

Annual Report of the

FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended  
June 30, 1974

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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 sixtieth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended June 30, 1974. The Commission regrets the delay which has occurred in transmission of this report.

By direction of the Commission.

PAUL RAND DIXON  
Acting Chairman.

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

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## THE YEAR IN SUMMARY

During the past year, effort has been devoted to evaluating, consolidating and improving many of the innovations and initiatives of recent years. Programs - such as advertising substantiation - have been streamlined and strengthened; some staff responsibilities - for developing trade regulation rules, for example - have been restructured. Our regional operations have been thoroughly reviewed, and we are placing new emphasis on delegating greater authority to the regional offices.

Staff resources have been reallocated, and we are giving higher priority to examining anticompetitive behavior, particularly in the food and energy industries. This evaluation of programs and reallocation of staff resources, using an increasingly more refined cost/benefit analysis, should be an ongoing process. The increased emphasis on programs rather than arbitrary structural divisions is also reflected in the organization of this report.

Fiscal year 1974 has been an eventful one for the Commission, both in Congress and in the courts. The Commission received broad new powers under the Alaska Pipeline Act in November, 1973. These powers are already helping the Commission to function more independently and effectively. Specifically, the legislation increased the civil penalty for violating a final order of the Commission from \$5,000 to \$10,000. It also gave the Commission broader authority to: initiate injunctive actions, represent itself in court after consultation with the Attorney General, and seek necessary information from the business community after GAO review without the necessity of prior clearance by the Office of Management and Budget.



In February, the Supreme Court denied certiorari in *National Petroleum Refiners Association v. Federal Trade Commission*, thereby allowing to stand the decision of the court of appeals affirming in full the Commission's rulemaking powers. This has helped to remove the uncertainty as to the Commission's authority that has lingered since the United States District Court for the District of Columbia first ruled in 1972 that the Commission did not have authority under the Federal Trade Commission Act to promulgate substantive rules regarding business conduct.

Late in fiscal year 1974, the Commission forwarded to the General Accounting Office its proposed forms for the Line of Business Reporting Program. This program will increase the quality and the utility of economic information acquired by the Commission for aggregate analysis and publication.

This past year also has seen the Commission respond to the public's demand for a freer flow of information from government to the people - so that the people will better understand our decisions and how they were made.

#### FISCAL YEAR 1974 PROGRAM ACCOMPLISHMENTS

Major program accomplishments for the Commission for fiscal year 1974 are discussed by mission as follows:

- . MAINTAINING COMPETITION
- . CONSUMER PROTECTION
- . ECONOMIC ACTIVITIES
- . EXECUTIVE DIRECTION AND POLICY PLANNING
- . ADMINISTRATION AND MANAGEMENT

## MAINTAINING COMPETITION

Antitrust compliance activities in fiscal 1974 included accomplishment of 17 divestitures under 11 separate Commission orders, and the certification of two new civil penalty cases.

A total of 28 complaints and 26 final orders were issued by the Commission in the competition area in fiscal 1974, as compared with 31 complaints and 28 orders in fiscal 1973. The antitrust litigation workload totaled 38 cases by the end of fiscal 1974, and the Commission issued final determinations in 14 adjudicated cases.

At the beginning of fiscal 1974, 261 formal antitrust investigations were pending; 55 formal investigations were initiated during the fiscal year. As a result of the management control procedures, such as periodic evaluation of deadline assignments, the backlog of inactive investigations was reduced, and the Bureau of Competition, by the end of fiscal 1974 had 101 open and active formal investigations. An additional 74 antitrust matters were also open in the Regional Offices at year end.

The following discussion of activities and fiscal year 1974 accomplishments is divided into many program areas. In addition, sections are included on regional office and General Counsel support and on Administrative Law judge participation.

## The Energy Program

The energy program has two main components: (1) the petroleum industry litigation (the Exxon case) and (2) Congressionally-mandated study of competitive conditions in the energy sector, including specific related investigations. The Exxon complaint (D. 8934), issued in fiscal 1974, charges the eight largest vertically integrated petroleum refining companies with having combined to monopolize petroleum refining and with the maintenance of a noncompetitive market structure in petroleum refining in the Eastern and Gulf Coast states and part of the Mid-Continental areas of the United States in violation of Section 5 of the Federal Trade Commission Act. Preliminary post-complaint, pretrial preparation was begun during fiscal 1974.

The energy study is the result of a specific Congressional mandate and a special appropriation of \$1 million for fiscal 1974 for a thorough study of competitive conditions in the energy industries. A new Energy Unit was established in the Commission's Bureau of Competition during fiscal 1974 to conduct the energy study and to coordinate antitrust enforcement efforts in the energy field. Work in progress at the end of fiscal 1974 included an investigation into the accuracy of reporting of reserves in the natural gas industry, investigation of inter-fuel mergers and inter-fuel competition, and action against interlocking directorates among energy companies.

## The Food Program

During fiscal 1974, the Commission initiated a program to consider application of antitrust enforcement in the food industry. This program is divided into five discrete functional segments, corresponding to the different functions in the food process from the farm to the consumer. These are (1) grower-producer, (2) manufacturer-processor, (3) distribution and marketing (except retailing), (4) retailing, and (5) food commodities.

### Grower-Producer Area

In the grower-producer area, fiscal 1974 accomplishments included issuance of a complaint against the Central California Lettuce Producers Cooperative (D. 8970) alleging that the respondent association and its members have acted illegally to fix and control the prices at which lettuce is sold. The Commission also issued a final order dismissing litigation in the United Brands matter (D. 8835), involving the acquisition of fresh produce growers.

### Manufacturer-Processor Area

Fiscal 1974 accomplishments in the manufacturer-processor segment of the food program included a consent order against PepsiCo, Inc. (D. 8903) requiring the divestiture of Rheingold, Inc. A Commission cease and desist order was issued against Adolph Coors Company (D. 8845) prohibiting territorial restrictions, resale price maintenance and other anticompetitive practices in the distribution of beer, and a final Commission order was entered dismissing the Commission's complaint against General Mills, Inc. (D. 8836) involving the acquisition of Gorton, a seafood producer. A complaint was issued challenging the acquisition by Deltown Foods, Inc. (D. 8951) of the Sealtest assets and trademarks from the Kraftco Corp. in the New York City area, and a proposed complaint was issued challenging the acquisition by the Coca-Cola Bottling Company of New York of the Franzia Brothers Winery.

Other matters in litigation at the end of fiscal 1974 involving food manufacturers or processors included the Commission's complaint against Kellogg Company, et al. (D. 8883), challenging practices allegedly resulting in a shared monopoly among the four largest firms in the breakfast cereal industry. Substantial pretrial discovery and trial preparation was accomplished in this matter during fiscal 1974. An initial decision was filed in the matter of ITT Continental Baking Company (D. 7880), which involves the reopening of a Commission order concerning acquisitions in the baking industry.

Commission activity during fiscal 1974 in the food manufacturer and processor area also included continuing enforcement of industry compliance with the Commission's published policy statement concerning product extension mergers in grocery manufacturing and issuance of an enforcement policy statement concerning mergers in the dairy industry. Finally, intensive industry--wide investigations continued in other segments of the food industries.

#### Distributing and Marketing Area

Fiscal 1974 accomplishments in the distribution and marketing segment of the food program included Commission acceptance of a consent order prohibiting the Kroger Company (C-2453) from inducing discriminatory prices from suppliers of grocery store products. In addition, at the end of fiscal 1974 eight cases were pending challenging allegedly anticompetitive territorial restrictions imposed by soft drink syrup manufacturers on soft drink bottlers. Also pending was a case against the Great Atlantic.& Pacific Tea Company (D. 8866) challenging allegedly preferential pricing and price fixing relating to private label dairy products. Finally, investigations were continuing at the end of fiscal 1974 involving allegedly anticompetitive mergers and specific anticompetitive practices by food marketers and distributors.

#### Food Retailing Area

In the area of food retailing, fiscal 1974 accomplishments include the initiation of a major investigation of retail food prices and continued monitoring of mergers and acquisitions among food retailing firms pursuant to the Commission's published statement of enforcement policy with respect to such mergers.

The retail pricing study constitutes a major initiative looking into the relationship between food prices and market concentration and competitive practices on a national basis through intensive examination of carefully selected metropolitan markets.

## The Health Care Program

In fiscal 1974, the Commission's staff targeted health care as a significant sector of the economy warranting intensive antitrust enforcement investigation, and a new health care program was established to address competitive problems in health care industries. It was determined that investigative efforts should focus on three areas: prescription drugs, medical laboratories and hospital supplies. Several investigations in the health care area were begun in fiscal 1974.

## Industry-Wide Antitrust Enforcement

The "industry-wide" category covers all pending matters (other than those that are subsumed under the energy, food and health care programs) that involve broad investigations or litigation focusing on the competitive performance of an entire industry rather than merely on the specific practices or conduct of particular firms. Activity in this area during fiscal 1974 included pretrial discovery and preparation for trial of the Commission's complaint against the Xerox Corporation (D. 8909), which involves alleged monopolization of the office copier market, and investigation of possible monopolization of the manufacture and distribution of replacement automobile crash parts. In addition, several industry-wide investigations were initiated during fiscal 1974 including an investigation into the competitive conditions and practices in the title insurance, car and toy industries.

## Mergers and Joint Ventures

The Commission's merger enforcement program was redefined in fiscal 1974 to include all merger enforcement activity apart from that included in the energy, food and health care programs. Fiscal 1974 was marked by both the continued development and refinement of the merger screening and evaluation process, which

has greatly reduced nonproductive manpower expenditures in merger investigation, and by further development and refinement of the law relating to permissible merger activity. The Commission's commitment to merger law enforcement remained high during fiscal 1974. Specific accomplishments during the fiscal year included the following:

Continuing enforcement of the Commission's Statement of Enforcement Policy with Respect to Vertical Mergers in the Cement Industry resulted in the issuance of a proposed complaint against Gifford Hill & Company, Inc. challenging a series of acquisitions of ready-mix concrete companies and producers of concrete products. Trial of the Commission's complaint against Ash Grove Cement Company (D. 8785), which also challenged acquisitions of ready-mix concrete producers, was completed during fiscal 1974.

A cease and desist order was issued in the matter of St. Joe Mineral Corp. (D. 8892), involving the acquisition of Quemetco in the lead industry. During adjudication, the acquired firm was sold to a third party; the Commission issued an order prohibiting future acquisitions for a specified period of time.

Consent orders were accepted by the Commission in the matter of Amerada Hess Corporation, et al. (C-2456), involving the acquisition of an oil pipeline facility (and provisionally accepted prior to establishment of a formal energy program within the Commission), and in the matter of Rockwell International Corp. (D.8842) requiring the divestiture of its knitting machine manufacturing division.

In the area of interlocking directorates, consent orders were accepted barring such relationships between General Electric Company (C-2477) and Chrysler Corporation (C-2484). In addition, the Commission provisionally accepted a consent order prohibiting interlocking directorates between Lear Siegler, Inc. and Royal Industries, Inc.

New merger complaints were issued, resulting in pending litigation in the following matters:

Liggett & Myers, Inc. (D. 8938) - challenging the acquisition of Ready Foods Corp., in the dog food industry.

RSR Corp. (D. 8959) - challenging the acquisition of Quemetco, Inc., in the lead industry.

Walter Kidde & Co., Inc. (D. 8957) challenging an acquisition in the door lockset industry.

British Oxygen Co. Ltd., et al. (D. 8955) - challenging the acquisition of Airco, Inc. in the industrial gas industry. During fiscal 1974, the United States District Court for the District of Delaware in Civil Action No. 74-3 1, granted a preliminary injunction against joint operation of the companies pending the resolution of the Commission's administrative complaint.

Proposed complaints were issued in the following merger matters during fiscal 1974:

Anaconda Company - challenging the acquisition of Systems Wire & Cable, Inc., a company engaged in the manufacture and sale of rigid and semi-flexible co-axial cables.

Fruehauf Corporation - challenging the acquisition of Kelsey-Hayes Company, a manufacturer of wheels and braking devices.

Jim Walter Corp. - challenging the acquisition of Panacon Corporation, a manufacturer of asphalt roofing materials.

The following other merger matters were in adjudication at the end of fiscal 1974:

Litton Industries, Inc. (D. 8778) - which was remanded for further hearings on the issue of relief concerning Litton's acquisition of Triumph-Adler in the typewriter industry.



Eaton, Yale & Towne, Inc. (D. 8826) - involving an acquisition of McQuay-Norris in the automobile engine parts industry. An initial decision was filed in fiscal 1974, and the matter was on appeal to the Commission.

American General Insurance Co. (D. 8847) - involving the acquisition of Fidelity and Deposit Company of Maryland.

Budd Co. (D. 8848) - involving the acquisition of Gindy Manufacturing Co. in the truck trailers industry - initial decision filed in fiscal 1974.

Warner-Lambert Co. (D. 8850) - involving the acquisition of Parke, Davis & Co. in the drug industry - hearings completed in fiscal 1974.

Beatrice Foods Co. (D. 8864) - involving the acquisition of paint applicator producers - on appeal to the Commission at the end of fiscal 1974.

Heublein, Inc. (D. 8904) - acquisition of United Vintners in the wine industry.

Associated Dry Goods (D. 8905) - involving the acquisition of L. S. Ayres department stores.

Retail Credit Co., et al. (D. 8920) - involving the acquisitions of a number of credit bureaus.

Kaiser Steel Corporation (D. 8878) - involving the acquisition of MSL Industries, Inc. in the steel tubing industry.

#### Horizontal Restraints and Relationships

The area of horizontal restraints concerns those aspects of antitrust directed toward prevention of agreements or relationships among competitors that result in artificial restraints on com-

petitive vitality. This classification covers matters involving horizontal restraints which are not programmatically incorporated in the food, energy or health care programs or industry-wide enforcement programs.

One focus of Commission activity in this area during fiscal 1974 involved restrictive provisions in shopping center leases. In the matter of Gimbel Brothers, Inc. (D. 8885), a complaint challenging shopping center leasing restrictions, was withdrawn from adjudication and a consent settlement was approved and entered by the Commission.

In the matter of Tysons Corner Regional Shopping Center (May Department Store, Woodward & Lothrop, Inc.) (D. 8886), a complaint involving shopping center leasing restrictions was withdrawn from adjudication and consent settlements were approved and entered with respect to three respondents; the matter was returned to trial with respect to the fourth respondent.

Finally, in the matter of Food Fair Stores, Inc., et al. (D. 8935), a complaint was issued also challenging allegedly anticompetitive shopping center leasing restrictions.

Another focus of Commission activity in fiscal 1974 in the area of horizontal restraints and relationships was parallel pricing. The Commission issued a complaint against Boise Cascade Corp., et al. (D. 8958) challenging parallel conduct in adhering to delivered prices based upon rail rates from the Pacific Northwest for plywood shipments from mills located in other areas of the country. Consent order settlements were approved and entered as to two of the seven respondents; an adjudicative complaint was issued as to five respondents.

## Vertical and Distributional Restraints

Cases in this area, including cases (other than food, energy and health care) involving general enforcement of the Robinson-Patman Act as well as gasoline dealer coercion, anticompetitive practices in franchising, fair trade abuses, anticompetitive practices in hearing aid distribution, and pyramid selling, involving major pretrial and trial work in fiscal 1974. Specific accomplishments during fiscal 1974 included the following:

In the fair trade area, the Commission issued a complaint against Rubbermaid, Inc. (D. 8839) alleging illegal resale price maintenance, abuses of fair trade agreements, and restrictive distributional agreements. Also, in the matter of Corning Glass Works (D. 8874), the Commission denied respondent's motion for reconsideration of a final Commission order prohibiting abuses of the fair trade laws.

In the area of anticompetitive practices in hearing aid distribution, a series of complaints were issued in fiscal 1974. All but one of these was settled by consent order. Consent orders were provisionally accepted by the Commission in the matter of Textron, Inc. (D. 8927) and Dahlberg Electronics, Inc. (D. 8929). The complaint against Beltone Electronics Corp. (D. 8928) was in trial at the end of fiscal 1974.

In the area of gasoline dealer coercion, cases were in litigation at the end of fiscal 1974 involving Phillips Petroleum Co. (D. 8930) and Standard Oil of Ohio (D. 8910). In addition, consent orders were accepted by the Commission requiring Union Oil Company of California (C-2471) and Standard Oil Company of California (C-2470) to end anticompetitive restrictions on car dealers relating to the use of credit cards and requirements agreements.

In the franchising area, the Commission issued a cease and desist order against the Chock Full O'Nuts Corp. (D. 8884) prohibiting anticompetitive restrictions on franchisees.

In the area of anticompetitive reciprocal dealing practices, the Commission accepted consent orders prohibiting such practices in matters involving Diamond Shamrock, Inc. (G2493), Occidental Petroleum Corp. (G2492), and the Southland Corp. (D. 8915).

Fiscal 1974 accomplishments involving other anticompetitive distributional practices included acceptance of consent orders involving Hammermill Paper Co. (C-2513), prohibiting anticompetitive resale and dealer restrictions in the printing and fine paper fields, Fashion Two Twenty, Inc. (G2520), prohibiting anticompetitive selling practices and agreements by manufacturer of cosmetics sold through a party-plan merchandising program. In addition a complaint was issued against Sharp Electronics, challenging territorial restrictions and restrictive customer limitations upon office equipment dealers in the sale of electronic calculators, and a consent order was provisionally accepted involving Colt Industries prohibiting anticompetitive practices which have the effect of enforcing the manufacturer's suggested retail prices on its dealers in the sale of firearms.

Finally, in the area of Robinson-Patman Act enforcement, apart from activities encompassed within the food program, the Commission accepted or provisionally accepted five consent orders in fiscal 1974. The order against Foremost-McKesson, Inc. (G2427), prohibits inducing or receiving discriminatory promotional payments or services and offering anticompetitive inducements in connection with trade shows. A similar order against Bergen Brunswig (G2463) prohibits inducing and receiving discriminatory prices and services by a wholesaler of druggist's sundries in connection with its trade shows. An order involving Consolidated Foods Corp. (G2454) prohibits price discrimination in the sale of decorative fabric trimmings and accessories. In addition, the Commission provisionally accepted consent agreements barring Ponder & Best, Inc. from discounting in price or the granting of promotional allowances or services in the sale of photographic equipment, and Lawry's Foods, Inc. from discriminating in the granting of promotional allowances in the sale of food

products. Pending at the end of fiscal 1974 was litigation involving the Commission's complaint against Holiday Magic (D. 8934) challenging alleged unlawful price discrimination and restrictions by a multilevel marketer of cosmetics. An initial decision was filed and the matter was on appeal to the Commission. Other Robinson-Patman matters are included in the food program.

## Compliance

During fiscal year 1974, 17 divestiture proposals were accepted by the Commission in 11 different cases. These include the divestiture of cement producing assets of the former Cement Division of BASF Wyandotte Corp. to a newly-organized Michigan corporation, Wyandotte Cement Inc., Detroit, Michigan; divestiture of two ready-mix concrete firms in Kansas City, Missouri to two different acquirers, Howard Corp., Bosie, Idaho, and WBW Sand and Material Co.; divestiture of a Nephi, Utah rubber hose and V7-belt plant to a new entrant, NRP, Inc., a Delaware corporation; divestiture of the Explosives Division of ICI America, Inc., to Atlas Powder Company, a wholly-owned subsidiary of Tyler Corporation, Dallas, Texas; divestiture of a periodical and paperback business, Iowa and Illinois News Agency, Inc., in Davenport, Iowa; divestiture of vending sales volume in six different market areas to William Ramsay (individual), Automated Services, Inc., Kentuckiana Food Service Co., Bruce O. Benedict (individual), Calderon Bros. Vending Machines, Inc., and CRH Catering Co.; divestiture of two lines of men's toiletries, BURLEY and MAN-POWER; and approval of a license and technical agreement toward the creation of a new entrant into the automotive brake friction materials business, Hayes-Albion Corp., Jackson, Michigan. Recommendations concerning applications for Commission approval of proposed acquisitions as required by existing Commission orders also were prepared by the staff and acted on by the Commission in four separate matters.

Seventeen investigational hearings were held to determine the manner and extent of compliance with various cease and desist

orders. The cases, among others, included O. K. Rubber Welders, Inc. (D. 8571); The Magnavox Company (D. 8822); and Georgia Pacific Corporation and Tri-State Mill Supply Co., Inc. (D. 2356).

As of the beginning of fiscal 1974, eight civil penalty matters were pending at various stages. During the year two additional penalty cases, U.S. v. Cott Corp. and U.S. v. Consolidated Foods, were certified. As a result of prosecution of civil penalty cases, monetary judgments totaling four hundred and four thousand (\$404,000) dollars were procured.

### Accounting

To assist in law enforcement activities directed toward maintaining competition, the accounting staff provided accounting services in numerous investigations, studies and litigation matters during fiscal 1974. Such services were furnished in aid of special studies, Bureau of Economics' studies and in the preparation of the annual economic report Rates of Return in Selected Manufacturing Industries.

In fiscal 1974 accounting analyses were made in 11 investigations involving discriminatory pricing practices; 30 involving restraints of trade and pricing discriminations; and 18 investigations concerning mergers and acquisitions. During the year, the accounting section furnished accounting analyses in 20 cases in litigation.

### Supervision, Evaluation and Administration

Accomplishments during fiscal 1974 in the area of supervision, evaluation and administration include progress toward the development of a computerized document indexing and data analysis system. In addition, progress was made in fiscal 1974 toward the development of a paraprofessional staff to assist in major antitrust litigation, i.e., in various phases of case management, document processing, factual analysis, and research work.

Also, during fiscal 1974 the backlog of inactive investigations has been eliminated. All litigated cases and active formal investigations are managed with the assistance of a computerized tracking system enabling the establishment of a system of deadlines and priorities. Systematic methods of case selection and evaluation also have been further refined and developed. These have contributed toward the managed and planned operation maximizing antitrust enforcement benefits.

#### Regional Office Support To Maintaining Competition

During fiscal 1974, the Commission's 12 regional offices played a substantially increased and important role in the Maintaining Competition mission. Regional office activity was particularly directed to the traditional areas of antitrust behavior and enforcement, including a substantial increase in work in the Robinson-Patman Act area. This increase in competition matters in the regional offices results from a close coordination with the Bureau of Competition as well as with active participation by the Bureau of Economics.

During fiscal 1974, the regional offices recommended and the Commission issued a complaint challenging the acquisition by Walter Kidde & Co., Inc. (D. 8957) of Arrow Lock Corporation, involving the door lockset industry. That case was in pretrial at the end of fiscal 1974. In addition, staffs of the regional offices were primarily responsible for litigation in two matters involving mergers and acquisitions: Kaiser Steel Corporation (D. 8878), involving an acquisition in the steel tubing industry; and Heublein, Inc. (D. 8904), involving an acquisition in the wine industry. In addition, one of the regional offices had primary responsibility for the litigation in Standard Oil of Ohio (D. 8910), involving gasoline dealer coercion.

Also during fiscal 1974, the regional offices recommended and the Commission provisionally accepted four consent orders involv-

ing the maintenance of competition. In the consent order provisionally accepted by the Commission involving Colt Industries, the respondent agreed to cease anticompetitive practices which had the effect of enforcing the manufactured suggested retail prices on its dealers in the sale of firearms. In Lear Siegler, Inc., et al., the companies involved agreed to an order prohibiting interlocking directorates. Two of the provisionally accepted orders involved violations of the Robinson-Patman Act: Ponder & Best, Inc., prohibiting price discrimination and the discriminatory granting of promotional allowances and services in the sale of photographic equipment; and Lawry's Foods, Inc., prohibiting the discriminatory granting of promotional allowances in the sale of food products.

In addition, during fiscal 1974, the regional offices opened 31 formal investigations involving competition matters. A total of 74 competition-related open formal investigations were the responsibility of the regional offices at the end of fiscal 1974.

#### General Counsel Support To Maintaining Competition

The General Counsel's staff serves as the Commission's lawyer in all court proceedings to which the Commission is a party in the United States District Courts, U.S. Courts of Appeals and the U.S. Supreme Court unless after notice and consultation with the Attorney General, in accordance with the Alaska Pipeline Act amendment to the Federal Trade Commission Act, the Department of Justice is designated to take the proposed suit.

The staff also serves as legal advisor to the Commission regarding questions of law and policy in the general areas of legislation, administrative law, procedure, jurisdiction, compliance with the Freedom of Information Act, enforcement of Commission subpoenas as well as any other area in which the Commission deems the advice of the General Counsel to be necessary or desirable. In fulfilling these responsibilities, the General Counsel staff coordi-



nates liaison activities with Congress and other Federal agencies, drafts comments on legislative proposals, administers the Commission's advisory opinion program, handles requests for access to Commission files under the Freedom of Information Act and advise the Commission as to the disposition of motions to quash investigational subpoenas. The staff's legal services are employed in connection with all the Commission's operational activities in the areas of competition and consumer protection.

During fiscal 1974, the appellate staff represented the Commission in 144 court cases, including 71 cases on hand at the start of fiscal 1974 and 73 cases which were initiated during the course of the fiscal year. Twenty-nine of the total involved appeals to the court of appeal from the Commission orders and of these nine were in the competition area. A total of 112 collateral suits were worked on during fiscal 1974 including subpoena enforcement, injunctive, contempt and Freedom of Information Act proceedings and appeals therefrom. Approximately 40% of these suits involve the Commission's operational activities in the area of competition.

Among the significant actions in the area of competition which have resulted from the appellate staff's efforts during fiscal 1974 are the following. The Supreme Court denied certiorari in several cases in which the courts of appeals had affirmed the Commission's position. For example, in the Kennecott Corporation case, the Tenth Circuit upheld the Commission's decision striking down Kennecott's acquisition of Peabody Coal Co. as having been in violation of Section 7 of the Clayton Act. In National Association of Women's and Children's Apparel Salesmen, Inc., the Fifth Circuit affirmed a comprehensive restraint of trade order. And three separate courts of appeals affirmed district court orders upholding motions by three national soft drink companies (Coca-Cola Company, Pepsico, Inc. and Seven-Up Company) to join bottling companies as indispensable parties in pending restraint of trade proceedings before the Commission.

During fiscal 1974, the Fifth Circuit affirmed a Commission order prohibiting discriminatory payments and allowances in Alterman Foods, Inc., and the Tenth Circuit upheld, with deletion of two paragraphs, a Commission order prohibiting territorial restrictions, resale price maintenance, and other anticompetitive practices in the Adolph Coors Company case.

After the start of fiscal 1974, the Commission's compliance powers were appreciably strengthened by Congress in the Alaska Pipeline Act to allow the Commission to directly enforce its subpoenas and to prevent unfair competitive practices by seeking preliminary injunctions. During fiscal 1974, the Commission successfully obtained preliminary injunctions halting restraint of trade and consumer deceptive practices during the pendency of administrative proceedings. A preliminary injunction was issued by the District Court of Delaware to restrain the acquisition of an industrial gas company by British Oxygen Company, Ltd.

During fiscal 1974, a district court dismissed an action brought by General Foods Corporation to enjoin the Commission from proceeding jointly against General Foods and three other cereal manufacturers named in a Commission complaint charging monopolization in the cereal industry.

In connection with its legislative function, the staff assisted in the preparation of reports, testimony and recommendations on proposed legislation and bills regarding: the enactment of legislation streamlining the Commission's procedures by providing new injunctive authority, broader authority to obtain investigative data and increased civil penalties for violations of Commission orders; proposed amendments to the Export Trade (Webb-Pomerene) Act to encourage business firms and to facilitate their engaging in export trade; the antitrust aspects of legislative proposals for deepwater port construction and operation; fuel and energy conservation; and Federal agency collection of information from regulated corporations.

Significant fiscal 1974 activities in the legal services area included recommendations on changes of policy and procedure for achieving more expeditious compliance with the requirements of the Freedom of Information Act and greater openness in Commission activities; and proposals for modifying trade regulation rule procedures.

Advisory opinion activities included clarification of a former advisory opinion on backhaul allowances to make it clear that under a delivered pricing system, the alternative availability to all purchasers of a true "f.o.b. mill" price, would not be illegal.\*

When the Commission issues a complaint charging a law violation, and no consent settlement is reached, the matter is referred to an administrative law judge to conduct an adjudicative proceeding. Upon referral, the judge is in complete charge and is responsible for handling the case in a fair, objective and expeditious manner. The judge is the official presiding officer and he rules on virtually all matters arising in the course of the case including motions, pretrial proceedings, procedural questions, and all issues arising during the actual trial including questions relating to the admissibility of testimonial and documentary evidence. Upon conclusion of hearings, the judge issues an initial decision which includes proposed findings of fact based upon the applicable law and the evidence of record. If he finds that a violation of law has been proved, he includes an appropriate order. Either side may then appeal to the Commission.

\*The Commission amplified this advisory opinion recently by stating that, in regard to the meaning of "true" f.o.b. no question would arise so long as the f.o.b. price was uniform and available to all customers on a nondiscriminatory basis.

Cases tried by an administrative law judge involve complex and important restraint of trade matters. The issues raised are often controversial and relate to difficult economic and competitive questions. The Commission's cases are generally highly significant because of their actual or potential impact upon the public, the economy and business relationships between corporations within important industries. Large financial interests are usually at stake, directly or indirectly, and public interest is often nationwide. It is not uncommon for a record before an administrative law judge in a major antitrust case to consist of thousands of pages of transcript and hundreds of exhibits. Complaints issued by the Commission have tended to become more complex in recent years involving larger firms, making disposition more time consuming and difficult.

At the beginning of fiscal 1974 there were 38 competition cases in the hands of the Commission's staff of administrative law judges.

Among the competition cases in trial before the administrative law judges during fiscal 1974 were the following: American General Insurance Company, D. 8847; Associated Dry Goods, D. 8905; Boise Cascade Corporation, D. 8958; British Oxygen, D. 8955; Central California Lettuce Producers Corp., D. 8970; Coca-Cola Company, D. 8855; Dr. Pepper, D. 8854; Exxon, D. 8934; Food Fair Stores, D. 8935; Fruehauf Corporation, D. 8972; The Great Atlantic & Pacific Tea Company, D. 8866; Heublein, D. 8904; Kaiser Steel Corporation, D. 8878; Kellogg, D. 8883; Liggett & Myers, D. 8938; Litton Industries, D. 8778; PepsiCo, Inc., D. 8856; Phillips Petroleum, D. 8930; Retail Credit Company, D. 8920; Rubbermaid Incorporated, D. 8939; Standard Oil Company of Ohio, D. 8910; Textron Inc., D. 8927; Warner Lambert Company, D. 8850; Bendix Corporation, D. 8739; ITT Continental, D. 7880; Rockwell International Corporation, D. 8842; Xerox, D. 8909.

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## CONSUMER PROTECTION

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The fiscal 1974 major program accomplishments achieved under the Consumer Protection mission are discussed below under the following headings: National Advertising, Marketing Practices, Rulemaking, Special Projects, Special Statutes, Compliance, Consumer Education, and Scientific Opinions. Sections also are included on Regional Office and General Counsel support to the mission, and on Administrative Law Judge participation.

### National Advertising

The major achievement in 1974 was the restructuring of the Advertising Substantiation Program. The program was redesigned to make it a more effective vehicle for developing cases for litigation and to shorten the interval between the publication of an advertisement and the staff analysis of the materials substantiating the ad. The revised program also allows for a more thorough evaluation of the substantiation materials submitted through the use of outside consultants.

The staff also substantially completed investigations prior to implementing several components of the Commission's Product Information Program. That program is designed to ensure that material information about key consumer products - e.g., food, prescription drugs, and automobiles - is disclosed to the consumer.

In 1974, a total of 8 consent orders were negotiated. In addition, 2 initial decisions and 1 Commission decision were issued.

The Commission also issued 6 proposed complaints under Part II of its Rules.

In the area of food and nutrition advertising, consent orders were negotiated in American Dairy Association involving nutritional and weight reducing claims made for whole milk and Carnation Company, et al. involving misleading comparisons between the nutritional characteristics of Carnation Chocolate Flavored Nonfat Dry Milk and whole milk. Also in the area of food and nutrition advertising, the Commission issued its decision in ITT Continental Baking Company.

Proposed complaints were issued in Dahlberg Electronics, Inc., Radioear Corporation, Textron, Inc., Seeburg Industries, Inc., Sonotone Corporation and Beltone Electronics Corporation, all manufacturers of hearing aids.

Consent orders were accepted by the Commission in Rheem Manufacturing Company and Whirlpool Corporation, both involving efficacy claims for air conditioning.

In other areas, consent orders were accepted by the Commission in Loew's Corporation involving unfair judging of the Kent Castle Contest and Trans-American Collections, Inc., involving the use of deceptive debt collection techniques. Consent orders were provisionally accepted by the Commission in Ford Motor Company, involving claims made for the structural strength and quietness of Ford automobiles and, in Sterling Drug Company, Inc., involving false disease prevention claims for Lysol Spray Disinfectant. In addition, an initial decision was handed down in Bristol-Myers Company involving claims for Dry Ban Spray Deodorant. An initial decision was also issued in Sun Oil Company, a case alleging misleading claims for the octane properties of Sunoco gasoline. At the close of the year, 9 additional national advertising trials were in progress.

## Marketing Practices

The major 1974 achievements of the Commission's program to combat unfair or deceptive marketing practices consisted of landmark consent decrees affecting the sales practices of sellers of undeveloped land, sellers of flammable plastics, and sellers of pesticides.

The Commission provisionally accepted an order against the GAC companies, large interstate land sales firms. Under the provisional order, the GAC companies are obliged to make cash refunds of up to \$2.8 million and to exchange land valued at up to \$14 million to past purchasers. The order also provides for full disclosure of significant facts and for a 10-day cooling-off period for future consumers.

In the plastics flammability matter, Society of Plastics Industries, Inc., et al., the Commission provisionally accepted an order from 26 manufacturers of such products. The order contains proscriptions on deceptive safety claims, requires warnings of hazard to future and past purchasers and provides for the creation and funding (\$5 million) of a research committee to develop reliable flammability testing techniques. Also approved and published was a proposed trade regulation rule to provide for prohibitions on deceptive safety claims and warnings as to the flammability of a wide number of plastic products and an investigation of several standards and certification organizations.

In addition to these major accomplishments, the staff completed its analysis of the record developed in connection with the initial proposed trade regulation rule governing franchising and submitted its recommendation for a revised proposed rule. It also continued the investigation of warranty practices and problems concentrating particularly on mobile homes. By the end of the year, the staff had completed its investigation and was in the process of recommending several courses of action for Commission consideration, including possible cases and proposed rules.



During 1974, the following docketed matters were in the prehearing stage: Coca-Cola Company, D. 8824; Control Data Corp., D. 8940; Lear Siegler, Inc., D. 8953; ECPI, Inc., D. 8952; FMC Corp., D. 8961.

Koscot Interplanetary, Inc., D. 8888, Grolier, Inc., D. 8879, and Great Atlantic & Pacific Tea Co., D. 8916, were in trial. Encyclopaedia Britannica, Inc., D. 8908, and Beneficial Corp., D. 8922, were pending for initial decision at the end of the year.

## Rulemaking

The position of Special Assistant Director for Rulemaking was created by the Commission on July 10, 1973, when the Division of Rules and Guides was abolished. The purpose of this action was to give all divisions of the consumer protection staff the option to proceed in problem areas either by rulemaking or litigation. The new Special Assistant Director for Rulemaking is charged with the responsibility of conducting rulemaking hearings. Responsibility for the development of rules was given to all operating divisions of the Bureau.

This section discusses Commission activity with respect to those rules and guides which are at or near the final stages. Those proposed rules which are in earlier developmental stages are discussed under the substantive subheadings.

During the first half of fiscal year 1974, rulemaking activity was quiescent, because of the pendency of a challenge in federal court of the authority of the Commission to promulgate substantive rules of business conduct. The case, *National Petroleum Refiners Assoc. v. FTC*, D.D.C., 340 F. Supp. 1343 (1972) was tried before the District Court for the District of Columbia which found that the Commission lacked such authority. An appeal was taken by the Commission. At the same time, as a matter of internal policy, the Commission determined that no new rule-

making proceedings should be commenced during the pendency of the case, but that work on previously announced proceedings should go forward to completion. The United States Court of Appeals for the District of Columbia reversed the district court's judgment and remanded the case for further proceedings, affirming the Commission's view that it is authorized to promulgate rules defining the meaning of the statutory standards of illegality which the Commission is empowered to prevent. The plaintiffs in that case, the National Petroleum Refiners Association, filed a petition for a writ of certiorari with the Supreme Court. The petition was denied in February 1974.

After the Petroleum Refiners opinion, the Commission acted to set effective dates for two Rules promulgated during the pendency of the case:

(a) Cooling-Off Period for Door-to-Door Sales - This Rule provides consumers with a three-day cooling-off period within which purchasers may cancel a transaction wherein the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

(b) Use of Negative Option Plans by Sellers in Commerce This Rule prescribes certain disclosures which must be made during the offering for sale and distribution of goods marketed under "negative option" plans. Examples include notification of the right of subscribers to cancel membership upon completion of the agreement; the right to take at least ten days before mailing a negative option form to the seller, an announcement identifying the latest selection, the right to receive credit for merchandise returned, the right of the buyer to have introductory or bonus merchandise shipped within four weeks after receipt of order by the seller.

Other proceedings in progress during 1974 were:

a) Buyers' Claims and Defenses in Consumer Installment Sales - A rulemaking proceeding to limit application of the common-law concept of holder-in-due-course in consumer transactions so that consumers will not lose potential claims and defenses in installment transactions when obligations are assigned or transactions transferred to third parties.

(b) Law Book Publishing Industry - A Guide proceeding to require that sellers of law books make various disclosures in the course of sale of industry products, including the name of the author or compiler of a publication, latest copyright date, whether the publication is supplemented, whether the publication is part of a set or series, amount of shipping and handling charges, type of binding, and others.

In both of these proceedings staff work was essentially completed during fiscal year 1974, the public record closed and analyzed by the staff, which was preparing final reports and recommendations for Commission consideration.

The Commission directed the staff to evaluate the content of and need for the existing 177 Trade Practice Rules and Industry Guides and, where appropriate, make recommendations to the Commission either for rescission or amendment.

During the year the Commission issued a final Trade Regulation Rule Concerning Power Output of Amplifiers. This Rule requires certain disclosures regarding the power capacity or characteristics of sound amplification equipment, used in the home. The Rule also sets forth minimum test conditions that manufacturers must meet in order to make certain disclosures regarding power output.

In other rulemaking activity, the Commission's Care Labeling Rule, which requires disclosure of the proper care and treatment

of most textile wearing apparel was republished together with a series of questions for comments to determine the effectiveness of the Rule and whether to expand coverage to other products such as carpets and drapes. Over 8,000 written care labeling comments were received and evaluated by the staff.

The Commission also issued Guides for the Household Furniture Industry, effective March 1974, specifying affirmative disclosures of the materials used in the construction of furniture products. The guides also apply to the outer covering, stuffing and padding in furniture, as well as to certain representations such as "floor sample".

### Special Projects

Five major special projects have been carried to advanced stages during the past fiscal year. They are the Creditors' Remedies Project, the Vocational School Project, the Funeral Project, the Condominium Investigation and the Recession Advertising Program.

The Creditors' Remedies Project, initiated in fiscal year 1973, is directed at abuses which have arisen following the massive growth of outstanding consumer credit from \$5.7 billion in 1945 to more than \$180 billion in 1973. During fiscal 1974, the staff completed an industry-wide investigation, including evaluation of more than 6,000 consumer debtor account files, the drafting of a program to regulate abuses in the industry and the preparation of an extensive report to the Commission recommending promulgation of a trade regulation rule limiting certain allegedly abusive creditor remedies.

The Vocational Schools Project was an extensive investigation of the \$2.5 billion vocational school and home study industry and the preparation of a comprehensive proposed trade regulation rule which includes requirements for a pro rata refund policy, a 10-day cooling-off/affirmation period, affirmative disclosure of job placement information, and provisions governing advertising.

The Funeral Project is concerned with an analysis of possible unfair and deceptive practices in the funeral industry. In February 1974, the Commission released the results of a pilot survey of funeral prices in the District of Columbia designed to bring about an increased public awareness of pricing practices and to provide an impetus toward regulation by states and the industry itself. Investigations into practices of some of the larger mortuaries were also pursued with a view toward possible corrective action against practices which may unfairly exploit or deceive the public.

Preliminary staff investigation of the Condominium Industry uncovered a variety of alleged abuses in sales contracts and promotional schemes. An industry-wide formal investigation was approved by the Commission near the end of fiscal year 1974.

The "Recession Advertising" Program was developed as a response to the proliferation of companies promoting "get rich quick" money-making schemes and home-study courses during the current period of economic uncertainty. Some approaches to problems uncovered in the home-study field were incorporated into the proposed Vocational School Rule. In addition, staff pursued investigations of companies offering home-study courses.

In addition to activities in these five major program areas, several preliminary investigations were developed in fiscal year 1974, including inquiries into possible unfair practices in contract terms used by employment agencies and nursing homes.

## Special Statute Enforcement

### Truth in Lending Act

The Commission maintained its active Truth in Lending enforcement program by issuing 34 complaints charging violations of that statute. One major case completed during the year involved a

national creditor, W. T. Grant Company (D. 8931), in which the Commission issued a final order prohibiting misrepresentations in connection with the sale of coupons offered on the installment plan and prohibiting violations of the Truth in Lending Act in connection with the sale of credit life and credit accident and health insurance.

#### Fair Credit Reporting Act

A complaint was issued against the nation's largest investigative reporting agency, Retail Credit Company (D. 8954), alleging violations of Section 5, Federal Trade Commission Act, and of the Fair Credit Reporting Act. In addition, the Commission presented testimony to Congress recommending reform of the Fair Credit Reporting Act.

#### Fair Packaging and Labeling Act

In the area of fair packaging practices, the Commission issued six complaints against major toy manufacturers challenging as deceptive a practice known as "slack-fill," alleging that the toy makers engage in the practice of packaging toys and children's games in containers which far exceed the size actually needed for the normal packaging of such articles (Walco Toy Co., Inc., D. 8921; Milton Bradley Company, D. 8926; Avalon Industries, D. 8925; Activtoys, Ltd., C-2389; Edu-Cards Corp., D. 8924; and Pastime Industries, Inc., D. 8923). The Commission issued for public comment a proposed rule under the Fair Packaging and Labeling Act, requiring the listing of ingredients on all packages of detergents and other cleaning products. During the year, the Commission also announced a Voluntary Guideline Agreement with the detergent industry whereby industry members agreed to comply with a uniform labeling program for the disclosure of the phosphorus content and biodegradability of industry products, by use of a "product information panel".

## Compliance

During fiscal 1974, the Commission accepted 114 written compliance reports; rejected 26 written compliance reports and authorized further appropriate action; and approved civil penalty proceedings in 10 consumer protection cases involving a wide variety of deceptive practices. Four civil penalty proceedings were disposed of in fiscal 1974, resulting in judgments totaling \$126,000.

Two civil penalty actions were in the appellate stage during fiscal 1974, including *U.S. v. The I. B. Williams Company, Inc., et al.*, in which the U.S. Court of Appeals for the Second Circuit affirmed the summary judgment of the district court of \$155,000 as to two counts against one defendant and remanded the case as to all other counts to the district court for a jury trial.

In addition to participation in the civil penalty cases listed above, staff attorneys worked with Department of Justice attorneys or U.S. Attorneys in the litigation stage in five cases:

*U.S. v. Bestline Products Corporation, et al.*; *U.S. v. Americana Corporation*; *U.S. v. Raymond Anderson, et al.*; *U.S. v. Del L. Young*; and *U.S. v. Irving R. Rifkin*.

## Consumer Education

Consumer education programs were conducted during fiscal 1974 respecting vocational schools and consumer credit disclosures. These were multi-media efforts to apprise consumers of the potential pitfalls in enrolling in some vocational school courses and of the value of using credit cost disclosures required by the Truth in Lending Act.

In addition, Interpretative Actions (IA's) covering several topics related to Commission activities were prepared. Interpretative Actions are radio scripts and question. and answer formats.

This material is disseminated to various interested parties and the media. IA's were developed for:

- freezer meat specials - warning of possible bait and switch tactics;
- supermarket specials - apprising consumers of the right to get advertised specials at the advertised price;
- home amplifiers for stereo systems - describing the uniform means of measuring amplifier output as prescribed by the Amplifier Trade Regulation Rule;
- care labeling - educating consumers of the right to have care labels with their clothes and fabrics;
- door-to-door sales - explaining the consumer's right to a 3-day cooling-off period; and
- Fair Credit Reporting Act - -advising consumers of their right to be informed of the information contained in credit reporting agency reports on them.

Some of the Commission's educational materials were translated for more effective use in Spanish-speaking communities.

### Scientific Opinions

During fiscal 1974, the Commission's Scientific Opinion staff provided written reports to the Commission and to Commission staff; located and interviewed prospective expert witnesses; advised attorneys on scientific investigations which in some cases included laboratory tests; and provided assistance in analyzing advertising substantiation program data submitted by manufacturers and sellers pursuant to Commission orders. Scientific and technical analyses of over 100 consumer products, including pharmaceuticals, cosmetics, foods, household cleaners, detergents, automobile tires and paints, were prepared.



Extensive tests were run to measure the tar and nicotine content of all domestic brands of cigarettes. The results of these tests were released for use by the public.

#### Regional Office Support to Consumer Protection Mission

Regional Office activities, while covering all assigned consumer protection programs, placed additional emphasis on the Regional Advertising Program, the Vocational Schools Program, the Land Sales Program, Consumer Education, and Federal/State activities.

The Regional Advertising Program authorized and directed each of the 12 regional offices to institute continuous monitoring of regional advertising effectively correcting significant regional advertising abuses in violation of Section 5 and 12 of the Federal Trade Commission Act. The complaints and orders which resulted should improve the standards of regional advertising.

Under the Vocational School Program, regional office efforts were directed toward the elimination of alleged unfair or deceptive acts or practices in the vocational school industry, including misrepresentation concerning the demand for graduates or starting salaries, misrepresentations concerning the school's ability to obtain jobs for graduates, and misrepresentations concerning the extent or nature of accreditation status, and the use of inequitable refund policies.

Several regional offices are participating in the Land Sales Program. The marketing practices of major interstate land sales firms are being investigated to determine whether formal action is appropriate. Possible deceptive representations concerning investment potential, future development obligations of the seller, and others, unfair contract terms, including refund procedures, and failure to disclose information, are under scrutiny. The proposed settlement of the GAC matter is an example of the possible relief in such cases.

Regional offices maintained a high level of consumer education activity. Distribution of large amounts of information on vocational schools, resulting in considerable media exposure, and the developing of scripts for television and radio public service slots, accounted for the largest portion of this activity. Additionally, regional offices were active in the dissemination of interpretive action scripts and delivery of numerous speeches before multiplier" groups, such as vocational counselors who come in contact with many students.

A substantial increase in the number of regional office man-hours devoted to federal/state activities was realized in fiscal 1974. In addition to increased contacts and closer relationships with state consumer protection personnel, new efforts were made to establish relationships with city and county agencies.

In addition to the activities outlined above, the regional offices contributed significantly to the staff Report to the Commission on an evaluation of the Mandatory Petroleum Allocation Program. This project entailed monitoring the activities of the 10 F.E.O. regional offices and all 50 State Allocation Offices and the compilation of 120 case studies.

Regional Office activity in fiscal 1974 accounted for the recommendation and Commission issuance of 29 formal complaints and the granting of two injunctions by the federal district courts.

Additionally, regional offices opened 246 formal investigations in areas involving alleged violations of Section 5 of the FTC Act and 88 investigations involving alleged violations of the Special Statutes (Truth in Lending, Textile, Wool and Fur, Fair Credit Reporting, and Fair Packaging and Labeling Acts). These investigations resulted in Commission issuance of 64 proposed complaints alleging violations of Section 5 and 7 proposed complaints alleging violations of the Special Statutes. These investigations also led to acceptance of 54 consent agreements involving Section 5 violations and 36 consent agreements including violations of the Special Statutes.

## General Counsel Support to Consumer Protection

As noted in the discussion of the competition mission, the General Counsel staff represented the Commission in 144 court cases during fiscal 1974. Twenty of these cases involved appeals to the appellate courts from Commission orders which resulted from adjudicative proceedings in the area of consumer protection. Approximately 60% of the 112 collateral suits initiated by or against the Commission were related to the Commission's consumer protection activities.

From the standpoint of the Commission's consumer protection activity, the most significant event which occurred in fiscal 1974 was the Supreme Court's denial of a petition for certiorari by National Petroleum Refiners Association from an appellate court ruling upholding the Commission's authority to promulgate substantive trade regulation rules. It is anticipated that the promulgation of trade regulation rules will result in greater industry-wide observance of Commission determinations expressed in such rules than would otherwise be achieved by the case-by-case approach and will also facilitate the trial of cases brought by the Commission challenging the practices proscribed by such rules.

The Commission's use of its new authority to obtain preliminary injunctive relief in consumer protection cases has been upheld. A preliminary injunction was obtained against Travel King, Inc., restraining the use of false advertising of "psychic surgery."

Decisions favorable to the Commission were obtained in several appellate court reviews of Commission orders in consumer protection cases: The Fifth Circuit affirmed a Commission order against Brown Auto Stabilizer Co. with respect to performance and safety misrepresentations. The Commission's decision and order prescribing Truth in Lending Act violations by Credit Card Service Corp. was affirmed by the District of Columbia Circuit. The Seventh Circuit sustained the Commission's deceptive adver-

tising order against Spiegel, Inc. And, the Second Circuit affirmed in part and remanded in part the Commission's order against National Dynamics Corp.

#### Administrative Law judges Participation in Consumer Protection Mission

The number of cases referred for trial in the area of consumer protection has increased gradually in the past several years. In fiscal 1974, 29 new cases were referred whereas in fiscal 1971 and fiscal 1972, 21 and 24 cases respectively were referred for trial. Many of these matters involved large corporations and posed difficult issues, both of liability and proper relief. During fiscal 1974, the following were among the consumer protection cases in trial before the administrative law judges: Bristol-Myers, D. 8897; Sterling Drug, D. 8899; Sun Oil, D. 8889; General Motors, D. 8907; Ger-Ro-Mar, D. 8872; Cone Mills, D. 8900; American Home Products Corp., D. 8918; Beneficial Corp., D. 8922; Control Data Corp., D. 8940; Encyclopedia Britannica, D. 89 08; Fedders Corp., D. 8932; Grolier, Inc., D. 8879; Koscot, D. 8888; Warner-Lambert, D. 8891; FMC Corp., D. 8961; The Atlantic & Pacific Tea Company, D. 8916; Retail Credit Company, D. 8954.



## ECONOMIC ACTIVITIES

The fiscal 1974 program accomplishments of the Economic Activities mission are described below under three broad programmatic headings: financial and statistical reporting, enforcement support, and industry analysis activities.

### Financial & Statistical Reporting

The primary function of FTC's financial and statistical reporting activities is to correct, analyze, and publish aggregate data on structural and performance developments in the manufacturing, wholesale and retail trade, and mining sectors.

### Line of Business Program

The newest of the Commission's financial and statistical activities is the Line-of-Business Program. This program is designed to collect and publish aggregate data on the economic performance of large firms in the U.S. economy. It was approved by the GAO after a series of hearings in fiscal year 1974. In the initial round covering the 1973 reporting year it requested data on total sales, direct costs, direct advertising, direct research and development, and direct assets for each line of business engaged in by the largest U.S. manufacturing corporations.

### Quarterly Financial Report

In 1974, the QFR program was expanded into mining and wholesale and retail trade sectors. Large companies are reporting already and the mailing lists for the smaller sampled companies

will be obtained in Fall 1974 from the Internal Revenue Service. Virtually all possible QFR operations were automated in fiscal year 1974. These included the data entry, manipulation, and mailing subsystems. The IRS also began developing a completely new automated sampling system to service the QFR program.

#### Merger Series

In fiscal 1974, the annual merger report series (i.e., the Federal Trade Commission Statistical Report on Mergers and Acquisitions) was expanded to include acquisitions of U.S. companies by foreign firms in calendar year 1973. The newest report also embodies innovations to yield a more accurate picture of domestic mergers and acquisitions of foreign firms by U.S. companies.

#### Corporate Patterns Survey

The pre-tested corporate patterns survey was revised and prepared for transmittal to GAO for clearance. It will provide a detailed view of 1972 sales by the 1,000 largest U.S. manufacturers in narrowly defined industries.

#### Pre-Merger Notification

The pre-merger notification form was revised, largely to obtain 1972 rather than 1967 value-of-shipments data covering acquiring and acquired companies. The new form should improve the Commission staff's ability to screen for possible violations of Clayton Act, Section 7. It will also provide better information for analyzing the impact of large mergers on individual industries.

#### Enforcement Support Activities

Much of the Commission's economics staff was occupied during fiscal 1974 with enforcement support activities. Considerable effort was spent supporting a complaint alleging domination of the

office copier market by the Xerox Corporation. Also, economic analyses support complaints involving alleged joint monopolization by the four largest breakfast cereal companies and the eight largest petroleum companies; a wide-ranging study of the nation's energy industries; and other full-scale industry-wide investigations. Preliminary inquiries were conducted for ten additional industries. Economists participated in eleven other formal investigations in such diverse areas as coffee, industrial gases, medical supplies, title insurance, beer, and supermarket pricing.

Economic assistance was also provided for nearly all the investigations and litigation of the Commission's merger cases and for a variety of trade practices matters.

### Industry Analysis

During fiscal 1974, a report, *Concentration Levels and Trends in the Energy Sector of the U.S. Economy*, was completed from published data and transmitted to the Congress. It reported levels and trends in concentration and the production of crude oil, natural gas, coal, uranium, and all four fuels combined for the period 1955 to 1970. It also analyzed the impact of major energy firm mergers and acquisitions on concentration. Further work to measure concentration of energy resources reserves is proceeding.

Another Economics staff report, *Regulation of the Television Repair Industry in Louisiana and California: A Case Study*, tested the effect of two types of state laws on the price and probable quality of television repairs under widely differing types of regulatory schemes in California, Louisiana, and Washington, D.C.

Work on many other industry study projects moved forward. Thus, survey forms subpoenaed under FTC Act, Section 6(b), were received and processed in connection with a major study of prescription drug pricing and promotion; the empirical work for a study concerning the effectiveness of compulsory patent licensing was completed, incandescent light bulb manufacturers and consumers were surveyed concerning the effects on purchasing decisions of various information disclosure rules; and a study of market share instability neared completion.



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## EXECUTIVE DIRECTION AND POLICY PLANNING

This mission serves to provide the Commission with overall executive direction, policy planning, program evaluation, and other direct support for its daily operations. The resources support the operations of the Commissioners and their immediate staffs, the Executive Director, the Director of Policy Planning and his staff, the Information Officer and his staff, the Office of the General Counsel, and the Secretary and his staff directly service the Commission.

The goal of these activities is to ensure that the Commission's Congressionally-mandated missions of Maintaining Competition, Consumer Protection, and Economic Activities are carried out in an effective and efficient manner. Particularly important are the tasks of establishing overall program priorities; allocating resources, both human and financial; and monitoring execution of approved activities. Highlighted below are activities in Policy Planning and Evaluation, Office of the Secretary, Public Information and the Executive Director.

### Policy Planning and Evaluation

The primary function of the Office of Policy Planning and Evaluation is to advise the Commission with respect to how and where its resources should be committed so as best to serve the public interest.

During the past fiscal year the Office prepared and submitted to the Commission the first Budget Overview Report, which presented a framework within which the Commission could consider

the fiscal 1975 budget requests of the major enforcements units. The Budget Overview articulated the various public policy ends that the Commission might achieve under its statutory authorization and organized all staff proposed activities and programs into the planning framework thereby created. Thus, the Commission was given a point of reference for the broad resource allocation decisions that are necessary to optimize the mix of law enforcement activities subject to the constraint of a budget. The Report organized a large body of relevant economic data to which the Commission could refer to inform itself for these resource allocation decisions and to evaluate the resource allocation recommendations made by the Office in the Report.

As a part of this Budget Overview project the Office worked closely with the major enforcement units in helping them to further organize their activities into programs. As a result of this joint effort, additional activities were brought into the framework of enforcement programs defined by goals and objectives with attendant strategies, target dates for completion, and concrete estimates of the resources to be devoted to each.

The Office provided technical assistance to the major enforcement units in the development of program plans and analytic program plans and analytic program guides which define problem areas and develop a strategy or alternative strategies by which defined objectives can be achieved. The Office wrote a handbook to be used in preparing analytic program guides. In addition, the Office wrote the new Deceptive Pricing Guide which will clarify the law on this subject for those subject to the Commission's jurisdiction.

The Office continued its evaluation work. As a part of this effort, the Office devised a survey to test whether the proposed Detergent Ingredient Labeling Rule would provide consumers with information that would allow them to make better value comparisons. Work was substantially completed on the Regional Advertising Cost-Benefit Guidelines that will allow the Commission and

the Regional Office staff to evaluate competing regional advertising matters on the basis of cost as compared to the probable pay-off to consumers.

Work began on the initiation of new programs, the first of which was the Prescription Drugs Program. Background studies were performed on problems and possible remedies at the manufacturing level with a view to submitting the second report to the Commission during the current fiscal year.

## Office of the Secretary

### Publications and Records

This functional area includes legal and public records and the rules and publications section. The records function serves the Commission by establishing and maintaining all the formal and informal records of the Commission. All requests for access to records information are filled by this office.

A project for microfilming of Commission records was begun in the last quarter of fiscal year 1974, making it easier to grant access to the records and to maintain integrity of the files.

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- Improving operating efficiencies and procedures for assuming new and expanded staff financial and programmatic responsibilities.
- Strengthening organization planning and the introduction of management-by-objectives principles and procedures.

## ADMINISTRATION AND MANAGEMENT

This mission provides support and service to the Commission and its major operating units in the areas of personnel, finance, management analysis and data processing, law library, and general office and administrative services. Highlights of program accomplishments in these areas for fiscal 1974 are discussed below.

### Personnel

During fiscal year 1974, the full range of personnel management services were provided for a total of more than 1600 employees. In-house training was provided for approximately 350 employees, and employees were sent to 170 classes in government and nongovernment facilities outside the agency.

A manpower and financial (salaries and wages) planning system was designed and implemented to provide the agency with improved control over its recruiting and staffing needs in relation to monies available. Under this new approach, at the beginning of each quarter, heads of operating offices review past and projected turnover, and hiring needs for the coming quarter. When the system was initiated early in fiscal 1974, the agency had approximately 200 vacancies, or 12.5 percent of its positions unfilled. By the middle of the second quarter and for the remainder of fiscal 1974, the vacancy rate was less than one percent.

Between February and May 1974, a group of eight law professors presented a semester long course in trial techniques and negotiation skills to approximately 100 of the agency's young attorneys. Based upon materials and situations from actual FTC cases, the course provided practical techniques and strategies for



working within the administrative adjudication structure of the agency. This course was a landmark in the Federal government for the training of attorneys.

During fiscal 1974, the Division implemented its Personnel Management Evaluation Survey program, through which the agency is evaluating on a periodic basis the effectiveness of personnel management practices, policies, and systems. Surveys were conducted in five regional offices and three headquarters organizational units.

## Financial Management

The thrust of FTC's financial management activities was directed in fiscal 1974 towards the implementation of a computerized accounting system which integrates budget control responsibilities into the day-to-day program operations of the Commission.

In past years, FTC's program managers had limited managerial control over budgetary resources. Under the new system - which decentralized financial accountability and responsibility for carrying out Commission-approved programs - program managers are responsible for controlling budgetary allocations at a detailed level, thereby requiring that budgetary implications of program decisions be fully considered in the accomplishment of program objectives. In addition to the provision of financial data on an organizational basis, the system will provide obligation and disbursement data at the program and case/project level for general operating expenses.

The Budget and Finance Division has also been instrumental in the detailed development and installation of this first program budget document.

## Management Activities

The Management Division's major program accomplishments for fiscal 1974 included the following:

1. Preparing an information system design identifying information requirements of the Commission. This effort led to the further design of the following subsystems:
  - The Financial Management System will provide bureau managers with financial information necessary to meet increased responsibilities for fiscal management and budgetary control.
  - The design of the Operational Planning and Control System provided the basis on which this program budget was developed.
  - System requirements were developed for the Case/Project Tracking System which includes the ability to provide case status information and relate it to resource scheduling and use.
  - The Weekly Activity Reporting System was designed and implemented to improve professional staff activity with reporting on a case and program basis.
2. Implementing new data processing applications to support the financial statistics program and specifically the Quarterly Financial Report.
3. Completing a feasibility review for a document indexing, retrieval, and data analysis system, and the subsequent awarding of a contract for the provision of technical support to the planning of this system.
4. Completing a staff study of stenographic reporting services provided under contract to the Commission, resulting in actions which should substantially reduce reporting costs in 1975 and in the future.

5. Converting data processing services from an inadequate computer owned and operated by the FTC to modern facilities in outside service bureaus. This approach includes provision of on-line (i.e., direct access) services to key Commission applications.
6. Providing analytical services in support of several bureau formal investigations and surveys.
7. Developing with the Office of Public Information a more efficient mailing system for the dissemination of Commission news releases and other public information materials.

### Library Services

During fiscal 1974, 1418 books and 1528 subscriptions were acquired or ordered. Over 4700 volumes were added to the collection and catalogued. Three bibliographic aids were published. Major shifting of over half the collection was completed. A systematic compilation of those materials related to legislation of interest to the FTC staff was begun.

### Administrative Services

Among the significant program accomplishments of the Division of Administrative Services during fiscal 1974 were the following:

1. An in-house space occupancy survey and analysis was conducted to determine the current occupancy patterns and space needs of various categories of professional and clerical staff personnel.
2. Additional space was acquired in the Gelman and Pennsylvania Buildings for the expansion of the Bureau of Competition and the Energy Study Group.

FUNDS AVAILABLE  
TO THE COMMISSION  
DURING FISCAL YEAR 1974

For fiscal year 1974, funds of \$32,496,000 were appropriated for the Commission. Actual expenditures for the year were \$32,103,430; these expenditures are detailed below by activity.

Obligations by Activities for Fiscal Year 1974

1.	Maintaining Competition: .....	<u>\$ 9,438,197</u>
	Investigation and Litigation .....	9,438,197
2.	Consumer Protection: .....	<u>15,238,412</u>
	Investigation and Litigation .....	12,876,023
	Consumer Credit Enforcement .....	1,274,308
	Fair Packaging and Labeling .....	119,380
	Flammable Fabrics, Textile, Fur and Wool Enforcement .....	788,976
	Other Special Statutes .....	179,725
3.	Economic Activities: .....	<u>2,560,788</u>
	Investigation and Litigation .....	14,608
	Economic and Financial Reports .....	2,546,180
4.	Executive Director and Policy Planning .....	<u>1,815,379</u>
5.	Administration and Management .....	<u>2,650,654</u>
6.	Emergency Petroleum Allocation Act .....	<u>400,000</u>
	Total Obligations - Fiscal Year 1974 .....	<u>\$32,103,430</u>