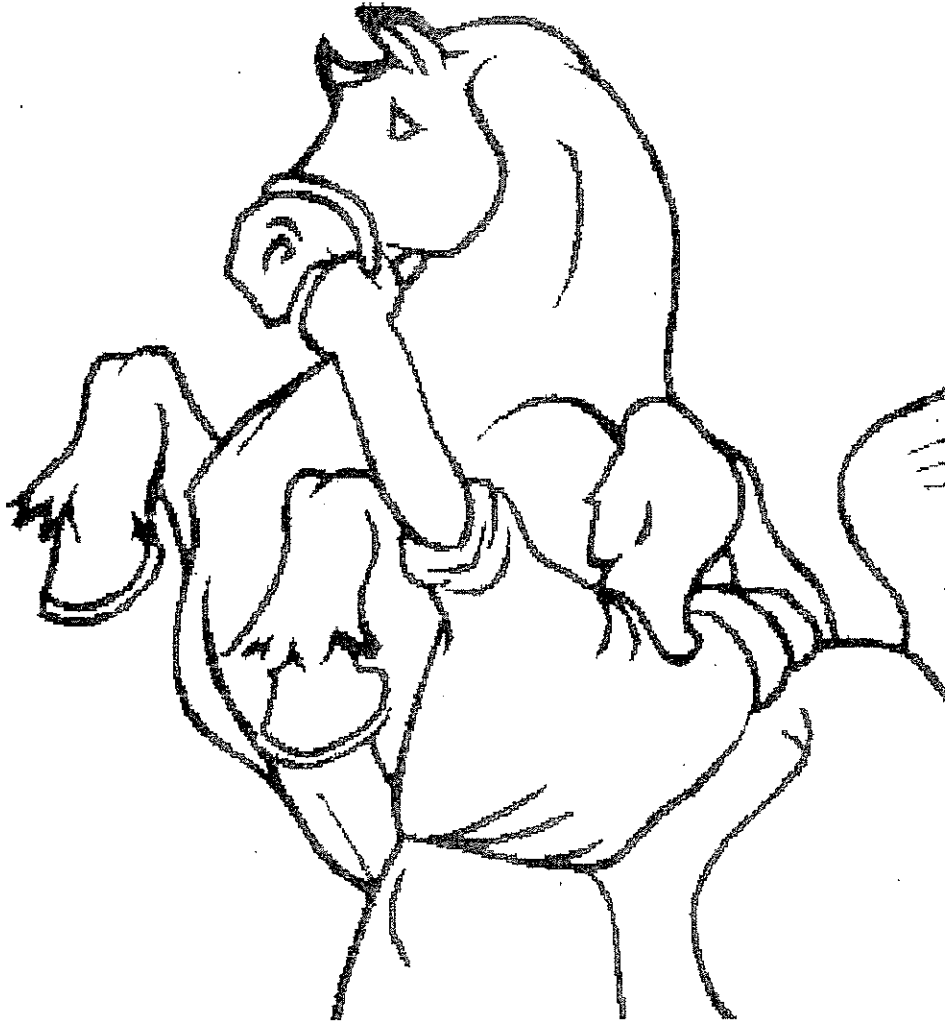


Federal Trade Commission

Bureau of Competition

Joseph J. Simons, Director



Antitrust Enforcement Activities
Fiscal Year 1998 - March 31, 2002

ABA Antitrust Section Spring Meeting 2002

ABA ANTITRUST SECTION SPRING MEETING

*Summary of Bureau of Competition Activity
Fiscal Year 1998 Through March 31, 2002*

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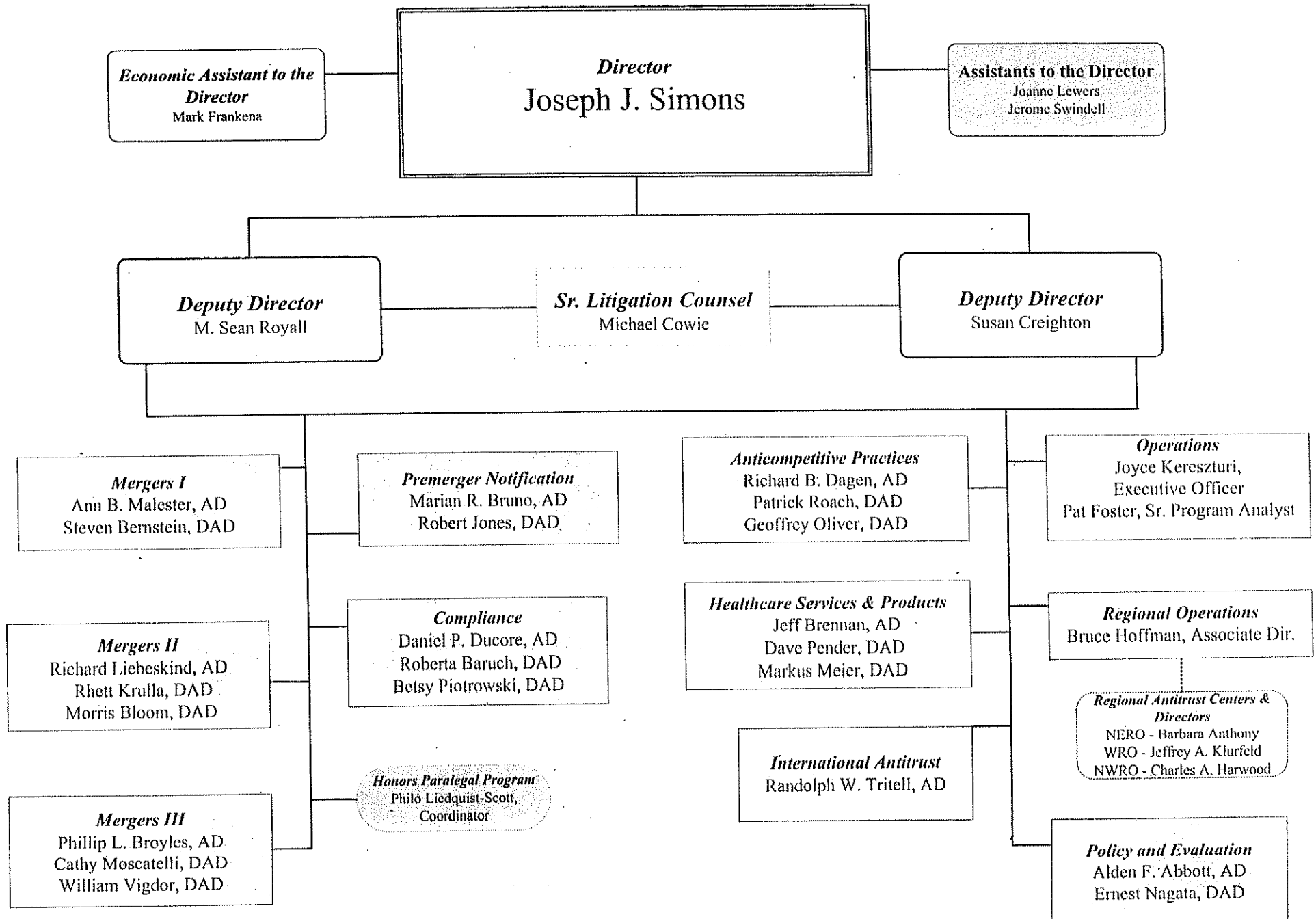
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FEDERAL TRADE COMMISSION
Bureau of Competition



ABA ANTITRUST SECTION SPRING MEETING

Summary of Bureau of Competition Activity Fiscal Year 1998 Through March 31, 2002

I. Mergers

A. Consent Orders

ABB (Final Order April 14, 1999): ABB divested the Analytical Division of *Elsag Bailey Process Automation N.V.* to Siemens Corporation settling antitrust concerns that the acquisition of Elsag would substantially reduce competition in the market for process gas chromatographs and process mass spectrometers, analytical instruments used to measure the chemical composition of a gas or liquid used in petrochemical refining, pharmaceutical and chemical manufacturing, and pulp and paper processing.

Agrium, Inc. (Final Order November 13, 2000): A consent order requires Agrium to divest a deepwater terminal near Portland, Oregon, an up water terminal in central Washington and other assets settling charges concerning its proposed acquisition of the nitrogen fertilizer business of *Union Oil Company of California*. Agrium and Unocal are the leading producers in the Northwest of nitrogen fertilizer – anhydrous ammonia, urea and UAN 32% solution – ingredients used for plant growth.

Airgas, Inc. (Final Order December 18, 2001): Airgas, Inc., the nation's largest distributor of industrial, medical, and specialty gases, settled antitrust charges that its January 2000 acquisition of Mallinckrodt, Inc.'s *Puritan Bennett Medical Gas Business* eliminated competition in the North American market for the production and sale of nitrous oxide. Under terms of the order, Airgas is required to divest two nitrous oxide plants and related assets to Air Liquide America Corporation within 10 days after the Commission issues its final order. Nitrous oxide is a clear, odorless gas used mainly in dental and surgical procedures as an analgesic agent or as a supplement to anesthesia.

Albertson's, Inc. (Final Order December 8, 1998): A consent order requires Albertson's to divest eight supermarkets in Montana and seven in Wyoming to Supervalu Holdings, Inc. in an effort to maintain competitive pricing in the areas. According to the complaint, Albertson's

acquisition of *Buttrey Food and Drug Store Company* would result in higher prices and reduced quality in 11 communities.

Albertson's, Inc. (Final Order December 8, 2000): The final order, modified after the public comment period, does not require the divestiture of a Lucky (American Stores Company) store in Lompoc, California to Ralph's. Albertson's Inc. agreed to divest 104 supermarkets and *American Stores Company* agreed to divest 40 supermarkets to settle charges that Albertson's acquisition of American Stores raises antitrust concerns in 57 markets in California, Nevada and New Mexico. The divestiture agreement is the largest retail divestiture of supermarkets ever required by the Commission.

AmericaOnline, Inc. (Final Order April 17, 2001): AOL and *Time Warner Inc.* settled Commission concerns relating to their proposed merger. The order requires AOL Time Warner to open its cable system to competitor internet service providers. In addition, the company is prohibited from interfering with content passed along the bandwidth contracted for by non-affiliated internet service providers; and prohibited from interfering with the ability of non-affiliated providers of interactive television services to interact with interactive signals that AOL Time Warner agreed to carry.

Associated Octel Company Limited (Final Order December 22, 1999): Associated Octel settled charges that its acquisition of *Oboadler Company* would eliminate direct competition and raise prices in the highly concentrated market for the manufacture and sale of lead antiknock compounds. Under terms of the order, Octel agreed to supply Oboadler's current distributor, Allchem Industries, Inc., with lead antiknock compounds for resale in the United States for 15 years.

The Boeing Company (Final Order January 5, 2001): The consent order permits the acquisition of *Hughes Space and Communications*, a subsidiary of General Motors Corporation, but prohibits Boeing from providing systems engineering and technical assistance (SETA) to the U.S. Department of Defense for a classified program. According to the complaint, Boeing is the sole supplier of SETA programs and Hughes is one of two competing contractors.

BP Amoco p.l.c. (Final Order August 29, 2000): BP Amoco settled charges that its acquisition of *Atlantic Richfield Company* (ARCO) would lessen competition in the production and sale of crude oil in several United States markets. The order requires BP to divest ARCO's complete free standing businesses relating to oil production on Alaska's North Slope to Philips Petroleum Company within 30 days.

British Petroleum Company p.l.c. (Final Order April 19, 1999): Consent order in BP Amoco p.l.c. (created by the merger of British Petroleum Company, p.l.c. and *Amoco Corporation*) requires the divestiture of 134 gas stations in eight markets and nine light petroleum products terminals settling charges that the merger would substantially reduce competition in certain wholesale gasoline markets.

Ceridian Corporation (Final Order April 6, 2000): A consent order requires Ceridian to grant licenses to new and existing firms that provide commercial credit cards (known as “trucking fleet-cards”) used by over-the-road trucking companies to make purchases at retail locations. The order settles charges that Ceridian’s consummated acquisitions of *NTS Corporation* and *Trendar Corporation* gave Ceridian the power to control the markets for the provision of trucking fleet cards and the systems used to read them at truck stops throughout the country.

Chevron Corporation (Final Order January 4, 2002): A consent order permitted the \$45 billion merger of Chevron and Texaco Inc., but requires significant divestitures in the petroleum industry.

CMS Energy Corporation (Final Order June 2, 1999): Consent order requires Consumer Energy, a CMS subsidiary, to “loan” natural gas from its own system to shippers on third-party pipelines if the interconnection capacity with competing pipelines falls below historical levels settling charges that its acquisition of two natural gas pipelines, *Panhandle Eastern Pipeline* and *Trunkline Pipeline*, from Duke Energy Company, could reduce competition and increase consumer prices for natural gas and electricity in 54 counties in Michigan.

Commonwealth Land Title Insurance Company (Final Order November 10, 1998): Final consent order settled allegations that the proposed consolidation of Commonwealth’s title plant with *First American Title Insurance Company*, its only competitor in the Washington, DC area, would restrict competition for title services. The consent order requires Commonwealth, among other things, to relocate its operations and to maintain them as viable businesses in competition with First American.

Computer Sciences Corporation (Final Order January 26, 2000): Final consent order permits the acquisition of *Mynd Corporation* and requires the divestiture of Mynd’s Claims Outcome Advisor System to Insurance Services Office, Inc. Claims assessment systems are used by insurance companies to evaluate appropriate payments for claims of bodily injury and to evaluate return-to-work plans in workers compensation matters.

CUC International, Inc. (Final Order May 4, 1998): CUC settled allegations that its proposed acquisition of *HFS, Inc.* would create a monopoly in the worldwide market for full-service timeshare exchange services. The consent order requires divestiture of CUC’s interval timeshare business to Interval Acquisition Corporation, a new entrant. Should this divestiture not take place, the consent order requires CUC to divest either Interval or HFS’ Resort Condominiums International.

Degussa AG (Final Order June 10, 1998): Degussa agreed to restructure a proposed transaction to acquire only one hydrogen peroxide production plant from *E. I. Dupont de Numbers & Co.*, to obtain prior Commission approval before acquiring certain other Dupont production plants and to notify the Commission of its attempts to acquire hydrogen peroxide facilities in specific areas. Originally, Degussa had planned to acquire all of Dupont’s hydrogen peroxide facilities in North

America.

Delhaize Freres et cie "Le Lion" S.A. (Final Order May 30, 2001): The consent order permitted the merger of *Establissemments Delhaize Freres et Cie "Le Lion" S.A.* and *Delhaize America, Inc.* with *Hannaford Bros. Co.* but requires the sale of 37 Hannaford supermarkets and one Hannaford site to three different buyers.

Deutsche Gelatine-Fabriken Stoess AG (Proposed Consent Agreement Accepted for Public comment March 7, 2002): A proposed settlement allows DGF to complete its \$170 million acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary under terms that the entire pigskin and beef hide gelatin business of Goodman Fielder would be excluded from the transaction. The complaint issued with the proposed agreement alleges that if the firms were allowed to consummate the transaction, as originally proposed, they would account for more than 50 percent of the U.S. market for these gelatin products used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The proposed agreement requiring the restructured transaction was negotiated after the Commission authorized staff to seek a preliminary injunction in federal district court to block the parties from consummating the transaction.

Diageo plc (Final Order December 19, 2001): *Diageo and Vivendi Universal S.A.* resolved competitive concerns regarding *Diageo's* and *Pernod Ricard S.A.'s* joint acquisition of *Vivendi's Seagram Spirits and Wine Business* would combine the second- and third- largest of rum in the United States. The consent order, among other things, requires *Diageo* to divest the *Malibu rum business* worldwide to a Commission-approved buyer within six months of the acquisition of *Seagram*. On October 23, 2001, the Commission authorized staff to seek a preliminary injunction in federal district court to block the transaction.

Dominion Resources, Inc. (Final Order December 14, 1999): A final order permits *Dominion's* acquisition of *Consolidated Natural Gas Company* but requires the divestiture of *Consolidate's Virginia Natural Gas, Inc.* The complaint alleged that the merger would combine the dominant provider of electric power in Virginia with the primary distributor of natural gas in southeastern Virginia.

Dow Chemical Company, The (Final Order March 15, 2001): *Dow* settled antitrust concerns relating to its proposed merger with *Union Carbide Corporation*. *Dow* agreed to divest and license intellectual property necessary to the production of linear low-density polyethylene - an ingredient used in premium plastic products such as trash bags and sealable food pouches - to *BP Amoco plc*.

Dow Chemical Company, The (Final Order February 20, 1998): *Dow* agreed to settle allegations that its acquisition of *Sentrachem Limited* would have substantially lessened competition for the research and manufacture of chelating agents (chemicals used in cleaners, pulp and paper, water treatment, photography, agriculture, food and pharmaceuticals to neutralize

and inactivate metal ions) by combining two of the three U.S. producers of the product. The terms of the consent order require Dow to divest Sentrachem's U.S. chelant business to Akzo Novel N.V.

Duke Energy Corporation (Final Order May 9, 2000): Duke agreed to divest 2,780 miles of gas gathering pipeline in Kansas, Oklahoma and Texas to settle antitrust concerns stemming from Duke's and *Phillips Petroleum Company's* proposed merger of their natural gas gathering and processing businesses under a new company called Duke Energy Field Services, L.L.C. and Duke's proposed acquisition of gas gathering assets in central Oklahoma from Conoco Inc. and Mitchell Energy and Development Corporation.

El Paso Energy Corporation (Final Order January 30, 2001): A final order allowed El Paso to acquire *PG&E Gas Transmission Teco, Inc.* and *PG&E Gas Transmission Texas Company* (subsidiaries of Pacific Gas & Electric) with the provision that it divest El Paso's interest in the Oasis Pipe Line Company; PG&E's share of the Teco Pipeline; and divest the Matagorda Island Offshore production area. The divestitures ensure that competition is maintained for natural gas transportation in three Texas markets.

El Paso Energy Corporation (Final Order March 19, 2001): A modified consent order allows the merger of El Paso and *Coastal Corporation* and requires the divestiture of more than 2,500 miles of gas pipeline system in Florida, New York and the Midwest. The modifications relate to the establishment of the Development Fund for the Green Canyon/Tarpon pipeline acquire and is described in the final order.

El Paso Energy Corporation (Final Order January 6, 2000): A final order ensures competition in the markets for natural gas transportation out of the Gulf of Mexico and into the southeastern United States. The consent order permitted El Paso's \$6 billion merger with *Sonat Inc.* and requires the divestiture of Sea Robin Pipeline Company; Sonat's one-third ownership interest in Destin Pipeline Company, L.L.C.; and the East Tennessee Natural Gas Company.

Exxon Corporation (Final Order October 30, 1998): Exxon will divest its viscosity index improver business to Chevron Chemical Company LLC to settle allegations that its proposed joint venture with *Royal Dutch Shell* to develop, manufacture and sell their fuel and lubricants additives would reduce competition and lead to collusion among the remaining firms in the market.

Exxon Corporation (Final Order January 30, 2001): A consent order settled antitrust concerns stemming from Exxon's acquisition of *Mobil Corporation*, but requires the largest retail divestiture in Commission history. The divestitures, representing only a fraction of the worldwide assets of Exxon and Mobil, include 2,431 gas stations; an Exxon refinery in California; a pipeline; and other assets. According to the complaint, the proposed merger would injure competition in moderate concentrated markets – California gasoline refining, marketing and retail sales of gasoline in the Northeast, Mid-Atlantic and Texas; and in the highly

concentrated markets for jet turbine oil.

Federal-Mogul Corporation (Final Order December 4, 1998): Federal-Mogul agreed to divest the thinwall bearings assets (Glacier Vandervell Bearings Group) it acquires in its takeover of *T&N plc* to a Commission-approved buyer. The complaint alleged that the acquisition would increase the likelihood of coordinated anticompetitive conduct between Federal-Mogul and the remaining competitors in the market for thinwall engine bearings used to separate component parts in the engines of cars, trucks and heavy equipment.

Fidelity National Financial, Inc. (Final Order February 17, 2000): A consent order settled charges that Fidelity's acquisition of *Chicago Title Corporation* would reduce competition for title information services in San Luis Obispo, Tehama, Napa, Merced, Yolo, and San Benito, California. The order requires the divestiture of title plants in each of the six areas.

FMC Corporation (Final order May 19, 2000): The consent order requires FMC to divest its phosphorus pentasulfide business in Lawrence, Kansas to Peak Investments, LLC and Solutia Inc.'s phosphate assets in Augusta, Georgia to Societe Chimique Prayon-Rupel to settle charges that the proposed FMC/ Solutia joint venture could substantially lessen competition in the United States market for pure phosphoric acid and phosphorus pentasulfide.

Global Industrial Technologies, Inc. (Final Order September 10, 1998): According to the complaint issued with the final order, Global's proposed acquisition of *AP Green Industries, Inc.* would combine the two largest domestic producers of glass-furnace silica refractories. Global agreed to divest Green's silica refractories to Robert R. Worthen and Dennis R. Williams and to two companies controlled by them – Utah Refractories Company and Worthen and Williams, L.L.C.

Guinness PLC (Final Order April 17, 1998): The complaint accompanying the proposed consent order alleged that the merger between Guinness and *Grand Metropolitan PLC* would eliminate substantial competition between the two firms in the sale and distribution of premium Scotch and premium gin in the U.S. The order requires the divestiture of Dewar's Scotch, Bombay gin, and Bombay Sapphire gin brands worldwide to acquirers pre-approved by the Commission.

Hoechst AG (Final Order January 18, 2000): A final order settled charges stemming from Hoechst's merger with *Rhone-Poulenc S.A.* According to the complaint, the merger (the merged firm would be renamed Aventis S.A.) raised antitrust concerns in the market for cellulose acetate and direct thrombin acetate. The order requires the divestiture of the subsidiary, Rhodia, a specialty chemicals firm that produces cellulose acetate.

INA-Holding Schaeffler KG (Final Order February 15, 2002): The consent order permits INA's acquisition of *FAG Kugelfischer Georg Schafer AG* but requires the divestiture of FAG's cartridge ball screw support bearing business within 20 business days after the consummation of

the transaction to Aktiebolaget SKF. According to the complaint, issued with the consent order, the acquisition, as planned, would create a monopoly in the market worldwide.

Insilco Corporation (Final Order January 27, 1998): Insilco agreed to divest two aluminum tube mills acquired in its acquisition of *Helima-Helvetion International, Inc.* to settle antitrust concerns that the acquisition would substantially reduce competition in the markets for welded-seam aluminum radiator and charged air cooler tubing in North America.

Intel Corporation (Final Order July 20, 1998): Final order settles allegations that Intel's acquisition of *Digital Equipment Corporation's* assets could endanger the continuing and future development of the Alpha microprocessor, a direct competitor of Intel's Pentium line of computer system components. The order requires Digital to license the Alpha technology to Advanced Micro Devices and to Samsung Electronics Co., Ltd. or to other Commission-approved companies to manufacture Digital's microprocessor devices.

Jitney-Jungle Stores of America, Inc. (Final Order January 28, 1998): Final order settles allegations that Jitney-Jungle's acquisition of *Delchamps, Inc.* would substantially reduce competition among supermarket stores in the areas of Gulfport-Biloxi, Hattiesburg and Vicksburg, Mississippi. The consent order requires the divestiture of 10 supermarkets to Supervalu, Inc.

Koch Industries, Inc. (Final Order January 31, 2001): A consent order settles allegations that Entergy-Koch LP's (a limited partnership owned equally by *Entergy Corporation* and Koch) acquisition of 50 percent of the Gulf South Pipeline Company, LP from Koch would lessen competition for the sale of electricity to consumers in Louisiana and western Mississippi and the distribution of natural gas to consumers in New Orleans and Baton Rouge. Entergy is the regulated electric and natural gas utility in parts of Louisiana and Mississippi. The order requires Entergy to establish a transparent process to buy natural gas and natural gas transportation that will assist state regulators in determining whether Entergy purchased gas supplies at inflated prices from its Entergy-Koch partnership.

Koninklijke Ahold NV (Final Order April 14, 1999): Order requires divestiture of 10 supermarkets in Maryland and Pennsylvania to settle antitrust concerns stemming from Ahold's acquisition of *Giant Food Inc.*

Koninklijke Ahold NV (Final Order December 7, 2001): Ahold would be permitted to acquire *Bruno's Supermarkets, Inc.* under terms of a consent order, but would be required to divest two BI-LO supermarkets in Georgia - one Milledgeville, and one in Sandersville. The Commission's complaint charged that the acquisition as originally proposed, would reduce competition in the retail sale of food and grocery items in the supermarkets in the area and eliminate direct competition between supermarkets owned and controlled by Ahold and those owned or controlled by Bruno's.

Kroger Company (Final Order January 10, 2000): Final order requires Kroger and *Fred Meyer Stores, Inc.* to divest eight supermarkets to settle charges that the acquisition of Fred Meyer would increase concentration and decrease competition in Arizona, Wyoming, and Utah. Under terms of the order, two Smith's Food & Drug Centers will be sold to Nash-Finch Company; one "City Market" will be sold to Albertson's Inc.; and five supermarkets (two "City Markets"; two Fry's, and one Smith's) will be sold to Fleming Companies, Inc.

Kroger Company (Final Order November 8, 1999): A final order settled charges stemming from Kroger Company's acquisition of *The John C. Groub Company*. The order requires the divestiture of three supermarkets in Columbus and Madison, Indiana to Roundy's, Inc., one of the largest food wholesalers in the United States.

Lafarge Corporation (Final Order August 8, 2001): The consent order requires the divestiture of Blue Circle Industries PLC's cement business serving the Great Lakes region of Ohio, Michigan, Illinois, Wisconsin and New York; its cement business in the Syracuse, New York; and its lime business in the southeast United States. These divestitures settled antitrust concerns stemming from Lafarge's proposed merger with Blue Circle. The two firms are market leaders in the industry for cement and lime.

Lafarge Corporation (Final Order February 12, 1999): As a result of plans to acquire *Holnam, Inc.*'s Seattle cement plant, and other cement assets in Washington State, Lafarge entered into an illegal agreement that would reduce competition by restricting its cement distribution in the Puget Sound area. The consent order requires LaFarge to restructure the sales agreement with Holnam to delete the production penalty clause.

Landamerica Financial Group, Inc. [formerly Lawyers Title Corporation] (Final Order May 20, 1998): Landamerica agreed to divest title plants in 11 areas to settle antitrust allegations that its proposed acquisition of *Commonwealth Land Title Insurance Company* and *Transnation Title Insurance Company*, subsidiaries of Reliance Group Holdings, Inc. would reduce competition in title plant services -- underwriting title insurance in the real estate industry. The consent order requires the divestiture of the title plants of Lawyers Title or those of Reliance Group to an acquirer approved by the Commission within six months.

MacDermid, Inc. (Final Order February 3, 2000): A consent order permits MacDermid's acquisition of *Polyfibron Technologies, Inc.* and requires the divestiture, among other things, of Polyfibron's liquid photopolymer business to Chemence Inc. According to the complaint, the acquisition would result in a monopoly in the production, distribution and sale of liquid and solid photopolymer in North America. Photopolymers are used to make flexographic printing plates.

Manheim Auctions, Inc. (Final Order November 13, 2000): The consent order settles antitrust concerns stemming from the acquisition of *ADT Automotive Holdings, Inc.*, the nation's third largest operator of wholesale motor vehicle auctions. The order requires Manheim to divest nine auctions in Kansas City, Missouri; Denver and Colorado Springs, Colorado; Atlanta,

Georgia; San Francisco, California; Seattle, Washington; Tampa, Orlando and Daytona Beach, Florida; and Phoenix, Arizona.

MCN (Final Order May 15, 2001): A final order permits the \$4 billion merger of MCN, a natural gas utility servicing communities in Michigan, and *DTE*, a public utility engaged in the generation and sale of electricity in Detroit and southeastern Michigan. The order, designed to resolve Commission concerns that the merger would lessen competition in the local distribution of electricity and in the local distribution of natural gas in the city of Detroit and in the counties of Macomb, Monroe, Oakland, Washtenaw and Wayne. MCN is the parent of Michigan Consolidated Gas Company and DTE is the parent holding company of The Detroit Edison Company.

Medtronic, Inc. (Final Order December 21, 1998): A final consent order settles allegations stemming from Medtronic's proposed acquisition of *Physio-Control International Corporation's* automatic external defibrillator business. According to the complaint, Medtronic, through its controlling interest in SurVivaLink Corporation, a direct competitor of Physio-Control, would control both companies as a result of the acquisition and thereby increase the likelihood of coordinated interaction which could result in increased prices and reduce innovation in the market. The consent order requires Medtronic to become a passive investor in SurVivaLink and reduce many of its present and future business contacts with the firm.

Medtronic, Inc. (Final Order June 3, 1999): Medtronic agreed to divest *Avecor Cardiovascular, Inc.'s* non-occlusive arterial pump assets to settle antitrust concerns that the acquisition would lessen competition for the research, development, manufacture and sale of the pumps in the United States. The order requires Medtronic to provide assistance to the buyer of the *Avecor Pump* assets to enable the buyer to obtain FDA approval to manufacture and market the *Avecor pumps* an reservoirs.

Merck and Co, Inc. (Final Order February 18, 1999): The complaint, issued with the consent order, alleged that as a result of Merck's 1993 acquisition of *Medco*, the nation's largest benefits manager, Merck's drugs received favorable treatment through *Medco's* drug-list formulary made available to medical professionals who prescribe and dispense prescriptions to health plan beneficiaries. The consent order requires *Medco*, among other things, to maintain an "open formulary" to include drugs approved by an independent Pharmacy and Therapeutics Committee, staffed by physicians and pharmacologists who have no financial interest in Merck.

Metso Oyj (Final Order October 23, 2001): Metso settled charges that if its acquisition of *Svedala Industri AB* were allowed to proceed as planned, competition would be lessened in four rock processing equipment markets: primary gyratory crushers; jaw crushers; cone crushers; and grinding mills. The firms agreed to divest Metso's worldwide primary gyratory crusher and grinding mill businesses and *Svedala's* worldwide jaw crusher and cone crusher businesses. The three crusher businesses would be purchased by Sandvik AB, a Swedish corporation; the grinding mill business would be purchased by Outokumpu of Finland. Metso and *Svedala* are

the two largest suppliers of rock processing equipment in the world.

Nestle Holdings, Inc. (Final Order February 8, 2002): Nestle settled antitrust charges that its \$10.3 billion proposed acquisition of *Ralston Purina Company* would lessen substantially competition in the United States market for dry cat food through the elimination of direct competition between the two firms in the product market and increase the likelihood that the combined firm could unilaterally exercise market power. The order requires the divestiture of Ralston's Meow Mix and Alley Cat brands to J.W. Childs Equity Partners II, L.P.

Nortek, Inc. (Final Order October 8, 1998): The consent order permits Nortek's acquisition of *NuTone, Inc.*, its closest competitor, but requires its divestiture of M&S, the second largest seller of hard-wired residential intercoms in the United States.

Novartis AG (Final Order December 19, 2000): The consent order permits the merger of Novartis and *AstraZeneca PLC* into a new Swiss company, Syngenta AG. The order requires Novartis to divest its worldwide foliar fungicide business (based on the strobilurin chemical class) to Bayer Ag; and requires AstraZeneca to divest its worldwide corn herbicide business (based on the active ingredient acetochlor) to Dow AgroSciences LLC.

Pfizer Inc. (Final Order July 28, 2000): Final consent order permits Pfizer's merger with *Warner-Lambert Company* and requires divestitures in several pharmaceutical markets including: Pfizer's RID brand of head lice treatment; Pfizer's antidepressant drug, Celexa; Warner's Cognex, a drug used in the treatment of Alzheimer's disease; and assets relating to the Epidermal Growth Factor receptor tryosine kinase inhibitor - drugs under development to treat solid cancerous tumors such as head and neck, non-small cell lung, breast, ovarian, pancreas and colorectal cancers.

Philip Morris Companies, Inc. (Final Order February 27, 2001): The consent order permits the merger of Philip Morris and *Nabisco Holdings Corporation* while settling charges that the merger of the two food companies would reduce competition in the already highly-concentrated market. Under terms of the order, the parties are required to divest Nabisco's dry-mix gelatin, dry-mix pudding, no-bake dessert, and baking powder assets to The Jel Sert Company and Nabisco's intense mints assets to Hershey Foods Corporation.

Precision Castparts Corporation (Final Order December 21, 1999): A final order requires the divestiture of large titanium stainless steel and large nickel-based superalloy production assets (structural cast metals used in the manufacture of aerospace components) to settle antitrust concerns stemming from its acquisition of *Wyman-Gordon Company*. The order requires Precision Castparts to divest Wyman-Gordon's titanium foundry in Albany, Oregon and Wyman-Gordon's Large Cast Parts foundry in Groton, Connecticut.

Provident Companies, Inc. (Final Order September 20, 1999): The consent order ensures that the merged firm of Provident and *UNUM Corporation* will continue to participate in industry-

wide solicitations for data to make actuarial predictions on probable future claims by applicants who hold policies with providers of individual disability insurance. The order requires Provident/UNUM to provide data to the Society of Actuaries and/or the National Association of Insurance Commissioners for studies and reports.

Quexco Incorporated (Proposed Consent Agreement Accepted for Public Comment May 10, 1999; Parties Abandoned Transaction): Proposed agreement would have permitted the acquisition of *Pacific Dunlop GNB Corporation* and required the divestiture of GNB's secondary smelter to Gopher resources, Inc. The parties abandoned the transaction during the 60-day public comment period.

Reckitt & Colman plc (Final Order January 18, 2000): A final order permits Reckitt & Colman to acquire *Benckiser N.V.* from NRV Vermögensverwaltung GmbH but requires the divestiture of Benckiser's Scrub Free® and Delicare® business to Church & Dwight, Inc., producers of household cleaning products.

RHI AG (Final Order March 21, 2001): A consent order permits the acquisition of *Global Industrial Technologies, Inc.* and requires the divestiture of two refractories manufacturing facilities – Global's Hammond, Indiana and Marelán, Quebec plants – to Resco Products, Inc. According to the complaint, the proposed acquisition would create the largest producer of refractories in North America with dominant positions in the magnesia - carbon brick refractory market and in the high alumina brick refractory market. Refractories are used to line furnaces in many industries that involve the heating or containment of solids, liquids, or gases at high temperatures.

Rhodia, Donau Chemie AG (Final Order April 21, 2000): Rhodia divested certain assets to resolve antitrust concerns stemming from its acquisition of *Allbright & Wilson PLC*. The consent order permits the acquisition but requires the divestiture of Albright's interest in its United States phosphoric acid joint venture to its joint venture partner, Potash Corporation of Saskatchewan.

Roche Holdings Ltd. (Final Order April 22, 1998): Roche agreed to divest, certain assets in the United States and Canada to settle antitrust concerns stemming from its proposed acquisition of *Corange Limited*. The consent order permits the acquisition but requires the divestiture of Cardiac thrombolytic agents (drugs used to treat heart attack victims) and ongoing business assets relating to chemicals used to test for the presence of illegal or abused drugs.

Rohm & Haas Company (Final Order July 13, 1999): Rohm & Haas settled charges that its acquisition of *Morton International, Inc.* would lessen competition in North America for the production and sale of water-based floor care polymers used in the formulation of floor care products such as polishes. The consent order requires the divestiture of Morton's worldwide water-based floor care polymers business to GenCorp, Inc.

S.C. Johnson & Son, Inc. (Final Order April 20, 1998): Consent order settles charges that Johnson's acquisition of *Dowbrands* would adversely affect competition and potentially raise the prices consumers pay for soil and stain removers and glass cleaners. The consent order requires the divestiture of Dow's "Spray 'n Starch", "Spray 'n Wash", and "Glass Plus" businesses to Reckitt & Colman.

Service Corporation International (Final Order June 29, 2000): Service Corporation International divested the *LaGrone Funeral Home*, acquired in 1994, to settle charges that the acquisition gave Service Corporation a monopoly in the provision of funeral services in Roswell, New Mexico. The order also requires Service Corporation, for ten years, to obtain prior Commission approval before acquiring any funeral home serving Chaves County, New Mexico.

Service Corporation International (Final Order May 4, 1999): Consent order permits the acquisition of *Equity Corporation International*, the fourth largest funeral home and cemetery company in the United States, and requires SCI to divest funeral service and cemetery properties in 14 markets to Carriage Services, Inc. to remedy the anticompetitive effects of the acquisition.

Shaw's Supermarkets, Inc. (Final Order April 5, 2000): A consent order settled charges that Shaw's proposed acquisition of *Star Markets, Inc.* could eliminate supermarket competition and increase prices in the greater Boston metropolitan area. The consent order permits the acquisition and requires the divestiture of three Shaw supermarkets and seven Star markets in eight communities.

Shell Oil Company (Final Order April 21, 1998): Shell Oil and *Texaco* settled allegations that their proposed joint venture would reduce competition and could raise prices for gasoline in Hawaii, California, and Washington and the price of asphalt in California. The consent order requires Shell to divest a package of assets, including Shell's Anacortes, Washington refinery; a terminal and retail gasoline stations in Oahu, Hawaii and retail gas stations, and a pipeline in California.

Shell Oil Company (Final Order December 21, 1998): The consent order requires Shell Oil and its Tejas Energy, LLC, subsidiary, to divest parts of the ANR pipeline system in Oklahoma and Texas to settle charges that its acquisition of gas gathering assets of *The Coastal Corporation* would lead to anticompetitive increases in gas gathering rates and an overall reduction in gas drilling and production in the two states.

Siemens AG (Final Order May 18, 2001): Siemens settled charges relating to its proposed \$9 billion acquisition of *Atecs Mannesmann AG*, a subsidiary of Vodafone. The consent order requires, among other things, the divestiture of Vodafone's Mannesmann Dematic Postal Automation business to Northrop Grumman Corporation. Siemens and Vodafone, through its Dematic subsidiary, are the two leading suppliers of postal automation systems in the world.

Sky Chefs, Inc. (Final Order September 18, 1998): Sky Chefs restricted its acquisition plans,

excluding Ogden Corporation's in-flight catering operation at the McCarran International Airport in Las Vegas, Nevada from its purchase agreement to settle Commission concerns that the consolidation of the two firms in Las Vegas would lead to higher prices for airline catering services. The consent order prohibits Sky Chefs from making certain acquisitions without Commission approval for 10 years.

SmithKline Beecham plc (Final Order December 26, 2001): Under terms of a final consent order settling charges stemming from the merger of SmithKline and *Glaxo Wellcome plc*, the parties agreed to divest pharmaceutical products in six markets: antiemetics; the antibiotic, ceftazidime; oral and intravenous antiviral drugs for the treatment of herpes; topical antiviral drugs for the treatment of genital herpes; and over-the-counter H-2 blocker acid relief products.

SNIA S.p.A. (Final Order July 28, 1999): Final order settles charges that Sorin Biomedica S.p.A.'s acquisition of *COBE Cardiovascular, Inc.* would eliminate competition in the United States market for research, development, manufacture and sale of heart-lung machines. The order permits the acquisition and requires the divestiture of COBE's heart-lung machine business to Baxter Healthcare Corporation.

TRW Inc. (Final Order April 6, 1998): TRW settled antitrust allegations stemming from its acquisition of *BDM*, a firm that provides, among other things, systems engineering and technical services (SETA) to the Department of Defense. TRW was part of one of two teams bidding for DOD's Ballistic Missile Defense Organization's lead system integrator program. The acquisition would have placed TRW into BDM's role of SETA contractor whereby TRW could gain sensitive competitive information, including cost and bidding information, about its only other competitor for the program. According to the complaint issued with the consent order, this situation could have resulted in less aggressive bidding and higher prices for the leading system integrator program, or put TRW in a position to favor its own team by setting unfair procurement specifications or submitting unfair proposal or performance evaluations. The consent order requires TRW to divest the SETA contract to a Commission approved acquirer.

Tyco International, Ltd. (Final Order December 5, 2000): Tyco settled antitrust concerns relating to its acquisition of *Mallinckrodt, Inc.* Tyco agreed to divest its endotracheal tube business to Hudson RCI. The consent order permitted the acquisition.

Valero Energy Corporation (Final Order February 22, 2002): The consent order permitted Valero to complete its \$6 billion merger with *Ultramar Diamond Shamrock Corporation*, but required the divestiture of Ultramar's Golden Eagle Refinery, bulk gasoline contracts, and 70 Ultramar retail service stations in Northern California to a Commission-approved acquirer. According to the complaint, the merger, as originally proposed, could have lessened competition in two refining markets in California resulting in consumers paying more than \$150 million annually if the price of CARB gasoline increased just one cent per gallon. CARB gasoline meets the specifications of the California Air Resources Board.

Valspar Corporation (Final Order January 26, 2001): Final order permitted Valspar's acquisition of *Lilly Industries, Inc.*, but requires Valspar to divest its mirror coatings business to Spraylet Corporation. Mirror coatings are applied to the back of a piece of glass in order to produce a mirror.

VNU N.V. (Final Order December 7, 1999): VNU N.V. settled antitrust concerns that its proposed acquisition of *Nielsen Media Research, Inc.* would restrict competition in the market for advertising expenditure measurement services in the United States. The order requires VNU to divest its Competitive Media Reporting division, the nation's largest supplier in the specialized market.

Williams Companies (Final Order June 17, 1998): Consent order permits the acquisition of *MAPCO, Inc.* but requires Williams to lease its pipeline to Kinder Morgan Energy Partners, a terminal competitor of MAPCO, to ensure that Kinder Morgan can continue to exist as an independent competitor in the transportation and terminaling of propane in certain Midwest markets. Under terms of the consent order Williams agreed to connect its Wyoming gas processing plant to any new competing pipeline in the future.

Winn-Dixie Stores, Inc. (Final Order February 14, 2000): A final order permitted Winn-Dixie's acquisition of 68 supermarkets and other assets from bankrupt *Jitney-Jungle Stores of America, Inc.* The order prohibits Winn-Dixie, among other things, from acquiring any interest in four specified Jitney-Jungle supermarkets without obtaining prior Commission approval. The sale of the 68 supermarkets was also approved by the U.S. Bankruptcy Court for the Eastern District of Louisiana.

Zeneca Group PLC (Final Order June 7, 1999): Consent order, resolving antitrust concerns relating to Zeneca's merger with *Astra AB* requires the divestiture of all assets relating to levobupivacaine, a long-acting local anesthetic. The assets will be purchased by Chiroscience Group plc, the developer of levobupivacaine.

B. Authorizations to Seek Preliminary Injunctions

BP Amoco p.l.c. (February 2, 2000): Commission authorized staff to file a motion in federal district court to prevent the merger of BP Amoco p.l.c. and *Atlantic Richfield Company*. The complaint, filed in the U.S. District Court for the Northern District of California, San Francisco Division on February 4, 2000, alleged that the merger would reduce competition in the exploration and production of Alaska North Slope crude oil and its sale to West Coast refineries, and in the market for pipeline and storage facilities in Cushing, Oklahoma. The merger would combine: (1) the two largest producers of crude oil on the North Slope of Alaska; (2) the two largest suppliers of Alaska North Slope crude oil to refineries in California and Washington; (3) and the two most successful competitors in bidding for exploration leases on the North Slope. On March 15, 2000, five days before the start of the trial, the defendants and the Commission

agreed to seek adjournment of the federal court proceedings to enter into consent negotiations. The consent order became final August 29, 2000.

Cardinal Health Inc. (March 3, 1998): The Commission authorized staff to file separate motions in federal district court to block the mergers of the nation's four largest drug wholesalers into two wholesale distributors of pharmaceutical products. The Commission charged that Cardinal's proposed acquisition of *Bergen Brunswig Corporation* and McKesson Corporation's proposed acquisition of *AmeriSource Health Corp.* would substantially reduce competition in the market for prescription drug wholesaling and lead to higher prices and a reduction in services to the companies' customers -- hospitals, nursing homes and drugstores -- and eventually to consumers. Two separate motions for preliminary injunctions were filed in the U.S. District Court for the District of Columbia March 6, 1998. On July 31, 1998, the District Court granted the Commission's motions enjoining both proposed mergers. The parties abandoned their respective merger plans soon after the decision.

Conso International Corporation (August 2, 2000): Conso International Corporation, owner of the Simplicity brand of home sewing patterns, abandoned its proposed acquisition of *McCall Pattern Company* after the Commission filed a motion for a preliminary injunction in the United States District Court for the Southern District of New York. The complaint charged that the acquisition would reduce the number of United States sewing pattern designers and producers from three to two, creating a firm with more than 75% of the domestic unit sales of domestic home sewing patterns.

Deutsche Gelatine-Fabriken Stoess AG (January 15, 2002): The Commission authorized staff to seek a preliminary injunction to block DGF's proposed acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary. According to the Commission this transaction, if allowed to proceed as planned, would increase the likelihood of anticompetitive activity in the U.S. market for pigskin and beef hide gelatin, used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The combination of the two firms would account for more than 50 percent of the relevant market in the U.S. A proposed consent agreement designed to remedy the significant antitrust concerns was accepted for public comment March 7, 2002.

Diageo plc (October 23, 2001): The Commission authorized staff to file a motion for a preliminary injunction to block the proposed acquisition of *Vivendi Universal S.A.'s Seagram Wine and Spirits Business* on grounds that the transaction, would not only combine the second- and third-largest rum producers in the U.S. eliminating actual competition between the firms, but could also create higher prices for consumers of rum. A consent order permitted the acquisition, with certain conditions.

The Hearst Trust and The Hearst Corporation (April 5, 2001): Hearst and its First DataBank subsidiary were charged with illegally acquiring a monopoly over a key type of drug information database used by pharmacists, hospitals, health plans, and other health care

professionals through Hearst's 1998 acquisition of its main competitor, *Medi-Span*. The complaint, filed in the U.S. District Court for the District of Columbia, asked the court to either order Hearst to create a new competitor to replace *Medi-Span* or forfeit its profits from the anticompetitive price increases that followed the acquisition of its only competitor. The complaint further alleged that the acquisition was consummated as a result of Hearst illegally withholding documents required for the premerger antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. A settlement presented to the federal district court for the entry of a final judgement, requires Hearst to pay \$19 million as disgorgement of unlawful profits divest *Medi-Span* to Facts and Comparisons. On December 18, 2001, the court entered a proposed final order and Stipulation. This settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. A separate complaint to settle allegations that The Hearst Trust and The Hearst Corporation subsidiary, violated the reporting requirements of the Hart-Scott-Rodino Act was filed October 11, 2001. In that settlement, Hearst agreed to pay \$4 million in civil penalties.

H.J. Heinz Company (July 7, 2000): The Commission authorized staff to file a motion for a preliminary injunction in federal district court on grounds that the proposed \$185 million acquisition of *Milnot Holding Company*, owner of *Beech-Nut Nutrition Corporation*, would reduce the number of competitors in the baby food market from three to two – creating a duopoly. The complaint was filed in the U.S. District Court for the District of Columbia on July 14, 2000. The federal district court denied the Commission's request for a preliminary injunction on October 19, 2000. On April 27, 2001, the U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and remanded for entry of a preliminary injunction against *Heinz* and *Beech-Nut*. Within minutes of the Appeals court decision, the parties abandoned the transaction.

Kroger Company/Winn-Dixie (June 2, 2000): The Commission authorized staff to file a motion in federal district court to block the proposed acquisition of 74 *Winn-Dixie* supermarkets in Texas and Oklahoma. The complaint, filed in the U.S. District Court for the Northern District of Texas, alleged that the acquisition would end 22 years of direct competition between the two supermarket chains in several markets in Texas, including metropolitan Fort Worth, Granbury, Weatherford, Brownwood, Henderson, Denton and Marshall. The parties abandoned the transaction before the start of the trial.

Libby, Inc. (December 18, 2001): The Commission authorized staff to seek a preliminary injunction to block *Libby's* proposed \$332 million acquisition of *Anchor Hocking*, a subsidiary of *Newell Rubbermaid, Inc.* on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. A one-day hearing on the motion for the injunction was held February 25, 2002. The Commission is awaiting the district court decision.

McKesson Corporation (March 3, 1998): Refer to the discussion under *Cardinal Health Inc.*

Swedish Match AB (June 22, 2000): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of *National Tobacco Company, L.P.* on grounds that the \$165 million acquisition would lessen competition in the market for loose leaf chewing tobacco and that Swedish Match's market share would increase to 60 percent. On December 14, 2000, the U.S. District Court for the District of Columbia issued a 42-page opinion granting the Commission's motion for the injunction. On December 22, 2000, the parties abandoned the transaction.

Tenet Healthcare Corporation (April 16, 1998): Staff authorized to file a motion for a preliminary injunction to block the proposed acquisition of Doctors Regional Medical Center in Poplar Bluff, Missouri. On July 30, 1999, the U.S. District Court for the Eastern District of Missouri granted the Commission's motion for the injunction. Tenet filed a notice of appeal in the Eighth Circuit on August 10, 1999. An administrative complaint was issued August 20, 1998 charging that the proposed merger of the only two general hospitals in Poplar Bluff would not only eliminate price, cost and quality competition but would also put consumers at risk of paying more for health care.

C. Commission Opinions/Initial Decisions

Swedish Match AB (January 5, 2001): The Commission dismissed the administrative complaint after Swedish Match and *National Tobacco Company, L.P.* abandoned the transaction that would give Swedish Match control of 60 percent of the loose leaf chewing tobacco market.

Tenet Healthcare Corporation (December 23, 1999): The Commission dismissed the administrative complaint that challenged the acquisition of *Doctors Regional Medical Center* in Poplar Bluff, Missouri after the United States Court of Appeals for the Eighth Circuit denied the Commission's petition for a rehearing en banc and denied the Commission's motion to stay the mandate in October 1999.

D. Court Decisions

H.J. Heinz Company (April 27, 2001): The U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and granted the Commission's request for entry of a preliminary injunction to enjoin Heinz's proposed acquisition of *Milnot Holding Company*, the owner of Beech-Nut Nutrition Corporation. Within minutes of the Appeals Court decision, the parties abandoned the transaction.

Swedish Match AB (August 5, 2002): The U.S. District Court for the District of Columbia granted the agency's request for a preliminary injunction to block the proposed acquisition of the

loose leaf chewing tobacco business of National Tobacco Company, L.P. The parties later abandoned the transaction.

Tenet Healthcare Corporation (July 22, 1999): The U.S. Court of Appeals for the Eight Circuit reversed the district court decision and dissolved the preliminary injunction mainly on geographic market grounds. The Commission's petition for rehearing was denied.

E. Order Violations

Boston Scientific Corporation (October 31, 2000): A complaint charged that Boston Scientific Corporation violated a 1995 consent order when it failed to provide *Hewlett-Packard Company* with a license to all of its intellectual property and technical information relating to intravascular ultrasound catheters. The complaint which seeks civil penalties and other equitable relief, was filed by the Department of Justice on behalf of the Commission. The trial is scheduled to commence August 5, 2002.

Columbia/HCA Healthcare Corporation (July 30, 1998): Columbia/HCA paid a \$2.5 million civil penalty to settle charges that it failed to divest the Davis Hospital and Medical Center in Layton, Utah, the Pioneer Valley Hospital in West Valley City, Utah and the South Seminole Hospital in Florida as required by a 1995 consent order. The complaint and settlement were filed in the U.S. District Court for the District of Columbia.

CVS Corporation (March 26, 1998): CVS paid a \$600,000 civil penalty to settle allegations that it violated the asset maintenance agreement under a 1997 consent order that settled antitrust concerns stemming from its acquisition of Revco D.S., Inc. According to the complaint, CVS removed the computerized pharmacy recordkeeping systems eliminating all automated access to pharmacy files from 113 Revco pharmacies prior to its Commission approved divestiture to Eckerd. The complaint and settlement were filed in U.S. District Court for the District of Columbia. In addition to the civil penalty action filed by the Commission, CVS paid a fine to the Commonwealth of Virginia for violating Virginia's Board of Pharmacy regulations about the proper transfer of prescription records.

Rite Aid Corporation (February 25, 1998): Rite Aid paid a \$900,000 civil penalty to settle charges that it failed to divest three drug stores located in Bucksport and Lincoln, Maine, and Berlin, New Hampshire as required by a 1994 consent order. The consent order settled allegations that Rite Aid's acquisition of LaVerdiere Enterprises, Inc. would lead to higher prices for prescription drugs sold in retail stores in those areas. The complaint and settlement were filed in the U.S. District Court for the District of Columbia by Commission attorneys, would require Rite Aid to pay the civil penalty to the U.S. Department of Treasury within 30 days.

F. Other Commission Orders

H.J. Heinz Company (December 7, 2001): The Commission dismissed the Part III administrative complaint after Heinz abandoned its proposed merger with Milnot Holding Company, the owner of Beech-Nut Nutrition Corporation, that would combine the nation's second and third largest manufacturers of jarred baby food, respectively.

Tenet Healthcare Corporation (December 23, 1999): The Commission decided not to continue with administrative litigation of the complaint that charged that the proposed merger of Tenet and *Doctors Regional Medical Center* would eliminate price, cost and quality competition and put consumers at risk of paying more for health care in Poplar Bluff, Missouri. The case was dismissed under the agency's 1995 policy to determine on a case-by-case basis whether to pursue administrative litigation in merger cases after a federal court has decline to bar the companies from merging pending the outcome of an administrative trial.

G. Complaints

Chicago Bridge & Iron Company N.V. (October 25, 2001): The Commission challenged the February 2001 purchase of the *Water Division and Engineered Construction Division* of Pitt-Des Moines, Inc. alleging that the acquisition significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. The administrative complaint is pending litigation before an administrative law judge.

H.J. Heinz Company (November 22, 2000): An administrative complaint charged that the proposed acquisition of *Milnot Holding Corporation*, owner of Beech-nut Nutrition Corporation, would substantially reduce competition in the manufacture and sale of jarred baby food in the United States. On November 1, 2000, the Commission sought an emergency stay from the Court of Appeals for the D.C. Circuit after the federal district court denied the Commission's request for a preliminary injunction. The Court of Appeals for the District of Columbia enjoined the transaction. The parties abandoned the proposed transaction and the administrative complaint was dismissed by the Commission.

Monier Lifetile LLC (September 22, 1998): An administrative complaint charged that the Monier joint venture formed by concrete roofing tile manufacturing division of *Boral Ltd.* and *LaFarge SA* could significantly diminish competition in areas of the Southwest and Florida. A consent order issued May 19, 1999 requires Monier to divest production facilities in Casa Grande, Arizona; Corona, California; and Fort Lauderdale, Florida.

MSC. Software Corporation (October 9, 2001): An administrative complaint challenged the 1999 acquisitions of *Universal Analytics, Inc.* and *Computerized Structural Analysis & Research*

Corp. alleging that MSC, the dominant supplier of advanced computer-aided engineering software known as “Nastran”, acquired the other two suppliers in the market. According to the complaint, the acquisitions eliminated competition and tended to create a monopoly the market. The complaint is pending litigation before an administrative law judge.

Swedish Match AG (December 21, 2000): An administrative complaint was issued after the United States District Court for the District of Columbia granted the Commission’s motion for a preliminary injunction to block Swedish Match North America from acquiring the loose leaf chewing tobacco brands of *National Tobacco Company*. The administrative complaint alleged that the acquisition would substantially reduce competition by combining the first and third sellers of loose leaf chewing tobacco in the United States. According to the complaint, if the acquisition were consummated, Swedish Match would gain a market share of 60 percent in U.S. sales. The Commission dismissed the administrative complaint after the parties abandoned the transaction.

Tenet Healthcare Corporation (August 20, 1998): An administrative complaint, issued after the Commission filed a motion in federal district court for a preliminary injunction, charged that the proposed merger of Tenet and *Doctors Regional Medical Center*, the only two general hospitals in Poplar Bluff, Missouri, would eliminate price, cost and quality competition and put consumers at risk of paying more for health care. The Commission dismissed the complaint after the United States Court of Appeals for the Eighth Circuit reversed the district court decision and dissolved the preliminary injunction.

H. Other

Best Practices Analysis for Merger Review Process (Announced March 15, 2002): Plans to conduct “brown bag” public workshops in Chicago, Los Angeles, New York, San Francisco, and Washington, DC during 2002 to solicit input from a broad range of interest groups who have participated in the Commission’s or the Department of Justice’s merger review process. The areas under consideration include:

- the initial waiting period under HSR;
- the content and scope of the second request;
- negotiation of modifications to the second request;
- special issues concerning electronic records and accounting of financial data.

Suggested remedies include:

- the package of assets to be divested;
- the manner of a proposed divestiture;
- the proposed buyer of divested assets;
- the Buyer Up Front;
- the use of Fix-It-First;
- the use of Crown Jewel Provisions;
- third party rights;

- the risks to competition and to the parties;
- follow up and determining the success of our remedy efforts.

Comments can be submitted through the Commission web site, at *remedies@ftc.gov* and *bestpractices@ftc.gov*.

Business-to-Business (Report Announced October 26, 2000): A staff report, “*Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces*” discusses information gathered and antitrust issues addressed at the public workshop held at the headquarters building of the Federal Trade Commission in Washington, D.C. on June 29 - 30, 2000. Business-to-Business (B2B) electronic marketplaces use the Internet to electronically connect businesses with each other, primarily for the purposes of buying and selling a wide variety of goods and services.

- Public Workshops held May 7 - 8, 2001 explored certain competition issues that arise in connection with B2B and business to consumer (B2C) e-commerce. The workshop continued the dialogue initiated at the June 2000 workshop.

Clayton Act -- Section 8 (Effective January 29, 2002): Changes in two threshold figures, based on the change in the Gross National Product, define when it is unlawful for an individual to serve as an officer or director of two or more competing corporations: (1) each of the two companies has capital, surplus and undivided profits in excess of \$18,193,000; and (2) the competitive sales of each corporation exceed \$1,819,300.

Clearance Procedures for Antitrust Investigations (Press Conference January 17, 2002): Agreement between the Commission and the Antitrust Division of the Department of Justice. A Memorandum of Agreement revises the clearance process that for the first time will formally divide areas of responsibility on an industry-wide basis between the two agencies. The clearance process was established in 1948; refinements were implemented in 1963, 1993 and 1995.

A Study of the Commission’s Divestiture Process (Released for Comments August 6, 1999): The staff report evaluates divestiture orders entered between 1990 and 1994 and discusses factors that make divestitures more successful. The report, released for public comment, concludes with recommendations designed to ensure more effective divestitures in the future

Protocol (Effective March 11, 1998): The Commission, the Department of Justice and the National Association of Attorneys General released a "Protocol" of how the agencies will conduct joint and coordinated merger investigations to minimize the burden on private parties; protect confidential information; encourage a close collaboration between federal and state officials in the settlement process; and coordinate efforts in the release of information to the news media.

II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement

A. Court Decisions

None

B. Consent Orders

Blackstone Capital Partners II Merchant Banking Fund L.P. (March 31, 1999): Blackstone and one of its general partners, Howard A. Lipson, paid \$2,835,000 to settle charges that they failed to file notification before acquiring the *Prime Succession, Inc.* chain of funeral homes. When the Blackstone notification and report form was submitted, Mr. Lipson certified the filing to be “true, correct and complete”. That filing contained no documentation relating to the Prime acquisition, later discovered by the antitrust agencies through documentation submitted by another filing person in an unrelated transaction. Under terms of the settlement, Blackstone will pay \$2,785,000; Mr. Lipson will pay \$50,000. This is the first time HSR civil penalties have been imposed on an individual for improper certification of an HSR Notification and Report Form. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.

The Hearst Trust and The Hearst Corporation (October 11, 2001): Hearst and its subsidiary paid a \$4 million civil penalty to settle charges that they failed to include required documents in the notification and report form file in 1998 for the proposed acquisition of Medi-Span International, Inc. The complaint alleged that the omitted documents hindered the antitrust agencies in their review and analysis of the proposed acquisition. The complaint, stipulation and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General. During fiscal year 2001, the Commission filed a related complaint for a permanent injunction alleging that Hearst and First DataBank created a monopoly through the acquisition of Medi-Span, First DataBank’s only other competitor selling software and data detailing information for pharmaceutical prices, descriptions, dosages, and interactions. That complaint seeks the divestiture of assets and the disgorgement of profits.

The Laitram Corporation (April 12, 1999): Input/Output, Inc. and The Laitram Corporation each paid \$225,000 in civil penalties to settle charges that Input/Output merged its operations with Laitram’s DigiCOURSE subsidiary before observing the statutory waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. According to the complaint, the parties filed notification under HSR in October 14, 1998, but Input/Output began its control over DigiCOURSE on October 10, 1998. The complaint and settlement were filed in U.S. District

Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.

Loewen Group Inc. and Loewen Group International, Inc. (March 31, 1998): Loewen Group and its subsidiary paid a \$500,000 civil penalty for failure to file a notification and observe the required waiting period with the two federal antitrust agencies before acquiring voting securities of Prime Succession, Inc., valued at \$16 million. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys serving as Special Attorneys to the U.S. Attorney General.

C. Complaints (Complaints filed as part of a consent agreement not listed separately)

None

D. Rules and Formal Interpretations

Rules to Exempt Certain Acquisitions Required by FTC Orders or Court Orders. Amendment to Rule 802.70 (Final Rules Effective **June 25, 1998**): Amended rule would exempt from the HSR reporting requirements: (1) acquisitions of stock or assets to be divested by a Commission order or any federal court in an action brought by the Commission or the Department of Justice; and (2) divestitures included in consent agreements that have been accepted by the Commission or the Department of Justice.

Limited Liability Companies – Formal Interpretation 15 (Effective **March 1, 1999**): Creation of an LLC which unites two or more independently-owned business under common control may be subject to the reporting requirements of the HSR Act, if the size thresholds of the HSR Act are met.

• Minor amendments announced **March 20, 2001**: The changes reflect the new \$50 million filing threshold and the revision of a footnote to reflect the size-of-person test for transactions valued at more than \$200 million.

Affidavits and Certifications - Formal Interpretation 16 (Effective **September 24, 1999**): The number of originally signed and notarized affidavits and certification pages required with each premerger notification filing has been changed. Parties were required to submit five original affidavits and certifications. Under new Formal interpretation 16, only one original and four duplicate copies of affidavits and certification pages are now required.

Second Requests Procedures (Effective **April 5, 2000**): Four new procedures and initiatives adopted to improve the handling of second request investigations issued by the Commission.

- Prior to issuance, all second requests will be reviewed by the senior management staff of the Bureau of Competition.
- Within five business days following the issuance of a second request the Bureau of competition and the parties in the proposed transaction will conference to discuss the competitive issues raised in the proposed acquisition.
- The Bureau of Competition staff will respond to party requests for modifications of the second requests within five business days.
- The parties will have recourse to the Commission's general Counsel for resolution of second request modification issues not resolved after discussion with staff.

Hart-Scott-Rodino Reform (Effective **February 1, 2001**): Significant changes in the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

- The size of transaction threshold increases from \$15 million to over \$50 million. The 15 percent size of transaction threshold is eliminated.
- Transactions valued at more than \$200 million will be reportable without regard to "size of person". The current size of person test will continue to be in place for transactions valued at \$200 million or less.
- All dollar thresholds will be adjusted each fiscal year, beginning with fiscal year 2005, to reflect changes in the gross national product during the previous year.
- A tiered fee structure replaces the standard \$45,000 filing fee for all reportable transactions. Companies will now pay \$45,000 for transactions valued at less than \$100 million, \$125,000 for transactions valued at \$100 million to less than \$500 million, and \$280,000 for transactions valued at \$500 million or more.
- The length of the waiting period that follows substantial compliance with a second request for additional information will become 30 days for most transactions (instead of 20 days under the current law).
- Whenever the end of any waiting period falls on a Saturday, Sunday or legal holiday, the official end of the waiting period will end on the next regular business day.

E. Other

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (May 29, 1998): Twentieth Annual Report (Fiscal Year 1997).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (March 1999): Twenty-first Annual Report (Fiscal Year 1998).

1999 Premerger Notification Source Book (April 1999): A compilation of the Hart-Scott-Rodino Rules and Regulations; Federal Register Publications; Form Filing Information; Formal Interpretations; Press Releases; Speeches; Annual Report and the 1997 Horizontal Merger

Guidelines. The 1999 Source Book replaces the 1990 version. Available from the U.S. Government Printing Office (stock number 018-000-00361-9).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (August 18, 2000): Twenty-second Annual Report (Fiscal Year 1999).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (April 30, 2001): Twenty-third Annual Report (Fiscal Year 2000).

III. Non-Merger Enforcement

HORIZONTAL ENFORCEMENT

A. Commission Opinions/Initial Decisions

Summit Technology and VISX (February 7, 2001): On June 4, 1999 an administrative law judge dismissed charges against VISX, a key developer of laser eye surgery equipment and technology, known as photo refractive keratectomy (PRK). According to the 1998 administrative complaint, VISX and Summit Technology, the only two firms legally able to market equipment for PRK, placed their competing patents in a patent pool and shared the proceeds each and every time a Summit or VISX laser was used. The administrative law judge also dismissed charges that VISX acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office, ruling that complaint counsel failed to present evidence that an act of fraud was committed since information was not willfully withheld from the patent office. A final order settled the price fixing allegations in the 1998 complaint. On February 7, 2001, the Commission dismissed its complaint after the U.S. patent and Trademark Office issued a Reexamination Certificate of U.S. Patent No. 5,108,388.

B. Court Decisions

California Dental Association (September 5, 2000): The Court of Appeals for the Ninth Circuit by a vote of 3-0 issued an opinion that the Commission failed to prove that the association of dentist in California engaged in anticompetitive advertising restrictions under the rule-of-reason analysis. The court vacated and remanded the complaint with instructions that the Commission dismiss the 1993 administrative complaint against the association. The administrative complaint was dismissed February 15, 2001.

C. Authorizations to Seek Preliminary/Permanent Injunctions

None

D. Consent Orders

Abbott Laboratories and Geneva Pharmaceuticals, Inc. (Final Orders May 22, 2000): Abbott and Geneva Pharmaceuticals settled charges that the two firms entered into an illegal agreement to stop the marketing and development of a competing generic drug. According to the complaint, Abbott, manufacturer of Hytrin – the brand name for terazosin HCL, a prescription drug used to treat hypertension and benign prostatic hyperplasia, entered into an agreement with

Geneva Pharmaceuticals whereby Abbott would pay Geneva millions of dollars not to market a generic version of Hytrin. The orders barr Abbott and Geneva, among other things, from entering into agreements in which a generic company agrees with a manufacturer of a branded drug to delay or stop the production of a competing drug. This provision remains in effect for a period of ten years.

Alaska Healthcare Network (Final Order April 25, 2001): An association of 86 physicians practicing in the Fairbanks, Alaska area settled charges that the Alaskan Healthcare Network illegally formulated a fee schedule based on its members' current prices for use in negotiations with third-party payers in an effort to obtain higher prices for medical services.

American Home Products Corporation (Proposed Consent Agreement Accepted for Public Comment February 19, 2002): A proposed consent order would settled charges that American Home Products entered into an anticompetitive agreement with Schering-Plough Corporation to delay the entry of a low-cost generic drug that would be in direct competition with a branded version developed and manufactured by Schering. According to the complaint issued with the proposed agreement, Schering illegally paid American Home millions of dollars to delay the entry and sale of its generic version of Schering's K-Dur 20, a drug used to treat patients who suffer from insufficient levels of potassium, a condition that could lead to cardiac problems. The proposed consent order, which expires in 10 years, prohibits American Home from entering into such agreements in the future. The administrative complaint issued to Schering in 2001 challenging the agreement with American Home and a similar anticompetitive agreement with Upsher-Smith Laboratories is awaiting the initial decision from the administrative law judge.

Asociacion de Farmacias Region de Arecibo (Final Order March 2, 1999): A pharmacy association in northern Puerto Rico and Ricardo Alvarez Class settled charges that they engaged in an illegal boycott in an attempt to obtain higher reimbursement rates for pharmacy goods and services under the government's managed care plan for the indigent. The consent order prohibits the members of the association and Mr. Class from engaging in joint negotiations for prices and from threatening to boycott or refusing to provide pharmacy services.

Bertlesmann Music Group, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs (cd) at or above the minimum advertised price (MAP) set by distribution companies in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Bertlesmann and four other firms, *Universal Music and Video Distribution Corporation and UMG Recordings, Inc., Time-Warner Inc., EMI Music Distribution, and Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Capitol Records, Inc. dba "EMI Music Distribution" (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. *EMI Music Distribution*, and four other firms, *Bertlesmann Universal Music and Video Distribution Corporation* and *UMG Recordings, Inc.*, *Time-Warner Inc.*, and *Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Checkpoint Systems, Inc. (Final Consent Order April 6, 1998): Checkpoint Systems, Inc. and *Sensormatic Electronics Corporation*, the two largest marketers of electronic article surveillance systems used in retail stores to prevent shoplifting, agreed to nullify and void the section of their June 1993 agreement that restricts negative advertising and promotional claims about each other's products or services. The consent order also prohibits each firm from entering into any agreement that restricts truthful, non-deceptive advertising, comparative advertising or promotional and sales activities.

Chrysler Dealers (Final Order October 22, 1998 - *Fair Allocation System*): An association of 25 automobile dealerships settled charges that they agreed to boycott Chrysler if the manufacturer continued to allocate vehicles based on total sales. Competing dealers marketed vehicles offering lower prices on the Internet and were taking substantial sales from other dealers in the Northwest. The consent order prohibits the dealers from threatening to enter into any boycott or refusal to deal with any automobile manufacturer or consumer.

Colegio de Cirujanos Dentistas de Puerto Rico (Final Order June 12, 2000): The dental association with a membership of more than 1800 dentists practicing in Puerto Rico agreed not to encourage its members to enter into agreements that set or fixed the fees charged or terms and conditions under which dentists would deal with health insurance plans or other payers in an attempt to obtain higher reimbursement rates for dental services.

Columbia River Pilots (Final Order March 1, 1999): A consent order prohibits licensed marine pilots in the State of Oregon from imposing unreasonable noncompete agreements, allocating customers and engaging in exclusive dealing contracts for the provision of piloting services on the Columbia River.

Dentists of Juana Diaz, Cuamo and Santa Isabel, Puerto Rico (Final Order February 12, 1999): Dentists in three communities in Puerto Rico settled charges that they refused to provide dental services under the government's managed care plan for the indigent unless they received certain prices. Under the terms of the consent order, the dentists are prohibited from jointly boycotting or refusing to deal with any third party payer to obtain higher reimbursement rates for

dental services.

Ethyl Corporation (Final Consent Order June 16, 1998): The consent order settled charges that Ethyl and The Associated Octel Company Ltd. entered into an agreement whereby Ethyl agreed to stop manufacturing lead antiknock compounds and, in return, Octel agreed to supply Ethyl with a limited volume of lead antiknock compounds. The complaint issued with the consent order charged that the agreement eliminated competition between the two firms. Under terms of the consent order, Octel must modify the agreement with Ethyl to remove price and volume restrictions and both firms are prohibited from disclosing to one another the prices that they charge their customers.

Fastline Publication, Inc. (Final Consent Order July 28, 1998): Fastline settled charges that it deprived consumers of the benefits of competition among farm equipment dealers when the publisher entered into agreements with the dealers to ban price advertising for new equipment in an attempt not to disclose those dealers who offered discounted prices. The consent order prohibits such practices in the future.

FMC Corporation and Asahi Chemical Industry Co. Ltd. (Proposed Consent Agreement Accepted for Public Comment December 21, 2000): A proposed consent agreement will settle charges that FMC and Asahi Chemical Industry Co. Ltd. of Japan entered into a conspiracy to divide the world market for microcrystalline cellulose (MCC), a binder used in making pharmaceutical tablets, into two territories. According to the complaint, FMC allegedly agreed not to sell the pharmaceutical to customers in Japan or East Asia without Asahi Chemical's consent, while Asahi Chemical agreed not to sell the pharmaceutical to customers in North America or Europe without the consent of FMC. The final order would prohibit such behavior in the future and restrict FMC from acting as the U.S. distributor for any competing manufacturer of microcrystalline cellulose (including Asahi Chemical) for 10 years, and for five years FMC would be prohibited from distributing in the United States any other product manufactured by Asahi Chemical.

Geneva Pharmaceuticals (Final Order May 22, 2000): Refer to discussion under Abbott Laboratories.

Hoechst Marion Roussel (recently renamed Aventis as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.) (Final Order April 2, 2001): A consent order settled allegations in an administrative complaint that charged that Hoechst agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Hoechst's branded Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina. The consent order prohibits the companies from entering into agreements designed to restrict the entry of generic competitors in an attempt to monopolize relevant markets.

Institutional Pharmacy Network (Final Order August 11, 1998): A final order prohibits five institutional pharmacies from engaging in any joint price negotiation or price agreements for the

provision of prescription drugs in an attempt to maximize reimbursement rates with managed care organizations.

M.D. Physicians of Southwest Louisiana, Inc. (Final Order August 31, 1998): A group of physicians in the area of Lake Charles, Louisiana settled charges that they illegally conspired to fix the prices for professional services by engaging in joint price negotiations with third-party payers. The final consent order prohibits such practices but does allow the MDP to engage in legitimate joint conduct.

Mesa County Physicians IPA (Final Order May 4, 1999): A Colorado physicians' organization settled charges issued in an administrative complaint alleging that the Mesa County IPA conspired with its members to increase prices for physician services and thereby prevented third party payers such as preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives from offering alternative health insurance programs to consumers in Mesa County.

Michael T. Berkley, D.C. and Mark A. Cassellius, D.C. (Final Order April 11, 2000): A final order settled charges that Drs. Michael T. Berkley and Mark A. Cassellius conspired to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan in an attempt to obtain higher reimbursement for chiropractic services in the La Crosse, Wisconsin area.

Nine West Group Inc. (Final Order April 11, 2000): Nine West Group Inc. settled charges that it entered into agreements with retailers; coerced other retailers into fixing the retail prices for their shoes; and restricted periods when retailers could promote sales at reduced prices. The order prohibits Nine West from fixing the price at which dealers may advertise, promote or sell any product. Nine West is one of the country's largest suppliers of women's shoes.

North Lake Tahoe Medical Group, Inc. (Final Order July 21, 1999): Physicians practicing in the North and South Lake Tahoe areas settled charges that they conspired to fix the prices and terms for professional services. The consent order prohibits the IPA from engaging in collective negotiations to fix prices; refusing to deal with third party payers; and coercing payers into accepting IPA fee schedules and minimum reimbursement rates.

Sensormatic Electronics Corporation (Final Consent Order April 6, 1998): Refer to the discussion under Checkpoint Systems, Inc.

Sony Music Entertainment (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and

those wholesale prices have continued to rise each year since. Sony Music Entertainment and four other firms, Bertelsmann, *Universal Music and Video Distribution Corporation* and *UMG Recordings, Inc.*, *Time-Warner Inc.*, *EMI Music Distribution*, and represent approximately 85 percent of all CD's purchased in the United States.

South Lake Tahoe Lodging Association (Final Order October 7, 1998): Consent order prohibits the association from entering into agreements that restrict its members from posting or advertising room rates for lodgings in the South Lake Tahoe area of Northern California and Nevada.

Southern Valley Pool Association (Final Order November 1, 1999): A consent order prohibits fourteen Bakersfield, California pool construction contractors from entering into any agreement or conspiracy to substantially raise and set swimming pool construction prices. The order also prohibits the contractors from refusing to deal with owner-builders or home construction contractors or developers.

Stone Container Corporation (Final Consent Order May 18, 1998): Consent order prohibits Stone Container from manipulating the market for linerboard, a corrugated box component, to effect future price increases; encouraging its competitors to support a coordinated price increase in the industry; and engaging in other joint pricing actions that involve third-party sales in the market.

Summit Technology, Inc. (Final Order February 23, 1999): Summit Technology and VISX, Inc., two ophthalmic laser manufacturers, settled charges that they fixed prices by establishing a patent pool to share their proceeds. The consent order prohibits each firm from engaging in any price fixing practices and from restricting each other's sales or licensing of their photorefractive keratectomy, eye surgery that uses lasers to correct vision.

Texas Surgeons, P.A. (Final Order May 18, 2000): General surgeons and six competing general surgery practice groups in the Austin, Texas area settled charges that they collectively refused to deal with two health plans, forcing the plans to accept the surgeons' demands to raise surgical rates.

Time Warner, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Time-Warner Inc. and four other firms, Bertelsmann, *Universal Music and Video Distribution Corporation* and *UMG Recordings, Inc.*, *EMI Music Distribution*, and *Sony Music Entertainment* represent approximately 85 percent

of all CD's purchased in the United States.

Universal Music and Video Distribution Corporation and UMG Recordings, Inc. (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CD's increased. Beginning in 1997, distributors increased the wholesale prices for CD's, and those wholesale prices have continued to rise each year since. Universal Music and Video Distribution and four other firms, Bertelsmann,, *Time-Warner Inc.*, *EMI Music Distribution*, and *Sony Music Entertainment* represent approximately 85 percent of all CD's purchased in the United States.

Urological Stone Surgeons, Inc. and Parkside Kidney Stone Centers (Final Order April 6, 1998): Consent order settled allegations that Urological Stone Surgeons, Parkside Kidney Stone Centers, Urological Services, Ltd and two physicians engaged in a price-fixing conspiracy to raise the price for professional urologist services for lithotripsy procedures in the Chicago metropolitan area. The complaint alleges that the parties agreed to use a common billing agent, established a uniform fee for lithotripsy services, prepared and distributed fee schedules, and negotiated contracts with third party payers on behalf of all urologists using the Parkside facility. The consent order prohibits such practices in the future and requires the parties to notify the Commission at least 45 days before forming or participating in an integrated joint venture to provide lithotripsy professional services.

Warner Communications Inc. (Final Order September 17, 2001): Warner Communications, Inc. and Vivendi Universal S.A. settled charges that they entered into agreements to fix prices and restrict advertising. According to the complaint issued with the consent order, the two firms formed a joint venture to distribute compact discs, cassettes, videocassettes of the public performances of the *Three Tenors*. The venturers agreed not to advertise or discount the 1990 and 1994 concerts of the *Three Tenors* in an effort to restrict competition with the 1998 concert. The 1998 concert was thought to be less appealing and not as popular as the earlier performances. The consent order prohibits the firms from restraining competition by entering into agreements fix prices or restrict advertising in the future.

Wisconsin Chiropractic Association (Final Order May 18, 2000): The Wisconsin Chiropractic Association and its executive director, Russell A. Leonard, settled charges that they conspired to fix the prices for chiropractic goods and services and to boycott third party payers in an attempt to obtain higher reimbursement rates for services and contracts in the La Crosse, Wisconsin area.

E. Complaints

Hoechst Marion Roussel (March 16, 2000): An administrative complaint charged that Hoechst Marion Roussel (recently renamed *Aventis* as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.), the manufacturer of Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina, agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Cardizem CD. According to the complaint, Hoechst and Andrx conspired to create a monopoly in the market for diltiazem. A consent order entered May 11, 2001 settled the charges.

Schering - Plough Corporation (March 30, 2001): The complaint alleged that Schering - Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with *Upsher-Smith Laboratories* and *American Home Products Corporation* to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher-Smith \$60 million and paid American Home \$15 million to keep the low-cost generic version of the drug off the market. Litigation was conducted in January before an administrative law judge. The charges against American Home were settled by a proposed consent agreement accepted for comment on February 19, 2002.

PolyGram Music Group (July 30, 2001): An administrative complaint charged that the Warner and PolyGram Music Group joint venture agreed not to discount or advertise the 1990 and 1994 *Three Tenors* albums and videos in an attempt to promote the 1998 Three Tenors concert. The complaint further alleged that the parties to the venture, formed to distribute compact discs, cassettes and video cassettes, was concerned that the 1998 performance would not be as well received as the earlier recordings. The administrative trial was held at the Commission in March 2002.

Summit Technology, Inc. and VISX, Inc. (March 24, 1998): An administrative complaint alleged that Summit and VISX, the only two firms that market laser equipment for vision correcting eye surgery, engaged in a price fixing conspiracy that eliminated price competition and product expansion through the establishment of a patent pool, to which each firm contributed a patent, and then shared in the proceeds each time a Summit or VISX laser was used. A consent order settled charges under Counts I and II of the complaint. Administrative hearings were held on Count III. of the complaint. The complaint was dismissed February 2, 2001 after the United States Patent and Trademark Office issued a Reexamination Certificate of U.S. Patent No. 5,108,388.

F. Other

Policy Statements/Conferences

Midwest Gas Price Investigation (March 30, 2001): The final Commission Report found that there was no evidence of collusion or other anticompetitive conduct by the oil industry to cause gasoline price spikes during the spring and summer of 2000. The nine-month investigation identified several key factors that contributed to the price increases: refinery production problems; errors in estimating the potential for supply shortages in the Midwest.

Refined Petroleum Products in the United States (Public Conference August 2, 2001): Public conference to examine factors that affect prices of refined petroleum prices in the United States. The participants included consumer groups, industry participants, and independent experts - parties that can focus on domestic and international aspects of gasoline industry.

• **Second Public Conference on the U.S. Oil and Gasoline Industry (May 2002):** From May 6 - 9, 2002, the Commission will hold a second public conference to examine factors that affect prices of refined petroleum products in the United States. The goal of the conference is to solicit information and views on the major factors affecting the prices of refined petroleum products, along with the relative importance of such factors.

Commission Studies

Study of U.S. Generic Drug Competition (Proposed Study Announced in the Federal Register Notice February 23, 2001): Commission proposes to conduct a study of generic drug competition to study the business relationships between brand-name and generic drug manufacturers to ensure that agreements between the two do not delay competition from generic versions of patent-protected drugs. In addition, the proposed study would enable the Commission to provide a more complete picture of how generic competition has developed under the Hatch-Waxman Act.

Advisory Opinions

MedSouth, Inc. (February 21, 2002): A multi-specialty physician practice association in Denver, Colorado intend to operate a nonexclusive physician network joint venture.

Northeast Pharmacy Service Corporation (July 27, 2000): Network of independent pharmacies in Massachusetts and Connecticut offering a package of medication-related patient care service.

BJC Health System (November 9, 1999): Sale of pharmaceutical by non-profit hospital system to the system's employees, affiliated managed care program enrollees, home care

subsidiary.

Orange Pharmacy Equitable Network (May 19, 1999): Network of retail pharmacies and pharmacists offering drug product distribution and disease management services.

Wesley Health Care Center, Inc. (April 29, 1999): Sale of pharmaceutical by non-profit skilled nursing facility to volunteers working at the facility.

Associates in Neurology (August 13, 1998): Eleven independent Los Angeles neurologists plan to establish a provider association to provide in-office services and hospital visits on a capitated basis.

Phoenix Medical Network, Inc. (May 20, 1998): Network of physicians in Erie, Pennsylvania to provide medical services for a percentage of the insurance premiums collected by the payers.

Alliance of Independent Medical Services, LLC (December 22, 1997): Network of ambulance and ambulette services providers formed to contract for transportation services with third party payers.

Direct Marketing Association (October 14, 1997): Staff advised that the association could require its members to (1) honor requests from consumers that direct marketers not contact them, (2) disclose to consumers how their members sell personal information about those consumers, and (3) honor consumers' requests that the members not sell or transfer their personal information.

Workshops/Hearings

Hearings to Focus on the Implications of Competition and Patent Law and Policy (February 6, 2002): The Commission and the Antitrust Division of the Department of Justice announced joint hearings to examine the implications of competition and patent law and policy for innovation and other aspects of consumer welfare.

- Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy (February 6, 2002)

- Patent Law for Antitrust Lawyers (February 8, 2002)

- Antitrust Law for Patent Lawyers (February 8, 2002)

- Economic

perspectives on Intellectual Property; Competition and Innovation (February 20, 2002)

- Business and Economic Perspectives on Real-World Experience with Patents (February 25 - 28, 2002)

- Business and Other Perspectives on Real-World Experience with Patents (March 19 0 20, 2002)

Slotting Allowances (May 31; June 1, 2000): Commission held two public workshops on

“Slotting Allowances” – lump sum, up-front payments that food manufacturers pay to get new products placed on supermarket shelves. The workshop provides manufacturers, retailers and other interested persons who have had actual-hands on experience with grocery marketing practices with a forum to discuss the nature of slotting allowances to assess whether they raise competitive concerns.

• ***Report on Slotting Allowances and Other Grocery Marketing Practices***

(Announced February 20, 2001): Staff report on information gathered and antitrust issues addressed at the public workshops held in 2000. Commission staff recommended that the agency gather basic data on current grocery marketing practices and continue to pursue anticompetitive conduct on a case-by-case basis. In addition, staff recommended that the agency refrain from issuing slotting allowance guidelines at the present time.

VERTICAL ENFORCEMENT

A. Commission Opinions/Initial Decisions

Toys “R” Us (Commission Decision November 1, 2000 - Final Order. October 14, 1998; Initial Decision September 30, 1997): An Administrative Law Judge issued an initial decision that, if made final, would prohibit Toys “R” Us from entering into agreements with toy manufacturers and others that result in restrictions on sales to warehouse clubs. TRU threatened to stop buying products that were sold to warehouse clubs, which resulted in major toy makers halting the sale of certain products to clubs. The ALJ found that these practices reduced competition and led to higher toy prices. The initial decision would prohibit the toy chain from entering into any agreement with a supplier to restrict sales to any toy discounter; from facilitating agreements among suppliers that would limit sales to any retailer; and for five years, from refusing to or announcing it will refuse to purchase from a supplier because the supplier sells to a toy discounter. On October 14, 1998 the Commission issued its decision that Toys R Us had orchestrated horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs. On December 7, 1998, Toys R Us filed a notice of appeal in the U.S. District Court for the Seventh Circuit. Complaint upheld by Seventh Circuit Court of Appeals.

B. Court Decisions

Toys R Us (August 1, 2000): The United States Court of Appeals for the Seventh Circuit unanimously affirmed the 1998 Commission decision. The Court found that the nation’s largest toy retailer engaged in horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs.

C. Authorization to Seek Preliminary/Permanent Injunctions

Mylan Laboratories, Inc. (December 22, 1998): Complaint filed in the U.S. District Court for the District of Columbia charged Mylan with restraint of trade, monopolization and conspiracy to monopolize the market for two generic drugs used to treat anxiety, lorazepam and clorazepate, through exclusive dealing arrangements. The complaint seeks consumer redress of at least \$120 million and to enjoin the alleged illegal exclusive licensing agreements. Federal District Court Judge Hogan released a 46 page decision upholding the Commission’s authority to seek restitution in antitrust injunction actions under Section 13(b) of the Federal Trade Commission Act. November 29, 2000: Commission approved a \$100 million settlement—the largest monetary settlement in Commission history. The settlement would settle Commission concerns that Mylan, Gyma laboratories of America, Inc., Cambrex Corporation and Profarmaco S.R.L. conspired to deny Mylan’s competitors ingredients necessary to manufacture lorazepam and

clorazepate. On April 27, 2001, the U.S. District Court for the District of Columbia granted preliminary approval to a plan of distribution to injured consumers who paid the increased prices and state agencies, including Medicaid programs, that purchased the drugs while the illegal agreements were in effect. The court granted final approval of the settlement February 1, 2002. The funds will be distributed by the states.

D. Consent Orders

Hale Products, Inc. (Final Order November 25, 1997): Hale and Waterous Company, Inc. agreed to settle charges that for more than 50 years they sold fire pumps on an exclusive basis to fire truck manufacturers in an attempt to allocate the customers each would serve, thereby making it more difficult for other pump makers to enter the market. The two consent orders prohibit each company from enforcing any requirement that fire truck manufacturers refrain from purchasing mid-ship mounted fire pumps from any other company, or that they purchase or sell only the relevant Hale or Waterous pumps.

McCormick & Company (Final Order April 27, 2000): McCormick & Company agreed to settle charges that it violated the Robinson-Patman Act when the firm charged some retailers higher net prices for its spice and seasoning products than it charged other retailers. According to the complaint, McCormick, the world's largest spice company, offered its products to some retailers at substantial discounts using a variety of different discounting schemes, such as slotting allowances, free goods, off-invoice discounts and cash rebates. The order prohibits McCormick from engaging in price discrimination and from selling its products to any purchaser at a net price higher than McCormick charged the purchaser's competitor.

Waterous Company, Inc. (Final Order November 22, 1997): Waterous and Hale Products, Inc. agreed to settle charges that for more than 50 years they sold fire pumps on an exclusive basis to fire truck manufacturers in an attempt to allocate the customers each would serve, thereby making it more difficult for other pump makers to enter the market. The two consent orders prohibit each company from enforcing any requirement that fire truck manufacturers refrain from purchasing mid-ship mounted fire pumps from any other company, or that they purchase or sell only the relevant Waterous or Hale pumps.

E. Complaints

Intel Corporation (July 8, 1998): An administrative complaint charged that Intel Corporation used its monopoly power to deny three companies continuing access to technical information necessary to develop computer systems based on Intel microprocessors. A consent order (August 3, 1999) prohibits Intel, among other things, from withholding certain advance technical information from a customer as a means of intellectual property licenses. The order protects

Intel's rights to withhold its information or microprocessors for legitimate business reasons.

F. Other

None

SINGLE FIRM ENFORCEMENT

A. Commission Opinions/Initial Decisions

None

B. Court Decisions

None

C. Consent Orders

None

D. Complaints

None

E. Other

None

IV. International Activities

International Competition Network

On October 25, 2001, the FTC, the Department of Justice, and twelve other antitrust agencies from around the world launched the International Competition Network (ICN). The ICN is an outgrowth of a recommendation of the International Competition Policy Advisory Committee (ICPAC) that competition officials from developed and developing countries convene a forum in which to work together on competition issues raised by economic globalization and the proliferation of antitrust regimes. ICN provides a venue for antitrust officials worldwide to achieve consensus on proposals for procedural and substantive convergence on best practices in antitrust enforcement and policy.

Fifty-three jurisdictions have already joined the ICN and we are well into the initial projects on mergers and competition advocacy. The merger project includes work on notification and procedures, the substantive test, and investigative techniques. The ICN will hold its first conference this September, and the United States will host an ICN conference on merger investigation techniques in November.

Bilateral Cooperation

In a global economy, cooperation with competition agencies in the world's major economies is a key component of an effective enforcement program. The FTC has broadened and deepened its cooperation with agencies around the world, both on individual cases and on policy issues. Our relationship with our colleagues in Brussels remains strong as we continue to work closely on merger and other cases. For example, in *Hewlett-Packard/Compaq*, FTC and EC staffs, aided by the parties' confidentiality waiver, cooperated in analyzing the likely effects of the transaction on PC and server markets. In *LaFarge/Blue Circle*, we worked closely with the Canadian Competition Bureau in designing compatible divestitures in the US and Canada. Continuing our cooperation under our 1999 agreement, economists from the FTC, DOJ, and the Japan Fair Trade Commission held productive discussions on merger analysis.

The conflicting outcomes of the Department of Justice's and European Commission's reviews of the *General Electric/Honeywell* merger provided a potent reminder that there are still important differences in some aspects of our antitrust policies. Given differences in laws, cultures, and priorities, it is unlikely that there will be complete convergence in the foreseeable future. However, areas of agreement far exceed those of divergence, and instances in which our differences will result in conflicting results are likely to remain rare. Moreover, we and the EC are committed to addressing and minimizing policy divergences. We have established a series of task forces to pursue further understanding and convergence, including on bundling and related issues that arose in *GE/Honeywell* and on our respective merger review procedures.

Trade/Competition Fora

Trade agreements increasingly involve competition issues. The FTC has, with the Antitrust Division and other US agencies, been working with the other nations of our hemisphere to develop competition provisions for a Free Trade Agreement of the Americas. We are negotiating competition chapters of bilateral Free Trade Agreements with Chile and Singapore. The WTO Ministerial Declaration issued in Doha last November calls for continuing work on trade and competition issues, and we continue to play an active role in the WTO trade and competition working group.

Multilateral Fora

The OECD is an important forum for competition officials from developed countries to share experiences and promote best practices. During the past year, the FTC has participated actively in the OECD's continuing work on, among other things, merger process convergence, implementation of the OECD hard-core cartel Recommendation, and regulatory reform. We also promote sound competition policies in regional fora such as the Asia-Pacific Economic Cooperation.

Technical Assistance

There is an understandably high demand for assistance from the United States in drafting new antitrust laws, establishing antitrust agencies, and assisting newer agencies with antitrust law enforcement. With funding principally from the Agency for International Development, the FTC is proud to have shared our experience and expertise with nations around the world. Examples of our work include: assistance with analytical techniques in South Africa; programs on investigative methods for agencies in Southeastern Europe; high-level briefings on regulatory reform in Russia; assistance in launching a new competition agency in Indonesia; and drafting a competition law for Egypt.

V. *Competition Speeches*

“The Essential Stability of Merger Policy in the United States” (January 17, 2002) Thomas B. Leary, Commissioner, *Guidelines for Merger Remedies: Prospects and Principles*, Joint U.S./E.U. Conference, University of California at Berkeley School of Law, Berkeley Center for Law & Technology, and Ecole Nationale Supérieure des Mines de Paris, Paris, France.

“Merger Enforcement in a World of Multiple Arbiters” (December 4, 2001) Timothy J. Muris, Chairman, Brookings Institution, Roundtable of Trade and Investment Policy, Washington, DC.

“Three Hard Cases and Controversies: The FTC Looks at Baby Foods, Colas and Cakes” (December 4, 2001) Thomas B. Leary, Commissioner, Association of the Bar of the City of New York’s Milton Handler Annual Antitrust Review, New York, New York.

“Competition and Intellectual Property Policy: The Way Ahead” (November 15, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Fall Forum, Washington, DC.

“A Comment on Merger Enforcement in the United States and in the European Union” (October 11, 2001) Thomas B. Leary, Commissioner, Transatlantic Business Dialogue Principals Meeting, Washington, DC.

“Antitrust Issues in the Settlement of Pharmaceutical Patent Disputes, Part II” (May 17, 2001 and for publication in the December 2001 edition of the *Journal of Health Law*), Thomas B. Leary, Commissioner, American Bar Association Antitrust Healthcare Program, Washington, DC.

“Antitrust Enforcement at the Federal Trade Commission: In a Word – Continuity” (August 7, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Annual Meeting, Chicago, Illinois.

“The Need for Objective and Predictable Standards in the Law of Predation” (May 10, 2001) Thomas B. Leary, Commissioner, Steptoe & Johnson and Analysis Group/Economics 2001, Antitrust Conference, Washington, DC.

“The Patent-Antitrust Interface” (May 3, 2001) Thomas B. Leary, Commissioner, American Bar Association’s Section of Antitrust Law Program, “Intellectual Property and Antitrust: Navigating the Minefield,” Philadelphia, Pennsylvania.

“Between Competition and Cooperation—Changing Business-to-Business” (April 4, 2001)

Orson Swindle, Commissioner, The 8th World Business Dialogue, University of Cologne, Cologne, Germany.

“Report from the Bureau of Competition” (March 29, 2001) Molly S. Boast, Director, Bureau of Competition, American Bar Association, Antitrust Section, Spring Meeting, Washington, DC.

“Antitrust and Intellectual Property Unresolved Issues” (March 2, 2001) Robert Pitofsky, Chairman, Berkeley Center for Law and Technology, University of California, Berkeley, California.

“Antitrust and Intellectual Property Law: From Adversaries to Partners” (Winter 2000) Sheila F. Anthony, Commissioner, Article Published in AIPLA Quarterly Journal.

“Antitrust Economics: Three Cheers and Two Challenges” (November 15, 2000) Thomas B. Leary, Commissioner.

“Antitrust Issues in Settlement of Pharmaceutical Patent Disputes” (November 3, 2000) Thomas B. Leary, Commissioner, Sixth Annual Health Care Antitrust Forum, Northwestern University School of Law, Chicago, Illinois.

“EU and U.S. Approaches to International Mergers—Views from the U.S. Federal Trade Commission” (September 14-15, 2000) Robert Pitofsky, Chairman, EC Merger Control 10th Anniversary Conference, The European Commission Directorate General for Competition, International Bar Association, Metropole Hotel, Brussels, Belgium.

“Antitrust in the Emerging B2B Marketplace” (July 19, 2000) Orson Swindle, Commissioner, Forum for Trust in Online Trade, Princeton Club, New York, New York.

“Use Your Time Wisely: Do’s and Don’t’s for Effective Advocacy Before the Federal Trade Commission” (July 11, 2000) Sheila F. Anthony, Commissioner, Published in the *Antitrust Report 2000*. ABA Section of Antitrust Law’s 2000 Annual Meeting, New York, New York

“Challenges of the New Economy: Issues at the Intersection of Antitrust and Intellectual Property” (June 15, 2000) Robert Pitofsky, Chairman, American Antitrust Institute, Conference: An Agenda for Antitrust in the 21st Century, National Press Club, Washington, DC.

“Riddles and Lessons from the Prescription Drug Wars: Antitrust Implications of Certain Types of Agreements Involving Intellectual Property” (June 1, 2000) The ABA Antitrust and Intellectual Property: The Crossroads Program, San, Francisco, California.

“The Evolving Approach to Merger Remedies” (May 2000) Richard G. Parker, Bureau Director and David A. Balto, Assistant Director, article published in *Antitrust Report*.

“Report from the Bureau of Competition” (April 7, 2000) American Bar Association Spring Meeting 2000.

“Advertising and Unfair Competition” (March 10, 2000) Sheila F. Anthony, Commissioner, The American Law Institute-American Bar Association, Product Distribution and Marketing Meeting, Scottsdale, Arizona.

“Vertical Issues: The Federal View” (March 9, 2000) The American Law Institute-American Bar Association, Product Distribution and Marketing Meeting, Scottsdale, Arizona.

“Emerging Antitrust Issues in Electronic Commerce” (November 12, 1999): David A. Balto, Assistant Director, Antitrust Institute, Distribution Practices: Antitrust Counseling in the New Millennium, Columbus, Ohio.

“Global Merger Enforcement” (September 28, 1999): Richard G. Parker, Bureau Director, International Bar Association, Barcelona, Spain.

“Enforcement Cooperation Among Antitrust Authorities” (May 19, 1999): John J. Parisi, IBC UK Conferences Sixth Annual London Conference on BC Competition Law.

“Report from the Bureau of Competition” (April 15, 1999): William J. Baer, Bureau Director, ABA Spring Meeting, Washington, DC.

“Antitrust Enforcement and High Technology Markets” (November 12, 1998): William J. Baer, Bureau Director, American Bar Association, Sections of Business Law, Litigation, and Tort and Insurance Practice, San Francisco, California.

“Report from the Bureau of Competition” (April 2, 1998): William J. Baer, Bureau Director, American Bar Association, Antitrust Section Spring Meeting 1998, Federal Trade Commission, Washington, DC.

“FTC Perspectives on Competition Policy and Enforcement Initiatives in Electric Power” (December 4, 1997): William J. Baer, Bureau Director, Conference on The New Rules of the Game for Electric Power: Antitrust & Anticompetitive Behavior, Washington, DC.

“New Myths and Old Realities: Perspectives on Recent Developments in Antitrust Enforcement” (November 17, 1997): William J. Baer, Bureau Director, Bar Association of the City of New York, New York, NY.

VI. Statistics

Fiscal Year 2002 (through March 31, 2002)

Part III Administrative Complaints

Mergers and Joint Ventures - 2

Chicago Bridge & Iron Company N.V./Water Division and Engineered Construction Division of Pitt-Des Moines, Inc.

MSC Software Corporation/Universal Analytics, Inc. and Computerized Structural Analysis and Research Corp.

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 5

Airgas, Inc./Puritan Bennett Medical Gas Business from Mallinckrodt, Inc.

INA-Holding Schaeffler KG and FAG Kugelfischer Georg Schaefer AG

Koninklijke Ahold NV/Bruno's Supermarkets, Inc.

Nestle Holdings, Inc./Ralston Purina Company

Valero Energy Corporation/Ultramar Diamond Shamrock Corporation

Civil Penalty Actions Filed

Premerger Notification - 1

First Data Bank/Medi Span.

Preliminary Injunctions Authorized

Mergers and Joint Ventures - 3

Deutsche Gelatine-Fabriken Stoess AG/Leiner Davis Gelatin Corporation and Goodman Fielder USA, Inc.

Diageo plc/Pernod Ricard S.A.

Libby, Inc./Anchor Hocking

Merger Transactions Abandoned - 7

Total Merger Enforcement (October 1, 2001 - March 31, 2002) - 18
(includes 1 civil penalty action)

Fiscal Year 2001

Part III Administrative Complaints

Mergers and Joint Ventures - 2

H.J. Heinz Company/Milnot Holding Corporation, owner of Beech-Nut Nutrition Corporation
Swedish Match AB/National Tobacco Company, L.P.

Nonmergers - 2

Schering-Plough Corporation, Upsher-Smith Laboratories and American Home Products Corporation
PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation, subs of Vivendi Universal S.A.

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 18

AOL Online, Inc./Time Warner Inc
Chevron Corporation/Texaco Inc.
Computer Sciences Corporation/Mynd Corporation
Dow Chemical Company, The/Union Carbide Corporation
El Paso Energy Corporation/Coastal Corporation, The
El Paso Energy Corporation/Pacific Gas & Electric (PG&E Gas Transmission Teco, Inc. and PG&E Gas Transmission Texas Corporation)
Koch Industries, Inc./Entergy Corporation
Lafarge S.A./Blue Circle Industries PLC
Manheim Auctions, Inc./ADT Automotive Holdings, Inc.
MCN, parent of Michigan Consolidated Gas Company/DTE - parent holding company of The Detroit Edison Company
Metso Oyj/Svedala Industri AB
Novartis AG/AstraZeneca PLC
Philip Morris Companies, Inc./Nabisco Holdings Corp.
SmithKline plc/Glaxo Wellcome plc.
Siemens AG/Atecs Mannesmann
Tyco International, Ltd./Mallinckrodt, Inc
Valspar Corporation/Lilly Industries, Inc.
Winn-Dixie Stores, Inc./Jitney-Jungle Stores of America, Inc.

Fiscal Year 2001
(Continued)

Nonmergers - 2

FMC Corporation and Asahi Chemical Industry Co. Ltd.
Warner Communications, Inc.

Civil Penalty Actions Filed
Order Violation - Mergers and Joint Ventures - 1

Boston Scientific Corporation

Permanent Injunctions Authorized - 1
Mergers and Joint Ventures

The Hearst Trust/The Hearst Corporation/First DataBank

Merger Transactions Abandoned - 4

Total Merger Enforcement Fiscal Year 2001 - 28
(includes 1 civil penalty action)

Fiscal Year 2000

Part III Administrative Complaints

Nonmergers - 1

Hoechst Marion Roussell (now called Aventis)

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 18

Agrium, Inc./Union Oil Company of California (Unocal)
Boeing Company, The/Hughes Space and Communications subsidiary of General Motors Corporation
Delhaize Freres et cie "Le Lion" S.A./Hannaford Bros. Co.
Dominion Resources, Inc./Consolidated Natural Gas
Duke Energy Corp./Phillips Petroleum
El Paso Energy Corp./Sonat Inc.
Exxon Corporation/Mobil Corporation
Fidelity National Financial/Chicago Title Corporation
FMC Corp./Solutia Inc.
Hoechst AG/Rhone-Poulenc
MacDermid, Inc./Polyfibron Technologies, Inc.
Precision Castparts Corporation/Wyman-Gordon Company
Pfizer Inc./Warner-Lambert Company
Reckitt & Colman plc/NRV Vermögensverwaltung GmbH/Benckiser N.V.
RHI AG/Global Industrial Technologies, Inc.
Rhodia, Donau Chemie AG/Albright & Wilson PLC
Service Corporation International/LaGrone Funeral Home
VNU N.V./Nielsen Media Research, Inc

Nonmergers - 14

Abbott Laboratories
Alaska Healthcare Network
Berkley and Cassellius, MD's
Bertelsmann Music Group
Colegio de Cirujanos Dentistas de PR
EMI Music Distribution
Geneva Pharmaceuticals
McCormick & Company
Nine West Group Inc.
Sony Corp. of America
Texas Surgeons, P.A.

Fiscal Year 2000

(Continued)

Nonmerger Part II Consent Agreements Accepted for Comment (continued)

Time-Warner Inc.
Universal Music and Video Distribution
Wisconsin Chiropractic Association

Preliminary Injunctions Authorized

Mergers and Joint Ventures - 5

BP Amoco/ARCO
Conso International Corp.(owner of Simplicity)/McCall Pattern Co.)
H.J. Heinz Co./Milnot Holding Co. (owner of BeechNut Nutrition Corp.)
Kroger Company/Winn-Dixie
Swedish Match AB/National Tobacco Company, L.P.

Merger Transactions Abandoned - 9

Total Merger Enforcement Fiscal Year 2000 - 47

Fiscal Year 1999

Part II Consent Agreements Accepted for Comment *Mergers and Joint Ventures - 18*

ABB/Elsag Bailey Process Automation N.V.
Albertson's/American Stores
Associated Octel Company Limited/Oboardlez Company
British Petroleum Company p.l.c., The/AMOCO Corporation
Ceridian Corp./NTS Corp./Trendar Corp
CMS Energy Corp./Panhandle Eastern Pipeline/Trunkline Pipeline/Duke Energy Company
Koninklijke Ahold nv/Giant Food, Inc.
Kroger Company/Fred Meyer Stores, Inc.
Kroger Co./John C. Groub Company, The
LaFarge Corporation/Holnam, Inc.
Medtronic, Inc./Avecor Cardiovascular, Inc.
Provident Companies, Inc./UNUM Corporation
Quexco Inc./Pacific Dunlop GNB Corporation
Rohm & Haas Company/Morton International, Inc.
Service Corporation International/Equity Corporation International
Shaw's Supermarkets, Inc./Star Markets, Inc
SNIA S.p.A./COBE Cardiovascular, Inc.
Zeneca Group PLC/Astra AB

Nonmergers - 4

Asociacion de Farmacias Region de Arecibo and Ricardo Alvarez Class
Columbia River Pilots Association
North Lake Tahoe Medical Group, Inc.
Southern Valley Pool Association

Civil Penalty Actions Filed *Premerger Notification - 2*

Howard A. Lipson/Blackstone Capital Partners II Merchant Banking Fund L.P.
Laitram Corporation, The

Permanent Injunctions Authorized
Nonmergers - 1

Mylan Laboratories, Inc.

Merger Transactions Abandoned - 12

Total Merger Enforcement Fiscal Year 1999 - 37
(includes 2 civil penalty actions)

Fiscal Year 1998

Part III Administrative Complaints *Mergers and Joint Ventures - 1*

Boral Ltd. and LaFarge SA/Monier Lifetile
Tenet Healthcare Corporation/Doctors Regional Medical Center (PI authorized)

Nonmergers - 2

Intel Corporation
Summit Technology, Inc. and VISX, Inc.

Part II Consent Agreements Accepted for Comment *Mergers and Joint Ventures - 23*

Albertson's, Inc. (Buttrey Food and Drug Store Company)
Cablevision Systems Corp./Tele-Communications, Inc.
Commonwealth Land Title Insurance Company/First American Title Insurance Company
CUC International, Inc./HFS Incorporated
Degussa Corporation/E.I. du Pont de Nemours & Co.
Dow Chemical Co./Sentrachem Limited
Exxon Corporation/The Shell Petroleum Company/Shell Oil Company
Federal-Mogul Corporation/T&N plc
Global Industrial Technologies, Inc./AP Green Industries
Guinness PLC/Grand Metropolitan
Intel Corp./Digital Equipment Corp.
Landamerica Financial Group, Inc. (named changed from Lawyers Title Corporation)
Medtronics, Inc./Physio-Controls International Corporation
Merck and Co., Inc.
Nortek, Inc./NuTone, Inc.
PacifiCorp/The Energy Group
Roche Holdings Ltd./Corange Limited
S.C. Johnson & Son, Inc./DowBrands
Shell Oil Company/The Coastal Corporation
Shell Oil Company/Texaco Inc
SkyChefs, Inc./Ogden Corporation
TRW Inc./BDM International Inc.
Williams Companies/MAPCO

Fiscal Year 1998

(Continued)

Part II Consent Agreements Accepted for Comment (continued)

Nonmergers - 11

Checkpoint Systems, Inc
Chrysler Dealers, Unn
Dentists of Juana Diaz, Coamo
Fastline Publications
Great Lakes Chemical Corporation/The Associated Octel Company.Ltd.
Institutional Pharmacy Network
M.D. Physicians of Southwest Louisiana, Inc.
Sensormatic Electronics Corporation
South Lake Tahoe Lodging Association
Stone Container Corporation
Urological Stone Surgeons, Inc. and Parkside Kidney Stone Centers

Civil Penalty Actions Filed

Premerger Notification - 1

Loewen Group Inc. and Loewen International, Inc.

Mergers and Joint Ventures - 3

CVS Corporation
Columbia/HCA Healthcare Corporation
Rite Aid Corporation

Preliminary Injunctions Authorized

Mergers and Joint Ventures - 3

Cardinal Health Inc./Bergen Brunswig Corp.
McKesson Corporation/AmeriSource Health Corp
Tenet Healthcare Corporation/Doctors Regional Medical Center

Merger Transactions Abandoned - 7

Total Merger Enforcement Fiscal Year 1998 - 51
(includes 4 civil penalty actions)