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ANNUAL REPORT ON DEVELOPMENTS IN THE UNITED STATES

(January 1 - December 31, 1991)

This report is submitted by the Delegate for the United States to the meeting of the Committee on Competition Law and Policy to be held on 20th, 21st and 22nd May 1992.

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Report to the OECD on United States Antitrust and Competition Developments for the Period January 1 to December 31, 1991

Introduction

1. This report describes antitrust developments in the United States for calendar year 1991. It summarizes the activities of both the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Bureau of Competition of the Federal Trade Commission ("FTC" or "Commission").

2. The FTC experienced a change of personnel among its Commissioners. On July 16, 1991, Dennis A. Yao was sworn in as a Commissioner, filling the position previously held by Andrew Strenio.

3. The Division experienced a change among its senior personnel. On March 18, 1991, Charles A. James was sworn in as Deputy Assistant Attorney General, filling the position formerly held by Michael Boudin.

I. CHANGES IN LAW OR POLICIES

A. Changes in Antitrust Rules, Policies or Guidelines

4. The United States Sentencing Commission issued new sentencing guidelines for criminal antitrust violations committed after November 1, 1991. Criminal fines for organizations (firms) convicted of violating the antitrust laws will continue to be based on a percentage of the volume of commerce done by the organization that was affected by the violation. However, rather than the prior fine range of 20 to 50 percent of the affected commerce, for offenses committed after November 1, 1991 fines for organizations may range from 15 to 80 percent of the volume of affected commerce depending upon a number of factors such as whether high-level company personnel participated in the violation and whether the organization cooperated with the government's investigation of the offense. Individuals violating the antitrust laws after November 1, 1991 face potentially higher prison sentences and somewhat lower fines than they would have received under the previous antitrust guideline.

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

{Department of Justice Comments on Proposed Legislation}

5. A March 1991 letter to the Senate Commerce Committee by the Justice and Commerce Departments expressed the Administration's opposition to a pending legislative proposal to re-regulate the cable television industry at the expense of anticompetitive principles. The Administration objected

particularly to provisions that called for comprehensive regulation of rates for basic cable service, and a requirement that cable programmers that are owned by cable systems sell to other competitive video delivery services. In addition, the Administration noted that most of the pending bills did not adequately address the need to remove barriers to entry by new competitors into the video services marketplace.

6. While favoring passage of legislation that would extend the National Cooperative Research Act of 1984 ("NCRA") to joint production ventures, the Department of Justice, in a July 1991 letter to the Senate Judiciary Committee also signed by the Departments of Treasury and Commerce and the U.S. Trade Representative, offered comments strongly opposing certain provisions in proposed legislation that could deny the coverage of the legislation to many joint production ventures with foreign firms because of the focus on location of facilities or each of the parties' role in the U.S. economy. The Senate bill, S.479, as reported, limited the detrebling protection available under the NCRA to joint ventures whose principal production facilities are in the U.S., and in which each party makes a substantial commitment to the U.S. economy. The Administration strongly objected to this limitation as discriminatory.

7. The Department commented to the Senate Judiciary Committee in opposition to legislation that would change the evidentiary standard necessary to prove illegal resale price maintenance agreements in certain cases where manufacturers have received complaints from dealers. The Administration opposed the legislation because it would inhibit manufacturers and distributors from entering into procompetitive distribution agreements for products in a wide variety of markets. The Administration commented that under existing antitrust law, distribution agreements that set resale prices are already per se illegal. The legislation would reduce the level of evidence needed to proceed to trial by creating an inference of unlawful conspiracy in certain cases. The inference would be based on evidence that is equally consistent with lawful, unilateral decisions by manufacturers regarding who will distribute their products. As a result, juries could misinterpret lawful business decisions as price fixing conspiracies. In addition, the Department explained that the legislation could also render certain nonprice distribution agreements per se illegal, even though such agreements should be considered, instead, under the antitrust "rule of reason."

8. Assistant Attorney General Rill testified on September 15, 1991, before the Advisory Commission on Conferences in Ocean Shipping at its hearings in New York City. The ACCOS is a 17-member panel of Congressional and private sector representatives under the chairmanship of the Secretary of Transportation. The ACCOS was formed to determine whether the nation is best served by giving antitrust immunity to conferences. The Commission's final report to Congress is due in the spring of 1992. In his testimony, the AAG argued that antitrust immunity for conferences should be withdrawn and that tariff filing and enforcement should be eliminated. He said conferences raised shipping costs to U.S. consumers, and have failed to protect and promote a U.S. flag liner fleet.

9. The Department had recommended, in a 1990 report to Congress, that two provisions of the Shipping Act of 1984 be repealed. The report recommended repeal of provisions that make it illegal for ocean carriers to offer discounts to customers, and of provisions that provide antitrust immunity for ports and

marine terminal operators. The Department noted that although tariff filing is undesirable, if it continues to be required, it should be required only for maximum tariffs and that offering discounts to customers should not be illegal as it currently is under the 1984 Act. It also recommended that a tariff system based solely on weight and volume not be made mandatory. The Department's comments were contained in a report, "The Department of Justice Analysis of the Impact of the Shipping Act of 1984," that was submitted in March 1990 to Congress and to the Advisory Commission on Conferences in Ocean Shipping.

10. In a May 10, 1991 letter to Congress signed by five Cabinet Secretaries, in a June 3, 1991 Statement of Administration Policy, and in testimony by Assistant Attorney General Rill on July 11, 1991, the Administration strongly opposed domestic content and domestic manufacturing requirements included in S. 173 and H.R. 1527, bills that would remove the line-of-business restriction contained in the AT&T consent decree that prohibits the Bell Operating Companies (BOCs") from designing, developing, or manufacturing telecommunications equipment. The Administration's opposition was premised on the belief that such restrictions would put the BOCs at a competitive disadvantage vis-a-vis other manufacturers free to procure and produce telecommunications equipment worldwide -- would harm not only the BOCs but U.S. consumers of such equipment -- and might result in disputes with U.S. trading partners that could impede U.S. exports of telecommunications equipment.

11. On October 31, 1991, the Department of Transportation and the Department of State let expire without renewal a memorandum of understanding ("MOU") with the European Civil Aviation Conference in which the United States had agreed to provide antitrust immunity for pricing agreements among air carriers flying routes across the North Atlantic in exchange for a zone of pricing flexibility for U.S. carriers under the International Air Transport Association.

{ FTC Comments on Proposed Legislation}

12. The FTC re-submitted written comments provided in the previous Congress to the Senate and House Committees on the Judiciary opposing proposed legislation on minimum resale price maintenance (S. 429 and H.R. 1470). The proposed legislation, substantially similar to legislation introduced last year (S. 865 and H.R. 1236), would codify the per se prohibition of minimum resale price maintenance and would modify existing evidentiary presumptions in vertical price restraint cases. Under the bill, a finder of fact would be allowed to find a vertical price fixing conspiracy on the basis of evidence that a supplier had terminated or reduced its sales to a discounting dealer and that complaints concerning the discounter from a competitor had been the "major contributing cause" for the supplier's action. The Commission's comments stated that the current law is adequate to address anticompetitive uses of resale price maintenance and the proposed legislation is therefore unnecessary. The Commission opposed codification of the per se rule, arguing that the courts should continue to have the flexibility to interpret the antitrust laws in light of current economic understanding. The Commission also opposed the evidentiary standard embodied in the bills on the ground that it is likely to result in the condemnation of legitimate resale pricing policies that are adopted unilaterally by sellers.

II. Enforcement of Antitrust Laws and Policies: Actions Against Anticompetitive Practices

A. Department of Justice and FTC Statistics

{ Division staffing and enforcement statistics}

13. With a staffing level of 601 full-time equivalent employees (including attorneys, economists, other professionals and clerical staff), the Department's Antitrust Division filed 99 antitrust cases during 1991 and opened 152 formal investigations. The Division's Appellate Section filed 4 briefs in the Supreme Court and 9 briefs in the courts of appeals in antitrust cases. The Division appeared in 20 regulatory agency proceedings by filing briefs and comments, participating in hearings, and presenting oral arguments. At the end of 1991, there were 146 antitrust grand jury investigations pending. In conjunction with its civil investigations, the Antitrust Division issued 469 civil investigative demands during 1991; it filed 13 proposed consent decrees or final judgments in civil cases during the year, and 12 such decrees or judgments were entered by the courts.

14. The Division filed 81 criminal cases during 1991. During that period, antitrust defendants were sentenced to 10 000 days of incarceration, with 6,652 actual days to be served. Fines and recoveries totaled more than $27.1 million.

{ FTC staffing and enforcement statistics}

15. At the end of 1991, the FTC Bureau of Competition had 224 employees: 157 attorneys, 33 other professionals, and 34 clerical staff. The FTC also employs economists who participate in its antitrust enforcement activities.

16. During 1991, with respect to all matters affecting competition, including mergers, the Commission issued 1 opinion, 2 administrative complaints, gave final approval to 11 consent agreements, and at year end, had 10 outstanding consent agreements provisionally accepted, subject to public comment. The Commission initiated 91 initial phase and 38 full phase investigations. Additionally, there were 28 initial investigations converted to full phase. There were 4 initial decisions by administrative law judges. The Commission modified or vacated 5 final orders. The FTC filed 5 civil penalty actions that resulted in the Commission obtaining 5 civil penalty judgment actions totaling $4.6 million. One civil penalty complaint was pending a final judgment at the end of the year. Finally, the Commission authorized preliminary injunction actions against 5 proposed mergers.

B. Antitrust Cases in the Courts

{ Supreme Court cases}

a) Division cases decided in 1991

17. There were no Division cases decided in 1991.

b) FTC cases decided in 1991

18. There were no FTC cases decided in 1991.

c) Private cases decided in 1991

19. Summit Health Ltd. v. Pinhas, 111 S. Ct. 1842 (1991), is a private treble damage suit for alleged unlawful denial of hospital privileges. The Supreme Court granted a petition for certiorari to review a decision by the Ninth Circuit holding that plaintiff doctor had properly alleged "interstate commerce" for purposes of the Sherman Act. On September 19, 1990, the Department of Justice and the Commission filed a brief amicus curiae in support of plaintiff. On May 28, 1991, the Supreme Court issued an opinion affirming the judgment below, holding that plaintiff had properly alleged the requirements of "interstate commerce" for purposes of maintaining suit under the Sherman Act. The Court noted that if the alleged conspiracy to deprive plaintiff of hospital privileges was successful, as a matter of practical economics there would be a reduction in the provision of ophthalmological services in the relevant market. The Court found that when the competitive significance of plaintiff's exclusion from the market is measured, not by a particularized evaluation of his or her practice, but by a general evaluation of the restraint's import on other participants and potential participants in the market, the restraint would be covered by the Sherman Act.

d) Department of Justice and FTC Briefs filed in private Supreme Court cases

20. During 1991 the Department filed briefs in several other Supreme Court cases that were not decided on the merits during 1991.

21. The Department expressed its views in United Artists Communications, Inc. v The Movie 1 & 2, 909 F.2d 1245 (9th Cir. 1991), cert. denied, 112 S. Ct. 866 (1992) at the invitation of the Supreme Court. In this case, the plaintiff, a motion picture exhibitor, alleged that its competitors and various motion picture distributors had conspired to eliminate the plaintiff as a competitor, and had monopolized and attempted to monopolize markets for the exhibition of motion pictures. The district court granted summary judgment for the defendants, finding that the plaintiff had failed to provide evidence of an agreement among the defendants and had failed to raise a material issue of fact as to elements of the plaintiff's monopolization and attempted monopolization allegations. The court of appeals reversed, finding that plaintiff had presented sufficient evidence to allow the case to go forward on each theory. The defendants sought to have the Supreme Court review the court of appeals' decision. The Department filed a brief in December, 1991 urging the Court to deny defendants' petition for certiorari, arguing that the court of appeals decision did not merit review. The Court denied certiorari on January 13, 1992.

22. Eastman Kodak Co. v. Image Technical Services, Inc., 903 F.2d 612 (9th Cir), cert. granted, 111 S. Ct. 2823 (1991), was argued by Assistant Attorney General James Rill before the Supreme Court on December 10, 1991. In this case, a copying equipment manufacturer without market power in the markets for its equipment refused to sell replacement parts for that equipment to independent service organizations (ISOs) and sold parts only to buyers of its

machines which agreed not to purchase repair services from ISOs. The ISOs alleged that, by refusing to sell parts to them, the manufacturer had (i) unlawfully tied the sale of services for its equipment to the sale of parts, and (ii) attempted to monopolize the sale of service for its equipment. The Supreme Court asked the Department for its views. The Department argued that since the defendant lacked market power, it could not as a matter of law be held liable under either theory urged by the plaintiffs.

23. In Consolidated Rail Corporation v. Delaware & Hudson Railway Company, 902 F.2d 174 (2d Cir. 1990), cert. denied 111 S. Ct. 2041 (1991), a railroad company sued a competing railroad alleging monopolization and attempted monopolization of the transportation of newsprint from Eastern Canada to the mid-Atlantic states, in violation of Section 2 of the Sherman Act. The plaintiff alleged that the defendant's refusal to agree to an acceptable joint pricing arrangement on the basis of a traditional division of revenues in the industry was exclusionary conduct likely to injure competition. The district court granted summary judgment for the defendant, reasoning that its conduct, while profit-maximizing, was not unlawful monopolization, but was the exercise of a legitimate business practice. The court of appeals reversed, holding in part that whether the defendant's policy was monopolization raised a question of fact, and that the defendant's Conrail's tracks were an essential facility to D&H. The Department argued that the court of appeals misapplied the law of monopolization and the essential facilities doctrine, and urged the Supreme Court to accept certiorari. On May 13, 1991, the Supreme Court denied certiorari.

{ Court of Appeals cases}

a) Division cases decided in 1991

24. In United States v. Brown, 925 F.2d 1182 (9th Cir.), aff'd and reh'g denied, 936 F.2d 1042 (1991), the court of appeals upheld the conviction of two billboard advertising executives for conspiracy to suppress competition for billboard sites. The Court held that an agreement between the two largest billboard advertising companies in California restricting each company's ability to compete for each other's billboard sites was per se illegal as a market allocation agreement. It also ruled that because the market allocation was a per se violation, the convictions could be upheld even without a finding of intent by the defendants to produce anticompetitive effects.

25. United States v. Allen's Moving and Storage, Inc., 1991-1 Trade Cas. (CCH) • 69,474 (4th Cir. 1991). In this price-fixing case, the court of appeals upheld the convictions of North Carolina movers which acted as agents for interstate carriers serving a military base. The defendants, which arranged the packing and moving of the household goods of military personnel, had dropped all discount interstate carriers, forcing the base to book shipments at non-discount rates.

26. In United States v. Blue Mountain Bottling Co., 929 F.2d 526 (9th Cir. 1991), four corporate defendants in a price-fixing case were ordered by a district court to pay funds to local drug and alcohol abuse programs as part of the penalty for their anticompetitive conduct. The Department appealed, arguing that the sentences were unlawful and that the defendants should have been ordered to pay fines. The court of appeals vacated these sentences

because the beneficiary organizations were not specifically harmed by defendants' anticompetitive actions.

b) FTC cases decided in 1991

27. FTC v. University Health, Inc., No. 91-8308 (11th Cir.), was a suit for preliminary injunction to prevent the acquisition of St. Joseph's Hospital in Augusta, Georgia, by University Health, Inc., pending a Commission adjudicatory proceeding to determine the legality of the transaction under Section 7 of the Clayton Act. The district court denied the Commission's request for a preliminary injunction. The court of appeals, by order of May 6, 1991, and written opinion entered July 26, 1991, reversed, and directed entry of the preliminary injunction. The court held that the Commission had authority under the Clayton Act to challenge acquisitions by nonprofit hospitals, and that the Commission had established the requisite elements for preliminary injunctive relief.

28. Ticor Title Insurance Co. v. FTC, No. 91-72 (S. Ct.), is a petition for review of an FTC decision holding that collective rate-setting activities of title insurance companies for title search and title examination services constitute an unfair method of competition (price-fixing). The companies contend that their conduct is protected by the "state action" doctrine and is also immune from federal antitrust challenge because it is "the business of insurance." In October, 1991, the Supreme Court granted certiorari to review a February, 1991 decision of the United States Court of Appeals for the Third Circuit, which held that the companies' conduct was protected by the "state action" doctrine. [The Supreme Court heard argument in the case on January 13, 1992.]

c) FTC appeals pending in 1991

29. Barnette Pontiac-Datsun, Inc. v. FTC, Nos. 89-3389-3392 (6th Cir.) is a petition for review of an FTC decision holding that an agreement among competing Detroit automobile dealerships to restrict the hours in which they sold cars was an unfair method of competition. The case was argued on March 12, 1990 and remained sub judice throughout 1991. [On January 31, 1992, the court of appeals issued a decision affirming the Commission's decision in substantial part.]

30. Olin Chemical Co. v. FTC, No. 90-70452 (9th Cir.) is a petition for review of an FTC decision requiring divesture in a case involving a merger of manufacturers of swimming pool chlorinating products. The petition for review was filed on September 5, 1990 and the court of appeals heard argument on October 10, 1991.

C. Statistics on Private and Government Cases Filed During 1991

31. According to the annual report of the Director of Administrative Office of the U.S. Courts, 743 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in the fiscal year ended June 30, 1991, an increase of 34.6% from the previous year (in which 552 cases were filed). The number of private suits filed between

July 1, 1990 and June 30, 1991 increased 43.8% to 650, compared with 452 in the previous year.

D. Significant Cases Filed During 1991

{ Department of Justice and FTC enforcement actions}

a) Criminal cases filed by the Department of Justice in 1991

32. During 1991, the Department initiated criminal prosecutions against price fixing and market allocation in a wide variety of product and service markets, including those for industrial waste removal, soft drinks, steel drums, Lund brand boats, school bus bodies, power grid tubes and dry cleaning supplies. The Department also instituted criminal enforcement proceedings against bid-rigging in a variety of product and service markets, including those for providing milk and other dairy products to schools, the construction of audio visual studios, real estate speculators, the hauling of voting machines, frozen seafood, various construction projects including roofing, insulation, slurry wall and building repair contractors, and general merchandise at public bulk auctions.

33. The Department has continued its efforts to prosecute conspiracies to rig bids for the purchase of goods (such as used commercial machinery and equipment) at public auctions in several states. Since 1987, the Department has filed 60 such cases against 94 corporations and 58 individuals. Ninety-two corporations and 53 individuals have been convicted of these crimes. The total fines in all auction cases were $4.4 million and 12 individuals were jailed. In 1991, the Department obtained convictions of 12 firms and 4 individuals in auction bid-rigging cases, and fines totalling $700,000 were assessed. The investigations are continuing.

34. Similarly, the Department has continued its efforts to prosecute conspiracies to fix prices of soft-drink products in local markets in many states [see U.S. 1989 Report at • 38]. Since 1986, the Department has brought 45 such cases, involving 28 corporate and 29 individual defendants -- of which, 25 corporations and 27 individuals have been convicted of criminal antitrust crimes. During 1991, the Department obtained a conviction against one firm in connection with these soft drink price-fixing cases. These soft-drink industry investigations are continuing. Fines assessed in 1991 totalled $19.9 million and nine individuals were sentenced to jail.

35. The Department’s ongoing enforcement program aimed at bid rigging in the sale of milk to schools has been vigorous as well. Since 1988, the Department has brought 45 such cases, involving 21 corporate and 34 individual defendants. It has obtained convictions against 18 corporations and 27 individuals. During 1991, the Department obtained convictions against 10 firms and 6 individuals in connection with these milk price-fixing cases. Fines and civil damages assessed in 1991 totalled $11.2 million and four individuals were sentenced to jail.

36. On September 20, 1990, following an eight-day trial, the defendants in U.S. v. Alston, three dentists and two professional corporations, located in Tucson, Arizona, were convicted by a jury of price-fixing in the first criminal

antitrust trial of health care professionals in over 50 years. In December 1990, however, the court granted motions for acquittal of two of the individual defendants and ordered a new trial for the third. The Department argued the appeal in November 1991 and awaits decision. Other health care cases are under investigation.

37. In 1991, the Department also continued its efforts to enforce the laws against anticompetitive conduct in the area of federal government procurement. In particular, the Department brought criminal actions against suppliers of cloth, gloves, uniforms, milk, seafood, soft drinks, and construction services for price-fixing and bid-rigging in connection with federal government acquisitions. A total of 110 criminal cases have been brought charging 127 corporations and 109 individuals in connection with procurement of goods and services by the Department of Defense. A total of 181 convictions have resulted in total fines and civil damages in excess of $57 million and jail terms averaging 10 months for 33 individuals. During 1991, the Department obtained convictions against 15 firms and 11 individuals in connection with these cases. Fines assessed in 1991 were $9.1 million and 6 individuals were sentenced to serve a total of 2004 days in jail. These investigations are continuing.

38. In November 1991, the defendants in U.S. v. Builders Fence Company, Inc. and Marshall Frankel, a Sun Valley, California firm and its president, were convicted by a jury of participating in a price-fixing conspiracy involving pipe and tube products used in chain link fences in the western United States. Both defendants await sentencing.

39. In September 1991, Maryland and Virginia Milk Producers Cooperative Association, Inc., d/b/a Marva Maid Dairy was convicted after trial on charges of bid rigging and mail fraud in connection with the supply of milk to certain Virginia school districts between 1984 and the end of the 1986-1987 school year. The defendant was fined $1,100,000.

b) Modification or termination and enforcement of Department of Justice consent decrees

40. The Department continued to review its outstanding antitrust consent decrees and litigated judgments to determine whether they have any anticompetitive effects or otherwise no longer serve the public interest. During 1991, the Department took action to terminate several out-of-date judgments, including those in such industries as smoke detection systems, retail department stores and movie distribution. In addition, an order was entered terminating the decree in a case involving non-industrial water purification systems.

41. On May 31, 1990, a federal grand jury returned a one-count indictment charging NYNEX with criminal contempt for violating the 1982 AT&T consent decree ("MFJ"). This is the first criminal case charging a violation of the decree. The consent decree restricts NYNEX and the other regional holding companies from engaging in various lines of business, one of which, at the time of the conduct at issue in this case, was information services. The indictment charges that NYNEX, through its subsidiary Telco Research Corporation, provided information services by providing MCI Communications Corporation with access over telephone lines to Telco Research computer facilities on the company's

premises. This matter now is pending in the district court; it will be tried without a jury, by order of the court.

42. On February 15, 1991, the district court supervising the AT&T consent decree granted a joint motion by the Department and U S WEST, Inc. for entry of an enforcement order, obligating U S WEST to pay a $10 million civil penalty for several admitted violations of the MFJ. The MFJ violations admitted by U S WEST were: (1) a violation of the discrimination provisions of the MFJ relating to the sale of switching services to the General Services Administration ("GSA"), in which U S WEST offered access to its local exchange facilities at a lower price if GSA purchased switching services from U S WEST rather than from AT&T; (2) a violation of the information services prohibition of the MFJ by providing reverse directory services, which provide a customer with the name or address of a telephone subscriber rather than only a telephone number; (3) a violation of the information services provision by providing computer facilities management services to Atlantic Richfield Company through U S WEST's subsidiary, Applied Communications, Inc.; and (4) a violation of the MFJ's line of business restriction on manufacturing and providing telecommunications equipment by designing, developing and marketing operator workstations through its subsidiary, Knowledge Engineering, Inc.

43. The $10 million civil penalty imposed on U S WEST is the largest ever obtained in an antitrust contempt case, and the largest the Antitrust Division has ever obtained from a single defendant. At the same time, U S WEST agreed to provisions giving the Department improved means to ensure U S WEST's compliance with the MFJ and to enforce the MFJ against U S WEST, including modifications of a pre-existing Civil Enforcement Consent Order. The court's order disposed of all U S WEST liability with respect to the admitted violations of the MFJ and certain other specified conduct not admitted by U S WEST to be violations.

44. The 1982 AT&T antitrust consent decree no longer prohibits the Bell Operating Companies ("BOCs") from providing "information services," i.e., data processing and retrieval services accessed by telephone. On July 25, 1991, the district court (Judge Harold Greene) granted motions by the Department and the BOCs to remove the information services restriction, concluding that removal would be consistent with the "public interest" under the applicable legal standard as defined by the court of appeals. [See U.S. 1990 Report •• 57, 60.] Supporters of the information services restriction have appealed this decision to the D.C. Circuit. The district court initially stayed its decision pending appeal, but the court of appeals vacated that stay, and on October 30, 1991, the Supreme Court denied appellants' application to reimpose the stay. The parties have proposed a schedule for briefing, but it is likely that the appellate process will not be completed until 1993. The BOCs may provide information services while the appeals are pending.

45. The antitrust laws apply to BOC provision of information services, and the Federal Communications Commission's rules for nondiscrimination and cost allocation provide additional safeguards against anticompetitive conduct in connection with these services. The interexchange services and manufacturing prohibitions of the decree remain in effect. Therefore, the BOCs may not engage in these prohibited activities, even as part of or in combination with information services.

46. Appeals from district court decisions denying BOC motions to provide common channel signaling ("CCS") to interexchange carriers using a more efficient centralized system also are pending in the D.C. Circuit. These appeals present two important issues: 1) whether the antitrust public interest standard applies to BOC motions supported by the United States and opposed by AT&T for modification of decree restrictions on the BOCs, and 2) whether the district court's failure to apply the public interest standard affected its decision to deny the BOCs' CCS waiver motions. The United States' position is that the public interest standard applies, and that the court must approve the proposed modification because it is within the range of settlements consistent with the public interest in competition. Stricter standards applied to motions for decree modification in other contexts would be inappropriate here. AT&T has no legal or equitable interest in the restrictions at issue that would warrant departure from the standard normally applied where the United States supports an antitrust defendant's motion to modify a decree restriction, and the decree contains no expression by the parties of intent to displace the public interest standard in this situation. The D.C. Circuit's decision on this appeal is likely to have far-reaching implications for future proceedings in which the United States seeks or supports removal of decree restrictions on the BOCs over AT&T's objections. The particular modification at issue here also is critical for efficient implementation of CCS technology, which will allow the BOCs and interexchange carriers to provide new services and to comply more efficiently with pro-competitive FCC orders regarding 800 services.

47. During 1991, the Department recommended that waivers of the interexchange restriction of the MFJ be granted to allow several BOCs to own receive-only earth stations for use in foreign cable television businesses. These earth stations would be used to receive cable television program signals transmitted to the foreign cable systems directly from the United States. The district court supervising the MFJ granted these waivers to Bell Atlantic, U S WEST, NYNEX, Southwestern Bell, and BellSouth on July 26, 1991, and to Ameritech on September 10, 1991. These waivers were modeled after one granted to Pacific Telesis on September 12, 1990 for the same purpose. The Department recommended these waivers after concluding that there was no substantial possibility that the BOCs could use their monopoly power over local exchange services in the United States to gain any anticompetitive advantage in foreign cable television markets.

48. In September 1991, the Department recommended to the district court that waivers of the MFJ be granted to permit Bell Atlantic, Ameritech and BellSouth to provide the Australian end of international telecommunications services between the United States and Australia, and to permit Bell Atlantic to provide the Venezuelan end of international telecommunications services between the United States and Venezuela. The Department concluded that the proposed activities would not impede competition in international telecommunications between the United States and the foreign nations in question. On October 8, 1991, the district court granted both of these waivers on conditions similar to those contained in the 1990 waivers involving New Zealand and Mexico, allowing the BOCs to acquire equity interests of up to 10% in submarine cables and international satellites used for telecommunications between the United States and Australia or Venezuela. The Department's recommendation and the court's action enabled the BOCs to bid for the Australian satellite company AUSSAT and for licenses to create a second telecommunications carrier in Australia competing with the established telephone company, and likewise enabled Bell

Atlantic to bid on the privatization of the Venezuelan telecommunications company, CANTV.

c) Other Department of Justice non-merger enforcement actions in 1991

49. In 1991, the Department pursued a variety of civil suits alleging anticompetitive behavior in non-merger contexts. In October 1991, the Department brought its first monopolization case in several years when it filed a two-count civil antitrust suit against Varian Associates, Inc. ("Varian") and Richardson Electronics Limited ("Richardson"). Varian is the largest manufacturer of power grid tubes in the world, and Richardson is the dominant or only distributor for virtually all manufacturers of power grid tubes that are sold in the United States. The complaint alleged that the two firms had illegal agreements to cooperate on the purchase of competitor firms and to collect rebuildable tube carcasses to prevent those from being rebuilt and sold in competition with the conspirators' new tubes. The goal of the agreements, the complaint alleged, was to raise the price of new tubes and to monopolize the manufacture and sale of certain types of power grid tubes. The case was settled by consent decree, which abolished the firms' written agreements, prohibits certain communications and activities of the defendants, and required each firm to pay $1.5 million in damages resulting from their sale of power grid tubes to various agencies and departments of the United States government. See United States v. Varian Associates, Inc. and Richardson Electronics, Ltd., 6 Trade Reg. Rep. (CCH) • 45,091 (N.D. Ill. 1991).

50. Another civil case of major importance brought by the Department in May 1991, was a civil antitrust case charging nine prominent United States universities (eight of which are known as the "Ivy League") with conspiring to restrain price competition on financial aid to prospective students, in violation of Section One of the Sherman Act. Eight of the nine universities agreed to settle the charges, signing a consent decree which precludes them from colluding on financial aid and from discussing future tuition or faculty salary increases. The ninth defendant, Massachusetts Institute of Technology ("MIT"), has not agreed to settlement and is likely to go to trial on the charges sometime in 1992. See United States v. Brown University et al., 7 Trade Reg. Rep. (CCH) • 50,731 (E.D. Pa. 1991); id., 1991-92 Trade Cas. (CCH) • 69,534 (E.D. Pa. 1991).

51. On February 7, 1991, the Department filed civil charges against 22 Savannah, Georgia obstetrician/gynecologists for violating Section 1 of the Sherman Act by agreeing to exchange fee information. Specifically, the doctors agreed, in a series of meetings, to increase their fees for normal deliveries and cesarean section by approximately $500 each. All defendants agreed to a consent decree that would prohibit the exchange of any information concerning current or future medical fees, as well as any agreement to fix, raise or maintain fees. See United States v. Burgstiner, 1991-1 Trade Cas. (CCH) • 69,422 (S.D. Ga. 1991).

52. On January 10, 1991, the Department filed a civil suit against two suppliers of smokeless small arms powder (Olin Corporation and Hodgdon Power Company, Inc.) alleging a conspiracy to rig bids in violation of the Clayton Act. Defendants agreed to pay a total of $25,000 in civil damages. See United States v. Olin Corp. and Hodgdon Power Co., Inc., 6 Trade Reg. Rep. • 45,091 (W.D. Tenn. 1991).

d) FTC non-merger enforcement actions in 1991

53. The Commission charged in an administrative complaint that Dr. Diran M. Seropian illegally conspired with others to prevent the Cleveland Clinic Foundation from establishing a clinic in Northern Broward County, Florida. According to the complaint, Dr. Seropian and the medical staffs of two area hospitals threatened not to refer patients or provide medical services to the hospitals if the Broward General Medical Center entered into an affiliation to provide medical services and privileges to physicians of the Cleveland Clinic. Dr. Seropian, Chief of Staff at Broward General, would be prohibited from refusing to deal with any provider of health care services if an Administrative Law Judge upholds the complaint. In early 1992, the Commission provisionally accepted a consent agreement to settle these charges. See Dr. Diran M. Seropian, Docket No. 9248, 5 Trade Reg. Rep. (CCH) • 23,007.

54. An Administrative Law Judge ruled that Peterson Drug Company of North Chili, New York, Inc. participated in an illegal boycott of New York State's Employee Prescription Program in an attempt to increase that state's reimbursement rate. The Administrative Law Judge ordered Peterson not to enter into any agreements with any pharmacy firm to withdraw from any prescription reimbursement plan. The other respondents in this case settled charges with separate consent agreements (below). See Chain Pharmacy Association of New York State, et al, Docket No. 9227, 5 Trade Reg. Rep. (CCH) • 22,999.

55. An Administrative Law Judge dismissed a complaint challenging agreements negotiated by the College Football Association ("CFA") to televise college football games. The CFA is a non-profit organization consisting of over sixty major college football playing institutions. The 1990 administrative complaint charged that the CFA illegally restrained competition through agreements which gave the American Broadcasting Company and its ESPN cable affiliate exclusive contracts to broadcast any game in which a CFA college is the home team. College games not selected for viewing on an ABC or ESPN station could be shown regionally as long as that broadcast did not conflict with the ABC collegiate football programming. The judge ruled that the Commission had no jurisdiction over nonprofit organizations under Sections 4 and 5 of the FTC Act. The Act gives the Commission jurisdiction over corporations or organizations chartered to conduct business for their own profit or for the profit of their members. The judge also found that the CFA did not carry on business for its own profit since the revenues earned from the football broadcasts were distributed to its member schools for various nonprofit purposes, including sustaining athletic programs. Finally, the judge ruled that CFA members were educational institutions recognized by the Internal Revenue Service as nonprofit organizations. The decision is on appeal to the Commission. See College Football Association, Docket No. 9242, 5 Trade Reg. Rep. (CCH) • 23,033.

56. The Commission issued in final its consent agreement with Nintendo of America Inc., to settle charges that it obtained agreements from certain of its dealers to sell its home video game hardware at specified price levels. According to the complaint, Nintendo's resale price maintenance activities increased consumer prices and restricted competition among retail dealers. The order prohibits Nintendo from fixing or controlling the retail price of any Nintendo product, coercing retailers into committing to sell products at pre-determined prices, reducing the supply of products or imposing different credit terms to dealers who sell Nintendo products at prices lower than those

suggested by Nintendo or, for five years, terminating dealers for failure to sell at minimum suggested prices. Also, for a period of five years, Nintendo is required to place a disclaimer on any material in which it suggests resale prices stating that the dealer is free to determine the prices at which it will sell the Nintendo products. Finally, Nintendo is required to mail a letter within 30 days to all its dealers, advising them that they can advertise and sell the products at any price without adverse action by Nintendo. See Nintendo of America, Inc., Docket No. C-3350, 5 Trade Reg. Rep. (CCH) • 22,968.

57. The Commission gave final approval to a consent agreement with the twenty-three obstetrician/gynecologist members of Southbank IPA, Inc. to settle charges that they conspired to fix the prices charged for physician services. According to the complaint, Southbank, its parent company, Southbank Health Care Corporation, and the twenty-three physicians formed the Independent Practice Association in the Jacksonville, Florida area to contract directly with third-party payers, insurance companies, and employers providing self-insured health benefits to their employees. The complaint alleged that the IPA and its members restrained competition among obstetricians and gynecologists in the Jacksonville area by boycotting third-party payers and attempting to increase the payments paid to the physicians. The order requires the physicians to dissolve Southbank IPA and its parent, and prohibit the physicians from entering into any agreement with any competing physician to set the fees charged for professional services. The physicians are also prohibited from dealing with any third party payor on collectively-defined terms, unless they are participating in an "integrated" joint venture as defined by the order, or in a partnership or professional corporation. This consent agreement is the first one in which the Commission has ordered dissolution of a health care organization. See Southbank IPA, Inc., Docket No. C-3355, 5 Trade Reg. Rep. (CCH) • 23,065.

58. The Commission gave final approval to a consent agreement settling charges that The Connecticut Chiropractic Association, a voluntary association of about 86% of the chiropractors in the state, illegally prohibited its members from offering free or discounted services and restricting their advertising. The complaint alleged that the association conspired with some of its members by adopting an Ethical Code that prohibited its members from offering free services or discounted fees and from advertising these services to consumers, from using advertisements that were not in "good taste," and from advertising unusual expertise unless they have met certain requirements. The complaint further alleged that the association coerced its members to comply with the code by threatening to influence health insurance companies to reduce reimbursements to patients, to report members to malpractice insurance carriers, and to expel members from the association. The consent agreement requires the association to amend its Ethical Code to drop these restrictions while allowing the association to continue to restrict members’ claims of specialization if they have not met standards established by a recognized chiropractic accrediting agency. See Connecticut Chiropractic Association, Docket No. C-3351. 5 Trade Reg. Rep. (CCH) • 22,991.

59. The Commission gave final approval to nine separate consent agreements with three trade associations, four retail pharmacy chains, and two individuals, who agreed not to enter into any agreement with other pharmacy firms to refuse to enter into any third-party prescription drug program. The consent agreements settled the 1989 administrative complaint against Chain

Pharmacy Association of New York State, Fay's Drug Company, Inc., James E. Krahulec, Kinney Drugs Inc., Melville Corporation, and the Rite Aid Corporation, and the two 1990 administrative complaints issued against Empire State Pharmaceutical Society, Inc., Capital Area Pharmaceutical Society, and Alan Kadish, the former president of the Pharmaceutical Society of the State of New York, Inc. Each complaint charged that the associations, pharmacy chains, and individuals conspired with others to refuse to participate in New York State's proposed Employees Prescription Plan designed to reduce the state's cost for the program, and thereby lower the prescription reimbursement rate paid to pharmacies. According to the complaints, the State of New York lost approximately $7 million after it was coerced into increasing the prices paid to pharmacies under the Prescription Plan.

60. Under the terms of the order, all parties are prohibited from communicating to any pharmacy firm their individual intentions to enter into any existing or proposed participation agreement for a period of eight years. In addition, for a period of eight years, each respective party is prohibited from advising or communicating with any other pharmacist with respect to entering into a participation agreement involving the prescription reimbursement policies of third-party payers. See Chain Pharmacy Association of New York State. Inc., Fay's Drug Company, Inc., Kinney Drugs, Inc., James E. Krahulec, Docket No. 9227, 5 Trade Reg. Rep. (CCH) • 22,955. Melville Corp., Rite Aid Corp., Docket No. 9227, 5 Trade Reg. Rep. (CCH) • 22,895, Empire State Pharmaceutical Society Inc., Capital Area Pharmaceutical Society, Alan Kadish, Docket Nos. 9238-9239, 5 Trade Rep. Reg. (CCH) • 22,895.

61. The Commission entered a consent agreement with The Madison County Veterinary Medical Association and four individual veterinarians, who were charged with conspiring with others to refuse to participate in any program that offers low cost veterinary services. The complaint alleged that the Medical Association and four Huntsville, Alabama veterinarians, Robert Neil Cole, D.V.M, Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M. restrained competition by conspiring not to participate in a program offered by the National Animal Welfare Association that promoted low cost spays and neuters to veterinarians. The complaint further alleged that the Medical Association and its members illegally agreed to restrict their advertisements in the Yellow Pages of Huntsville, Alabama. Under the terms of the order, the Medical Association and the four individual veterinarians are prohibited from collectively refusing to deal or threatening to refuse to deal with a program that promotes the sale to consumers of veterinary services at discounted prices. In addition, the order prohibits the veterinarians' attempt to fix or standardize advertisements and promotionals for veterinary services. See Madison County Veterinary Association, Docket No. C-3340, 5 Trade Reg. Rep. (CCH) • 22,997.

62. The Commission announced for public comment a proposed consent agreement settling charges that Kreepy Krauly, U.S.A., Inc., a manufacturer of automatic swimming pool cleaning devices, illegally entered into written agreements with its dealers concerning the retail prices at which its products are sold. Under the terms of the proposed order, Kreepy Krauly is prohibited from entering into or enforcing such agreements with dealers, or coercing dealers to maintain or adhere to any resale price and, in addition, must notify its officers and distributors that dealers are free to set their own prices for the products to

be sold. See Kreepy Krauly, U.S.A., Inc., Docket No. C-3354, 5 Trade Reg. Rep. (CCH) • 22,924.

63. The Commission announced for public comment a consent agreement to settle charges that Sandoz Pharmaceuticals Corporation engaged in an illegal tying arrangement by requiring patients who purchased clozapine, a drug used in the treatment of schizophrenia, to also purchase distribution and monitoring services marketed and arranged by Sandoz under its Clozaril Patient Management System. Clozapine is sold under the tradename Clozaril and is exclusively marketed in the United States by Sandoz. According to the complaint, the illegal tying arrangement restrained competition and injured consumers by raising the price of treatment and prevented federal, state, and local institutions and private health-care providers from administering their own patient monitoring services. Under the terms of the consent agreement, Sandoz will be prohibited from requiring any purchaser of Clozaril to buy other goods or services from Sandoz, or from anyone designated by Sandoz. In addition, Sandoz must provide to any other sellers of clozapine, at reasonable terms, information on patients who have suffered adverse reactions to clozapine. The proposed order does allow Sandoz to refuse to sell the drug to anyone who does not provide adequate monitoring services for patients. See Sandoz Pharmaceuticals Corp., File No. 901-0124, 5 Trade Reg. Rep. (CCH) • 23,0111.

64. The Commission announced for public comment a proposed consent agreement with The Industrial Multiple and its parent, American Industrial Real Estate Association, which would settle charges that Industrial Multiple had restrained competition among industrial real estate brokers by unreasonably restricting access to the Multiple Listing Service (MCL), limiting the contract options member brokers could offer to their clients, and reducing the likelihood of discount commissions or other price competition among brokers. Industrial Multiple is the sole Los Angeles multiple listing service. Under the agreement Industrial Multiple would be prohibited from requiring that applicants for membership: be engaged primarily in industrial real estate brokerage, receive a specified percentage of their income from real estate commissions, have a specified amount of their real estate transactions involve industrial property; have a minimum number of dollar volume of industrial real estate sales or leases over any period of time or to be engaged in industrial real estate brokerage over any period of time. The agreement would also prohibit Industrial Multiple from conditioning membership on any criterion that is applied in an unreasonably discriminatory manner and requires that members "flag" those listings where the commission rate differs from the listing firm's normal rate, and from restricting the public's access to exclusive agency listings. See Industrial Multiple, File No. 851-0057, 5 Trade Reg. Rep. (CCH) • 23,090.

65. The Commission announced for public comment a proposed consent agreement with Roberto Fojo, M.D., that would settle charges that Fojo, the former chairman of the Department of Obstetrics and Gynecology at North Shore Medical Center in Miami, engaged in a conspiracy with other department members to threaten the withdrawal of their emergency room services and thus coerced the hospital into paying obstetricians or gynecologists ("ob/gyns") and other physicians to take emergency room call. Under the hospital's standard arrangement with physicians, physicians agreed to take emergency room call duty and to provide other services for free, in exchange for hospital privileges. The complaint alleged that after Fojo's arrangement, only a few of the 20

ob/gyns were willing to take emergency room duty and those who did received payment. The proposed agreement would prohibit Fojo from agreeing with other physicians to boycott the emergency room of any hospital and, for five years, from threatening that any physician might, in concert with another physician, pursue such a boycott. See Roberto Fojo, M.D., File No. 871-0045, 5 Trade Reg. Rep. (CCH) • 23,113.

66. The Commission announced for public comment proposed consent agreements with six Rockford, Illinois area nursing homes, which would settle charges that they participated in a conspiracy to boycott local nurse registries in order to restrain competition and reduce payments for hiring temporary nursing assistants. Among other things, the agreement would prohibit respondents from entering into agreements with other purchasers of nursing homes to refuse, or threaten to refuse, to use the services of any temporary nurse registry, or to fix or otherwise interfere with the prices charged by such registries. Further, they would prohibit respondents, for five years, from communicating certain information about their use of their registry services to other nursing homes. In addition, agreements with any other respondent to purchase or use the services of any participating temporary nurse registry would be prohibited for ten years. See Rockford Illinois Nursing Homes, File No. 891-0048, 5 Trade Reg. Rep. (CCH) • 23,115.

67. At the request of the Shell Oil Company, the Commission reopened and set aside a 1961 order. The administrative complaint had charged that a marketing agreement between Firestone Tire & Rubber Company and Shell requiring Firestone to pay Shell a sales commission on all tires, batteries, and accessories sold to Shell outlets was an unfair method of competition. The order prohibited Shell from using such sales commissions and from promoting the sale of tires, batteries and accessories by any vendor to any person who sold Shell products. In setting aside the order, the Commission noted that there have been significant changes in the law of vertical distribution since 1961. See Firestone Tire & Rubber Company, et al, Docket No. 6487, 5 Trade Reg. Rep. (CCH) • 23,030.

68. The Commission reopened and modified a 1990 order to allow the New England Motor Rate Bureau to file collective rates for the transportation of commodities by motor common carriers in the state of New Hampshire. The Rate Bureau's request to set aside the order in its entirety was denied. The order became final in November 1990 after the First Circuit Court of Appeals reversed the Commission's decision and ruled that collective ratemaking by the Rate Bureau was adequately supervised, and therefore in compliance with the antitrust laws, in the State of Massachusetts. The order was then based solely on unlawful ratemaking activity in New Hampshire. See New England Rate Bureau, Docket No. 9170, 5 Trade Reg. Rep. (CCH) • 22,055.

69. The Commission agreed to modify an order it obtained against the American Medical Association (AMA) in 1982. The modification involves a fencing-in provision and does not affect the order's main cease and desist provision, which prohibits the AMA from restricting truthful, nondeceptive advertising by physicians and from interfering with the compensation physicians are offered in contracts for their service. The provision at issue requires the AMA to obtain certification from its member organizations that they agree to the order, and the AMA wanted that regulation deleted. Instead, as modified, the order stays compliance with the certification provision for two

years. If, after that time, the AMA has fulfilled certain obligations set out in the modification, the Commission will deem the AMA's obligation under the certification provision to be satisfied. See American Medical Association, Docket No. 9064, Trade Reg. Rep. (CCH) • 23,074.

{ Private cases having international implications}

70. In Amernational Industries, Inc. v. Action-Tunsgram, Inc., 1991-1 Trade Cas. (CCH) • 69,331 (6th Cir.), cert. denied, 111 S. Ct. 2857 (1991) a court of appeals vacated a default judgment that had been entered by a district court in an antitrust case brought by a U.S. light bulb importer against Electroexportimport, a trading company owned by the government of Romania. The district court had entered the default judgment after finding that the defendant had failed to comply adequately with the court's orders compelling the production of documents to the plaintiff. On appeal, the court of appeals ordered the district court to vacate the judgment and conduct further proceedings. In so doing, it noted the Foreign Sovereign Immunity Act's "strong policy" of "encouraging foreign states and their instrumentalities to appear before United States courts and allowing the merits of cases involving foreign sovereigns to be considered completely and carefully." The court also observed that the broad divergence of cultural, governmental, and political practices between the United States and Romania were factors that should have been considered by the district court in the exercise of its discretion. The court found that the plaintiff would not have been prejudiced if the default judgment had been vacated and that the district court should have considered the substantive defenses put forward by the defendant in connection with the motion to vacate the default judgment.

71. In In re Insurance Antitrust Litigation, 938 F.2d 919 (9th Cir. 1991) the court of appeals reversed a dismissal by a district court of a civil suit brought against foreign and domestic U.S. insurers and reinsurers which allegedly agreed to boycott general liability insurers using nonconforming forms. The court of appeals held that the insurers were not entitled to antitrust immunity under the McCarran-Ferguson Act, which exempts conduct regulated by U.S. states, and even if they would have been entitled to such immunity, they lost such protection when they conspired with foreign defendants. The court held that it had jurisdiction over the foreign insurers because the conspiracy involved importation of insurance into the United States and came within the import exception in the Foreign Trade Antitrust Improvements Act of 1982. The court also held that the defendants had made no showing that they were entitled to the "state action" defense based on state regulation of aspects of their conduct. Applying a Timberlane comity analysis, the court concluded that considerations of comity did not require the dismissal of the case against the foreign insurers, because of the substantial effects of defendants' conduct in the U.S. and because the purpose of the boycotts was to affect the business of insurance in the United States. (The position taken in this case by the Department of Justice is summarized in U.S. 1990 Report • 44.)

72. In Alpha Lyracom Space Communications, Inc. v. Communications Satellite Corp., 1991-2 Trade Cas. (CCH) • 69,608 (2d Cir. 1991), cert. denied, 112 S. Ct. 1174 (1992) the court of appeals ruled that the Communications Satellite Corporation ("COMSAT"), a private corporation created by Congress, was immune from antitrust liability for activity undertaken as the United States

representative to the International Telecommunications Satellite Organization. The Court also ruled, however, that COMSAT could be subject to antitrust liability for conduct as a common carrier.

73. International Raw Materials v. Stauffer Chemical Co., 1991-2 Trade Cas. (CCH) • 69,498 (E.D. Pa. 1991) involved the interpretation of the Webb-Pomerene Act, which provides that an "association entered into for the sole purpose of engaging in export trade" enjoys immunity from antitrust prosecution with respect to "any agreement made or act done in the course of export trade." The American Natural Soda Ash Corporation ("ANSAC") is an export trade association made up of the leading U.S. producers of soda ash. ANSAC had entered into a complex financial relationship with a shipping terminal, including certain guarantees and commitments by ANSAC to the terminal and the possibility that ANSAC could ultimately acquire a financial interest in the terminal. The court ruled that ANSAC qualified for protection under Webb-Pomerene, even though most of the association's members were foreign-owned or controlled. It also ruled that ANSAC's financial relationship with the terminal did not undermine its right to antitrust immunity under the Webb-Pomerene.

III. ENFORCEMENT OF ANTITRUST LAWS AND POLICIES: Mergers and Concentrations

A. Department of Justice and FTC Merger Statistics

74. The Department and the Commission maintain statistics respecting the mergers and acquisitions reported under the premerger notification provisions of the Hart-Scott-Rodino Act. Only those mergers meeting certain size or other criteria are required to be reported under the Act. During 1991, the two agencies received 2,930 filings for 1,537 reported transactions under the premerger notification program.

{ Department of Justice review of premerger notifications}

75. Based on its review of premerger notification reports, the Department issued 63 letters requesting additional information ("second requests") in connection with 37 transactions during 1991. During that period, the Department also reviewed 1,440 mergers and acquisitions undertaken by banks and other financial institutions that were not covered by the Hart-Scott-Rodino Act.

{ FTC review of premerger notifications}

76. Based on its review of pre-merger notification reports, the FTC investigated 29 transactions with second requests for information.

{ Enforcement of premerger notification rules}

77. The Commission and the Department actively have enforced the filing requirements of the Hart-Scott-Rodino (HSR) Act and in this connection have brought charges in federal court and received civil penalties. The Federal Trade Commission requests the Department Justice to file its complaints. The

complaints and settlements are filed in the U.S. District Court for the District of Columbia.

78. On August 2, 1991, the Department and FTC announced a Memorandum of Agreement with respect to the handling of civil penalty suits enforcing the premerger notification provisions of the HSR Act. Under the agreement, the Commission will submit civil penalty recommendations to the Department. The Department will advise the Commission either that (1) it will file the recommended action, (2) it disapproves the recommended action, or (3) it requires further information. If none of the determinations described above has been communicated to the Commission within 45 days, the Commission may designate Commission attorneys for appointment by the Attorney General to file the case in federal court on behalf of the United States.

79. On March 8, 1991, the Department filed civil charges against Cox Enterprises for its failure to comply with the notification and waiting period requirements of the Hart-Scott-Rodino Act, in connection with its purchase of Knight-Ridder Inc. in 1986. The complaint charged that Cox held in excess of $15 million worth of Knight-Ridder stock as a result of a series of stock purchases but failed to notify the Department. Cox thus faced a civil penalty of $10,000 for every day it was in violation of the act. On August 8, 1991, Cox agreed to settle the suit by paying a civil fine of $1.75 million. See United States v. Cox Enterprises, Inc., 1991-92 Trade Cas. (CCH) • 69,540 (N.D. Ga. 1991).

80. The Department brought a similar action in 1991 against several other parties, including Aero Limited Partnership, for failing to comply with the HSR requirements in connection with its investment in US Air Group, Inc. Aero agreed to pay $1,125,000 as penalties. See United States v. Aero Limited Partnership, 1991-92 Trade Cas. (CCH) • 45.091 (D.D.C. 1991).

81. On January 3, 1991, the Commission charged General Cinema Corporation with violating the HSR Act. According to the complaint filed in the federal court by the Commission, General Cinema acquired more than $15 million worth of stock in Cadbury Schweppes p.l.c. between September 1986 and February 1987 without filing the required notification under the Hart-Scott-Rodino Act with the Commission and the Department of Justice. The complaint asks the court to order General Cinema to pay the maximum civil penalty allowed by law. See General Cinema Corporation, File No. 871-0047, 5 Trade Reg. Rep. (CCH) • 23,129. On January 7, 1992, General Cinema agreed to pay $950,000 in civil penalties.

82. On January 7, 1991, in connection with a complaint and consent judgment filed by the Department in federal court, Service Corporation International ("SCI") agreed to pay $500,000 in civil penalties to settle charges that it violated the premerger notification filing requirements under the HSR Act. The complaint alleged that SCI acquired more than $15 million of Centurion National Group, Inc.'s stock without notifying the Commission or the Department of Justice as required by the HSR Act. According to the complaint, SCI was in violation of the HSR Act for fifty-nine days. See Service Corporation International, File No. 871-0053, 5 Trade Reg. Rep. (CCH) • 22,927.

83. On January 30, 1991, in connection with a complaint filed by the Department in federal court, Equity Group Holdings, a general partnership

controlled by Steven M. Rales and Mitchell P. Rales, agreed in a consent decree to pay $850,000 to settle charges that they violated HSR premerger notification requirements when Equity acquired stock in Interco Inc. The complaint alleged that the Rales brothers, Equity, and a newly-formed Rales affiliated limited partnership acquired more than $15 million of Interco stock before filing the required notification and report form and observing the waiting period required by the Hart-Scott-Rodino Act. The complaint further alleged that the partnership, City Capital Associates Limited Partnership, formed by the Rales brothers and two associates, used two corporations as forty-nine percent owners in an attempt to avoid the HSR premerger notification rules. See Equity Group Holdings, File No. 871-0093, 1991-1 Trade Reg. Rep. • 69,320 (D.D.C. 1991).

84. On January 31, 1991, in connection with a complaint filed by the Department in federal court, Atlantic Richfield Co. and Union Carbide Corporation each agreed to pay a $1 million civil penalty to settle charges that they did not comply with the federal premerger notification requirements under the HSR Act when ARCO acquired Union Carbide’s urethane polyether polyols and propylene glycol assets. The complaint alleged that the parties effectively consummated the acquisition when Union Carbide transferred all benefits and risks of ownership of the chemical assets to ARCO. The complaint further alleged that the acquisition of beneficial ownership occurred before the parties filed the required HSR premerger notification reports. This $2 million civil penalty is the second largest secured for a violation of the HSR Act. See Atlantic Richfield Co./ Union Carbide, File No. 901-0010, 5 Trade Reg. Rep. (CCH) • 22,878.

85. On December 20, 1991, in connection with a complaint filed in federal court by Commission attorneys acting as special attorneys to the United States Attorney General under the Memorandum of Agreement adopted last year between the Commission and the Department of Justice, Atlantic Richfield Co. (ARCO) agreed to pay $290,000 to settle charges that it violated HSR when it sold stock in ARCO Seed Co. to U.F. Genetics. According to the complaint, the premerger reporting violations occurred when U.F. Genetics acquired beneficial ownership of all of ARCO Seed’s voting securities prior to notifying the Commission or the Department of Justice and observing the waiting period. The companies were in violation for 31 days. The consent judgment still requires the court’s approval. See Atlantic Richfield/ U.F. Genetics, File No. 871-0073, 5 Trade Reg. Rep. (CCH) • 23,133.

B. Merger Cases and Business Reviews

{ Merger cases brought by the Department of Justice}

86. During 1991, the Department formally initiated investigations of 93 mergers and acquisitions. The Department publicly challenged 14 proposed transactions, and ultimately filed 4 suits to block the transactions. Ten proposed transactions were abandoned or restructured after the Department’s announcement of its intent to file suit or the filing of the complaint.

87. On January 5, 1991, the Department filed a civil antitrust suit challenging the proposed acquisition of Semi-Gas Systems of San Jose, California, by Nippon Sanso of Tokyo, Japan. The Department argued that the proposed acquisition would violate Section 7 of the Clayton Act by

substantially lessening competition in the production and sale of gas cabinets in the United States. Gas cabinets are used to distribute specialty gases for semiconductor fabrication. The acquisition combined the two leading producers of gas cabinets in the world and substantially increased Semi-Gas' dominant position in the United States market. Nippon Sanso produces gas cabinets in the United States through a wholly-owned subsidiary, Matheson Gas Products of Secaucus, New Jersey.

88. The Department moved for a preliminary injunction to block the proposed transaction. On March 25, 1991, the U.S. District Court for the Eastern District of Pennsylvania denied that motion. The Court ruled in a bench opinion that it had not been presented with evidence adequate to reach a conclusion that the government had a reasonable probability of prevailing on the merits. Specifically, the Court held that the evidence of market share and market concentration presented by the government was not reliable enough to support the government's position that the acquisition would substantially lessen competition. See United States v. Nippon Sanso K.K. et al., 1991-1 Trade Cas. (CCH) • 69,337 (E.D. Pa. 1991). After the motion for a preliminary injunction was denied, the government voluntarily dismissed its complaint.

89. On May 10, 1991, the Department received a favorable decision from the district court in U.S. v. Autotote and United Tote, 768 F. Supp. 1064 (D. Del. 1991). This civil merger case, filed in 1990, alleged that the proposed acquisition of Autotote by United Tote, its major competitor in the design and manufacture of totalisator systems and services (used for betting), would substantially lessen competition in that industry. The court agreed that the merger was anticompetitive and issued an order enjoining the two firms from merging. The firms did not pursue an appeal.

90. On July 5, 1991, the Department filed a complaint challenging the merger of two banks -- Fleet/Norstar Financial Group, Inc. and New Maine National Bank. The competition that the Department alleged would be suppressed by the merger was in the provision of banking services to small and medium-sized businesses in certain parts of the state of Maine. The case was settled by a consent decree, wherein the banks agreed to divest themselves of certain bank branch assets and deposits. The Department was satisfied that these divestitures would facilitate entry of a new provider of business banking services (or strengthen an existing small competitor), thereby preserving competition. See United States v. Fleet/Norstar Financial Group, Inc., 1991-2 Trade Cas. (CCH) • 69,646 (D. Me. 1991).

91. On July 24, 1991, the Department sued to block a proposed acquisition of Velobind, Inc. by General Binding Corp. General Binding is the largest manufacturer of high-volume mechanized binding machines, while Velobind is the second largest manufacturer of this equipment. The parties subsequently agreed to restructure their deal, so as to essentially create a new competitor in the sale of plastic strip-binding machines. The Department agreed that the restructured transactions alleviated competitive concerns, and therefore entered into a consent decree with the parties. See United States v. General Binding Corp. and VeloBind Inc., 7 Trade Reg. Rep. (CCH) • 50,732 (D.D.C. 1991).

92. The Department sued to block the merger of Ashton-Tate Corporation and Borland International, Inc., two competitors in the sale of relational data

base management system software for personal computers. The case was settled by consent decree when Borland agreed it would refrain from suing competitors for copyright infringement based on Ashton-Tate's dBase programming language (a widely-used standard in relational database system software). The Department was satisfied that the terms of this consent decree would preserve competition in this $200 million per year industry. See United States v. Borland International, Inc. and Ashton-Tate Corp., 6 Trade Reg. Rep. (CCH) • 50,734 (N.D. Cal. 1991).

{ Merger cases brought by the FTC}

93. Free markets for capital and corporate assets are vital to the efficient functioning of the United States' economy. Mergers and acquisitions allow those assets to be reorganized efficiently, and they improve consumer welfare by reducing costs and prices. Some mergers, however, may substantially lessen competition and result in price increases to consumers. In the past calendar year, the Commission has sought to block 4 mergers. The Commission issued 1 administrative complaint to challenge a proposed acquisition. Additionally, the Commission entered into 10 consent agreements to settle the anticompetitive concerns raised by proposed merger transactions. The Commission granted early termination of the Hart-Scott-Rodino waiting period in 939 transactions. These efforts illustrate the Commission's commitment to challenge potentially anticompetitive mergers without preventing transactions that can increase productivity.

a) Preliminary injunctions authorized

94. The Commission's staff filed a motion in the U.S. District Court for the District of Columbia for a preliminary injunction to block the proposed acquisition by Wiggins Teape Appleton p.l.c. of a Vancouver, Washington paper mill owned by Boise Cascade Corporation. The Commission had reason to believe that the acquisition could substantially reduce competition in the production of chemical carbonless paper in the United States. Chemical carbonless paper, used in business forms and credit-card charge slips, is coated paper that enables writing on the top page to be copied onto pages underneath without the use of carbon paper. Before the court's scheduled hearing on the preliminary injunction, Appleton abandoned the proposed transaction and the Commission withdrew its request for the injunction. See Wiggins Teape Appleton p.l.c., File No. 911-0006, 5 Trade Reg. Rep. (CCH) • 22,952.

95. The Commission authorized its staff to seek a preliminary injunction to block Oy Wartsila Ab's proposed acquisition of Computerized Security Systems, Inc. and Winfield Lock Inc. The Commission believed that the proposed acquisition would substantially reduce competition in the manufacture and sale of recodable hotel lock systems. Wartsila, through its wholly-owned subsidiary, Ving Card Systems Inc., and Computerized Security Systems are two of the world's leading suppliers of recodable hotel lock systems. The parties abandoned the acquisition before the Commission could file a motion in federal district court requesting a preliminary injunction. See Oy Wartsila Ab, File No. 901-0152, 5 Trade Reg. Rep. (CCH) • 22,929.

96. The Commission authorized its staff to seek a preliminary injunction to block the proposed $70 million acquisition by EG&G, Inc. of Heimann GmbH, a wholly-owned subsidiary of Siemens AG. The Commission believed that the

proposed acquisition would result in a monopoly in the United States of X-ray security screening devices used by airlines, government and private industry to detect dangerous materials. EG&G, through its wholly-owned subsidiary, Astrophysics Research Corporation, is the industry leader for X-ray security equipment; Heimann is the largest manufacturer of X-ray screening equipment outside of the United States. The parties restructured the transaction to eliminate the Commission's antitrust concerns. See EG&G, File No. 911-0084, 5 Trade Reg. Rep. (CCH) • 23,037.

97. The Commission authorized its staff to seek a preliminary injunction to block Instruments SA's proposed acquisition of the Molecular Beam Epitaxy Equipment Division of INTEVAC, Inc. The Commission believed the proposed acquisition would substantially lessen competition in the manufacture and sale of molecular beam epitaxy systems, a process used to grow materials of artificially structured crystals for use in semiconductor and optoelectronic devices. The parties abandoned their acquisition plans before the Commission filed a motion in court requesting a preliminary injunction. See Instruments S.A., File No. 911-0056, 5 Trade Reg. Rep. (CCH) • 22,995.

b) Commission administrative decisions

98. The Commission unanimously reversed a 1990 Administrative Law Judge's decision that dismissed a complaint challenging Ukiah Adventist Hospital's and Adventist Health System/West's acquisition of substantially all of the assets of Ukiah General Hospital. The 1989 administrative complaint charged that the acquisition would harm consumers by substantially reducing competition in general acute care hospital services by giving Adventist Health System/West, the parent of Ukiah Adventist, control of three of the five hospitals in the Southeastern Mendocino area of Ukiah, California. The judge ruled that the Commission did not have jurisdiction over asset acquisitions made by not-for-profit entities if the acquisition was not accomplished by merger. The Commission reversed and held that the Clayton Act gives the Commission the necessary authority to challenge asset acquisitions by nonprofit entities. The Commission remanded the case to the judge for a decision on the merits. See Adventist Health System West, Docket No. 9234, 5 Trade Reg. Rep. (CCH) • 23,038.

99. An Administrative Law Judge dismissed a complaint that challenged Coca-Cola Bottling Company of the Southwest's acquisition of certain Dr Pepper Bottling Co. assets in San Antonio. The administrative complaint charged that the acquisition reduced competition in the production of national brand soft drinks and increased the likelihood of collusion in the San Antonio area. The complaint further alleged that the acquisition would weaken the Big Red Bottling Company, a company comprised of the Dr Pepper Bottling Co. assets not included in the purchase by Coca-Cola. The judge concluded that the relevant product market was broader than defined by the complaint and included national brands, private label, and warehouse brands of soft drinks. Additionally, the judge defined the geographic market as one larger than the ten county area around San Antonio named in the complaint and found that competition in the market for soft drinks in that area was healthy. The relevant market is characterized by excess capacity, low prices, and low barriers to entry. A staff appeal was filed in July, 1991 and oral arguments before the Commission were given in December, 1991. See Coca Cola Bottling Company of the Southwest, Docket No. 9215, 5 Trade Reg. Rep. (CCH) • 23,010.

100. The Commission issued an administrative complaint challenging the proposed acquisition of St. Joseph Hospital by University Health, Inc. According to the complaint, the acquisition would reduce competition for general acute care hospital services in the Augusta, Georgia area and would also deny patients, physicians, and health care insurers the benefits of open competition based on price, quality and service. The complaint further alleged that the Augusta area was already highly concentrated and that the acquisition would increase the possibility of collusion among other area hospitals. The U.S. Court of Appeals for the Eleventh Circuit unanimously directed the U.S. District Court for the Southern District of Georgia in Augusta to grant the preliminary injunction sought by the Commission to block the proposed acquisition. The appeals court also affirmed the district court's holding that the Commission has jurisdiction under the Clayton Act over asset acquisitions involving solely nonprofit entities. The motion for the preliminary injunction was the first time the Commission has asked a federal court to block a non-profit hospital merger. The matter was later withdrawn from adjudication for consent negotiations. See St. Joseph's Hospital/University Health, Inc., Docket No. 9246, 5 Trade Reg. Rep. (CCH) • 22,965.

101. The Commission gave final approval to a consent agreement with Hoechst A.G., a German company, and its United States subsidiaries, Hoechst Corporation and Hoechst Celanese Company to settle charges stemming from Hoechst's acquisition of Celanese Corporation. The complaint alleged that the acquisition would substantially lessen competition in the manufacture and sale of acetal in world markets, including the United States. The acquisition gave Hoechst AG, the parent of Hoechst Celanese, control of the Ticona Polymerwerke in Germany, an acetal joint venture established by Celanese and Hoechst AG.

102. Although the order does not require the three firms to divest any existing or acquired acetal assets or businesses, it prohibits the firms from creating or enforcing any agreement that serves to prevent the Hoechst/Daicel Chemical Industries, Ltd. joint venture, Polyplastics Company, Ltd. of Japan, from competing against Hoechst and its subsidiaries in the manufacture and sale of acetal in the United States. Hoechst AG and its two United States subsidiaries, Hoechst Corporation and Hoechst Celanese Corporation, are also prohibited from entering into any agreements with any producer of acetal products to allocate or restrict competition in the market for a period of ten years (A separate consent order was entered in 1987 settling charges that the same acquisition could substantially lessen competition in the United States in the manufacture and sale of polyester staple and polyester filament). See Hoechst A.G., Docket No. 9216, 5 Trade Reg. Rep. (CCH) • 23,044.

103. The Commission gave final approval to a consent agreement with Meade Instruments, a subsidiary of Harbour Group Investments L.P., and Celestron International, a subsidiary of Diethelm Holding (U.S.A.) Ltd., to settle charges relating to their plans to create a joint venture. Meade and Celestron proposed to form a fifty-fifty joint venture, Celestron Meade International, that would manufacture and market mid-sized Schmidt-Cassegrain telescopes used in astronomical viewing. According to the complaint, Meade and Celestron are two of the largest manufacturers of these telescopes in the United States, and a combination of the two companies would have created a virtual monopoly for the telescopes. The order requires Harbour Group and Diethelm Holding to obtain prior Commission approval for ten years before acquiring any company that manufactures or sells mid-sized Schmidt-Cassegrain telescopes in the

United States. The parties abandoned their planned combination and agreed to the consent order after the U.S. District Court for the District of Columbia granted the Commission's request for a preliminary injunction. See Harbour Group Investments, L.P., et al, Docket No. 9244, 5 Trade Reg. Rep. (CCH) • 22,992.

104. The Commission gave final approval to a consent agreement with Mr. Harold A. Honickman and the Brooklyn Beverage Acquisition Corp., to settle charges that the 1987 acquisition of the Seven-Up Brooklyn Bottling Company, Inc. would reduce competition in the production, distribution, and sale of branded carbonated soft drinks in the New York metropolitan area. According to the complaint, as a result of the acquisition, Mr. Honickman and his Brooklyn Beverage subsidiary bottled, distributed, and sold soft drinks in the area under the Pepsi, Canada Dry and Seven-Up names. The Seven-Up assets were later sold. The consent agreement requires Mr. Honickman to obtain prior Commission approval for ten years before acquiring any interest in a carbonated soft drink bottling operation in the New York metropolitan area. According to the order, prior approval would not be required if notice of the proposed transaction was reported under the Hart-Scott-Rodino Premerger Notification Rules and if Honickman and Brooklyn Beverage divested all overlapping assets within six months before exercising control over the newly acquired assets. See Harold A. Honickman and Brooklyn Beverage Acquisition Corp., Docket No. 9233, 5 Trade Reg. Rep. (CCH) • 22,980.

105. In October, the Commission gave final approval to a consent agreement with Nippon Sheet Glass Company, Ltd. and Pilkington PLC, to settle charges that Nippon's 1990 acquisition of a twenty percent interest in Libby-Owens-Ford Co., a wholly-owned United States subsidiary of Pilkington, was likely to reduce competition in the North American market for wired glass. According to the complaint, the terms of the Nippon/Pilkington acquisition agreement gave the jointly owned L-O-F rights to distribute, in North America, the polished wired glass produced by both Pilkington and Nippon, thus eliminating competition between Nippon and Pilkington and increasing the likelihood of collusion among other firms in the market.

106. Under the terms of the order, Nippon and Pilkington are prohibited from jointly manufacturing or distributing polished wired glass in North America to customers located in the United States through L-O-F or any other firm without Commission prior approval for a period of ten years. The order maintains Nippon and Pilkington as independent suppliers of wired glass to the United States. See Nippon Sheet Glass Company/Pilkington, Docket No. C-3345, 5 Trade Reg. Rep. (CCH) • 23,007.

107. The Commission gave final approval to a consent agreement with PepsiCo, Inc., to settle charges that its acquisition of Twin Ports Seven-Up Bottling Company would substantially lessen competition in the production and distribution of carbonated soft drinks in the Duluth, Minnesota area. According to the complaint, Twin Ports, a bottler and distributor of Seven-Up and Dr Pepper, sells non-Pepsi brands in competition with the Pepsi brands sold by the franchised Pepsi bottler in the Duluth area. The acquisition thus would increase the likelihood of interbrand collusion because PepsiCo could raise the price of either its branded soft drinks or the non-Pepsi brand soft drinks that its Twin Ports operation bottles and distributes as a franchise in the area. Under the terms of the order, PepsiCo must divest Twin Ports within nine

months to an acquirer approved by the Commission. In addition, for a period of ten years, PepsiCo must obtain Commission approval before acquiring the rights to distribute non-Pepsi brands, or before acquiring any person with such rights, in the Duluth area. See PepsiCo, Inc., Docket No. C-3347, 5 Trade Reg. Rep. (CCH) • 22,899.

108. The Commission gave final approval to a consent agreement with RWE Aktiengesellschaft, to settle charges stemming from its proposed $1.3 billion acquisition of Vista Chemical Company. The complaint issued with the proposed consent agreement alleged that the acquisition would eliminate competition in the market for the manufacture and sale of high purity alcohol process alumina in the world. RWE and Vista are the only two companies that obtain alumina as a by-product in the production of high-purity alcohol used in making catalysts for the petroleum refining, chemical and automotive emissions control industries. The order requires RWE to license certain technology for the production of its alumina and to assist the licensee in the formation and operation of a joint venture company capable of establishing itself as a producer of high-purity alcohol process alumina comparable to that of Vista or RWE. See RWE Aktiengesellschaft, Docket No. C-3349, 5 Trade Reg. Rep. (CCH) • 23,004.

109. The Commission gave final approval to a consent agreement with Sentinel Group, Inc., settling charges that its acquisition of funeral homes have substantially lessened competition for funeral services in six cities in Georgia and Arkansas. The complaint alleged that the acquisition significantly enhanced the possibility of collusion or interdependent coordination among the remaining firms in the areas. Under the terms of the order, Sentinel must divest one of its funeral homes in each of the three separate markets listed in the complaint and must obtain FTC approval before acquiring any additional funeral homes in all six markets listed in the complaint for ten years. Additionally, the order provides that Sentinel will divest three of the funeral homes and prohibits Sentinel for ten years from acquiring a funeral home in the area extending 14 miles outward in any direction from the city limits of the six cities. See Sentinel Group, Inc., Docket No. C-3348, 5 Trade Reg. Rep. (CCH) • 23,027.

110. The Commission gave final approval to a consent agreement with Alleghany Corporation, where Alleghany agreed to divest to a Commission approved acquirer within twelve months its interests in Westwood Equities Corporation, a company that provided real estate records serving eighteen counties in several states. The complaint alleged that the proposed acquisition of most of the title insurance-related assets of Westwood would lessen competition in the production and sale of title plant or back plant information in certain counties located in California, Illinois, Indiana, Tennessee and Washington. In addition to the divestitures, for a period of ten years Alleghany is prohibited from acquiring any interest in specified firms that provide title plant and back plant services to the counties named in the order without prior Commission approval. See Alleghany Corporation and Westwood Equities Corporation, Docket No. C-3335, 5 Trade Reg. Rep. (CCH) • 22,951.

111. The Commission gave final approval to a consent agreement with American Stair-Glide Corporation, to settle charges arising from its acquisition of the Cheney Company, Inc. The complaint alleged that the acquisition eliminated competition and established a dominant firm in the United States in the

manufacture and sale of stairway and wheelchair lifts. The consent order requires ASG to grant a non-exclusive perpetual license to Cheney's technology and know-how in the production of curved stairway lifts, straight stairway lifts and vertical wheelchair lifts, and also a perpetual exclusive license to the Cheney name to a licensee pre-approved by the Commission. The order also requires ASG to obtain prior Commission approval before acquiring any interest in a firm engaged in the production, distribution or sale of any curved stairway lifts, straight stairway lifts, or vertical wheelchair lifts in the United States for a period of ten years. The order further prohibits ASG from using the Cheney name in connection with any products sold in the United States. Finally, for a period of five years, ASG is prohibited from entering into any long term sales agreement or any exclusive agreements limiting a distributor's ability to sell the stairway lifts or wheelchair lifts of any other manufacturer. See American Stain Glide Company and Cheney Company, Docket No. C-3331, 5 Trade Reg. Rep. (CCH) • 22,931.

112. The Commission gave final approval to a consent agreement with the Torrington Company and Universal Bearings Inc., to settle charges resulting from Ingersoll-Rand Company's proposed acquisition of Universal. According to the complaint, Universal prematurely began consolidating its axle shaft business into Torrington, Ingersoll Rand's wholly-owned subsidiary, during the Hart-Scott-Rodino waiting period. The complaint further alleged that during this same period of time, Universal allocated the business of its axle shaft customers to Torrington. Under the terms of the order, Torrington and Universal agreed not to consolidate the production, marketing or any other aspect of their respective businesses with an acquiring person prior to the consummation of any proposed acquisition. Earlier in the year, the Commission authorized its staff to seek a preliminary injunction to block Ingersoll-Rand's acquisition of Universal. The Commission believed that the acquisition would substantially reduce competition in the manufacture and sale of needle rollers, cylindrical steel parts used for anti-friction purposes in bearings for automobile transmissions, drive shafts, and power steering units. The parties abandoned the transaction before the motion for a preliminary injunction could be filed in a federal district court. See Torrington Company and Universal Bearings Inc., Docket No. C-3330, 5 Trade Reg. Rep. (CCH) • 22,942.

113. The Commission accepted for public comment a proposed consent agreement that would permit Service Corporation International to acquire the Sentinel Group, Inc. According to the complaint, the acquisition would substantially reduce competition for funeral services in certain areas of Georgia and Tennessee and increase the possibility of collusion among the remaining establishments providing funeral services in the areas. Under terms of the proposed consent, SCI would be permitted to acquire Sentinel if it divests six specific funeral homes within twelve months: one each in Savannah, Georgia, LaFayette, Georgia, and Soddy Daisy, Tennessee; and three in Chattanooga, Tennessee. In addition, for a period of ten years, SCI must obtain prior Commission approval before acquiring any additional funeral homes in Savannah and LaFayette, Georgia, and in specific suburban areas of Chattanooga, Tennessee. See Service Corporation International, File No. 911-0087, 5 Trade Reg. Rep. (CCH) • 23,028.

114. The Commission accepted for public comment a proposed consent agreement with Service Corporation International, which would settle charges that SCI's proposed acquisition of Pierce Brothers Holding Company would substantially

lessen competition among funeral home establishments in the San Bernadino-Riverside area of California. The acquisition would combine SCI's 600 funeral homes and 150 cemeteries in 42 states with Pierce's 63 and 12 in Southern California and Florida. Under the terms of the proposed agreement, SCI would be permitted to acquire Pierce, but must divest four of the Pierce funeral homes and obtain FTC approval before acquiring any additional funeral homes in the San Bernadino-Riverside area. See Service Corporation International, File No. 911-0027, 55 Trade Reg. Rep. (CCH) • 23,110.

115. The Commission accepted for public comment a proposed consent agreement with the parent company of Kaiser Cement, which would settle charges that its proposed acquisition of the British company, Beazer plc, could substantially reduce competition for cement in Northern California. Beazer was a 50% owner of Cencal Cement Company. Cencal, in turn, owned a deep-sea cement import terminal at the port of Stockholm. According to the complaint, the proposed acquisition would tend to substantially lessen competition in the manufacture and sale of cement in the 48 northernmost counties of California by eliminating competition between Kaiser and Cencal and by significantly enhancing the likelihood of collusion or interdependent coordination among the remaining firms in the market.

116. Under the proposed agreement, Hanson and its wholly- owned subsidiary would be permitted to acquire Beazer, but would be required within 180 days to sell the 50% share of Cencal it acquires in the transaction to Cencal's other co-owner, Ssangyong Cement, Inc. or acquire Ssangyong's Cencal interest and then to divest the entire Cencal Company within 12 months to a Commission-approved acquirer. In either case, Cencal must be operated independently of Hanson under a "hold separate" agreement until it is sold. Additionally, if divestiture is not complete within 12 months, Hanson has agreed to the appointment of a trustee by the Commission to complete it. Finally, the agreement would prohibit Hanson from acquiring, without Commission approval, any assets or more than 3% of the stock of a company that manufactures, sells, ships or distributes cement in the northern California market for ten years. See Kaiser Cement Company (Hanson plc, et al), File No. 921-0014, 5 Trade Reg. Rep. (CCH) • 23,107.

117. The Commission accepted for public comment a proposed consent agreement which would settle charges that Mannesmann, A.G.'s proposed acquisition of Rapistan Company would substantially decrease competition in the United States market for high speed, light to medium duty conveyor systems for distributors and users. Both Rapistan and Mannesmann's Cincinnati-based subsidiary, The Bushman Company, also manufactures and sells these conveyor systems. The complaint alleged that the market for these products is highly concentrated and entry by new competitors is difficult. The planned acquisition would eliminate actual competition between two competitors in the United States and allow Mannesmann the chance to acquire a dominant market position and increase the likelihood of collusion. Under the proposed agreement, Mannesmann would sell Bushman to a Commission approved buyer within 12 months and keep the assets of Bushman and Rapistan separate until Bushman was sold. Additionally, for 10 years, Mannesmann would be required to obtain Commission approval before acquiring any business that manufactures and sells the conveyor system at issue. See Mannesmann, A.G., File No. 911-0110, 5 Trade Reg. Rep. (CCH) • 23,117.

b118. The Commission modified a 1977 consent order with Union Carbide Corporation that prohibited Union Carbide from entering into contracts longer than one year with industrial gas distributors. The order settled charges that Union Carbide engaged in certain actions that could substantially lessen competition in the sale of industrial gases and raise entry barriers at both the producer and distributor levels. The Commission modified the order to allow the company to enter into requirements contracts for terms longer than one year with several gas distribution companies, to be owned jointly by the Union Carbide Industrial Gas Division and its employees, and which are to be formed from packaged gas distribution businesses in which the Industrial Gas Division currently has more than a fifty percent interest. See Union Carbide Corporation, Docket No. C-2902, 5 Trade Reg. Rep. (CCH) • 22,961.

119. The Commission reopened and modified an order that required the British firm, T&N plc, to divest certain thinwall engine bearing assets. The modification eliminated T&N's obligation to divest its remaining inventory of thinwall engine bearings. In January of 1991, the Commission approved T&N's divestiture of certain thinwall bearing assets to Automotive Components Ltd. (ACL), an Australian company. Commission approval of the divestiture was required by a 1990 consent order, which was modified after T&N showed that requiring the company to divest the remaining inventory would impose costs on both T&N and ACL and that there does not appear to be any competition need to require additional divestiture. See T&N plc, Docket No. C-3312, 5 Trade Reg. Rep. (CCH) • 23,104.

c) District court actions

120. Adventist Health System v. FTC, No. 91-2320 (D.D.C.), is a suit to enjoin an ongoing FTC adjudicatory proceeding that challenges a nonprofit hospital acquisition under Section 7 of the Clayton Act. The complaint was filed on September 11, 1991, and on October 17, 1991, the district court ruled that the case should be transferred to the Ninth Circuit for decision. Plaintiffs have appealed that ruling.

121. CableAmerica Corp. v. FTC, No. 91-N-2932-NE (N.D. Ala.) is a suit to enjoin an ongoing Commission investigation under the Clayton and Hart Scott Rodino Acts of a proposed merger of cable system companies. Plaintiffs allege that the Commission lacks authority to investigate or regulate combinations of cable companies because such authority resides exclusively with the Federal Communications Commission. The complaint was filed on December 16, 1991.

122. Dr. Pepper/Seven-Up and Harold Honickman v. FTC, No. 91-2712 (D.D.C), is a suit seeking review of a Commission decision denying prior approval for Harold Honickman to acquire the assets of Seven-Up Brooklyn Bottling Co., pursuant to the terms of a consent order. The complaint was filed on October 22, 1991.

{ Business reviews conducted by the Department of Justice}

123. The Department conducted one review of business proposals in 1991. [For a description of the Department's business review procedure, see footnote 12 at • 90 of U.S. 1982-83 Report.] In March 1991, the Department of Justice advised the Recording Industry Association of America (RIAA) that it did not intend to challenge RIAA's proposed research and development joint venture in audio

recording technology with Bolt, Beranok and Newman Systems and Technologies Corporation (BBN). The Department's letter to RIAA stated that, on the basis of currently available information, the proposed joint venture offered the possibility of benefits and efficiencies in undertaking expensive and risky new product development without any significant diminution of competition in either the market in which the venture proposed to operate or in other markets where RIAA members compete or might compete. The letter also noted, however, that the Department reserved the right to sue if the actual operation of the proposed joint venture proves anticompetitive in purpose or effect.

IV. REGULATORY AND TRADE POLICY MATTERS

A. Regulatory Policies

{ Department of Justice Participation in Regulatory Proceedings}

124. During 1991, the Department continued to advocate increased competition in regulated industries, urging that unnecessary or counterproductive governmental interferences with free market forces be eliminated. When legitimate regulatory objectives required governmental intervention in a market, the Department urged employment of the least anticompetitive form of intervention. Some of these regulatory filings are described below:

125. During the Summer of 1991, the Department filed papers in a United States Department of Transportation ("DOT") proceeding instituted to review DOT's regulations governing the activities of computer reservation systems ("CRSs") owned by airlines. DOT had concluded that business reasons required each airline to place its flight information on every CRS and that airlines that owned a CRS and integrated their internal reservation system with that of their CRS could provide superior services on their CRS than could nonowner user airlines. The integration advantage was denominated "architectural bias" by DOT and was found to have anticompetitive effects in air transportation markets. To promote competition in air transport markets and increase consumer welfare, the Department suggested that DOT adopt rules that prohibit CRSs from charging a booking fee to airline users. Such a rule would require the CRS vendors to obtain service fees from travel agents in a competitive market rather than from airlines which would pay supracompetitive prices because of their need to be on every system. To reduce the anticompetitive effects of architectural bias, the Department suggested that DOT require airline CRS owners to separate their internal reservation systems from that of their CRS and provide equal access to all airline users. The Department favored these two approaches over other approaches because they involved less regulatory intervention by DOT over the long run.

126. In June, 1991 the Department urged DOT to liberalize its "Cities Program" to allow foreign air carriers to provide air service to more U.S. cities that received limited international service, as long as the foreign carrier's home nation afforded similar access to U.S. air carriers.

127. Continuing its previous efforts to persuade the United States Department of Agriculture ("USDA") to eliminate or modify marketing orders that impede

market forces and harm consumers, the Department participated in three USDA marketing order proceedings in 1991. It reiterated past suggestions that USDA's milk marketing order system utilized unreasonable pricing rules and output restrictions and therefore should be modified to allow greater use of reconstituted milk as a means of substituting efficiently produced milk for inefficiently produced milk. The Department demonstrated that the current system encourages excessive production from inefficient plants resulting in unnecessarily high prices to dairy product consumers. This overproduction also hurts taxpayers who support government programs that purchase and store excess dairy products.

128. The Department also opposed two USDA marketing orders that proposed to limit the output of California/Arizona naval oranges and lemons. It argued that these output restrictions did not engender any benefits that would justify the higher prices and reduced availability to consumers that are caused by the restrictions. Past experience indicated that such output restrictions were not necessary to provide price stability to farmers, and that indeed they could have the opposite effect of causing price instability since excessive plantings could be encouraged by the artificially high consumer prices resulting from the restrictions.

129. This past year the Department participated in two proceedings before the Federal Maritime Commission ("FMC") to encourage the FMC to eliminate unnecessary and costly regulation. It urged the FMC to exempt non-vessel owning common carriers from the tariff requirements of the 1984 Shipping Act. In a separate proceeding, the Department urged the FMC to exempt nonconference agreements between marine terminal operators and ocean carriers from the tariff requirements of the 1984 Shipping Act. In both cases, the Department argued that the special conditions thought by some to justify tariff regulation did not exist, and that the unnecessary imposition of tariff requirements impeded competition and raised costs to shippers.

130. The Department supported efforts of the Federal Communications Commission ("FCC") to foster competition in the provision of local telephone exchange access services. The Department observed that requiring the local telephone companies to provide alternate transport providers access to the local exchange switches that was comparable to the quality of interconnector enjoyed by the local phone company could be expected to provide consumers with pricing and innovation benefits, just as the FCC's "equal access" requirement had produced competitive benefits in the provision of long-distance service.

131. The Department also filed comments supporting the FCC's proposed modification of its prior ruling that the availability to a community of three over-the-air television signals provided effective competition to a local cable system with respect to its provision of basic cable services. The result of the FCC's prior ruling was to deprive the local community of the legal power to regulate basic cable rates. While there are a number of factors relevant to determining whether the availability of any given number of television signals will constrain the pricing of a local cable system, the Department noted that existing studies indicated the proposed new six-signal test was likely to be more accurate than a three-signal test.

132. In 1991, the Department reiterated its belief that the FCC should eliminate its rules, first adopted in 1970, that severely restrict the

television networks' right to share in the profits or revenues derived from off-network showing of any program produced by the network and to engage in television program syndication (the sale, licensing or distribution of programs to television stations for non-network broadcast). The Department concluded that the rules were no longer necessary to promote competition and the public would be served better by reliance on market forces than by intrusive FCC regulation. The Commission modified its rules to reduce the restriction.

133. The Federal Energy Regulatory Commission's ("FERC") proposal to mandate that all natural gas pipelines unbundle the sale of transport and storage services from the sale of the gas transported and stored was the subject of a regulatory filing by the Department in October, 1991. The Department urged FERC to take a more discriminating approach. It urged FERC not to mandate unbundling for pipelines that lacked market power, and to rely on market-based and/or incentive regulation rather than cost-of-service regulation where pipelines possess market power.

{ FTC Activities with Respect to Regulatory and State Legislative Matters}

134. The Commission, in fulfilling its competition and consumer protection mission, seeks to prevent or lessen consumer injury caused by private or governmental activities that interfere with the proper functioning of the marketplace. In some instances, laws, regulations, or self-regulatory standards may injure consumers by restricting entry, protecting market power, chilling innovation, limiting competitive responses of firms, or wasting resources. The goal of the advocacy program, therefore, is to reduce such possible harms to consumers by informing appropriate governmental and self-regulatory entities of the potential effects on consumers, both positive and negative, of proposed legislation or rulemaking.

135. Advocacy comments on antitrust issues are prepared by the Staffs of the Bureaus of Competition and Economics, and the ten Regional Offices under the general supervision of the Office of Consumer and Competition Advocacy. The Office of Consumer and Competition Advocacy is the central source of planning, coordination, review and information for the staff's work in this area. In calendar year 1991, the Commission staff submitted comments or amicus briefs to federal, state and self-regulatory entities on antitrust-related issues in such areas as telecommunications, transportation, marketing, health, and legal ethics.

a) Self-Regulatory

136. The Commission staff sent a letter to the Ethics Counsel, American Bar Association concerning the competitive effects of proposed amendments to the ABA's Model Rules of Professional Conduct. The staff supported the ABA Discussion Draft's approach, finding that law firm diversification has the potential to provide significant benefit to consumers. To counteract any problems, the staff suggested adopting narrowly tailored changes to the ABA's Model Rules of Professional conduct.

b) Federal agencies

137. A member of the Commission staff testified before the Advisory Commission on Conferences in Ocean Shipping ("ACCOS"), stating that the 1984

Shipping Act contained some potentially anticompetitive features and recommending the elimination of tariff filing requirements and extension of antitrust immunity only if the benefits exceed the costs. The staff requested that the ACCOS consider, in deciding whether the existing regulatory system should be retained or modified, whether ocean shipping markets differ fundamentally from transportation markets where deregulation has brought tangible consumer benefits or other markets that operate effectively without antitrust immunity.

138.   The Commission staff submitted a comment to the FCC, following the FCC's request for input on whether to allow cellular customer premises equipment (CPE) and cellular service to be offered on a bundled basis if that service is also offered separately at a nondiscriminatory price and if so, under what conditions bundling should be allowed. The staff's comment agreed with the FCC that consumers most likely would benefit from a regulatory change which permits the bundling of both service and CPE into a package which costs less than if the two were offered separately.

139.   The Commission staff commented on another FCC notice of proposed rulemaking which concerned whether the FCC should retain, modify, or repeal its financial interest and syndication rules. The staff recommended complete repeal of the rules. The rules forbid television networks from engaging in the domestic syndication of any program or the foreign syndication of independently-produced programs and from obtaining any financial or propriety right or interest in the exhibition, distribution, or use of programs produced by others, except for the exclusive right to network exhibition in the United States. In a further comment, responding to another FCC notice on the subject, the staff concluded that a four-year phase-out of the rules barring networks from entering the rerun and syndication business would better serve consumers and competition than would a modification that gave the networks only limited access to this market.

140.   The Commission staff submitted a comment in response to an FCC proposal to relax the number of radio and television stations that one person or entity may own, stating that by allowing stations to enjoy the efficiencies associated with joint ownership, stations that might otherwise cease operating might continue broadcasting. Thus, joint ownership has the potential to increase variety and competition.

141.   In response to the Federal Reserve System's request, the Commission staff commented on proposed changes to its check transportation pricing structure, and pointed out that the proposed pricing might adversely affect efficiency by causing private competitors to curtail their service or leave the market. The staff recommended that the Federal Reserve should determine actual costs of transporting bundled and presorted checks from the bank where first received to the payor bank before replacing its pre-check transport fee with a maximum charge, above which the price for transporting checks would not vary with volume.

142.   In response to a request from the Federal Aviation Administration, the Commission staff commented on several proposed changes to the current slot allocation and transfer system at four high density traffic airports. The staff advised that a study of the usage of the landing slots does not suggest that changing the current market-based system for allocating and transferring

the slots will necessarily result in an increase of slot usage at those airports. The staff also concluded that in the absence of market power, imposing significant delays or other restrictions on slot transfers may impede the significant reallocation of slots from lower to higher valued uses and that a more efficient manner of encouraging high slot use might be to disqualify air carriers from participating in slot lotteries in the future, if they sell lottery slots too quickly.

143. The Commission staff commented in response to an FCC Notice of Proposed Rulemaking on reinstituting signal carriage ("must carry") requirements, expressing its opposition to requiring cable television systems to carry the signals of local television stations. The staff concluded that this requirement could force cable stations to carry relatively low rated stations in place of programming that cable subscribers value more highly. The staff also concluded that there is insufficient evidence that "must carry" rules would provide competitive benefits by preventing cable systems from acquiring or exercising market power in advertising markets.

c) States

144. In response to the Arkansas Senate General Assembly’s request, the Commission staff commented on the potential competitive effects of the proposed Petroleum Trade Practices Act. The comment concluded that enactment of the bill would insulate gasoline refiners and marketers from competition and thereby cause gasoline prices in Arkansas to increase.

145. The Commission staff commented to the Illinois Commerce Commission on their proposed amendments to rules regulating intrastate trucking, advising that the rules would make entry into this industry in Illinois more difficult. The staff also stated that relaxing rather than tightening restrictions on entry into the industry has benefitted consumers and competition by increasing choices, improving service, and reducing prices for the transportation of goods.

146. The Commission staff commented to the Illinois Blue Ribbon Telecommunications Task Force on the state’s regulation of intrastate telecommunications services. The comment stated that price cap regulation is a better alternative than rate of return regulation because it allows firms to retain a portion of costs savings, while a rate of return provides little incentive to reduce costs since the state’s regulatory commission generally mandates that cost reductions can be fully rebated to customers.

147. The Commission commented on a New Jersey bill that would prohibit physicians from dispensing more than a 72-hour supply of drugs or medicines to any patient, unless the drugs or medicines are dispensed at no charge. The staff suggested that the effect of legislatively restricting physician dispensing unnecessarily may deprive consumers of the benefits of choice, convenience and price competition, and recommended that the legislature consider whether less restrictive health and safely standards are sufficient to protect the public.

148. The Commission staff commented in response to the New Mexico supreme court regarding amendments to the New Mexico Code of Professional Conduct. The staff concluded that the amendments could restrict the flow of truthful and

useful information to consumers and impede competition or increase costs to a greater extent than is necessary to achieve consumer benefits. The staff recommended that the court consider modifying the rules to permit a wider range of truthful communications, and to narrow the prohibitions to target only those representations that pose a clear likelihood of injury.

B. Department of Justice Trade Policy Activities

149. The Department continued to participate in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade policy. During 1991, for example, the Department continued its participation in discussions with the European Community and member governments concerning telecommunications issues and funding of Airbus Industrie programs. The Department has held extensive consultations with the Japanese government regarding the Structural Impediments Initiative, and has participated in the multilateral Uruguay Round negotiations on the General Agreement on Tariffs and Trade.

V. NEW STUDIES RELATED TO ANTITRUST POLICY

A. Department of Justice Economic Discussion Papers

150. The Economic Analysis Group of the Antitrust Division regularly prepares study papers on topics of interest to antitrust practitioners. A list of papers published during 1991 is annexed to this report as Appendix I. The papers may be obtained from the Economic Analysis Group, Antitrust Division, Department of Justice, Judiciary Center Building, Room 11-453, 555 Fourth St., N.W., Washington, D.C. 20001.

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

151. Although the Commission is primarily a law enforcement agency, it also collects, analyzes, and publishes information about various aspects of the nation’s economy. This work is done by the Bureau of Economics, and consists of studies on a broad array of topics relating to antitrust, consumer protection and regulation. A list of FTC studies that are available to the public is provided below. Studies may be obtained from the Federal Trade Commission, Division of International Antitrust, 601 Pennsylvania Ave., N.W., Washington, D.C. 20580.

Appendix I

DEPARTMENT OF JUSTICE: ANTITRUST DIVISION ECONOMIC ANALYSIS GROUP
DISCUSSION PAPERS, 1991

1. McAfee, R. Preston and Marius Schwartz, "Two-Part Tariffs to Competing Firms: Destructive Recontracting, Nondiscrimination, and Exclusivity," EAG 91-1, January 7, 1991.

2. Town, Robert J., "Merger Waves and the Structure of Merger and Acquisition Time Series," EAG 91-2, February 15, 1991.

3. Werden, Gregory J., "A Review of the Empirical and Experimental Evidence on the Relationship between Market Structure and Performance," EAG 91-3, May 8, 1991.

4. Vistnes, Gregory S., "An Empirical Investigation of Procurement Contract Structures," EAG 91-4, May 20, 1991.

5. Town, Robert J., "Price Wars and Demand Fluctuations: A Re-examination of the Joint Executive Committee," EAG 91-5, June 4, 1991.

6. Werden, Gregory J. and Luke M. Froeb, "Correlation, Casuality, and All that Jazz: The Inherent Shortcomings of Price Tests for Antitrust Market Delineation," EAG 91-6, June 12, 1991.

7. Froeb, Luke M., and Gregory J. Werden, "Endogeneity in the Concentration-Price Relationship: Causes and Consequences," EAG 91-7, July 1, 1991.

8. Rubinovitz, Robert, "Market Power and Price Increases for Basic Cable Service Since Deregulation," EAG 91-8, August 6, 1991.

9. Kimmel, Sheldon, "A Fundamental Bias in Studying Effects of Concentration on Price," EAG 91-9, August 15, 1991.

10. Pittman, Russell, "Some Critical Provisions in the Antimonopoly Laws of Central and Eastern Europe," EAG 91-10, September 20, 1991. The International Lawyer, forthcoming.

11. Werden, Gregory J., "Market Delineation under the Merger Guidelines: A Tenth Anniversary Retrospective," EAG 92-1, January 2, 1992.

12. Pittman, Russell, "Merger Law in Central and Eastern Europe," EAG 92-2, January 9, 1992.

13. Majeurus, David W., "Durable Goods Monopoly with a Finite But Uncertain Number of Consumers," EAG 92-3, February 3, 1992.

Appendix II

FEDERAL TRADE COMMISSION ECONOMIC WORKING PAPERS AND REPORTS, 1991

Economic Reports

1. Petroleum Tariffs as a Source of Government Revenue, Keith B. Anderson and Michael R. Metzger, February 1991.

Working Papers

1. Quality Choice, Trade Policy, and Firm Incentives, (WP#183), James D. Reitzes, January, 1991.

2. Housing Demand and Property Tax Incidence in a Life-Cycle Framework, (WP#184), Seth B. Sacher, January 1991.

3. Do Employees Regard Wage Cuts and Layoffs as Opportunities?, (WP#185), John David Simpson, January 1991.

4. Some Antitrust Concerns of Partial Equity Acquisitions,(WP#186), A.E. Rodriguez, March 1991.

5. Movements in the Earnings-Schooling Relationship, 1940-1988, (WP#187), Mary T. Coleman, March 1991.

6. Does North America Labor Demand Adjustment Differ from that in Britain?, (WP#188), Richard Fry, May 1991.

7. Merger and Regulatory Incentives, (WP#189), Mark D. Williams, May 1991.

8. Are Judges Smarter than Economists? Sunk Costs, The Threat of Entry and the Competitive Process, (WP#190), Andrew N. Kliet & Malcolm Coate, June 1991.

9. Bondholder Reaction to Increases in Leverage, (WP#191), John Simpson, June 1991.

10. Antidumping Policy, (WP#192), James D. Reitzes, July 1991.

Miscellaneous Studies

1. Technological Integration of Large, Thomas R. Iosso, July 9, 1991.

2. Segment Reporting: The Cost Allocation Issue, Alexander J. Sannella, September 1991.

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END-OF-TEXT