

Federal Trade Commission **Bureau of Competition**

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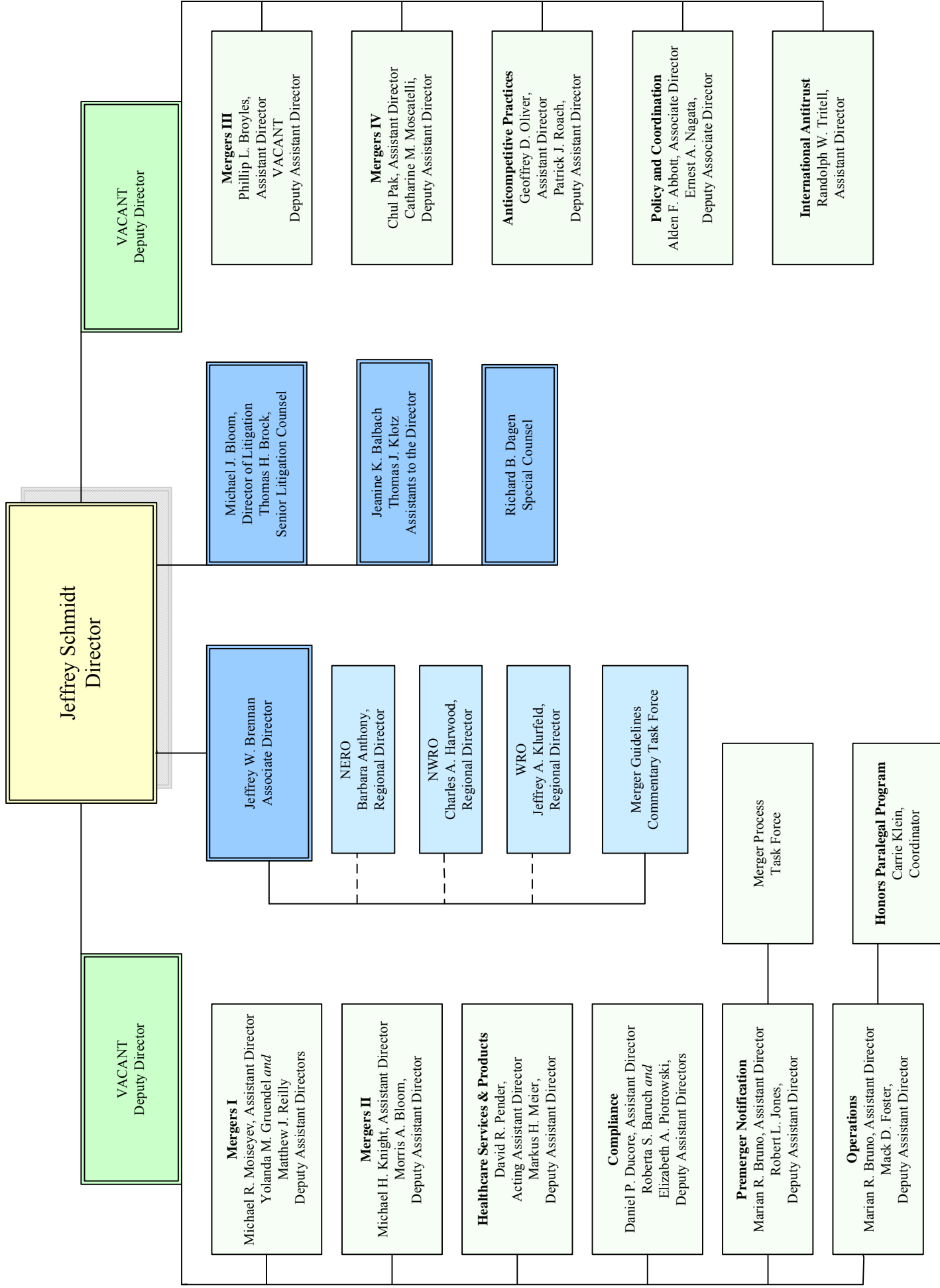


**Antitrust Enforcement Activities
Fiscal Year 2002 - March 15, 2006**

ABA Antitrust Section Spring Meeting 2006

Federal Trade Commission Bureau of Competition

January 2006



**ABA ANTITRUST SECTION
SPRING MEETING**

**Summary of Bureau of Competition Activity
Fiscal Year 2002 Through March 15, 2006**

Table of Contents

I.	Mergers	1
A.	Consent Orders	1
	Airgas, Inc.....	1
	American Air Liquide, Inc.....	1
	Allergan, Inc.	1
	Amgen Inc.....	1
	Aspen Technology, Inc.....	2
	Baxter International, Inc.	2
	Bayer AG	2
	Buckeye Partners, L.P.....	2
	Cemex, S.A.	3
	Cephalon, Inc.	3
	Chevron Corporation	3
	Chevron Texaco Corporation.....	3
	Cytec Industries, Inc.	3
	Dainippon Ink and Chemicals, Inc.....	3
	DaVita Inc.....	4
	Deutsche Gelatine-Fabriken Stoess AG.....	4
	Diageo plc	4
	DSM N.V.	4
	Enterprise Products Partners L.P.	4
	GenCorp Inc.....	5
	General Electric Company	5
	General Electric Company.....	5
	Genzyme Corporation.....	5
	INA-Holding Schaeffler KG.....	5
	Itron, Inc.....	5
	Johnson & Johnson	6
	Koninklijke Ahold NV.....	6
	Libbey, Inc.	6
	Metso Oyj.....	6
	Magellan Midstream Partners, L.P.	7
	MSC. Software Corporation	7
	Nestle Holdings, Inc.....	7
	Novartis AG.....	7
	Occidental Chemical Corporation.....	7
	Penn National Gaming, Inc.....	8

	Pfizer Inc.....	8
	Phillips Petroleum Company	8
	Quest Diagnostics, Inc.	8
	Sanofi-Synthélabo.....	8
	Shell Oil Company.....	8
	SmithKline Beecham plc	9
	Solvay S.A.	9
	Southern Union Company.....	9
	Teva Pharmaceutical Industries Ltd.....	9
	The Procter & Gamble Company	9
	Valero Energy Corporation.....	9
	Valero L.P.	10
	Wal-Mart Stores, Inc.....	10
B.	Authorizations to Seek Preliminary Injunctions	10
	Aloha Petroleum, Ltd.....	10
	Arch Coal, Inc.....	10
	Cytoc Corporation.....	11
	Deutsche Gelatine-Fabriken Stoess AG.....	11
	Diageo plc	11
	Kroger Company/Raley's Corporation	11
	Libbey, Inc.	11
	Meade Instruments Corporation	12
	Nestlé Holdings, Inc.....	12
	Vlasic Pickle Company.....	12
C.	Commission Opinions/Initial Decisions	12
	Chicago Bridge & Iron Company	12
	Northwestern Healthcare Corporation.....	13
D.	Court Decisions	13
	Arch Coal, Inc.....	13
	Swedish Match AB	14
E.	Order Violations	14
	Boston Scientific Corporation.....	14
	RHI AG.....	14
F.	Other Commission Orders	14
	H.J. Heinz Company	14
G.	Administrative Complaints	14
H.	Other	15
	Best Practices Analysis for Merger Review Process	15
	Conference on the Price Effects of Mergers and Concentration in the United States Petroleum Industry.....	16
	Guidelines for Merger Investigations	16
	Horizontal Merger Investigation Data	16
	Merger Efficiency Roundtable.....	16
	Merger Enforcement Workshop	16
	Merger Remedies - Second Workshop	16
II.	Hart-Scott-Rodino Antitrust Improvements Act Enforcement	17

A.	Court Decisions	17
	Scott R. Sacane	17
	The Hearst Trust and The Hearst Corporation.....	17
	William H. Gates, III	17
B.	Consent Orders	17
C.	Complaints - Filed	18
	Blockbuster, Inc.	18
D.	Complaints - Authorized	18
	Arch Coal, Inc.	18
E.	Rules and Formal Interpretations	18
F.	Other	19
III.	Non-Merger Enforcement	20
A.	Commission Opinions/Initial Decisions	20
	Kentucky Household Goods Carriers Association, Inc.	20
	North Texas Specialty Physicians.....	20
	Rambus, Inc.	21
	South Carolina State Board of Dentistry	21
	Union Oil of California.....	21
B.	Court Decisions	22
	PolyGram Holding, Inc. (The Three Tenors).....	22
	Schering-Plough Corporation	22
C.	Authorizations to Seek Preliminary/Permanent Injunctions	23
	Alpharma, Inc. and Perrigo Company	23
	Mylan Laboratories, Inc.....	23
	Warner Chilcott.....	23
D.	Consent Orders	24
	Alabama Trucking Association, Inc.	24
	American Home Products Corporation.....	24
	American Institute for Conservation of Historic and Artistic Works.....	24
	Anesthesia Service Medical Group, Inc. and Grossmont Anesthesia Services Medical Group	24
	Aurora Associated Primary Care Physicians, L.L.C.....	25
	Biovail Corporation	25
	Biovail Corporation and Elan Corporation	25
	Bristol-Myers Squibb Company	25
	California Pacific Medical Group dba Brown and Toland Medical Group.....	26
	Carlsbad Physician Association.....	26
	Clark County, Washington Attorneys.....	26
	Evanston Northwestern Healthcare Corporation	26
	FMC Corporation and Asahi Chemical Industry Co. Ltd.....	26
	Health Care Alliance of Laredo, L.C.,.....	27
	Indiana Household Movers and Warehousemen, Inc.	27
	Institute of Store Planners.....	27
	Iowa Movers and Warehousemen’s Association.....	27
	Maine Health Alliance	27
	Memorial Hermann Health Network Providers.....	27

	Minnesota Transport Services Association.....	28
	Movers Conference of Mississippi, Inc.	28
	National Academy of Arbitrators.....	28
	New Hampshire Motor Transport Association.....	28
	New Millennium Orthopaedics.....	28
	Obstetrics & Gynecology Medical Corporation of Napa Valley.....	28
	Partners Health Network, Inc.....	29
	Physician Network Consulting, L.L.C.....	29
	Piedmont Health Alliance, Inc.....	29
	Preferred Health Services, Inc.	29
	Professional Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia A. Brauchler.....	30
	Professionals in Women’s Care.....	30
	San Juan IPA.....	30
	Southeastern New Mexico Physicians IPA.....	30
	South Georgia Health Partners, L.L.C.....	30
	SPA Health Organization dba Southwest Physician Associates.....	31
	Surgical Specialists of Yakima.....	31
	System Health Providers.....	31
	Tenet Healthcare Corporation.....	31
	Union Oil Company of California.....	31
	Valassis Communications, Inc.....	32
	Virginia Board of Funeral Directors and Embalmers.....	32
	Washington University Physician Network.....	32
	White Sands Health Care System, L.L.C.....	32
E.	Administrative Complaints	32
F.	Other	32
	Public Documents/Policy Statements/Conferences.....	32
	Commission Studies/Guidelines.....	33
	Advisory Opinions.....	34
	Advocacy Filings.....	36
	Workshops/Hearings/Conferences.....	41
	Intellectual Property and Patent Law.....	43
	Other.....	44
IV.	International Activities	44
V.	Competition Speeches	46
VI.	Statistics	54

ABA ANTITRUST SECTION SPRING MEETING

Summary of Bureau of Competition Activity Fiscal Year 2002 Through March 15, 2006

I. Mergers

A. Consent Orders

Airgas, Inc.

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

American Air Liquide, Inc.

(Final Order June 29, 2004): L'Air Liquide was permitted to acquire Messer Griesheim GmbH, a leading industrial gas producer. Under terms of the order, Air Liquide is required to divest six air separation units operated by Messer in California, Texas, Louisiana, and Mississippi within six months. According to the complaint, the transaction as proposed would substantially lessen competition in the market for liquid argon, liquid oxygen and liquid nitrogen.

Allergan, Inc.

(Proposed Consent Agreement Accepted for Public Comment on March 8, 2006): The consent order requires that Allergan and Inamed will divest the rights to develop and distribute Reloxin, a potential Botox rival, to settle charges that Allergan's \$3.2 billion purchase of Inamed would reduce competition and force consumers to pay higher prices for botulinum toxin type A products. Under the terms of the FTC settlement, the companies will return the development and distribution rights to Reloxin to Ipsen Ltd., its U.K.-based manufacturer.

Amgen Inc.

(Final Order September 3, 2002): Amgen settled antitrust charges that its proposed \$16 billion acquisition of Immunex Corporation would reduce competition and tend to create a monopoly in

the biopharmaceutical markets for neutrophil (white blood cell) regeneration factors; tumor necrosis factor (TNF) inhibitors; and interleukin-1 (IL-1) inhibitors. The consent order requires the firms to sell all of Immunex's assets related to Leukine - a neutrophil regeneration factor - to Schering AG; license certain intellectual property rights to TNF inhibitors to Serono S.A.; and license certain intellectual property rights related to IL-1 inhibitors to Regeneron Pharmaceuticals Inc.

Aspen Technology, Inc.

(Final Order December 20, 2004) Under terms of a consent order, Aspen agreed to divest Hypotech's continuous process and batch process assets and Aspen's operator training software and service business to a Commission-approved buyer to settle charges in the complaint and resolve the administrative proceedings. The Commission issued an administrative complaint on August 6, 2003 that challenged Aspen's 2002 acquisition of Hyprotech, Ltd. alleging that the acquisition eliminated a significant competitor in the provision of process engineering simulation software for industry. According to the complaint, the acquisition has led to reduced innovation competition in six specific process engineering simulation software markets.

Baxter International, Inc.

(Final Order February 3, 2003): Baxter settled Commission concerns stemming from its \$316 million proposed acquisition of Wyeth Corporation's generic injectable drug business and agreed to divest several pharmaceutical products. The Commission charged that the acquisition would reduce competition in the manufacture and sale of propofol (a general anesthetic); new injectable iron replacement therapies; metoclopramide (used to treat nausea); and vecuronium and pancuronium (neuromuscular blocking agents used to temporarily freeze muscles during surgery). The consent order requires divestitures in each of the pharmaceutical markets.

Bayer AG

(Final Order August 2, 2002): A consent order permits Bayer to purchase Aventis CropScience Holdings S.A. from Aventis S.A. The order requires Bayer to divest businesses and assets in the following four major markets: new generation chemical insecticide products; new generation chemical insecticide active ingredients; post-emergent grass herbicides for spring wheat; and cool weather cotton defoliant. According to the complaint, the transaction as proposed would result in the elimination of both actual and potential competition in the four markets; increase barriers to entry; reduce innovation competition for certain products; and increase the possibility of coordinated interaction between competitors.

Buckeye Partners, L.P.

(Final Order December 17, 2004): Buckeye agreed to notify the Commission before acquiring any interest in the Niles petroleum terminal for a period of ten years under provisions of a consent order. The consent order settled charges that Buckeye's proposed acquisition of five refined petroleum products pipelines and 24 petroleum products terminals in the United States from Shell Oil Company would reduce competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area of Niles, Michigan.

Cemex, S.A.

(Final Order March 25, 2005): Cemex S.A. agreed to settle concerns stemming from its proposed \$5.8 billion acquisition of RMC Group PLC. The final consent order required Cemex to divest RMC's five ready-mix concrete plants in the Tucson, Arizona area, at no minimum price to a Commission-approved buyer.

Cephalon, Inc.

(Final Order September 20, 2004): The consent order settled charges that Cephalon's proposed acquisition of Cima Labs, Inc. would allow Cephalon to continue its monopoly in the United States market for drugs that eliminate or reduce the spikes of severe pain that chronic cancer patients experience. The consent order required Cephalon to grant Barr Laboratories, Inc. a fully paid, irrevocable license to make and sell a generic version of Cephalon's breakthrough cancer pain drug, Actiq, in the United States.

Chevron Corporation

(Final Order January 4, 2002): A consent order permitted the \$45 billion merger of Chevron and Texaco Inc., but required significant divestitures in the petroleum industry, including gasoline marketing assets, refining and bulk supply facilities, crude oil pipeline interests and terminaling facilities.

Chevron Texaco Corporation

(Final Order July 27, 2005): Under the terms of the consent orders Chevron and Unocal will cease enforcing Unocal's patents covering reformulated gasoline that complies with California Air resources Board Standard, will not undertake any new enforcement efforts related to the particular patents, and will cease all attempts to collect damages, royalties, or other payments related to the use of any of the patents. In addition, the companies will dismiss all pending legal actions related to alleged infringement of the patents. According to the complaint, the acquisition of the Unocal patents by Chevron would have facilitated coordinated interaction among downstream refiners and marketers of CARB gasoline.

Cytec Industries, Inc.

(Final Order April 7, 2005): A final consent order requires Cytec Industries, Inc. to divest UCB's Amino Resins Business in Massachusetts and Germany to a Commission-approved buyer. According to the complaint issued with the agreement, the acquisition as proposed would eliminate direct competition between the two firms in the market for amino resins used for industrial liquid coatings and rubber adhesion promotion.

Dainippon Ink and Chemicals, Inc.

(Final Order March 13, 2003): Dainippon agreed to divest the perylene business of its U.S. subsidiary, Sun Chemical Corporation, to Ciba Specialty Chemicals Inc. and Ciba Specialty Chemicals Corporation to settle allegations that its proposed acquisition of Bayer Corporation's high-performance pigment manufacturing facility would eliminate competition in the highly concentrated world market for perylenes – organic pigments used to impart unique shades of red color to products, including coatings, plastics and fibers.

DaVita Inc.

(Final Order November 18, 2005): The consent order resolves the competitive issues raised by DaVita's proposed \$3.1 billion purchase of rival outpatient dialysis clinic operator Gambro Healthcare Inc. from Gambro AB. Pursuant to the order, DaVita sold 69 dialysis clinics and ended two management services contracts in 35 markets across the United States within 10 days of consummating its purchase of Gambro. The Commission has approved Renal Advantage Inc. as the buyer of most of the clinics to be divested, and entered into an order to maintain assets with DaVita.

Deutsche Gelatine-Fabriken Stoess AG

(Final Order April 17, 2002): A consent order allowed DGF to complete its \$170 million acquisition of Leiner Davis Gelatin Corporation and its Goodman Fielder USA, Inc. subsidiary under terms that the entire pigskin and beef hide gelatin business of Goodman Fielder would be excluded from the transaction. The complaint issued with the order alleged that if the firms were allowed to consummate the transaction, as originally proposed, they would account for more than 50 percent of the U.S. market for these gelatin products used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The consent order requiring the restructured transaction was negotiated after the Commission authorized staff to seek a preliminary injunction in federal district court to block the parties from consummating the transaction.

Diageo plc

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

DSM N.V.

(Final Order January 6, 2004): A consent order permitted DSM N.V. to acquire the Vitamins and Fine Chemicals Division of Roche Holding AG but requires DSM to divest its phytase business to BASF AG within 10 days after the transaction is completed. Phytase is an enzyme added to certain animal feed to promote the digestion of nutrients necessary for livestock production.

Enterprise Products Partners L.P.

(Final Order November 23, 2004): Enterprise Products Partners L.P. settled charges that its \$13 billion merger with GulfTerra Energy/Partners L.P. would eliminate competition in two markets: the pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico; and propane storage and terminaling services in Hattisburg, Mississippi. The consent order requires the divestiture of an interest in a pipeline transportation system and an interest in a propane facility that serves the Dixie Pipeline.

GenCorp Inc.

(Final Order December 19, 2003): A consent order allowed GenCorp Inc. to acquire Atlantic Research Corporation while requiring the divestiture of Atlantic's in-space liquid propulsion business within six months of consummating the transaction. According to the complaint issued with the consent order, the transaction as originally planned would have lessened competition in the United States in four different types of in-space propulsion engines: monopropellant thrusters; bipropellant apogee thrusters; dual mode apogee thrusters; and biopropellant attitude control thrusters.

General Electric Company

(Final Order January 28, 2004): A final consent order settled antitrust concerns stemming from General Electric Company's proposed acquisition of Agfa-Gevaert N.V.'s nondestructive testing business. According to the complaint issued with the consent order, the transaction as proposed would have eliminated competition in the United States markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages - equipment used to inspect the tolerance of materials without damaging them or impairing their future usefulness. The consent order requires General Electric to divest its worldwide Panametrics Ultrasonic NDT business to R/D Tech, Inc. within 20 days after the transaction is completed.

General Electric Company

(Final Order October 25, 2004): General Electric was permitted to acquire InVision Technologies, Inc. with conditions that it divest InVision's YXLON x-ray nondestructive testing and inspection equipment to a Commission approved acquirer. According to the complaint issued with the consent order, the two firms are direct competitors in a highly concentrated market. The consent order protects competition in the United States market for specialized x-ray testing and inspection including standard x-ray cabinets; x-ray systems equipped with automated defect recognition software; and high-energy x-ray generators.

Genzyme Corporation

(Final Order January 31, 2005): A consent order allowed Genzyme's acquisition of ILEX Oncology, Inc., but requires the companies to divest certain assets in the market for solid organ transplant acute therapy drugs. Specifically, Genzyme is required to divest all contractual rights related to ILEX's Campath®, an immunosuppressant antibody used in solid organ transplants to Schering AG.

INA-Holding Schaeffler KG

(Final Order February 15, 2002): The consent order permits INA's acquisition of FAG Kugelfischer Georg Schafer AG but requires the divestiture of FAG's cartridge ball screw support bearing business to Aktiebolaget SKF within 20 business days after the consummation of the INA/FAG transaction. According to the complaint issued with the consent order, the acquisition, as planned, would create a monopoly in the market worldwide.

Itron, Inc.

(Final Order August 5, 2004): The consent order, designed to preserve competition in the market for the manufacture and sale of mobile radio frequency automatic meter reading technologies for electric utilities in the United States, permitted Itron's \$255 million acquisition of Schlumberger

Electricity, Inc. The consent order requires Itron to grant a royalty-free, perpetual, and irrevocable license to Hunt Technologies, Inc., creating an effective competitor in this market that allows utility companies and others to gather electric consumption data automatically and remotely from electricity meters.

Johnson & Johnson

(Final Order December 12, 2005): The consent order protects competition in three medical device product markets affected by Johnson & Johnson's proposed \$25.4 billion acquisition of Guidant Corporation. Under the terms of the order, J&J is required to 1) grant to a third party a fully paid-up, non-exclusive, irrevocable license, enabling that third party to make and sell drug eluting stents with the Rapid Exchange delivery system, 2) divest to a third party J&J's endoscopic vessel harvesting product line, and 3) end its agreement to distribute Novare Surgical System, Inc.'s proximal anastomotic assist device.

Koninklijke Ahold NV

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

Libbey, Inc.

(Final Order October 7, 2002): The Commission authorized staff to seek a preliminary injunction to block Libbey's proposed \$332 million acquisition of Anchor Hocking, a subsidiary of Newell Rubbermaid, Inc., on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. The district court granted the Commission's request for an injunction on April 22, 2002. An administrative complaint, issued on May 9, extend the injunction until the conclusion of the administrative proceedings. Pursuant to the delegation of authority, the Commission withdrew the matter from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

Metso Oyj

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

Magellan Midstream Partners, L.P.

(Final Order November 23, 2004): Under terms of a consent order, Magellan completed its acquisition of pipelines and terminals in the Midwestern United States and a refined petroleum products terminal in Oklahoma City that supplies light petroleum products such as gasoline and diesel fuel from the Shell Oil Company. The consent order required Magellan to divest the Shell Oklahoma City terminal to a Commission-approved buyer within six months after the transaction is consummated.

MSC. Software Corporation

(Final Order October 29, 2002): MSC settled charges that its 1999 acquisitions of Universal Analytics, Inc. and Computerized Structural Analysis & Research Corp. eliminated competition between the three firms in the development and application of engineering software. The administrative complaint issued October 2000, alleged that the two acquisitions would eliminate competition for advanced versions of Nastran, an engineering simulation software program used throughout the aerospace and automotive industries. The consent order required MSC to divest at least one clone copy of its current advance Nastran through royalty-free perpetual, non-exclusive licenses to one or two acquirers approved by the Commission.

Nestle Holdings, Inc.

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

Novartis AG

(Final Order September, 21 2005): To resolve overlaps for three generic pharmaceuticals that arose from Novartis AG's acquisition of Eon Labs, Inc., under the terms of a consent order, Novartis is required to divest all the assets necessary to manufacture and market generic desipramine hydrochloride tablets, orphenadrine citrate extended release (ER) tablets, and rifampin oral capsules in the United States to Amide within 10 days of Novartis's acquisition of Eon. Further, Novartis, through its Sandoz generic pharmaceuticals division, will supply Amide with orphenadrine citrate ER and desipramide hydrochloride tablets until Amide obtains Food and Drug Administration (FDA) approval to manufacture the products itself, and will assist Amide in obtaining all necessary FDA approvals.

Occidental Chemical Corporation

(Final Order July 13, 2005): A consent order allows Occidental Chemical Company's purchase of the chemical assets of Vulcan Materials Company, provided Occidental divests Vulcan's Port Edwards, Wisconsin, chemical facility and related assets. The consent order alleviates the alleged anticompetitive impact of the acquisition in the markets for potassium hydroxide, anhydrous potassium carbonate (APC), and potassium carbonate, which includes APC and liquid potassium carbonate. The Port Edwards facility will be divested to ERCO Worldwide, or to another Commission-approved buyer within six months if a problem is encountered with ERCO sale.

Penn National Gaming, Inc.

(Final Order September 15, 2005): A consent order permitted Penn National Gaming, Inc.'s acquisition of Argosy Gaming Company, provided Penn sells Argosy's Baton Rouge casino to Columbia Sussex Corporation within four months of the order becoming final.

Pfizer Inc.

(Final Order May 27, 2003): A final consent order permits Pfizer Inc.'s acquisition of Pharmacia Corporation while requiring the divestiture of various products including extended release drugs used in the treatment of an overactive bladder; hormone replacement therapies; erectile dysfunction; canine arthritis; and motion sickness. Novartis AG, Neurocrine Biosciences, Inc., Schering-Plough Corporation, Johnson & Johnson, Insight Pharmaceuticals Corporation, and Cadbury Schweppes are named in the order as potential buyers of the various pharmaceuticals and products.

Phillips Petroleum Company

(Final Order February 7, 2003): A final consent order allows the merger of Phillips Petroleum and Conoco Inc. but requires certain divestitures and other relief to maintain competition in the gasoline refining market in specific areas of the United States. Among the assets to be divested are refineries, propane terminals, and natural gas gathering facilities. The combined firm will be known as ConocoPhillips.

Quest Diagnostics, Inc.

(Final Order April 3, 2003): Quest Diagnostics settled antitrust concerns that its proposed acquisition of Unilab Corporation would substantially increase concentration in the clinical laboratory testing services market by agreeing to divest clinical laboratory testing assets in Northern California to Laboratory Corporation of America.

Sanofi-Synthélabo

(Final Order September 20, 2004): The consent order settled antitrust concerns that Sanofi's proposed \$64 billion acquisition of Aventis would create significant overlaps in several markets for pharmaceutical products while creating the world's third largest pharmaceutical company. Under terms of the consent order, Sanofi must: 1) divest its Arixtra factor Xa inhibitor to GlaxoSmithKline, plc; 2) divest its key clinical studies for the Campto® cytotoxic colorectal cancer treatment to Pfizer, Inc. and 3) divest Aventis' contractual rights to the Estorra insomnia drug either to Sepracor, Inc. or to another Commission-approved buyer.

Shell Oil Company

(Final Order November 18, 2002): Shell Oil Company was allowed to complete its \$1.8 billion acquisition of Pennzoil-Quaker State Company but required to divest certain assets to maintain healthy competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. Under terms of the consent order, Shell and Pennzoil must divest its 50 percent interest in Excel Paralubes (a base oil refinery in Westlake, Louisiana) and freeze Pennzoil's right to obtain additional Group II supply under a contract with ExxonMobil at approximately current levels (up to 6,500 barrels of base oil per day).

SmithKline Beecham plc

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

Solvay S.A.

(Final Order June 25, 2002): Solvay settled antitrust concerns stemming from its proposed acquisition of Ausimont S.p.A. from Italenergia S.p.A., and agreed to divest its U.S. polyvinylidene fluoride (PVDF) operations and its interest in Alventia LLC, a joint venture which manufactures the main raw material for PVDF. According to the complaint, the proposed acquisition would lessen competition in two markets: the production and sale of all grades of PVDF; and the production and sale of melt-processible grades of PVDF.

Southern Union Company

(Final Order July 16, 2003): Southern Union Company settled antitrust concerns stemming from its proposed acquisition of the Panhandle pipeline from CMS Energy Corporation. The consent order permitted the acquisition but required Southern Union to terminate an agreement to manage the Central pipeline which transports natural gas to several counties in Missouri and Kansas.

Teva Pharmaceutical Industries Ltd

(Final Order March 7, 2006): A consent allowed Teva to acquire IVAX Corporation, provided the companies sell the rights and assets needed to manufacture and market 15 generic pharmaceutical products. Among the drugs sold were several forms of generic amoxicillin and amoxicillin clavulanate potassium that are widely used in the United States.

The Procter & Gamble Company

(Final Order December 16, 2005): The consent order permitted The Procter & Gamble Company's acquisition of rival consumer products manufacturer The Gillette Company, provided the companies divest: 1) Gillette's Rembrandt at-home teeth whitening business; 2) P&G's Crest SpinBrush battery-powered and rechargeable toothbrush business; and 3) Gillette's Right Guard men's antiperspirant deodorant business. In addition, P&G must amend its joint venture agreement with Philips Oral Health Care, Inc. regarding the Crest Sonicare IntelliClean System rechargeable toothbrush to allow Philips to independently market and sell rechargeable toothbrushes.

Valero Energy Corporation

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

gasoline increased just one cent per gallon. CARB gasoline meets the specifications of the California Air Resources Board.

Valero L.P.

(Final Order July 27, 2005): The consent order permitted Valero L.P. to acquire Kaneb Services LLC and Kaneb Pipe Line Partners subject to the divestitures of assets that will preserve existing competition for petroleum transportation and terminaling in Northern California, Pennsylvania, and Colorado, and avoid a potential increase in bulk gasoline and diesel prices. The order also requires Valero to develop an information firewall and maintain open, non-discriminatory access to two retained Northern California terminals, in order to ensure access to ethanol terminaling in Northern California.

Wal-Mart Stores, Inc.

(Final Order February 27, 2003): A consent order settled Commission concerns that Wal-Mart's proposed acquisition of the largest supermarket chain in Puerto Rico, Supermercados Amigo, Inc., would eliminate competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned or controlled by Amigo. While the consent order permits the acquisition, it requires Wal-Mart to divest four Amigo supermarkets in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico to Supermercados Maximo.

B. Authorizations to Seek Preliminary Injunctions

Aloha Petroleum, Ltd

(July 26, 2005): The Commission authorized staff, in conjunction with the Hawaii Attorney General, to seek a preliminary injunction to block Aloha Petroleum's proposed acquisition of Trustreet Properties. Aloha sought to acquire Trustreet's half interest in the Barber Point petroleum importing terminal, when Aloha already owned the other half interest. The proposed acquisition would have reduced the number of marketers with ownership or access to a refinery or importing terminal from five to four, and the number of suppliers selling to unintegrated retailers from three to two. After Aloha subsequently announced a long-term agreement with a third party, Mid-Pac Petroleum, that would enable Mid-Pac to replace Trustreet as a bulk gasoline supplier, the Commission sought to dismiss its federal court complaint on the ground of changed circumstances.

Arch Coal, Inc.

(March 30, 2004): The Commission authorized staff to file a complaint to block Arch Coal, Inc.'s proposed acquisition of Triton Coal Company, L.L.C. from New Vulcan Holdings, L.L.C. on grounds that the acquisition would increase concentration and tend to create a monopoly in the market for coal mined from the Southern Powder River Basin and in the production of 8800 British Thermal Unit coal. On April 1, 2004, the complaint was filed in the U.S. District Court for the District of Columbia. On June 13, 2005 the Commission announced that it was closing its investigation, saying that it will not continue with administrative litigation challenging the deal.

Cytc Corporation

(June 24, 2002): The Commission authorized staff to seek a preliminary injunction to block the acquisition of Digene Corporation on grounds that the combination of the two firms would reduce competition and increase consumer prices within the highly concentrated market for primary cervical cancer screening tests, both now and in the future. The parties abandoned the transaction before court papers could be filed.

Deutsche Gelatine-Fabriken Stoess AG

(January 15, 2002): The Commission authorized staff to seek a preliminary injunction to block DGF's proposed acquisition of Leiner Davis Gelatin Corporation and its Goodman Fielder USA, Inc. subsidiary. According to the Commission this transaction, if allowed to proceed as planned, would increase the likelihood of anticompetitive activity in the U.S. market for pigskin and beef hide gelatin, used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The combination of the two firms would account for more than 50 percent of the relevant market in the U.S. A proposed consent agreement designed to remedy the significant antitrust concerns was accepted for public comment March 7, 2002; the consent order was finalized April 17, 2002.

Diageo plc

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

Kroger Company/Raley's Corporation

(October 2, 2002): The preliminary injunction authorized by the Commission during the investigation into Kroger's acquisition of 18 Raley's supermarkets in the Las Vegas, Nevada area was not filed. After staff determined that the transaction would promote healthy competition in the Las Vegas/Henderson area due to the rapid growth of the market and the presence of Wal-Mart, Albertson's, Kroger and Safeway - the four major competitors in the area, the investigation was closed.

Libbey, Inc.

(December 18, 2001): The Commission authorized staff to seek a preliminary injunction to block Libbey's proposed \$332 million acquisition of Anchor Hocking, a subsidiary of Newell Rubbermaid, Inc., on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. The district court granted the Commission's request for an injunction on April 22, 2002. An administrative complaint, issued on May 9, extend the injunction until the conclusion of the administrative proceedings. Pursuant to the delegation of authority, the Commission withdrew the matter from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

Meade Instruments Corporation

(May 29, 2002): The Commission authorized staff to seek a temporary restraining order and a preliminary injunction to prevent Meade from acquiring any of the assets that could become available as a result of the pending bankruptcy proceedings in Tasco Holdings, Inc.'s Celestron International. According to the Commission, the purchase of the performance telescope assets would eliminate competition in that market and create a monopoly for the Schmidt-Cassegrain telescopes. Meade agreed not to submit any bid for Celestron or its assets.

Nestlé Holdings, Inc.

(March 4, 2003): The Commission authorized staff to seek a preliminary injunction to block the merger of Nestlé and Dreyer's Grand Ice Cream, Inc. on grounds that the merger would reduce competition in the highly concentrated market for superpremium ice cream. Nestlé markets superpremium ice cream under the Häagen Dazs brand; Dreyer's superpremium brands include Dreamery, Godiva and Starbucks. Before the complaint was filed in a federal district court, the parties agreed to enter into a consent agreement to settle the charges. The final order requires the divestiture of superpremium ice cream brands Dreamery and Godiva, the Whole Fruit sorbet brand, and Nestlé's distribution assets to CoolBrands International, Inc.

Vlasic Pickle Company

(October 22, 2002): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of Claussen Pickle Company by Hicks, Muse, Tate & Furst Equity Fund V L.P., the owner of Vlasic Pickle Company on grounds that the transaction would combine the dominant firm in the market for refrigerated pickles (Claussen) with its most significant competitor in refrigerated pickles (Vlasic). Six days after the complaint was filed in federal district court, the parties abandoned the transaction.

C. Commission Opinions/Initial Decisions

Chicago Bridge & Iron Company

(January 7, 2005): The Commission upheld in part the ruling of an administrative law judge that Chicago Bridge & Iron's acquisition of the Water Division and the Engineered Construction Division of Pitt-Des Moines, Inc. created a near-monopoly in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. In an effort to restore competition as it existed prior to the merger, the Commission ordered Chicago Bridge to reorganize the relevant product business into two separate, stand-alone, viable entities capable of competing in the markets described in the complaint and to divest one of those entities within six months.

With an administrative complaint issued on October 25, 2001, the Commission challenged the February 2001 purchase of the Water Division and Engineered Construction Division of Pitt-Des Moines, Inc. alleging that the acquisition significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. The initial decision filed June 27, 2003 upheld the complaint.

On June 27, 2004, an administrative law judge upheld the complaint and ordered the divestiture all of the assets acquired in the acquisition. In December 2004, the Commission

approved an interim consent order prohibiting Chicago Bridge & Iron from altering the assets acquired from Pitt-Des Moines, Inc. except “in the ordinary course of business.” These assets included but were not limited to real property; personal property; equipment; inventories; and intellectual property.

Northwestern Healthcare Corporation

(October 17, 2005): In an Initial Decision the Administrative law judge found that Evanston Northwest Healthcare Corporation’s acquisition of an important competitor, Highland Park Hospital, resulted in higher prices and substantially lessened competition for acute care inpatient services in parts of Chicago’s northwestern suburbs. The Administrative law judge found that the evidence established that the merged hospital exercised its enhanced post-merger market power to obtain price increases significantly above its premerger prices and substantially larger than price increases obtained by comparable hospitals. The ALJ also found that the evidence ruled out explanations for the price increase, other than the exercise of market power. The ALJ entered an order that would require the divestiture of the acquired hospital.

The hospital’s appeal of the ALJ’s decision and order requiring divestiture of Highland Park Hospital is now pending before the Commission.

On February 10, 2004 the Commission issued an administrative complaint alleging that following Evanston Northwestern Healthcare Corporation’s acquisition of Highland Park Hospital prices charged to health insurers for medical services increased and, therefore, higher costs for health insurance were passed on to consumers of hospital services in the Cook and Lake counties of Illinois. The complaint also alleges that a physicians group affiliated with both hospitals, Highland Park Independent Physician Group, negotiated prices for physicians on staff at Evanston as well as for several hundred independent physicians not affiliated with either hospital. According to the complaint, these actions constitute illegal price fixing among competing physicians or physician groups and deny consumers the benefits of competition in physician services.

In May, 2005, the Commission approved a final consent order to resolve a separate count in the complaint involving alleged price fixing by doctors associated with the two hospitals.

D. Court Decisions

Arch Coal, Inc.

(August 13, 2004): The U.S. District Court for the District of Columbia denied the Commission’s request for a preliminary injunction to block Arch Coal, Inc.’s proposed acquisition of Triton Coal Company, L.L.C. from New Vulcan Holdings, L.L.C. The parties consummated the deal after the Circuit Court of Appeals for the District of Columbia refused to issue a stay pending an appeal of the district court decision.

The administrative complaint issued on April 6, 2004 challenged the proposed acquisition of all the assets of Triton Coal Company, L.L.C. from New Vulcan Coal Holdings, L.L.C. According to the complaint, the acquisition would have combined two of the four leading producers of coal in Wyoming’s Southern Powder River Basin. On September 10, 2004, the administrative complaint was withdrawn from adjudication. The Commission decided not to pursue an appeal of the decision of the U.S. District Court for a preliminary injunction to block the sale of Triton to Arch Coal. On June 13, 2005 the Commission announced that it was closing

its investigation, saying that it will not continue with administrative litigation challenging the deal.

Swedish Match AB

(Dec. 14, 2000): The U.S. District Court for the District of Columbia granted the agency's request for a preliminary injunction to block the proposed acquisition of the loose leaf chewing tobacco business of National Tobacco Company, L.P. The parties later abandoned the transaction.

E. Order Violations

Boston Scientific Corporation

(March 31, 2003): A federal district judge ordered Boston Scientific Corporation to pay \$7,040,000 in civil penalties to settle charges that it violated a 1995 consent order when it failed to provide Hewlett-Packard Company with a license to all of its intellectual property and technical information relating to intravascular ultrasound catheters. The complaint was filed on October 31, 2000 by the Department of Justice on behalf of the Commission. The trial was held in August 2002.

RHI AG

(April 1, 2004): RHI AG paid a total civil penalty of \$755,686.41 to settle charges that it violated a 1999 consent order concerning its acquisition of Global Industrial Technologies, Inc. According to the complaint, filed in the United States District Court for the District of Columbia, RHI not only failed to divest the two refractories plants and other assets to Resco Products, Inc., but it did not completely comply with other provisions required by the settlement agreement.

F. Other Commission Orders

H.J. Heinz Company

(December 7, 2001): The Commission dismissed the Part 3 administrative complaint after Heinz abandoned its proposed merger with Milnot Holding Company, the owner of Beech-Nut Nutrition Corporation, that would combine the nation's second- and third- largest manufacturers of jarred baby food, respectively.

G. Administrative Complaints

None

H. Other

Reforms to the Merger Review Process

(Effective February 17, 2006): Reforms to the agency's merger review process establishing that the FTC will:

- limit the number of employees required to provide information in response to a second request, provided the party complies with specified conditions;
- reduce the time period for which a party must provide documents in response to the second request;
- allow a party to preserve far fewer backup tapes and produce documents on those tapes only when responsive documents are not available through more accessible sources; and
- significantly reduce the amount of information parties must submit regarding documents they consider to be privileged.

Best Practices Analysis for Merger Review Process

(Announced March 15, 2002): The Commission conducted "brown bag" public workshops in Chicago, Los Angeles, New York, San Francisco, and Washington, DC during 2002 to solicit input from a broad range of interest groups who have participated in the Commission's or the Department of Justice's merger review process. The areas under consideration included:

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

Remedies issues included:

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

Workshops held:

- Workshop on Accounting and Financial Data (July 10, 2002) Washington, DC
- General Session on Best Practices for Merger Investigations (June 27, 2002)

Washington, DC

- General Session on Best Practices for Merger Investigations (June 25, 2002) Los

Angeles, CA.

- General Session on Best Practices for Merger Investigations (June 12, 2002) Chicago,

IL

- Electronic Records (June 5, 2002) Washington, DC

- General Session on Best Practices for Merger Investigations (June 5, 2002) San

Francisco, CA

Conference on the Price Effects of Mergers and Concentration in the United States Petroleum Industry

(January 14, 2005, Washington, DC.) The conference reviewed two studies that examined price effects within the petroleum industry: the March 2004 case study of the effects of the Marathon/Ashland Corporation joint venture; the second, the May 2004 report by the Government Accountability Office that examined the effects of mergers and market concentration in the United States petroleum industry.

Guidelines for Merger Investigations

The Guidelines represent the first outcome of the Best Practices Workshop which began March 2002. Available at www.ftc.opa/2002/12/mergerguides Primary components:

- Witnesses will be able to obtain investigational hearing transcripts.
- Documents will no longer have to be sorted or identified by specification.
- Second sweeps will be avoided whenever possible.
- In response to second requests, parties will be able to submit documents and other materials in an electronic format rather than in hard copy.
- Sample products are no longer required by Specification 5(a) of the Model Second Request.

Horizontal Merger Investigation Data

Fiscal Years 1996 - 2003 Staff analysis of horizontal investigations. The staff tabulated certain market structure information as it relates to the Commission's decision whether or not to seek relief in specific markets investigated. Released February 2004.

Merger Efficiency Roundtable

(December 9 - 10, 2002; Washington, DC): Experts in mergers and acquisitions from the academic, consulting, and business communities gave presentations on how to determine whether a proposed transaction is likely to generate merger efficiencies.

Merger Enforcement Workshop

(February 17 - 19, 2004) sponsored by the Federal Trade Commission and the Department of Justice. Topics discussed:

- Hypothetical Monopolist Test
- Concentration & Market Shares
- Monopsony
- Non-Price Competition/Innovation
- Unilateral Effects
- Coordinated Effects
- Uncommitted Entry
- Efficiencies/Dynamic Analysis/Integrated Analysis

Merger Remedies - Second Workshop

(October 23, 2002; New York, New York): Workshop, co-hosted by the Antitrust and Trade Regulation Committee of The Association of the Bar of the City of New York, was designed to gather information from a broad range of interested parties regarding consent order remedies in merger and acquisition matters.

II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement

A. Court Decisions

Scott R. Sacane

(September 26, 2005): A Connecticut-based hedge fund manager who failed to report several large stock purchases before they were made, as required by the Hart-Scott-Rodino (HSR) Premerger Notification Act, paid a \$350,000 civil penalty to settle Federal Trade Commission charges. The complaint alleged that Scott Sacane, manager of the Durus Life Sciences Master Fund, failed to make four required premerger notification filings. His failure to do so violated the HSR Act for each transaction.

The Hearst Trust and The Hearst Corporation

(October 11, 2001): Hearst and its subsidiary paid a \$4 million civil penalty to settle charges that they failed to include required documents in the notification and report form file in 1998 for the proposed acquisition of Medi-Span International, Inc. The complaint alleged that the omitted documents hindered the antitrust agencies in their review and analysis of the proposed acquisition. The complaint, stipulation and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General. During fiscal year 2001, the Commission filed a related complaint for a permanent injunction alleging that Hearst and First DataBank created a monopoly through the acquisition of Medi-Span, First DataBank's only other competitor selling software and data detailing information for pharmaceutical prices, descriptions, dosages, and interactions. The Final Order and Stipulation requiring divestiture and disgorgement of profits was entered December 18, 2001.

William H. Gates, III

(May 4, 2004): William H. Gates, III paid \$800,000 in civil penalties to settle charges that he acquired more than ten percent of the voting securities of Republic Services, Inc. without observing the filing and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint was filed in the federal district court in Washington, DC.

B. Consent Orders

None

C. Complaints - Filed

Blockbuster, Inc.

(March 4, 2005): The Commission filed a complaint under Section 7A(g)(2) of the Clayton Act in U.S. District Court for the District of Columbia to require Blockbuster, Inc. to provide sufficient and accurate pricing data in compliance with the second request issued by the Commission under the statutory rules of the Hart-Scott-Rodino Act. Blockbuster cannot proceed with its proposed acquisition of Hollywood Entertainment Corporation until 30 days from the date it has substantially complied with the second request.

D. Complaints - Authorized

Arch Coal, Inc.

(February 23, 2004): The Commission authorized staff to file a complaint in federal district court for a temporary restraining order under Section 7A(g)(2) of the Clayton Act to block Arch Coal's proposed acquisition of Triton Coal Company until Arch Coal substantially complied with the Commission's request for additional information under the Hart-Scott-Rodino Act. After Arch Coal was notified that the Commission authorized a Section 7A(g)(2) complaint, Arch withdrew its Certification of Substantial Compliance with the second request and provided additional information. On June 13, 2005 the Commission announced that it was closing its investigation, saying that it will not continue with administrative litigation challenging the deal.

E. Rules and Formal Interpretations

Hart-Scott Final Rulemaking

(Effective February 18, 2006): The notification and filing thresholds under the premerger rules have been revised as required by the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the Commission to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004.

Hart-Scott Rodino Reform / Amended Final Rules

(Effective January 11, 2006): Amendments to Parts 801 and 802 of the Premerger Notification Rules allowing filing persons to provide an Internet address linking directly to the documents required by Items 4(a) and (b) in lieu of providing paper copies.

Hart-Scott Rodino Reform / Amended Final Rules

(Effective December 12, 2005): Amendments to Parts 801 and 802 of the Premerger Notification Rules requiring use of 2002 NAICS rather than 1997 NAICS when reporting economic data by industry and product codes.

Hart-Scott Rodino Final Rulemaking

(Effective April 7, 2005): Final rules adopted from proposed rules published April 8, 2004. The amendments require notification of acquisitions of interests in unincorporated entities and formations of unincorporated entities. The rules also extend the application of certain exemptions, including the intraperson exemption, to unincorporated entities.

Hart-Scott Final Rulemaking

(Effective March 2, 2005): The notification and filing thresholds under the premerger rules have been revised as required by the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the Commission to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004.

Hart-Scott Rodino Reform / Amended Final Rules

(Published March 12, 2002):

- Amendments to Parts 801 and 802 of the Premerger Notification Rules.
- Amendments to Section 802.21: Acquisitions of voting securities not meeting or exceeding greater notification threshold.

F. Other

Model Retail Second Request

(April 28, 2004) Model Request for Additional Information and Documentary Material (Second Request) for transactions involving retail industries.

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976

(September 27, 2002): Twenty-fourth Annual Report (Fiscal Year 2001).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976

(August 1, 2003): Twenty-fifth Annual Report (Fiscal Year 2002).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976

(September 7, 2004): Twenty-sixth Annual Report (Fiscal Year 2003).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976

(August 16, 2005): Twenty-seventh Annual Report (Fiscal Year 2004).

III. Non-Merger Enforcement

A. Commission Opinions/Initial Decisions

Kentucky Household Goods Carriers Association, Inc.

(June 21, 2004): An administrative law judge upheld an administrative complaint that charged a group of affiliated intrastate movers with engaging in horizontal price-fixing by filing collective rates on behalf of its member motor common carriers for the intrastate transportation of property within the Commonwealth of Kentucky. The judge also ruled that the association's conduct was not protected by the state action doctrine because the State of Kentucky did not supervise the rate-making practices of the group. On July 12, 2004, the Kentucky Household Goods Carriers Association, Inc. filed an appeal of the initial decision with the Commission. The oral argument was held January 24, 2005. On June 22, 2005, the Commission issued a unanimous opinion upholding the Initial Decision finding that the Kentucky Household Goods Carriers Association, Inc., consisting of competing firms, engaged in illegal price-fixing by jointly filing tariffs containing collective rates on behalf of its members, and that the state action doctrine does not immunize that activity from antitrust liability.

The administrative complaint issued on July 8, 2003 by the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Kentucky. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny.

North Texas Specialty Physicians

(November 8, 2004): An administrative law judge upheld the administrative complaint that charged that the North Texas Specialty Physicians, a physician group practicing in Fort Worth, Texas, collectively determined acceptable fees for physician services in negotiating contracts with health insurance plans and other third party payers. The judge ruled that complaint counsel proved that North Texas Specialty Physicians engaged in horizontal price fixing. The accompanying order prohibits the group from negotiating, on behalf of its members, collective pricing of contracts with health plan services for the provision of physician services. On January 14, 2005, North Texas Specialty Physicians filed a notice of appeal of the initial decision. On December 1, 2005, the Commission issued a unanimous decision upholding the allegations that North Texas Specialty Physicians negotiated agreements among participating physicians on price and other terms, refused to negotiate with payers except on terms agreed to among its members, and refused to submit payor offers to members if the terms did not satisfy the group's demands. The Commission concluded that the group's contracting activities with payors "amount[s] to unlawful horizontal price fixing" and that respondent's efficiency claims were not legitimate and not supported by the evidence. The respondent has appealed the Commission decision to the U.S. Court of Appeals for the Fifth Circuit.

The administrative complaint, issued on September 16, 2003 by the Commission, charged that the corporation of 600 physicians negotiated the price and other terms of medical services that its participating physicians would accept in contracting with third party payers. According to the complaint, the exchange of prospective price information among otherwise competing physicians reduced competition and enabled the physicians to achieve supra-competitive prices.

Rambus, Inc.

(July 6, 2004): The administrative law judge dismissed all charges against Rambus, Inc., on February 17, 2004, ruling that Commission staff had failed to sustain their burden of proof with respect to all three violations alleged in the complaint. The Initial Decision found that Rambus' conduct before the JEDEC standard-setting organization did not amount to deception and did not violate any extrinsic duties, such as a duty of good faith to disclose patents or patent applications. The Initial Decision also found that there was insufficient evidence that there were viable alternatives to Rambus' technology before the standard setting organization. Complaint counsel filed a notice of appeal and the matter is pending with the Commission.

An administrative complaint issued on June 19, 2002 charged that between 1991 and 1996, Rambus joined and participated in the JEDEC Solid State Technology Association (JEDEC), the leading standard-setting industry for computer memory. According to the complaint, JEDEC rules require members to disclose the existence of all patents and patent applications that relate to JEDEC's standard-setting work. While a member of JEDEC, Rambus observed standard-setting work involving technologies which Rambus believed were or could be covered by its patent applications, but failed to disclose this to JEDEC. In 1999 and 2000, after JEDEC had adopted industry-wide standards incorporating the technologies at issue and the industry had become locked in to the use of those technologies, Rambus sought to enforce its patents against companies producing JEDEC-compliant memory, and in fact has collected substantial royalties from several producers of DRAM (dynamic random access memory).

South Carolina State Board of Dentistry

(July 30, 2004) The Commission denied the motion of the Board to dismiss the complaint on grounds that its actions were protected from antitrust scrutiny under the state action doctrine. The South Carolina State Board of Dentistry appealed the Commission opinion to the Fourth Circuit Court of Appeals.

An administrative complaint issued on September 12, 2003 charged that the South Carolina State Board of Dentistry prevented dental hygienists from providing dental care and services on-site to children in South Carolina schools. According to the complaint, the Board passed regulation that required the children to have a dentist examine the children before they would be eligible for the school dental program. The complaint further alleged that this provision decreased competition in the delivery of preventive dental services to school-aged children. On July 30, 2004,

Union Oil of California

(November 25, 2003): An administrative law judge dismissed a complaint in its entirety against Union Oil of California that charged the company with committing fraud in connection with regulatory proceedings before the California Air Resources Board regarding the development of reformulated gasoline. The judge ruled much of Unocal's conduct was permissible activity under the Noerr-Pennington doctrine and that the resolution of the issues outlined in the complaint would require an in depth analysis of patent law which he believed were not within the jurisdiction of the Commission. In July 2004, the Commission reversed the judge's ruling and reinstated charges that Unocal illegally acquired monopoly power in the technology market for producing a "summer-time" low-emissions gasoline mandated for sale and use by the California Air Resources Board for use in the state for up to eight months of the year. While the case was pending before the administrative law judge, a consent agreement was signed

B. Court Decisions

PolyGram Holding, Inc. (The Three Tenors)

(July 24, 2003): The Commission upheld the ruling of an administrative law judge and prohibited PolyGram from entering into any agreement with competitors to fix the prices or restrict the advertising of products they have produced independently. The administrative complaint, issued on July 30, 2001, generally known as The Three Tenors and involving respondents PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation charged PolyGram with entering into an illegal price fixing agreement not to advertise or discount earlier albums and video recordings of concerts featuring the Three Tenors in an effort to promote the latest concert, thought to be less appealing to the public. The Commission ordered the respondents to cease and desist from entering into any combination, conspiracy, or agreement - with producers or sellers at wholesale of audio or video products - to “fix, raise, or stabilize prices or price levels” in connection with the sale in or into the United States of any audio or video product. In July 2005, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission’s decision in *Polygram Holding Inc.*, validating the Commission’s approach to analyzing horizontal conduct among competitors.

Schering-Plough Corporation

(March 8, 2005) The United States Court of Appeals for the Eleventh Circuit set aside and vacated the Commission decision that found that Schering-Plough entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering’s branded K-Dur 20, a prescribed potassium chloride supplement. The Commission filed a petition for writ of certiorari with the U.S. Supreme Court in August 2005, arguing that the lower court failed to recognize how some agreements limiting entry during the term of a patent can still be improper; the decision jeopardizes particularly important consumer interests; and the court of appeals misapplied the substantial evidence standard of review.

In the complaint dated March 30, 2001 the Commission alleged that Schering - Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with Upsher-Smith Laboratories and American Home Products Corporation to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher-Smith \$60 million and paid American Home Products \$15 million to keep the low-cost generic version of the drug off the market. The charges against American Home Products were settled by a consent agreement.

An initial decision filed July 2, 2002 dismissed all charges against Schering - Plough and Upsher-Smith Laboratories. On December 8, 2003 the Commission reversed the administrative law judge’s initial decision that had dismissed all charges. The Commission found that Schering-Plough Corporation entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering’s branded K-Dur 20. According to the opinion, the parties settled patent litigation with terms that included unconditional payments by Schering in return for agreements to defer introduction of the generic products. The Commission entered an order that would bar similar conduct in the future.

C. Authorizations to Seek Preliminary/Permanent Injunctions

Alpharma, Inc. and Perrigo Company

(August 11, 2004): The Commission authorized staff to file a complaint in federal district court charging that Alpharma, Inc. and Perrigo Company drove up the prices for over-the-counter store-brand children's liquid ibuprofen through an agreement eliminating competition between the two firms and allowing Perrigo to raise its prices creating higher profits to then be shared between the firms. According to the complaint, while both Alpharma and Perrigo filed for U.S. Food and Drug Administration approval to sell a generic version of children's liquid Motrin, Alpharma was eligible to sell its product at least six months before approval would be granted to Perrigo. The two companies entered into an agreement not to compete whereby Perrigo would sell the children's liquid ibuprofen for seven years and Alpharma, while would not marketing a competing product, would receive an up-front payment and a royalty on Perrigo's sales of the product. To settle the charges, Alpharma and Perrigo paid a total of \$6.25 million in illegal profits and agreed not to enter into agreements not to compete when one party to the agreement is a first filer of an abbreviated new drug application.

Mylan Laboratories, Inc.

(December 22, 1998): A complaint was filed in the U.S. District Court for the District of Columbia charging Mylan with restraint of trade, monopolization and conspiracy to monopolize the market for two generic drugs used to treat anxiety, lorazepam and clorazepate, through exclusive dealing arrangements. The complaint seeks consumer redress of at least \$120 million and to enjoin the alleged illegal exclusive licensing agreements. Federal District Court Judge Hogan released a 46 page decision upholding the Commission's authority to seek restitution in antitrust injunction actions under Section 13(b) of the Federal Trade Commission Act. November 29, 2000: Commission approved a \$100 million settlement—the largest monetary settlement in Commission history. The opinion settled Commission concerns that Mylan, Gyma Laboratories of America, Inc., Cambrex Corporation and Profarmaco S.R.L. conspired to deny Mylan's competitors ingredients necessary to manufacture lorazepam and clorazepate. On April 27, 2001, the U.S. District Court for the District of Columbia granted preliminary approval to a plan of distribution to injured consumers who paid the increased prices and state agencies, including Medicaid programs, that purchased the drugs while the illegal agreements were in effect. The court granted final approval of the settlement February 1, 2002. The funds were distributed by the states.

Warner Chilcott

(November 5, 2005) A complaint was filed in District Court for the District Columbia seeking to put an end to an agreement between drug manufacturers Galen Chemicals Ltd. (now known as Warner Chilcott) and Barr Laboratories that denies consumers the choice of a lower-priced generic version of Warner Chilcott's Ovcon® oral contraceptive. According to the FTC's complaint, Barr planned to launch a generic version of Ovcon as soon it received regulatory approval from the Food and Drug Administration. Warner Chilcott expected to lose half its Ovcon sales within the first year if Ovcon faced competition from a generic equivalent. Faced

with this prospect, instead of competing with Barr, Warner Chilcott entered into an agreement with Barr, preventing entry of Barr's generic Ovcon into the United States for five years. In exchange for Barr's promise not to compete, Warner Chilcott paid Barr \$20 million.

D. Consent Orders

Alabama Trucking Association, Inc.

(Final Order October 28, 2003) With an administrative complaint issued on July 8, 2003 the Commission charged that the association of household goods movers engaged in the collective filing of tariffs on behalf of its members who compete in the provision of moving services in the state of Alabama. Under terms of a final consent order, Alabama Trucking Association, Inc. agreed to stop filing tariffs containing collective intrastate rates and to void collectively filed tariffs currently in effect in Alabama.

American Home Products Corporation

(Final Order April 5, 2002): A consent order settled charges that American Home Products entered into an anticompetitive agreement with Schering-Plough Corporation to delay the entry of a low-cost generic drug that would be in direct competition with a branded version developed and manufactured by Schering. According to the complaint issued with the consent, Schering illegally paid American Home millions of dollars to delay the entry and sale of its generic version of Schering's K-Dur 20, a drug used to treat patients who suffer from insufficient levels of potassium, a condition that could lead to cardiac problems. The consent order, which expires in 10 years, prohibits American Home Products from entering into such agreements in the future. On December 8, 2003, the Commission issued an opinion that found that the agreements between Schering and Upsher-Smith and American Home Products violated the antitrust laws. The Commission entered an order for Schering and Upsher-Smith that is similar to the American Home Products order.

American Institute for Conservation of Historic and Artistic Works

(Final Order October 30, 2002): A consent order settled charges that the American Institute for Conservation of Historic and Artistic Works adopted and enforced provisions in its rules of conduct that prohibited professional conservators to work for free or at reduced fees. The association agreed to remove all provisions from its Code of Ethics, and its Commentaries to the Guidelines for Practice that are inconsistent with the order. Professional conservators manage and preserve cultural objects (including historical scientific, religious, archaeological and artistic objects).

Anesthesia Service Medical Group, Inc. and Grossmont Anesthesia Services Medical Group

(Final Order July 11, 2003): Two anesthesiologists groups settled charges that they entered into joint agreements to establish fees and services from Grossmont Medical Hospital in San Diego County. Specifically, the groups agreed on fees that both would demand from health care insurance companies and other third party payers for taking call for obstetrics and providing services to uninsured emergency room patients. Together, the two groups are composed of

approximately 200 physicians that provide competing anesthesiology services in the San Diego area.

Aurora Associated Primary Care Physicians, L.L.C.

(Final Order July 19, 2002): A consent order settled charges that the organization of internists, pediatricians, family physicians and general practitioners in the Aurora, Colorado area engaged in boycotts and entered into collective negotiations with health care insurers in an effort to increase the costs of physician services. The order prohibits the organization from entering into any agreement with insurance payers or providers to negotiate fees on behalf of the physicians group.

Biovail Corporation

(Final Order October 2, 2002): The Commission charged Biovail Corporation with illegally acquiring an exclusive patent license for Tiazac, a pharmaceutical used to treat high blood pressure and chronic chest pain. The complaint further alleged that Biovail, in an effort to maintain its monopoly, wrongfully listed the acquired license in the U.S. Food and Drug Administration's "Orange Book" for the purpose of blocking generic competition to its branded Tiazac. The consent order requires Biovail to divest part of its exclusive rights to DOV; prohibits the firm from taking any action that would trigger additional statutory stays on final FDA approval of a generic form of Tiazac; and also prohibits Biovail from wrongfully listing any patents in the Orange Book for a product for which the company already has a New Drug Application from the FDA.

Biovail Corporation and Elan Corporation

(Final Order August 20, 2002): A consent order settled charges that Biovail and Elan Corporation entered into an agreement that contained substantial monetary incentives not to compete in the market for specified dosages of generic forms of Adalat CC, a drug used to treat hypertension. The final consent order requires the companies to terminate their agreement and prohibits them from entering into similar agreements in the future. This is the Commission's first enforcement action involving an allegedly anticompetitive agreement between two competing generic drug manufacturers.

Bristol-Myers Squibb Company

(Final Order April 14, 2003): Bristol-Myers Squibb Company (BMS) settled charges that it engaged in illegal business practices to delay the entry of three low price generic pharmaceuticals that would be in direct competition with three of its branded drugs. The complaint alleged that BMS purposely made wrongful listings in the Orange Book of the U.S. Food & Drug Administration and that it also paid a potential competitor over \$70 million to delay the entry of its generic drug. The three drugs involved in the complaint are: Taxol (containing the active ingredient paclitaxel) – used to treat ovarian, breast, and lung cancers; Platinol (containing the active ingredient cisplatin) – used for the treatment of various forms of cancer; and BuSpar (containing the active ingredient buspirone) – used to manage anxiety disorders.

California Pacific Medical Group dba Brown and Toland Medical Group

(Final Order February 3, 2004): With an administrative complaint issued on July 8, 2003 the Commission charged a San Francisco, California physicians' organization with engaging in an agreement under which its competing members agreed collectively on the price and other terms on which they would enter into contracts with health plans or other third party payers. The complaint also alleged that Brown and Toland directed its physicians to end their preexisting contracts with payers and required its physician members to charge specified prices in all Preferred Provider Organization contracts. A final consent order prohibits Brown and Toland from negotiating with payers on behalf of physicians, refusing to deal with payers, and setting terms for physicians to deal with payers, unless the physicians are clinically or financially integrated.

Carlsbad Physician Association

(Final Order June 13, 2003): A New Mexico physician organization settled charges that it and its members entered into agreements to fix prices and to refuse to deal with third party payers and other health care plans except on collectively agreed-upon terms.

Clark County, Washington Attorneys

(Final Order July 23, 2004): Private attorneys in Clark County, Washington who provide criminal legal services for indigent defendants under a county contract settled charges that they illegally entered into an agreement known as the "Indigent Defense Bar Consortium Contract" to collectively demand higher fees for certain types of cases and refuse to accept specific additional cases unless the Clark County complied with their demands. The county was forced to substantially increase the reimbursement rate for each of the case categories specified in the Consortium Contract. According to the Commission, the conduct of the attorneys was identical to the boycott staged by criminal defense attorneys in Washington, DC which was ruled to be price fixing by the U.S. Supreme Court in the matter of Superior Court Trial Lawyers Association. Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph, the four attorneys who led the activities and served as the representatives of the 43 attorneys who signed the Consortium Contract, were named in the complaint and in the consent order.

Evanston Northwestern Healthcare Corporation

(Final Order May 17, 2005): Under terms of a consent order, Evanston Northwestern Healthcare Corporation agreed not to collectively negotiate fee-for-service contracts. The order settled charges of one count of an administrative complaint issued February 10, 2004. The count alleged that a physician group associated with a hospital negotiated prices for several hundred independent physicians who were not financially or clinically integrated with the group.

FMC Corporation and Asahi Chemical Industry Co. Ltd.

(Final Order June 12, 2002): A consent order settled charges that FMC and Asahi Chemical Industry Co. Ltd. of Japan entered into a conspiracy to divide the world market for microcrystalline cellulose (MCC), a binder used in making pharmaceutical tablets, into two territories. According to the complaint, FMC allegedly agreed not to sell the pharmaceutical to customers in Japan or East Asia without Asahi Chemical's consent, while Asahi Chemical agreed not to sell the pharmaceutical to customers in North America or Europe without the consent of FMC. The final order prohibits such behavior in the future and restricts FMC from

acting as the U.S. distributor for any competing manufacturer of microcrystalline cellulose (including Asahi Chemical) for 10 years. In addition, for five years, FMC is prohibited from distributing in the United States any other product manufactured by Asahi Chemical.

Health Care Alliance of Laredo, L.C.,

(Proposed Consent Agreement Accepted for Public Comment on February 13, 2006): A physicians' independent practice association in Texas agreed to settle charges that it engaged in unlawful collective bargaining to set fees its members would accept from health insurance plans and advised its members against dealing individually with plans. The Commission charged that both practices resulted in higher medical costs for consumers. The consent order settling the FTC's charges will prohibit the IPA from engaging in such anticompetitive conduct in the future.

Indiana Household Movers and Warehousemen, Inc.

(Final Order April 25, 2003): The corporation that represents household goods movers in Indiana settled charges that it filed collective intrastate rate tariffs with the State's Department of Revenue on behalf of its members. According to the complaint issued with the consent order, these collective filings reduced competition for household goods moving services within the state.

Institute of Store Planners

(Final Order May 27, 2003): Under the terms of a final consent order, The Institute of Store Planners is required to remove from its Code of Ethics any provision that prohibits its members from providing their services for free and any provision that prohibits competition with other members for work on the basis of price. Its members provide architectural store design and store and merchandise planning to retail stores.

Iowa Movers and Warehousemen's Association

(Final Order September 10, 2003): The Iowa Movers and Warehousemen's Association settled allegations that it filed collectively established tariffs for intrastate moving rates in Iowa - a practice which did not meet the requirements of the state action doctrine. Under the state action doctrine, some practices of private firms are protected against scrutiny by the federal antitrust laws.

Maine Health Alliance

(Final Order August 27, 2003): A network of doctors, hospitals, and its executive director, William R. Diggins, settled charges that they illegally engaged in price-fixing activities that raised health care costs in five Maine counties by negotiating jointly with third-party payers in an effort to obtain higher compensation and more advantageous contract terms for its members.

Memorial Hermann Health Network Providers

(Final Order January 18, 2004): Memorial Hermann Health Network Providers settled charges that it negotiated fees and other services for medical care provided by its member physicians in the Houston, Texas area in an effort to obtain higher fees and more advantageous terms. According to the complaint these alleged price fixing practices increased costs for consumer, employers, and health plans.

Minnesota Transport Services Association

(Final Order September 15, 2003): A consent order settled charges that the household goods movers association filed collectively established rate tariffs for its members in Minnesota, conduct that was not protected by the state action doctrine. Under a state action doctrine, some private companies may be protected from the federal antitrust laws if the state authority regulates and regularly reviews the operations and practices of the companies.

Movers Conference of Mississippi, Inc.

(Final Order October 28, 2003): With an administrative complaint issued on July 8, 2003 the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Mississippi. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny. Under terms of a final consent order the Movers Conference agreed to stop filing tariffs containing collective intrastate rates.

National Academy of Arbitrators

(Final Order January 13, 2003): The National Academy of Arbitrators is prohibited from adopting policies that restrict its members from advertising truthful information about their services, including prices and conditions of services, under terms of a consent order. The association is required to remove all provisions that do not conform to the provisions in the consent order from: (1) its Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; (2) its Formal Advisory Opinions; (3) any Statements of Policy; and (4) its Web site.

New Hampshire Motor Transport Association

(Final Order December 4, 2003): The New Hampshire Motor Transport Association settled charges that it filed tariffs containing rules that called for automatic increases in intrastate rates. In addition, the organization agreed to void its collectively filed tariffs current in effect in New Hampshire.

New Millennium Orthopaedics

(Final Order June 13, 2005): The Commission settled charges with two small groups of orthopaedic physicians in the Cincinnati area that had formed an independent practice association that jointly negotiated contracts regarding the rates its physician members would charge health plans and other payors for their services. In addition to the usual prohibitions on joint negotiations, the Commission's order disbanded the IPA and prohibited future collective bargaining.

Obstetrics & Gynecology Medical Corporation of Napa Valley

(Final Order May 14, 2002): A doctors' group consisting of nearly every obstetrician and gynecologist with active medical staff privileges at the two general acute care hospitals in Napa County, California settled charges that they restrained price and other competition by engaging in illegal agreements to fix fees and other terms of dealing with health care insurance plans. According to the complaint issued with the consent order, the doctors refused to deal with the third party payers except on collectively determined terms. The consent order not only prevents

the doctors from engaging in similar practices in the future but also requires the dissolution of the group.

Partners Health Network, Inc.

(Final Order September 23, 2005): A physician-hospital organization operating in northwestern South Carolina, agreed to settle charges that it orchestrated and carried out agreements among its physician members to set the prices they would accept from health plans, and to refuse to deal with health plans that did not agree to its collectively determined prices. The consent order settling the FTC's charges prohibits the PHO from collectively negotiating with health plans on behalf of its physicians and from setting terms of dealing with purchasers.

Physician Network Consulting, L.L.C.

(Final Order August 27, 2003): The Physician Network Consulting, L.L.C. of Baton Rouge Louisiana; Michael J. Taylor; Professional Orthopedic Services, Inc; The Bone and Joint Clinic of Baton Rouge, Inc.; Baton Rouge Orthopaedic Clinic, L.L.C.; and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. settled charges that they entered into agreements to fix prices and other terms on which they would deal with United HealthCare of Louisiana, Inc., a health insurance company. Physician Network Consulting is an agent for Professional Orthopedic Services' members.

Piedmont Health Alliance, Inc.

(Final Order October 1, 2004): With an administrative complaint issued on December 22, 2003 the Commission charged Piedmont Health Alliance, Inc. with collectively setting prices it demanded for physician services with third party payers. According to the complaint, the physician-hospital organization entered into signed agreements on behalf of its member physicians to participate in all contracts negotiated and to accept the negotiated physician fees. The complaint further alleges that these practices eliminated price competition among physicians in the North Carolina counties of Alexander, Burke, Caldwell and Catawba. The complaint also names ten individual physicians who participated in the alleged price fixing services. On August 10, 2004, the organization and physicians agreed to settle charges that they fixed prices for medical services. A final consent order prohibited Piedmont Health Alliance, Inc. and the ten physicians from entering into any such agreements with physicians in the area that negotiate fees or terms of services with health insurance companies or other third party payers. Also refer to settlement entered with Tenet Healthcare Corporation (Frye Regional Medical Center, Inc.).

Preferred Health Services, Inc.

(Final Order April 13, 2005): The order prohibits Preferred Health Services from orchestrating collective agreements and other terms for physician services when negotiating with health insurance plans and other third party payers. According to the complaint these agreements among the physician-hospital organization of doctors and the Oconee Memorial Hospital in northwestern South Carolina to collectively negotiate fees and terms of services could lead to higher health care costs and limited physician access.

Professional Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia A. Brauchler

(Final Order July 19, 2002): A consent order settled charges that a Denver, Colorado physician organization and its members, its president, Dr. M. J. Guese, and its non-physician consultant, M. A. Brauchler, increased fees for services through collective boycotts and agreements in an effort to fix the prices they would receive from health care insurance payers. The order prohibits the organization and its members and other respondents from entering into any agreement with insurance payers or providers to negotiate on behalf of the physicians group.

Professionals in Women’s Care

(Final Order October 2, 2002): Eight Denver, Colorado physician groups specializing in obstetrics and gynecology and their non-physician agent settled allegations that the practice group and other physicians entered into collective contracts in an effort to increase prices and terms of services when dealing with health insurance firms and other third-party payers. The consent order prohibits the following respondents from entering into such agreements in the future: R.T. Welter and Associates, Inc.; R. Todd Welter; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OG/GYN Associates, P.C.; The OB-GYN, P.C.; The Women’s Health Group, P.C.; Cohen and Womack, M.D., P.C.; and Westside Women’s Care, L.L.P.

San Juan IPA

(Final Order June 30, 2005): San Juan IPA, Inc., a physicians’ independent practice association operating in northwestern New Mexico, agreed to settle Commission charges that it orchestrated and carried out agreements among its member doctors to set the price that they would accept from health plans, to bargain collectively to obtain the group’s desired price terms, and to refuse to deal with health plans except on collectively determined price terms. According to the complaint, the effect of this conduct was higher prices for medical services for the area’s consumers. The consent order prohibits the association from collectively negotiating with health plans on behalf of its physicians and from setting their terms of dealing with such purchasers. This consent involves 120 physicians who make up about 80 percent of the doctors practicing independently in the area of Farmington, New Mexico.

Southeastern New Mexico Physicians IPA

(Final Order August 6, 2004): A Roswell, New Mexico physicians’ association, Southeastern New Mexico Physicians IPA, settled charges that it and two of its employees entered into collective agreements among physician members on fees and refused to deal with health plans that did not accept the collective agreed-upon terms. According to the complaint, these practices increased the price of health care in the Roswell area. The consent order prohibits the IPA and its employees named in the consent from orchestrating agreements between physicians to negotiate with health insurance plans on behalf of any physician and deal or refuse to deal individually with any third party payer.

South Georgia Health Partners, L.L.C.

(Final Order October 31, 2003): A Georgia physician-hospital organization and its other associated physician groups settled charges that they entered into agreements to fix physician

and hospital prices and refused to deal with insurance companies, except on collectively agreed-upon terms.

SPA Health Organization dba Southwest Physician Associates

(Final Order July 17, 2003): A physician group in the Dallas/Fort Worth, Texas area settled charges that it collectively bargained on behalf of its members to negotiate fee schedules with third party payers and other health insurance companies. According to the complaint, issued with the consent order, these practices decreased competition and increased prices for the provision of medical services to area consumers.

Surgical Specialists of Yakima

(Final Order November 11, 2003): The Surgical Specialists of Yakima, Cascade Surgical Partners, Inc., P.S. and Yakima Surgical Associates, P.S. settled charges that they jointly entered into agreements for their members to fix prices and terms for the provision of medical services when dealing with health care insurers.

System Health Providers

(Final Order August 20, 2002): System Health Providers and its parent corporation, Genesis Physicians Group, Inc., settled charges that they collectively bargained with health insurance firms to accept proposed fee schedules; discouraged members from entering into contracts directly with payers; and refused to deal with health insurance firms and other third-party payers except on collectively agreed upon terms. The order prohibits the recurrence of the alleged practices and actions.

Tenet Healthcare Corporation

(Final Order January 29, 2004): A consent order prohibits Frye Regional Medical Center, Inc., an acute care hospital in Hickory, North Carolina, and its parent company Tenet Healthcare Corporation from entering into any agreement to negotiate fees on behalf of any physician practicing in four North Carolina counties and from refusing to deal with insurance companies and other payers. Also refer to related administrative complaint issued to Piedmont Health Alliance. This settlement is the first case in which the Commission has named a hospital as a participant in an alleged physician price-fixing conspiracy.

Union Oil Company of California

(Final Order August 2, 2005): With an administrative complaint issued on March 4, 2003 the Commission charged that Union Oil Company of California (Unocal) made misleading statements concerning its emissions results for the production of “summer-time” gasoline mandated by the California Air Resources Board (CARB) for use March through October. According to the complaint, Unocal lead producers of the CARB gasoline to believe that its research was non-proprietary and in the public interest, while at the same time it failed to disclose that it had patent pending claims on the research results with the U.S. Patent and Trademark Office. As a result of the patent being allowed, Unocal is now in a position to enforce its patent rights – requiring companies that produce the “summer-time” CARB gasoline to pay substantial royalties to Unocal if they use the patented technology. An initial decision dismissing the complaint was filed on February 17, 2004.

A consent order settled the Commission's monopolization complaint against Unocal. Under the terms of the settlement, Unocal will stop enforcing the relevant reformulated gasoline patents, which the Commission alleged could have imposed additional costs of over \$500 million per year on California consumers. In addition, Unocal will release all relevant gasoline patents to the public.

Valassis Communications, Inc.

(Proposed Consent Agreement Accepted for Public Comment on March 15, 2006): Valassis, a leading producer of free-standing newspaper inserts (FSIs) in the United States, has settled charges that it attempted to collude with News America Marketing, its only FSI rival, to eliminate competition between the two companies. Under the consent order settling the FTC's complaint, Valassis is barred from engaging in collusive agreements with other FSI publishers or attempting to collude with its competitors.

Virginia Board of Funeral Directors and Embalmers

(Final Order October 1, 2004): The Virginia Board of Funeral Directors and Embalmers settled charges that it prohibited Virginia funeral directors and service providers from engaging in truthful advertising to notify consumers of prices and discounts for funeral products and services. Under terms of the consent order, the Board is prohibited from engaging in such practices in the future and is required to amend its regulation prohibiting Board licensees from advertising funeral services including those services that can be contracted prior to the death of the person whose funeral is being planned.

Washington University Physician Network

(Final Order August 22, 2003): A consent order prohibits a St. Louis, Missouri physicians' organization from negotiating with third party payers on behalf of its member physicians and from refusing to deal with health insurance companies.

White Sands Health Care System, L.L.C.

(Final Order January 11, 2005): A consent order settled charges that the White Sands Health Care System refused to deal with health care insurers that resisted the collectively negotiated prices set by its member physicians and nurse anesthetists. The complaint alleged that these practices increased costs for health care for consumers in the Alamogordo, New Mexico area. White Sands, a physician-hospital organization, consists of Alamogordo Physicians, an independent practice association; Gerald Champion Regional Medical Center, and 31 non-physician health care providers, including all five nurse anesthetists in the area.

E. Administrative Complaints

F. Other

Public Documents/Policy Statements/Conferences

Agreements Filed with the Federal Trade Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Summary of Agreements Filed in FY

2004: A Report by The Bureau of Competition (January 7, 2005): Information regarding the 22 agreements that were filed with the Commission in fiscal year 2004.

Policy Statement on Monetary Equitable Remedies in Competition Cases (July 25, 2003): The Commission issued a policy statement that identified three factors that will be considered in determining whether the Commission will seek disgorgement or restitution in competition cases. First, the Commission will ordinarily seek monetary relief when the underlying violation is clear. Second, there must be a reasonable basis for calculating the amount of remedial payment. Third, the Commission will consider the value of seeking monetary relief in light of other remedies available in the matter including private actions and criminal proceedings.

FTC Antitrust Actions in Pharmaceutical Services and Products (November 8, 2002): Summary of health care antitrust matters involving the pharmaceutical industry and enforcement policy prepared by the FTC Health Care Services and Products Division Staff.

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

Commission Studies/Guidelines

The Petroleum Industry: Mergers, Structural Change and Antitrust Enforcement: A Report of the Staff of the Federal Trade Commission, Bureau of Economics (August 2004): The staff report describes the Commission's merger enforcement actions in petroleum-related markets during the past 20 years; provides an overview of industry trends in production and pricing; provides an analysis of merger activity for the period 1985 through 2001; and examines trends at specific industry levels: crude oil production and reserves; bulk transport of crude oil; refining; bulk transport of refined products; and product terminals and gasoline marketing.

Improving Health Care: A Dose of Competition: A Report by the Federal Trade Commission and the Department of Justice (July 23, 2004): Joint report to inform consumers, businesses, and policy-makers on a range of issues affecting the cost, quality, and accessibility of health care.

Fulfilling the Original Vision: The FTC at 90 (April 2, 2004): Report highlights some of the Commission's accomplishments from the past year and outlines several goals to guide the agency's twin missions of competition and consumer protection.

Possible Anticompetitive Barriers to E-Commerce: Contact Lenses: A Report from the Staff of the Federal Trade Commission (March 29, 2004): The staff report concludes that e-commerce offers consumers greater choices and more convenience in the contact lens market.

Pharmaceutical Agreement Notification Filing Requirements (Effective January 7, 2004): Agreements between Brand-name and generic pharmaceutical companies regarding the

manufacture, marketing, and sale of generic versions of brand-name drug products are required to be filed with the Commission and the Department of Justice, pursuant to Section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

Slotting Allowances in the Retail Grocery Industry: Selected Case Studies of Slotting Allowances in Five Product Categories (November 14, 2003): Slotting allowances paid to certain retailers in certain geographic areas for five product categories: fresh bread, hot dogs, ice cream and frozen novelties, shelf-stable pasta, and shelf-stable salad dressing.

To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy, A Report by the Federal Trade Commission (October 2003): The report is the first of two reports about how to maintain that balance. The report concludes that questionable patents are a significant competitive concern and can harm innovation. The report makes recommendation to reduce the number of questionable patents that are issued and upheld.

Report of the State Action Task Force: Recommendations to Clarify and Reaffirm the Original Purposes of the State Action Doctrine to Help Ensure that Robust Competition Continues to Protect Consumers (September 23, 2003): The staff report concludes that the scope of the antitrust state action doctrine has expanded dramatically since its articulation by the Supreme Court. The report recommends clarifications of the doctrine, including more rigorous application of the “clear articulation” and “active supervision” requirements.

Possible Anticompetitive Barriers to E-Commerce: Wine (July 3, 2003): Staff report concludes that e-commerce offers consumers lower prices and more choices in the wine market. Report concludes that state bans on interstate direct shipping imposes the largest regulatory barrier to expanded e-commerce in wine.

Generic Drug Entry Prior to Patent Expiration: An FTC Study (Released July 30, 2002): The Commission recommends changes to the Hatch-Waxman Amendments to permit only one automatic 30-month stay per drug product, per generic entry application, and to resolve infringement disputes over patents listed in the “Orange Book” prior to the filing of a generic’s entry application. By limiting the availability of 30-month stays to one per drug product, per generic application, the report concludes that generic entry by other firms would be facilitated. In addition, the Commission supports S.754, The Drug Competition Act, to require brand-name companies and first generic applicants to provide copies of certain agreements to the Federal Trade Commission and the Department of Justice.

Advisory Opinions

North Mississippi Health Services. Staff letter concerning the transfer of pharmaceuticals at cost by non-profit hospital to patients of non-profit clinic and hospice (August 16, 2005).

Stevens Hospital, of Edmonds, Washington. Staff Letter concerning the Applicability of the Non-Profit Institutions Act Amendments to the Robinson-Patman Act to Stevens Proposed Pricing of Pharmaceuticals (April 18, 2005).

Bristol-Myers Squibb. Staff advised Bristol-Myers Squibb that its proposed settlement with Teva Pharmaceuticals USA, inc. does not raise issues under Section 5 of the Federal Trade Commission Act. (May 2004)

Dunlap Memorial Hospital in Orville, Ohio. Staff concluded that Dunlap's provision of pharmaceuticals to the Viola Startzman Free Clinic falls within the scope of the Non-Profit Institutions Act. (January 9, 2004)

Medical Group Management Association: Letter from Jeffrey W. Brennan to Gerald Niederman. An association of medical practice administrators requested an opinion concerning its proposal to conduct and publish the results of a survey of physician practices. (November 3, 2003)

Partlinx LLC. Staff advised that Commission does not presently intend to recommend law enforcement action in connection with Partlinx's proposed e-commerce joint venture. (October 10, 2003)

Bay Area Preferred Physicians. The Bureau advised that it does not presently intend to recommend an enforcement action if Bay Area Preferred Physicians establishes a physician network to create new contracting opportunities between physicians and health plans and other third-party payers. (September 23, 2003)

Valley Baptist Medical Center. Sale of pharmaceuticals to contracted workers who provide services at VBMC. (March 18, 2003)

Arkansas Children's Hospital. Sale of pharmaceuticals to patients seen in clinics that are located on ACH's campus but are operated by the University of Arkansas for Medical Sciences. (March 18, 2003)

PriMed Physicians : Proposal by physician group to create with other Dayton, Ohio area physicians an advocacy group to undertake "a campaign to inform and educate the general public" of policies and procedures by third party payers in Dayton. (February 6, 2003)

Joint FTC and DOJ letter urging Council of the North Carolina State Bar to approve a proposed opinion that would explicitly permit non-lawyers to compete with lawyers to perform real estate closings. (July 11, 2002)

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

Connecticut Hospital Association The applicability of the Non-Profit Institutions Act to sales of pharmaceuticals by its member hospitals to their retired employees.(December 20, 2001)

Harvard Vanguard Medical Associates, Inc. Sale of pharmaceuticals by non-profit, multi-specialty medical clinic to employees and to patients treated at the clinic. (December 18, 2001)

Advocacy Filings

Comments of Staff of the Federal Trade Commission Bureau of Economics to file a comment with the Federal Communications Commission regarding the auction of advanced wireless services licenses. (March 10, 2006)

Comment of the Federal Trade Commission to the Federal Energy Regulatory Commission Concerning Market-Based Rates for Public Utilities (January 18, 2006).

Comments of Staff of the Federal Trade Commission to the Honorable Bill Seitz Concerning Ohio H.B. 306 to Amend the Operation of Wine Wholesale Franchises (December 12, 2005).

Federal Trade Commission Civil Remedies: Antitrust Modernization Commission (December 1, 2005).

Statutory Immunities and Exemptions: Antitrust Modernization Commission (December 1, 2005).

The Hart-Scott-Rodino Second Request Process: Antitrust Modernization Commission (November 17, 2005).

Treatment of Efficiencies in Merger Enforcement: Antitrust Modernization Commission (November 17, 2005).

Patent Law Reform: Antitrust Modernization Commission Concerning (November 8, 2005).

Federal Antitrust Enforcement Institutions : Antitrust Modernization Commission (November 3, 2005).

Joint Comments of the Federal Trade Commission and the Department of Justice to The Honorable Alan Sanborn Concerning Michigan H.B. 4849, Which Would Impose Minimum Service Requirements on Real Estate Brokers (October 18, 2005)

State Action Doctrine: Antitrust Modernization Commission (September 29, 2005).

Comments of Staff of the Federal Trade Commission, Bureau of Economics, Bureau of Competition and the Office of Policy Planning to the Honorable Wesley Chesbro Concerning the Proposed California Franchise Act to Govern Contractual Relationships Between Beer Manufacturers and Wholesalers (August 26, 2005).

Comment of the Federal Trade Commission to the Federal Energy Regulatory Commission Concerning Information Requirements for Available Transfer Capability (August 23, 2005).

Comments of Staff of the Federal Trade Commission to the Federal Energy Regulatory Commission concerning Long Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators (August 23, 2005).

Brief Amicus Curiae Illinois Tool Works, Inc. et al. v. Independent Ink, Inc. (Supreme Court) (Case. No. 04-1329)) Supporting Petitioners on the Issue of Whether a Patent is Presumed to Confer Market Power in a Tying Case (August 5, 2005).

Brief Amicus Curiae Texaco, Inc. v. Dagher et al. (Supreme Court (Case Nos. 04-805 and 04-814)). Concerning Whether an Agreement on Pricing Between Joint Venture Owners is a Per se Violation of the Sherman Act When the Owners do not Compete in those Products (May 31, 2005).

Joint Comments of the Federal Trade Commission and the Department of Justice to the Honorable Matt Blunt Concerning Missouri H.B. 174 to Impose Minimum Service Requirements on Real Estate Brokers (May 24, 2005).

Joint Comments of the Federal Trade Commission and the Department of Justice to the Alabama Senate Concerning Alabama H.B. 156 to Impose Minimum Service Requirements on Real Estate Brokers (May 12, 2005).

Joint Comments of the Federal Trade Commission and the Department of Justice before the Texas Real Estate Commission Concerning Proposed Amendments to 22 Tex. Admin Code § 535.2 to Impose Minimum Service Requirements on Real Estate Brokers (April 20, 2005)

Comment of the Federal Trade Commission to the Food and Drug Administration Concerning Response to Citizen Petition by IVAX Pharmaceuticals Relating to Generic Drug Application (Apr. 2005).

Comments of Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics and the Office of Policy Planning regarding three bills that the Virginia Assembly considered: HB 2518 - would loosen current restrictions on competition between commercial and independent optometrists; and HB 160 and SB 272 - would further impair competition between these groups of eye care professionals. (March 9, 2005)

Comments of Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics and the Office of Policy Planning to North Dakota State Senator Richard L. Brown concerning HB 1332 which might have the unintended consequences of increasing the price of pharmaceuticals within the state and ultimately decrease the number of North Dakotans with insurance coverage for pharmaceuticals. (March 8, 2005)

Joint Amicus Brief Filing with the U.S. Department of Justice Empagran, S.A. v. Hoffmann-LaRoche, Ltd., No. 01-7115 (D.C. Cir.). International cartels. (February 18, 2005)

Brief Amicus Curiae Teva Pharmaceuticals USA, Inc. v. Pfizer, Inc. Case No. 04-1186 (Fed. Cir.) Teva, in an effort to market its generic version of Pfizer's Zoloft drug, sued Pfizer challenging the patent for Zoloft. (February 11, 2005)

Joint Comments of the Federal Trade Commission and the Department of Justice to Chief Justice McFarland of the Kansas Supreme Court concerning the Unauthorized Practice of Law Committee of the Kansas Bar Association's proposal to define the practice of law. (February 4, 2005)

Joint Comments of the Federal Trade Commission and the Department of Justice urging the Massachusetts Bar Association to narrow or reject a proposal that would reduce competition between nonlawyers and lawyers to provide certain services. (December 16, 2004)

Joint Comments of the Federal Trade Commission and the Department of Justice to The Honorable Paul Kujawski, Member of the Massachusetts House of Representatives, concerning the adoption of HB 180, a bill that would enable nonlawyers to compete with lawyers to perform certain real estate closing services. (October 12, 2004)

Comments of Staff of the Federal Trade Commission to California Assembly Member Greg Aghazian concerning a bill (AB 1960) that requires pharmacy benefit managers to disclose certain information to purchasers of their services. (September 10, 2004)

Brief Amicus Curiae Cleveland Bar Association v. CompManagement, Inc. (Case No.: UPL 02-04) Matter on appeal from a decision rendered by Ohio's UPL Board finding that CompManagement, an actuarial firm, had engaged in the unauthorized practice of law through its representation of employers in workers' compensation matters before the Ohio Industrial Commission. (August 5, 2004)

Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice Andrx Pharmaceuticals, Inc. v. Kroger Company, et al. (U.S. Court of Appeals for the Sixth Circuit) Private antitrust matter concerning an interim settlement of a pharmaceutical patent infringement case, in which the alleged infringer agreed not to market its product while the infringement litigation was pending. (July 16, 2004)

Comments of the Federal Trade Commission to the Federal Energy Regulatory Commission concerning revisions to the conditions under which FERC will permit electric utilities to sell wholesale power at market rather than regulated rates. (July 16, 2004)

Comments of the Federal Trade Commission to the Federal Energy Regulatory Commission concerning FERC's policies governing electric utility procurement of wholesale electric supply from affiliated generators and through acquisition of affiliated, unregulated generation assets. (July 14, 2004)

Comments of Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Michigan House Representative Gene DeRosset on Michigan's proposed bill 4757, "Petroleum Marketing Stabilization Act". (June 18, 2004)

Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice in Jackson Tennessee Hospital Co., No. 04-5387 (6th Cir.) Brief contends that the district court improperly concluded that Tennessee Hospital Co. and other defendants were exempt from antitrust enforcement under the state action doctrine. (June 4, 2004)

Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice in McMahon v. Advanced Title Services Company of West Virginia. The brief argues that allowing nonlawyers to compete with lawyers in the provision of real estate settlement services, including title searching, title reports, closings, and document deliveries, would benefit West Virginia consumers in a variety of ways. (May 25, 2004)

Comments of the Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Rhode Island Attorney General Patrick C. Lynch and Deputy Senate Majority Leader Juan M. Pichardo on seven state bills that contain “freedom of choice” and “any willing provider” provisions for pharmaceutical sales. (April 12, 2004)

Comments of the Staff of the Federal Trade Commission Bureaus of Competition, Consumer Protection and Economics and the Office of Policy Planning provide comments on Maryland House Bill 795 which would permit corporate ownership of funeral homes. (April 6, 2004)

Comments of the Staff of the Federal Trade Commission Bureaus of Competition, Economics, Consumer Protection, the Northeast Regional Office and the Office of Policy Planning provided comments on three bills that would allow out-of-state vendors to ship wine directly to New York consumers if the vendors comply with certain regulatory requirements. (March 30, 2004)

Comments of Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Kansas State Senator Les Donovan regarding Bill No. 2330 which would bar the “below-cost” sale of motor fuel. (March 16, 2004)

Comments of Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Comments to the Speaker Pro Tempore of the Alabama State House of Representatives Concerning the Alabama Motor fuels Marketing Act. (January 29, 2004)

Joint Comments of the Federal Trade Commission and the Department of Justice on a draft of the proposed amendment to the Indiana Supreme Court Admissions & Discipline Rule regarding Unauthorized Practice of Law to the Indiana State Bar Association. (October 10, 2003)

Comments of the Staff of the Federal Trade Commission Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Analysis of Wisconsin’s Unfair Sales Act: Letter to Wisconsin State Representative Shirley Krug. (October 1, 2003)

Comments to the Federal Energy Regulatory Commission regarding proposed revisions to market-based tariffs and authorization. (August 28, 2003)

Letter sent to New York Attorney Eliot Spitzer. Comments of the Office of Policy and Planning and the Bureau of Competition stated that there is a significant risk that the Motor Fuel Marketing Practices Act could harm consumers by reducing competition in the sale of motor fuels. (July 24, 2003)

Application for Approval of Asset transfer Agreements with Affiliated Company, Ameren Union Electric Company. Comments to the Illinois Commerce Commission regarding the transfer of generation assets from an unregulated affiliated to its regulated parent utility. (June 18, 2003)

Proposed Amendments to the North Carolina Motor Fuel Marketing Act. Comments of the Federal Trade Commission's Bureau of Competition, Bureau of Economics, and the Office of Planning. Letter to Senator Daniel G. Clodfelter, Chairman of the Judiciary I Committee, stating that the proposed amendments to the state's Motor Fuel Marketing Act are not only unnecessary, but have significant potential to harm consumers by causing them to pay more at the pump. (May 21, 2003)

Standards for Determining Whether Natural Gas Prices are Constrained by Market Forces. Comments to the Georgia Public Service Commission regarding proposed standards to determine whether market forces constrain retail prices for natural gas. (April 24, 2003)

The Potential Effect of Tenet Healthcare Corporation's Proposed Purchase of Slidell Memorial Hospital. Letter from Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Louisiana Attorney General, The Honorable Richard P. Ieyoub, opposing the proposed acquisition by Tenet Health Care Systems of the Slidell Memorial Hospital. According to the letter, the proposed acquisition would eliminate competition and probably give Tenet the opportunity to increase prices unilaterally following the acquisition. (April 1, 2003)

Real Estate Closing Activities. The Commission and the Department of Justice Joint letter to the Rhode Island House of Representatives on Proposed Bills H.5936 and H.5639: Proposed Restrictions on Competition from Non-Attorneys. The agencies expressed concerns that the bills would eliminate competition between non-lawyers and lawyers in the closing of real estate deals in Rhode Island by requiring a lawyer to close almost all real estate closings. (April 1, 2003)

Competition and the Effects of Price Controls in Hawaii's Gasoline Market (January 28, 2003)

Competition and the Effects of Price Controls in Hawaii's Gasoline Market (January 28, 2003)

In the Matter of Application for FDA Approval to Market a New Drug; Patent Listing Requirements; Comments of the FTC Before the HHS and FDA (December 23, 2002)

FTC/DOJ Comments on the American Bar Association's Proposed Model Definition of the Practice of Law (December 20, 2002)

Ohio House Bill 325 - Physician Collective Bargaining (October 16, 2002)

Bill No.S04522 (New York Motor Fuel Marketing Practices Act); /Bill No. A06942 (An Act to Amend the General Business Law, in Relation to the Operation of Retail Service Stations) (August 8, 2002)

Proposed North Carolina State Bar Opinions Concerning Non-Attorneys' Involvement in Real Estate Transactions (July 11, 2002)

Proposed Bill H.7462, Restricting Competition from Non-Attorneys in Real Estate Closing Activities (March 29, 2002)

The Threat of Consumer Harm Resulting from Physician Collective Bargaining Under Alaska Senate Bill 37 (March 22, 2002)

Virginia Senate Bill No. 458, "Below-Cost sales of Motor Fuels" (February 15, 2002)

Washington House Bill 2360, Physician Antitrust Immunity (February 8, 2002)

Alaska Senate Bill 37, Physician Antitrust Immunity (January 18, 2002)

North Carolina State Bar Opinions Restricting Involvement of Non-Attorney in Real Estate Closings and Refinancing Transactions (December 14, 2002)

Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform (July 20, 2002)

Workshops/Hearings/Conferences

Healthcare

Conference on Healthcare Information & Competition (April 16, 2004)

This quasi-academic conference, organized by Stanford health economist Dan Kessler, brought together academics and health policy makers for one day to examine the production of and use of health care market information by consumers and employers. It examined some effects of competition in promoting or retarding information use. Aspects of health care quality were also addressed. Seven papers were presented, and participation included government health care experts and employers.

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. September 24 - 26; and 30; October 1, 2003, Washington, DC.

- Physician Product and Market Definition
- Physician Information Sharing
- Physician IPAs - Patterns and Patterns of Integration - Messenger Model

- Physician Unionization; Group Purchasing Organizations
- International Perspectives on Health Care and Competition Law and Policy
- Medicare and Medicaid
- Remedies: Civil/Criminal

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. June 25 - 26, 2003, Washington, DC.

- Mandated Benefits
- Pharmaceutical: Formulary Issues
- Prospective Guidance

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. May 27; 29; and 30 and June 10 - 12, 2003, Washington, DC.

- Quality and Consumer Information - Hospitals
- Physicians
- Market Entry
- Long Term Care/Assisted Living Facilities
- Noerr-Pennington/State Action
- Financing Design/Consumer Information Issues

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. April 21 - 23; May 7 - 8, 2003, Washington, DC.

- Health Insurance Monopoly - Market Definition. Competitive Effects
- Health Insurance Monopoly - Entry and Efficiencies
- Health Insurance Monopsony - Market Definition - Competitive Effects
- Health Insurance/Providers: Countervailing Market Power - Most Favored Nation Clauses
- Physician Hospital Organizations
- Quality and Consumer Information - Overview

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. March 26 - 28, 2003, Washington, DC.

- Round table discussion on hospital-related issues and an examination of product and geographic markets for hospitals
- Issues in litigating hospital mergers

Hearings on Healthcare and Competition Law and Policy sponsored by the Commission and the Department of Justice. February 26 - 28, 2003, Washington, DC. Examined the state of the healthcare market place and the role of competition, antitrust, and consumer protection in satisfying citizens' preferences for high-quality, cost-effective healthcare.

Healthcare Impact of Competition Law & Policy on the Cost, Quality and Availability of Healthcare and the Incentives for Innovation in the Field. September 9 - 10, 2002 Workshop, Washington, DC.

Intellectual Property and Patent Law

Ideals into Action: Implementing Reform of the Patent System (April 15 - 16, 2004) The Commission, the National Academy of Sciences, and the Berkeley Center for Law and Technology sponsored a conference to address patent reform and how it might be implemented.

Town Meetings on Patent System Reform Three meetings in San Jose, California, February 18, 2005; Chicago, Illinois on March 4, 2005; and Boston, Massachusetts on March 18, 2005 to bring together government officials, business representatives, lawyers and other members of the patent community to discuss significant recommendations for patent reform made by the Commission, the National Academies' Board on Science, Technology and Economic Policy, and the American Intellectual Property Law Association.

Intellectual Property Law and Policy - Roundtable Discussion (October 25, 2002)

- Competition, Economic, and Business Perspectives on Patent Quality and Institutional Issues: Competitive Concerns, Prior Art, Post-Grant Review, and Litigation

- Competition, Economic, and Business Perspectives on Substantive Patent Law Issues: Non-Obviousness and Other Patentability Criteria

- Antitrust Law and Patent Landscapes

- Standard Setting Organizations: Evaluating the Anticompetitive Risks of Negotiating Intellectual Property Terms and Conditions Before a Standard is Set

- Relationships Between Competitors and Incentives to Compete: Cross Licensing of Patent Portfolios, Grantbacks, Reach-Through royalties, and Non-Assertion Clauses

www.ftc.gov/opp/intellect/index

Antitrust and Intellectual Property Law and Policy

- Patent Pool and Cross-Licensing: When Do They Promote or Harm Competition? (April 17, 2002)

- Standard-Setting Practices: Competition, Innovation and Consumer Welfare to Deal? (April 18, 2002)

- The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal? (May 1, 2002)

- Patent Settlements: Efficiencies and Competitive Concerns (May 2, 2002)

- Antitrust Analysis of Licensing Practices (May 14, 2002)

- An International Comparative Law Perspective on the Relationship Between

- Competition and Intellectual Property, Parts I and II (May 22 - 23, 2002)

Competition and Intellectual Property Policy

- Cross-Industry Perspectives on Patents (April 9, 2002)

- Substantive Standards of Patentability (April 10, 2002)

- Patenting Procedures, Presumptions, and Uncertainties (April 10, 2002)

- Patentable Subject Matter - Business Method and Software Patents (April 11, 2002)

- Patent Criteria and Procedures - International Comparisons (April 11, 2002)

Hearings to Focus on the Implications of Competition and Patent Law and Policy

- Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy (February 6, 2002)
- Patent Law for Antitrust Lawyers (February 8, 2002)
- Antitrust Law for Patent Lawyers (February 8, 2002)
- Economic perspectives on Intellectual Property; Competition and Innovation (February 20, 2002)
- Business and Economic Perspectives on Real-World Experiences with Patents (February 25 - 28, 2002)
- Business and Other Perspectives on Real-World Experiences with Patents (March 19 - 20, 2002)

Other

Roundtable on the Economics of Internet Auctions (October 27, 2005)

The Bureau of Economics held a Roundtable on The Economics of Internet Auctions bringing together academic economists, government economists and industry professionals to discuss competition, network effects, fraud, lemons problems, inference, and demand estimation.

Competition Policy and the Real Estate Industry (October 25, 2005)

The Federal Trade Commission and the Department of Justice's (DOJ) Antitrust Division hosted a joint workshop covering new and innovative brokerage business models, multiple listing services, and the implications of state-imposed minimum-service requirements.

Oil Industry Merger Effects (January 14, 2005)

The public conference discussed two recent studies that focused on the price effects of mergers and concentration in the United States petroleum industry.

90th Anniversary Symposium (September 22 - 23, 2004)

The Federal Trade Commission honored the agency's 90th anniversary and featured over 50 participants, current Commissioners and other agency officials, as well as prominent academics and practitioners, many of whom are Federal Trade Commission alumnae.

Anticompetitive Efforts to Restrict Competition on the Internet (October 8 - 10, 2002)

The public workshop explored possible anticompetitive efforts to restrict competition on the Internet.

Federal Circuit Jurisprudence: Jurisdiction, Choice of Law, and Competition Policy Perspectives (July 11, 2002)

IV. International Activities

The FTC works to promote cooperation and convergence toward best practices with competition agencies around the world. The FTC has built a strong network of cooperative relationships with its counterparts abroad, and plays a lead role in key multilateral fora. The

FTC works with other nations to protect American consumers who can be harmed by anticompetitive conduct and frauds perpetrated outside the United States. The FTC also actively assists new democracies moving toward market-based economies with developing competition laws and policies.

The FTC's cooperation with competition agencies around the world is a vital component of our enforcement program, facilitating our ability to promote convergence toward sound consumer welfare-based competition policies. During the past year, the FTC participated in consultations in Washington and in foreign capitals with top officials of, among others, the European Commission (EC), the Japan Fair Trade Commission (JFTC), and the Russian Federal Anti-Monopoly Service, and for the first time held a joint consultation with the Canadian Competition Bureau and the Mexican Federal Competition Commission.

FTC staff routinely coordinate with colleagues in foreign agencies, promoting efficient and effective review of multijurisdictional mergers and conduct. Recent illustrative matters include:

- **Procter & Gamble/Gillette.** Procter & Gamble's \$57 billion acquisition of Gillette raised competition concerns regarding many consumer products, including tooth whiteners and antiperspirants. FTC staff worked closely with several competition authorities, including the EC, the Canadian Competition Bureau, and the Mexican Federal Competition Commission. The FTC and the EC coordinated compatible remedies in oral health care products. Their decisions also addressed whether the merger would increase the merged firm's ability, when acting as a "category manager," to obtain premium retailer shelf space and exclude or disadvantage competitors in several brand categories. Canada determined that the divestitures obtained by the FTC and the EC would resolve its competition concerns, while Mexico and other authorities authorized the transaction.
- **Johnson & Johnson/Guidant.** Johnson & Johnson's proposed \$25 billion bid to take over Guidant raised concerns in several medical device markets, particularly stents and other devices used to treat vascular diseases. The FTC coordinated its review with the EC, the Canadian Competition Bureau, and the Japan Fair Trade Commission. The competitive situation and likely effects of the proposed merger varied among jurisdictions, requiring close cooperation in the investigation and the negotiation of remedies. Pursuant to confidentiality waivers from the parties, EC staff participated in joint meetings with FTC staff, the parties, and third parties. In light of subsequent developments, the FTC and other agencies are monitoring the potential acquisition of Guidant by Boston Scientific.

The FTC promotes policy convergence through formal and informal working arrangements with other agencies, many of which seek the FTC's views in connection with developing new policy initiatives. For example, during the past year, the FTC consulted with:

- EC regarding several aspects of merger policy, including the EC's review of its remedies policies and the EC's discussion paper on its policies regarding abuse of dominance;
- Several EU Member States on competition in health care markets;
- United Kingdom regarding synergies between competition and consumer protection policy;
- Canadian Competition Bureau on cross-border information sharing policies; and

- JFTC on exclusionary conduct and administrative procedures and remedies, and submitted comments on proposed JFTC Guidelines on Standardization and Patent Pool Arrangements.

Multilateral competition fora provide important opportunities for competition agencies to enhance mutual understanding and promote cooperation and convergence. The FTC participates actively in, among others, the International Competition Network (ICN) and the Organisation for Economic Cooperation and Development (OECD).

Trade agreements increasingly involve competition issues. The FTC participates in United States delegations that negotiate competition chapters of free trade agreements, including during the last year in connection with negotiations with Peru and other Andean countries and with Thailand. The FTC also participates in the competition forum of the United Nations Conference on Trade and Development, which focuses on competition issues facing developing countries.

Last year was a peak time in recent years for the FTC's international technical assistance program, which provides training and other education to developing nations. These activities, funded mostly by the United States Agency for International Development, included 28 missions to 18 countries, involving 35 different FTC staff experts. In addition, FTC staff maintained a resident advisor in Jakarta, Indonesia, assisting the member states of the ten-nation ASEAN organization. The FTC works in close cooperation with DOJ's Antitrust Division in conducting its antitrust activities in this program.

V. Competition Speeches

“Moneyball and Price Gouging” (February 27, 2006) Michael A. Salinger, Director, Bureau of Economics. Boston Bar Association, Antitrust Committee, Boston, MA.

“Economic Competition” (February 1, 2006) Deborah Platt Majoras, Chairman. Mexican Judicial Training Seminar Mexico City, Mexico.

“Ranking Exclusionary Conduct” (November 15, 2005) Susan Creighton, Director, Bureau of Competition. Remarks delivered at the ABA Section of Antitrust Law Fall Forum, Washington, D.C.

“The Rhetoric of Gun-Jumping” (November 10, 2005) William Blumenthal, General Counsel. Remarks delivered before the Annual Antitrust Seminar of the Greater New York Chapter of the Association of Corporate Counsel, in New York.

“Competition in the Information Society Uncorked and Unplugged” (November 8, 2005) Jon Leibowitz, Commissioner. Remarks before the 2005 Global Forum Palais D’Egmont Brussels, Belgium,

“The Status of Convergence on Transatlantic Merger Policy” (October 27, 2005) William Blumenthal, General Counsel. Written version of opening remarks delivered before a panel on "Cross-Atlantic Perspectives on Antitrust Enforcement" at the Fall Meeting of the International Law Section of the American Bar Association, in Brussels.

“Following the Yellow Brick Road to a More Competitive Landscape” (October 25, 2005) Jon Leibowitz, Commissioner. Remarks before the FTC/DOJ Workshop on Competition Policy in the Real Estate Industry.

“Developments in Competition Law in the European Union and the United States: Harmony and Conflict” (October 21, 2005) Pamela Jones Harbour, Commissioner. Remarks at the New York State Bar Association International Law and Practice Section Fall Meeting 2005, Program 19, London, England.

“Health Care” An Interview with Commissioner Thomas B. Leary (October 2005) Thomas B. Leary, Commissioner. This is an interview with Commissioner Leary conducted by the ABA Antitrust Section Health Care Committee Newsletter, published in the ABA's Antitrust Health Care Chronicle, , Vol. 19, No. 3.

“Recognizing the Procompetitive Potential of Royalty Discussions in Standard Setting” (September 23, 2005) Deborah Platt Majoras, Chairman. Stanford University, Stanford, California.

“Municipal Broadband: Should Cities Have a Voice?” (September 22, 2005) Jon Leibowitz, Commissioner. National Association of Telecommunications Officers and Advisors (NATOA), 25th Annual Conference - Washington, D.C.

“State Intervention: A State of Displaced Competition” (September 20, 2005) Deborah Platt Majoras, Chairman. George Mason University Law School: George Mason Law Review Antitrust Symposium.

“Is It Live Or Is It Memorex? Models of Vertical Mergers and Antitrust Enforcement” (September 8, 2005) Michael A. Salinger, Director, Bureau of Economics. Association of Competition Economics (ACE) Seminar on Non-Horizontal Mergers, Competition Commission, London, UK, September 7, 2005, and Fondation Universitaire, Brussels, Belgium.

Remarks to the 2005 ABA Annual Meeting (August 6, 2005) Deborah Platt Majoras, Chariman. Chicago, Illinois,

“Challenges in Identifying Anticompetitive Dominant Firm Behavior” (July 7, 2005) Michael A. Salinger, Director, Bureau of Economics. Speech before the National Economic Research Associates (NERA) 2005 Antitrust and Trade Regulation Seminar, Santa Fe, New Mexico.

“The Bipartisan Legacy” (June 21, 2005) Thomas B. Leary, Commissioner. Written version of a speech delivered at the American Antitrust Institute's Sixth Annual Conference at the National Press Club in Washington, D.C. on. The remarks are to be published in an edition of the Tulane University Law Journal.

“Competition Policy, Patent Law, and Innovation: Welcoming Remarks for the Patent Reform Conference” (June 9, 2005) Deborah Platt Majoras, Chairman. Washington, D.C.

“Vertical Restraints: What Does the Evidence Imply for Policy” (May 12, 2005) Luke M. Froeb, Director, Bureau of Economics. Presentation before the AEI-Brookings Joint Center , Washington, D.C.

“Health Care and the FTC: The Agency as Prosecutor and Policy Wonk” (May 12, 2005) Jon Leibowitz, Commissioner. Antitrust in HealthCare Conference, American Bar Association/American Health Lawyers Association, Washington, D.C.

“Recent Developments in the Merger Review Process in the United States and the International Competition Network” (April 20, 2005) William Blumenthal, General Counsel. Written version of remarks delivered before the International Bar Association and Japanese Federation of Bar Associations, Conference on International Competition Enforcement, in Tokyo.

Keynote Address (April 19, 2005) Deborah Platt Majoras, Chairman. OECD Workshop on Dispute Resolution and Consumer Redress.

“Post Merger Product Repositioning” (April 9, 2005) Luke M. Froeb, Director, Bureau of Economics. Speech before the Third Annual Meeting of the International Industrial Organization Conference, at The Georgia Institute of Technology Hotel and Conference Center, Atlanta, GA.

“U.S. Antitrust Practice - How does it affect European business?” (April 7, 2005) Deborah Platt Majoras, Chairman. Speech before the Studienvereinigung Kartellrecht, Brussels, Belgium.

“The Good, the Bad and the Ugly: Trade Associations and Antitrust” (March 30, 2005) Jon Leibowitz, Commissioner. American Bar Association, Antitrust Spring Meeting, Washington, D.C.

“The Cost of Filling Up: Did the FTC Approve Too Many Energy Mergers?” (March 31, 2005) Luke M. Froeb, Director, Bureau of Economics and John H. Seesel, Associate General Counsel for Energy, Federal Trade Commission. Remarks before The Fuel and Energy Committee Section of Antitrust Law, American Bar Association, Washington, D.C.

“A “Check-Up” of Selected Health Care Activity at the Federal Trade Commission” (March 30, 2005) Pamela Jones Harbour, Commissioner. ABA Antitrust Section Spring Meeting “The Agencies’ 2004 Report on Improving Health Care: Comments on the Report and Its Aftermath”.

“State of the FTC” (March 28, 2005) Deborah Platt Majoras, Chairman, Washington, DC.

“Vertical Restraints: Federal and State Enforcement of Vertical Issues” (March 17 - 19, 2005) Pamela Jones Harbour, Commissioner. ALI-ABA Course of Study, Product Distribution and Marketing, New Orleans, LA.

“Category Management” An Interview with FTC Commissioner Thomas B. Leary (Spring 2005) Thomas B. Leary, Commissioner. This is an interview with Commissioner Leary conducted by the ABA Section of Antitrust Law, Sherman Act Section 2 Committee, published in the Sherman Act Section 2 Committee's newsletter, Vol. III No. 2.

“New Trends in Antitrust Oversight of Mergers” (March 3, 2005) Susan Creighton, Director, Bureau of Competition. Panelist on Antitrust Issues in Today's Economy. New York, New York.

“The Federal Trade Commission: Fostering a Competitive Health Care Environment That Benefits Patients” (February 28, 2005), Deborah Platt Majoras, Chairman. World Congress Leadership Summit, New York, New York.

Steering Committee of the Antitrust and Consumer Law Section of the D.C. Bar (February 23, 2005) Deborah Platt Majoras, Chairman. Keynote Speaker, Washington, DC.

“Current Topics in Antitrust, Economics and Competition Policy” (February 8, 2005) Deborah Platt Majoras, Chairman and Susan Creighton, Director, Bureau of Competition. Keynote Speakers, Charles River Associates Program, Washington, DC.

Cheap Exclusion (February 8, 2005) Susan Creighton, Bureau of Competition Director. Remarks Before the Charles River Associates 9th Annual Conference on Current Topics in Antitrust Economics and Competition Policy, Washington, D.C.

“The Use of Economics in Merger Analysis” (January 27, 2005) Luke M. Froeb, Director, Bureau of Economics. The IBC Conference: The Use of Economics in Competition Law, Brussels, Belgium.

“Promoting International Convergence: Spring Training for Antitrust Professionals” (January 25, 2005) Deborah Platt Majoras, Chairman. Final Keynote at ABA International Forum, Miami, Florida.

“Recent Actions at the Federal Trade Commission” (January 18, 2005) Deborah Platt Majoras, Chairman. The Dallas Bar Association's Antitrust and Trade Regulation Section, Dallas, Texas.

“Estimating the Price Effects of Mergers and Concentration in the Petroleum Industry: An Evaluation of Recent Learning” (January 14, 2005) Deborah Platt Majoras, Chairman. Opening Remarks, Federal Trade Commission.

“Quantitative Methods in Merger Control” (December 3, 2004) Luke Froeb, Director, Bureau of Economics. King's College, London, England.

“Looking Forward: Merger and Other Policy Initiatives at the FTC” (November 18, 2004) Deborah Platt Majoras, Chairman. ABA Antitrust Section Fall Forum, Washington, DC.

“From Theory to Praxis: Quantitative Methods in Merger Control” (October 30, 2004)
Luke M. Froeb, Director, Bureau of Economics. Summit at Como: A Discussion of Competition Policy, Law and Economics, Como, Italy.

“The Art and Science of Cost-Effective Counseling” (October 2, 2004) Thomas B. Leary, Commissioner. ABA Antitrust Section 2004 Antitrust Masters Course, Atlanta, Georgia.

“Presenting Your Case to the FTC and DOJ - The Keys to Success” (October 1, 2004)
Pamela Jones Harbour, Commissioner. ABA Antitrust Section 2004 Antitrust Masters Course, Atlanta, Georgia.

ABA Antitrust Section 2004 Antitrust Masters Course (September 30, 2004) Deborah Platt Majoras, Chairman. Atlanta, Georgia.

“Antitrust Policy and Intellectual Property” (September 27, 2004) Thomas B. Leary, Commissioner. Andrews’ Publications Intellectual Property 2004 Litigation Conference. Chicago, Illinois.

“Competition Law and Consumer Protection Law: Two Wings of the Same House”
(September 22, 2004) Thomas B. Leary, Commissioner. Written version of a speech delivered at the FTC 90th Anniversary Symposium.

The Economic Roots of Antitrust - An Outline by Thomas B. Leary, Commissioner. Speech given by Alden Abbott, Assistant Director, Office of Policy and Coordination, Federal Trade Commission. Japan.

The Economic Roots of Antitrust - An Outline by Thomas B. Leary, Commissioner. (July 31, 2004) Outline prepared for a presentation at the International Seminar on Antitrust Law and Economic Development, Chinese Academy of Social Sciences Institute of Law. Beijing, China.

Prepared Remarks (May 17, 2004) Thomas B. Leary, Commissioner. The American Antitrust Institute’s Roundtable Discussion on Antitrust and Category Captains, Washington, DC.

Report from the Bureau of Competition (April 2, 2004) Barry Nigro, Deputy Director, Bureau of Competition. 52nd Annual ABA Antitrust Section Spring Meeting.

“Unilateral Merger Effects & Economic Models” (March 3, 2004) Luke M. Froeb, Director, Bureau of Economics. The 2004 Antitrust Conference: Antitrust Issues in Today’s Economy, New York, New York.

“Diagnosing Physician-Hospital Organizations” (January 22, 2004) Susan A. Creighton, Director, Bureau of Competition. American Health Lawyers Association, Program on Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions, Washington, DC.

“A Regulator’s Perspective on Protecting Consumers and Competitive Marketplaces: Developments at the FTC” (November 7, 2003) Orson Swindle, Commissioner. American Bar Association, Section of Administrative Law and Regulatory Practice, 2003 Administrative Law Conference, Washington, DC.

“The Role of Expert Economic Testimony in Antitrust Litigation” (November 2003) Luke M. Loeb, Director, Bureau of Economics. Committee on Antitrust and Trade Regulation of the Association of the Bar of the City of New York.

“A Federal-State Partnership on Competition Policy: State Attorneys General as Advocates” (October 1, 2003), National Association of Attorneys General, 2003, Antitrust Seminar, Washington, DC.

“Antitrust in Healthcare: A Keynote Address” (May 15, 2003) Thomas B. Leary, Commissioner. Written version of May 15, 2003 speech given at forum on Antitrust and Healthcare, Health Lawyers Association and the ABA Sections on Antitrust Law and Health, Washington, DC.

“Advertising and Unfair Competition: FTC Enforcement” (March 21, 2003) Thomas B. Leary, Commissioner. 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

“Vertical issues: The Federal View” (March 20, 2003) Thomas B. Leary, Commissioner. 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

“Discussion of Generic Drug Study” (January 29, 2003) Michael S. Wroblewski, Assistant General Counsel for Policy Studies, Office of General Counsel. Generic Pharmaceutical Association Annual Meeting, Rio Grande, Puerto Rico.

Institute of Public Utilities’ 34th Annual Regulatory Policy Conference (December 10, 2002) Thomas B. Leary, Commissioner. Keynote Speaker, Tampa, Florida.

“Antitrust Implications Under Hatch-Waxman” (December 6, 2002) Thomas B. Leary, Commissioner. Food and Drug Law Institute Hatch-Waxman Update Conference, Washington, DC.

“Competition” (October 30, 2002) Thomas B. Leary, Commissioner. International Chamber of Commerce, Department of Policy and Business Practices, ICC Commission, New York, New York.

American Bar Associations Antitrust Masters Course (October 25, 2002) Thomas B. Leary, Commissioner. Remarks, Sea Island, Georgia.

“Current Developments in EC & US Antitrust Law” (October 10, 2002) Thomas B. Leary, Commissioner. European Law Research Center at Harvard Law School, Cambridge, Massachusetts.

Anticompetitive Efforts to Restrict Competition on the Internet Workshop (October 8, 2002) Timothy J. Muris, Chairman, Opening Remarks. Comments by Thomas B. Leary, Commissioner. October 10, 2002 Session, Opening Remarks by Sheila F. Anthony, Commissioner; and Concluding Remarks by Ted Cruz, Director, Office of Policy Planning, Washington, DC.

“New Directions in Antitrust Enforcement” (July 4, 2002) Thomas B. Leary, Commissioner. National Economic Research Associates 22nd Annual Antitrust and Trade Regulation Seminar, Santa Fe, New Mexico.

Eurelectric CEO Meeting: Merger Acquisitions, Competition Policy (June 24, 2002) Thomas B. Leary, Commissioner. Keynote Speaker, Conference on World-wide Energy Liberalism, Leipzig, Germany.

Research Workshop and Conference on Marketing and Antitrust Competition Policy, University of Notre Dame, Mendoza School of Business (May 3, 2002) Thomas B. Leary, Commissioner. Keynote Luncheon Speaker, South Bend, Indiana.

“Crises and Transitions: Is Competition Policy Responsive to Market Power Issues in Restructuring Energy Markets?” (April 25, 2002) Thomas B. Leary, Commissioner, ABA 2002 Annual Antitrust Spring Meeting, Washington, DC.

Center for Health Law Studies and the St. Louis University Law Journal. (April 12, 2002) Thomas B. Leary, Commissioner. 14th Annual Health Law Symposium, Keynote Speaker, St Louis, Missouri.

Baltimore Academies Business Professionals Breakfast. (March 13, 2002) Orson Swindle, Commissioner. Discussion of Consumer Protection and Competition Issues, Pikesville, Maryland.

“New Trends in Antitrust Oversight of Mergers” (March 7, 2002) Thomas B. Leary, Commissioner. Conference Board 2002 Antitrust Conference, New York, New York.

“Perspectives from the FTC: Remarks on the Enforcement Agenda” (March 1, 2002) Thomas B. Leary, Commissioner. Antitrust in Deer Valley: New Challenges/Cutting Edge Solutions, ABA Section of Antitrust Conference, Park City, Utah.

“The Essential Stability of Merger Policy in the United States” (January 17, 2002) Thomas B. Leary, Commissioner. Guidelines for Merger Remedies: Prospects and Principles, Joint

U.S./E.U. Conference, University of California at Berkeley School of Law, Berkeley Center for Law & Technology, and Ecole Nationale Supérieure des Mines de Paris, Paris, France.

“Three Hard Cases and Controversies: The FTC Looks at Baby Foods, Colas and Cakes”

(December 4, 2001) Thomas B. Leary, Commissioner. Association of the Bar of the City of New York’s Milton Handler Annual Antitrust Review, New York, New York.

“A Comment on Merger Enforcement in the United States and in the European Union”

(October 11, 2001) Thomas B. Leary, Commissioner. Transatlantic Business Dialogue Principals Meeting, Washington, DC.

VI. Statistics

Fiscal Year 2006 (October 1, 2005 through March 15, 2006)

Part II Consent Agreements Accepted for Comment - 6

Mergers and Joint Ventures - 4

DaVita Inc./Gambro Healthcare, Inc.

Johnson & Johnson/Guidant Corporation

Teva Pharmaceutical Industries Ltd / Ivax Corporation

Allegran / Inamed Corporation

Nonmergers - 2

Health Care Alliance of Laredo, L.C.

Valassis Communications, Inc.

Permanent Injunctions Authorized - 1

Warner Chilcott

Total Merger and Nonmerger Enforcement - 7

Fiscal Year 2005

Part II Consent Agreements Accepted for Comment - 13

Mergers and Joint Ventures - 9

Cemex S.A. de C.V./RMC Group, PLC
Cytex Industries Inc./UCB S.A.
Genzyme Corporation/ILEX Oncology, Inc.
Occidental Chemical Corporation/Vulcan Materials Company
Chevron Texaco Corporation/Unocal Corporation
Valero L.P./Kaneb Services LLC
Novartis AG/Eon Labs, Inc.
Penn National Gaming, Inc./Argosy Gaming Company
The Procter & Gamble Company/The Gillette Company

Nonmergers - 4

Preferred Health Services
New Millennium Orthopedics LLC
San Juan IPA
Partners Health Network, Inc.

Part III Consent Agreements Accepted for Comment - 2

Nonmergers - 2

Evanston Northwestern Healthcare Corporation - Count III of the administrative complaint
Union Oil Company of California

Preliminary Injunctions Authorized - 1

U.S. Restaurant Properties, Inc./Aloha Petroleum Corp

Civil Penalty Actions Filed - 1

Scott R. Sacane

Total Merger and Nonmerger Enforcement

(Includes 1 civil penalty actions) - 17

Fiscal Year 2004

Part III Administrative Complaints - 2

Mergers and Joint Ventures - 1

Evanston Northwestern Healthcare Corporation/Highland Park Hospital
Arch Coal, Inc./Triton Coal Company (Note: Preliminary Injunction Authorized During Fiscal Year - case counted under Preliminary Injunctions Authorized)

Nonmergers - 1

Piedmont Health Alliance, Inc.

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 10

GenCorp Inc./Atlantic Research Corporation
General Electric Company/Agfa-Gevaert N.V.
L'Air Liquide SA/Messer Griesheim GmbH
Itron, Inc./Schlumberger Electric, Inc.
Sanofi-Synthélabo/Aventis, S.A.
Cephalon, Inc./Cima Labs, Inc.
General Electric Company/InVision Technologies, Inc.
Buckeye Partners, L.P./Shell Oil Company
Midstream Partners, L.P./Shell Oil Company
Enterprise Products Partners L.P./GulfTerra Energy Partners L.P.

Nonmergers - 7

New Hampshire Motor Transport Association
Memorial Hermann Health Network Providers
Tenet Healthcare Corporation
Southeastern New Mexico Physicians IPA
Clark County, Washington Attorneys
Virginia Board of Funeral Directors and Embalmers
White Sands Health Care System, LLC

Fiscal Year 2004

(continued)

Civil Penalty Actions Filed - 2

RHI AG

William H. Gates III

Preliminary Injunctions Authorized - 1

Arch Coal, Inc./Triton Coal Company

Permanent Injunctions Authorized - 1

Alpharma, Inc. and Perrigo Company

Total Merger and Nonmerger Enforcement

(Includes 2 civil penalty actions) - 26

Fiscal Year 2003

Part III Administrative Complaints

Mergers and Joint Ventures - 1

Aspen Technology, Inc./Hyprotech, Ltd.

Nonmergers - 7

Alabama Trucking Association, Inc.
California Pacific Medical Group dba Brown and Toland Medical Group
Kentucky Household Goods Carriers Association, Inc.
Movers Conference of Mississippi, Inc.
North Texas Specialty Physicians
South Carolina State Board of Dentistry
Union Oil Company of California

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 7

Baxter International Inc./Wyeth Corporation
Dainippon Inc. and Chemicals, Inc./Bayer Corporation
DSM N.V./Roche Holding AG
Pfizer Inc./Pharmacia Corporation
Quest Diagnostics Inc./Unilab Corporation
Southern Union Company/Panhandle Pipeline from CMS Energy Corporation
Wal-Mart Stores, Inc./Supermercados Amigo, Inc.

Nonmergers - 16

Anesthesia Service Medical Group, Inc.
Bristol-Myers Squibb Company (BuSpar)
Bristol-Myers Squibb Company (Platinol)
Bristol-Myers Squibb Company (Taxol)
Carlsbad Physician Association
Indiana Household Movers and Warehousemen, Inc.
Institute of Store Planners
Iowa Movers and Warehousemen's Association
Maine Health Alliance, The
Minnesota Transport Services Association
National Academy of Arbitrators
Physician Network Consulting, et al.
South Georgia Health Partners, L.L.C.
SPA Health Organization dba Southwest Physician Associates

Fiscal Year 2003

(continued)

Part II Consent Agreements Accepted for Comment (Continued)

Surgical Specialists of Yakima

Washington University Physicians Network

Civil Penalty Actions Filed

None

Preliminary Injunctions Authorized

Mergers and Joint Ventures - 3

Kroger Company (Raley's Supermarkets)

Nestle Holdings, Inc./Dreyer's Grand Ice Cream

Vlasic Pickle Company (Claussen Pickle Company)

Merger Transactions Abandoned - 10

Total Merger and Nonmerger Enforcement - 44

Fiscal Year 2002

Part III Administrative Complaints

Mergers and Joint Ventures - 2

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

Libby Inc. and Anchor Hocking (Note: Preliminary Injunction Authorized during fiscal year - case counted under PI's Authorized)

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

Nonmergers - 1

Rambus, Inc.

Part II Consent Agreements Accepted for Comment

Mergers and Joint Ventures - 10

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

Amgen Inc./Immunex Corp

Bayer AG/Aventis CropScience Holdings S.A.

INA-Holding Schaeffler KG and FAG Kugelfischer Georg Schaefer AG

Koninklijke Ahold NV/Bruno's Supermarkets, Inc.

Nestle Holdings, Inc./Ralston Purina Company

Phillips Petroleum/Conoco

Shell Oil Company/Pennzoil-Quaker State Company

Solvay S.A./Ausimont S.p.A.

Valero Energy Corporation/Ultramar Diamond Shamrock Corporation

Nonmergers - 8

American Institute for Conservation of Historic and Artistic Works

Aurora Associated Primary Care Physicians

Biovail Corporation

Biovail Corporation and Elan Corporation

Obstetrics & Gynecology Medical Corporation of Napa Valley

Professional Integrated Services of Denver

Professional's in Women's Care

System Health Providers

Fiscal Year 2002

(Continued)

Civil Penalty Actions Filed

Premerger Notification - 1

First Data Bank/Medi Span

Preliminary Injunctions Authorized

Mergers and Joint Ventures - 5

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

Diageo plc/Pernod Ricard S.A.

Libby, Inc./Anchor Hocking

Meade Instruments/Tasco Holdings

Cytoc Corporation/Digene Corporation

Merger Transactions Abandoned - 7

(HSR and Non-HSR matters)

Total Merger and Nonmerger Enforcement - 34

(includes 1 civil penalty action)

