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Annual Report of the  
FEDERAL TRADE  
COMMISSION  
1975

Annual

Report

of the

FEDERAL

TRADE

COMMISSION

For the Fiscal Year Ended

June 30, 1975

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Letter of Transmittal

FEDERAL TRADE COMMISSION  
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the sixty-first Annual Report of the Federal Trade Commission covering its accomplishments during the fiscal year ended June 30, 1975.

By direction of the Commission.

CALVIN J. COLLIER,  
Chairman.

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

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**THE YEAR IN SUMMARY**

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With its fiscal 1975 budget, the Commission began making resource allocation decisions on a programmatic basis. It took steps to introduce cost/benefit analysis into resource planning decisions and embarked on a management improvement program designed to complement and support the program budget. As part of the process, the Commission used its Office of Policy Planning and Evaluation to assess the effectiveness of programs and to recommend resource allocations based on potential yield of benefits to consumers. The Commission also initiated a formal, semi-annual review of staff progress in each individual program so that changes in program emphasis could be made pursuant to shifting priorities.

One result of the program review was a dramatic increase in the percentage of resources devoted to eliminating barriers to competition. This increased emphasis reflects the Commission's belief that restraints upon competition deprive the public of access to goods and services of optimum quality at minimum prices and that a free and honest market is the best guarantor of consumer benefit. Particular attention was given to the areas of energy, food, and health care.

The passage of the Magnuson-Moss Warranty - Federal Trade Commission Act of 1975 substantially strengthened the Commission's ability to deal with consumer problems by confirming the Commission's authority to issue substantive trade regulation rules and empowering the Commission to seek consumer redress and civil penalties for rule violations. Under the warranty provisions of Magnuson-Moss, the Commission is developing a system of warranty regulation designed to promote competition among warrantors and establish standards for the fair and nondeceptive use of warranties. To this end, seven proposed trade regulation rules were



issued by the Commission. In addition, during this year, the Commission also began designing a program to codify into trade regulation rules the definitions of unfair or deceptive conduct previously developed in individual case litigation, its industry guides, and trade regulation rules.

### **FISCAL YEAR 1975 PROGRAM ACCOMPLISHMENTS**

Major program accomplishments for the Commission for fiscal year 1975 are discussed by mission as follows:

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

## **MAINTAINING COMPETITION**

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The Commission made substantial progress during fiscal 1975 in developing major antitrust cases in support of the Maintaining Competition mission. The Xerox patent monopoly case (office copier industry) was withdrawn from adjudication for purposes of settlement. Both the Exxon, et al. case (petroleum industry litigation) and Kellogg, et al. ("Breakfast Cereal" case) advanced through pretrial stages. The Commission issued a new complaint charging alleged monopolization of the airport auto rental market by the nation's leading car leasing firms (Avis-Hertz-National). Investigations with far-reaching economic and consumer significance were undertaken, especially in the food and health care sectors, and merger law enforcement activity continued to be highly trial-intensive.

Direct enforcement effort in Maintaining Competition was characterized by three broad emphases: extensive investigative activity in cases having a major economic impact such as the food and health care industries; intensive trial activity; and, continued legal-economic activity encompassing the full scope of the energy industries.

The investigation and litigation activities in this mission were augmented by continued management improvements. Utilization of the program planning concept was further implemented; case evaluation and selection processes were refined and employed effectively; and steps were taken to improve coordination of efforts. Moreover, increasing use was made of the Bureau of Economics in analyzing cost/benefit considerations for proposed enforcement and investigative actions.

In fiscal 1975, the Commission issued 31 complaints and 28 final orders in the competition area, as compared with 28 complaints and 26 final orders in fiscal 1974. The litigation workload included 49 matters in adjudication at year-end. In addition, compliance efforts in fiscal 1975 resulted in 18 divestitures under seven different Commission orders. Through prosecution of civil penalty actions for failure to comply with Commission orders, over \$4 million in penalties were assessed or affirmed.

As a result of careful review of all pending investigations under comprehensive evaluation procedures, a number of unpromising files were closed, reducing the total of open formal antitrust investigations to less than 130.

The discussion following covers (1) a survey of accomplishments in each enforcement program in the Maintaining Competition mission, (2) a review of contributions made to the mission by regional offices and the General Counsel, and (3) an overview of adjudicative activity in which the Administrative Law Judges took part.

### The Energy Program

Both segments of the Commission's energy program - the petroleum industry litigation (Exxon, et al., D. 8934) and the energy study - made significant strides during the year.

In the Exxon case, active pretrial discovery was conducted in preparation for trial of the Commission complaint, which alleges monopolization and conspiracy to monopolize the production, refining, and distribution of petroleum products by the eight leading firms in the industry. A large volume of documentary material was received and processed, and extensive depositions were completed.

The Congressionally-mandated energy study, involving a multi-disciplinary evaluation of competitive economic conditions in all sectors of the energy field, continued during the year. Difficulty in obtaining the necessary underlying data was encountered during the year. It was necessary to undertake subpoena enforcement proceedings to secure compliance with Commission compulsory process.

In addition, the Deepwater Port Act of 1974 assigned responsibility to the Commission for reviewing the applications submitted for licenses to construct port facilities for supertankers. The legislative purpose underlying the Act is to ensure that the limited number of sites which are suitable for this type of construction are licensed in a manner which will provide the greatest competitive benefits to the American consumer. These licenses are being monitored by the Commission's Energy Study unit.

Last, several interlocking directorates were dissolved in conjunction with initial consent disposition of complaints in six cases, on which formal action required the expiration of the 60-day time period for public comment.

### The Food Program

The Commission's program to examine the food industry developed substantial knowledge and understanding of the industry's segments during fiscal 1975, and focused on five discrete areas:

#### Grower-Producer

Emphasis during fiscal 1975 was upon antitrust evaluation of Agricultural cooperatives, particularly with respect to the impact on marketing of the Capper-Volstead Act cooperatives exemption from federal antitrust law. A draft staff report regarding this question was completed and submitted to the Commission.

Other accomplishments included the filing of an initial decision adjudging violation of Section 5 of the FTC Act by Central California Lettuce Producers Cooperative (D. 8970).

#### Manufacturer-Processor

Activity in this area was highlighted by unanticipated settlement of the Deltown Foods case (D. 8951) involving dairy interests in the New York market; substantial progress in preparation for trial of the shared monopoly complaint against Kellogg, et al. ("Breakfast

Cereal" case, D. 8883); and issuance of three complaints. New complaints in this area involved Nestle Alimentana S.A. (D. 9003) (challenging the acquisition of Stouffer Corp. under Section 7 of the Clayton Act); Coca-Cola Bottling Co. of New York (D. 8992) (challenging the acquisition of Franzia Brothers Winery under Section 7 of the Clayton Act); and ITT-Continental Baking Co. (D. 9000) (charging ITT with engaging in predatory pricing and price discrimination in an attempt to monopolize the wholesale bread industry).

#### Distributing and Marketing

During fiscal 1975, the Commission completed extensive trial proceedings and the record was closed in the case against The Great Atlantic & Pacific Tea Co., et al. (D. 8866) involving alleged illegal inducement of lower prices and unlawful fixing of resale prices in connection with the sale of private label dairy products.

The Commission continued its litigation involving territorial franchise restrictions by eight national soft drink franchise firms. Trial of the first case was completed (Coca-Cola, D. 8855) and a second matter was scheduled to commence trial hearings early in fiscal 1976.

#### Retailing

Because of food chain resistance to subpoena compliance in the Commission's investigation of retail food pricing, serious delays have been experienced in obtaining testimony and in securing documentary materials. This matter was vigorously pursued through enforcement proceedings to secure compliance with Commission compulsory process.

The Commission continued monitoring mergers and acquisitions among food retailing firms through its special merger notification program. This program implements a previously-published statement of enforcement policy dealing with mergers in the food industry.

## Commodities

A study of soybean and grain markets was conducted and will be completed in fiscal 1976. The broad, general knowledge and understanding of commodities marketing which has been attained provides the basis for further investigative activity in this important sector of the food economy.

## The Health Care Program

The Commission's health care program grew and changed during fiscal year 1975. The program has been revised and expanded to concentrate on three areas: drugs, hospital care, and physician services.

Progress was made in a number of existing investigations in the area of drugs and hospital supplies. In addition, planning was completed for the new investigations in the hospital care and physician services sector of the health care industry. Nonpublic investigations addressed to the thorough study and antitrust evaluation of some of the primary competitive problems affecting these areas have been initiated.

The Commission was delegated responsibility under the Health Maintenance Organizations Act to consult with the Department of Health, Education, and Welfare in order to ensure that regulations implementing the Act have no undue anti-competitive effects. Liaison was established with DHEW as part of the hospital care segment of this program.

## Industrywide Enforcement

The Xerox case (D. 8909) was brought close to a successful conclusion as a result of settlement discussions which led to withdrawal of the matter from adjudication. An initial settlement agreement was rejected by the Commission following receipt of extensive public comment, and the matter was returned to the staff for further negotiations. A second settlement agreement was submitted to the

Commission, opportunity for additional comment was made available to the public, and the matter was under consideration by the Commission at the end of the year.

The Commission issued a complaint against the three largest national car leasing firms charging a conspiracy to monopolize the auto rental business at airports (Avis-Hertz-National, D. 9033). Four recommendations for complaint were also received by the Commission charging unlawful resale price maintenance by manufacturers or marketers of high-fidelity audio components.

New investigations were planned or initiated in several other consumer goods industries, including household appliances and detergents. Existing investigations involving toys and games, title insurance, and automotive crash parts continued.

### Merger Enforcement

The joint Bureau of Competition and Bureau of Economics merger screening and evaluation process which selects cases for further consideration continued during fiscal 1975. The following 9 matters were reviewed by the Merger Screening Committee and acted upon by the staff or Commission.

Two cases already in adjudication in which trials were completed resulted in initial decisions requiring divestiture (Ash Grove's acquisition of Lee's Summit and Fordyce in the cement industry, D. 8785, and purchase of Airco shares by British Oxygen, which was alleged to lessen competition in the marketing of industrial gases, D. 8955). Six matters were disposed of by consent without need for extensive litigation. Final orders were entered in three of these cases: Deltown Foods acquisition of the "Sealtest" assets of Kraftco in the New York area, D. 8951; acquisition of McQuay-Norris automotive engine parts by Eaton, Yale & Towne, D. 8826; and Rockwell International's acquisition of the manufacturer of Wildman jacquard looms and knitting machines, D. 8842. Proposed consent orders were placed on the record for receipt of public comment in connection with acquisitions of

United Auto Parts and other firms in the automotive parts field by Borg-Warner, File 731 0607; acquisition by Associated Dry Goods of competing retail outlets in Indiana from L. S. Ayres, D. 8905, and Kaiser Steel Corporation, acquisition of steel tube manufacturing assets and facilities of MSL Industries, D. 8878.

In addition, five new complaints were issued for adjudication: Jim Walter's acquisition of Panacon Corp. in the asphalt roofing industry, D. 8986; Gifford-Hill's acquisition of several companies in the ready-mix concrete, cement, aggregates, and prestressed concrete products field, D. 8989; Anaconda's acquisition in the coaxial cable industry of Systems Wire and Cable, D. 8994; Cargill's acquisition of Missouri Portland Cement, D. 9005; and a joint venture in the outboard marine motor market involving Brunswick Corporation, D. 9028.

Two additional matters in which the terms of Commission orders were in dispute were finally resolved. A consent agreement was negotiated with Bendix Corp. (D. 8739), providing for creation of a new company to restore the competition allegedly eliminated by its acquisition of Fram Corp., and the Commission modified its divestiture order against Litton (D. 8778) that had required it to dispose of the Royal typewriter product line.

The Commission's regional offices contributed to this program by handling litigation of complaints against Heublein (acquisition of United Vintners, D. 8904) and Walter Kidde (acquisition of Arrow Lock, D. 8957), in the San Francisco and New York Regional Offices respectively.

The merger notification program, which requires prompt disclosure of certain categories of acquisition or merger, continued to provide information for use in the merger screening process.

#### Horizontal Restraints

Case developments in the horizontal restraints area generally fell into one of several distinct groups or programs. Four cases involving tying arrangements in the prefabricated wood building.



truss market were resolved: three by consent prior to complaint (Automated Building Components, C-2635; Hydro-Air Engineering, C-2636; and J. D. Adams Co., C-2637) and one following issuance of the complaint but prior to full adjudication (Sanford Industries, D. 8997). Basing point pricing was the subject of trial preparation in Boise Cascade (D. 8958), consent settlement in two cases (International Paper, C-2518, and Vancouver Plywood, C-2519), and a new complaint (issued against Martin Marietta, et al. D. 9039). The three former cases all involve plywood; the latter involves cement, and is being handled by the Dallas Regional Office. In shopping center leasing matters, Tyson's Corner (D. 8886) was argued on appeal to the Commission after a favorable initial decision and after partial consent disposition involving May Department Stores Company. A similar matter involving The Rouse Company (C-2663) was disposed of by consent.

Also within the field of horizontal restraints, a consent order was entered against Lear Siegler, Inc., et al. (C-2542) involving an alleged violation of Section 8 of the Clayton Act arising from presence of a common director on the boards of the named company and Royal Industries, both of which were engaged in the production and sale of safety helmets and other products. New complaints charging violations of Section 8 were issued against Kane-Miller Corp., et al. (D. 9034) and Kraftco, Inc., et al. (D. 9035), both involving interlocking directorates in the food industry.

The Chicago Regional Office recommended and is handling adjudication of a complaint which charges that Borden, Inc. (D. 8978) has attempted to unlawfully monopolize the reconstituted lemon juice market.

Last, substantial administrative effort was devoted during the year to initiation of enforcement projects with the regional offices involving collusion and government procurement.

## Vertical Restraints

The bulk of routine Commission enforcement in the area of vertical restraints is now being performed by regional office staffs. Orders were issued in a variety of matters involving discriminatory practices, dealer restraints, and unlawful resale price maintenance: these included Duofold, C-2632; Colt Industries, C-2520; Ponder & Best, C-2552, Cubco, C-2670; and Lawry's Foods, C-2575. The Dallas Regional Office also was responsible for a major new complaint against Gibson Products (D. 9016) charging numerous discriminatory and restrictive marketing practices.

While the regional offices were concerned largely with individual conduct violations, the headquarters staff concentrated its resources in this program on distributional restraints having more general application. A complaint proceeding against Phillips (D. 8930) challenging dealer coercion in the service station field was unexpectedly settled by consent, while pretrial continued in the related case against Standard of Ohio (D. 8910). Trial began in a matter involving dealer restraints in hearing aid distribution (Belton, D. 8928) and a new complaint was issued against Amway Products (D. 9023) regarding its direct sales distributional restraints. Alleged "fair trade" abuses were the subject of a matter involving Rubbermaid (D. 8939) in which an initial decision was rendered; the case is subject to an appeal pending before the Commission.

Other matters satisfactorily resolved were the consent settlements in Dahlberg Electronics (D. 8929, dealer restraints in the sale of hearing aids), Sharp Electronics (C-2574, dealer restrictions in the sale of business and consumer electronic products), and Hart, Schaffner & Marx (C-2634, including discriminatory prices and allowances from suppliers of men's furnishings). Modified orders were entered in AAMCO Automatic Transmissions (C-2305), and in Adolph Coors (D. 8845, pursuant to opinion and order of the U.S. Court of Appeals for the Tenth Circuit). The Commission affirmed upon appeal the findings of violation by Holiday Magic, Inc., et al. (D. 8834), and entered an order which was subsequently modified in order to delete provisions regarding

restitution. The case involved a myriad of dealer restraints connected with the distributional activities of this multilevel, direct sales organization.

Problems with industrywide significance were the subject of two other Commission achievements. An informal agreement was reached in Columbia Broadcasting Co. (File 641 0008) under which the networks are not making available more regional advertising during prime evening hours.

Last, an Order to File Special Report was issued to 75 fast-food franchise firms regarding any supply restraints they imposed on their independent franchise dealers during fiscal 1975. Responses to the latter orders were deferred for six months in order to allow firms to review their practices and bring them into voluntary compliance prior to filing the required Special Reports. These will be collected and analyzed during fiscal 1976.

### Compliance

During fiscal 1975, an extensive analysis and recommendations involving reports of compliance in approximately 75 major matters were submitted to the Commission. There have been six investigations into possible order violations and formal advisor opinions have been recommended to the Commission in eight matters. In addition, informal advice has been given to respondents in many cases.

During the year, 18 major divestiture proposals were processed by the staff and acted on by the Commission in seven different cases. These included divestiture of: six ready-mix concrete plants and related assets in Florida; interests in two West Coast macaroni companies by different acquirers; a knitting machine manufacturing business; a periodical and paperback business in Rome, Georgia; vending sales volume in nine different market areas; seven automotive parts wholesale distributors in California; and, a pipeline company in Jackson, Mississippi. Recommendation concerning four applications for prior Commission approval of proposed acquisition were also prepared by the staff and acted on by the Commission.

At the beginning of fiscal year 1975 there were nine civil penalty actions pending at various stages. During the year an additional penalty case, U.S. v. Papercraft Corp. was certified to the Department of Justice. Through vigorous prosecution of the pending civil penalty actions by the compliance staff, penalties were assessed or affirmed totaling \$4,292,700. In addition, injunctions have been awarded or affirmed in five of the cases.

#### Accounting

The accounting staff provided assistance in numerous investigations, studies and litigation matters in fiscal 1975. During that period, accounting services were utilized in 19 matters involving mergers and acquisitions; nine matters involving discriminatory pricing practices; and 36 matters involving other unfair methods of competition and restraint of trade.

In addition, accounting assistance was provided for the annual Rates of Return in Selected Manufacturing Industries report, and in special and economic studies.

#### Regional Office Support to Maintaining Competition

During fiscal 1975, the Commission's regional offices worked closely with the Bureaus of Competition and Economics to develop a significant and important program for antitrust law enforcement. In addition to their efforts in investigating and arresting such traditional trade restraint problems as allocation of markets and customers, resale price maintenance systems, boycotts, price fixing and bid-rigging conspiracies, the regional offices have also assisted state and local law enforcement agencies in improving their effectiveness in dealing with competition problems.

Generally, regional office efforts designed to promote competition fell within three broad areas:

- (1) reducing or preventing excess market power caused by industry merger, joint venture activity and excess concentration;
- (2) reducing or preventing excess market power caused by industry member conduct, such as allocation of markets and customers, resale price maintenance, boycotts, price and bid fixing, and price and service discrimination; and
- (3) assisting state and local law enforcement agencies to enhance their effectiveness in the antitrust area.

Within the first category, the regional offices in fiscal 1975 continued their adjudicatory efforts in the matter of Walter Kidde and Company (D. 8957), challenging Kidde's acquisition of Arrow Lock Corporation, and in Heublein, Inc. (D. 8904) challenging the acquisition by Heublein Incorporated of United Vintners.

Within the second category, the regional offices recommended three complaints which were issued by the Commission in fiscal 1975. First, in the matter of Martin Marietta Corporation (D. 9039), the Commission charged three Portland cement manufacturers with establishing and maintaining a noncompetitive pricing and distribution system. Second, in the matter of Borden, Inc. (D. 8978), the Commission charged Borden with illegally monopolizing the reconstituted lemon juice industry. Third, in the matter of Gibson Products Company (D. 9016), the Commission alleged that the owners and operators of a nationwide chain of "Gibson" retail stores knowingly induced discriminatory allowances from their suppliers, boycotted suppliers not granting these special allowances, and received or granted illegal brokerage payments, all in violation of the Robinson-Patman Act and Federal Trade Commission Act. The regional offices were also responsible for obtaining two other orders involving the Robinson-Patman Act: Ponder & Best, Inc. (C-2552) and Lawry's Foods, Inc. (C-2575).

In addition, the regional offices were heavily involved in investigations involving shopping center leases, and were responsible for a consent order entered against a major shopping center developer in The Rouse Co. (C-2663). Resale price maintenance

was the subject of complaints and orders obtained through regional office efforts in Colt Industries Corp. (C-2520), Duofold, Inc. (C-2632), and Cubco, Inc. (C-2670). The regional offices also completed work on an industrywide investigation of vertical price fixing in the sale of phonographic stereo equipment.

Within the third category above, the regional offices have been engaged in an extensive effort to encourage the state legislators to review state laws and bills from the point of view of assessing their costs and benefits for consumers. Particular emphasis was placed on reviewing state licensing laws that restrict, rather than promote, competition. To this end, staff of the regional offices have testified before state legislative committees on proposed regulatory reform bills, and have conferred with State Attorneys General regarding the competitive impact of specific state regulations. In addition, they have worked with state officials to set up statewide regulatory reviews, and have commented on licensing boards' proposed rules and regulations.

During fiscal 1975, the regional offices opened 15 formal investigations of competition matters. A total of 57 competition-related, open formal investigations were the responsibility of the regional offices at year-end.

#### General Counsel Support to Maintaining Competition

The General Counsel's staff serves as the Commission's lawyer in all court proceedings (except compliance matters) to which the Commission is a party in the United States District Courts, U.S. Courts of Appeals and the U.S. Supreme Court.

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

Counsel staff coordinates liaison activities with Congress and other Federal agencies, drafts, comments on legislative proposals, administers the Commission's advisory opinion program, advises the Commission on appeals from denials of access to Commission files under the Freedom of Information Act and advises the Commission as to the disposition of motions to quash 6(b) orders. The staff's legal services are employed in connection with all the Commission's competition, consumer protection, and economic activities.

During fiscal 1975, the General Counsel represented the Commission in 156 court cases, including 73 cases on hand at the start of fiscal 1975 and 83 cases which were initiated during the course of the fiscal year. Twenty-eight of the total involved appeals to the court of appeals from the Commission orders and of these, six were in the competition area. A total of 128 collateral cases were worked on during fiscal 1975 including subpoena enforcement, injunction, and Freedom of Information Act proceedings and appeals therefrom. Thirty-nine of these cases involve the Commission's operational activities in the area of competition.

Among the significant actions in the area of competition which have resulted from the litigation staff's efforts during fiscal 1975 are the following:

In the Corning Glass Works case, the Seventh Circuit affirmed a Commission order which prohibited Corning from enforcing price maintenance in fair trade states through the use of contracts with its wholesalers located in free trade states.

In the Avnet case, the Seventh Circuit also upheld a Commission decision striking down Avnet's acquisition of Guarantee Generator and Armature Co. as having been in violation of Section 7 of the Clayton Act.

The legislative and congressional liaison activities of the Commission included the preparation of reports and the presentation of testimony at congressional hearings on a number of bills subsequently enacted, including amendments to the Freedom of Information Act; the Magnuson-Moss Warranty - Federal Trade

Commission Improvement Act of 1974; the Deepwater Port Act of 1974; legislation to increase the criminal sanctions of the Sherman Antitrust Act; and the Privacy Act of 1974. Testimony was given on a number of bills dealing with the repeal of the so-called "fair trade laws"; the Hart-Scott Antitrust Improvement Act of 1974; parens patriae antitrust suits by state attorneys general; and exclusive territorial franchising in the food and soft drink industries. Testimony has also been given in a number of investigative areas not the subject of specific legislative proposals. These included hearings dealing with the impact of the Commission's activities on small business, the Congressional review of the Commission's management process and resource utilization, the Commission's investigation of the retail food industry, and the effectiveness of federal regulation of the airline industry.

Significant fiscal 1975 activities in the legal services area included recommendations on changes of policy and procedure in order to comply with the amendments to the Freedom of Information Act; and rendering advice with respect to many issues involved in the Commission's line of Business Program. Advisory opinions were rendered with respect to the lawfulness of a statistical price reporting plan, a fuel reservation program for transient aircraft, redeemable coupon redemption, together with various requests for advice concerning applications of the Robinson-Patman Act. Over 75 staff opinions, in addition, were provided the business community in fiscal 1975.

#### Administrative Law Judges' Participation In Maintaining Competition Mission

At the beginning of fiscal 1975 there were 36 competition cases in the hands of the Commission's staff of 12 administrative law judges. Among the competition cases in trial before the administrative law judges during fiscal 1975 were the following: American General Insurance Company, D. 8847; Amway Corporation, Inc., D. 9023; Associated Dry Goods, D. 8905; Boise Cascade Corporation, D. 8958; Borden, Inc., D. 8978; British Oxygen, D. 8955; Central California Lettuce Producers Co-op, et al., D. 8970; Cargill, D. 9005; The Coca-Cola Company, et al., D. 8855; Exxon Corp., et al., D. 8934; Food Fair Stores Inc., et al., D. 8935;



Fruehauf Corporation, D. 8972; The Great Atlantic & Pacific Tea Company, D. 8866; Hertz Corporation, D. 9033; Kaiser Steel Corporation, D. 8878; Kellogg Company, et al., D. 8883; Kraftco, Inc., et al., D. 9035; Liggett & Myers, Incorporated, D. 8938; Litton Industries, D. 8778; PepsiCo, Inc., D. 8856; Phillips Petroleum, D. 8930; Retail Credit Company, D. 8920; Standard Oil Company of Ohio, D. 8910; Textron, Inc., D. 8927; Warner-Lambert Company, D. 8850; Xerox Corporation, D. 8909; Gifford-Hill & Company, D. 8989; ITT-Continental Baking Company, et al., D. 9000.

## **CONSUMER PROTECTION**

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In fiscal 1975, the dominant feature of the Consumer Protection mission at the Commission was the enactment of the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act. The efforts that went into redirecting Commission consumer protection programs in order to begin to take advantage of the Act's opportunities, on the part of both the Bureau of Consumer Protection and the regional offices, were significant enough to merit separate discussion in this review of fiscal 1975 program accomplishments. Additional sections will follow on other Bureau and regional office programs, and on support to the Consumer Protection mission provided by the General Counsel and the Administrative Law Judges. In addition to these support missions, the Bureau of Economics began to utilize cost/benefit analysis of consumer protection rulemaking and enforcement proposals.

### **Implementation of the Magnuson-Moss Act**

To capitalize on the potential of the Magnuson-Moss Act, and to comply with the strict deadlines Congress wrote into the Act for the creation of a brand new federal system of warranty regulation, the Commission reviewed and redirected its consumer protection programs during the last six months of fiscal 1975.

By confirming the Commission's authority to issue substantive trade regulation rules, and by empowering the Commission to seek consumer redress and civil penalties for rule violations, the Magnuson-Moss Act made the trade regulation rule the basic building block of the Commission's consumer protection programs. The Commission therefore accelerated its efforts to produce enforceable trade regulation rules and also began designing a program to

codify into trade regulation rules the definitions of unfair or deceptive conduct previously outlined in litigation, interpretive guides, and trade practices rules.

The Magnuson-Moss Act not only defined the scope and role of the Commission's rulemaking power, but also spelled out the procedural steps the Commission must follow in order to promulgate valid trade regulation rules. Accordingly, the Commission halted proceedings in connection with several major rules in process when the Act became law in order to bring its procedures into compliance. These rules subsequently were republished in accordance with the Act's requirements, and an entirely new set of procedural rules was proposed to govern future trade regulation rule proceedings.

Title I of the Magnuson-Moss Act also invested the Commission with responsibility for developing a system of warranty regulation designed to promote competition among warrantors, and establish standards for the fair and nondeceptive use of warranties. To that end, rules were prepared, under the Congressional deadline of January 4, 1976, for final promulgation, dealing with the content of warranties, their presale availability, and minimum requirements for informal dispute settlement. In addition, guidelines were issued to help warrantors meet their obligations under the self-enforcing sections of the Act relating to the description of warranties as full or limited. Finally, the Commission's staff undertook an extensive program to educate and provide advice to businesses concerning their responsibilities under the Act.

The Act made civil penalties and consumer redress available for other enforcement situations in addition to violations of trade regulation rules. Under the Act, violators of the Federal Trade Commission Act are exposed to civil penalties if they knowingly engage in practices previously determined by the Commission to be unfair or deceptive, even though the violators themselves were not respondents in the earlier proceedings. Consumer redress actions are permitted against parties who engaged in unfair or deceptive practices which a reasonable person would also have known to be dishonest or fraudulent. Within three months after enactment of the Magnuson-Moss Act, the staff prepared and the

Commission approved comprehensive plans to implement the civil penalty and consumer redress sections of the Act. On March 11, 1975, two months after the Act was signed by the President, the Commission served its first notice that it might seek consumer redress from a respondent in complaints issued against two major sellers of undeveloped land, Horizon Corp., and AMREP Corp. These matters were proceeding at the end of fiscal 1975.

#### Prescription Drug Price Advertising Trade Regulation Rule

An important aspect of the Consumer Protection mission is to ensure that the marketplace provide consumers with a rational choice among competing products or services. In fiscal 1975, the Commission began an examination of private and public restraints on free market competition, with emphasis on advertising bans which prevent consumers from making the sort of well informed choices that foster price competition.

The prime examples of this type of approach are the Commission's proposed rules in the prescription drug advertising area. These rules are intended to promote disclosure of accurate drug price information by pharmacists to prospective customers, and eliminate restraints imposed on prescription drugs price advertising either indirectly by state-sanctioned private action or directly by government action. In attacking the problem of governmental restrictions on competition, the rules would preempt any nonfederal law or regulation that prohibits advertising or accurate price information for prescription drugs.

#### Other Consumer Protection Rulemaking

In addition to the prescription drug rule, during fiscal 1975, the Commission proposed six additional rules. Further, an additional six rules developed during the fiscal year were proposed in the first month of fiscal year 1976.

While the Magnuson-Moss Act lent impetus to the Commission's rulemaking efforts, its procedural sections also halted rulemaking activity underway at the time of its enactment until the proceedings could be made to conform to the Act's requirements. For example, prior to passage of the Act the Commission had already proposed a broad trade regulation rule on private proprietary vocational and home study schools, which would require, inter alia, disclosures of dropout and placement rates, an end to generalized employment and earnings claims, a ten-day reaffirmation period for students' enrollment contracts, and pro rata tuition refunds for uncompleted courses. Hearings on the rule had been held in Boston, New York and Washington, but additional hearings were suspended until the rule could be republished and hearings procedures revamped in accordance with the new requirements of the Magnuson-Moss Act.

A partial list of other trade regulation rules proposed during 1975 includes:

**Food Advertising Rule** - The proposed rule would govern a variety of nutrition claims made in food advertising, including emphatic nutrition claims, nutrient comparison claims, nourishment claims, and claims for food intended to be combined with other foods.

**Unfair Credit Practice Rule** - The proposed rule would eliminate from consumer credit contracts a number of provisions alleged to be unfair to consumers.

**Mobile Home Sales and Service** - The proposed rule would require that warrantors establish systems designed to assure that the provisions of their warranties are carried out and prohibit certain alleged misrepresentations in connection with mobile home sales.

**Flammable Products** - The proposed rule would require disclosure of certain fire hazards associated with cellular plastics used in construction, and ban combustion characteristic descriptions unless based on specified substantiation.

Hearing Aids - The proposed rule would require a 30-day trial period for hearing aids with refund available for most of the purchase price, plus disclosure that many persons with hearing loss will not receive significant benefit from a hearing aid, and would ban a variety of allegedly deceptive and unfair sales techniques.

Three Congressional-mandated rules under Title I of the Magnuson-Moss Act were developed during fiscal 1975 and proposed shortly after the year's end. As previously discussed, they covered warranty content, minimum requirements for informal dispute settlement, and presale availability of warranties.

Trade regulation rules developed during fiscal 1975 and proposed shortly after the end of the year included rules on health spas, on the disclosure of performance characteristics of room air conditioners, and on practices in the funeral industry.

Additional work was carried out on trade regulation rules proposed or adopted during the previous years. A proposed rule on disclosure requirements and prohibitions concerning franchising was revised and republished, and considerable effort was devoted to developing a possible final rule. Voluminous comments were received and analyzed on possible revision of the rule on care labeling of textile wearing apparel. The Commission staff also monitored compliance with the rule on a cooling-off period for door-to-door sales by sampling the forms and contracts of some 500 companies and then alerting any company found not to be in compliance with the rule.

The Commission promulgated guides on endorsements and testimonials, issuing final guides on expert endorsements and endorsements by organizations and proposed guides covering consumer endorsements and disclosure of material connections. Guides for the law book industry were developed during the fiscal year. An enforcement policy statement was issued on the designation of model year of motor vehicles, to deal with the practice of deceptively updating unsold motor vehicles at the end of a model year to appear to be manufactured for the forthcoming model year. The Commission also proposed a guide that would ban the advertising of child-directed premiums on television.

Although no proposals were published during the fiscal year, the Commission staff devoted considerable resources to developing an appropriate response to the Food and Drug Administrations' panel review of over-the-counter drugs, particularly with respect to any warnings or contradictions that might be disclosed in advertising. Additional effort was invested in analyzing the lengthy record concerning the proposed rule on mail order merchandise, and in preparing the rule for possible final promulgation. The Commission staff also carried out its usual function of cigarette testing and submitted an annual report on cigarettes to Congress.

### Consumer Protection Litigation

The Commission issued complaints under Part III of its Rules in II cases developed by the Bureau of Consumer Protection during the year. In addition, the Commission obtained 22 consent orders in Bureau cases during the course of the year.

Prominent among these settled cases were a number in which consumers realized direct benefits in money, services, or products. Four cases were settled with leaders in the mobile home manufacturing industry requiring them to perform warranty services worth an estimated \$1 million to thousands of former consumers, in addition to creating systems to deal effectively with warranty complaints in the future (Skyline Corp., Redman Industries, Inc., Fleetwood Enterprises, Inc., and The Commodore Corp.). In Fuqua Industries, Inc., tuition restitution of as much as \$1.25 million was ordered to eligible former students at the respondent's vocational schools. In Lear Siegler, Inc., the order required restitution to former vocational school students in the amount of \$750,000. In the credit balance cases, four major retailers agreed to halt the practice of retaining credits on customers' accounts as the store's own and to refund an estimated \$1.25 million to consumers (Gimbel Brothers, Inc.; Carter Hawley Hale Stores, Inc., a parent of Nieman-Marcus and Bergdorf Goodman, Inc.; McCrory Corp., parent of Lerner Stores Corp.; and Associated Dry Goods Corp., parent of Lord & Taylor). A complaint was issued charging similar practices on the part of Genesco, Inc., parent of Bonwit Teller. A consent order against 24 producers of cellular plastics

used in construction required them to establish a \$5 million research program to study flammability hazards associated with the products and to engage in extensive corrective advertising to warn past users of the hazards (Society of the Plastics Industry, Inc.). A broad restitution order was also issued by an administrative law judge in his initial decision in Koscot Interplanetary, Inc. The matter was appealed to the Commission.

In advertising cases, the advertising substantiation program continued to be a major law enforcement effort. Advertising substantiation rounds were conducted covering television sets, dental products, and dishwashers in fiscal 1975. Complaints were developed from those rounds during the year and issued shortly after the year's close in Matsushita Electric Corp. and General Electric Co., both alleging misrepresentation of test results relating to the ease of service of the respondents' color television sets. The 1975 rounds also led to a complaint shortly after the end of the fiscal year in Block Drug Co., Inc., alleging false and unsubstantiated advertising for the respondent's denture adhesive and unsubstantiated advertising for its denture cleanser.

Advertising substantiation rounds for previous years also led to a number of complaints in fiscal 1975. Three cases against major automakers involved mileage claims for the firms' cars. In General Motors, a consent order was issued prohibiting deceptive fuel economy claims. In Ford Motor Co., complaint counsel won a summary decision shortly after the fiscal year ended on a complaint alleging unsubstantiated mileage claims. In Chrysler Corp., the complaint alleging deceptive mileage advertising was tried and submitted to the administrative law judge for decision.

Other cases stemming from earlier substantiation rounds included consent orders against three makers of acne preparations prohibiting misrepresentations of efficacy claims and the making of claims without a reasonable basis (Savoy Drug and Chemical Co., American Image Corp., Hugh Mooney t/a Organic Masque Co.). Six complaints against hearing aid manufacturers, previously proposed under consent order procedures, were issued under Part III of the Commission's rules, alleging false efficacy and novelty claims (Sonotone Corp., Seeburg Industries, Inc., Textron, Inc., Radioear Corp., Dahlberg Electronics, Inc., Beltone Electronics Corp.).



Several advertising cases involved issues of public health or safety. In National Commission on Egg Nutrition, a complaint issued alleging that the respondent had misrepresented the state of scientific opinion on the relationship between the consumption of eggs, dietary cholesterol, and heart disease. The Commission sought and was granted an injunction against the respondent's advertising by the Seventh U.S. Circuit Court of Appeals. In Morton-Norwich Products, Inc., a consent order required the respondent to disclose that its salt product was not to be used by persons on a sodium or potassium restricted diet. In C.E.B. Products, Inc., the respondent was required by consent order to disclose that its cosmetic could cause severe eye pain, and to correct or recall existing packaging and advertising to comply with the order.

Disposition or other significant developments in a number of cases already in litigation at the beginning of the fiscal year: In The Great Atlantic & Pacific Tea Co., Inc., the administrative law judge issued an order prohibiting the respondent from failing to have advertised specials available and from over-pricing advertised items. The judge's order became final when no appeal was taken to the Commission. An administrative law judge also issued an order in Encyclopedia Britannica, Inc., prohibiting a variety of allegedly deceptive practices in connection with the respondent's door-to-door sales of encyclopedias and recruitment of salespersons. The case was appealed to the Commission.

In Beneficial Corp., an administrative law judge ruled that the respondent had deceptively advertised through its use of the "Instant Tax Refund" slogan, and had unfairly used confidential information collected in the course of its tax preparation business in order to solicit loans. A consent order in Tax Corporation of America prohibited similar practices with respect to confidential tax information and other misrepresentations related to tax preparation.

In Warner-Lambert Co., an administrative law judge issued an order forbidding the respondent to advertise that its Listerine mouthwash is beneficial in the treatment of colds and sore throats, and ordering the respondent to engage in corrective advertising for two years. The case was appealed to the Commission.

The Commission entered orders prohibiting advertising misrepresentations relating to the assertedly nonpolluting nature of respondents' gasoline in Standard Oil of California and Crown Central Petroleum Corp. The Commission also ordered the cessation of false uniqueness claims and other false and unsubstantiated advertising for respondents' air conditioners in Fedders Corp.

An extended trial was in progress during much of the fiscal year in Retail Credit Co., on a complaint alleging that the respondent, a national consumer reporting agency, had engaged in unfair and deceptive methods of collecting and reporting information, and had violated the Fair Credit Reporting Act.

The Commission's administration of the Fair Packaging and Labeling Act over the past fiscal year under Section 4 has been primarily focused on providing more meaningful information to the consumer to facilitate value comparisons. Working in conjunction with staff members of the other agencies involved in administering this Act, uniform guidelines have been developed for use by industry in expressing net quantity of a package in terms of metric measurements. Under Section 5 of the Act the Commission is continuing to evaluate the proposed regulation to require ingredient listing, in the order of decreasing predominance, on all detergent products. At the end of the fiscal year, the public record was reopened to permit consideration of several surveys conducted by members of industry reflecting consumer understanding and desire for such ingredient listing.

#### Compliance

In compliance matters, judgments for civil penalties totaling \$273,700 were obtained during the fiscal year in seven cases. Twenty-three more civil penalty cases were certified to the Department of Justice and/or filed in court during the year. In addition to the normal new compliance reports required under order, over 200 reports were obtained from respondents in previous cases to ensure their continued adherence to the terms of the orders.

## Regional Office Support to Consumer Protection Mission

The Commission's regional offices continued to carry a substantial portion of the overall Consumer Protection mission. In several consumer protection programs, the regional offices share enforcement responsibilities with the Bureau of Consumer Protection, and in a number have primary enforcement responsibility. Significant activities in joint programs included the regional offices' participation in the land sales program investigations of the marketing practices of various interstate land sales firms. The Commission's complaint against a major land sale company, AMREP Corporation, is an example of this enforcement activity.

In the Truth in Lending Program the Commission approved three regional office complaints charging Coventry Builders, Inc., United Builders, Inc., and Capital Builders, Inc., with significant violations of the Truth in Lending Act.

Under the Textile, Wool and Fur Labeling Program the New York Regional Office sought condemnation of misbranded merchandise. Boverman Fabrics, Inc., was charged with importing substantial amounts of misbranded woolen products. That action resulted in prompt remedial action by the importer, and it promises to become a useful enforcement tool in this area.

Under the Vocational School Program, regional office efforts continued to be directed toward the elimination of unfair and deceptive practices in the vocational school industry. As a result of regional office investigations, the Commission issued complaints against American Tractor Trailer Training, Inc., New England Tractor Trailer Training, Inc., and Commercial Programming Unlimited.

In addition to enforcement responsibilities in programs jointly conducted by the regional offices and the Bureau of Consumer Protection, the regional offices conduct programs in which the regional offices have sole enforcement responsibility within the Commission. Under the Health Spa Program, the regional offices concluded several pending matters, including a consent order in-

volving Jack La Lanne Management, Inc., which contained a pro rata refund for patrons who were misled by the firm's sales and promotional efforts. In addition, a Health Spa Trade Regulation Rule containing a pro rata refund provision (in addition to a cooling-off period") was drafted in substantial part by the New York Regional Office in cooperation with the Bureau of Consumer Protection.

In the Idea Promotion Program, investigational efforts continued toward the goal of producing a Trade Regulation Rule (in the idea promotion industry). Pursuant to those efforts, nonpublic hearings were held in Dallas and Los Angeles. Formal complaints were issued against Idea Research and Development, Inc., and the Raymond Lee Organization. Five other formal investigations were also initiated as a result of the industrywide investigation.

In the Regional Advertising Program the regional offices continued to monitor and investigate regional advertising in their respective geographic areas. Concurrently with the effort, the San Francisco Regional Office completed investigation and drafting of a proposed Trade Regulation Rule with respect to the Protein Supplement Industry. Regional offices will bear increasing responsibility under the codification program implemented under the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act.

#### General Counsel Support to Consumer Protection

As noted in the discussion of the Competition mission, the General Counsel staff represented the Commission in 156 court cases during fiscal 1975. Twenty-two of these cases involved appeals to the appellate courts from Commission orders which resulted from adjudicative proceedings in the area of consumer protection. Fifty-seven of the collateral suits initiated by or against the Commission were related to the Commission's consumer protection activities.

There were two significant decisions issued during fiscal year 1975 relating to the Commission's enforcement authority. In the National Commission on Egg Nutrition case, the Seventh Circuit reaffirmed the principle (established in the Rhodes Pharmacal case 25 years earlier) that the Commission is entitled to temporary injunctive relief under Section 13(a) upon showing a reasonable basis for believing that the law is being violated; and it does not have to meet the standards of irreparable injury, probability of success on the merits and the balancing of equities which apply to private injunctive suits. In the Retail Credit case the District of Columbia Circuit upheld the Commission's power to subpoena consumer reports from a consumer reporting agency without first obtaining a court order or the permission of affected consumers to authorize disclosure of the document.

In the Claude Thiret case, the Tenth Circuit Court of Appeals affirmed in its entirety the cease and desist order issued against two related corporations involved in home improvements and the installation of steel siding. The Commission had ordered the firms to cease and desist from misrepresentations concerning the use of a customer's home as a "model home," the price of the siding, the insulation qualities of the siding, and the nature of the guarantee.

In the Heater case, the Ninth Circuit held that the Commission had no authority to order a respondent to make restitution of moneys secured by practices found to violate the Federal Trade Commission Act. The effect of the decision, however, has been mooted by passage of the Magnuson-Moss Warranty - Federal Trade Commission Improvement Act (P.L. 93-637), which gives the Commission authority to seek consumer redress in cases where a cease and desist order is issued against a respondent for having engaged in an unfair or deceptive act or practice.

In the Ger-Ro-Mar case, the Second Circuit enforced the portions of the order which prohibited respondent from misrepresenting its pyramid-type marketing program. The court, however, refused to hold the program was illegal per se, and it set aside that portion of the order which would have prohibited the respondent from continuing to use it.

Legislative matters which were of concern to the Consumer Protection mission included Commission testimony on bills dealing with the vocational school industry; consumer credit problems; equal credit opportunity; and, hearing aids. A number of bills of importance to the mission were enacted during this fiscal year: Title I of P.L. 93-637, January 4, 1975, "Consumer Product Warranties"; the Energy Policy and Conservation Act, P.L. 94-163, December 22, 1975; and, the Real Estate Settlement Procedures Act of 1974 (P.L. 93-533, December 22, 1974).

The legal services activities dealing with the Consumer Protection mission included completion of the revised trade regulation rule procedures. Advisory opinion activities included Commission opinions ranging from a definition of the preemptive effect of Commission trade regulation rules over conflicting requirements of state or local law, to the disclosures deemed necessary to assure non-deception in the practice of "dry testing" mail order sales of proposed continuity book series.

#### Administrative Law Judges Support to Consumer Protection

The number of cases referred to the Administrative Law Judges in the area of consumer protection has increased sharply in the past several years. In fiscal 1975, 47 new cases were referred for trial, whereas in fiscal 1974, 31 cases were referred. Many of these matters involved large corporations and posed difficult issues. During fiscal 1975, the following were major consumer protection cases in trial or pretrial before the Administrative Law judges: American Home Products Corp., D. 8918; The Great Atlantic Pacific Tea Company, D. 8916; Beneficial Corp., D. 8922; Bristol-Myers, D. 8817; Chrysler Corporation, D. 8995; Control Data Corp., D. 8940; Encyclopedia Britannica, D. 8908; Fedders Corp., D. 8932; FMC Corp., D. 8961; Ford Motor Company, D. 9001; Genesco, Incorporated, D. 9019; Grolier, Inc., D. 8879; Horizon Corporation, D. 9017; Koscot Interplanetary, Inc., et al., D. 8888; Sterling Drug, Inc., et al., D. 8919; Warner-Lambert Co. Inc., D. 8891; AMREP Corporation, D. 9018; Kroger Company, D. 9040.

## **ECONOMIC ACTIVITIES**

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The fiscal year 1975 program accomplishments of the Economic Activities mission are summarized here under two broad programmatic headings: financial and statistical reporting and industry analyses. The activities of the economists directly supporting the Maintaining Competition and Consumer Protection missions are reported as a part of those missions' summaries.

### Financial and Statistical Reporting

The primary function of the FTC's financial and statistical reporting activities is to collect, analyze, and publish aggregate data on structural and performance developments in major sectors of the economy.

#### Line of Business Program (LB)

In August 1974 the first Line of Business survey form was sent to 345 large manufacturing corporations. It sought information broken down into 219 manufacturing and nine nonmanufacturing categories on 1973 sales, the direct cost of sales, directly attributable advertising, directly assignable R&D outlays, and net plant and equipment values. This type of information, which is essential to Commission resource allocations, was unavailable under existing reporting schemes.

Completed returns were received from 228 companies. The remaining firms were contesting the program in legal actions pending before the Federal District Courts for the Southern District of New York and Delaware. Support for this aspect of the LB Program was provided by the Office of the General Counsel.

Following extensive consultation with companies and other interested organizations and a May 20, 1975, public hearing before the Commission, the LB survey form was revised for the 1974 reporting year. Information on allocated costs and net operating income by line of business will be sought for the first time. On July 1, 1975, the revised form was forwarded to the General Accounting Office for clearance.

#### Quarterly Financial Report

In April 1975 the first Quarterly Financial Report which expanded survey coverage to the mining, retailing and wholesale trade sectors was published. In addition to a stratified sample of some 11,000 manufacturing corporations, the survey now includes approximately 2,400 retailing corporations, 600 mining firms, and 2,300 wholesale trade corporations. A special survey of corporations with assets of \$10 million or more was conducted to determine the impact on reported profits of widespread shifts from FIFO to LIFO inventory accounting in 1973 and 1974.

#### Merger Series

Changes in the data processing schedule were effected to increase the accuracy of the annual Report on Mergers and Acquisitions for calendar year 1974.

#### Corporate Patterns Survey

The survey of 1972 five-digit product line sales and corporate structure was approved by the General Accounting Office. Survey forms were prepared for mailing to approximately 1,100 corporations.

#### Aggregate Concentration

Supplementing the annual tabulation of asset concentration trends among the 100 and 200 largest manufacturing corporations, a special study was carried out to ascertain the effect of a change in Quarterly Financial Report subsidiary consolidation rules. Uni-



form reporting of overseas subsidiary holdings on a net equity basis led to a decline of approximately 2.5 percentage points in measured aggregate concentration for the 100 largest corporations.

#### Premerger Notification

The Premerger Notification program, revised to secure 1972 product line data, was transferred organizationally to the Bureau of Economics' Division of Economic Evidence. As a result, future accomplishments will be reported under the Maintaining Competition mission.

#### Industry Analysis

Three formal Bureau of Economics staff reports were completed in fiscal year 1975. One, on Food Chain Profits, introduced a new QFR based survey of retail food chain profits and analyzed longer-term trends in the profitability of food retailing. An economic report on The U.S. Sugar Industry analyzed the structure, conduct, and performance of that industry, with particular emphasis on why sugar prices rose by unprecedented amounts in 1974. A staff report on Price and Profit Trends in Four Food Manufacturing Industries used Quarterly Financial Report and other data to analyze price and profit developments in the fluid milk, meat, bread, and beer industries between 1972 and 1975. The reasons for rapid consumer price increases during this period and the consequences of price controls and their removal were evaluated.

Economics staff also contributed a chapter to a Bureau of Competition Staff Report on Agricultural Cooperatives and played a significant role in a joint task force Report on Retail Prescription Drug Pricing Practices.

Numerous other staff studies were completed for publication in congressional hearings, conference symposia, etc. These included testimony on the relationships between market power and inflation and on the measurement of food sector profit and price

performance, along with papers on price stability in concentrated industries, concentration-advertising-profit relationships among large and small corporations, industrial structure and worker alienation, the measurement of corporate diversification, the effects of new entry on market structure, the domestic consequences of direct foreign investment, the measurement of pharmaceutical manufacturers' profits, and vertical integration in food marketing.

Economics staff members collaborated with Bureau of Competition attorneys in preparing a comprehensive study of how federal energy land leasing and transfer policies affect income distribution and the competitiveness and efficiency of energy resource development. A joint staff Report on Competition in the Petroleum Industry of the Western United States was also completed. Other studies focusing on the effects of fuel adjustment pricing clauses on electric power rates and competition in the principal energy resource industries were initiated.

A major two-year study of the U.S. steel industry's competitiveness in world markets was launched. Members of the FTC steel team contributed to a study of steel prices by the Council on Wage and Price Stability. The collection of data for a study of advertising and promotional activity in three pharmaceutical product lines was completed, and significant progress was made toward the publication of an anticipated series of reports beginning in fiscal 1976. A program of research on cyclical and inflationary pricing behavior in concentrated and atomistically structured industries was initiated.

Following General Accounting Office clearance, a survey form was sent to some 40 electrical equipment manufacturing firms. It seeks to determine the impact of the 1960-61 price-fixing conspiracy convictions on industry conduct and performance. A new program of industry surveys to be compiled from publicly available information was also started.

**EXECUTIVE DIRECTION AND POLICY PLANNING**

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## Executive Director

The Executive Director's activities in fiscal 1975 concentrated upon improving the methods through which the Commission reviews the status of pending matters and renders guidance to the staff with particular emphasis on increasing cost/benefit analysis and reducing delay. The highlight of this effort was the Mid-Year Review held in early February 1975. During this session the full Commission used the program budget and case status and cost information provided by the management information systems to evaluate at the mid-point of the fiscal year the resource commitments and actual accomplishments of each Commission program. This review resulted in a shift in resources among the number of programs, provided guidance to the staff and increased the staff's accountability to the Commission.

In addition to providing day-to-day programmatic guidance to the staff, the Executive Director in fiscal 1975 was involved in such areas as:

- Continuing to strengthen the role of planning in the Commission's decisionmaking process.
- Increasing responsibility of operating units for financial and programmatic control.
- Recommending to the Commission appropriate resource allocations and providing an analysis of each program's status at the Mid-Year Review.

- Supervising the installation of the Commission's management information system.
- Analyzing and testing proposals to improve the Commission's legal support capabilities.

#### Office of the Secretary

The publications and records functions includes legal and public records and the rules and publications section. The records function serves the Commission by establishing and maintaining all formal and informal records of the Commission. All requests for information on the public record are filled by this office.

The Secretary's Office also has the responsibility for initial grants of access pursuant to the Amendments to the Freedom of Information Act. From amendment of the Act on February 19, 1975, to the close of fiscal 1975, the unit has processed, within the FOIA imposed deadlines, 285 initial requests which was more than three times the number of requests received each week in the preceding year.

#### Office of Policy Planning and Evaluation

In fiscal 1975 the Office of Policy Planning and Evaluation prepared and submitted to the Commission the second Budget Overview Report analyzing the fiscal 1976 budget requests of the major enforcement units.

This Budget Overview was a distinct improvement over the first one in at least two ways. First, because the Commission programs became the basis of operations management as well as planning, a new unity between planning and management was established. As a result, the specific program recommendations of the Office could be given clear operational meaning by the Commission in its resource allocation deliberations.

Second, the Budget overview focused on the enhancement of consumer benefit (e.g., cost/benefit analysis) as a critical standard by which the effectiveness of programs in both law enforcement missions could be assessed.

This work was continued in the fiscal 1975 Mid-Year Review Report. The Office used economic analysis in an attempt to predict the likely consumer benefits of each fiscal 1975 program of the Bureaus of Consumer Protection and Competition. This was extremely valuable to the Commission in reallocating resources among programs.

#### Office of Public Information

The Commission's public information activities included distribution of news releases to reporters, consumers, attorneys, educators, businesses, and other groups. The information staff also handled all media inquiries; conducted or assisted in news briefings; issued news releases, and answered or referred written requests for information; arranged speakers for groups and associations on requests, and handled telephone inquiries.

## **ADMINISTRATION AND MANAGEMENT**

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During fiscal 1975, the Commission's Administration and Management mission continued to provide the Commission and its staff with a full range of support services. This section outlines the personnel, financial, administrative and management services activities under this mission.

### Division of Personnel

During fiscal 1975, personnel management services were expanded into an agency-wide program. to assist in the development and evaluation of personnel. The Division consolidated and systematized its training and employee development efforts during fiscal 1975, focusing on executive and management development, legal training, clerical/secretarial training and upward mobility. The most significant improvement in fiscal 1975 was the attorney performance evaluation system. Implementation occurred during early fiscal year 1976, and has proved to be a valuable tool to both staff attorneys and supervisors alike.

As part of its position management efforts, the Personnel Division conducted reviews of the research analyst position and the entire legal secretarial support structure. Actions taken as a result of this review included a three-fold approach to improving the secretarial support function - an expanded career ladder, a more effective recruitment effort, and an expanded training program.

## Financial Management

The major accomplishment of the Division of Budget and Finance in fiscal 1975 was the implementation of the Commission's first program budget. The Commission's fiscal 1975 OMB budget and subsequent congressional budget were both constructed using the programmatic format and approach. These budget documents contained a comprehensive expression of Commission priorities both to serve as an internal document as well as an external communication of appropriation requests. This represents a fundamental improvement in the internal management of the Commission's staff and financial resources at the program level.

To complement the program budget and planning systems, the financial reporting system was modified to monitor and control funds at the program and case/project levels as well as at the traditional organization and object class levels.

In addition, the Division of Budget and Finance participated in the preparation for the Commission's first Mid-Year Review implemented under its operational planning and control system. The data prepared for this review permitted the Commission for the first time to assess formally the actual progress of each program against its objectives and also to reorder the "mix" of resources and priorities to meet the changing needs or conditions present in the Commission.

## Administrative Services

In addition to its on-going activities during fiscal 1975, the Division of Administrative Services had several major program accomplishments. Two are particularly worth mentioning.

A Property Management System was developed to strengthen the Commission's compliance with the requirements of various Federal Property Management Regulations, Public Laws, and standards, regulations, and principles promulgated by GSA and

GAO. A physical inventory was completed on May 30, 1975, and the implementation phase begun on an automated system.

A Prospectus for Proposed Lease Under the Public Buildings Act of 1949 to consolidate five satellite offices in Metropolitan Washington, D.C., was developed and submitted to GSA. During fiscal 1975, it was approved by GSA and sent to Congress. It was subsequently approved by the Senate Public Works Committee, but is with the House Public Works Committee.

#### Management Activities

During Fiscal 1975, the Management Division completed a number of specific projects designed to improve support services to the Commission's management and enforcement staffs at the lowest reasonable price.

A prototype, automated line of Business system to tabulate data was implemented. A Commission-wide Case/Project Tracking System was implemented to assist management in planning for and controlling resource allocations to preliminary and formal investigations, projects, rulemakings, compliance matters, litigated matters and court proceedings.

In response to the Freedom of Information Act, a reporting system was implemented to facilitate the preparation of an annual report to the Congress which reflected the number and types of requests, how they are processed, the number denied or partially granted, reason for denial, responsible official, fees collected, and a copy of the fee schedule.

To assist in the efficient operation of all legal and management computer systems, the Management Division conducted extensive analysis necessary to solicit proposals for processing consolidation to occur in fiscal 1976. This analysis also formed the foundation for a five year plan to provide the FTC with data processing support. The staff will finalize its recommendations and present them to the Commission in early fiscal 1976.



Two particular cost reduction projects were undertaken that deserve special notice. First, procedures were established for printing the FTC Decisions that will improve the timeliness of the printing process with an estimated minimum annual cost savings of over \$60,000 at present values. Second, automated legal research services were installed in the Library for use by the attorney staff in order to test alternatives for improvements to legal services.

Several Management Analysis projects were initiated which included the Records Management Study, Text Processing Study, and Legal Search Study.

### Library Services

The library staff completed legislative histories of the Magnuson-Moss Act and the Fair Credit Reporting Act. Several partial legislative histories of interest were completed. A card catalog for the Los Angeles Regional Office library was completed. Four extensive bibliographies on subjects of interest to Commission staff were published. A vertical serials list for patron use was produced by the library staff. The Acquisitions Section implemented a new internal financial control system for library and non-library purchases. The library staff began orientation lectures and library tours for all new attorneys and economists. Two training manuals for use in the Circulation Section were developed.

**FUNDS AVAILABLE  
TO THE COMMISSION  
DURING FISCAL 1975**

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For fiscal year 1975, funds of \$38,983,000 were appropriated for the Commission. Actual expenditures for the year were \$38,962,000; these expenditures are detailed below by activity.

Obligations by Activities for Fiscal Year 1975

1. Maintaining Competition: .....	<u>\$12,723,000</u>
Investigation and Litigation .....	12,723,000
2. Consumer Protection: .....	<u>17,570,000</u>
Investigation and Litigation .....	14,064,000
Consumer Credit Enforcement .....	1,224,000
Fair Packaging and Labeling .....	58,000
Flammable Fabrics, Textile, Fur and Wool Enforcement .....	681,000
Other Special Statutes .....	1,543,000
3. Economic Activities: .....	<u>3,107,000</u>
Investigation and Litigation .....	18,000
Economic and Financial Reports .....	3,089,000
4. Executive Direction and Policy Planning .....	<u>2,158,000</u>
5. Administration and Management .....	<u>3,404,000</u>
Total Obligations - Fiscal Year 1975 .....	<u>\$38,962,000</u>