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REPORT

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

Annual  
Report  
of the FEDERAL  
TRADE  
COMMISSION

For the Fiscal Year Ended

September 30, 1989

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\* From April 21, 1986 to August 10, 1989.

\*\* Sworn in August 11, 1989.

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LETTER OF TRANSMITTAL

July 13, 1990

The Honorable Dan Quayle  
President of the Senate  
United States Senate  
Washington, D.C. 20510

The Honorable Thomas Foley  
The Speaker of the House  
House of Representatives  
Washington, D.C. 20515

Dear Mr. President and Mr. Speaker:

It is a pleasure to transmit the seventy-fifth Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended September 30, 1989.

By direction of the Commission.

Janet D. Steiger  
Chairman

FEDERAL TRADE COMMISSION  
1989 ANNUAL REPORT

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## SUMMARY

The Federal Trade Commission enforces a variety of federal antitrust and consumer protection laws. The Commission seeks to ensure that the nation's markets function competitively, and are vigorous, efficient, and free of undue restrictions. The Commission also works to enhance the smooth operation of the marketplace by eliminating acts or practices that are unfair or deceptive. In general the Commission's efforts are directed to stopping actions that threaten consumers' opportunities to exercise informed choice. Finally, the Commission undertakes economic analysis to support its law enforcement efforts and to contribute to the policy deliberations of the Congress, the Executive Branch, other independent agencies, and state and local governments.

In addition to out its statutory enforcement responsibilities, the Federal Trade Commission advanced the policies underlying Congressional mandates through cost-effective non-enforcement activities, such as consumer education. This report itemizes the Commission's accomplishments in fiscal year 1989.

## MAINTAINING COMPETITION

The Bureau of Competition and the Commission's ten regional offices assisted the Commission in fulfilling its mission of maintaining competition in the U.S. economy. In the merger enforcement area, the Bureau of Competition experienced a 5 percent increase over fiscal year 1988 figures of transactions reported pursuant to the Premerger Notification Program, and the staff reviewed and proposed modifications to the reporting rules to reduce the premerger reporting burden and to reduce incentives to violate the rules. In fiscal 1989, the Commission reviewed mergers in many sectors of the economy, the most notable were in the petroleum, health care, and food industries. Measures were taken to ensure compliance with Commission orders requiring divestitures and prior approvals of acquisitions.

Outside the merger enforcement area, the Commission continued efforts to eliminate private and public restraints on competition by reviewing licensed occupations, investigating and challenging boycotts, and reducing the economic restrictions on the practice of innovative health care providers. The Commission devoted considerable attention to maintaining competition in the health, care industry and to challenging anticompetitive agreements among competitors, especially competitive restraints involving professionals. In the compliance area, the Bureau of Competition staff continued or completed work on civil penalty litigation, petitions to modify orders, and applications for



approval of divestitures and acquisitions from entities already subject to Commission orders. Along with its enforcement activities, the agency promoted competition through other methods, including, when invited, advocacy before state and federal bodies of regulatory approaches that would foster rather than impair competition.

## CONSUMER PROTECTION

In fiscal 1989, the Commission challenged as false, misleading, or unsubstantiated, a number of advertising claims which presented risk of substantial harm to consumers. As Part of this effort, the Commission accepted a number of consent agreements while issuing administrative complaints and pursuing administrative litigation in other matters.

The Commission also conducted investigations of alleged fraudulent or deceptive tactics in the sale of items. The Commission continued its participation, together with state and local law enforcement authorities, in a nationwide computer network for consumer complaints involving telemarketing fraud. In addition, the Commission worked to ensure that warranty information was understood and made available to consumers prior to sale and that promises made under the "warranties were honored.

The Commission obtained civil penalties or consumer redress in several actions charging violations of Commission rules. The Commission amended the appliance labeling rule, adopted modifications to the Door-To-Door Cooling Off Rule, and began proceedings to consider expanding the Mail Order Rule to cover telephone sales and other telemarketing technologies.

In fiscal 1989, the Office of Consumer and Business Education produced three business booklets concerning credit statutes and the Used Car Rule. In addition, the Office developed or revised 20 consumer publications on topics such as using credit cards, car rental, dance studio contracts, and program length commercials, and the staff distributed more than 2.5 million copies of consumer and business publications.

## CONSUMER AND COMPETITION ADVOCACY

A number of federal and state legislatures and regulatory bodies sought the Commission's advice on proposed legislation or regulatory matters. Topics addressed included advertising, antitrust, communications, health care, occupational licensing, rent control and transportation. The staff also filed amicus curiae briefs in the circuit courts and the Supreme Court concerning issues related to the agency's missions.

## ECONOMIC ANALYSIS

In fiscal 1989, Federal Trade Commission economists continued to

make policy recommendations and to produce reports on topics of interest to the public. While direct support of enforcement, particularly antitrust, activities absorbed the bulk of the resources of the Bureau of Economics in fiscal 1989, the Bureau was also responsible for analyzing data and publishing information about the nation's industries, markets, and business firms. The Bureau conducted a number of studies on a broad range of antitrust, consumer protection and regulatory topics. This work resulted in published reports on sham litigation, mergers in the US petroleum industry, and health claims policy. These major reports provide insight into the effects of government regulation on competition and consumer welfare.

#### ADMINISTRATION AND MANAGEMENT

A number of organizational changes during fiscal 1989 were designed to improve the delivery of ADP support services to Commission staff. The Automated Systems Division implemented three new central records systems, and also completed work on a utility to enable personal computer users to print documents on any printer attached to the Commission's local area network. The staff also improved internal controls over property, information, and telephone usage.

The Commission's budget declined in real terms in fiscal 1989, resulting in the expenditure of about 10 percent fewer workyears than in fiscal 1988. The tight budget required a reduction-in-force ("RIF") during the year and virtually no hiring activity. In addition to RIF-related activities, the Division of Personnel devoted much of its attention to an alternative work schedule program and revision of the agency's merit promotion plan. Two regional offices moved to new offices in fiscal 1989, and work was accomplished on a number of renovations and improvements to the Headquarters building.

#### MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission is charged with preventing unfair methods of competition and promoting competition. The major goal of this mission is to detect and eliminate antitrust violations, including collusion, anti-competitive mergers, predatory single firm conduct, injurious vertical arrangements, and other anticompetitive practices in the private sector. The Bureau of Competition is primarily responsible for conducting the activities of this mission. Activities are grouped into the following program areas: premerger notification, mergers and joint ventures, horizontal restraints, distributional restraints, single firm violations, and antitrust policy analysis. The premerger notification program investigates possible violations of the

reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act and administers the operation of the statutory premerger notification rules. The other program areas-review violations of the antitrust laws in the petroleum, health care, transportation and food areas as well as suspected violations among licensed occupations. In addition, the Bureau provides procompetitive analysis and comment in government proceedings that affect competition.

#### PREMERGER NOTIFICATION

The Premerger Notification Program administers the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires that certain mergers, acquisitions, and joint ventures must be reported to the Commission prior to their consummation.

During fiscal year 1989, 2,883 transactions were reported under the program, an increase of 5 percent over fiscal year 1988. The Commission opened 35 investigations to issue "requests for additional information" relating to 42 of those transactions. In addition, the Premerger Notification staff responded to approximately 17,000 inquiries regarding application and interpretation of the Hart-Scott-Rodino Act and the premerger rules.

In August 1989, the Commission published the second Premerger Notification Sourcebook, an update of the 1987 reference manual that compiles in a single volume the text of the Hart-Scott-Rodino Act, the Commission's premerger notification rules including revisions and amendments, all rule interpretations issued formally by the Commission, and various other documents relevant to the premerger notification program.

At the request of the Commission, the Department of Justice filed a complaint and settlement in one matter involving a violation of the Hart-Scott-Rodino Act. In the Great Atlantic & Pacific Tea Co., Inc., the complaint charged that A&P structured its acquisition of Waldbaum, Inc., as an acquisition by a general partnership for the purpose of avoiding the notification and waiting requirements of the Hart-Scott-Rodino Act. The complaint charged that the substance of the transaction was an acquisition of Waldbaum by A&P. A&P agreed to settle the charges by paying a civil penalty of \$3 million. This is the largest civil penalty obtained for a violation of the Hart-Scott-Rodino Act.

#### MERGERS AND JOINT VENTURES

This program monitors and investigates mergers, acquisitions, and joint ventures that may reduce competition, tend to create monopoly, or cause other harm to consumers. The Commission has the authority to seek to enjoin mergers preliminarily under Section 13(b) or the FTC Act

when the Commission deems such action appropriate to prevent violations of the antitrust laws. In fiscal year 1989, the Commission authorized seven preliminary injunction actions: General Electric/Union Carbide, Textron/Avdel, BOC/Varian Associates; Red Food Stores/Kroger, U.S. Can/Armstrong Industries, Autoclave Engineers/Tylan Corp.; and Elf Aquitaine/Pennwalt. In carry-over matters, the parties to two acquisitions-McNesson-Alco and, McKesson/Northwest abandoned the transactions after the Commission had authorized injunction actions in fiscal 1988.

In the General Electric/Union Carbide, BOC/Varian Autoclave Engineers/Tylan, U.S. Can/Armstrong matters, the transactions were abandoned when the Commission voted to seek injunctions. Shortly after the Commission authorized the staff to seek injunctive relief in Elf Aquitaine/Pennwalt - but before the filing of the Commission's preliminary injunction application in federal court the Commission entered into a consent agreement pursuant to which Elf Aquitaine agreed to divest Pennwalt's polyvinylidene fluoride/vinylidene fluoride plant in Thorofare, New Jersey. In Textron/Avdel, the Co on obtained from the district court a stipulated injunction and hold-separate agreement, pursuant to which Textron win hold separate the business of Avdel and a court-appointed trustee will oversee the operation of Avdel pending completion of the administrative proceedings. The courts denied the Commission's application for injunctive relief in Red Food Stores/Kroger.

The Commission also issued administrative complaints in three merger cases in fiscal 1989. In Hoechst Celanese Corp., the Commission's complaint alleges that the acquisition may substantially lessen competition in the market for acetal, a type of engineering resin. In Textron/Avdel, the complaint claims that the transaction may lessen competition in markets for aerospace blind rivets and non-aerospace structural blind rivets. The complaint in Promodes, S.A. (the administrative litigation pertaining to the Red Food/Kroger acquisition) charges that the acquisition may h competition among Chattanooga, Tennessee, supermarket firms.

Meanwhile, administrative litigation continued (or was concluded) in a number of merger cases in fiscal 1989. In Owens-Illinois/Brockway, involving Owens-Illinois' acquisition of Brockway, Inc., an Administrative Law Judge found that the transaction was likely substantially to lessen competition in the production and sale of glass containers, and ordered divestiture of the acquired Brockway assets plus certain additional relief. The judges decision was appealed to the Commission by Owens. During the pendency of respondent's appeal before the Second Circuit in B.F. Goodrich/Diamond Shamrock - in which the Commission had found a violation in the market for vinyl chloride

monomer-Goodrich and the Commission reached a settlement providing for the divestiture of a VCM plant different from the one originally ordered divested. Earlier in the same case, the Commission and Occidental Petroleum Corp. had entered into a stipulation that provided for a continuing feedstock arrangement. Following the Seventh Circuit's affirmance, the administrative complaint in Illinois Cereal Mills/Elders was withdrawn from adjudication as to Illinois Cereal for the purpose of negotiating a consent agreement. Although the companies have abandoned the proposed acquisition, the matter remains in adjudication as to Elders. In MidCon/United Energy Resources, the Commission dismissed the count in the complaint that dealt with offshore pipelines, upon a finding that the transaction was unlikely to result in anticompetitive effects.

A number of consent orders and agreements have flowed from the merger program in fiscal 1989. The Commission issued a consent order requiring divestiture and prior approval in West Point-Pepperell, Inc., which involved the competitive effects in the sheet and towel markets caused by West Point-Pepperell's acquisition of J.P. Stevens & Co. A consent order issued in the KKR/RJR Nabisco matter required divestiture of certain assets in the catsup, packaged nut, and Oriental food businesses. In Sun Co./Atlantic Petroleum, the consent order required the respondent to divest gasoline terminals and related retail marketing assets in Williamsport, Pa., and Binghamton, N.Y. In PepsiCo/General Cinema, the Commission's order required divestiture of overlapping operations in Staunton, Va., and Broward County, Fla. The order in Panhandle Eastern/Texas Eastern requires divestiture of overlapping natural gas pipeline operations in the Gulf Coast area and other relief, including the appointment of a trustee to oversee the divestiture process. Litigation in PPG/Swedlow, which involved a transaction between firms in the aircraft transparency market, was concluded as to PPG with a consent order following the parties' abandonment of the acquisition. The order requires PPG to obtain prior Commission approval before making certain acquisitions. Charges against Swedlow were dismissed. Litigation of the attempted acquisition by Pacific Resources, Inc., of certain Hawaiian assets of Shell Oil Co. was settled by a consent agreement requiring Pacific to obtain Commission approval before making certain acquisitions.

In addition to these consent orders, the merger program yielded a number of proposed consent agreements in fiscal 1989 that were placed on the public record for comment. In Arkla/TransArk Pipeline, the proposed order would require the divestiture of the TransArk Pipeline or, if the Commission were to permit it, the divestiture of Arkla's interest in any other pipeline in the same market. In MTH Holdings/Grand Union, the proposed order requires the divestiture of 16 stores in 12

cities and towns in Vermont and New York State, imposes a moratorium on future acquisitions, and provides for other relief. The agreement negotiated in Elf Aquitaine/Pennwalt provided for, the divestiture of a PVDF/VF2 plant in Thorofare, New Jersey, and other relief. Finally, in the litigation against Coca-Cola Bottling Southwest, the Commission reached a consent agreement with the Dr Pepper/Seven-Up-Company, providing that Dr. Pepper/Seven-Up will take no action that would interfere with the Commission's ability to fashion relief against Coca-Cola Bottling.

There was also considerable activity involving Commission orders in the merger area. B.P. Goodrich Co. requested Commission approval of the divestiture of a vinyl chloride monomer plant in Calvert City, Ky., to Sterling Chemicals Inc.; more recently, Goodrich filed a substitute proposal involving the divestiture of the Calvert City plant to a different acquirer. In L'Air Liquide S.A., the Commission modified the consent order to permit the consolidation of L'Air Liquide with Big Three Industries and also approved L'Air Liquide's proposal to divest certain interests in the production of argon from the Geismar plant in Louisiana. The Commission also approved an acquisition pursuant to the order in Great Lakes Chemical; meanwhile, Great Lakes filed a still-pending request for approval of another acquisition. In Flowers Industries, the Commission granted prior approval to an acquisition involving Winn-Dixie; another request by Flowers for prior approval of an acquisition is pending before the Commission. Flowers also requested that the Commission reopen and modify the order so as to eliminate the prior approval requirement.

In other matters, the Commission approved two proposed divestitures in InterNorth, Inc., and prevailed in a federal court action concerning a third party's right of first refusal in property subject to the divestiture order. The plaintiff's appeal of that federal court ruling is pending in the U.S. Court of Appeals for the Fifth Circuit. In Sun Co./Atlantic Petroleum the Commission approved Sun's divestiture of the Binghamton terminal and related assets to Amerada Hess and the divestiture of the Williamsport properties to subsidiaries of Coastal Corp. The Commission also granted prior approval of an acquisition in General Electric. In LaFarge Canada Inc., the Commission approved a proposed acquisition and also modified the order in part. In Cooper Industries, Inc., Cooper agreed to a stipulated final judgment providing for, inter alia, a civil penalty of \$100,000 after making an acquisition without the prior Commission approval required by tire order. In MidCon/United Energy, MidCon agreed to a stipulated judgment providing for a civil penalty of \$100,000 for failure to divest by the date set forth in a consent order. In West Point-Pepperell, the Commission denied the respondent's application for an extension of the time within which to

divest certain sheeting facilities; moreover, West Point-Pepperell filed-but ultimately withdrew - a petition to reopen and modify the order that sought Commission authorization to divest the Columbus plant in lieu of the Hanna-Pickett and Abbeville plants. Finally, in KKR/RJR, the respondent asked for Commission approval of the proposed divestitures of the Chun King Oriental food business and of the Fisher Nut business.

#### HORIZONTAL RESTRAINTS

In fiscal 1989, the Commission continued to devote substantial resources to eliminating anticompetitive agreements among competitors, especially in markets for professional and health care services. In implementing its program against anticompetitive horizontal restraints, the Commission has used various means, including advocacy before regulatory agencies and state legislatures, cooperative efforts resulting in voluntary compliance, consent orders and litigation. This year the Commission issued administrative complaints in two cases: Robert G. Koski, M.D., involved charges that the doctor conspired with other physicians in Michigan to prevent a clinic from offering services that would increase competition among health care practitioners in the area; Chain Pharmacy Association of New York State involved allegations that a trade association and several pharmacies engaged in an illegal boycott of the state's prescription plan in an effort to increase the program's reimbursement rate for prescriptions.

The Commission issued its final order in four cases. In Detroit Auto Dealers, involving allegations that competing motor vehicle dealers in Detroit conspired to close their businesses during certain week nights and weekends, the dealerships were ordered to increase their hours of operation. The complaint against Ticor Title Insurance Co. and four other title insurance companies was upheld when the Commission ruled that the companies illegally conspired to fix prices on search and examination services through their participation in rating bureaus in New Jersey, Pennsylvania, Connecticut, Wisconsin, Arizona and Montana. In the New England Motor Rate Bureau case, the Commission upheld a 1986 Administrative Law Judge's decision that the rating bureau illegally fixed prices by collectively filing rates to be charged for the interstate transportation of freight in Massachusetts and New Hampshire. The Commission dismissed the complaint against the Motor Transport Association of Connecticut, ruling that the association's practice of filing intrastate transportation rates for property shipped by motor common carrier was exempt from the federal antitrust laws under the state action doctrine. The Commission found that collective rulemaking was protected by the laws and action of the state of Connecticut.

The Commission accepted for public comment or issued consent

agreements in eight matters involving collective or coercive activities by professionals. In Certain Sioux Falls Obstetricians, a consent agreement settled charges that obstetricians in South Dakota engaged in collective, coercive activities that interfered with the residency program of the University of South Dakota School of Medicine. Related to that consent agreement, the Commission accepted a proposed consent agreement in Lee M. Mabee, M.D., to settle charges in an administrative complaint that he also participated in the illegal boycott of the residency program of the school of medicine. The New York State Chiropractic Association entered into a consent agreement under which it will not conspire to deal with third-party payers on collectively determined terms. Brooks Drug, Carl's Drug Co., and Genovese Drug Stores, three pharmacy chains related to the Chain Pharmacy case, separately entered into consent agreements settling charges that they restrained competition among pharmacy firms by boycotting a third-party prescription benefit plan. Under a final consent agreement in Memorial Staff of Dickinson County Memorial Hospital which was related to the Robert G. Koski, M.D., matter, doctors in Dickinson County, Michigan, agreed not to interfere with medical facilities that compete with the private practice of physicians. The Iowa Chapter of the American Physical Therapy Association agreed not to restrict physical therapists from working for physicians, and fourteen physicians in Huntsville, Texas, agreed not to conspire against health maintenance organizations in Eugene M. Addison, M.D.. Under terms of a consent agreement, the Cleveland Automobile Dealer's Association agreed to rescind its closing policy that limited showroom hours among competing car dealers in the Cleveland area.

Four consents accepted for comment were pending at the close of the fiscal year: American Institute of Certified Public Accountants involved allegations that the institute restrained competition by restricting fee arrangements and truthful advertising. Texas Board of Chiropractic Examiners and the Structural Engineers Association of Northern California, involved allegations that both organizations illegally restrained competition by restricting truthful advertising; Oklahoma State Board of Veterinary Medical Examiners involved allegations that veterinarians were restricted from entering into certain business arrangements with non-veterinarians.

During fiscal 1989, the Commission's staff conducted numerous investigations of allegedly anticompetitive regulations of state licensing boards and private professional and trade associations. Such regulations can have the purpose or the effect of fixing or stabilizing prices or reducing output, thus causing substantial injury to consumers. A number of these investigations have been closed after the board, upon consultation with Commission staff, voluntarily eliminated regulations



imposing horizontal restraints. The Commission's investigations involved competition among pharmacists, veterinarians, accountants, funeral service providers, engineers and architects.

The Commission's staff also investigated allegations of efforts by health care providers collectively to coerce higher fees from third-party payers or to prevent competition from allied professionals or alternative delivery systems, restrictions on advertising and other forms of competition by a wide variety of trade and professional associations, and allegations of the misuse of government processes to disadvantage competitors.

In addition, during fiscal 1989, the Commission's staff provided advisory opinions, comments and guidance to regulatory agencies and private groups to ensure that their regulations or activities do not impose unreasonable horizontal restraints. These advocacy activities dealt with various economic sectors, including health care, marketing and delivery, certificate-of-need regulation in the health care field, trucking regulation, taxicab regulation, pre-need funeral legislation, and public accounting legislation. Finally, the Commission filed amicus briefs in *Nurse Midwifery Assoc. v. Hibbett* and *Bolt v. Halifax Hospital*. Both briefs dealt with legal issues that commonly arise in cases involving horizontal restraints in the health care sector.

#### DISTRIBUTIONAL RESTRAINTS

During fiscal 1989, the Commission continued to investigate, and has initiated new inquiries into, possible unlawful restraints upon the distribution of goods or services in the marketplace. The types of restraints examined by the Commission include unlawful refusals to deal, dealer terminations, interference with a competitor's sources of supply, and agreements that exclude, restrict or impede a rival from competing in the open market.

The Commission staff is litigating challenges to the pricing practices of eight major book publishers; reviewing the public comments on the proposed revisions to the Fred Meyer Guides, which advise businesses regarding discriminatory advertising and promotional allowances, and monitoring for violations of the Robinson-Patman Act, which prohibits price discrimination and promotional allowances or discounts unless made available on a proportionally equal basis to all purchasers for resale.

#### SINGLE FIRM VIOLATIONS

During fiscal 1989, the Commission has continued investigations into possible abuses of market power, including possible abuse of the patent process and other practices that may increase the costs of competitors

and thereby injure competition. The Commission staff is examining additional circumstances in which nonprice predation may be an effective anticompetitive tool. Additionally, Commission staff considers all complaints it receives alleging predatory pricing although such complaints seldom entail violation of applicable legal standards.

#### ANTITRUST POLICY ANALYSIS PROGRAM

During fiscal 1989, the Bureau of Economics undertook a number of research projects in support of the antitrust mission of the Commission. In addition, the Bureau completed a number of other projects and released staff reports on (1) the cost of trade restrictions on textiles, steel, and automobiles, (2) mergers in the US petroleum industry, and (3) sham litigation.

#### CONSUMER PROTECTION MISSION

The Consumer Protection Mission acts to ensure that the marketplace is free of unfairness, fraud and deception, and serves as the nation's advocate of competition and consumerism. To achieve these objectives, the Mission has undertaken several initiatives, including: increasing efforts to inform and educate consumers of their rights, working more closely with business groups to increase compliance with the law; developing approaches that focus on specified market failures; fashioning innovative remedies to advance consumer welfare, implementing a sound program of law enforcement actions; and strengthening the Commission's program of filing comments before various federal and state agencies in support of competition and consumers.

Mission activities are grouped into five program areas; Enforcement, Marketing Practices, Advertising Practices, Credit Practices, and Service Industry Practices. These program areas are supported by the Office of Consumer and Business Education and the Economic and Consumer Policy Analysis program.

#### ADVERTISING PRACTICES

Eight advertising cases resulted in consent agreements accepted by the Commission. General Nutrition Corp. is required to pay a total of \$600,000 for research, and is prohibited from making false and unsubstantiated claims about its products. The consent order settles charges that GNC made false and unsubstantiated claims that its diet supplement, "Healthy Greens," was effective in reducing the risk of cancer. The \$600,000 will be divided equally among the American

Diabetes Association, the American Cancer Society, and the American Heart Association for research in nutrition, obesity, or physical fitness.

Associated Mills was charged with having no basis for claiming that its Pollenex Bottled Water Maker Reverse Osmosis System could remove certain hazardous organic chemicals from tap water for a year. The company agreed to have substantiation for future similar claims. Coleco Industries agreed not to misrepresent the availability of its computer-related products. The company was charged with falsely claiming that additional modules for its "My Talking Computer" were available, when the modules were not yet for sale.

Alamo Rent-A-Car agreed to settle charges that its operators failed to disclose to consumers the existence and amount of airport surcharges and mandatory fuel charges when consumers inquire about possible rental of Alamo's vehicles. To settle similar charges, the Commission accepted a consent agreement with General Rent-A-Car. The company was also charged with failing to inform consumers of the car models they are renting even though, under General's vehicle classification system, consumers could receive a smaller automobile than expected. General agreed to disclose orally all mandatory, charges to every consumer who inquires about its prices, and to disclose to consumers the car models they would receive under the car size classification the consumer selects.

The Commission gave final approval to a consent agreement with JS&A Group, and its president and owner, Joseph Sugarman. The consent group prohibits the company from claiming that its program-length ad for sunglasses, called BluBlockers, is an investigative consumer program that conducted an objective investigation of the sunglasses the company sells. The order also prohibits JS&A from misrepresenting that any paid advertisement is an independent consumer or news program.

Two additional consent agreements were accepted by the Commission. An-Mar International, makers of Solar Gold suntanning devices, agreed to settle charges it falsely advertised that its products provided health benefits and that consumers did not risk harmful side effects, such as skin cancer. The consent agreement prohibits the company from misrepresenting the safety of its products. Body By Design, a Boston health club, was charged with falsely claiming that its electric muscle stimulation treatments produced the same effects as exercises. Under the consent agreement, accepted subject to final approval, the club and owners, agreed not to misrepresent any fitness program.

The Commission issued an administrative complaint charging Campbell Soup Co. with making deceptive and unsubstantiated claims in advertisements for its soups. According to the complaint, the ads link the low fat, low cholesterol content of its soups with a reduced risk of some forms of heart disease, but fail to disclose that the soups are high

in sodium and that diets high in sodium may increase the risk of heart disease.

Complaints against two companies selling baldness cures were filed in federal district court. California Pacific Research was charged with falsely advertising "New Generation" baldness preventative and remedy. The court issued a preliminary injunction against the company. Pantron I was charged with falsely advertising that "Helsinki-Formula" products will cure or prevent baldness. Both companies used various means of advertising, including 30-minute program-type television commercials that suggested that the performance claims were accurate and supported by scientific substantiation. The Commission requested that the court issue preliminary and permanent injunctions and order the defendants to pay refunds to consumers.

An Administrative Law Judge upheld charges that Kraft, Inc. falsely advertised that its Kraft Singles cheese slices contained as much calcium as five ounces of milk and contain more calcium than do most imitation slices. The ALJ ordered the company not to misrepresent the nutrient content of its individually wrapped slices of cheese in the future.

The Commission accepted an Administrative Law Judge's finding that Norelco falsely advertised that its Clean Water Machine would make tap water clean or cleaner, when it knew that the machine added a potentially hazardous chemical to the water. The company is prohibited from misrepresenting the performance of the Clean Water Machine or any other electric-powered consumer appliance.

The Commission ruled that Removatron International Corp., the largest maker of high-frequency, tweezer-type hair-removal devices, made false and deceptive claims that its devices permanently remove hair and lacked a reasonable basis for making such permanency claims. The Commission issued an order prohibiting the company from making unsubstantiated claims about its product and requiring it to possess clinical testing as substantiation for future permanency claims.

Comment was sought on proposed amendments to regulations under the Comprehensive Smokeless Tobacco Act of 1986 to remove the exception for utilitarian items. The Court of Appeals had ruled that, the Commission's exemption was improper. Therefore, staff requested the Commission to seek comments on ways to amend the regulation to provide warnings on utilitarian items.

## MARKETING PRACTICES

In the Marketing Practices program, two Franchise Rule cases resulted in over \$3 million ordered returned to consumers. Engage-A-Car, an auto leasing franchise, agreed to pay \$1.5 million into a redress fund to settle charges of misrepresenting its profitability. The KIS Corp., which sold one-hour photo finishing equipment and franchises, agreed to pay

\$1.55 million to settle charges it made false claims and failed to provide required disclosures to prospective buyers.

In addition, four complaints charging violations of the Franchise Rule were filed in federal district court. Temporary restraining orders and asset freezes were issued in all four cases, including: Investment Developments and its affiliated corporations and principals, marketers of amusement game machine franchises; American Safe Marketing, seller of distributorships to sell fire extinguishers; 7-Day Appraisal Services, seller of real estate appraisal franchises, and National Business Consultants, seller of business opportunities for business consulting services.

Civil penalties of \$120,000 were ordered from four companies charged with violating the Funeral Rule. The Rule requires that funeral providers give detailed and accurate information about prices and legal requirements to persons who are arranging funerals. Lucas Funeral Home agreed to pay \$20,000, and Errington Memorial Chapel and the James H. Turner Funeral Home will each pay \$10,000 in civil penalties to settle charges.

The Commission won its first contested lawsuit brought under the Funeral Rule. A federal district court ruled that Dudley M. Hughes, Jr., owner of Dudley Hughes Funeral Company, must pay \$80,000 in civil penalties for violating the Rule. Hughes was also permanently prohibited from future violations. This was the largest civil penalty amount imposed in a case involving the Funeral Rule.

The Commission accepted a consent agreement, subject to final approval, with Robert Lewis Wilks, the former owner of the Barbers Funeral Home. The complaint charged Wilks with failing to provide his customers with goods and services they selected and paid for. Wilks agreed to stop doing business as a funeral service provider, or having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

The Commission accepted a consent agreement with Batesville Casket Co., the nation's largest casket maker, settling charges the company made false claims about the length of time its caskets will keep-out air, water, and other gravesite substances.

Administrative complaints were issued against The Hensley Group, a timeshare promoter, and Outdoor World Corporation, a campground promoter. The Commission also filed complaints in federal court against the two companies, and David and Annette Defusco, who owned a company, Lead Marketing, that marketed recreational property. The Commission alleged that the defendants represented in promotional mailings that named consumers had won one or more specified prizes, when the consumers had not won the specified prizes. A federal court issued preliminary injunctions against the DeFuscus, Lead Marketing,

and Outdoor World, prohibiting them from misrepresenting that consumers have won specified prizes. The Hensley Group agreed to a stipulated injunction that contains the same prohibitions.

The Commission issued an administrative complaint charging TK-7 Corp, and its president, Moshe Tal, with making false and unsubstantiated advertising claims concerning the performance characteristics of gasoline additives. According to the complaint, the company claimed that its products can improve engine performance by extending engine life, and increasing power, octane, and mileage.

Mytel International a telemarketer of photocopy supplies, agreed to pay \$250,000 to settle charges it deceptively marketed supplies directly and through other sales companies. Mytel agreed to stop doing business with telemarketers that make misrepresentations in their sales presentations.

Traditional Industries was charged with making false claims concerning the quality and value of photographic processing packages it sold to consumers for \$300 to \$1,500. In a consent decree filed in federal court, the company agreed to settle the charges by changing its sales practices and by permitting some consumers to cancel their contracts.

A complaint was filed charging Case Equipment Co. and its president with making false and deceptive claims in the marketing of machines that allegedly copy color pictures onto textiles and other surfaces. At the Commission's request, a federal court issued a temporary restraining order forbidding further misrepresentations, and froze the defendants' assets.

Vaughn Management was charged with falsely telling consumers they would receive an "award" for no cost, when in fact consumers had to pay a "processing fee" of \$24.50 to \$26.50 to obtain their awards. The Commission also alleged that defendants failed to tell consumers who paid the processing fee that they were required to spend hundreds of dollars more to use the airfare vouchers they received as awards. A federal court issued a temporary restraining order halting such misrepresentations and also froze the defendants' assets.

Complaints were filed in federal district court charging two Florida telemarketers with misrepresenting the capabilities of water purifiers they sell and the return or replacement policies for the purifiers. U.S. Consumer Promotions (USCP) was also charged with falsely telling consumers they would receive an award without making a purchase and failing to disclose to consumers that they would have to pay substantial additional sums of money to obtain the award. The court issued temporary restraining orders against USCP and Environmental Protection Systems and froze the defendants' assets. Responding to an increase in marketing abilities in the sale of home-water purifiers, the Commission also prepared a brochure, with assistance from EPA, to help consumers

determine their need for a water treatment unit; the brochure explains what various types of units can do and alerts consumers to deceptive sales practices that unscrupulous sellers may employ.

Ujena, Inc., a swimsuit seller, was charged with not paying promised refunds on mail order or telephone sales, in a timely manner. The Commission accepted a consent agreement in which the company agreed to pay refunds no later than 10 days after receiving requests. The Commission also accepted a consent agreement with Montgomery Ward settling charges that Ward's employees made false and unsubstantiated claims in selling appliance service contracts.

A consent agreement, accepted subject to final approval, with Budget Rent-A-Car settled charges it failed to disclose to prospective renters that it did not inspect automobiles subject to recall notices within a reasonable period of time, and if appropriate, make the necessary repairs. Cooper Rand Corp. was charged with falsely claiming that its lighter-to-lighter automobile battery chargers could restart auto batteries as quickly as jumper cables. In a consent agreement the company agreed not to make false claims about its products and to notify consumers of the limitations of the "Auto Starter."

Richard J. Wiley agreed to settle charges that he used deceptive practices to sell distributorships for energy-saving devices and home burglar alarms. Under a consent judgment, Wiley agreed not to misrepresent any business ventures he offers for sale in the future.

The United States Circuit Court of Appeals for the 7th Circuit affirmed the trial court's decision and judgment of \$6.5 million for consumer redress in *FTC v. Amy Travel*.

In an Advance Notice of Proposed Rulemaking, the Commission sought public comment on whether it should revise its Franchise Rule to encourage more franchisors to provide cost and earnings information to potential purchasers and to eliminate potential inconsistencies in federal and state requirements governing franchise sales. In addition, the Commission granted Saturn Corporation, a wholly-owned subsidiary of General Motors, an exemption from the Rule.

The Commission also published an Advance Notice of Proposed Rulemaking seeking public comment on its Rule Governing Informal Dispute Settlement Procedures, also called Rule 703. Under the Magnuson-Moss Warranty Act, the Commission is responsible for encouraging the use of informal dispute settlement mechanisms as an alternative to court action. The Commission also requested comment on a petition concerning the Rule by two industry groups, and a Memorandum of Opposition to the petition filed by the National Association of Attorneys General.

Public comment was sought on a petition by the State of Texas for statewide exemption from the Funeral Rule. Under the Rule, states can

apply for an exemption if they have existing laws that cover the same business practices as the Commission rule.

## CREDIT PRACTICES

Complaints filed in federal district courts resulted in \$3,756,000 ordered returned to consumers and \$36,000 in civil penalties paid to the U.S. Treasury. BankCard Travel Club has agreed to pay up to \$2.5 million in consumer redress to settle charges that it deceptively billed customers for membership fees. In addition, one defendant, Lee Franklin, will pay \$40,000 into the redress fund. The company and three individual defendants also agreed to permanent injunctions.

Action Credit Systems and five other defendants settled charges that they engaged in deceptive acts and practices in connection with the marketing and sale of credit repair service. Action Credit and two defendants are required to pay \$1.2 million into a consumer redress fund. Miguel de la Campa agreed to pay \$11,000 and Nathan S. Levy agreed to pay \$5,000 for use as redress or disgorgement. The money paid by the defendants may be used to pay redress to consumers or, if redress is not feasible, may be paid directly to the U.S. Treasury. All defendants, except Mr. Levy, were permanently barred from selling or providing credit card procurement or credit improvement services, or from assisting others in doing so.

Two former officials of Credit-Rite, James Thomas Gray Sr. and Donald Gray, have agreed to settle charges that they misled consumers about the company's services. Under the consent decree, they are prohibited from misrepresenting their ability to improve consumers' credit bureau reports, and must honor any refund promises they make. As a result of an action brought by the New Jersey U.S. Attorney's office, both defendants were ordered to pay restitution, and James Thomas Gray was sentenced to serve a prison term.

Debt Collectors, Inc. was charged with illegally harassing consumers with threats of imminent court action, arrest, garnishment, incarceration, and deportation, with using obscene and profane language, and with threatening them with violence, in violation of the Fair Debt Collection Practices Act. The company agreed to enter into a consent decree and to pay \$155,000 in civil penalties to settle charges.

Green Tree Acceptance, one of the country's largest companies financing mobile homes and recreational vehicles, agreed to pay \$115,000 in civil penalties to settle charges it violated federal credit laws. The company was charged with discriminating against the elderly by requiring larger down payments from them. The consent decree also settled 1986 charges that the company did not tell consumers why they were denied credit, in violation of the disclosure requirements of Equal Credit Opportunity and Fair Credit Reporting Acts.



John Wanamaker Philadelphia, a department store, agreed to pay a \$90,000 civil penalty to settle charges it illegally discriminated against some married women who applied for credit, in violation of the Equal Credit Opportunity Act. Wanamaker also agreed not to violate the Act in the future.

A complaint filed in federal district court charged Credit Repair, Inc. with misleading consumers by falsely and deceptively claiming that it could substantially improve their credit records and by failing to honor its 100 percent money-back guarantee. The Commission requested that the court order defendants to pay consumer redress and to permanently prohibit them from the challenged practices.

American Credit Services was charged with misrepresenting its credit establishment and credit improvement services in a complaint filed in federal district court. The Commission is seeking a permanent injunction enjoining the company from such misrepresentations in the future and to obtain redress for consumers.

The Commission accepted a consent agreement, subject to final approval, with Heilig-Meyers Co. settling charges the company understated its annual percentage rates to consumers in five states. Heilig offers installment contracts to finance the purchase of furniture that it sells. Under the agreement, Heilig agreed to calculate and disclose accurately the APRs that it discloses in connection with future extensions of consumer credit.

The Commission initiated a review of its Holder In Due Course Rule to determine what impact it has on small businesses. The Rule requires sellers to include specific language in sales contracts and loan agreements when consumers finance their purchases. The Commission also terminated a proceeding to amend the Holder Rule by extending it to cover third-party creditors.

The Commission staff issued its Commentary on the Fair Debt Collection Practices Act. The purpose of the commentary is to replace nearly 1,000 pages of informal staff interpretations. The Act regulates certain activities of debt collectors and prohibits a variety of unfair, deceptive, or abusive practices.

## SERVICE INDUSTRY PRACTICES

Law enforcement actions taken under the Service Industry Practices program resulted in several orders being entered in federal district court, including judgments totaling over \$12.7 million.

The Commission previously charged Federal Sterling Galleries with misrepresenting the authenticity and investment value of the Salvador Dali art work they offered for sale. In fiscal year 1989, a federal court granted the Commission's motion for summary judgment against the remaining individual defendant and issued an order for permanent

injunction and \$4.6 million in consumer redress. The order enjoins the defendant from future misrepresentations in connection with the sale of art work or any other investment offering.

In the case of Rainbow Enzymes, defendants Roy Standridge and Jimmy Standridge agreed to settle charges that they engaged in unfair and deceptive practices in connection with the recruitment of "licensed submanufacturers" to make an ingredient that was allegedly used to make a patented enzyme cleaner. Roy Standridge agreed to pay \$20,000 into a consumer redress fund, and a company controlled by him paid in \$70,000. Jimmy Standridge agreed to pay \$25,000 in consumer redress. The settlements also contained injunctive relief against future misrepresentations.

Dr. Cecil B. Jacobson, who ran the Reproductive Genetic Center Ltd., agreed to settle charges that he misrepresented the likelihood that his patients would become pregnant as a result of his treatments and that women who underwent his infertility treatments had, in fact, become pregnant. Under a consent decree, Jacobsen agreed to pay up to \$250,000 in consumer redress and also agreed to a permanent injunction forbidding future misrepresentations relating to his infertility practices.

Rare Coins of Georgia, and three other defendants, agreed to pay \$150,000 in consumer redress to settle charges they overstated the quality of coins they sold to telemarketers for resale to the public for investments. The settlement also prohibits future misrepresentations about the value of coins and other investments they sell. The action against this supplier halted a nationwide fraud, potentially saving consumers millions of dollars.

A complaint was filed in federal district court charging Certified Rare Coin Galleries with deceptively marketing purportedly rare coins as low-risk, liquid, high-yield investments. The court issued a temporary restraining order with an asset freeze and appointed a receiver for Certified.

Numismatic Certification Institute, and its principals, Steve Ivy and James Halperin, agreed to settle charges that its representations and failures to disclose information misled consumers as to the value of coins certified by the company. An affiliate, Heritage Capital Corporation, also agreed to settle charges that it provided substantial assistance to a coin retailer, Certified Rare Coin Galleries (CRCG), knowing that CRCG was misrepresenting the security and profit potential of its coins to investors. Under the settlement, defendants agreed to a permanent injunction, and Heritage and NCI agreed to contribute \$1.2 million into a consumer redress plan for CRCG's customers.

Bruce M Abrash, an officer of Numismatic Funding Corp., agreed to settle charges that he misrepresented the grade and investment value of silver coins he sold to consumers through telephone and mail order

sales. A judgment was entered against Abrash in the amount of \$125,000, plus a cash payment of approximately \$20,000 from the liquidation of certain assets.

Nancy Murphy, an officer of Lynn Murphy & Co., settled charges that she engaged in unfair and deceptive acts in the sale of rare gold coins and silver and platinum bullion for investments. A complaint was filed against the company and three individual defendants in 1988. Mrs. Murphy agreed to an injunction, and also agreed to "fully cooperate" with the Commission in preparation for future trials and to testify if necessary.

A federal judge entered permanent injunctions against Lynn Murphy and Company, Lynn Murphy and Brad Kaye prohibiting them from misrepresenting gold and bullion investments. The court also awarded the Commission a judgment of \$6.3 million to redress consumers who bought investments from the defendants. At present, the defendants have no known assets with which to satisfy the judgment.

A federal district court issued preliminary injunctions against Pannos Mining Co. and three other companies as a result of an action filed by the Commission. The defendants and four individuals were charged with a bogus investment scheme in which consumers were likely to lose their entire investment. Pannos Mining offered investors deferred delivery contracts for gold and silver at prices substantially below the current market price. The Commission is seeking permanent injunctions and redress for consumers who invested in the project.

The Commission charged Security Rare Coins, a New York firm that sells coins for investment, with misrepresenting the value and investment potential of its coins, over grading them by at least one grade, and failing to honor its buy-back- policy. The court issued a temporary restraining order and a limited asset freeze against Security and its president, James J. Duggan.

A complaint was filed in federal district court charging Uni-Vest Financial Services and five individual defendants with misrepresenting to consumers the risk of investing in precious metals they offered. The Commission also charged that the company failed to follow clients' instructions to sell, or not to sell, their investments. The Commission asked the court to issue a permanent injunction blocking future unfair or deceptive acts or practices and to order the defendants to pay refunds to consumers.

Continental Communications was charged with misleading potential investors in connection with its marketing of an application preparation service for the Federal Communications Commission's lottery of licenses to build and operate cellular telephone systems in Rural Service Areas. A federal court ordered the defendants to stop misrepresenting the investment potential of participating in the lottery. The court also froze

defendants' assets in an attempt to secure refunds for consumers at the end of the court case, and appointed a temporary receiver to take over the corporate defendant.

The Commission filed a complaint in federal district court against Magui Publishers and Pierre Marcand charging them with supplying bogus Dali art prints to retailers throughout the United States and overseas. The court issued a temporary restraining order stopping the challenged practices and also froze defendants' assets and appointed a temporary receiver.

A complaint was filed in federal district court charging Axiom III Corp. with marketing a bogus investment scheme in which consumers were likely to lose their entire investment. Axiom offered deferred delivery contracts for gold to investors across the country. The court issued a temporary restraining order against the company and the other defendants, and froze their assets. The court also appointed a temporary receiver for Axiom and the other companies charged in the complaint.

A federal court has sentenced Wayne Pedersen, a former official of Schoolhouse Coins, to three months in federal prison for criminal contempt of a court-ordered asset freeze. The Commission charged that Pedersen withdrew funds from a bank account, sold various properties, and otherwise violated the freeze order. Pedersen pled guilty to the charges.

The Commission issued the Ophthalmic Practices Rule prohibiting certain state restrictions on optometrists' commercial practices. The Rule invalidates four kinds of state restrictions, including those that ban optometrists from having offices in shopping centers. The effective date of the Rule was stayed as a result of appeals filed by a number of state boards, private associations, and state attorney general offices.

Other activities under the program included the disbursement of \$2 million from the Alaska Land Leasing settlement fund to defrauded consumers. Several matters were in litigation during the fiscal year: Overseas Unlimited (the sale of job placement services), Security Rare Coin and Bullion (sale of rare coins), U.S. Oil and Gas (sale of services relating to the Bureau of Land Management lottery for oil and gas rights), and Austin Galleries (sale of art).

## ENFORCEMENT

Civil penalties amounting to \$365,000 were ordered in fourteen actions brought under the Enforcement program. In a complaint filed in federal court, the Ronby Corp., the company that franchises the Fred Astaire Dance Studios, was charged with violating a 1964 Commission order by failing to provide certain cancellation and refund rights to students. Under a consent decree, Ronby agreed to pay \$105,000 in civil penalties and is prohibited from violating the order in the future. The

order with Ronby was also modified by the Commission. The modified order gives students significantly increased protection by providing them with absolute cancellation and refund rights.

SILO, Inc. was charged with illegally removing EnergyGuides from appliances it sold, in violation of the Energy Policy and Conservation Act and the Appliance Labeling Rule. SILO agreed to pay a \$45,000 civil penalty, under a consent order. This was the first Commission enforcement action of both the Rule and the Act.

Milcon Industries, which does business as Blue Ridge Insulation, was charged with misrepresenting the amount of insulation it installed in residential and commercial buildings, in violation of the R-Value Rule and the FTC Act. To settle the charges, Milcon agreed to install additional insulation for certain past customers. It also agreed to pay \$10,000 in civil penalties, unless 50 percent of the affected consumers participate in the redress program.

World Products was charged with violating the Mail Order Rule by failing to notify consumers of delayed shipments and failing to pay timely refunds. Under a consent agreement, the company agreed not to violate the Rule in the future and to pay a \$10,000 civil penalty. Three officers and owners of Northeastern Software were also charged with violating the Mail Order Rule. Under a consent judgment, a \$10,000 civil penalty will be paid and the defendants will be prohibited from violating the Rule and from misrepresenting the time periods within which they ship merchandise ordered by telephone. A complaint was filed against High Tech Advertising, a seller of record albums and various other merchandise, charging violations of the Mail Order Rule. The Commission is seeking civil penalties and preliminary and permanent injunctions against the defendants.

Nine companies agreed to pay civil penalties to settle charges of violating the Used Car Rule which requires dealers to display on each used vehicle offered for sale to consumers a window stickers called the "Buyers Guide" containing warranty information and other important disclosures. Five of the companies also were charged with violating the Warranty Disclosure Rule or the Magnuson-Moss Warranty Act, which require retailers to provide specified warranty information in a single document.

Civil penalties of \$30,000 were paid by Shelly Cars, \$25,000 was paid by Eastside Motors, Goodman Buick paid \$17,500, and MFM Auto Sales d/b/a Central Auto Sales paid \$15,000 to settle the charges. Ron Price Motors paid \$20,000 in civil penalties, Far West Auto Brokers \$17,500, Bob Wright Motors \$ 10,000, Plaza Motors \$10,000, and Koons Ford of Annapolis \$40,000. In addition, a complaint charging violations of the Rule was filed against Aurora Discount Cars.

Budget Marketing, a nationwide telemarketer of magazines, was

business titles, including Spanish translations, from which consumers and businesses can order new materials.

#### ECONOMIC SUPPORT

During the fiscal year, the Bureau of Economics provided economic support to Consumer Protection casework and rulemakings. In addition, the Bureau began several studies of consumer related issues and completed work on several long term studies.

#### ECONOMIC ACTIVITIES

The Bureau of Economics provides economic support to the FTC's antitrust and consumer protection activities, advises the Commission about the impact of government regulation on competition, and analyzes economic phenomena in the American economy as they relate to antitrust, consumer protection, and regulation.

The primary mission of the FTC is to enforce the antitrust and consumer protection laws. In 1989, the Bureau of Economics continued to provide guidance and support to those activities. In the antitrust area, economists offered advice on the economic merits of potential antitrust actions. Situations where the marketplace performed reasonably well were distinguished from situations where the market might be improved by Commission action. When enforcement actions were initiated, economists worked to integrate economic analysis into the proceeding, to provide expert testimony, and to devise remedies that would improve market competition.

In the consumer protection area, economists provided estimates of the benefits and costs of alternative policy approaches. Potential consumer protection actions were evaluated not only for their immediate impact, but also for their longer-run effects on price, product variety, and overall consumer welfare.

Although the FTC is primarily an enforcement agency, it is also charged with analyzing data and publishing information about the nation's industries, markets, and business firms. Much of this work is undertaken by the Bureau of Economics. In 1989, economists conducted a number of studies on a broad array of topics in antitrust, consumer protection, and regulation.

#### ANTITRUST

In the antitrust area, economists participated in all investigations of alleged antitrust violations and in the presentation of cases in support of complaints. Economists also advised the Commission on all proposed

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

Several studies undertaken by the Bureau also support the Commission's antitrust activities. For example, during 1989, economists investigated and published reports on the economics of sham litigation and mergers in the US petroleum industry.

## CONSUMER PROTECTION

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

In addition to the Bureau's direct support for individual consumer protection matters, staff economists studied and produced reports on consumer protection topics of particular interest to the Commission as well as the Congress. These included examinations of health claims policy generally and, more specifically, the effect on consumers of health claims for high fiber cereals.

## REGULATION

In the regulation area, staff economists actively participated in the Commission's Competition and Consumer Protection Advocacy Program. As part of this effort, Bureau staff reviewed a variety of regulations that raise antitrust or consumer protection issues. These reviews led to several invited staff comments including submissions to the Postal Rate Commission, the National Association of Attorneys General, the Federal Communications Commission, the Securities and Exchange Commission, the International Trade Commission, and several state and local regulatory bodies or legislatures. In addition, staff economists completed analyses of the effects of regulation in long-distance telephone markets, in local building codes, and in international trade of autos, steel, and textiles.

## EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT, REGIONAL OFFICES

The Office of the Executive Director carries out administrative and management responsibilities for the Commission as well as providing management direction to the agency's ten regional offices. The Executive

Director administers these functions through a series of divisions, including Personnel, Budget and Finance, Procurement and General Services, Information Services, Automated Systems and the Library. in fiscal 1989 major management initiatives included:

#### OFFICE AUTOMATION

An organizational change was made to improve information systems support services and to increase litigation support by merging ADP support staff from the Bureau of Economics with staff from the Automated Systems Division, and establishing the Litigation Support and Economic Analysis Branch. Also directly related to improved user support services was the consolidation and simplification of the Help Desk and the Information Systems Request process.

Several Commission-wide systems were put into operation including the Office of the Secretary's Records System, the Contract Management Read-Only System, and the Bureau of Competition Clearance System. Other office systems completed during the year included the implementation of BEAM3 - a utility that enables staff to print a document on any printer throughout the agency using the local area network, installation of WordPerfect 5.0 on pc's throughout the Commission, distribution of new Wyse pc's, and, enhancement of the agency's telecommunication system.

Internal controls were improved by the establishment of the Planning and Information Standards Program. This program will promote the sharing of information and system across organizations and will reduce the cost of generating and storing information. Also, Call Detail Reporting was implemented to provide more management control over telephone costs, and the new Property Management System was designed to provide information to managers about location and distribution of personal computers and other hardware.

A decision was made to convert the Commission's Automated Information Systems to a "relational database" design. The Information Services Division assumed the role of "Data Administrator" for all of the Commission's automated information. The project to convert the existing systems to the new concept will require more than two years, but will result in higher quality data and more effective retrieval of information from the information systems.

The Library Services Branch responded to approximately 14,000 reference questions, conducted over 4,100 computer searches on commercial databases, processed 2,700 interlibrary loan transactions, circulated 26,000 items, and added over 2,100 items to its collection bringing the total collection to over 117,000 volumes.

The Information Center sponsored 83 classes on 33 different topics and had 821 people to attend classes ranging from using LEXIS on the



pc to basic phone training. New classes were added to the training schedule to introduce staff to the changing ADP environment at the FTC. The staff also performed over 5,500 records check searches in response to 999 questions for information. A records check system which will allow FTC staff to do their own records check searching is in the final stages of development. In addition, the Information Center formed several pc user groups, held an open house, and issued several publications.

## BUDGET AND FINANCE

The fiscal 1989 appropriation for the Federal Trade Commission was frozen at the preceding year's level. This forced the Commission to undertake a severe cost reduction program, including personnel reductions through early retirement and reduction-in-force programs. The Commission spent \$66.2 million and used 894 workyears in fiscal 1989. The workyears used were about 10 percent fewer than in fiscal 1988. Finally, two audits of agency activities were completed prior to April, 1989, at which time responsibility for audit activities was transferred to the newly established Office of the Inspector General.

## HUMAN RESOURCES

The Commission experienced a reduction-in-force during fiscal 1989 and consequently little recruiting was done and other human resource initiatives were drastically decreased. However, a comprehensive study of alternative work schedules was conducted and it was determined that this program should be implemented in the next fiscal year.

The agency's main recruitment tool, the merit promotion plan, was totally revised providing the agency with more flexibility in recruiting and promoting employees. Various management guides and informational brochures were developed and distributed to staff.

During Fiscal 1989, the Office of EEO continued to expand initiatives designed to attain total integration of equal employment opportunity principles into the agency's management process. Specific initiatives included evaluating and recommending improvements in our management systems that enhanced better understanding of responsibilities and more active participation of senior managers in formulating and monitoring equal employment opportunity strategies within their organizations, as well as their ability to resolve problems. Work also continued on a variety of ongoing responsibilities including providing guidance, processing complaints, and monitoring and tracking employment trends.

PART II (INVESTIGATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

American Institute of Certified Public Accountants

The American Institute of Certified, Public Accountants agreed not to restrict certified public accountants from accepting contingent fees or commissions for professional services to clients for whom they are not providing financial statement reviews or other attest services. The complaint accompanying the agreement charged that the association restricted CPAs from providing services to clients under either a fixed fee or contingent fee arrangement. According to the complaint, the association barred CPAs who prepared financial plans from accepting commissions on a client's purchase of any products recommended by the CPA and barred CPAs from offering assistance to clients for a fee contingent on the amount of the client's. recovery. In addition, the complaint further alleged that the association restricted CPAs use of truthful advertising, the solicitation of clients and acceptance of payments for client referrals, and the use of nondeceptive trade names. The complaint alleged that these actions restrained competition among CPAs and deprived consumers of information about available services.

Arkla, Inc.

Arkla, Inc., entered into a proposed consent agreement concerning its 1986 acquisition of Transark Transmission Co. The Commission charged that the acquisition could hurt competition in the pipeline transportation of natural gas in Arkansas and Oklahoma. Under the consent agreement, Arkla agreed to divest the Transark pipeline or a portion of its own pipeline that runs through the two states to an acquiror approved by the Commission. For a period of ten years, Arkla must obtain prior Commission approval before acquiring any gas pipeline in Arkansas and Oklahoma.

Chain Pharmacy Association of New, York State, Inc.

(See - Brooks Drug, Inc., page 35.)

(See - Carl's Drug Co., Inc., page 35.)

(See - Genovese Drug Stores, Inc., page 35.)

#### Cleveland Automobile Dealer's Association

(See page 36.)

#### KKR Associates

(See page 37.)

#### Medical Staff of Dickinson County Memorial Hospital

(See page 37.)

#### MTH Holdings, Inc.

The Commission accepted for public comment a proposed consent agreement that would permit two investment banking firms, MTH Holdings, Inc., and Solomon, Inc., to acquire GU Acquisition Corporation, the owner and operator of the Grand Union Company, a national retail grocery store chain. According to the complaint accompanying the agreement, the acquisition would substantially reduce competition between the MTH owned P&C Food Markets and the Grand Union stores in various areas of Vermont and upstate New York. Under the consent agreement, MTH agreed to divest certain grocery stores in Vermont and New York to eliminate antitrust concerns created by the acquisition. MTH and Solomon also agreed to hold separate the entire 135 store Northern Division of Grand Union and to operate the Division as an independent business until all of the divestitures have been completed. Finally, the consent agreement requires MTH to obtain prior Commission approval before acquiring any grocery store in any of the Vermont or New York counties in which the divestitures were ordered.

#### Oklahoma State Board of Veterinary Medical Examiners

The Oklahoma State Board of Veterinary Medical Examiners agreed not to restrict member veterinarians' business arrangements. The complaint issued with the agreement charged that the board adopted rules of conduct that prohibited members from forming a partnership with non-veterinarians to practice veterinary medicine and accepting employment by a non-veterinarian or company

engaged in the sale of veterinarians I services to the public. According to the complaint, these actions hurt competition and deprived consumers of the benefits of lower prices for veterinarian services that could result from more efficient business arrangements.

Panhandle Eastern Corp.

(See page 38.)

PepsiCo, Inc.

(See page 38.)

Societe Nationale Elf Aquitaine

Societe Nationale Elf Aquitaine (SNEA) was permitted to acquire the Pennwalt Corp. under terms of a proposed consent agreement. Under the agreement, SNEA agreed to divest within twelve months Pennwalt's Thorofare, New Jersey, chemical plant to a Commission approved acquirer. In addition, SNEA entered into a hold separate agreement, requiring that Pennwalt's fluorochemicals division be operated independent of any other companies owned by SNEA. The complaint accompanying the agreement alleged that the acquisition would reduce competition in the production and sale of polyvinylidene fluoride and vinylidene fluoride. The agreement also requires SNEA to obtain prior Commission approval before acquiring any company that manufactures or sells either of the two chemicals for a period of ten years. The Commission's staff had been authorized to block the acquisition with a motion for a preliminary injunction if SNEA had refused to divest the assets that had raised antitrust concerns.

Structural Engineers Association of Northern California, Inc.

Under the terms of a proposed consent agreement, the Structural Engineers Association of Northern California, Inc., agreed not to interfere with its members' use of truthful advertising and competitive pricing policies for structural engineering services. According to the complaint issued with the agreement, the Association's code of ethics prohibited structural engineers from advertising their services and charging competitive prices, and from providing a second opinion on the work of another structural engineer. The complaint alleged that these methods restrained competition by depriving

consumers the benefits of selecting structural engineering services through advertised prices and competitive business policies.

Sun Co., Inc.

(See page 39.)

Texas Board of Chiropractic Examiners

The Texas Board of Chiropractic Examiners agreed to repeal its Rules of Practice that prohibited chiropractors from using any form of public communication that advertised services or fees. Under terms of a proposed consent agreement, the Board may not interfere with its members' use of truthful advertising about fees, services, and products, and is prohibited from taking any disciplinary actions against any chiropractor who solicits patients through advertising. According to the complaint accompanying the agreement, the State of Texas prohibits the Board from adopting rules and regulations restricting truthful advertising or solicitation of patients. The proposed order does not restrict the Board from adopting or taking disciplinary action to prohibit false or deceptive advertising.

#### CONSUMER PROTECTION MISSION

Budget Rent-A-Car Corp.

The Commission charged Budget Rent-A-Car with failing to disclose to prospective renters that it did not inspect automobiles subject to recall notices within a reasonable period of time and, if appropriate, make the necessary repairs. Budget agreed to inspect and repair affected vehicles within 120 days after receiving a recall notice, or alternatively, to disclose to prospective renters that the vehicles are subject to safety recall notices and may contain defects, if it chooses not to inspect.

Heilig-Meyers Co.

Heilig is required to calculate and disclose accurately the APRs in connection with the extension to any consumer or credit subject to the Truth-in-Lending Act. Heilig is also required to make adjustments to the accounts of customers to whom it disclosed APRs that were understated by more than 1/4 of one percentage point, except for accounts where the amount of the adjustment is less than one dollar.

**Nutronics Corp.**

The Commission charged Nutronics with making false and unsubstantiated claims in advertising its fuel saving device known as the Alter-Brake System. The company has agreed not to misrepresent the device in the future.

**Robert Lewis Wilks (Barbers Funeral Home)**

The Commission charged Wilks, former owner of Barbers Funeral Home, with failing to provide his customers with goods and services that they selected and paid for. According to the complaint, Wilks misrepresented to consumers that he provided the caskets, burial vaults, and other goods and services, but in numerous instances, Wilks buried deceased persons without the caskets and/or burial vaults selected and paid for, and desecrated the bodies and graves of the deceased by dumping trash into the caskets or graves. Wilks agreed to stop doing business as a funeral service provider, or having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

**PART II (INVESTIGATIVE STAGE)  
CONSENT ORDERS ISSUED**

**MAINTAINING COMPETITION MISSION****Brooks Drug, Inc.; Carl's Drug Co., Inc.; Genovese Stores, Inc.**

Three members of the Chain Pharmacy Association of New York State, Inc. have separately agreed not to enter into any agreement with any pharmacy firms to boycott any prescription plan to increase the reimbursement rate for prescriptions. According to the complaints issued with the consents, Brooks Drug Inc., Carl's Drug Co., Inc., and Genovese Stores, Inc. conspired with others to refuse to participate in a New York State prescription plan program that would reduce the level of reimbursement for prescription drugs. The complaints charged that these actions hurt consumers in New York by reducing price competition among pharmacies after the state was forced to increase its payments paid to pharmacies under the program. The Commission issued a separate administrative complaint against the chain association. (See - Chain Pharmacy Association of New York State, Inc., page 42.)

Carl's Drug Co., Inc.

(See page 35.)

#### Certain Sioux Falls Obstetricians

Eleven obstetricians in the Sioux Falls, South Dakota area agreed not to engage in collective, coercive activities that interfere with the residency program of the University of South Dakota School of Medicine. The complaint accompanying the agreement charged that a conspiracy among the doctors began when the medical school recruited the area's first perinatologist for its full-time faculty. It charged that when the perinatologist began advertising for patients, and the medical school continued recruiting additional practicing obstetricians, the obstetricians threatened a boycott of the OB/GYN residency program. The complaint alleged that a twelfth obstetrician acted in combination with them. That doctor refused to sign the consent agreement and a separate administrative complaint was issued against him. The Commission accepted a proposed consent agreement with him during the year. (See - Lee M. Mabee, M.D., page 47.)

#### Cleveland Automobile Dealer's Association

The Cleveland Automobile Dealer's Association agreed not to enforce a limitation on members' showroom hours. The agreement settled charges in an accompanying complaint that the association adopted a policy that restricted auto dealers from conducting business on Sundays and curtailed the hours of operation during certain week nights. According to the complaint, the limitation on hours hurt competition among car dealers in the Cleveland area and reduced consumers' opportunities for comparative shopping.

#### Eugene M. Addison, M.D.

Fourteen physicians in the Huntsville, Texas, area agreed not to deal collectively with health maintenance organizations or health plans, boycott them, or deny hospital staff privileges because the applicant for privileges is associated with them. The agreement settled charges in an accompanying complaint that the physicians first acted collectively in negotiations with HMOs to obtain more advantageous terms of participation, and then when those efforts were unsuccessful, collectively refused to participate with HMOs. The complaint also charged that the physicians engaged in an effort

to restrict the hospital privileges of physicians affiliated with HMOs. The complaint alleged that these actions limited competition and increased prices to consumers.

#### Genovese Stores Inc.

(See page 35.)

#### Iowa Chapter of the American Physical Therapy Association

The Iowa Chapter of the American Physical Therapy Association agreed not to restrict member therapists from being employed by physicians. The complaint issued with the consent agreement charged that the association adopted a resolution saying it was illegal and unethical for physical therapists to work for doctors, called on its members to report any such therapists and threatened disciplinary action against such therapists. According to the complaint, these actions hurt competition and deprived consumers of the choice of providers and the convenience of choosing physicians and physical therapy services at the same location.

#### KKR Associates

KKR Associates entered into a consent agreement under which it could acquire RJR Nabisco, Inc. The agreement requires KKR to divest within twelve months to an approved Commission acquirer either its Beatrice division of the RJR assets used in the production and sale of packaged nuts, ketchup and oriental food. Under a hold separate agreement issued with the order, KKR is required to operate RJR separately, and its ability to participate in the business decisions of RJR are limited until all of the divestitures are completed. The complaint charged that the acquisition would reduce competition in the production of branded ketchup, shelf-stable oriental entrees, shelf-stable oriental noodles, and , shelf--stable oriental vegetables, soy sauce and packaged nuts. Finally, the order requires KKR to obtain prior Commission approval before acquiring any significant interest. in a company engaged in the production or sale of products named in the complaint.

#### Medical Staff of Dickinson County Memorial Hospital

The Medical Staff of Dickinson County Memorial Hospital and twelve doctors who practiced in the upper Peninsula of Michigan, in Dickinson County, agreed to settle charges that they conspired



with others to prevent Marquette General Hospital from opening a proposed new medical clinic, which would offer competing medical services in a neighboring county. According to the complaint issued with the order, the medical staff and doctors, solicited other area doctors to join in their threatened refusal to refer patients to the proposed clinic and to agree not to practice at the new facility. The complaint alleged that these actions hindered competition among physicians and hospitals and deprived consumers of their ability to choose among a variety of alternative types of health care facilities and services. The order prohibits the medical staff and others involved in the conspiracy from withholding patient referrals from any physician, hospital, clinic or other health care provider. The consent order covers the medical staff, twelve doctors and two medical societies. A separate administrative complaint was issued against one other Dickinson County doctor. (See - Robert G. Koski, D.O., page 44.)

#### Panhandle Eastern Corporation

The consent agreement required Panhandle to divest its fifty percent interest in Stingray Pipeline Co. The complaint accompanying the consent alleged that the acquisition by Panhandle Eastern Corporation of Texas Eastern Transmission Corp. would create a monopoly in the transportation of natural gas out of Southern Texas and Western Louisiana. Under terms of the agreement, Panhandle must obtain prior Commission approval before acquiring any natural gas pipeline in that area.

#### PepsiCo, Inc.

The Commission accepted a consent agreement resolving the acquisition by PepsiCo, Inc. of seventeen bottling companies from General Cinema Corporation. The complaint accompanying the consent agreement, alleged that the acquisition could lessen competition and increase the possibility of collusion among bottlers of carbonated soft drinks in Staunton, Virginia, and in the Fort Lauderdale area of Florida. According to the complaint, after the acquisition PepsiCo would become both a bottler of non-PepsiCo brands and a supplier of PepsiCo brand products distributed by PepsiCo-owned bottlers in the two areas. Under terms of the agreement, the non-Pepsi soft drink assets would be retained by General Cinema. PepsiCo also agreed to provide bottling services, at cost, for five years to General Cinema for its non-Pepsi soft drinks in Staunton and Fort Lauderdale. In addition, prior Commis-

sion approval is required for additional transfers by General Cinema of soft drink assets in the two areas and any acquisition by PepsiCo of a bottler where it supplies concentrates for Pepsi brand products.

#### Sioux Falls Obstetricians, Certain

(See page 36.)

#### Sun Company, Inc.

Sun Company, Inc., agreed to divest petroleum assets to settle charges that Sun's acquisition of Atlantic Petroleum Corp. would lessen competition in the distribution and marketing of light petroleum products from terminals in Williamsport, Pennsylvania, and Binghamton, New York. Sun agreed to divest Atlantic's terminals in Broome County, New York, and Lycoming County, Pennsylvania, and fifteen ARCO stations associated with the terminals. In addition, the consent agreement requires Sun to obtain Commission approval for a period of ten years before acquiring any light products terminals or pipelines in certain parts of New York and Pennsylvania.

#### West Point-Pepperell, Inc.

West Point-Pepperell, Inc., divested certain towel and sheet making facilities to settle charges that its acquisition of J.P. Stevens & Co., Inc, would substantially reduce competition in the manufacture and sale of sheets and towels in the United States. Under the agreement, the Commission also ordered divestiture of a sheeting mill and a yarn plant and prohibits West Point from making certain acquisitions in the towel and sheet industry for ten years without prior Commission approval.

### CONSUMER PROTECTION MISSION

#### Alamo Rent-A-Car, Inc.

Alamo, the fifth largest car rental company, agreed to settle charges that it failed to disclose to consumers the existence and amount of airport surcharges and fuel charges when consumers inquire about possible rental of its vehicles. Alamo agreed to disclose charges that are mandatory or are not reasonably avoidable to every consumer who inquires about its prices.

An-Mar International Ltd., Inc.

An-Mar, maker of Solar Cold suntanning devices, was charged with falsely advertising that its products provide health benefits and that use of its machines by consumers does not pose a risk of harmful side effects, such as skin cancer. An-Mar is prohibited from misrepresenting that its devices provide health benefits and do not pose a risk of any harmful side effects.

Associated Mills, Inc.

Associated Mills was charged with having no basis for claiming that its Pollenex Bottled Water Maker Reverse Osmosis System could remove certain hazardous organic chemicals such as chloroform from tap water for a year. Under a consent agreement, the company agreed to have substantiation for future performance claims for water treatment products. It must also have a reasonable basis for claims about the expected life over which any environmental treatment product can treat or remove any contaminant or reduce any health-related risks.

Batesville Casket Co.

The consent order settles charges that the nation's largest casket maker made false advertising and warranty claims about the length of time its caskets will keep out air, water, and other gravesite substances. The order prohibits future misrepresentations and unsubstantiated claims concerning casket durability.

Coleco Industries, Inc.

Coleco was charged with falsely claiming that additional modules for its children's computer toy, My Talking Computer, were available for sale, when that was not the case. The complaint alleges that two of the four advertised modules, dealing with money and spelling, were not available when the availability claims were made. The company has agreed not to misrepresent the availability of its computer related products.

Cooper Rand Corp.

Cooper Rand, a company that sells lighter-to-lighter automobile battery chargers falsely claimed that, its Auto Starter could restart auto batteries instantly, or as quickly as jumper cables, according to

the Commission's complaint. Cooper Rand agreed not to make false claims about its products in the future and to notify approximately 131,000 purchasers of the Auto Starter about the limitations of the Auto Starter, including its inability to start a vehicle as quickly as jumper cables.

#### General-Rent-A-Car, Inc.

General-Rent-A-Car, the seventh largest rental car company, was charged with failing to disclose to consumers the existence and amount of airport surcharges and mandatory fuel charges when, consumers inquire about possible renting of their vehicles. The complaint also charged that the company's "800" operators fail to inform consumers of the car models they are renting even though, under General's vehicle classification system, consumers could receive a smaller car than expected. General agreed to disclose orally to every consumer who inquires all mandatory charges, as well as the car models they would receive under the car classification the consumer selects.

#### JS&A Group, Inc.

JS&A Group and its owner, Joseph Sugarman, agreed to settle charges that they falsely claimed that their program-length video advertisement was an objective investigation of their BluBlocker sunglasses. JS&A is prohibited from falsely claiming that any product for personal or household use has been independently investigated or evaluated. In addition, for the next ten years, JS&A must disclose clearly and prominently in any program-length advertisement that it is an advertisement or 'commercial.

#### Montgomery Ward & Co.

Montgomery Ward was charged with making false and unsubstantiated claims in selling its service contracts. Ward is prohibited from misrepresenting service contract coverage and the need for buying a service contract, including the need for maintenance, adjustment and servicing of products. Ward is also prohibited from making unsubstantiated claims about the durability or reliability of any product for which it sells service contracts.

#### Nutritone, Inc. (Body by Design)

Nutritone, a Boston health club, was charged with falsely claiming

that its electric muscle stimulation treatments produced the same effects as exercises. The club and owners agreed not to misrepresent any diet, strength development or fitness program in the future.

SILO, Inc.

SILO agreed to pay a \$45,000 civil penalty for violations of the Energy Policy and Conservation Act and the Appliance Labeling Rule. The Commission charged the defendants with illegally removing EnergyGuides, which disclose energy usage information, and allow consumers to comparison shop for the most energy-efficient product, from appliances it sold.

Ujena, Inc.

Ujena agreed not to misrepresent any term or condition of a money-back guarantee. It also agreed to honor all valid refund requests to consumers who paid by cash, check or money order within 10 days of receipt of the refund request, or within the time period specified in the advertisement. It agreed to send credit statements to credit card issuers within seven days, when a purchase is made by credit card.

### PART III ADMINISTRATIVE COMPLAINTS

#### MAINTAINING COMPETITION MISSION

Chain Pharmacy Association of New York State, Inc.

The Commission charged in an administrative complaint that the Chain Pharmacy Association of New York State, Inc. illegally conspired to boycott that State's employees prescription plan in an attempt to increase its reimbursement-rate. According to the complaint, the association, eight pharmacy chain, and one individual threatened to refuse to participate in New York State's proposed Employees Prescription Plan that would reduce the State's costs by reducing the price the State paid for the program. The complaint alleged that competition was lessened among pharmacies who participate in prescription benefit plans in New York. The complaint further alleged that the State of New York lost several million dollars after the boycott coerced the State into increasing the prices paid to pharmacies under the employees plan. Separate consent agreements settled charges against three of the pharmacy chains.

(See - Brooks Drug, Inc., page 35; Carl's Drug Co., Inc., page 35; and Genovese Drug Stores, Inc., page 35.)

Harper & Row, Publishers, Inc.  
The Hearst Corporation,  
The Macmillan, Inc.

The Putman Berkley Group, Inc.  
Random House, Inc.  
Simon & Schuster, Inc.

The Commission issued separate administrative complaints alleging that six book publishers ate against independent bookstores in pricing. According to the complaints, Harper & Row, Publishers, Inc., The Hearst Corporation, Macmillan, Inc., The Putman Berkley Group, Inc., Random House, Inc., and Simon & Schuster, Inc., charged bookstore chains lower prices than independent bookstores regardless of the size of the order. In addition, the complaints allege that the publishers offer discounts and promotional allowances to bookstore chains only. The complaints allege that the higher prices paid by the independent book stores have limited their ability to compete with bookstore chains.

Hearst Corporation, The

(See page 43.)

Hoechst Celanese Corporation

The Commission's complaint charges that American Hoechst Corporation's acquisition of Celanese Corp. would substantially reduce competition in the manufacture and sale of the thermoplastic polymer resin known as acetal. According to the complaint, American Hoechst's parent, Hoechst AG, Celanese and Ticona Polymerwerke GMBH, a joint venture of Hoechst and Celanese, were competitors in the production and sale of acetal. The complaint charged that due to the acquisition Hoechst Celanese became the 100 percent owner of Ticona and that the acquisition therefore eliminated competition among the three firms and enhanced the likelihood of collusion among the remaining producers in the industry. A 1987 consent agreement settled antitrust concerns in the polyester textile fiber market and allowed American Hoechst and Celanese to merge.

Macmillan, Inc.

(See page 43.)

Promodes, S.A.

The Commission issued an administrative complaint challenging the acquisition by Red Food Stores, Inc., of all the supermarket assets of Kroger Co. in Chattanooga, Tennessee. The complaint charged that the acquisition by Red Foods, a subsidiary of a French grocery company, Promodes, S.A., would eliminate direct competition between the two firms and would increase the retail prices of food and grocery items in supermarkets in Chattanooga. Red Foods consummated the acquisition after the Eleventh Circuit upheld a District Court decision that denied the Commission's motion for a preliminary injunction.

Putnam Berkley Group, Inc., The

(See page 43.)

Random House, Inc.

(See page 43.)

Robert G. Koski, D.O.

The Commission issued a complaint alleging that Robert G. Koski, a doctor of osteopathy, conspired with the Dickinson County Memorial Hospital medical staff and others in Dickinson County, Michigan, to prevent a competing medical facility from opening in the area. According to the complaint, Dr. Koski and others threatened to refer patients to physicians practicing at Marquette General Hospital's medical office in Dickinson County. The complaint further alleged that Dr. Koski solicited other physicians in the area to join the conspiracy to deny patient referrals to the new medical facility. A consent agreement settled charges against twelve Dickinson County doctors, two medical societies and the hospital medical staff. (See - Medical Staff of Dickinson County Memorial Hospital, page 37.)

Simon & Schuster, Inc.

(See page 43.)

Textron Inc.

The Commission charged in an administrative complaint that the

acquisition by Textron, Inc., of Avdel PLC. could substantially increase concentration in the design, manufacture and sale of non-aerospace structural blind rivets. According to the complaint, the acquisition would eliminate Avdel as a substantial independent competitor and could increase the likelihood that other firms in the industry would increase prices and restrict production. on the stipulation of the parties, a U.S. district court issued a temporary restraining order preventing Textron from taking control of either the assets or operations of Avdel.

## CONSUMER PROTECTION MISSION

### Campbell Soup Co.

The Commission issued a complaint charging Campbell Soup Co. with making deceptive and unsubstantiated claims in its "Soup is Good Food" advertisements. The Commission charged that ads linking the low fat, low cholesterol content of its soups with a reduced risk of some forms of heart disease, fail to disclose that the soups are high in sodium and that diets high in sodium may increase the risk of heart disease. The complaint charged that in light of the representations made in the ads, the company's failure to make this disclosure is deceptive.

### Hensley Group

The Commission charged the Hensley Group, a timeshare promoter, and H. Lloyd Hensley, its president, with falsely telling consumers that they had won one or more specified prizes, and that the prizes would be awarded without paying additional costs. The Hensley mailings represented that the gifts or prizes would be awarded to consumers who appear at the site at which resort memberships or other recreational or real property interests are being sold.

### Outdoor World Corp.

The Commission charged Outdoor World, a membership camp\_ ground promoter, with telling consumers that they had won one or more specified prizes, when they had not. The complaint alleges that Outdoor World created and disseminated mailings listing prizes or gifts to be awarded to consumers who appear at the site at which resort memberships or other recreational or real property interests are being sold. In addition, the complaint charges that the company falsely represented that prizes would be awarded at no cost, but



consumers were unable to receive some prizes without paying additional costs.

Revlon, Inc. and Charles Revson, Inc.

The Commission charged Revlon and a subsidiary with making unsubstantiated claims about the effectiveness of its Ultima II ProCollagen Anti-cellulite body complex. According to the complaint, Revlon does not have a reasonable basis for its claims that the product significantly reduces cellulite and reduces the skin's bumpy texture, ripples, or slackness caused by cellulite, that its product helps to disperse toxins and excess water from areas where cellulite appears and increases subskin tissue strength and tone.

Schering Corp.

Schering, a subsidiary of Schering-Plough Corp., a major national pharmaceutical manufacturer, was charged with making deceptive and unsubstantiated claims that its product, Fibre Trim, is an effective weight loss product and a high fiber supplement. The complaint charges that Schering falsely claims that Fibre Trim is a high fiber supplement and the recommended daily dosage of Fibre Trim provides a significant portion of a person's daily requirements of dietary fiber. The complaint also alleges that the company did not have a reasonable basis for claims that Fibre Trim is an effective weight loss or maintenance product and provides the health benefits associated with a fiber rich diet.

TK-7 Corp.

The Commission issued a complaint alleging that TK-7 and its president, Moshe Tal, made false and unsubstantiated advertising claims concerning the performance characteristics of gasoline additives. According to the complaint, the company claimed that its products can improve engine performance by extending engine life, and increasing power, octane, and mileage. The company has marketed TK-7 as a lead substitute gasoline additive for vehicles or other equipment that performs best with leaded gasoline. Because of health concerns, the amount of lead in gasoline has been greatly reduced in recent years. TK-7 has marketed its products as a solution to problems caused by these reductions in lead.

PART III (ADJUDICATIVE STAGE)  
CONSENT AGREEMENTS ACCEPTED  
AND PUBLISHED FOR PUBLIC COMMENT

MAINTAINING COMPETITION MISSION

Lee M. Mabee, Jr., M.D.

Dr. Lee M. Mabee agreed not to conspire to boycott the obstetrical/gynecological residency program of the University of South Dakota School of Medicine. The consent agreement settled a 1988 administrative complaint that alleged that Dr. Mabee and eleven other obstetricians in the Sioux Falls, South Dakota, area conspired to interfere with the recruitment practices of the medical school's residency program. The Commission accepted a consent agreement with the other doctors. (See - Certain Sioux Falls Obstetricians, page 36.)

PPG Industries, Inc.

(See page 49.)

Dr Pepper/Seven-Up Company

Dr Pepper/Seven-Up Company agreed to settle charges that the acquisition of certain San Antonio Dr Pepper Bottling Co. assets substantially lessened competition in the production, distribution, and sale of soft drinks in the San Antonio, Texas area. According to a 1988 administrative complaint, Coca-Cola Company of the Southwest acquired the Dr Pepper and Canada Dry franchises from San Antonio Dr Pepper in 1984. The complaint alleges that the acquisition eliminated a major competitor and increased the likelihood that Coca-Cola would unilaterally exercise market power that could lead to increased prices and restricted production of carbonated soft The complaint against Coca-Cola of the Southwest remains in adjudication.

CONSUMER PROTECTION MISSION

R.J. Reynolds Tobacco Company

The Commission alleged that R.J. Reynolds made false and misleading advertising claims regarding the health effects of smoking. The Commission accepted for comment a proposed consent-under which the company agreed not to misrepresent in

future advertisements the purpose or results of a long-term scientific study funded by the National Heart, Lung, and Blood Institute of the National Institutes of Health (MR PIT study). In addition, under the proposed consent, Reynolds would be prohibited from misrepresenting in any manner, directly or by implication, any discussion of cigarette smoking and chronic or acute health effects, the results, design, purpose or content of any scientific test or study explicitly referred to concerning any claimed association between cigarette smoking and chronic or acute health effects.

PART III (ADJUDICATIVE STAGE)  
CONSENT ORDERS ISSUED

MAINTAINING COMPETITION MISSION

New York State Chiropractic Association

The New York State Chiropractic Association agreed not to conspire to deal with third-party payers on collectively determined terms, act on behalf of its members in negotiating with third-party payers, or coerce third-party payers. The consent agreement settled a 1987 administrative complaint, that charged that the association's members had agreed to act as a united front to coerce an increase in payment levels and coverage from a health insurance company. The complaint charged that after the health insurance company refused to accede to the demands, the association solicited its members to resign from their participation in the insurer's program, and many members did so. The actions allegedly restrained competition among chiropractors and increased the prices paid for their services. The consent agreement also provides that for eight years the association may not advise its members on the desirability of participating in plans offered by third-party payers, including providing advice on the price to be paid or other terms of participation.

Pacific Resources, Inc.

Pacific Resources, Inc. agreed to obtain Commission approval before acquiring certain gas or oil assets in Hawaii. The agreement settled a 1987 administrative complaint that charged that the proposed \$32 million acquisition, which was abandoned, of the Hawaiian petroleum products and gasoline assets of Shell Oil Co. would, if consummated, reduce competition in the supply of gasoline and diesel fuel in Hawaii and could increase prices for gas

or diesel fuel in the state. Under the agreement, Pacific must obtain Commission approval before acquiring certain terminalling, refining or gasoline retail marketing assets in Hawaii. It must also obtain approval before entering into any terminalling agreement, such as a long-term lease, for more than 50 percent of a terminal's capacity.

#### PPG Industries, Inc.

PPG Industries, Inc. agreed to obtain prior Commission approval before acquiring certain firms engaged in the manufacture of aircraft transparencies. The consent settled a 1986 administrative complaint that charged that PPG's proposed acquisition of Swedlow, Inc., could substantially reduce competition in the manufacture and sale of aircraft transparencies - windows, windshields and canopies used in private, commercial and military airplanes and helicopters. The complaint against Swedlow was dismissed. (See - Swedlow, Inc., page 52.)

#### CONSUMER PROTECTION MISSION

##### General Nutrition, Inc.

General Nutrition, one of the nation's largest health food chains, agreed to settle charges that it made false and unsubstantiated claims that its food supplement, Healthy Greens, was effective in reducing the risk of cancer. The consent agreement also settles additional charges from a separate investigation that the company falsely claimed six other food supplements would promote weight loss and muscle growth or retard aging. GNC is required to, in lieu of consumer redress, pay a total of \$600,000 for research in nutrition, obesity, or physical fitness. The money is to be divided equally among the American Diabetes Association, the American Cancer Society, and the American Heart Association. The company also agreed not to misrepresent government reports or scientific tests.

#### INITIAL DECISIONS

#### MAINTAINING COMPETITION MISSION

##### Owens-Illinois, Inc.

An Administrative Law Judge ruled that Owens-Illinois, Inc., must divest, within twelve months, the glass container business acquired through its 1988 acquisition of Brockway, Inc. The judge upheld a

1988 administrative complaint alleging Owen's acquisition of Brockway would substantially reduce competition in the manufacture and sale of glass containers in the United States. According to the decision, the merger eliminated Owen's strongest competitor and made Owens the largest domestic glass container manufacturer with a 38 percent market share. The order also requires Owens, for a period of ten years, to obtain the prior approval of the Commission before acquiring any firm engaged in the manufacture or sale of glass containers in the United States.

#### CONSUMER PROTECTION MISSION

Kraft, Inc.

An Administrative Law Judge ruled that Kraft falsely advertised that its Kraft Singles cheese slices contain as much calcium as five ounces of milk and more calcium than do most imitation slices. The judge also found that the milk equivalency and imitation cheese superiority claims were unsubstantiated. The ALJ ordered the company not to misrepresent the nutrient content of its individually wrapped slices of cheese in the future.

#### FINAL COMMISSION ORDERS

#### MAINTAINING COMPETITION MISSION

Detroit Motor Vehicle Dealers

The Commission upheld a 1984 complaint that charged that car dealers in the Detroit area had conspired to limit the hours of operation for the sale and lease of motor vehicles. According to the decision, the agreement of the dealerships, individuals and dealer association to limit showroom hours restricted competition by limiting comparison shopping. The ruling requires the dealerships to remain open a minimum of 64 hours a week for one year and requires the Detroit Auto Dealers Association to advertise that the expanded shopping hours are available under the Commission order.

MidCon Corp.

The Commission, upheld the 1988 decision of an Administrative Law Judge that dismissed charges challenging the merger, of MidCon Corp. and United Energy Resources, Inc. The 19,85 administrative complaint charged that the merger would substan-

tially lessen competition in the transportation of natural gas from offshore areas in the Gulf of Mexico. The Commission ruled that the evidence did not prove a likelihood of anticompetitive effects in any of the relevant geographic markets identified in the complaint. Pursuant to a 1986 consent agreement, MidCon divested its interest in the Arcadian Gas Pipeline System to settle charges concerning the New Orleans/Baton Rouge, Louisiana, area.

#### Motor Transport Association of Connecticut, Inc.

The Commission dismissed a 1984 complaint that charged that the Motor Transport Association of Connecticut restricted competition among motor carriers by fixing collective rates for the intrastate transportation of property in the State of Connecticut. The Commission found that the association's collective ratemaking activities were protected from the FTC supervision by the Connecticut Department of Public Utility Control. According to the Commission's opinion, the Department exercises its delegated authority to regulate motor common carriers and reviews and evaluates proposed tariffs within agency guidelines. The Commission's order upheld the 1987 decision of an Administrative Law Judge.

#### New England Motor Rate Bureau, Inc.

The Commission upheld an Administrative Law Judge's decision that the New England Motor Rate Bureau, Inc. hindered competition by illegally setting prices to be charged by member motor carriers for the intrastate transportation of goods in Massachusetts and New Hampshire. The Commission found that the bureau's collective ratemaking was not exempt from the antitrust laws under the state action doctrine, which requires that the state clearly articulate its intent to displace competition with regulation and supervise the collective activities. According to the 1983 complaint, the bureau conspired with others to fix prices by collectively formulating and filing rates for the transportation of commodities within the states of Massachusetts, New Hampshire, Rhode Island, and Vermont. The Commission ordered the bureau to cancel and withdraw all filed tariffs and to terminate all its existing agreements with carriers concerning the filing of established rates in states that do not actively supervise collective ratemaking. In addition, the bureau is prohibited from fixing prices and filing collective rates in Massachusetts and New Hampshire. Charges against activities in Vermont were dismissed in 1986 after the State of Vermont deregulated the intrastate transportation of freight and the bureau

ceased to formulate and file rates in that state. As to activities in the State of Rhode Island, the Commission found that the bureau's rulemaking activities were supervised by the Division of Public Utilities and Carriers and were therefore immune from antitrust liability by virtue of the state action doctrine.

#### Swedlow, Inc.

The Commission dismissed its complaint against Swedlow, Inc., which challenged the company's proposed acquisition by PPG Industries, Inc. Swedlow's shareholders accepted an offer from Pilkington Brothers PLC after the District of Columbia Circuit Court of Appeals directed the district court to enjoin PPG's merger attempt. Swedlow was acquired by Pilkington in 1986. The Commission accepted a consent agreement with PPG prohibiting without prior approval future acquisitions of firms that produce aircraft transparencies. (See - PPG Industries, Inc., page 49.)

#### Ticor Title Insurance Co.

The Commission ruled that Ticor Title Insurance Co., Chicago Title Insurance Co., Safeco Title Insurance Co., Lawyers Title Insurance Corp. and Stewart Title Guaranty Co. illegally conspired to fix the prices charged for title search and examination services through rating bureaus in six states. The Commission found that the practice of filing uniform charges through rating bureaus for examination and search activities in the six states was not an insurance function and was not protected from the federal antitrust laws under any state action doctrine. The companies were prohibited from setting or filing rates for title search and examination services through rating bureaus in New Jersey, Pennsylvania, Connecticut, Wisconsin, Arizona and Montana. The order does not prohibit the companies from collectively setting prices for their search and examination services in any state where the collective activity, is monitored and supervised.

### CONSUMER PROTECTION MISSION

#### North American Philips Corp.

The Commission upheld an Administrative Law Judge's finding that Norelco falsely advertised that its Clean Water Machine would make tap water clean or cleaner, when it knew that the machine added a potentially hazardous chemical to the water. The Commission put into effect the ALJ's order requiring the company not to

misrepresent the performance of the Clean Water Machine or any other electric powered consumer appliance. Under the order the company is also prohibited from misrepresenting any test or study of its products.

#### Removatron International Corp.

The Commission upheld an Administrative Law Judge's ruling that Removatron, the largest maker of high-frequency, tweezer-type hair-removal devices, made false and deceptive claims that its devices permanently remove hair, and that the company lacked a reasonable basis for making such permanency claims. The order prohibits the company from making unsubstantiated claims about its product and requires it to possess clinical testing as substantiation for future permanency claims. The order also requires that ads that make hair removal claims include a disclosure that there is no reliable evidence that the device provides anything more than temporary hair removal.

### ORDER MODIFICATIONS

#### MAINTAINING COMPETITION MISSION

##### Adolph Coors Company

The Commission set aside the provisions of a 1975 order against Adolph Coors Company that imposed territorial restraints and certain customer restrictions on distributors of its products. One provision was modified to prohibit Coors from refusing delivery of products that would be sold at unauthorized prices.

##### Atlantic Richfield Co.

The Commission set aside a 1961 order that prohibited Arco, the successor to Atlantic Richfield Co., from entering into sales commission agreements with suppliers of tires, batteries and accessories. The order settled charges that the sales agreement between Atlantic Richfield and The Goodyear Tire & Rubber Co. was an unfair method of competition.

##### Lafarge Canada Inc.

The Commission granted in part a request to modify a 1982 order with Lafarge Canada, Inc., formerly Canada Cement Lafarge Ltd.,



by setting aside the provision requiring Lafarge to obtain Commission approval before acquiring any cement manufacturing plants, grinding plants, or distribution terminals in Florida. The Commission denied the requests by Lafarge's parent, Lafarge Corp., to set aside the requirement for acquisitions in other states and to limit the prior approval requirement to specific acquisitions and to certain classes of assets. The original order settled charges that Canada Cement Lafarge's proposed acquisition of General Portland, Inc., would substantially lessen competition in the cement industry in the Southeastern United States.

#### L'Air Liquide S.A. and Liquid Air Corp.

The Commission modified L'Air Liquide's 1987 consent order and the 1979 consent order of its American subsidiary, Liquid Air Corp., that required both companies to obtain prior approval for acquisitions. The 1979 order settled charges that Liquid Air's acquisition of the industrial-gases division of Chemetron Corp. would eliminate competition between the two competitors in the production and sale of air separation gases in various markets. The 1987 order settled charges that L'Air Liquide's acquisition of Big Three Industries, Inc. would reduce competition in the production and sale of liquid argon in the United States and of liquid oxygen and nitrogen in certain parts of the country. The Commission modified both orders to exempt from the prior approval provision of each order acquisitions of companies already owned or controlled by L'Air Liquide.

#### Lenox, Inc.

The Commission set aside two provisions in a 1970 order that settled charges that Lenox, Inc., illegally set resale prices for its products. One of the provisions had barred Lenox from terminating dealers after complaints from other dealers, the other provision had required Lenox to reinstate dealers terminated for discounting or for selling to other retailers. The Commission denied Lenox's request to vacate the order.

#### Liquid Air Corp.

(See - L'Air Liquide S.A., page 54.)

#### Sears, Roebuck and Co.

The Commission modified a consent order to allow Sears, Roebuck

and Co. to use radius clauses, which restrict tenants from operating a similar type of store or offering similar types of products or services within a certain radius of a shopping center. The Commission also modified the order to allow Sears to agree with a developer to restrict the use made of other stores in a shopping center so long as Sears is not a major tenant. The 1977 order settled charges that Sears restricted competition in shopping centers by entering into agreements to exclude certain tenants from operating retail stores in shopping centers. The Commission denied Sears' request to set aside the order entirely.

#### Sharp Electronics Corp.

The Commission set aside a 1974 order that prohibited Sharp from restricting the territories in which its dealers were permitted to sell calculators or the customers to whom the dealers could sell.

### CONSUMER PROTECTION MISSION

#### Kroger Company

The Commission denied a request by the Kroger Company to set aside a 1977 order prohibiting it from failing to have advertised items available at the advertised prices. Kroger had agreed that the Commission's action in amending the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule constituted a change of law requiring that the Kroger order be set aside. The order's core prohibitions and defenses track those of the Rule. In denying Kroger's petition, the Commission stated that it may be in the public interest to modify the order to enable Kroger to benefit from the Rule's amendments, but Kroger had not requested such relief.

#### Lindal Cedar Homes, Inc.

The Commission denied a petition filed by Lindal, a manufacturer of pre-cut housing, to set aside or modify a 1976 order issued against it. The order, which also names Sir Walter Lindal individually, prohibits misrepresenting the ease and economy of or time involved in erecting its houses, prohibits the use of certain unfair terms in contracts for the purchase of its houses and requires that certain warranties be given to the consumer, incorporates the then proposed Franchise Rule., and requires compliance with the Truth-in-Lending Act. Although the Commission found that Lindal does primarily market pre-cut housing that requires professional assistance, it still derives about fifteen percent of its revenues from

consumers who build their homes without professional assistance, the market the order was directed at. The Commission also found Lindal's other changed conditions of fact and law arguments to be unpersuasive.

#### National Indemnity Company, Inc.

A petition to vacate or modify a 1978 consent order was denied. Respondent sells property and liability insurance. The order was issued because the respondent failed to notify consumers that an investigative consumer report might be requested. The request to vacate or modify was based on the fact that respondent no longer requested investigative consumer reports, and had an exemplary record of compliance for ten years. The Commission found that respondent failed to show that changed conditions of fact or law or the public interest justified vacating or modifying the order.

#### Readers' Digest Association, Inc.

Readers' Digest asked the Commission to modify two consent orders that required disclosure of all terms and conditions of promotional offers. The Commission denied both requests. However, an advisory opinion was provided which clarified some ambiguities concerning the orders' interpretation.

#### Ronby Corporation (Fred Astaire Dance Studios)

Ronby Corporation, national licensor of Fred Astaire Dance Studios, and its two owners, Chester F. and Charles L. Casanave, agreed to a proposed modification of the 1964 order against the predecessor licensor of the Astaire studios. The order was modified, giving Fred Astaire Dance Studio students significantly increased protection by providing them with absolute cancellation and refund rights, and other safeguards on prepaid contracts for future services. The modification was part of an agreement negotiated with Ronby to settle charges of order violations.

### PRELIMINARY AND PERMANENT INJUNCTIONS

#### MAINTAINING COMPETITION MISSION

#### Autoclave Engineers, Inc.

The Commission authorized its staff to seek a preliminary injunc-

tion to block Autoclave Engineers Inc.'s proposed tender offer for Tylan Corp. on grounds that the acquisition would substantially lessen competition in the manufacture and sale of mass flow controllers used to control the flow of process gases used in the manufacture of semiconductors. Before the filing of the injunction action, the transaction was abandoned.

#### The BOC Group, Inc.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by The BOC Group, Inc. of the Vacuum Products Division of Varian Associates, Inc. The Commission believed that the acquisition would substantially reduce competition in the production and sale of helium mass spectrometer leak detectors, which are used to discover leaks in products systems. The parties abandoned the transaction before the injunction action was filed.

#### General Electric Co.

The Commission authorized its staff to seek a preliminary injunction to block a proposed joint venture between General Electric and Union Carbide Corp. The Commission believed that the proposed joint venture would substantially reduce competition in the production and sale of silicone products. Before court papers were filed, the joint venture was abandoned.

#### Promodes, SA.

(See page 44.)

#### Societe Nationale Elf Aquitaine

(See page 33.)

#### Textron Inc.

(See page 44.)

#### U.S. Can Co.

The Commission authorized its staff to seek a preliminary injunction against the proposed acquisition by U.S. Can Co. of Armstrong Industries, Inc., on the grounds that the acquisition would substan-

tially reduce competition in the production and sale of one-gallon metal paint cans. The transaction was abandoned after the Commission authorized seeking an injunction.

#### CONSUMER PROTECTION MISSION

##### Action Credit Systems, Inc.

The federal district court approved four stipulated final orders and judgments against defendants prohibiting them from selling credit repair and credit card procurement services and requiring them to pay money for use as consumer redress or disgorgement to the U. S. Treasury.

##### American Credit Services, Inc.

The Commission filed a complaint in federal court charging American Credit with misrepresenting in advertising, its credit establishment and credit improvement services. The Commission seeks to permanently enjoin American Credit from such misrepresentations in the future and to obtain redress for consumers who purchased its services.

##### American Safe Marketing, Inc.

The Commission filed a complaint in federal district court charging American Safe Marketing with making false and misleading claims in the sale of distributorships to sell fire extinguishers. The court issued a temporary restraining order and temporary injunction with asset freezes.

##### Aurora Discount Cars

The Commission filed a complaint, alleging violations of the Used Car Rule, against William L. Morrison, who does business as Aurora Discount Can a used car dealership in Seattle, Washington. The complaint charges Morrison with failing to properly display Buyers Guides on the side window of used vehicles he offered for sale to consumers. The Commission asked the court to order the defendant to pay civil penalties and prohibit future rule violations.

##### Axiom III Corp.

The Commission filed a complaint in federal district court charging defendants with marketing a bogus investment scheme in, which

consumers are likely to lose their entire investment, because there is such a small amount of gold in Axiom's mines and the defendants are not successfully mining or processing the ore. The Commission asked the court to issue preliminary and permanent injunctions and is also seeking redress for consumers who invested in the project.

#### BankCard Travel Club

BankCard agreed to pay up to \$2.5 million in consumer redress to settle allegations that it failed to honor cancellation requests and improperly charged annual membership fees to consumers' credit cards. In addition, the company is prohibited from making any misrepresentations about the costs, benefits and refund policies relating to membership in any program they offer. They must also notify members about their right to cancel membership prior to the end of any free membership period.

#### Bruce Abrash

Bruce Abrash, one of the defendants in the Commission's case against Numismatic Funding Corp., agreed to settle charges that he misrepresented the grade and investment value of silver coins he sold to consumers through telephone and mail order sales. Under the settlement, Abrash agreed not to engage in future misrepresentations, and consented to the entry of a \$125,000 judgment against him and a cash payment of approximately \$20,000.

#### Budget Marketing, Inc.

The Commission filed a complaint for alleged violation of the Commission's final order against Cowles Communications, Inc., predecessor to Budget Marketing. The complaint also charged the company with violating the Electronic Fund Transfer Act (EFT Act), and its implementing regulations, Regulation E. The Commission asked the court to order defendants to pay civil penalties and to prohibit them from violating the FTC order and the FTC Act.

#### California Pacific Research, Inc.

The Commission filed a complaint in federal district court charging California Pacific Research with falsely advertising New Generation baldness preventative and remedy. The complaint alleges that the ads, including 30 minute TV commercials, falsely represent that the shampoos and cleanser conditioners reduce excessive hair loss in

virtually everyone who has male pattern baldness and will promote new hair growth in a substantial number of individuals who have male pattern baldness. The Commission is seeking pre and permanent injunctions and an order requiring the company to pay refunds to consumers.

#### Case Equipment Co.

The Commission filed a complaint in federal district court charging Case Equipment Co. with making false and deceptive claims in the marketing of machines that allegedly copy color pictures onto textiles and other surfaces. The court issued a temporary restraining order and froze the defendants' assets.

#### Cecil B. Jacobson, M.D.

The Commission filed a federal district court complaint against Cecil Jacobson and the Reproductive Genetic Center Ltd. charging that the defendants misrepresented that women who underwent defendants' medical treatment were virtually certain to have successful pregnancies and later had, as a result of those treatments, become pregnant. Subsequently, Jacobson agreed to a permanent injunction forbidding future misrepresentations relating to his infertility practice and to pay up to \$250,000 in consumer redress.

#### Certified Rare Coin Galleries, Inc.

A federal district court entered a temporary restraining order against CRCG, a nationwide seller of coins for investment, prohibiting misrepresentation of the value and investment potential of its coins. The complaint charges that CRCG claimed falsely that its coins are a safe long-term investment, that consumers can reasonably expect their coins to increase substantially in value over the purchase price in three to five years, and that the coins are sold at or close to the prices at which they can be liquidated through a market sale. The Commission is seeking preliminary and permanent injunctions and an order for consumer redress.

#### Continental Communications, Inc.

The Commission filed a federal district court complaint against Continental and others, charging that they mislead consumers about cellular phone licenses. The court granted the Commission's

request for a temporary restraining order, asset freeze and the appointment of a temporary receiver.

#### Creative Advertising Specialty House, Inc.

This company has agreed to pay \$5,000 in refunds to consumers. In addition, the company, which falsely represented \$70 rubber dinghies as "Power motorboats" worth more than \$1000 to consumers, has agreed to a permanent injunction prohibiting it from engaging in direct mail or telemarketing solicitations that misrepresent the facts. The company also agreed not to debit consumers' credit card accounts unless specifically authorized to do so by consumers.

#### Credit Clinic Corporation

Steven Leff, former president of Credit Clinic Corp., agreed to settle charges that he misled consumers by falsely claiming that the company could improve consumers credit records and by failing to honor the company's money-back guarantee. The court approved a consent decree Prohibiting Leff from misrepresenting his ability to improve consumers' credit reports or profiles.

#### Credit Repair, Inc.

In a complaint filed in federal court, the Commission charged that the Credit Repair "clinic" misled consumers by falsely and deceptively claiming that it could substantially improve their credit records and by failing to honor, its 100 percent money-back guarantee. The Commission asked the court to order Credit Repair and its two principals to pay consumer redress and to permanently prohibit them from engaging in the challenged practices.

#### Credit-Rite, Inc.

This company and individual defendants agreed to cease misrepresenting their ability to improve consumers' credit bureau reports and to honor any refund promises they make to consumers. The two principals pled guilty to federal criminal charges in New Jersey and were sentenced to serve prison terms and to pay fines and restitution to consumers who were injured by their practices.



#### David and Annette DeFusco

The Commission filed a complaint in federal district court charging that defendants' promotional mailings claimed that named consumers had won specified prizes, when they had not. The court issued a preliminary injunction against the DeFuscos prohibiting them from misrepresenting that consumers will receive awards for no costs, or misrepresenting any material fact concerning any award, prize, or premium.

#### Engage-A-Car

The Commission obtained a settlement as to defendants Stanley Kessler and David Kessler which prohibits them from violating the Franchise Rule by making misrepresentations about franchise or business opportunity offerings. The consent decrees include agreements with the Kesslers to pay \$1.5 million to a consumer redress fund to reimburse Engage-A-Car franchisees.

#### Environmental Protection Systems, Inc.

The Commission filed a complaint in federal district court charging Environmental Protection Systems with misrepresenting the capabilities of water purifiers it sells and the return or replacement policies for the purifiers. The court issued a temporary restraining order and preliminary injunctions with asset freezes.

#### Federal Sterling Galleries

The Commission's Motion for Summary Judgment against Robert Sweeney was granted and redress in the amount of \$4.6 million was ordered. The Commission also obtained default judgments against the remaining defendants, each for \$4.6 million.

#### Hensley Group

The Hensley Group, a timeshare promoter, agreed to a stipulated preliminary injunction prohibiting it from misrepresenting that consumers have won specified prizes. The Commission filed a complaint in federal court charging that defendants, promotional mailings claimed that named consumers had won specified prizes, when they had not. The Commission also issued an administrative complaint against Hensley.

#### High Tech Advertising, Inc.

The Commission filed a complaint against High Tech Advertising charging violations of the Mail Order Rule. The complaint charged the defendants with failing to, ship merchandise on time, failing to notify consumers when they were unable to ship the products in a timely manner, and failing to provide refunds to consumers who did not receive their orders. The Commission asked the court to issue preliminary and permanent injunctions against the defendants and to order them to pay civil penalties.

#### Investment Development, Inc.

The Commission filed a complaint in federal district court charging Investment Development, a marketer of amusement game machine franchises, with violating the Franchise Rule and making unfair and deceptive representations in the marketing of its franchises.

#### KIS Corp.

KIS agreed to pay \$1.55 million in consumer redress to purchasers of its one-hour photo finishing minilab franchises, with the possibility of additional payments if assets become available. KIS is prohibited from violating the FTC Act or Franchise Rule or from misrepresenting any aspect of a business venture or the equipment, goods or services offered for sale in connection with a business venture.

#### Lynn Murphy & Co., Inc.

A federal court has issued a permanent injunction against an Arizona company involved in selling consumers investments in rare gold coins and silver and platinum bullion. Defendants were charged with falsely representing the value of gold coins, and misrepresenting that they would purchase- bullion to serve as collateral for loans they helped investors obtain from banks. The Commission successfully moved for summary judgment and obtained a permanent injunction prohibiting the defendants from making any misrepresentations concerning investments they offer. The court also entered a judgment of \$6.3 million to redress consumers who bought investments from the defendants.

**Magui Publishers, Inc.**

The Commission filed a federal district court complaint against Magui Publishers charging it sold fake art works purportedly by Salvador Dali and other artists to art dealers who then sold them to consumers. The court granted the Commission's request for a temporary restraining order, an asset freeze and the appointment of a temporary receiver to run the business. Staff subsequently obtained a preliminary injunction prohibiting any continued misrepresentations.

**Memphis Lamp, Inc.**

The Commission filed a complaint in federal district court charging Memphis Lamp with unfair and deceptive practices in connection with the labeling of their fluorescent and incandescent lamps. The court issued a temporary restraining order against the defendants.

**Mytel International**

Mytel has agreed to pay \$250,000 in lieu of consumer redress, to settle charges it deceptively marketed supplies directly and through other sales companies. It also agreed to stop doing business with telemarketers it knows to make misrepresentations in their sale of office supplies. The complaint charged that sales companies working with Mytel made repeated misrepresentations in selling photocopy supplies over the phone to small businesses and nonprofit organizations around the country. The complaint also charged that Mytel authorized, condoned, or assisted in these practices.

**Nancy Murphy**

Nancy Murphy, an officer of Lynn Murphy & Co., agreed to a stipulated permanent injunction to settle charges she engaged in unfair and deceptive acts in the sale of rare gold coins and silver and platinum bullion for investments.

**National Alliance of Brokers**

The Commission filed a complaint in federal district court charging National Alliance of Brokers with misrepresenting the value, liquidity, and investment potential of their coins, over-grading their coins, failing to deliver coins, and failing to honor their buy-back

policy. The court granted a temporary restraining order prohibiting further misrepresentations, appointing a receiver, and freezing defendants' assets.

#### National Business Consultants, Inc.

The Commission filed a complaint in federal district court charging National Business Consultants with making false and misleading claims in the sale of business opportunities for business consulting services. The court issued a temporary restraining order and froze the defendants assets.

#### North American Enterprises

The Commission filed a complaint in federal district court charging the company with misrepresenting a \$1,000 government bond prize offered as part of a promotion to sell vitamins and with failing to honor money-back guarantees.

#### North American Office Systems

A civil contempt action was filed for nonpayment of a civil penalty judgment awarded in 1987. The court found the judgment debtors in contempt and ordered them to be held in the custody of the U.S. Marshall until the judgment is paid.

#### Numismatic Certification Institute

The Commission filed a federal district court complaint alleging that NCI misled consumers as to the grade of coins it certified for sale by coin retailers. The complaint alleges that NCI's affiliate, Heritage Capital Corp., provided substantial assistance to a coin retailer, Certified Rare Coin Galleries, Inc. (CRCG), knowing that CRCG was misrepresenting the security and profit potential of its coins to investors. The Commission's case against NCI settled for injunctive relief and \$1.2 million.

#### Outdoor World Corp.

A federal court issued a preliminary injunction, pending resolution of an administrative complaint, against Outdoor World Corp., a membership campground promoter. The preliminary injunction prohibited the company from misrepresenting that consumers have won specified prizes. The Commission alleged that Outdoor World

mailings indicating that a named consumer had won one or more specified prizes were false and misleading because the named consumer has not won the specified prizes.

#### Pannos Mining Company

The Commission filed a complaint in federal district court charging that Pannos Mining, which sold contracts for delivery of gold and silver from an Arizona mine, was a bogus investment scheme in which consumers are likely to lose their entire investment. The court issued a temporary restraining order against defendants, froze their assets, and appointed a temporary receiver to secure a fund for any redress award. Preliminary injunctions were also issued against defendants.

#### Pantron I Corp.

The Commission filed a complaint against Pantron in federal district court charging the company with falsely claiming that Helsinki Formula products will cure or prevent baldness. The Commission is seeking preliminary and permanent injunctions and an order requiring the company to pay refunds to consumers.

#### Rainbow Enzymes, Inc.

The Commission obtained three redress judgments against defendants in the Rainbow Enzymes matter. The complaint charged that the defendants misled people into paying \$3,000 each to participate in manufacturing a cleaning fluid for which there was no market, and also encouraging these people to recruit others to take part. Separate permanent injunctions and redress orders were issued against two Rainbow salesmen. James Standridge was ordered to pay \$20,000 in redress and Roy Standridge was ordered to pay \$25,000. Standridge, Inc., a farm implement dealership owned by Roy Standridge, was ordered to pay \$50,000 in redress. In addition, in cooperation with the U.S. Attorney, criminal charges were brought against Stan Massie, the principal in the Rainbow case. Prior to trial, Mr. Massie pled guilty to the charges and received a four year sentence.

#### Rare Coins of Georgia

The Commission obtained a settlement with the defendants in which they agreed to, pay \$150,000 to settle charges that they had

misrepresented the grade and investment quality of coins they wholesaled to telemarketers for resale to the public as investments. The settlement also prohibits further misrepresentations about the value of coins and other investments they sell.

Richard J. Wiley (Certified Security Systems)

Wiley has agreed to settle charges that he used deceptive practices to sell distributorships for energy-saving devices and home burglar alarms. Wiley agreed not to misrepresent any business ventures he offers for sale in the future. Wiley is currently in federal prison on a criminal conviction relating to the sales of distributorships. For five years after he is released from prison, he must post a \$500,000 bond before going into the business of selling distributorships.

Security Rare Coin & Bullion Corp.

The Commission charged in federal court that Security Rare Coin, a leading nationwide seller of coins for investment, misrepresented the value and investment potential of coins. The Commission asked the court to grant a permanent injunction, asset freeze, and an order to pay consumer redress.

7-Day Appraisal Services, Inc.

The Commission filed a complaint in federal district court charging 7-Day Appraisal Services with making false and misleading claims in the sale of real estate appraisal franchises. The court issued a temporary restraining order and preliminary injunction with asset freezes.

Solar Michigan, Inc.

The Commission won a stipulated permanent injunction and order of redress against Solar Michigan, which was charged in federal court with falsely claiming that its solar energy heating systems can significantly reduce residential heating fuel consumption and will pay for themselves in a short time. The Commission had also charged that the company had no reasonable basis for making the claims.

Thermex, Inc. of Jacksonville

The Commission filed a complaint against Thermex of Jacksonville,

a Florida manufacturer of loose-fill cellulose insulation, for violating the R-Value Rule. The complaint alleges the defendants violated the Rule by overstating the R-value and coverage of their insulation, and by failing to base R-value claims on required tests. The Commission asked the court to order payment of a civil penalty and an order to obey the Rule in the future.

#### Traditional Industries, Inc.

The Commission obtained a settlement with Traditional Industries and its subsidiaries providing for a trust fund of \$250,000 for refunds for a specified class of consumers. In addition, certain other consumers were offered cancellation of their remaining contractual balance. Total consumer redress, including both refunds and cancellation of the remaining balance is expected to exceed \$3.6 million. The defendants also agreed to a permanent injunction prohibiting future misrepresentations and requiring them to perform services as promised. The consent decree also enjoins defendants from future violations of the Cooling-Off Rule and the Truth-in-Lending Act.

#### Uni-Vest Financial Services, Inc.

The Commission filed a complaint in federal district court charging Uni-Vest with misrepresenting to consumers the risk of investing in precious metals they offered. The Commission also charged that the company failed to follow clients' instructions to sell, or not to sell, their investments. The Commission asked the court to issue a permanent injunction and to order the defendants to pay refunds to consumers.

#### U.S. Consumer Promotions, Inc.

The Commission filed a complaint in federal district court charging U.S. Consumer Promotions with misrepresenting the capabilities of water purifiers it sells and the return or replacement policies for the purifiers. The complaint also charged that the company represents that consumers who purchase water purifiers will receive valuable awards without being required to make any additional purchase. However, consumers received vouchers that require payment of substantial additional sums of money to obtain awards. The court issued a temporary restraining order and preliminary injunctions with asset freezes.

Vacation Travel Club of America, Inc.

The Commission filed suit in federal district court alleging that this company deceptively marketed their travel-related services at no charge as a prize or award, failed to provide refunds to consumers, made unauthorized credit card charges to consumers' accounts and violated the Truth-in-Lending Act. The Commission requested a temporary restraining order, preliminary and permanent injunctions and consumer redress.

Vaughn Management, Inc.

The Commission filed a complaint in federal district court charging Vaughn Management with falsely telling consumer they would receive an award for no cost, when consumers actually had to pay a processing fee to obtain their awards. The Commission also charged that defendants failed to tell consumers who paid the processing fees that they were required to spend hundreds of dollars more to use the airfare vouchers they received as awards. The court issued a temporary restraining order and froze the defendants' assets.

Wayne Pedersen

The Commission obtained a criminal contempt conviction against Wayne Pedersen, one of the defendants in the Schoolhouse Coins case, for violating a federal court order aimed at preserving assets for consumer redress. Mr. Pedersen was sentenced to three months in federal prison.

#### CIVIL PENALTY ACTIONS

#### MAINTAINING COMPETITION MISSION

Cooper Industries, Inc.

Cooper Industries, Inc. agreed to pay \$100,000 in civil penalties to settle charges that Cooper violated a 1979 order by acquiring stock of McGraw-Edison Co. in 1984 without obtaining prior Commission approval. Under the 1979 order Cooper was required for ten years to obtain prior approval before buying stock in any company that manufactured certain reciprocating gas compressors. According to the complaint accompanying the consent judgment, Cooper held the stock in violation of the order until 1985, when McGraw-Edison sold its gas compressor business.



**MidCon Corp.**

MidCon Corp. agreed, to pay \$100,000 in civil penalties to settle charges that MidCon violated a 1986 order by failing to divest its interest in the Arcadian Gas Pipeline System by February 1987.

**Tengelmann Warenhandelsgesellschaft (The Great Atlantic & Pacific Tea Company, Inc.)**

The Great Atlantic & Pacific Tea Company, Inc., and its parent, Tengelmann Warenhandelsgesellschaft, agreed in a consent judgment to pay \$3 million to settle charges that they violated the premerger notification requirements of the Hart-Scott-Rodino Act. The complaint accompanying the judgment charged that A&P purposely avoided the filing obligation and statutory waiting period requirements of H-S-R by forming a general partnership with five members of the Waldbaum family for the sole purpose of acquiring more than \$15 million worth of voting securities of Waldbaum, Inc. According to the complaint, the transaction was actually an acquisition by A&P and not the partnership. The judgment is the largest civil penalty ever secured by the Commission for violation of the H-S-R Act. The complaint was filed in U.S. District Court for the District of Columbia at the request of the Commission by the Department of Justice.

**CONSUMER PROTECTION MISSION****Bob Wright Motor Co., Inc.**

Bob Wright Motor Co., a Richmond, Virginia used car dealership, agreed to pay \$10,000 in civil penalties to settle charges it violated the Used Car and Warranty Disclosure Rules. The defendants were charged with failing to display Buyers Guides in the side window of vehicles offered for sale to consumers, failing to include a required disclosure in sales contracts, and failing to provide consumers with all required warranty disclosures.

**Debt Collectors, Inc.**

This company agreed to a civil penalty consent decree in the amount of \$155,000 to settle charges it violated the Fair Debt Collection Practices Act. In addition, the company agreed to include disclosures in certain collection communications to consumers informing them of their rights under the Act in the future.

#### Dudley Hughes Funeral Co.

Dudley M. Hughes, Jr., owner of Dudley Hughes Funeral Company, must pay \$80,000 in civil penalties for violating the Funeral Rule. Hughes is also permanently enjoined from violating the Rule through failure to provide consumers with price information and required disclosures. This was the first contested lawsuit under the 1984 Funeral Rule.

#### Eastside Motors

Eastside Motors agreed to pay \$25,000 in civil penalties to settle alleged violations of the Used Car Rule. The defendants were charged with failing to display, distribute or properly translate "Buyers Guide" information for consumers.

#### Eddy's Funeral Home (GMJB)

GMJB, a real estate partnership that formerly owned Eddy's Funeral Home, agreed to pay a civil penalty of \$10,000 and \$4,200 in consumer redress to settle charges it violated the Funeral Rule by failing to provide customers with written price lists of funeral goods or services and by charging for goods and services that were never provided.

#### Errington Memorial Chapel

Errington agreed to pay \$10,000 in civil penalties to settle charges it violated the Funeral Rule by failing to provide each prospective customer with a general price list at the beginning of discussions concerning funeral arrangements, failing to provide price lists for caskets and outer burial containers, and failing to provide an itemized statement of the funeral goods and services selected.

#### Far West Auto Brokers, Inc.

Far West Auto Brokers agreed to pay \$17,500 in civil penalties to settle charges it violated the Used Car Rule. The defendants were charged with failing to display properly completed Buyers Guides in vehicles offered for sale to consumers, failing to provide a copy of the Buyers Guide to its customers, and failing to provide consumers with all of the disclosures required by the Warranty Disclosure Rule.

**Goodman Buick-GMC Trucks, Inc.**

Goodman Buick-GMC Trucks agreed to pay \$17,500 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to properly complete and display required Buyers Guides on vehicles offered for sale to consumers. The consent decree prohibits future violations of the Rule.

**Green Tree Acceptance, Inc.**

This company agreed to pay civil penalties of \$115,000 for allegedly discriminating against the elderly by requiring larger down payments of them and for failing to give some consumers a reason for denying them credit in violation of the Equal Credit Opportunity Act. In addition, Green Tree, when it denied credit on the basis of information obtained from credit bureaus, failed to tell consumers it did so, in violation of the Fair Credit Reporting Act. The company agreed not to violate the FCRA or the age discrimination and notification provisions of the ECOA in the future.

**James H. Turner Funeral Home, Inc.**

Turner agreed to pay \$10,000 in civil penalties to settle charges it violated the Funeral Rule by failing to disclose required information to consumers seeking funeral services.

**John Wannamaker Philadelphia**

This company agreed to a civil penalty consent decree in the amount of \$90,000 for allegedly discriminating against married women who applied for credit in violation of the Equal Credit Opportunity Act. Wannamaker agreed that in the future, when married couples applied jointly for credit, it would not choose to consider one spouse's credit history over that of the other based on sex or marital status.

**Koons Ford of Annapolis, Inc.**

Koons Ford of Annapolis agreed to pay \$40,000 in civil penalties to settle alleged violations of the Used Car Rule, the Warranty Disclosure Rule and the Magnuson-Moss Warranty Act. The defendants were charged with failing to display properly completed Buyers Guides on cars offered for sale and to give them to

purchasers, and failing to include required disclosures in its warranty documents.

#### Lucas Funeral Home

Funeral Corporation of Texas d/b/a, Lucas Funeral Home has agreed to pay \$20,000 in civil penalties to settle charges that it failed to provide consumers with required information concerning funeral goods and services.

#### MFM Auto Sales, Inc,

MFM Auto Sales agreed to pay \$15,000 in civil penalties to settle charges it violated the Used Car Rule. The company was charged with failing to display properly completed Buyers Guides on used vehicles it offered for sale to consumers.

#### Milcon Industries, Inc.

Milcon Industries, d/b/a Blue Ridge Insulation, agreed to install additional insulation in residential and commercial buildings and to pay a civil penalty of \$10,000 to settle charges it violated the R-Value Rule. The complaint charged the defendants with misrepresenting the amount of insulation Installed. The defendants will not have to pay any civil penalty if 50 percent of the affected purchasers participate in the redress program.

#### Niday Funeral Home

Niday Funeral Home agreed to pay civil penalties of \$25,000 to settle charges that it violated the Funeral Rule. The complaint alleged that Niday violated the Funeral Rule by failing to provide price lists and an itemized statement of goods and services selected at the time and in the manner required by the Rule, and failing to provide consumers with other disclosures required by the Rule.

#### Northeastern Software, Inc

Northeastern Software agreed to pay \$10,000 in civil penalties to settle charges it violated the Mail Order Rule. The defendants are prohibited from violating the Mail Order Rule in the future, and from making misrepresentations about shipment periods for merchandise ordered by telephone.

**Plaza Motors, Inc.**

Plaza Motors was ordered to pay \$10,000 in civil penalties for violations of the Used Car Rule and the Warranty Disclosure Rule. The complaint charged the defendants with failing to post required Buyers Guides on cars offered for sale to consumers, failing to include required disclosures in the sales contracts, and failing to disclose in warranty documents required statements concerning limitations on the duration of implied warranties.

**Ronby Corporation (Fred Astaire Dance Studios)**

Ronby Corporation, national licensor of Fred Astaire Dance Studios, agreed to pay \$105,000 in civil penalties over a three year period to settle charges that it violated a 1964 FTC order.

**Ron Price Motors, Inc.**

Ron Price Motors agreed to pay \$20,000 in civil penalties to settle charges it violated the Used Car and the Warranty Disclosure Rules. The defendants were charged with failing to display Buyers Guides on used cars offered for sale and to provide them to purchasers and failing to provide consumers with warranty disclosures.

**Shelly Cars, Inc.**

Shelly Cars agreed to pay \$30,000 in civil penalties to settle charges it violated the Used Car Rule. The defendants were charged with failing to display Buyers Guides on all of the used vehicles it offered for sale.

**World Products**

World Products agreed to pay \$10,000 in civil penalties to settle charges it violated the Mail Order Rule. The Commission charged Mail Order Products, Inc., which does business under the name World Products, with failing to make prompt refunds, failing to send proper notices when shipments would be delayed, and when they did notify buyers, failing to do so within the applicable time period.

**ECONOMIC REPORTS COMPLETED**

Economic reports usually entail a significant commitment of resources

and report original research concerning an issue of current or long term policy interest to the Federal Trade Commission.

The Impact of State Price and Entry Regulations on Intra-State Long Distance Telephone Rates, Alan D. Mathios and Robert P. Rogers, November 1988. The study finds that states using price cap regulation have 7-10 percent lower long-distance rates than states using rate-of-return regulation. In addition, state regulatory entry barriers tend to increase the price of long-distance telephone service.

Local Building Codes and the Use of Cost-Saving Methods, Richard Duke, January 1989. The study finds that locally-drafted building codes no longer significantly increase building costs since almost all localities have adopted national model codes that provide for cost-saving techniques. However, the study also finds that many builders do not use most cost-saving methods permitted by the codes, in part because purchasers of new homes apparently believe that houses built with older techniques are of higher quality.

A General Equilibrium Analysis of the Welfare and Employment Effects Of US Quotas in Textiles, Autos, and Steel, David G. Tarr, February 1989. Using state-of-the-art modeling techniques, this report examines the costs of trade restraints in three industries. Findings indicate that voluntary export restraints in these industries cost the U.S. \$21 billion in 1984 while "protecting" 174,000 jobs in the three industries. Thus, the annual cost of each job, protected was approximately \$120,000.

Economics of Sham Litigation: Theory, Cases, and Policy, Christopher C. Klein, April 1989. The report examines court records on public and private Sherman Act "countersuits" entailing allegations of sham litigation, between 1972 and 1985. Using an empirical approach, the report seeks to answer the question of "whether case law involving Sherman Act countersuits alleging sham litigation has developed in a way that appropriately discourages the use of adjudicative proceedings to produce anticompetitive outcomes."

Mergers in the U.S. Petroleum Industry, 1971-1984: An Updated Comparative Analysis, Jay S. Creswell, Jr., Scott M. Harvey, and Louis Silvia, May 1989. The report reviews recent evidence on oil industry mergers and concludes that conglomerate mergers have become less important and that mergers have had little impact on industry concentration.

Health Claims in Advertising and Labeling: A Study of the Cereal Market, Pauline M. Ippolito and Alan D. Mathios, August 1989. The report presents an empirical examination of the effects of the health claims in fiber cereals which began in 1984. Evidence indicates that health claims in advertising significantly alter consumer behavior and reach groups not otherwise reached by government and general health information.

#### ECONOMIC ISSUES SERIES

Economic Issues Papers are literature reviews or policy analyses (rather than original empirical or theoretical work) in a subject area relevant to the Commission's mission.

How Should Health Claims for Foods Be Regulated? An Economic Perspective, John E. Calfee and Janis K. Pappalardo, September 1989. This is a policy analysis examining the application of a cost/benefit approach to health claims. The analysis focuses on the problem that regulators tend not to ask one of the right questions; "How much will it harm consumers if we do not allow a claim that turns out to be true?"

#### WORKING PAPERS

Economic Working Papers are preliminary, unpublished work products of the Bureau of Economics, resulting from original research by Bureau staff, either in connection with ongoing agency activities or independent analyses, often requiring very minor allocations of staff time.

Deregulation by Vertical Integration, (WP#166), John R. Morris, October 1988.

A Theory of Minimum Quality Standards: Quacks, Lemons & Licensing Revisited, (WP#167), Michael R. Metzger, November 1988.

The Relationship Between Industrial Sales Prices and Concentration of Interstate Natural Gas Pipelines, (WP#168), John R. Morris, November 1988.

Do Government-Imposed Ownership Restrictions Inhibit Efficiency? FCC's Duopoly Rule, (WP#169), Keith Anderson & John Woodbury, December 1988.

The Impact of Tariffs and Quotas on Strategic R & D Behavior, (WP#170), James Reitzes, January 1989.

Predation, Entry and the Diversified Firm, (WP#171), David Levy, January 1989.

Terminal Railroad Revisited: Foreclosure of an Essential Facility or Simple Horizontal Monopoly, (WP#172), David Reiffen and Andrew Kleit, April 1989.

Regulation, Market Structure, and Hospital Costs: A Comment on the Work of Mayo and McFarland, (WP#173), Keith B. Anderson, May 1989.

A Recalculation of Cline's Estimates of the Gains to Trade Liberalization in the Textile and Apparel Industries, (WP#174), Michael R. Metzger, May 1989.

#### MISCELLANEOUS ECONOMIC POLICY PAPERS

Miscellaneous Economic Policy Papers result from basic research and explore well-defined industrial organization and management strategy questions of interest to the broad policy concerns of the Commission. These papers may be prepared by FTC staff economists or by outside individuals who have been granted access to economic data compiled by the FTC.

Looking for a Profitability-Concentration Relation: Applying a U.X Test to U.S. Data, David R. Ross, November 1988.

Characteristics of Divested Lines of Business, Habir Singh and Kathleen Saul, December 1988.

Empirical Studies of Innovation and Market Structure, Wesley M. Cohen and Richard C. Levin, January 1989.

Innovation and Learning: The Two Faces of R&D - Implications for the Analysis of R&D Investment, Wesley M. Cohen and Daniel A. Levinthal, January 1989.

Industry Determinants and Differences in U.S. Intrafirm Exports, Anita M. Benvignati, February 1989.



Business Relatedness and Business Performance, Richard Klavans, February 1989.

Industry Heterogeneity and Its Effect on the Observed Determinants of Profitability, David R. Ross and Ralph M. Bradburd, February 1989.

Knowledge Base, Variety, and Technological Change, Wesley M. Cohen and Franco Malerba, May 1989.

How Much Does Industry Matter?, Richard P. Rumelt, July 1989,

Do Firms Differ Much? Some Additional Evidence, Ioannis N. Kessides, August 1989.

The Random Character of Innovative Effort, Wesley M. Cohen, September 1989.

### CONSUMER AND COMPETITION ADVOCACY

#### OFFICE OF CONSUMER AND COMPETITION ADVOCACY

The Commission, in fulfilling its competition and consumer protection missions, seeks to prevent or lessen consumer injury caused by private or government activities that interfere with the proper functioning of the marketplace. In some instances, laws or regulations may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, and wasting resources. These results may occur because the interests of consumers are not always well represented. A goal of the advocacy program, therefore, is to reduce the possible harm to consumers by informing appropriate governmental entities of the potential effects on consumers, both positive and negative, of proposed legislation or rule-making. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review, and information for the staff's work in this area. In fiscal year 1989, the Commission staff submitted 79 comments to a variety of states and agencies in such areas as advertising, antitrust, communications, health care, occupational. licensing, rent control and transportation.

#### NATIONAL ORGANIZATIONS

##### American Bar Association

The Commission staff commented on proposed revisions to the American Bar Association Model Rules of Conduct. The changes

proposed a relaxation of restrictions on promotional activity of attorneys, such as use of direct mail. The comment applauded the proposal, stating that it would benefit consumers. The comment further says the proposal may unduly restrict some forms of telephone solicitation to the detriment of consumers and should define more clearly the term "recorded communication."

#### National Association of Attorneys General

The Association of state Attorneys General requested that the Commission comment on proposed guidelines for the car rental industry. The comment noted that the Commission agreed with the guidelines' general conclusions that deception and unfairness in the advertising and marketing of rental cars should not be tolerated, but expressed concern that certain provisions of the guidelines could discourage advertising which might provide useful information, as well as advertising that was unfair and deceptive.

In an additional letter to the National Association of Attorneys General, the Commission said that several of the provisions found in the guidelines could discourage or prevent non-deceptive, fair and competitive conduct. This could injure consumers, the comment noted.

#### FEDERAL AGENCIES

##### Bureau of Alcohol, Tobacco and Firearms

In response to a Bureau of Alcohol, Tobacco and Firearms (BATF) Federal Register Notice, the Commission commented on two alternative proposals to revise its regulation governing the advertising and labeling of "light" or "lite" alcoholic beverages. The comment suggested that the BATF first determine through consumer testing whether consumers are deceived by current labeling practices in the industry. If consumers are deceived, BATF should also consider using market research to find the best means of curing the deception, the staff comment noted.

##### Department of Agriculture

The Commission staff commented on the Department of Agriculture's Food Safety and Inspection Service (FSIS) proposal to make an exception to its rules requiring the disclosure of mechanically separated meat in ingredient lists. The comment did not take a position on the merits of the proposed change, but did identify

specific market and consumer survey information that FSIS might want to examine to determine whether the proposed change would be warranted.

#### Department of Transportation

The U.S. Congress asked the Department of Transportation to consult with the Federal Trade Commission in its preparation of a study that analyzes the competitive aspects of gross receipts fees imposed by airports on off-airport car rental companies. The Commission comment develops DOT's analysis, highlighting the factors likely to affect the magnitude of the impact on the prices, profitability and locational decisions of both off-airport and on airport car rental companies. In addition, the comment discusses the possible effects on competition in the car rental industry.

#### Environmental Protection Agency

The Commission staff commented to the Environmental Protection Agency on its proposed regulations to limit the production of certain chemicals that disrupt the ozone layer. The EPA proposal would create a system of marketable permits to be allocated to producers and importers of certain chemicals. This market-based incentive plan appears to represent the lowest cost, most efficient, and most pro-competitive method of implementing chemical reduction under the terms of the Montreal Protocol, the comment said.

#### Federal Communications Commission

The Commission staff commented to the Federal Communications Commission on its regulations governing the use and licensing of FM commercial translators. The comments reevaluated previously used data in this area. The Commission staff found that rather than overstating the positive impact of increasing the number of stations the comment understated the impact. Most new FM translators, the comment further noted, are directed at low population areas not at high population areas which already have adequate radio service.

In response to a Federal Communications Commission Notice of Inquiry, the Commission commented on several proposed regulatory policies for Advanced Television. The comment makes several points. First, the FCC should consider - allowing the market to determine the total quantity of spectrum allocated to ATV. Second, considerable information on the benefits and costs to society is

necessary and third, the proposed requirement that ATV be compatible with existing television receivers could impose future costs on society that exceed any benefits.

#### International Trade Commission

The staff commented on an antidumping and countervailing duty petition against antifriction bearings and similar parts, from nine countries. The comments stated that an economically sound approach to defining such terms as "like product" and "domestic industry" would likely have a beneficial effect in this and future trade cases.

The Commission staff also commented on the International Trade Commission investigation into the effects of significant limits on imports of manufactures, agricultural and natural resource products and services. The comment discussed several models and concluded that annual gains to the U.S. economy and to consumers from removing all tariffs on manufactured imports are between \$0.6 and \$1.3 billion per year. In addition, both wage and income of workers and rental income of capital owners are situated to increase slightly if these tariffs are removed.

#### Office of Personnel Management

The Commission commented on the Office of Personnel Management's proposals to adjust severance pay regulations. The proposal would pay benefits to Federal employees involuntarily separated through reductions in force, who accept employment with the private contractor who provides the service previously performed by the separated employee. The proposal, according to the comment, would likely improve efficiency by smoothing transitions from Federal to private provision of commercial services and help private suppliers compete to supply commercial services to the government.

#### Postal Rate Commission

In response to a Postal Rate Commission (PRC) rulemaking concerning the Postal Service's request for greater flexibility in setting rates for Express Mail to meet private competition, the Commission recommended granting the postal service greater flexibility in pricing Express Mail. The Commission staff proposed that the Postal Service be free to set Express Mail rates at any point

within the zone of discretion established by the PRC without additional extended hearings and review. The comment also said the change could harm consumers if regulatory advantages enjoyed by the Postal Service were not simultaneously reduced or removed. The current advantages might pose a risk of increased costs from inefficient and anti-competitive pricing.

In response to another PRC Federal Register notice, the Commission staff said that the PRC proposals to improve statistical information the PRC receives from the Postal Service could offer substantial benefits in return for relatively modest costs. The PRC could use the information to make better decisions concerning postal rates and services. The comment stated that under PRC regulations, statistical studies would sometimes fail to have documentation of the sources of data, the assumptions made, and the statistical techniques that had been used. An improvement in the reporting procedures could offer better statistical information for improved decisions at very little cost, the staff comment concluded.

The Commission staff, in an additional comment provided more detailed suggestions on two methods of assessing statistical information that the PRC received from other parties. The FTC staff had raised the option of incorporating these two methods in the PRC's proposed regulations when it commented on the proposed regulations designed to improve the statistical information that the PRC receives. The comment suggested tests to assess the sensitivity of postal demand forecasts to small changes in the data, in the variables used to explain postal demand, and in the forms of the explanatory variables that are used.

The Commission staff commented to the Postal Rate Commission that it believes a study of the costs and benefits of exempting addressed third class mail from the U.S. Postal Service's delivery monopoly would be useful. Substantial benefits to consumers through improved mail service, lower postal costs, and perhaps lower prices on advertised goods generally, could result from implementation of the proposed exemption, the comment said.

The Commission staff commented to the Postal Rate Commission concerning advances in the economic theory of regulated monopolies since the reorganization of the Postal Service in 1971. The comment discussed two theoretical developments that are particularly relevant to the policy of maintaining the government monopoly on letter mail.

### Securities and Exchange Commission

The Securities and Exchange Commission proposed some changes to its rules covering mutual funds that use fund assets to pay costs associated with the distribution of fund shares, known as 12b-1 plans. The Commission staff commented on these amendments to rules concerning certain fees charged by mutual funds. The staff comment stated that the proposed amendments that would define payments made under a 12b-1 plan as an "asset based sales load" may improve investor welfare. However, the amendments that require 12b-1 payments to be made on a current-year basis may not be in the best interest of mutual fund investors, the comment noted.

### U.S. Customs Service

The Commission staff suggested in a comment on a Customs Service proposal to require permanent country-of-origin marking only on those jewelry items in the imported American-style. The Customs Service proposed regulations concerning such labeling for Native American style jewelry to address the problems of imported jewelry being passed off as Native American products. Regulatory efforts, the comment said, should focus on the problem that has been identified, namely, Native American style crafts and choose the proposal least costly to importers and U.S. consumers,

## STATES

### Alabama

Commission staff commented on a bill before the Alabama Senate that would prohibit the suppliers of construction equipment from discontinuing supply relationships with an Alabama dealer unless the dealer breached a "reasonable" material provision of the franchise agreement and fails to correct such a breach after being afforded several months to do so. The staff comment said the bill would likely harm Alabama consumers by increasing the costs of distributing construction equipment, deter equipment suppliers from entering into relationships with Alabama dealers, and possibly cause prices to increase above a level that would prevail in a competitive market.

### California

In testimony before the California Public Utilities Commission, the FTC staff commented on the benefits of deregulating the trucking

industry. Deregulation appears to have brought lower prices and higher quality service to shippers, the staff commented. Also, there is little reason to believe that deregulation brings predatory pricing or loss of service to small communities. Eliminating or decreasing economic regulation of intrastate trucking can result in significant benefits to California, the testimony further stated.

The Commission staff commented on a California Senate bill that would require certain persons who file premerger notifications with the federal authorities to also simultaneously file them with the California Attorney General. The bill would also permit the state Attorney General to disclose the reports to many law enforcement agencies. The bill, the comment said, could increase concerns that sensitive data may be disclosed. This may harm merger enforcement by decreasing compliance with the merger filing requirements and impose a burden on businesses and consumers, the comment said.

#### Colorado

Commission staff commented on a Colorado bill that would require companies to inform their clients of their rights under the Fair Credit Reporting Act. The comment said the disclosure provisions use technical language and are too lengthy. The adoption of a short simple disclosure conveying information that consumers could easily comprehend might be preferable. The comment also supported the inclusion of effective disclosure requirements in legislation regulating the credit repair industry.

Commission staff commented on a Colorado bill to permit unrestricted branch banking in the state. The Commission staff commented that the bill would likely permit some benefits from consumers and would not prevent smaller banks from competing effectively and would not increase the risk of bank failure. The comment noted that a number of studies suggest that the performance of banks is better in states that permit branching than in states that do not.

#### Florida

The Commission staff commented on proposed amendments to the Florida Rules of Professional Conduct for attorneys. The comment said the amendments may restrict the flow of truthful and useful information to consumers and have the potential to interfere with

competition and increase costs without providing countervailing benefits to consumers. The comment suggested that the Florida Bar Association consider modifying the rules to allow a wider range of truthful communications and to ban only those that are likely to be unfair and deceptive.

The Commission staff commented on several provisions of a bill that would require that virtually all fees be reflected in the total advertised price of car rentals rather than being stated separately. Because studies have shown that price advertising enhances competition and lowers prices, the comment suggested that the legislature be cautious in imposing any requirements that may discourage price advertising. The comment said a provision that would mandate that car rental companies assume responsibilities for losses over \$200 would restrict consumer choice in whether or not to accept collision damage waiver provisions. According to the comment, providing consumers with information on the collision damage waiver provision may be more effective than requiring that collision damage waiver be sold to all whether all consumers want it.

### Georgia

The Commission staff commented on five bills before the Georgia legislature dealing with health care certificate of need regulation and concluded that they might benefit Georgia consumers. The bills propose to relax Georgia's requirements that health care facilities prove that new facilities and equipment are needed before they can be constructed or purchased. The comment said a relaxation of the requirements may lead to greater diversity and better quality in health care services and increased price competition.

### Illinois

The Commission staff commented on a proposal to restrict auto manufacturers in Illinois from licensing repair shops or opening franchises. The proposal would most likely harm consumers by reducing competition and increasing costs. The bill would prevent automobile manufacturers from licensing repair shops to operate in areas where their new car dealers provide repair services and would reduce the ability of manufacturers to franchise more than one dealer in any market. This could result in higher prices for some types of repair services and for new cars.



The Commission staff commented on a bill that proposed to reduce the ability of acquirers of corporations to engage in business combinations for three years after acquiring 15% of the target firm's shares. The comment noted that vigorous takeover activity enhances economic efficiency and therefore benefits consumers, workers and shareholders. The bill's enactment, the comment stated, is likely to deter takeovers that may actually increase economic welfare.

The Commission staff commented on an Illinois bill that would prohibit credit unions and buying clubs that assist consumers in purchasing new and used autos at discount prices from licensed dealers from doing so. The bill would prohibit this "brokering" activity and require a dealer's license in order to perform many of the activities that can now be performed without a license. The proposal could limit competition among automobile dealers and increase prices that consumers pay for automobiles.

The Commission staff commented on an Illinois bill that would limit the methods car rental companies can use to calculate base rental charges and in advertising those charges, alter the allocation of costs and risks of damage or theft, and ban long-term leasing on Sundays. The provisions could increase costs, make it more difficult to obtain information about price and comparison shop, the comment noted. This could lead to increased prices.

#### Louisiana

The Commission staff commented on a bill that would prohibit below cost gasoline pricing and prohibit price discrimination in gasoline sales. The proposal would deny businesses the flexibility to adjust their prices in response to supply and demand. It would likely add costs to the distribution of gasoline in the state of Louisiana that do not exist in other states and the costs would be borne by Louisiana consumers and visitors.

#### Massachusetts

The Commission staff commented on a Massachusetts bill that would amend state law to regulate certain business combinations involving Massachusetts corporations and would authorize the use of "poison pills", restrictions on the use of acquired stock. The comments suggested that the provisions be applicable only to corporations that affirmatively elect to be covered by them so that

shareholders of a corporation determine whether restraints on the transfer of corporate control are in the interests of the corporation. In addition, to prevent managers from protecting their own interests with poison pills, the comment suggests that such requirements be approved by a vote of the majority of the outstanding shares.

The Commission staff also commented on a Massachusetts bill that would require many prepaid health care programs that offer pharmaceutical benefits to let any pharmacy participate may increase costs to consumers, reduce competition and restrict consumers freedom to choose health benefits programs that they believe best meet their needs.

The FTC staff commented to the Massachusetts Department of Public Utilities that issuance of additional taxicab medallions for the city of Boston would benefit consumers. As a result of the restrictions, the comment pointed out, consumers pay \$14.5 million per year in excess of the costs of the service they receive. Consumers would gain significantly from an increase in the number of cabs that would be permitted to operate in the city, the comment stated.

The Commission staff commented to the Massachusetts Attorney General's office concerning proposed revisions to the state's retail advertising regulations. The overall effect of several of the regulations may be to unnecessarily restrict some forms of truthful advertising, particularly price advertising. They might have the practical effect of chilling the dissemination of truthful advertising and this could harm consumers.

## Michigan

In response to a notice by the Michigan Department of Licensing and Registration, the Commission staff commented on a proposal to change the administrative rules of the Michigan Board of Optometry. The rule change would prohibit optometrists from delegating specified procedures to non-licensed qualified eye-care professionals unless a licensed professional supervised the performance of the procedure. This would prohibit opticians from performing various procedures that they routinely would do on their own, unless supervised. These restrictions would harm consumers by limiting competition and increasing costs and in the case of cosmetic contact lenses, not improve the quality of care.

## Missouri

The FTC staff commented on a bill before the Missouri legislature that would prohibit physical therapists from accepting wages or any other form of payment from a physician or other health care provider who refers patients to the therapist. The comment said the bill would likely injure consumers by reducing competition among physical therapy providers and decrease the choices available to consumers.

## Montana

The FTC staff commented on a bill before the Montana legislature that would regulate gasoline prices in the state. The bill would prescribe minimum price levels and prohibit price discrimination. If enacted, the comment said, the proposal would likely injure consumers. Retailers might be unable to operate discount outlets, short term price discounts would be deterred and higher retail gasoline prices in Montana would possibly occur.

## Nebraska

The Commission staff commented on bills before the Nebraska legislature to repeal or liberalize the state's health care certificate of need regulation. The bills propose to repeal or liberalize Nebraska's requirements that health care facilities prove that new facilities and equipment are needed before they can be constructed or purchased. The comment said a relaxation of the requirements may lead to greater diversity and better quality in health care services and increased price competition.

## Nevada

The Commission staff commented on a bill that would prohibit physical therapists from paying or receiving any referral fees. The comment said restrictions may harm consumers because restrictions on referral fees may interfere with legitimate health care delivery systems that contain costs to consumers. The restrictions might unnecessarily inhibit beneficial competition and limit choices for consumers, the comment stated.

## New Jersey

The Commission staff commented on several provisions of a bill

that would require, in effect, that collision damage waiver be purchased as part of all rental transactions, ending the choice of consumers whether or not to purchase such coverage. The comment said this will restrict consumer choice and will force consumers to pay higher costs, primarily in the form of higher base prices. In situations in which consumers suffer from insufficient information, remedies that require the disclosure of better information may resolve the problem rather than such a requirement.

In testimony before the New Jersey Division of Consumer Affairs, the Commission staff commented on proposed rules implementing the Public Warehousemen Licensing Act. The proposed rules reflect interpretations of the Act by state regulators that may unnecessarily inhibit mover pricing flexibility. If somewhat revised, the rules might better accomplish this laudable goal and better realize the pro-competitive objectives of the Act.

The Commission staff commented on a proposed rule that would make it unlawful for anyone to advertise or sell any merchandise as "new" when in fact it was not "new" as defined in the rule. The comment expressed the view that even though there was support for the effort to ensure that misuse of the term "new" did not result in consumer injury, the proposed rule would prohibit all merchandise that has been returned from being sold as "new" making the definition overly broad and in some instances, prohibiting nondeceptive competitive activity and thereby possibly injuring consumers.

#### New York

The Commission staff commented on several provisions of a New York state bill covering rental car transactions. The comment said the portion of the bill that included new restrictions on the ability of car rental companies to advertise and charge for certain specified items may increase the cost of price advertising and harm the ability of car rental companies to advertise nationally. This could result in reduced price promotion and lead to higher prices. Also the bill would require that collision damage waiver be purchased as part of all rental transactions, ending the choice of consumers whether or not to purchase such coverage. This would restrict consumer choice and force consumers to pay higher costs, primarily in the form of higher base prices, according to the comment. In situations in which consumers suffer from insufficient information, remedies that require the disclosure of better information may resolve the

problem rather than such a requirement. Finally, the staff commented on a provision that prohibits rental car companies from requiring any security for a rental. This might increase the number of instances in which car companies are unable to obtain payment for car rentals or for acts that the renter is liable. Honest and careful drivers would then have to bear the debts of less careful people.

The Commission staff said a New York law that regulates the state's dairy industry should be allowed to expire. The regulation of the dairy industry does not appear to be needed and consumers would benefit if a competitive market were permitted, the comment argued. In a free market, competition will encourage the milk industry to satisfy consumer preferences in the most efficient manner and maximize consumer choice while ensuring that consumers pay the lowest competitive price, the comment said.

The Commission staff commented on a bill that would prohibit New York doctors and dentists from dispensing more than a 72-hour supply of any prescription drug unless the physician or dentist dispenses the drugs for free or is located more than ten miles from a registered pharmacy. The comments said such restrictions could be harmful to consumers. With the increasing numbers of local group medical practices and walk-in clinics providing convenience, there is increased competition for the sale of prescription drugs. This leads to greater choice for consumers and lower prices.

The Commission staff commented on a New York City bill that would grant certain retail tenants seeking lease renewal a "right of first refusal" to accept the rent obligation and length of lease negotiated with any prospective new tenant. The bill might impair the efficient allocation of resources to and within the commercial rental market and thus could injure landlords and tenants as well as the public at large, the comment said.

#### North Carolina

In testimony before the North Carolina State Goals and Policy Board, Commission staff said economic evidence does not support the view that certificate of need health care regulation reduces the costs of health care. Certificate of need regulation generally requires a health care establishment to demonstrate that new facilities or equipment are needed before they can be constructed or purchased. In addition to testifying regarding the rationales for certificate of

need regulation, the staff also the increasing ability of the health care markets to function in an unregulated, competitive way.

The Commission staff commented on a North Carolina bill that would prohibit distributors of household furniture from using a variety of distributional restraints and require furniture distributors who sell to North Carolina dealers to establish uniform wholesale prices and retailing standards. Legislation that restricts the ability of manufacturers to control the distribution of their products is likely to harm consumers since consumers can benefit from suppliers' placement of restrictions on retailing prices.

#### Ohio

Commission staff, in testimony before an Ohio State Senate Committee, stated that certificate of need health care regulation has been unsuccessful in containing health care costs. The state Senate is reviewing the state's certificate of need regulation which requires a health care establishment to demonstrate that new facilities or equipment are needed before they can be constructed or purchased. One reason health care economists hold this view is that certificate of need regulation restricts the availability of new firms to enter a health care market and compete against an incumbent provider. This may in turn increase prices and interfere with improvements in the quality of care.

#### Oklahoma

The Commission staff commented on a proposal to revise the Oklahoma state Constitution and eliminate constitutionally mandated interest rate ceilings in the state. The comment said removal would promote the availability of consumer credit and would be beneficial for consumers. An interest rate ceiling may substantially harm consumers since when an imposed ceiling is lower than the competitive market rate, lenders must make adjustments by either increasing other charges, reducing the volume of credit or doing both.

#### Oregon

The Commission staff commented on a bill in the Oregon State Senate that would prohibit accountants' use of referral fees and commissions. Such a proposal would reduce competition among accountants and restrict the dissemination to consumers of informa-

tion about accounting services thereby adversely affecting consumers' ability to obtain accounting services on the terms they want. The prohibitions, the comments said, would restrict competition more than is reasonably necessary to protect consumers against conflicts of interest.

Commission staff commented about a bill in the Oregon State Senate that would prohibit suppliers of "heavy equipment" from discontinuing supply relationships with any Oregon dealer unless the supplier is withdrawing from the state, or the dealer breaches a "reasonable and material" provision of its contract with the supplier. By denying businesses the flexibility to tailor their supply contracts to the market, the bill would tend to create an excessively rigid distribution system unresponsive to market conditions. This could lead to increased prices for consumers, the comment noted.

#### Pennsylvania

The Commission staff commented on Pennsylvania's restrictions on advertising by dentists during a review of the state's Board of Dentistry regulations being conducted by the state's Independent Regulatory Review Commission. The comment said the regulations should only prohibit false, misleading or deceptive advertising. The elimination of the Board's restrictions governing advertising, by dentists in the state could enhance the dissemination of truthful information to the public. Consumers would benefit through improved information and lower dental prices created through increased competition.

The Commission staff testified before the Business and Commerce Committee of the Pennsylvania House of Representatives on a bill that would require all sellers of pre-need cemetery goods or services to deposit into a trust fund 100% of the proceeds of any such sale. The proposal may restrict the sale of pre-need goods and services without providing sufficient countervailing consumer benefits. The ability of consumers to choose pre-need funeral services would be substantially restricted.

#### South Carolina

The Commission staff commented on a South Carolina bill proposing to require that wholesale gasoline prices be rolled back to their levels as of April 1989. Such restrictions, the Commission staff commented, could cause a return to gasoline shortages, and retail

gas prices could therefore rise to an inflated level in the state of South Carolina.

The Commission staff commented to the South Carolina Legislative Audit Council on the restrictive or anticompetitive effects of the state's statutes or regulations governing the activity of six state agencies that deal with occupational licensing programs. Certain provisions in the regulation could have anticompetitive effects and the Council may wish to consider alternatives to these provisions, the comment stated.

The Commission staff commented on a Board of Architectural Examiners regulation prohibiting competitive bidding. The comment suggested there are other public and private means for protecting health and safety that are less restrictive of competition, adding that restrictions on competitive bidding may not be necessary to protect the public's health and safety. The Council, the staff recommended, should consider the costs imposed by this regulation in light of its limited benefits.

#### Texas

Commission staff commented on a bill in Texas that would provide for voluntary state licensure of electricians and electrical contractors. The comment said the proposal would probably eliminate some of the existing barriers to practice and in this way benefit consumers by reducing prices and increasing consumer choices. The proposal would establish a state licensing board and provide for the voluntary testing of electricians. The decrease in barriers to entry may increase competition and lower prices, the comment said.

The Commission staff commented on a proposal in the Texas State House that would partially deregulate the tow truck industry in the state of Texas. The comments said a significant body of evidence suggests that deregulation of trucking services lowers rates and improves services. The proposal is important, the comments stated, because it could move Texas toward a more competitive tow truck industry. This would result in significant benefits for consumers and competition.

Commission staff commented on a Texas bill that would ban certain forms of below cost pricing. The bill would ban below cost sales made by a retailer or wholesaler with the intent of injuring



competition. This proposal, the comment stated, could chill price competition that would benefit consumers.

Commission staff commented on a Texas bill that would regulate corporate acquisitions and certain business combinations involving Texas corporations. The bill would also prohibit bidders for corporate control from voting newly acquired control shares unless a majority of the shareholders voted to authorize the exercise of that right. The comment suggested that such legislation might deter takeovers that increase economic welfare and the state should not frustrate shareholders' will to transfer control of a corporation and require them to retain managers that they wish to replace.

Commission staff commented on a proposal to expand regulation of landscape architects in the state of Texas. The proposal would limit the practice of landscape architects primarily to persons licensed by the board. The proposal could lead to higher prices and less consumer choice since it would inhibit entry into the landscape design profession and restrict competition among providers of landscaping services, the comment said.

Commission staff also commented on a bill that would prohibit certain uses of the title "interior designer" by unlicensed persons although unlicensed individuals could perform interior design services. The bill may increase consumer search costs by preventing unlicensed professionals from identifying themselves by a term that consumers associate with the profession and for which no common substitute exists.

In testimony before the Texas Senate Economic Development Committee, the Commission staff commented on a bill that would amend the Texas Public Accountancy Act of 197 to prohibit accountants' use of referral fees, contingent fees and commissions. Such prohibitions would be more restrictive of competition than is reasonably necessary to protect consumers against conflict of interest. Requiring that referral fees and commissions be disclosed is a preferable means of ensuring that consumers have sufficient information to protect themselves against conflict of interest, the staff advised.

Commission staff commented on a Texas bill that would require car rental companies to assume all responsibility for any damage - a proposal apparently designed to prohibit the offering of a separate collision damage waiver charge. Such a proposal would restrict

consumer choice and result in some consumers having to bear greater costs primarily in the form of higher base prices. Requiring disclosure of unproved information often is a preferable means to resolve any problems of consumer confusion. The Commission staff also commented on a provision of the proposal that would prohibit car rental companies from requiring any security or deposit for damage in, any form. This might increase the number of instances in which car companies are unable to obtain payment for car rentals or for acts that the renter is liable. Honest and careful drivers would then have to bear the debts of less careful people.

Commission staff commented on a Texas Senate bill that would ban certain forms of below cost pricing. Since distinguishing between below cost pricing and vigorous competition is difficult, statutory prohibitions against pricing below cost can chill price competition, the comment said. The proposal could insulate wholesale and retail marketers of tangible personal property from price competition. The end result could be that Texas consumers would end up paying higher prices for goods.

In testimony before the Dallas City Council, the Commission staff said consumers may benefit from the removal of the current flight restrictions on Love Field Airport because competition may be increased by repeal and this could result in lower fares and increased convenience for consumers.

#### Virginia

The Commission staff said that a bill before the Virginia legislature that imposes restrictions on the sale of pre-need funeral plans could unnecessarily reduce competition and harm consumers. Pre-need funeral plans allow consumers to select and pay for funeral arrangements in advance. The proposal would permit only licensed Virginia funeral directors to engage in pre-need funeral planning and prohibit solicitation of pre-need plans through in-person communications. This prevents the introduction and development of innovative forms of competition and lower cost alternatives for funeral products.

#### Washington

The Commission staff commented on a Washington state bill that would require car rental companies to assume all responsibility for any damage - a proposal apparently designed to prohibit the

offering of a separate collision damage waiver charge. Such a proposal would restrict consumer choice and result in some consumers having to bear greater costs primarily in the form of higher base prices. Requiring disclosure of improved information often is a preferable means to resolve any problems of consumer confusion. The Commission staff also commented on a provision of the proposal that would prohibit car rental companies from requiring any security or deposit for damage in any form. This might increase the number of instances in which car companies are unable to obtain payment for car rentals or for acts that the renter is liable. Honest and careful drivers would then have to bear the debts of less careful people.

#### West Virginia

The Commission staff commented on a West Virginia bill that would partially deregulate the tow truck industry in the state. By increasing the cost of entering the tow truck business, this process may increase the price of towing services in the state, to the detriment of consumers. This proposal, of partially deregulating the tow truck industry, could result in significant benefits for consumers and competition.

The Commission staff commented on a West Virginia bill that would prohibit the business of automobile brokering. If passed, the comment said, competition may be reduced for new and used cars and prices may increase.

#### AMICUS CURIAE BRIEFS

Several amicus curiae briefs were filed by the Commission.

A brief was filed in the Sixth Circuit in *Nurse Midwifery Assoc. v. Hibbett* on the question of whether a corporation controlled by competing physicians was a single entity under the Sherman Act. The Commission supported the plaintiffs in concluding that challenged conduct of defendant State Volunteer Mutual Insurance Company must be treated as the conduct of a single entity for antitrust purposes.

In the Second Circuit, the Commission filed an amicus curiae in *S.E.C. v. Levine* in which the Commission supported the Securities and Exchange Commission. The brief stated that the lower court was correct in determining that illegal insider-trading profits, which had been disgorged into a receivership account following settlement

of charges that the defendants had violated the Securities and Exchange Act, could be held in constructive trust for the benefit of injured investors, free of tax liens.

In an amicus brief to the Supreme Court in *Peel v. Attorney Registration Disciplinary Commission of Illinois* on the question of whether the professional qualifications of an attorney on his business letterhead constitute commercial speech, the Commission said the State's categorical prohibition of all certification and specialization claims violated the standards governing regulation of commercial speech under the First Amendment.

In an amicus to the Eleventh Circuit in *Bolt v. Halifax Hospital Medical Center*, the Commission stated that the court should hold that the review afforded Florida courts for hospital privilege terminations does not constitute "active supervision" for purposes of the state action doctrine.

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