and advertising to facilitate better informed consumer choice. Fifty-two manufacturers of consumer electronic equipment, major home appliances and bedding, plus a number of trade associations, retailers and consumers were contacted, as were officials administering the British "Teltag" system, to elicit their ideas and recommendations.

During the year the administration of two relatively new statutes was assigned to the Bureau. The effective date of the first statute the Truth-in-Lending Act-fell on the first day of the fiscal year. Procedures to reduce the cost of enforcement and, at the same time, increase its effectiveness immediately were put into use. With more than 1 million creditors subject to the act, such procedures were an administrative necessity. One such procedure was a method for correcting minor violations not of such substance as to require formal Commission action. Creditors were notified and assisted in bringing their advertising as well as their disclosure statements into compliance.

Approximately 12,000 creditors provided informal assurances that violative practices would be discontinued; however, by July 1970, the staff had recommended to the Commission that 21 complaints charging violation of the Truth-in-Lending Act be issued. Most of these were in consent order negotiations at the end of the year.

While direct creditor education and enforcement activities occupied the major portion of the staff's time, particularly the answering of some 8,000 requests for guidance, a series of Consumer Credit Policy Statements to clarify to creditors and consumers the position of the Commission concerning certain practices related to the Truth-in-Lending Act and consumer credit were publicized. These dealt with such matters as "Easy Credit," "The Shrinking Billing Period," and the "Previous Balance Method."

Regulatory authorities in each of the States were contacted to set up a cooperative program for enforcement, and 12 States entered into liaison agreements providing that state examiners will report violations of the act and conversely complaints received by the Commission will be forwarded to the State agency.

To increase the capability of the field offices, the Commission created a new nonlegal professional position, that of Consumer Protection Specialist, to conduct on-the-spot investigations in order to provide mobility and at least the possibility of immediate relief to those most in need of the Commission's assistance. The first of these Consumer Protection Specialists was employed during the last quarter of fiscal 1970.

With regard to the other statute-the Fair Packaging and Labeling Act-full implementation began in the early part of the fiscal year with the Commission's order making the mandatory regulations effective on September 10, 1969, after three law suits challenging the Commission's regulations under the act were settled. By January 1, 1970, a nationwide survey of the marketplace revealed there was 62 percent overall compliance of the packages on retail shelves even though a "grace" period for disposal of noncomplying packaging and labeling was provided for in the act.

By the close of the fiscal year more than 5,000 packages of consumer commodities subject to the Commission's jurisdiction had been examined and notification of noncompliance had been given to 1,385 business establishments responsible for 1,864 different pack-

ages. Of particular interest is the fact that as a result of the Commission's enforcement activities, manufacturers of soap agreed to include the net weight on packaged or labeled soap. A second total compliance survey was completed on July 1, 1970. The results will be tabulated early in fiscal year 1971.

In addition, the Commission began implementation of the discretionary section of the act by publishing proposals for regulation of "cents-off" promotions. Concurrently, research and studies were started regarding economy-size representations, coupon practices, slack-fill, ingredients listing and characterization of sizes.

In the area of consumer education, which will be given increased attention in the future by the Commission, the fiscal year was one of experimentation and planning to determine what additional role the FTC should play.

As a first step, the Commission authorized a series of presentations at schools in the District of Columbia area by two staff attorneys to develop an effective model or curriculum guide for communicating information on deceptive practices, advertising, credit, etc. in the classroom, at the junior and high school levels. Simultaneously, workshops were held to develop another model for briefing teachers and for devising instructional materials teachers could use in the classroom.

It is also clear that such educational efforts should not be limited to traditional school systems. The poor and the elderly are not to be found in the schools. They are in the community and in order to reach them, specialized and innovative educational approaches must be considered. For example, "spot" TV announcements, flyers or notices with retirement or subsistence checks and other direct government-to-individual contacts may be an effective means to this end.

Under the reorganization effective July 1, 1970, the Commission's educational activities were centralized in the Division of Consumer Education in the Bureau of Consumer Protection. This division will be responsible for educational programs, such as those mentioned above, to foster and enhance consumer competence. In addition, the division will be responsible for the operation of Consumer Protection Coordinating Committees in a number of large trade areas and for the creation of Consumer Advisory Boards in major cities in which the Commission has field offices. The commit-

tees will be made up of Federal, State and local enforcement officials, consumer organizations and community action representatives and will, through cooperative efforts, work toward achieving a more effective surveillance of the marketplace by public agencies. The boards represent business, consumer and community groups and are set up to assist the Commission.

The Bureau of Deceptive Practices was also responsible for obtaining and maintaining compliance with the approximately 7,000 orders to cease and desist from false and deceptive trade practices under sections 5 and 12 of the Federal Trade Commission Act. The investigations to insure this compliance fall into three general Categories: (1) Penalty, (2) compliance and (3) spot check. A penalty investigation involves the gathering of probative evidence of violations of an order in a form suitable for use in a penalty proceeding. A compliance investigation, on the other hand, is conducted in order to obtain sufficient information on which to base a determination of compliance or noncompliance with an order. A spot check investigation is generally used merely to locate a respondent, to obtain specific documentation, or to resolve a similar question of limited scope.

When the penalty investigation discloses serious violation of an order, a civil complaint and supporting trial memorandum are certified by the Commission to the Attorney General for the recovery of money penalties. Over $73,000 was recovered during fiscal year 1970. In addition, two court injunctions requiring future compliance with Commission orders were obtained.

The following are illustrative of penalty cases begun during the fiscal year:

D. 8547, J.B. Williams Co., Inc., et al.
Misrepresentation of a vitamin-mineral preparation: $1,000,000 in penalties sought.

D. 8720, Angus Freezer Meats, Inc. et al.
Misrepresentation of savings in the purchase of meat for storing in home freezers: $80,000 in penalties sought.

D. 8138, Universal Training Service, et al.
Misrepresentation of a correspondence course designed to train purchasers for civil service positions: $90,000 in penalties sought.

D. 8169, Civil Preparation Service, et al.
Misrepresentation of a correspondence course intended to prepare pur-

chasers for civil service positions. Judgment in the amount of $10,000 was obtained.

D. C-716, Sav-Cote Chemical Laboratories, Inc., et al.
False and deceptive representations made in connection with the sale of paint products. Judgment in the amount of $5,500 and a permanent injunction commanding obedience to the Commission's order was obtained.

D. C-620, Better Rhinestone Jewelry Corp., et al.
Misrepresentations made in connection with the interstate sale of jewelry. Judgment in the amount of $3,000 was obtained.

D. 7292, Lifetime Cutlery Corp., et al.
Misrepresentations in connection with the interstate sale of cutlery. Judgment in the amount of $20,000 was obtained.

Toward the end of fiscal year 1970, a reorganization of the Bureau began and was geared to take effect on the first day of the fiscal year 1971. Under the plan, all of the Commission's consumer protection functions related to the prevention of consumer deception and fraud would be placed in a new Bureau of Consumer Protection.

MAINTAINING FREE AND FAIR BUSINESS COMPETITION

The competitive structure of the American economy becomes more complex each year, with changes which the business community initiates through its imagination, technical improvements, production and service. These lead to profitable and burgeoning American business. But, American business' investment and expertise must function within our free enterprise system under the antitrust laws. It is the basic responsibility of the Commission's Bureau of Restraint of Trade to administer and enforce the antitrust laws, which include section 5 of the FTC Act and sections 2, 3, 7 and 8 of the Clayton Act.

During fiscal year 1970, a total of 1,626 letters of complaint, involving restraints of trade, were received from the business community and the public.

A total of 1,647 were disposed of (including 436 on hand at the beginning of the fiscal year) ; at the end of the fiscal year, only 416 were pending. The complaints over which the Commission had jurisdiction and which had merit and a basis for relief in the public interest, were entered for investigation. Those matters, together with investigations generated by the Commission, totaled 180. In the fiscal year, 402 investigations were completed. At the end of the fiscal year, 424 investigations were pending. The Commission approved 18 formal complaints. It issued 24 formal complaints and 18 orders to cease and desist, 12 of which were consent orders. It approved disposition of 34 cases on Assurances of Voluntary Compliance with the law.

Investigations and proceeding involving restraints of trade under the Robinson-Patman Act are reflected in the following summary of casework:

Informal cases:

- Initiated 36
- Disposed of during year (exclusive of matters disposed of by acceptance of Assurances of Voluntary Compliance) 178
- Disposed of by Assurances of Voluntary Compliance 21
- Pending 91

Compliance matters (apparel):

- Compliance reports forwarded for acceptance 42
- Compliance reports rejected 2
- Compliance investigations open, June 30, 1970 12

Formal cases:

- Complaints issued 11
- Contested orders issued 3
- Consent orders issued 4
- Cases pending in litigation June 30, 1970 8

A review of major cases decided or pending during fiscal year 1970 follows:

In Associated Pest Control Services, Inc., et al. (C-1638), the agreed-upon complaint charged an association of about 40 pest control organizations and one member corporation individually and as a representative of every member organization of the association with violation of section 2(f) of the amended Clayton Act. Under the order, respondents are to cease and desist from inducing and receiving or receiving lower net prices from suppliers than those available to other purchasers where the association or any member competes either with the purchaser paying the higher price, or with any customer of such purchaser. The "class action" effect of the consent order in this matter marks it as an unusual order as the Commission rarely issued orders which ran against parties not specifically named.

In Art Metal-Knoll Corp. (C-1643), the Commission issued a broad consent order, under the terms of which the respondent, charged in the complaint with price discrimination violative of section 2(a) of the amended Clayton Act by selling furniture to different customers at varying discounts from list prices, agreed to cease and desist from discriminating in price in violation of the statute.

In Jos. Schlitz Brewing Co. (C-1665), the Commission issued a consent cease and desist order tailored to the practices specifically alleged in the complaint. Under the terms of the agreed-upon see-

tion 2(a) order, Schlitz is to cease and desist from discriminating in the price of beer to any retailer within the primary plant area of any of its breweries when it knows or should know that such lower discriminatory price is lower than the price at which the retailer may purchase similarly packaged beer from any other regional or national brewer having, an annual volume substantially smaller than that of Schlitz.

The consent cease and desist order issued by the Commission in Arden-Mayfair, Inc., et al. (C-1748), forbids a supermarket chain and a food broker from engaging in activities violative of section 2(c). of the amended Clayton Act. The brokerage company named in the order, its president (individually and as an officer), and all agents, representatives and employees of the brokerage company are forbidden by the order to accept any compensation or allowance from sellers in connection with the purchase of grocery products for the brokerage company's account, or for purchases made where the brokerage company is acting for, on behalf of, or under the direct or indirect control of any buyer.

In the matter of Beatrice Foods Co. and the Kroger Co., Inc. (D. 8663), Beatrice, the third largest dairy company in the country, was charged with violating section 2 (a) of the amended Clayton Act by selling fluid milk and other dairy products to Kroger and certain other customers at lower prices than those it charged other customers for products of like grade and quality; Kroger was charged with violating section 2(f) of the act by knowingly inducing and receiving such discriminatory prices.

As to Beatrice, the Commission affirmed the dismissal of the complaint. As to Kroger, the Commission reversed the examiner and issued a cease and desist order proscribing the knowing inducement or receipt from any seller of fluid milk and other dairy products of a net price which Kroger knows or should know is below the net price at which that seller sells products of like grade and quality to other customers when Kroger competes either with the purchaser paying the higher price or with a customer of such purchaser. The main thrust of the Commission's opinion was that, in the negotiations with Kroger, Beatrice in good faith had made every reasonable inquiry which could be expected of it in its attempts to determine the exact bids which Kroger had received from competing dairy companies. Kroger, on the other hand, knowing

the market structure generally, had consistently played one dairy company against another, leading Beatrice (as well as others) to false conclusions as to the bids of competition. Despite the fact that Beatrice in fact discriminated in favor of Kroger, the good-faith efforts of Beatrice to prevent that occurrence were sufficient to cause the charge to be dismissed. Kroger having actively induced the discriminatory prices, could not avail itself of the defense of the dismissal as to Beatrice, and the Commission's order issued against it. The matter is presently on appeal before the U.S. Court of Appeals for the Sixth Circuit.

In Colonial Stores Inc. (D. 8768), the Commission found that this major regional food chain had knowingly induced and received discriminatory payments and allowances from suppliers in consideration of services and facilities furnished by Colonial in connection with the sale of products of those suppliers during certain special promotions Colonial had originated. Colonial, the Commission found, knew or should have known that such payments or allowances were not made available on proportionally equal terms to those other customers of the suppliers who competed with Colonial in the resale of the suppliers' products.

Cases pending at various stages in the litigative process are as follows:

The Borden Co., (D. 8809), where the complaint alleges that this second-largest manufacturer of ice cream has violated section 2(a) of the amended Clayton Act by discriminating in price in its sale of ice cream and other frozen dessert products to the Kroger Co., Inc.

United Fruit Co., et al., (D. 8795), where the Commission has charged United Fruit with violating section 2(a) of the amended Clayton Act by selling bananas to Harbor Banana Distributors, Inc. (another named respondent) at prices lower than those charged other wholesalers, to the detriment of those competing wholesalers. United Fruit is also charged with having violated section 5 of the Federal Trade Commission Act by aiding and abetting Harbor Banana's attempts to establish a monopoly in the wholesale handling and selling of bananas. The complaint also charges Harbor with having violated section 5 of the act by its attempts to monopolize, as well as with violations of sections 2(f) and 7 of the amended Clayton Act.

Connell Rice & Sugar Co., Inc., Foremost-McKesson, Inc., and Standard Brands Inc. (D. 8736), in which the unresolved portion of the complaint charges Standard Brands with violation of sections 2 (a) and 2(c) of the Clayton Act, as amended, and section 5 of the Federal Trade Commission Act. Specifically, Standard Brands is charged with price discrimination, the payment of illegal brokerage and anticompetitive conspiracy in connection with the sale of corn products, including corn syrup and sweeteners.

Practices involving general trade restraints violative of section 5 of the FTC Act resulted in the initiation of 40 investigations in 17 industries involving 9 different charges.

Following is a summary of general trade restraint casework in fiscal 1970:

Informal cases:	
Initiated	85
Disposed of during year	136
Pending June 30, 1970	192
Formal cases:	
Complaints issued	6
Contested orders	---
Consent orders	5
Cases pending litigation June 30, 1970	4

In dealing with general trade restraint violations in their incipiency, 211 matters were inquired into under the small business procedure. During the fiscal year, 125 matters were closed, 34 of which were satisfactorily resolved.

Important and substantial investigations in the general trade restraint area were undertaken involving the franchising business and the activities of certain food retailers and food producers. Under section 6(b) of the FTC Act (a procedure providing for filing of compulsory special reports), about 50 leading franchisers were ordered to file special reports to determine whether illegal practices were prevalent in the various industries covered in the investigation. An investigation of food retailing in the Washington, D.C. area, and alleged monopolization of food retailing in the area was initiated, involving Safeway, Giant Food and A & P. In the food production area, an investigation into the alleged oligopolistic structure of the cereal industry was announced by the FTC during the fiscal year.

Three cases involving general trade restraints were acted on by the circuit courts.

In Lenox, Inc. (D. 8718) the complaint charged Lenox with maintaining an unlawful resale price maintenance scheme in connection with the sale and distribution of its china. The Commission found that the allegations of the complaint were supported by the evidence of record, and issued an order which prevents Lenox from establishing and maintaining resale prices by prohibiting Lenox from obtaining express or implied resale price maintenance agreements with dealers, suggesting resale prices for a period of 3 years, imposing customer restrictions on dealers, and refusing to sell to dealers who failed to maintain the established prices or who sold to other dealers for resale. The order also prohibited fair trading for a period of time. The Second Circuit Court of Appeals upheld all of the order provisions except the fair trade provisions.

In another Division matter, Columbia Broadcasting System v. Federal Trade Commission. (D. 8512), decided by the Court of Appeals for the Seventh Circuit on June 26, 1969, the court, while remanding for additional data, sustained the Commission's findings that CBS had restrained trade in and attempted to monopolize the $100 million "club" segment of the national phonograph record industry.

A case of considerable importance was reargued on June 8, 1970, before the Fourth Circuit Court of Appeals. This case involved efforts to restrain trade in trading stamps received by the consuming public. Sperry & Hutchinson Co. (D. 8671).

The Commission's enforcement effort under the Celler-Kefauver Anti-Merger Act is directed toward those areas where the preservation of competition promises to have the broadest effect.

Prompt use of both voluntary and compulsory investigational procedures enabled the Commission to weigh the probable anticompetitive effects of proposed mergers, while at the same time affording businessmen contemplating mergers an opportunity to evaluate the probable legal consequences of proposed actions. During the year, four mergers were called off after the initiation of an expeditious Commission investigation.

Following is a summary of investigations and casework in the merger area during fiscal 1970:

Informal cases:

Initiated	34
Disposed of during year	72
Pending June 30, 1970	98

Formal Cases:

Complaints issued	7
Contested orders issued	3
Consent orders issued	3
Modification of order denied	1
Cases pending litigation June 30, 1970	12

The Commission's four enforcement merger policy statements (grocery products manufacturing, food distribution, cement, and textile mill products industries) contribute substantially to the effectiveness of the merger enforcement program. The issuance of section 6(b) orders requiring all cement manufacturers to give 60 days advance notice of any acquisitions of ready-mixed concrete producers, and similar orders to the food distribution industry requiring advance notification of any mergers or acquisitions by any food retailer and wholesaler with annual sales in excess of $100 million has substantially slowed merger activities in these industries and also resulted in several investigations and litigated matters.

In May 1969, the Commission inaugurated a premerger notification program designed to secure special reports from large corporations entering into contracts, agreements or understandings to merge or acquire the assets of another corporation with assets of $10 million or more. During fiscal 1970 this program was in full operation and enabled the Commission to institute prompt investigations and take immediate action in those instances where a statutory violation was indicated. As of June 30, 1970, a total of 140 corporations with assets in excess of $250 million forwarded special reports covering 211 acquisitions of corporations with assets in excess of $10 million.

The past fiscal year evidenced a marked increase in the compliance activities of the Bureau's Compliance Division affecting divestitures and requests to make acquisitions by firms under order. These orders, most of which have legal origin in section 7 of the Clayton Act, as amended, required divestitures in many instances. Many of these orders also contained prohibitions against future acquisitions for a designated period of time without prior Commission approval.

This Division handled hundreds of matters affecting compliance with Commission orders. These included, for example, the achievement of divestiture of approximately 40 plants or facilities in 10 cases where respondent companies were required to make divestitures as a result of orders designed to alleviate undue concentration in industries such as milk, chain grocery stores, baking, cement, corrugated paper, vending routes and petrochemical.

Some 53 active antimerger orders have required and will continue to require constant compliance surveillance and enforcement, since they prohibit acquisition without prior Commission approval in -a variety of industries. For example, 21 of these orders will remain effective at least into the 1980's.

In the Robinson-Patman Act area, compliance was achieved with final orders proscribing price and other forms of discrimination in product lines, among others, as food, furniture, automotive parts, dairy and carpets.

Compliance achievements affecting orders, issued pursuant to the provisions of section 5 of the Federal Trade Commission Act, were accomplished in industries as scrap steel, dental supplies, grocery stores, food products and sporting goods.

During the past fiscal year, three restraint of trade civil penalty cases were certified by the Commission to the Attorney General.

As of the end of fiscal 1970 active cases in this Division included the following:

Clayton Act, as amended:	
Section 7	60
Other sections	48
Section 5 Federal Trade Commission Act	38
Total	146
Cases disposed of during fiscal 1970	125

During fiscal 1970, the Division of Accounting furnished accounting services in connection with 17 price discrimination cases, 10 antimerger cases and 32 cases involving charges of unfair methods of competition and deceptive practices. The Division also furnished accounting services in connection with the conglomerate merger studies by the Bureau of Economics.

The computation of rates of return showing the profitableness of industrial companies in selected manufacturing industries for the calendar year 1968 was completed and published, and preparation for the Rates of Return Report for the year 1969 was initiated. Financial data contained in this report are used by other Government agencies, economists, universities and by private industry in studies of various companies and industries.

During the fiscal year, the Commission, under provisions of the Packers and Stockyards Act, as amended September 2, 1958 (7 U.S.C. 226, 227), continued its liaison with the U.S. Department of Agriculture. During the year, the Commission notified the Department that the Commission intended to conduct investigations of certain practices in two separate matters; the Department notified the Commission in one separate matter.

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THE INDUSTRY GUIDANCE PROGRAM

More than in any year since the establishment of the procedure, the Commission sought to use trade regulation rules to augment the industry guidance function, while dealing swiftly and decisively with important problem areas. Two new rules were adopted, while staff work and public hearings went forward in connection with a number of proceedings conducted in connection with proposed rules.

The Trade Regulation Rule for Games of Chance in the Food and Gasoline Industries was issued by the Commission to be effective in October 1969. In essence, the rule prohibits users, promoters or manufacturers of games from directly or indirectly misrepresenting the chances of winning a prize by those who participate. The rule also provides for specific disclosures to be made in advertising, details a formula for the mixing and distribution of game pieces, and prohibits promotion and sale of any game in which winning pieces or prizes are predetermined or preidentified by methods other than random distribution to the participating public. Other provisions of the rule require disclosure to the Commission and the general public of such information as a list of names and addresses of winners together with the amount or value of the prize won by each and a disclosure of the total number of game pieces distributed. Finally, the rule sets forth a formula to enable users, promoters and manufacturers of games to determine the length of time which must elapse between the conclusion of one game and the commencement of another, new game.

The Trade Regulation Rule on the Unsolicited Mailing of Credit Cards was adopted and made effective in May 1970. The rule very plainly states that it is a violation of section 5 of the Federal Trade Commission Act to mail credit cards on an unsolicited basis, i.e. without the prior expressed request or expressed consent to the mailing by the recipient.

In its report announcing issuance of the rule, the Commission advised that it had excluded banks, common carriers and air carriers which in their operations are not subject to the jurisdiction of the Federal Trade Commission. The Commission further advised, however, that to the extent that firms falling within these categories issue credit cards for use in connection with the sale of merchandise or services or for other purposes outside their principal function in commerce, the Commission considers that they are within its jurisdiction and will deal with violations on a case-by-case basis, not in reliance upon the rule but in accordance with Commission procedures under the Federal Trade Commission Act.

At the close of the year, staff work had been completed on two other proceedings and proposed rules had been made public. The first is a rule dealing with Incandescent Light Bulbs and will declare it to be an unfair and deceptive act or practice to fail to disclose on light bulb containers or on the lamps themselves the electrical power consumed, the actual light output and the average laboratory life of the bulb.

The second proposed rule, involving the Posting of Research Octane Ratings on Gasoline Dispensing Pumps, seeks to overcome consumer deception by providing consumers a criterion to which they can relate the gasoline in a given pump with the engine requirements of their automobiles. The proposed rule, accordingly, provides for clear and conspicuous disclosures of octane ratings to be placed on all gasoline pumps in a permanent manner.

Five other proceedings, for which public hearings were either conducted or scheduled, received considerable staff attention during the year.

In the first, the Commission itself conducted a 2-day public hearing looking into problems of Automobile Price Advertising, especially those involving redesignation of equipment and accessories from "standard" to "optional," claims of savings based upon prices charged for previous year models advertised as being "comparably equipped," and announcing pricing actions in such a manner as to conceal actual price increases and preticketing automobiles with prices which exceed those at which they normally are sold. Upon completion of an analysis of the public record, the staff submitted its report together with recommendations based upon the information developed during the bearing.

In another, public hearings were scheduled in connection with the proposed Rule Relating to the Use of Negative Option Plans by Sellers, which plans require consumers to inform sellers they do not wish to receive the product offered. If adopted by the Commission in its proposed form, the rule would prohibit the use of negative option plans entirely in connection with the sale in commerce of goods and merchandise.

In the third, a proposed rule concerning Unordered Merchandise was scheduled for public hearing early in the new fiscal year. As released by the Commission, the rule provides that, with clearly stated exceptions, the shipment of unordered merchandise constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act. The proposal further provides that merchandise shipped in violation of the rule may be treated as a gift by the recipient without obligation whatsoever to the sender.

In the fourth matter, 4 days of public bearings were conducted by the staff in connection with the proposed Rule Relating to Retail Food Store Advertising and Marketing Practices. The proposal seeks to prevent the advertising of food and grocery "specials" in such manner as to indicate to consumers that they are available in all stores in a grocery chain, when in fact they may be available only in selected stores, and unavailable in others, particularly those located in low-income areas. Likewise, the proposal, if adopted by the Commission, would require that advertised items be conspicuously and readily available to consumers at or below the advertised prices.

Lastly, 6 days of public hearings were conducted by the staff in connection with the proposed Rule Relating to Care Labeling of Textile Products. The proposal in this proceeding seeks to require disclosure on labels of instructions for laundering and cleaning. Additionally, other information related to the proper care and normal use of textile products would be set forth in order to avoid impairment of their utility or appearance. The proceeding was initiated because of the vast array of new fibers, fabrics and finishes currently available and the inability of the consuming public either to identify the composition of a particular textile or to determine with certainty what care procedures or techniques to use which will

insure that the utility and appearance of the product will not be impaired.

In connection with its guides program, the Commission authorized an industry-wide investigation to look into three separate practices allegedly being engaged in by publishers of law books. In announcing the investigation, the Commission noted that the alleged practices may be contrary to provisions of the Trade Practice Rules for the Subscription and Mail Order Book Publishing Industry and that if a determination was made that industry members were in violation of law, the Commission would take action to stop the practices either on an individual basis or under an industry-wide proceeding, or both.

The staff completed work and transmitted to the Commission for consideration proposed Guides for Residential Siding and Related Products. The proposed guides, when and if released by the Commission, will be concerned exclusively with guarantee and warranty problems in the industry. In a related line of commerce a public hearing was held to receive industry and consumer comment on the proposed Guides for the Decorative Wall Paneling Industry which are designed to eliminate deceptive practices, especially as they relate to the misrepresentation of the material content of industry products.

Also, a public hearing was conducted to receive comment from all interested parties on the proposed Guides for the Feather and Down Industry, dealing primarily with questions of down tolerance in industry products.

Final Guides for Labeling, Advertising and Sale of Wigs and Other Hairpieces were adopted by the Commission. These are intended to provide industry members with sound advice aimed at assisting them in their efforts to eliminate consumer deception, primarily through failure to disclose material facts concerning their products. The staff also completed work on a revision of guide 10 of the Guides for the Watch Industry, dealing with the subject of disclosures and representations of the country of origin of watch movements, and transmitted its report and proposals to the Commission for consideration.

Additionally, the Commission authorized the release of proposed Guides for the Household Furniture Industry, to replace the existing trade practice rules for the industry. A public record contain-

ing the views, suggestions and objections of interested parties was developed, the record was analyzed by the staff and a final report with recommendations was prepared. The Commission thereafter directed that the staff should conduct a public hearing on guides 5 and 12 dealing with problems involving the disclosure of constituent fibers making up the fabric used in the outer coverings of furniture and matters involving guarantees and warranties of industry products.

Also, a proposed Guide Concerning Use of the Word "Free" and Similar Representations was forwarded to the Commission together with recommendations concerning adoption of the proposal in final form.

As part of the Commission's consumer education program, a consumer bulletin, "Advice for Persons who are Considering An Investment In A Franchise Business," was prepared and issued to the public. By providing this type of educational material to consumers, they will be able to acquaint themselves with the pitfalls which may be encountered when considering possible investment in a franchise.

The Commission also issued an information statement on the subject of Up-Dating of the Model Years of Motor Vehicles, revealing the findings of its limited investigation on the subject and suggesting to consumers steps which should be taken to ascertain whether vehicles had been the subject of model year redesignation. The Commission also pointed out that it found no evidence that domestic manufacturers had redesignated automobiles produced in the United States.

During the year, 1,133 separate interpretive staff level opinions concerning the meaning and application of rule and guide provisions to particular business practices were given. This figure represented an increase of 252 over the previous year and marked the second year in a row wherein these figures showed- a substantial increase.

The advisory opinion procedure, however, did not experience growth similar to the increases in staff level interpretations. Instead, requests for formal opinions declined from the 174 received in fiscal year 1969. In all, the staff processed and transmitted to the Commission 124 matters in fiscal year 1970. Of this number, the Commission rendered 114 opinions.

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The advisory opinions rendered, as has been the case for many years, covered virtually the entire spectrum of Commission administered law. They varied from tripartite promotional assistance plans falling under section 2 of the amended Clayton Act, to franchising programs under section 5 of the FTC Act, to questions of the appropriate disclosure of the foreign origin of goods and materials imported into the United States, the applicability of flammability standards under the Flammable Fabrics Act, to merger questions, the advertising of drugs, packaging problems covered by the Fair Packaging and Labeling Act, and many others.

While the various opinions were of obvious assistance to those applying for them, thus permitting the applicants to abide by the law, the entire industry guidance function was further enhanced because of the continued publication of advisory opinion digests designed for the use and assistance of businessmen generally.

In addition, the Commission continued dissemination of the compilation of advisory opinion digests which were incorporated into one volume covering the period from the inception of the procedure through the close of calendar year 1968.

Two hundred and fourteen Assurances of Voluntary Compliance were negotiated by the staff and accepted by the Commission during the year, as compared to 236 such assurances obtained during the previous year.

TEXTILES AND FURS

The Commission's Bureau of Textiles and Furs is responsible for protecting American consumers from dangerously flammable fabrics and wearing apparel through its enforcement of the Flammable Fabrics Act. The Bureau also is responsible for enforcement of the Wool Products Labeling Act, Textile Fiber Products Identification Act and the Fur Products Labeling Act to keep misbranded textiles and furs out of the marketplace and to have noncomplying products removed from it.

Investigators make inspections of mills and the places of business of manufacturers, wholesalers, importers and retailers. More than 14,000 inspections under the four acts were made during the fiscal year, 4,776 of which were- under the Flammable Fabrics Act. This inspection work of the Bureau turned up approximately 3,000,000 misbranded textile and wool products valued at approximately $40,000,000. Minor deficiencies were corrected by correspondence with industry. Major deficiencies were corrected by formal action of the Commission, including issuance of complaints.

In all, the Bureau initiated some 240 formal investigations, which were added to 260 investigations carried over from the previous year, making a total of 500 handled during the year. Also during the fiscal year 1970, the Bureau disposed of 209 formal investigations, 139 with Commission orders, 20 with Assurances of Voluntary Compliance, and 50 for other reasons.

Of the initiated cases, 156 were brought under the Flammable Fabrics Act and involved fabrics, dresses, baby shirts, sweat shirts, face masks, headbands and leis. The increase in cases under the act was brought about by the discovery of several dangerously flammable imported fabrics which had been made into children's and ladies' dresses and bridal veils, together with a survey of some 100 hospitals which were using nonwoven disposable products. This survey disclosed quantities of nurses' and surgical caps, face masks

and infants' shirts which failed the flammability test. All of the unsold flammable goods were removed at once from the channels of commerce through the efforts of the Bureau, and the general public was alerted to the hazards by means of news releases.

The Commission has also undertaken a new enforcement procedure for flammable fabrics matters. The accent is on prompt information to the consumer. News releases are issued within 24 hours after testing indicates that a fabric has failed to conform to the applicable standards of flammability. The releases are designed to protect the consumer by providing immediate information of possible dangers. Therefore, releases are sent not only to the known persons who may be affected by the fabric but to approximately 3,500 newspapers throughout the country. Fire marshals in all 50 States also receive the releases. The fire marshals have been of tremendous assistance in obtaining local publicity concerning flammable fabrics and in aiding in the removal of such products.

Concurrently, contact is made with the persons responsible to effect prompt removal of dangerous products, fabrics or materials from the marketplace.

The Compliance Section of the Bureau opened fiscal year 1970 with 148 pending matters. During the year, 139 new cases and 14 reinvestigations were initiated and added to its docket, making a total of 301 cases handled. Satisfactory compliance was obtained in 176 matters, leaving 125 matters on hand at the close of the year.

Additionally, five fur and flammable cases were certified by the Commission to the Department of Justice for civil penalty actions, and one case asking for $65,000 in civil penalties was filed in the U.S. District Court for the District of Iowa. Two civil penalty cases previously referred to the Department Of Justice were settled. One was a case under the Wool Act for $4,000. The other was under the Flammable Fabrics Act and the Textile Act which was settled for $2,000 together with a permanent injunction.

Personnel of the Bureau's laboratory for testing textiles, fur and flammability increased from two to four technicians during the fiscal year, and additional equipment was installed to handle the mounting volume of work. The laboratory made 118 tests under the Wool Act, 79 tests under the Fur Act, 140 tests under the Textile Act and 2,042 tests under the Flammable Fabrics Act, for a total of 2,379 tests. Additionally, amendments were made to the regula-

tions under the Textile Fiber Products Identification Act and the Fur Products Labeling Act to specify appropriate methods of designating newly developed textile fibers and metallically treated furs.

Near the close of the fiscal year, the Commission asked the Congress to change the Flammable Fabrics Act to require premarketing testing, to eliminate willfulness as an element of the criminal offense now provided for in the act and to eliminate the requirement for prior issuance of a cease and desist order before a civil penalty is sought for a violation.

Under the Commission reorganization of July 1, 1970, the Bureau's investigators will be assigned to and controlled by the respective field offices to which they are assigned. The compliance staff was transferred to the Division of Compliance in the Bureau of Consumer Protection where the compliance work will now be handled. The remaining units will become the Division of Textiles and Furs, Bureau of Consumer Protection.

ECONOMIC STUDIES AND EVIDENCE

Some of the Commission's most important instruments of consumer protection and anti-monopoly action are the economic reporting of facts coupled with well-reasoned economic analysis. It is not enough for the Commission to simply put out the fires of illegality. As the legislative history of the Federal Trade Commission clearly establishes, it was the congressional intent that the economic fact finding and reporting functions of the Commission should be used as one of the principal means of curbing monopoly power. Important work in the area of economic studies and evidence during the fiscal year are set forth in this chapter.

Economic Studies and Reports

During the year the Commission issued its annual reports on Current Trends in Merger Activity, 1969, and on Larger Mergers in Manufacturing and Mining, 1958-69. These reports indicate a record-breaking total of mergers for 1969: 4,550 firms disappeared through acquisition, 16 percent more than the total for 1968. (See table 1.) Acquisitions by manufacturing companies continued to represent the largest single segment of the total, accounting for about 57 percent of all acquisitions recorded. Merger activity, however, grew more rapidly in other sectors of the economy. The most spectacular growth occurred in services. In 1969, more than 1,000 acquisitions were recorded in this sector, up 48 percent from the preceding year and more than triple the rate for 1967. As merger activity attained the record levels of recent years, its impact spread to embrace all major sectors of the economy.

The pattern of mergers within manufacturing and mining was similar to previous years. Most manufacturing and mining firms were acquired by other manufacturers, and the greatest number of acquisitions were made by firms classified in the electrical and nonelectrical machinery, chemical, and food industries. The trend to-

TABLE 1. - Number of mergers and acquisitions recorded, by industry of acquiring company, 1960-69

TABLE - TEXT NOT AVAILABLE - SEE IMAGE

ward a greater degree of variety in mergers accelerated last year. Of all acquisitions of manufacturing and mining companies in 1969, 19 percent were made by firms in other economic sectors. The corresponding figures for earlier years were 16 percent in 1968, 12 percent in 1967, and only 8 percent in 1960.

During the year, the Bureau completed and published Economic Report on Corporate Mergers, a comprehensive study of conglomerate mergers. The report includes an analysis of various aspects of the current merger movement, its general causes and motivations, its dimensions and structural characteristics, and its impact on competition and the centralization of economic power. It also describes the effect of the merger movement on the geographic centralization of corporate control. The report makes recommendations regarding future merger enforcement policy, suggests certain administrative and legislative steps designed to reduce financial and tax incentives for merger, recommends legislation to strengthen the rules against interlocking directorates and makes recommendations for improvement of public corporate reporting.

In unprecedented fashion, the current merger movement has centralized and consolidated corporate control and decision-making among a relatively few vast companies. By the end of 1968, the 200 largest industrial corporations controlled over 60 percent of the total assets held by all manufacturing corporations. (See fig. 1.) The share of manufacturing assets held by the 100 largest corporations in 1968 was greater than the share of manufacturing assets held by the 200 largest corporations in 1950, the year Congress enacted the Celler-Kefauver amendment to section 7 of the Clayton Act. The 200 largest manufacturing corporations in 1968 controlled a share of assets equal to that held by the 1,000 largest in 1941.

The current merger movement has played a key role in this process of centralization. The report, which deals primarily with developments in the industrial sector, indicates that since World War II, practically all of the increases in the share of industrial assets held by the 200 largest corporations were directly attributable to mergers. Indeed, without merger activity on the part of the largest corporations, aggregate concentration might well have declined during the past decade. Merger activity has registered progressive increases since the early 1950's and has reached record levels in the

Figure 1

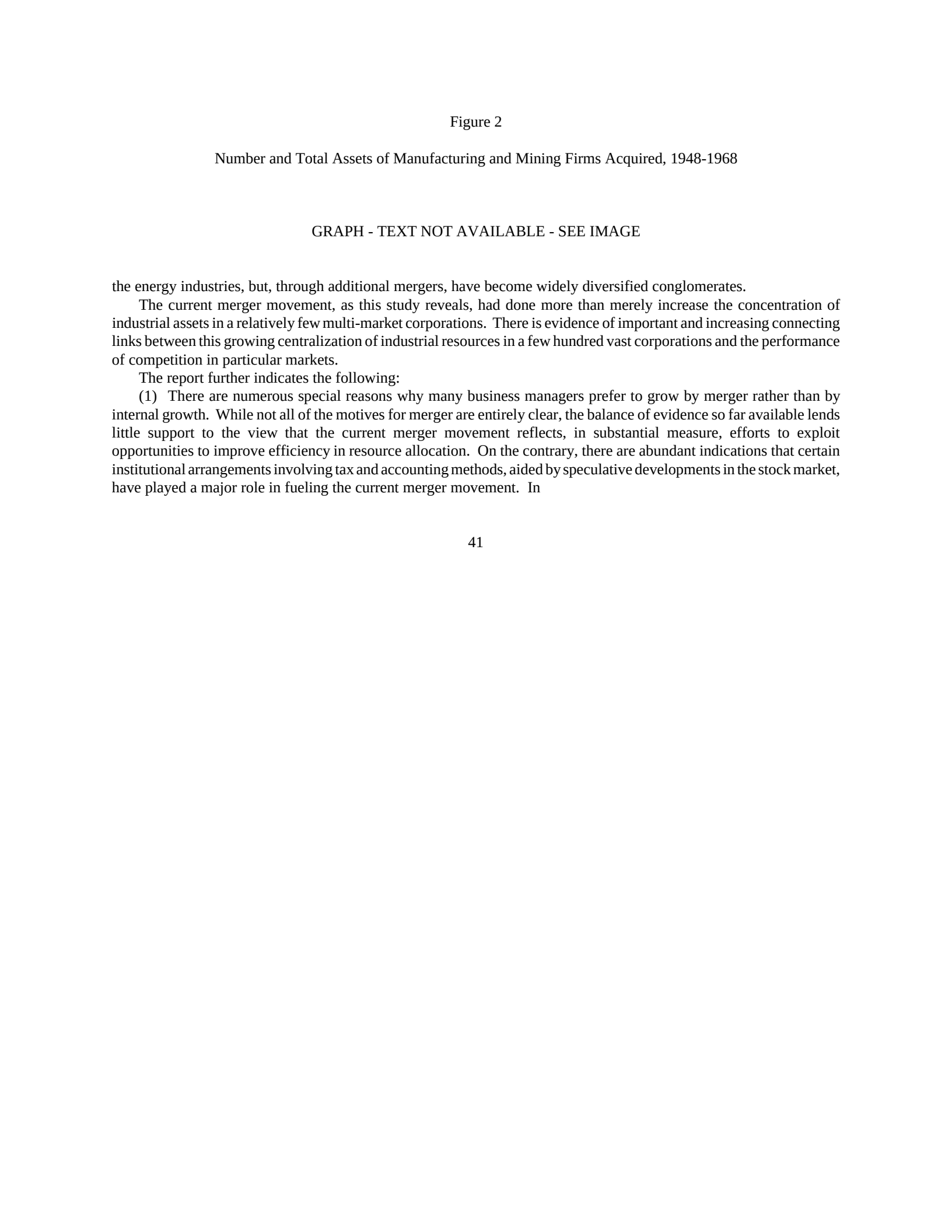
CHANGE IN CONCENTRATION OF CORPORATE MANUFACTURING ASSETS
COMPARED WITH MOST ACTIVE MERGER PERIODS, 1925 THROUGH 1968

1960's. Acquired manufacturing and mining assets averaged about 85 billion annually during 1965 and 1966, rose to $10 billion in 1967, and to $15 billion in 1968. (See fig. 2.) Early in 1969 acquisitions reached an annual rate of over $20 billion. Although merger activity declined in the second and third quarters of 1969, for the first 9 months of the year the rate of acquisitions was nearly 6 percent above that of the corresponding period of 1968.

These developments in manufacturing are part of a broader picture of concentration and centralization in the American economy. Firms engaged in retail distribution, insurance, broadcasting, newspapers, and the utilities have also been caught up in this movement. Many railroads have not only merged with one another in recent years, but have increasingly created holding companies as vehicles for expanding into manufacturing and other sectors of the economy. Banks have created one-bank holding corporations for the purpose of enlarging the scope of their operations beyond their traditional areas of activity. Large petroleum companies have not only consummated a long series of mergers within various branches of

Figure 2

Number and Total Assets of Manufacturing and Mining Firms Acquired, 1948-1968



the energy industries, but, through additional mergers, have become widely diversified conglomerates.

The current merger movement, as this study reveals, had done more than merely increase the concentration of industrial assets in a relatively few multi-market corporations. There is evidence of important and increasing connecting links between this growing centralization of industrial resources in a few hundred vast corporations and the performance of competition in particular markets.

The report further indicates the following:

(1) There are numerous special reasons why many business managers prefer to grow by merger rather than by internal growth. While not all of the motives for merger are entirely clear, the balance of evidence so far available lends little support to the view that the current merger movement reflects, in substantial measure, efforts to exploit opportunities to improve efficiency in resource allocation. On the contrary, there are abundant indications that certain institutional arrangements involving tax and accounting methods, aided by speculative developments in the stock market, have played a major role in fueling the current merger movement. In

this context, there is little reason to expect significant social benefits to flow from the continuation of current trends.

(2) The largest corporations have generally acquired very profitable companies, frequently those holding leading positions in their industries, while small companies have usually acquired less profitable firms. Most large company acquisitions have not involved purchases of unprofitable companies operating on the fringes of their industries, or foothold acquisitions of smaller companies that might be expanded in a fashion that, as some have hoped, might challenge the market position of dominant firms, thereby bringing about deconcentration.

(3) The great majority of merging companies operated in the same broad industry group, e. g., all chemical products or all food and kindred products, and many of these so-called product related mergers may have eliminated important potential competitors.

(4) Many large acquiring corporations are multi-market enterprises that hold commanding positions in one or more highly concentrated industries and enjoy high, noncompetitive profits in some markets. The multi-market firm, therefore, has the power to employ competitive strategies seldom available to single-market or less diversified firms. This study, together with the Commission's experience in several litigated cases, reveals that conglomerate-derived market power may be used to defend or expand the firm's position in ways inimical to competition.

(5) The conglomerate form of organization also created the opportunity and incentive to engage in extensive reciprocal buying the practices of "You buy from me if I buy from you." This study shows that when large conglomerate corporations engage in this practice, there is a tendency to create more rigid pricing behavior, heighten barriers to entry, discourage potential large competitors from entering each other's markets, and entrench firms in dominant positions in highly concentrated markets. Although the impact of the various advantages enjoyed by large conglomerate corporations often eludes precise measurement, the evidence discloses that (a) manufacturing industries are becoming increasingly dominated by the large conglomerate corporations, and (b) that there is a tendency for market concentration to increase in industries where these corporations are major participants.

(6) The country's largest industrial corporations are increas-

ingly linked with other leading domestic and international corporations through numerous management ties, intercorporate stock holdings, and joint ventures. These numerous industrial linkages and contact points among large corporations which are often actual or potential competitors tend to create an atmosphere conducive to a recognition of mutual interdependence and the exercise of forbearance in the market process.

Auto Insurance Studies

During 1970, the Bureau of Economics completed two research studies for the Department of Transportation: Structural Trends and Conditions in the Automobile Insurance Industry and Insurance Accessibility for the Hard-to-Place Driver. These studies constituted the Federal Trade Commission's contribution to the 2-year study of the motor vehicle insurance and compensation system which the Congress in Public Law 90-313 directed the Department of Transportation to conduct.

The first of these staff studies, Structural Trends and Conditions in the Automobile.. Insurance Industry, was published in April 1970. Its purpose was to outline current trends in such important structural characteristics as the number and size distribution of firms in the industry, the degree of specialization and diversification of auto insurers, geographic distribution of firms and the trend in mergers and acquisitions over the past 10 years. These characteristics determine in large part the nature and degree of competition in providing auto insurance services to the public.

There has been a trend toward increasing concentration among the four and eight largest auto insurers in recent years even though concentration is not as high in this industry as in some manufacturing industries. The 20 leading auto insurer groups accounted for 46.3 percent of national earned auto premiums in 1955 and 56.6 percent in 1968. In 1955, the four largest groups accounted for 18.7 percent of earned auto premiums nationally, and by 1968 their share had increased to 27 percent. Concentration tends to be somewhat higher in narrower geographic markets and varies inversely with the size of the market as measured by premium volume. Market shares of leading firms, on the average, are higher in low-volume States than they are in high-volume States where the market is larger and will support more firms.

Data developed in this study indicate that companies using the direct distribution method in contrast to independent agency system realized higher premium growth rates from 1955 to 1968. Even though the rate of growth was quite uneven among individual insurers in both groups, the simple average compound growth rate for seven direct writers among the 20 largest auto insurance groups of 1968 was 10.3 percent compared to 9.1 percent for 13 agency writers. Four direct writing groups and five agency groups had a growth rate of over 10 percent during the period. A high rate of growth for an individual company or group is usually associated with merger activity or direct distribution.

The auto insurance industry in recent years has experienced a decrease in the number of new entrants and an increase in the number of exits. The number of new auto insurers incorporated declined from an average of 15 per year nationally for the 10-year period 1955-64 to an average of 6.5 new entrants per year during the period 1965-68. Furthermore, 14 of the 26 new entrants in the recent period were closely affiliated with an existing insurance company.

The second of the staff studies, Insurance Accessibility for the Hard-to-Place Driver, May 1970, was also published by the Department of Transportation. Its major purpose was to study the problems of insurance access and price variability for the hard-to-place driver, that is, the driver who is unable to obtain insurance from standard market companies.

The major finding of this report was that the hard-to-place driver problem is not confined to those with the poorest driving records. Both theory and market data indicate that the hard-to-place problem is a byproduct of underwriting competition and an integral part of the competitive functioning of the automobile insurance industry. Insurers do not find it profitable to grant coverage to all applicants because even with the most highly developed rating classification systems, there are still some drivers within individual classifications who have distinctly higher than average loss potential. Insofar as the rating system fails to account for these differences, there is an opportunity for insurers to increase their profits through selective underwriting. Refusals to insure new applicants, refusals to renew, and cancellations are manifestations of these efforts.

Although problems of estimation exist with respect to the size of the hard-to-place problem, current data indicate that 8 percent of all automobile insurance business in 1968 could be classified as nonstandard. In some lines, the share was as high as 10 percent. Assigned risk plans, originally conceived as the solution to assure insurance availability, currently serve no more than half of the substandard liability market.

In addition to the problem of access, the hard-to-place driver often faces extreme price variability in attempting to obtain insurance coverage. In some territories, prices attain levels which seriously tax the driver's ability to pay.

Drivers refused coverage in the voluntary standard market have two alternatives in obtaining automobile insurance. They can obtain coverage through the assigned risk plans or in the voluntary substandard market, neither of which is wholly satisfactory.

Assigned risk plans differ significantly from State to State. All plans do not provide access for all licensed drivers, nor do all plans provide the full range of first and third-party coverages. Liability coverage, moreover, is often restricted to minimum limits. Additionally, marketing arrangements for assigned risks are inferior to voluntary market arrangements.

The failure of existing assigned risk plans to serve as an insurance placement safety valve for drivers designated as unacceptable risks in the voluntary market led to the emergence of a group of companies specializing in serving high-risk drivers. While voluntary market high-risk specialists offer broader ranges of coverage than many of the assigned risk plans, too often their insurance is of inferior quality. Substandard insurers have accounted for virtually all of the insolvencies occurring in the property and liability insurance industry. These insolvencies have resulted in losses to policyholders and have also left some innocent accident victims uncompensated. In addition, there is evidence that the claims service provided by high-risk specialists is frequently inferior to that of the standard companies.

Virtually all concerned with problems in the automobile insurance industry agree that significant improvements are needed in arrangements to serve the hard-to-place driver. Two major proposals -one by the National Association of Insurance Commissioners and the other by the National Industry Committee on Automobile Insur-

ance Plans-are under active consideration. Both recommend that eligibility standards be modified to require only a valid driver's license and the payment of the premium. Coverages are broadened to include both higher liability limits and first-party coverages. A provision for installment premium financing is also suggested. A number of State plans have already been modified to reflect these proposals.

Beyond improvements in existing assigned risk plans, even more fundamental modifications have been suggested to improve marketing access and to reduce the delays and inconvenience now involved in obtaining coverage under assigned risk plans. These proposals call for the establishment of a "placement facility" through which any applicant with a valid driver's license could receive immediate binding from any agent he approached. Such a facility now exists in Canada and serves to eliminate any basis for rejection or separate treatment of high-risk drivers.

In recent years, Federal legislation has been introduced to eliminate variations in the degree of insolvency protection among the States. Though the methods of achievement differ, the proposals share the common goal of preventing loss to innocent accident victims due to insurer insolvency.

A final aspect of the hard-to-place problem considered by the report relates to the problem of ability to pay and its conflict with the position that assigned risk plans or any alternatives be self-supporting. The goal of a self-supporting program may be self-defeating, in that the higher the price of insurance, the more individuals will be encouraged to carry inadequate coverages. Some individuals, moreover, will be able to obtain insurance only at the cost of great financial hardship. A limited degree of subsidization may have to be accepted if we are to minimize the uninsured motorist problem.

In summary, the report found that the hard-to-place problem is not a temporary phenomenon but an inevitable and undesirable consequence of the competitive process. Because of the compulsory nature of automobile insurance, equitable means must be found for serving the hard-to-place driver at a cost be can afford.

Economic Evidence

During the fiscal year 1970 some 70 investigations were undertaken with the aid of staff members of the Division of Economic

Evidence of the Bureau of Economics. About 53 of these investigations concerned the competitive aspects of mergers and acquisitions. Economists prepared analyses and exhibits, testified as expert witnesses at hearings, and helped in other ways with the complaints and findings in nine formal cases, all involving acquisitions. An additional 10 matters were reviewed by staff members for probable economic effects where compliance with Commission orders was the problem.

Fiscal 1970 ended the first full year of operation of the Premerger Notification Program and it proved that this program is, among other things, a valuable screening tool for the enforcement of section 7 of the Clayton Act. Under this program, all corporations subject to FTC jurisdiction and having total assets of $250 million or more are required to file a special report whenever an acquisition of a firm with $10 million or more in total assets is made by any of them. For purposes of this program, an acquisition may be either of assets or of 10 percent or more of voting stock. By the end of fiscal 1970, about 180 special reports had been received from the acquiring companies, of which about 21 were subject to further investigation. An additional 45 were cleared for investigation to the Department of Justice. The information received under this program also will be used to study trends in mergers and acquisitions among large firms.

An industry-wide survey of the food distribution industry, conducted under section 6(b) of the FTC Act, was completed. The data received will be related to those gathered in an earlier survey to assess the changes in industry structure. Two staff reports, each concerned with an industry segment, were finished and were used to evaluate the effects of numerous acquisitions in each industry segment studied.

Financial Statistics

Four issues of the Quarterly Financial Report for Manufacturing Corporations were published during fiscal year 1970. Each issue was based on uniform, confidential, quarterly financial statements collected from a scientific cross section (i.e., probability sample) of 11,000 of the 200,000 manufacturing corporations in the United States. The purpose of this sample survey is to produce, each calendar quarter, an income statement and balance sheet for all manu-

factoring corporations in all manufacturing industries. These quarterly estimates account for more than 97 percent of all manufacturing activity, more than one-half of all corporate profits, and nearly one-third of the national income. Each issue contains estimated national totals for 13 items of income and retained earnings, 14 asset sizes, 16 items of liabilities and stockholders' equity, and 43 financial and operating ratios (including profit rates on sales and equity) for each of 34 industry groups and 10 asset sizes of corporate manufacturers.

For the first time, the number of multi-billion-dollar corporate manufacturers exceeded 100, compared with 87 in 1969 and 78 in 1968. The 102 manufacturing corporations with assets exceeding $1 billion in the first quarter of calendar year 1970 accounted for $268 billion or 48 percent of the total assets of all corporate manufacturers. An additional 218 firms, each with assets in excess of $250 million, accounted for $107 billion or an additional 19 percent. A total of 609 firms, each with assets exceeding $100 million, accounted for $420 billion or 76 percent of the total assets of all corporate manufacturers. Table 2 gives the relative importance of

TABLE 2.-Relative importance of the largest manufacturing corporations, first quarter 1970

Asset size	Total assets of all manufacturing corporations[1]		Number of manufacturing corporations
	Million dollars	Percent	
$1,000 million and over----------	267,733	48	102
$250 million to $1,000 million----------	106,706	19	218
$100 million to $250 million----------	45,085	8	289
$100 million and over----------	419,527	76	609
$50 million to $100 million----------	26,012	5	366
$25 million to $50 million----------	19,134	3	533
$10 million to $25 million----------	20,001	4	1,202
$10 million and over----------	484,671	87	2,710
Under $10 million----------	69,375	13	([2])
All asset sizes----------	554,046	100	([3])

[1] Figures are rounded and will not necessarily add to totals.

[2] Not available.

[3] Approximately 200,000.

SOURCE: FTC-SEC Quarterly Financial Report for Manufacturing Corporations, first quarter 1970, p. 61.

the largest manufacturing corporations, classified by asset size, in the first quarter of calendar year 1970.

Rates of return (profit rates after taxes) on stockholders' equity for all manufacturing corporations averaged 11.5 percent for the four quarters of 1969, compared with 12.1 percent in 1968 and 11.7 percent in 1967. Comparable rates for the first and second quarters of calendar year 1970 were 9.2 percent and 10.4 percent, respectively.
Profits after taxes per dollar of sales, by asset size, are given in table 3.

TABLE 3.-Profits after taxes per dollar of sales, by asset size. (Cents)

Asset size	1Q 1969	2Q 1969	3Q 1969	4Q 1969	1Q 1970	2Q 1970
All manufacturing corporations	4.9	5.1	4.6	4.6	4.0	4.4
Under $1 million	2.4	3.4	2.8	1.4	1.7	2.4
$1 million to $5 million	2.5	3.2	3.0	2.4	1.6	2.4
85 million to $10 million	3.5	3.3	2.8	2.8	1.9	2.4
$10 million to $25 million	3.1	3.8	3.3	3.2	2.3	2.9
$25 million to $50 million	4.0	4.2	3.7	3.7	2.8	3.2
$50 million to $100 million	4.0	4.3	4.1	4.0	3.3	3.4
$100 million to $250 million	4.7	4.9	4.5	4.6	3.9	4.0
$250 million to $1,000 million	4.9	5.0	4.7	4.9	4.3	4.3
$1,000 million and over	6.8	6.7	6.2	6.3	5.7	6.0

FIELD OPERATIONS

The authority of the Bureau of Field Operations was expanded during fiscal 1970. Under the Commission directive of February 24, 1970, the field offices were authorized to serve not only as the investigative arm of the Commission as heretofore, but also to undertake administrative trial of cases of a regional nature and to perform all duties concomitant with adversary proceedings in such matters.

The delegation of authority to conduct trials has stimulated the field attorneys to greater interest. There were, by the end of the fiscal year, a number of cases in the field offices which would go to trial shortly. The authority to try cases in the field offices will undoubtedly increase the number of complaints issued and trials held in the next fiscal year.

Authority to issue subpoenas where informants refuse to cooperate in furnishing information pertinent to investigations was also conferred upon the attorneys in charge of the field offices and their assistants.

The major field activity for the fiscal year continued to be case investigation and settlement. During fiscal year 1970, two new consumer statutes to be administered by the Commission went into effect, i.e., the Truth-in-Lending and the Fair Packaging and Labeling Acts. Field offices bore a major share of the effort of the Commission in getting the implementation of these statutes underway. A large scale educational effort, particularly in Truth-in-Lending, devolved upon the field offices. At the same time, however, enforcement of the disclosure and other requirements of the Truth-in-Lending statute and Regulation Z issued pursuant thereto was also initiated.

Enforcement work by field offices under the Truth-in-Lending statute consisted largely of correcting lesser violations where these were discovered and the creditor voluntarily agreed to comply with

the requirements of the statute. There were 10,129 minor violations investigations instituted under Truth-in-Lending during the fiscal year, in which 8,331 corrections were obtained. Issuance of complaints was recommended by the field in nine Truth-in-Lending cases. Field office attorneys delivered speeches on Truth-in-Lending requirements to interested groups on 691 occasions during the past fiscal year. Attendance at these meetings ranged from 25 to 1,000 persons.

During fiscal year 1970, the Commission undertook two new programs designed to broaden the participation of Federal, State and local law enforcement agencies as well as private individuals and private and quasi-public organizations in consumer problems and to bring together those agencies and individuals concerned with consumer problems in a coordinated effort to protect the buying public from advertising and selling practices which are fraudulent, deceptive and unfair. Field offices have had a significant role in organizing and coordinating the operation of these programs.

The first of these programs involves the Consumer Protection Coordinating Committees which ultimately will be established in each of the principal metropolitan areas in the Nation where the bulk of retail business is concentrated.

Priority was given during the year to organizing these committees in the 15 largest metropolitan areas. Chicago, Los Angeles, San Francisco and Washington, D.C., had committees in actual operation by the close of the fiscal year. Preliminary agreement to set up such committees in Detroit, Philadelphia, New York and Boston had been reached. Negotiations were still in the formative stages with regard to Pittsburgh, Cleveland, St. Louis, Minneapolis-St. Paul, Dallas-Fort Worth, and Charlotte-Greensboro-Columbia.

The coordinating committees in each instance will function by means of regular meetings of representatives from participating enforcement agencies at one table in order to:

- Bring to bear Federal, State and county or city laws to stop fraudulent and deceptive practices;
- Pool information to establish priorities for efforts in both education and enforcement;
- Give each metropolitan area a one-stop complaint service in that a complaint filed with any of the major agencies in the

area will be transferred automatically to the right one without further effort;

- Determine the patterns of violations in an area or larger segment of the country;
- Avoid duplication of effort among consumer protection agencies and develop a "quick response" liaison system among them.

As each Consumer Coordinating Protection Committee is established, arrangements are made for feeding all consumer complaints received by the constituent enforcement members into an automated data processing system which will disclose not only the patterns of violations and the most common deceptive practices being engaged in, but also will identify the types of businesses in which these violations occur, as well as the specific business concerns against which such complaints are being lodged. Printouts of the complaints are made for the use of all constituent members in the enforcement of their laws and regulations. The FTC field office in whose territory a particular committee is located furnishes the necessary staff personnel for coordinating and managing the activities of the committee.

The second consumer program inaugurated by the Federal Trade Commission through its field offices during fiscal year 1970 involves Consumer Advisory Boards to provide an additional input to the Commission. The boards are made up of representatives of consumer, business and other community groups concerned with consumer problems. The first Consumer Advisory Board was organized and established in New Orleans. Its membership consists of, among other groups, the local better business bureau, the bar association, legal services, the Louisiana Consumer League, CORE and the New Orleans Retail Grocers Association. At the end of fiscal 1970, other boards were in process of being organized in Seattle, San Francisco, Chicago and other cities.

The Consumer Advisory Boards are expected to fulfill at least three functions which will advance the public interest in effective enforcement of laws designed to protect the consumer. First, the board will provide an additional informed source of consumer complaints for consideration by the Commission. Second, it will provide a useful vehicle by which the Commission can implement its consumer information program by channeling information to

large groups of consumers represented by the board. Third, the board can provide the Commission with insight into novel or emerging consumer problems which may require legislative remedies or provide a basis for direct action in the form of test cases.

Complaints filed with private and quasi-public agencies such as OEO assistance offices, Urban Leagues and Better Business Bureaus will not be entered into the Coordinating Committees' complaint system. Yet, complaints made to such agencies can also reveal patterns of violations as important as those disclosed by the complaints filed with law enforcement bodies.

In reverse, the members of the advisory boards can contribute to law enforcement processes by providing important channels of information to interested consumer groups for such consumer education materials as may, from time to time, be published by the Commission.

Field offices were authorized to start preliminary investigations without prior permission from headquarters in order to expedite handling of complaints received from the public. This program was begun in October 1969 on a 6-month pilot project. Before the 6-month period had expired, the program had pointed to sufficient promise and success for the Commission to feel warranted in incorporating this function in the enlarged responsibilities and duties which the Commission approved in February 1970 for the field offices.

During the approximately 9 months of the fiscal year 1970 that this program was in effect, the field offices started preliminary investigation in 46 restraint of trade matters and 601 deceptive practice cases. Of these, 22 restraint of trade and 303 deceptive preliminary investigations have been completed. Minor violations corrections were obtained in a total of 132 matters and full-scale investigations were recommended in 59 situations. Preliminary investigations were closed in 134 instances where the investigation failed to reveal merit to the complaint or Commission jurisdiction ill the matter. Where appropriate, the latter were referred to other Federal or local enforcement agencies. The preliminary investigation program is growing steadily, particularly since consumers and businessmen and others are becoming more conscious of the Federal Trade Commission as a consequence of the wide publicity being given to its work and enforcement.

Preliminary investigations are a bridge between the informal activities of the field offices and the formal full-scale investigations. The informal activities of the field offices during fiscal 1970 involved some 60,359 telephone, written and personal contacts from the public with the field offices as compared to 30,662 for fiscal 1969. This was an increase of 29,797 or 96.8 percent over fiscal 1969. Furthermore, the field offices furnished speakers to groups interested in the work of the Federal Trade Commission on 1,023 occasions, and there were 5,536 other contacts initiated by the field offices with the public.

Included in the information inquiries to the field offices were 2,939 written applications for complaints of which 1,544 were disposed of by the field and 1,342 referred to headquarters in Washington for handling. There were also 9,225 oral applications for complaint received in the field offices, of which 8,935 were handled by the field and 290 referred to headquarters for disposition. The 12,163 written and oral applications for complaint for the fiscal year 1970 represented a 32-percent increase over the 9,234 applications for complaint received during fiscal 1969.

The number of formal seven-digit investigations completed by the field offices during fiscal 1970 was 861 or 4.66 per attorney. This was a decrease from the 957 investigations completed in fiscal 1969.

The total workload of formal seven-digit investigations in the field in fiscal 1970 was 1,211 cases. This included the 606 cases referred to the field offices for investigation during the fiscal year. There was a decrease of 172 cases from the 778 cases referred to the field offices for investigation in fiscal 1969.

The field offices negotiated and prepared Affidavits of Discontinuance in 44 deceptive practice, nine textile and fur and 14 restraint of trade cases for a total of 67 cases. It also negotiated Affidavits of Discontinuance in 32 other matters which were prepared at headquarters.

In addition the field staff prepared proposed complaints and orders in 41 deceptive practice, eight textile and fur and five restraint of trade matters in which the field offices negotiated consent settlements. In another 40 deceptive practice and 156 textile and fur, or a total of 196 cases, headquarters referred proposed corn-

plaints and orders to the field staff for negotiation of consent orders with proposed respondent.

Fifty investigational subpoenas prepared in the field were served in cases in which respondents refused information required in investigations undertaken by the field offices.

HEARING EXAMINERS

Although continuing to reflect the Commission's emphasis on the achievement of law observance by means other than formal litigation, the number of cases handled by hearing examiners during the fiscal year 1970 showed an increase of nearly 30 percent over the previous fiscal year. In fiscal year 1970, the litigation workload totaled 66 cases, compared to 51 in fiscal year 1969.

As the year began, 27 cases were pending before hearing examiners. To this caseload, 34 new cases were added, and five cases were reopened or remanded. Of this total of 66 cases, 28 cases were disposed of-17 by litigation and 11 by consent settlement or by other procedures-leaving 38 cases pending at the end of the year. Of the 24 cases disposed of during the previous fiscal year, 16 were litigated and eight were settled or otherwise terminated.

The increased caseload resulted in an increase in the number of days devoted to evidentiary hearings and to preheating conferences -278 days in fiscal year 1970, compared to 247 days in fiscal year 1969.

As in previous years, the special capabilities of the hearing examiners were used in various other ways by other government entities. In addition to adjudicating Commission cases, hearing examiners sat as special masters for U.S. courts of appeals and heard cases for various other Federal agencies.

GENERAL COUNSEL

The Office of General Counsel serves as the Commission's attorney. Its principal functions are to represent the Commission before the courts; provide advice on matters of law, policy and procedure to the Commission, individual Commissioners and the agency's operating bureaus; and to analyze laws proposed by the Congress and State legislatures which have bearing upon the Commission's mission.

Court Actions

In fiscal 1970, the General Counsel's Office was involved in a substantial amount of litigation. Court proceedings which involve the agency arise in a number of ways. Any individual or company against which the Commission has issued an order to cease and desist may petition a U.S. circuit court of appeals to review and set aside the order. In the event of disobedience to a Commission subpoena, the Commission may request the Department of Justice to file a petition for enforcement in a U.S. district court. The Commission may also request the Department of Justice to institute civil proceedings to compel the filing of a special or annual report ordered by the Commission and to recover forfeitures for failure to comply with the Commission's order. Disobedience of a court's decree enforcing a Commission order or subpoena may be punished by the court as a contempt. Collateral suits challenging the Commission's jurisdiction or methods of procedure may be brought under certain circumstances in a U.S. district court. The Commission's interest in these collateral matters is defended by the Department of Justice with the assistance of the Commission's General Counsel. It is the Department's usual practice to refer such cases to the local U.S. attorneys who in turn accept the services of the General Counsel with respect to briefing and pleading the Commission’s position.

The more significant area of litigation during the fiscal year involved the defense of Commission orders before the appellate

courts. Eleven cases involving appeals from Commission cease and desist orders were briefed and argued. Eleven decisions were rendered by the circuit courts, 10 affirming, or sustaining in substantial part, Commission determinations.

These appellate matters covered the principal areas of the agency's law enforcement responsibility. Three cases involved anticompetitive mergers. In Seeburg Corp. (D. 8682), the U.S. Court of Appeals for the Sixth Circuit affirmed a Commission divestiture order nullifying the merger of the Nation's fourth and sixth largest manufacturers of vending machines. In United States Steel Corp. (D. 8655), the court sustained a Commission finding that U.S. Steel's vertical acquisition of a large New York City ready-mixed concrete producer had substantial anticompetitive effects. The court also rejected the respondent's contention that it had sufficiently established a "failing company" defense. The matter was remanded to the Commission, however, to afford the respondent an opportunity to meet exculpatory criteria delineated by the Supreme Court in a decision rendered subsequent to the Commission's determination. Finally, in Ibex Corp. (D. 8622), the Sixth Circuit upheld the Commission's ruling that the merger between Abex (formerly American Brake Shoe Co.) and S. K. Wellman Co., the country's largest producer of sintered metal friction materials, violated section 7 of the Clayton Act.

Other important court decisions involving Commission rulings, together with the status of significant cases pending at the year's end, are outlined in appendix A to this report.

Legal Services

In addition to representing the agency in court, the General Counsel provides day-to-day legal services to the Commission and its operating bureaus. The bulk of this advisory work concerns assignments calling for detailed research and recommendations on matters of law, policy and procedure. Such matters run the gamut of consumer protection, antitrust, and administrative law. By way of illustration, assignments handled by the General Counsel in fiscal 1970 involved:

Preparation of a comprehensive study and analysis of the most effective procedures for the Commission to follow under the Flammable Fabrics Act in order to remove immediately

from distribution (by seizure, impounding or otherwise) fabrics discovered to be dangerously flammable; and

Review and study of Commission procedures designed to ensure maximum compliance with the requirements of the "Jencks" rule and the Freedom of Information Act.

The Office completed over 200 assignments from the Commission requesting legal memoranda on evidentiary, jurisdictional and procedural questions, or requiring the drafting or revision of Commission reports and other public statements. It also analyzed and made recommendations to the Commission on 144 requests from the public under the Freedom of Information Act for access to the agency's information and documents.

Federal-State Cooperation

During the year, the General Counsel's Office administered the Commission's program of Federal-State cooperation. He purpose of this program is to serve and facilitate cooperative effort with State and local government officials and, thus, increase protection of the consuming public from unfair and deceptive commercial practices. It seeks to accomplish this objective in four ways: (1) By forming coordinating groups of Federal and State government officials; (2) by supplying information to State and local agencies engaged in consumer protection efforts; (3) by referring complaints to them; and (4) by offering Commission assistance when requested, with proposals for new legislation against unfair practices.

In 1970, the Commission made considerable progress toward establishing a system of effective cooperation between the Commission and the agencies of State governments. Consumer Protection Coordinating Committees composed of key Federal, State, and local law enforcement officials were formed in Chicago, Los Angeles and San Francisco. By bringing together consumer experts from the three government levels, these committees will be able to combine experience, power and jurisdictional authority, thus assuring swift identification and resolution of consumer problems. Some of the goals of these committees are to: Pool information to establish priorities for efforts in both education and enforcement; give consumers a one-stop complaint service; identify and analyze patterns

of violations; and develop a "quick response" liaison system among consumer agencies.

At the close of the fiscal year, work was continuing toward the establishment of consumer protection committees in other major metropolitan areas such as New York City, Detroit, Philadelphia and Boston.

Legislation

The General Counsel furnished advice and comment to the Commission on 92 bills which were pending in Congress. In addition to drafting the Commission's legislative recommendations, the Office also prepared proposed amendments of pending consumer protection legislation at the request of congressional committees. Frequent conferences with Members of Congress and with representatives of executive agencies were held to assist the preparation of legislation and presentation of views of Commission members in legislative hearings.

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE TO THE COMMISSION DURING FISCAL YEAR 1970

For fiscal year 1970, funds totaling $20,889,213 were available to the Commission. Public Law 91-126 authorized $19,500,000; and Public Law 91-305, title II, provided $1,000,000. Also, title III of Public Law 91-305 authorized $389,213 for increased pay costs related to the Federal Employees Salary Act of 1970. The Commission's adjusted obligational authority for 1970 was $20,785,993, which reflects a transfer of $103,220 to the General Services Administration for space rental.

Obligations by activities, fiscal year 1970

1.	Maintaining competition:	
	Investigation and litigation	$ 6,648,184
	Economic and financial reports	1,189,955
	Trade regulation rules and industry guides	401,118
	General activities and special projects	181,609
	Total-Maintaining competition	8,420,866
2.	Consumer protection:	
	Investigation and litigation	5,834,889
	Consumer credit enforcement	1,300,774
	Fair packaging and labeling	273,106
	Flammable fabrics, textile, wool, and fur enforcement	1,994,726
	Trade regulation rules and industry guides	802,238
	General activities and-special projects	128,057
	Total-Consumer protection	10,333,790
3.	Executive direction and policy planning	578,603
4.	Administrative management	1,452,734
	Total obligations-FY 1970	20,785,993

APPENDIX (A)

FTC Cases in the Courts

The following is a summary of significant Federal Trade Commission cases before the courts during fiscal 1970, together with a brief discussion of what is involved in each case or groups of cases.

RESTRAINT OF TRADE CASES

The most significant restraint of trade decisions in fiscal 1970 were in the merger field (section 7 of the Clayton Act). In three cases, the Sixth Circuit (Cincinnati) upheld the Commission's determination that challenged acquisitions were unlawful:

Abex Corp. (D. 8622) involved the acquisition by Abex (formerly American Brake Shoe Co.), a large diversified manufacturer of railroad products, hydraulic products, castings and friction materials, of the S. K. Wellman Co., the Nation's largest manufacturer of sintered metal friction materials. The court affirmed the Commission's findings that sintered metal friction materials constituted a valid product submarket and that the acquisition may have adverse competitive effects. The court also upheld the Commission's order of divestiture and the inclusion in the order of a proviso prohibiting Abex from acquiring any other company engaged in the manufacture or sale of sintered metal friction materials for 10 years without the prior approval of the Commission. Abex has filed a petition for certiorari.

The Seeburg Corp. (D. 8682) involved the acquisition by Seeburg, a manufacturer of a broad line of vending machines, of Cavalier Corp., a vending machine manufacturer engaged largely in the production of machines used to dispense soft drinks in bottles and cans. The court sustained the Commission's finding of probable adverse competitive effect, agreeing that the appropriate product markets within which to consider such effects were (1) the overall market for vending machines of all types and (2) the submarket for bottle vending machines. The court also upheld the Commission's order of divestiture and its 10-year ban on future acquisitions of vending machine manufacturing concerns. (Subsequent to this decision, the Commission filed with the court an emergency petition requesting the entry of a protective order preventing Seeburg from dissipating the assets of Cav-

alier pending divestiture. At the close of the fiscal year, the court had entered a temporary restraining order pending resolution of the petition.) Seeburg is expected to file a petition for certiorari.

While Abex and Seeburg were "horizontal" mergers, the Sixth Circuit also decided an important "vertical" case this year in the Commission's favor, United States Steel Corp. (D. 8655). This case involved the acquisition of Certified Industries, the largest nonintegrated consumer of portland cement among ready-mixed concrete manufacturers in the New York City metropolitan area, by United States Steel, the largest nonintegrated supplier of portland cement in that area. In an exhaustive opinion, the Sixth Circuit sustained the Commission's finding that portland cement and ready-mixed concrete were appropriate product markets or relevant lines of commerce within which to test the acquisition, and affirmed the Commission's determination of probable anticompetitive effects. On the latter issue, the court discussed in detail and applied "several functional factors" as indicia for determining legality: (1) The degree of foreclosure of competitors from market segments previously open to them; (2) the "nature and purpose" of the vertical arrangement between the companies involved; (3) the likely effects of the acquisition upon local industries and small businesses; (4) the level and trend of industry concentration, including a trend toward domination by a few leading firms; (5) the existence of a trend toward vertical integration and consolidation in previously independent industries; and (6) the ease with which potential entrants might overcome entry barriers and compete effectively with existing operating companies.

The United States Steel case is especially noteworthy as regards the court's consideration of the Commission's ruling upon the so-called "failing-company" doctrine. It was the contention of United States Steel that the acquired ready-mix company would have failed but for its intervention, and that the acquisition was, therefore, immunized under the Supreme Court's 1930 decision in International Shoe v. Federal Trade Commission. It was the Commission's conclusion that under the law this defense was not absolute, but merely relative, and that the continued existence of Certified as a giant, vertically integrated concern would adversely affect competitive conditions in the cement and ready-mixed concrete industries more so than the elimination of Certified from the market by business failure. In a carefully reasoned opinion, the court analyzed the "failing-company" defense in light of the Supreme Court's 1969 decision in Citizens Publishing Co. That decision, the Court noted, emphasized the "present narrow scope" of the doctrine and specified three essential conditions for its application: (1) The evidence must show that the financial condition and resources of the acquired company are so impaired that "it faced the grave probability of a business failure;" (2) there is "no other prospective purchases' than the acquiring corporation; and (3) the prospects of the acquired company's emerging from reorganization as a viable competitive unit must be "dim or nonexistent." The court of appeals observed that the Commission's decision

in the instant case was entered prior to the Supreme Court's clarifying ruling in Citizens Publishing, and that neither the Commission nor the company had devoted sufficient consideration to criteria (3) in that opinion. It therefore remanded the case to the Commission to afford United States Steel the opportunity of satisfying its burden of producing evidence that the acquired company's prospects of successfully surviving bankruptcy or similar proceedings were "dim or nonexistent." And, in this connection, the court specifically ruled that under Citizens Publishing the "failing-company" defense must be measured from the point of inception of the vertical arrangements between United States Steel and Certified, i.e., when the cement producer be-an to assist the ready-mix company in financing its cement purchases, rather than from the point where complete integration of these companies was accomplished by acquisition.

In another significant section 7 development occurring near the close of the fiscal year, the Commission in OKC Corp. (D. 8802) authorized the General Counsel to file in the Fifth Circuit (New Orleans) an emergency petition for a preliminary injunction under the "All Writs" Act. The petition seeks to prevent an acquiring cement producer from selling off the ready-mix business or other assets of the acquired company, Jahncke Service, Inc., and from making material changes in the business organization and structure of Jahncke pending disposition by the Commission of its administrative complaint challenging the acquisition. This is the first attempt by the Commission to utilize its power to seek such injunctions under the "All Writs" Act since the Supreme Court's ruling in the landmark Dean Foods case.

Pending at the close of fiscal 1970 in the Eighth Circuit (St. Louis) was a petition for review filed in Mississippi River Corp. (D. 8657). In that case, the Commission had found that Mississippi's acquisition of three leading ready-mixed concrete manufacturers in Kansas City, Memphis and Cincinnati violated section 7.

In restraint of trade cases involving violations of section 5 of the Federal Trade Commission Act, there were two decision in fiscal 1970 by courts of appeals. In Lenox, Inc. (D. 8118), the Second Circuit (New York) upheld the Commission's finding that Lenox utilized unlawful resale price-maintenance agreements with its dealers in the distribution of the company's fine china dinnerware, giftware and artware. The court held, however, that the Commission's order should be modified to permit Lenox to enter into "fair trade" agreements in States where such contracts are lawful under the McGuire Act. In George T. Robertson and Samuel E. Southerland (members of the Henderson Tobacco Market Board of Trade, Docket 8684), involving the allocation of selling time among tobacco warehouses, the Fourth Circuit (Richmond) dismissed the petition for review on jurisdictional grounds. The most significant feature of the court's opinion was its discussion of the procedures which are required at the formal litigative

stage of an administrative proceeding, as contrasted with informal procedures the Commission may utilize at the nonadjudicative compliance stage.

In addition, the Supreme Court denied the petition for certiorari filed on the Commission's behalf in Columbia Broadcasting System, Inc. (D. 8512). In that case, the Commission had found an unlawful lessening of competition in violation of section 5 in the mail-order record club market by virtue of the company's restrictive licensing agreements with competitors. (In fiscal 1969, the Seventh Circuit (Chicago) affirmed the Commission's order in part, reversed in part and remanded the case to the Commission for additional evidence and further consideration.)

There were two important section 5 restraint of trade cases pending in courts of appeals at the close of the fiscal year following the submission of briefs and oral argument: Sperry & Hutchinson Co. (D. 8671) in the Fifth Circuit (New Orleans), which involves various restrictive practices in the distribution and redemption of trading stamps, and L. G. Balfour Co. (D. 8435) in the Seventh Circuit (Chicago), which involves monopolization and other unfair acts and practices in the national college fraternity insignia products market, and additional unfair practices in the sale and distribution of high school class rings.

In the area of discriminatory pricing under the Robinson-Patman Act in fiscal 1970, the Supreme Court in Tri Valley Growers (formerly Tri-Valley Packing Association, Ds. 7225 and 7496) denied a petition for certiorari filed by Tri Valley to review a fiscal 1969 decision of the Ninth Circuit (San Francisco) sustaining the Commission's findings of violation of sections 2(a) and (d) in the distribution of canned fruits and vegetables and modifying the section 2(d) portion of the Commission's order to accord with the Supreme Court's Fred Meyer decision.

Two discriminatory pricing matters were pending in courts of appeals at the close of fiscal 1970: The Kroger Co. (D. 8663) in the Sixth Circuit (Cincinnati), in which the company has challenged the Commission's finding that it knowingly induced unlawful discriminatory prices in the purchase of dairy products in violation of section 2(f) of the Clayton Act; and National Biscuit Co. (D. 5013) in the Fifth Circuit (New Orleans). In the latter case, following the commencement of an investigational proceeding by the Commission in 1967 to determine whether Nabisco was complying with the Commission's 1954 modified order, Nabisco filed a petition for review (as permitted under the Clayton Act for orders issued prior to the 1959 "finality act") contending that the Commission's original order against it, issued in 1944 pursuant to a stipulation of facts, was a "consent" order, and that, accordingly, the procedures utilized by the Commission in 1954 to modify the order were improper. The court has remanded the case to the Commission to conduct evidentiary hearings on the 1944 consent order question and has denied all subsequent attempts by the Commission to "throw in the towel."

DECEPTIVE PRACTICE CASES

There was considerable court activity in fiscal 1970 in deceptive practice cases under sections 5 and 12 of the Federal Trade Commission Act.

The Supreme Court denied petition for certiorari in Sydney N. Floersheim (D. 8721), declining to review a decision of the Ninth Circuit (San Francisco) upholding a Commission order prohibiting the dissemination of deceptive "debt collection" forms.

There were several decisions in courts of appeals: In All-State Industries of North Carolina, Inc. (D. 8738), the Fourth Circuit (Richmond) affirmed the Commission's determination that a company engaged in the sale and installation of aluminum siding, windows, doors and appurtenant fixtures had employed "bait and switch" and other unlawfully deceptive selling methods. The court upheld the Commission's order in its entirety, including a provision directing the company to affirmatively disclose to prospective purchasers that notes of indebtedness executed in connection with its retail sales may be assigned to third parties against whom the purchasers' claims or defenses based upon the sales transaction may not be legally available.

In P. F. Collier & Son Corp., P. F. Collier, Inc. and Crowell Collier and Macmillan, Inc. (D. 7751), in which the Commission found unlawfully deceptive practices in the door-to-door sale of encyclopedias, the Sixth Circuit (Cincinnati) upheld the Commission's order as to all corporations involved. The court held: (1) That the parent Crowell Collier so dominated and controlled the acts of its two subsidiaries that the entire operation formed essentially a single enterprise; (2) that the dissolved subsidiary Collier & Son should be included in the order so as to reach its successor, Collier, Inc., through which the unlawful practices may be carried on in the future; and (3) that the latter corporation was "merely a disguised continuance" of its dissolved predecessor and was, therefore, properly subject to the Commission's order. The court also upheld the requirement in the Commission's order directing that petitioners' salesmen affirmatively state the true nature of their business when approaching prospective customers in their homes.

In Lester S. Cotherman and William F. Sullivan (officers of Consolidated Mortgage Co., D. 8723), in which the Commission found misrepresentation in the advertising and offering of money-lending services, the Firth Circuit (New Orleans) rejected petitioners' challenges as to the Commission's jurisdiction on the grounds that these objections had been waived before the agency. The court ruled that even the question of subject-matter jurisdiction can be waived unless an agency has "patently traveled outside the orbit of his authority." The court also held that the Commission had properly rejected petitioners' "abandonment" defense, and that is was warranted in including petitioner Sullivan in the order in a personal capacity. The Commission, however, was directed to modify the order in certain respects to permit petitioners to make truthful statements concerning the terms of their money-fending services.

In Joseph L. Portwood (D. 8681) the Tenth Circuit (Oklahoma City) upheld the Commission's finding that petitioners, in operating a philatelic stamp business, made various misrepresentations with regard to unsolicited merchandise mailed to prospective purchasers. The court, however, directed modification of the affirmative disclosure requirement in the Commission's order so as to clarify the recipient's obligations on receipt of such material.

In Cinderella Career & Finishing Schools, Inc., Stephen Corporation, and Vincent Melzac (D. 8729) the Commission had found various false and deceptive advertising representations in connection with offering to train young women for careers as airline stewardesses or department store buyers. The District of Columbia Circuit, however, set aside the Commission's order for two reasons: (1) That the Commission had failed to properly consider the entire record in overturning the hearing examiner's dismissal of the complaint; and (2) that Commissioner Dixon, Chairman of the 'Commission at the time the case was decided, improperly participated in the decision in view of certain statements contained in a speech given by him while the matter was before the Commission for decision. The court remanded the case to the Commission for further consideration without Mr. Dixon's participation. The Solicitor General has declined to permit the Commission to seek certiorari.

Section 5 deceptive practice cases pending in courts of appeals at the close of fiscal 1970 were: Leon A. Tashof (d/b/a New York Jewelry Co., D. 8714) in the District of Columbia Circuit, an important "pilot" case involving misrepresentations as to prices and to the extension of credit terms in the framework of "ghetto" merchandising; Windsor Distributing Co. D. 8773) in the Third Circuit (Philadelphia), involving deceptive statements in connection with the sale of vending machines; Star Office Supply Co. (D. 874,9) in the Second Circuit (New York), involving misrepresentations in connection with the sale of office stationery; and Thermochemical Products, Inc. (D. 8725), in the Third Circuit (Philadelphia), in which the Commission had found various deceptive representations in connection with the sale and distribution of paint. In the latter case the court has issued an injunction pendente lite requiring compliance with the Commission's order pending final disposition of the review proceeding.

In the area of "drug" advertising under section 12 of the Federal Trade Commission Act, the Sixth Circuit (Cincinnati) decided S.S.S. Co., Inc. (D. 8646), in the Commission's favor. In that case, the Commission bad found that the company had falsely advertised the efficacy of its tonic and tablets as regards medical conditions associated with iron deficiency. The court reviewed the evidence establishing that only a small minority of people suffered from tiredness or lack of energy due to iron deficiency anemia and that in most of such cases these symptoms were attributable to other ailments, for the treatment of which S.S.S. medications were not a remedy. It held that the Commission was fully justified in ordering that any representations that S.S.S. preparations were beneficial in treating tiredness symp-

toms must be limited to those symptoms caused by a deficiency of one or more of the vitamins or iron contained in the preparations, and further, that such representations must be accompanied by affirmative disclosure by the company that the great majority of persons experiencing tiredness symptoms will derive no benefits from its preparations.

In Grove Laboratories (division of Bristol-Myers Co., D. 8643) the Fifth Circuit (New Orleans) sustained the Commission's determination that the company had deceptively advertised the efficacy of its hemorrhoid preparation "Pazo." The court held, however (in line with the Sixth Circuit's fiscal 1969 decision in American Home Products Corp.), that the Commission's order was too broad and should be modified to permit the company to represent that its products may afford temporary relief from pain and itching and help reduce swelling associated with hemorrhoids in many instances. The case was remanded to the Commission for the entry of a modified order. In the American Home Products case (D. 8641) the Commission's modified order was upheld this year by the Sixth Circuit with minor language changes. In addition, there are three similar "hemorrhoid" cases which have been held in abeyance in the Second Circuit (New York) pursuant to stipulation of the parties pending the final resolution of American Home Products, viz., Humphrey's Medicine Co. D. 8641, E.C. Dewitt & Co. (D. 8642) and The Mentholatum Co.

COLLATERAL SUITS AGAINST THE COMMISSION FOR INJUNCTIVE AND OTHER RELIEF

During fiscal 1970, the Commission was again faced with numerous court suits challenging its jurisdiction or methods of procedure:

In Textile and Apparel Group, American Importers Association (File 201-12-1), the Supreme Court denied petition for certiorari filed on the Commission's behalf to review a decision of the District of Columbia Circuit holding that the promulgation of rule 36 under the Wool Products Labeling Act was beyond the Commission's authority under that statute. (In substance, rule 36 provided for the temporary detention of imported wool products by the Bureau of Customs to permit the Commission to require tests as to fabric content.)

The complaint filed in Bristol-Myers Co. (Trade Reg. Rule 215-14) sought to prevent the Commission from proceeding with its pending analgesic rulemaking proceeding on jurisdictional grounds, and to compel the Commission to produce documents from its files for the company's inspection and use under the Public Information Act. The District of Columbia Circuit, this year, upheld the district court's fiscal 1969 dismissal of the jurisdictional issue, but overturned the lower court on the question of the disputed documents and remanded the case for further consideration.

In Lehigh Portland Cement Co. (D. 8680) the Fourth Circuit (Richmond) affirmed the judgment of the U.S. District Court for the Eastern

District of Virginia granting the Commission's motion for summary judgment and denying a cross-motion for summary judgment filed by Lehigh. Lehigh had contended, in a complaint for declaratory judgment and injunction, that the Commission's section 7 proceeding against it was prejudiced by press releases and by the Commission's industry-wide investigation concerning 'vertical integration in the cement and ready-mixed concrete industries.

In Papercraft Corp. (D. 8779) the U.S. District Court for the Western District of Pennsylvania granted the Commission's motion for summary judgment and denied the motion for summary judgement filed by plaintiff. Papercraft had sought an order requiring the Commission to exercise its power under section 6(b) to conduct a study of the gift-wrapping market for Papercraft's use in defending a section 7 proceeding brought by the Commission.

In Maremont Corp. (D. 8763) the U.S. District Court for the Northern District of Illinois dismissed the company's complaint for declaratory judgment and injunction on the grounds of failure to exhaust administrative remedies. Maremont had alleged that the conduct of the Commission's administrative proceeding against it was de riving the company of various statutory and constitutional rights. The case has been appealed to the Seventh Circuit (Chicago).

The complaint in Genuine Parts Co. (File 671 0673) in the U.S. District Court for the Northern District of Georgia (Atlanta division) sought an injunction against the enforcement of a Commission section 6(b) order requiring a special report, and also sought a declaratory judgment to the effect that the order was harassing, oppressive and unreasonable and, therefore, in violation of plaintiff's constitutional rights. The Commission filed a counterclaim seeking enforcement of its order and moved for summary judgment. Following hearings, the court directed enforcement of substantially all of the Commission's order.

In Safeway Stores, Inc. (File 691 0079), the U.S. District Court for the Northern District of Texas was requested to enjoin the Commission from further proceedings upon a subpoena issued against Safeway in an investigation by the Commission. Safeway contended that such proceedings would conflict with an outstanding consent judgment issued against it by that court in a case brought by the Justice Department. The court, while denying the Commission's motion to dismiss Safeway's application, held that the Commission had the right to proceed with its investigation but that any information obtained could not be utilized in attempting- to secure compliance with the consent order.

In Joseph Stancato, the U.S. District Court for the Central District of California dismissed an action for mandamus filed to compel the Commission (and the Justice Department) to institute an investigation and prosecution of certain corporations. At the close of the fiscal year the action was still pending on petition for rehearing.

The complaint in L. C. Balfour Co. (D. 8435) in the U.S. District Court for the Eastern District of Virginia contends that the Commission's final order in Docket 8435 was based in part on evidentiary matters going beyond the time period stipulated to by the parties in settling an earlier suit by Balfour in that court. 'Me court has denied Balfour's motion for preliminary injunction. This action is being conducted contemporaneously with Balfour's appeal from the merits of the Commission's section 5 decision now pending in the Seventh Circuit (Chicago).

In Jewel Companies, Inc., et at. (Ds. 8786-8790), several brokers and retailers of fresh fruits and vegetables brought an action in the U.S. District Court for the Northern District of Illinois to prevent the Commission from prosecuting administrative proceedings against them charging violations of section 2(c) of the Clayton Act. The court denied the Commission's motion to dismiss, and the Commission filed an interlocutory appeal in the Seventh Circuit (Chicago). The matter has been argued and awaits decision by the appellate court.

In Continental Baking Co. (D. 8309), the U.S. District Court for the District of Delaware this year rejected the Commission's motion to amend the court's fiscal 1969 interlocutory order and to issue its final judgment so as to permit appellate review. His suit involves problems connected with the Commission's efforts to determine whether Continental Baking is complying with the Commission's order issued against it in the Bakers of Washington case. (In ruling upon Continental's petition for relief pendente lite, the court has held (erroneously, we believe) that civil penalties for violating the Commission's order may not be assessed until the Commission first rules whether the conduct outlined in Continental's compliance reports violates the order and informs the company of this.)

There were several other collateral matters pending in the courts at the close of fiscal 1970. In Sydney N. Floersheim (D. 8721) the complaint in the U.S. District Court for the District of Columbia seeks a declaratory judgment to the effect that certain "debt collection" forms submitted to the Commission for approval, but thereafter rejected, are in fact lawful and in compliance with the Commission's order. Floersheim also seeks a preliminary stay of civil penalty proceedings during the pendency of the litigation. An earlier action brought by Floersheim and Payment Demand, Inc., alleging that the Commission was prematurely attempting to enforce the cease and desist order, was dismissed by the court on the grounds of mootness.

Pending in the U.S. District Court for the District of Columbia was American Brands Inc. (D. 8799), in which various motions of the parties are waiting hearing. This suit charges the National Association of Broadcasters and the three major networks with violation of the antitrust laws in refusing to broadcast certain of the company's cigarette advertising. Plaintiff also seeks to enjoin the prosecution of a Commission complaint alleging false advertising of the tar content, of certain of the company's cigarettes.

A complaint filed in Central Dairy Products Co. in the U.S. District Court for the District of Columbia seeks the disclosure, pursuant to the Public Information Act, of information contained in certain of the Commission's investigational files for the use of Central Dairy in connection with private antitrust litigation. The Commission had granted disclosure of part of the requested material but has withheld disclosure of other portions.

In Koppers Co. (D. 8755) in the U.S. District Court for the Eastern District of Virginia, the Commission has filed its answer to the complaint following the denial of Koppers' motion for a temporary restraining order. The company has sought to enjoin the Commission's section 5 proceeding alleging that certain interlocutory rulings have deprived it of needed discovery in that case.

Also pending at the close of fiscal 1970 were three cases seeking declaratory and injunctive relief against the Commission (and the Board of Governors of the Federal Reserve System), alleging that a portion of Regulation Z promulgated under the Truth-In-Lending Act is unauthorized: N. C. Freed Co. and International Roofing Corp. (File 99-90) in the U.S. District Court for the Western District of New York; Gardner and North Rooling and Siding Corp. and Surfa Shield Corp. (File 99-89) in the U.S. District Court for the District of Columbia; and Continental Oil Co. in the U.S. District Court for the District of Delaware.

SUITS FOR ENFORCEMENT OF COMMISSION SUBPOENAS AND ORDERS TO FILE REPORTS

During fiscal 1970, the Commission with the permission of the Department of Justice initiated judicial proceedings to enforce 19 subpoenas, and there was considerable activity in such cases in both district courts and courts of appeals.

The U.S. District Court for the Northern District of Alabama ordered enforcement of a Commission subpoena in American Aluminum Corp. (Norman J. Foucha, File 662 3701) and also denied a motion for stay. Following respondent's appeal to the Fifth Circuit (New Orleans), compliance with the subpoena was effected, and the appeal was withdrawn.

In three instances, efforts to obtain compliance with Commission subpoenas involved contempt proceedings. In International Creditors Corp. (Melvin G. Rabin, File 685 8121), the U.S. District Court for the Eastern District of Pennsylvania directed compliance with the Commission's subpoena. Stay pending appeal was denied by the Third Circuit (Philadelphia) and, later, by the Supreme Court. Following Mr. Rabin's further refusal to comply, proceedings for both civil and criminal contempt were instituted in the district court. Thereafter, compliance was obtained, and the appeal was dismissed. The contempt proceedings remained pending at the close of the year, although the Commission has moved to discharge the proceeding for civil contempt.

In Triangle Aluminum Industries, Inc., (Gene Daniel, Jean Elrod, Sol Blaine, File 672 3394,), the U.S. District Court for the Northern District of Georgia (Atlanta division) ordered enforcement of the Commission's subpoenas. Subsequently, two of the individuals involved complied with the subpoenas (Daniel and Elrod). Mr. Blaine appealed to the Fifth Circuit (New Orleans), but motions for stay were denied at both the district and circuit court levels. Following Mr. Blaine's further refusal to comply, the Commission moved for civil contempt in the district court. Following the dismissal of his appeal by the court of appeals, compliance in pertinent part was obtained and the district court dismissed the contempt citation.

In Harry Stroiman (d/b/a Empire Builders Co., File 662 3513), the U.S. District Court for the Southern District of Iowa adjudged Mr. Stroiman in civil contempt for failure to obey its order requiring him to comply with the Commission's subpoena and imposed a fine of $100 a day for every day of noncompliance, reserving the question of criminal contempt. Thereupon, Mr. Stroiman complied and the court dismissed the criminal proceeding. Mr. Stroiman's appeal to the Eighth Circuit (St. Louis) from the civil contempt judgment was pending at the close of fiscal 1970.

The Commission was also active in fiscal 1970 in seeking enforcement of "third party" subpoenas, i.e., subpoenas issued at the request of respondents to Commission complaints to assist in the preparation of their defenses. In Lehigh Portland Cement Co. (D. 8680), petitions were filed in the U.S. District Court for the District of Columbia to enforce 13 subpoenas issued at Lehigh's request. Subsequently, eight subpoenas were complied with, and the proceedings as to these were dismissed without prejudice. In one instance, an order of enforcement was obtained but a hearing date on the return had not been set as of the close of the year. As to the four remaining subpoenas, the District Court directed compliance and denied motions for stays pending appeal. On appeal, however, the District of Columbia Circuit vacated the judgment below and remanded the matter to the Commission for further consideration. The Court of Appeals held that the Commission, in approving a protective order designed to safeguard the receipt and use of the sensitive competitive information requested, had failed to sufficiently articulate its reasons for approving a protective order less stringent than the order it had earlier approved in a case involving similar facts.

In Koppers Co. (D. 8755), another "third party" matter, the U.S. District Court for the District of Columbia ordered compliance with a subpoena issued at Koppers' request directed to United States Pipe & Foundry Co. Dissatisfied with the extent of the court's ruling, Koppers requested the Commission to appeal. Upon the Commission's refusal, Koppers moved for leave to intervene in the District Court and sought to have Pipe & Foundry held in contempt for failure to comply with the court's order. The Commission opposed both motions and the court denied them. Koppers then at-

tempted to secure such relief in the District of Columbia Circuit but was similarly unsuccessful.

Pending at the close of fiscal 1970 in the District of Columbia Circuit was an appeal filed in Lehigh Portland Cement Co. (Ralph L. Browning, D. 8680). The U.S. District Court for the District of Columbia has directed enforcement of the Commission's subpoena as to this officer of Lehigh, and compliance, in fact, has already been obtained.

Other subpoena enforcement proceedings pending at the close of fiscal 1970 were Southern Cross Discount Corp. (Emanuel Gladstone, File 682 3401) in the U.S. District Court for the Northern District of Georgia (Atlanta division), A & R Agency (File 020 8716) in the U.S. District Court for the Northern District of Illinois (Eastern Division), and Morison and Foremost-McKesson (File 691 0009) in the U.S. District Court for the Northern District of California.

In addition to subpoena matters, there were four court actions in fiscal 1970 involving efforts to obtain compliance with Commission section 6(b) orders calling for the filing of special reports: Milwaukee Boiler Mfg. Co. (File 34-66-918) in the U.S. District Court for the Eastern District of Wisconsin; Marx Baking Co. (File 41-42-050) in the U.S. District Court for the District of Colorado; Chicago Casket Co. (File 39-44-280) in the U.S. District Court for the Northern District of Illinois; and Victor Gloves, Inc. (File 23-44-515) in the U.S. District Court for the Southern District of New York. In two of these cases, Milwaukee and Marx' court enforcement orders were entered pursuant to consent, while the other two matters, Chicago Casket and Victor, were pending at the close of the year.

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