

# Bureau of Competition

Federal Trade Commission

## Enforcement Activities

Fiscal Year 1997 - March 15, 2001



## American Bar Association

### Antitrust Section

Spring Meeting 2001

Molly S. Boast  
Acting Director  
Bureau of Competition

Robert Pitofsky  
Chairman  
Federal Trade Commission







# ABA ANTITRUST SECTION SPRING MEETING

## *Summary of Bureau of Competition Activity Fiscal Year 1997 Through March 15, 2001<sup>1</sup>*

### *I. Mergers*

#### *A. Consent Orders*

1. \* *ABB* (Final Order April 14, 1999): ABB divested the Analytical Division of *Elsag Bailey Process Automation N.V.* to Siemens Corporation settling antitrust concerns that the acquisition of Elsag would substantially reduce competition in the market for process gas chromatographs and process mass spectrometers, analytical instruments used to measure the chemical composition of a gas or liquid used in petrochemical refining, pharmaceutical and chemical manufacturing, and pulp and paper processing.
2. \* *Agrium, Inc.* (Final Order November 13, 2000): A consent order requires Agrium to divest a deepwater terminal near Portland, Oregon, an up water terminal in central Washington and other assets settling charges concerning its proposed acquisition of the nitrogen fertilizer business of *Union Oil Company of California*. Agrium and Unocal are the leading producers in the Northwest of nitrogen fertilizer – anhydrous ammonia, urea and UAN 32% solution – ingredients used for plant growth.
3. \* *Albertson's, Inc.* (Final Order December 8, 1998): A consent order requires Albertson's to divest eight supermarkets in Montana and seven in Wyoming to Supervalu Holdings, Inc. in an effort to maintain competitive pricing in the areas. According to the complaint, Albertson's acquisition of *Buttrey Food and Drug Store Company* would result in higher prices and reduced quality in 11

---

<sup>1</sup> \* Denotes new cases during this period -- the first public notice of an enforcement action by the Commission.

communities.

4. \* *Albertson's, Inc.* (Final Order December 8, 2000): The final order, modified after the public comment period, does not require the divestiture of a Lucky (American Stores Company) store in Lompoc, California to Ralph's. Albertson's Inc. agreed to divest 104 supermarkets and *American Stores Company* agreed to divest 40 supermarkets to settle charges that Albertson's acquisition of American Stores raises antitrust concerns in 57 markets in California, Nevada and New Mexico. The divestiture agreement is the largest retail divestiture of supermarkets ever required by the Commission.
  
5. \* *American Home Products* (Final Order May 16, 1997): Consent order settles charges that the proposed acquisition of *Solvay, S.A.*'s animal health business would reduce competition in the market for the research, development, manufacture and sale of canine lyme vaccine, canine corona virus vaccine, and feline leukemia vaccine. The order requires divestiture of Solvay's U.S. and Canadian rights to the three types of vaccines to the Schering-Plough Corporation or another Commission-approved buyer.
  
6. \* *AmericaOnline, Inc.* (Proposed Consent Agreement Accepted for Public Comment December 14, 2000): AOL and *Time Warner Inc.* agreed to settle Commission concerns relating to their proposed merger. Under terms of the agreement, AOL Time Warner is required to open its cable system to competitor internet service providers. In addition, the company is prohibited from interfering with content passed along the bandwidth contracted for by non-affiliated internet service providers; and prohibited from interfering with the ability of non-affiliated providers of interactive television services to interact with interactive signals that AOL Time Warner agreed to carry.
  
7. \* *Associated Octel Company Limited* (Final Order December 22, 1999): Associated Octel settled charges that its acquisition of *Oboadler Company* would eliminate direct competition and raise prices in the highly concentrated market for the manufacture and sale of lead antiknock compounds. Under terms of the order, Octel agreed to supply Oboadler's current distributor, Allchem Industries, Inc., with lead antiknock compounds for resale in the United States for 15 years.
  
8. \* *Autodesk, Inc.* (Final Order June 18, 1997): Consent order settles charges that the acquisition of *Softdesk, Inc.* would reduce competition in the development and sale of computer-aided design software engines (CAD) and prohibits Autodesk from reacquiring "IntelliCADD," a CAD engine recently sold by Softdesk to Boomerang Technology, Inc., or any entity that controls the

IntelliCadd technology.

9. \* *Baxter International Inc.* (Final Order March 24, 1997): Consent order requires divestiture of Baxter's Autoplex product line of Factor VIII inhibitors used in the treatment for hemophilia and the licensing of *Immuno International AG's* fibrin sealant, a biologic product in development to be used to control bleeding in surgical procedures. According to the complaint issued with the final order, the acquisition of *Immuno International* would tend to create a monopoly and increase Baxter's ability to unilaterally raise prices in the market for the research, manufacture and sale of biologic products derived from human blood plasma.

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

11. \* *The Boeing Company* (Final Order March 5, 1997): Consent order permits the acquisition of *Rockwell International Corporation's* Aerospace and Defense business subject to a divestiture and other conditions. Currently, there are two teams competing to develop high-altitude endurance unmanned air vehicles for the Department of Defense's Advance Research Projects Agency -- Boeing/Lockheed (developing Tier III Minus, a stealthy, high-altitude endurance unmanned air vehicle) and Rockwell/Teledyne (developing Tier II Plus, a non-stealthy, high-altitude endurance unmanned air vehicle). As a result of the acquisition, Boeing would become a member of both teams and could increase the price of the components it supplies or reduce its investment in technology and quality. The consent order allows Teledyne, if it chooses, to replace Rockwell as its wing supplier without incurring any significant costs or risks to the project. Terms of the consent order require Boeing to deliver the assets necessary to produce the Tier II Plus wings to businesses designated by Teledyne. The order also establishes a "firewall" between Boeing's Tier III Minus business and the Rockwell North American Aircraft Division that provides Tier II Plus wings.

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

13. \* *British Petroleum Company p.l.c.* (Final Order April 19, 1999): Consent order in BP Amoco p.l.c. (created by the merger of British Petroleum Company, p.l.c. and *Amoco Corporation*) requires the divestiture of 134 gas stations in eight markets and nine light petroleum products terminals settling charges that the merger would substantially reduce competition in certain wholesale gasoline markets.
  
14. \* *Cablevision Systems Corp.* (Final Order April 27, 1998): Consent order settles charges that Cablevision's acquisition of certain cable operations in northern New Jersey and in New York from *Tele-Communications Inc.* would result in higher prices and lower quality of cable television services for residents of Paramus and Hillsdale, New Jersey. The settlement requires divestiture of TCI's cable systems in the two cities.
  
15. \* *Cadence Design Systems, Inc.* (Final Order August 11, 1997): Cadence agreed to settle charges that its acquisition of *Cooper & Chyan Technology, Inc.* would reduce competition for "routing" software used to automate the design of integrated circuits or microchips. According to the complaint, the merger would reduce Cadence's incentives to permit competing suppliers of routing tools to obtain access to its layout environments resulting in less innovation, higher prices, and reduced services. To ensure that independent software developers of commercial routing tools continue to compete with Cooper & Chyan's technology, the consent order requires Cadence to allow the developers to participate in Cadence's software interface programs.
  
16. *Castle Harlan Partners, II L.P.* (Final Order December 20, 1996): Final consent order preserves competition in the sale of commemorative class rings to graduating high school and college students. The order requires restructuring of the purchase agreement to exclude Gold Lance, Inc. from the proposed plans to acquire *Class Rings, Inc.* The new acquisition plan is limited to the class ring business of Town & Country Corporation and CJC Holdings, Inc.
  
17. \* *Ceridian Corporation* (Final Order April 6, 2000): A consent order requires Ceridian to grant licenses to new and existing firms that provide commercial credit cards (known as "trucking fleet-cards") used by over-the-road trucking companies to make purchases at retail locations. The order settles charges that Ceridian's consummated acquisitions of *NTS Corporation* and *Trendar Corporation* gave Ceridian the power to control the markets for the provision of trucking fleet cards and the systems used to read them at truck stops throughout the country.



18. \* *Ciba-Geigy Limited* (Final Order March 24, 1997): Final consent order settles antitrust concerns in three markets affected by the proposed acquisition of *Sandoz Ltd.*: research and development in gene therapy products that are being targeted for life-threatening conditions such as hemophilia and cancer; corn herbicides; and flea control products. In the gene therapy market, the order requires the licensing of certain intellectual properties to Rhone-Poulenc Rorer and other firms to permit continued competition in research, development and commercialization for a broad range future medical treatments. In addition, in one of the largest divestitures ever required under a consent order, Sandoz agreed to divest its U.S. and Canadian corn herbicide business to BASF Aktiengesellschaft within 10 days. The consent order also requires the divestiture of Sandoz's flea control business to Central Garden and Pet Supply of Lafayette, California within 30 days.

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

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

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

22. \* *Cooperative Computing, Inc.* (Final Order June 20, 1997): Consent order will preserve competition in electronic parts catalogs for the auto parts aftermarket. The final order permits the acquisition of *Triad Systems Corporation* but requires the divestiture within 60 days of the PartFinder® electronic catalog

database, and the J-CON® application program interface, and support software and documentation, through an exclusive, royalty-free and perpetual license with the right to sublicense, to MacDonald Computer Systems or another Commission-approved buyer.

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

24. \* *CVS Corporation* (Final Order August 13, 1997): CVS agreed to settle allegations that its acquisition of *Revco* would substantially reduce competition for the retail sale of pharmacy services to health insurance companies and other third-party payers in Virginia and in the Binghamton, New York metropolitan area. The consent order requires the divestiture of 114 Revco stores in Virginia and 6 pharmacy counters in Binghamton.

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

26. \* *Delhaize Freres et cie "Le Lion" S.A.* (Proposed Consent Agreement Accepted for Public Comment July 25, 2000): The proposed consent agreement approved the merger of *Establisements Delhaize Freres et Cie "Le Lion" S.A.* and *Delhaize America, Inc.* with *Hannaford Bros. Co.* but requires the sale of 37 Hannaford supermarkets and one Hannaford site to three different buyers.

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

28. \* *Dow Chemical Company, The* (Proposed Consent Agreement Accepted for Public Comment February 5, 2001): Dow agreed to settle concerns relating to its proposed merger with *Union Carbide Corporation* and divest and license intellectual property necessary to the production of linear low-density polyethylene - an ingredient used in premium plastic products such as trash bags and sealable food pouches - to BP Amoco plc.
29. \* *Dow Chemical Company, The* (Final Order February 20, 1998): Dow agreed to settle allegations that its acquisition of *Sentrachem Limited* would have substantially lessened competition for the research and manufacture of chelating agents (chemicals used in cleaners, pulp and paper, water treatment, photography, agriculture, food and pharmaceutical to neutralize and inactivate metal ions) by combining two of the three U.S. producers of the product. The terms of the consent order require Dow to divest Sentrachem's U.S. chelant business to Akzo Novel N.V.
30. \* *Duke Energy Corporation* (Final Order May 9, 2000): Duke agreed to divest 2,780 miles of gas gathering pipeline in Kansas, Oklahoma and Texas to settle antitrust concerns stemming from Duke's and *Phillips Petroleum Company's* proposed merger of their natural gas gathering and processing businesses under a new company called Duke Energy Field Services, L.L.C. and Duke's proposed acquisition of gas gathering assets in central Oklahoma from Conoco Inc. and Mitchell Energy and Development Corporation.
31. \* *Dwight's Energydata, Inc.* (Final Order July 28, 1997): Consent order settles charges that the acquisition of *Petroleum Information Corporation* could create a monopoly for production and well history data used by geologists and petroleum engineers to find additional oil and gas reserves. The settlement requires Dwight to license a complete set of well history to HPDI, an independent competitor, or another Commission-approved licensee.
32. \* *El Paso Energy Corporation* (Final Order January 30, 2001): A final order allows El Paso to acquire *PG&E Gas Transmission Teco, Inc.* and *PG&E Gas Transmission Texas Company* (subsidiaries of Pacific Gas & Electric) but requires the divestiture of El Paso's interest in the Oasis Pipe Line Company; the divestiture of PG&E's share of the Teco Pipeline; and the divestiture of the Matagorda Island Offshore production area. The divestitures ensure that competition is maintained for natural gas transportation in three Texas markets.
33. \* *El Paso Energy Corporation* (Proposed Consent Agreement Accepted for Public Comment January 29, 2001): Proposed consent order allows the merger of El Paso and *Coastal Corporation* but requires the divestiture of more

than 2,500 miles of gas pipeline system in Florida, New York and the Midwest.

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

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

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

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

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

39. \* *FMC Corporation* (Final order May 19, 2000): The consent order requires FMC to divest its phosphorus pentasulfide business in Lawrence, Kansas to Peak Investments, LLC and Solutia Inc.'s phosphate assets in Augusta, Georgia

to Societe Chimique Prayon-Rupel to settle charges that the proposed FMC/Solutia joint venture could substantially lessen competition in the United States market for pure phosphoric acid and phosphorus pentasulfide.

40. *Fresenius A.G.* (Final Order October 15, 1996): Order settles charges that the acquisition of *National Medical Care, Inc.* would combine two significant producers of HD concentrate used in hemodialysis treatment. The order requires the divestiture of the Lewisberry, Pennsylvania hemodialysis concentrate plant to Di-Chem, Inc. or other Commission-approved buyer.

41. \* *General Mills, Inc.* (Final Order May 16, 1997): Consent order preserves competition in ready-to-eat cereals. The order permits the acquisition of *Ralcorp Holdings, Inc.*'s branded ready-to-eat cereal and snack mix business but requires the transfer of licenses to manufacture and sell cereals identical to the Chex brand products without the approval of General Mills.

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

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

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

45. \* *Insilco Corporation* (Final Order January 27, 1998): Insilco agreed to divest two aluminum tube mills acquired in its acquisition of *Helima-Helvetion International, Inc.* to settle antitrust concerns that the acquisition would

substantially reduce competition in the markets for welded-seam aluminum radiator and charged air cooler tubing in North America.

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

47. \* *J.C. Penney Company* (Final Orders February 28, 1997): Separate final consent orders settle charges that the acquisitions of *Eckerd Corporation* and 190 *Rite Aid* stores in North and South Carolina would give J.C. Penney a dominant position in four metropolitan areas and increase its ability to raise prices for the sale of pharmacy services to third party payers. The orders require the divestitures of 34 Thrifty drug stores and 127 Rite Aid drug stores in the areas by March 21, 1997.

48. \* *J.C. Penney Company* (Final Order February 28, 1997): Refer to the discussion under number 44 above.

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

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

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

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

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

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

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

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

57. \* *Mahle GmbH* (Final Order June 4, 1997): Consent order settles charges that the acquisition of *Metal Leve S.A.* would result in Mahle becoming a monopolist in the research, development, manufacture and sale of articulated pistons used in heavy duty diesel engines and requires divestiture of Metal Leve's U.S. piston business within 10 days of the final consent order.
58. \* *Manheim Auctions, Inc.* (Final Order November 13, 2000): The consent order settles antitrust concerns stemming from the acquisition of *ADT Automotive Holdings, Inc.*, the nation's third largest operator of wholesale motor vehicle auctions. The order requires Manheim to divest nine auctions in Kansas City, Missouri; Denver and Colorado Springs, Colorado; Atlanta, Georgia; San Francisco, California; Seattle, Washington; Tampa, Orlando and Daytona Beach, Florida; and Phoenix, Arizona.
59. \* *Medtronic, Inc.* (Final Order December 21, 1998): A final consent order settles allegations stemming from Medtronic's proposed acquisition of *Physio-Control International Corporation's* automatic external defibrillator business. According to the complaint, Medtronic, through its controlling interest in SurVivaLink Corporation, a direct competitor of Physio-Control, would control both companies as a result of the acquisition and thereby increase the likelihood of coordinated interaction which could result in increased prices and reduce innovation in the market. The consent order requires Medtronic to become a passive investor in SurVivaLink and reduce many of its present and future business contacts with the firm.
60. \* *Medtronic, Inc.* (Final Order June 3, 1999): Medtronic agreed to divest *Avecor Cardiovascular, Inc.'s* non-occlusive arterial pump assets to settle antitrust concerns that the acquisition would lessen competition for the research, development, manufacture and sale of the pumps in the United States. The order requires Medtronic to provide assistance to the buyer of the Avecor Pump assets to enable the buyer to obtain FDA approval to manufacture and market the Avecor pumps and reservoirs.
61. \* *Merck and Co, Inc.* (Final Order February 18, 1999): The complaint, issued with the consent order, alleged that as a result of Merck's 1993 acquisition of *Medco*, the nation's largest benefits manager, Merck's drugs received favorable treatment through Medco's drug-list formulary made available to medical professionals who prescribe and dispense prescriptions to health plan beneficiaries. The consent order requires Medco, among other things, to maintain an "open formulary" to include drugs approved by an independent Pharmacy and Therapeutics Committee, staffed by physicians and pharmacologists who have no financial interest in Merck.



62. *NGC Corporation* (Final Order December 12, 1996): Final order preserves competition in natural gas fractionation in the Mont Belvieu, Texas area. The order permits the acquisition of certain gas transportation assets from *Chevron Corporation* but requires the divestiture of the Mont Belvieu I gas liquids fractionation plant in Mont Belvieu, Texas.
63. \* *Nortek, Inc.* (Final Order October 8, 1998): The consent order permits Nortek's acquisition of *NuTone, Inc.*, its closest competitor, but requires its divestiture of M&S, the second largest seller of hard-wired residential intercoms in the United States.
64. \* *Novartis AG* (Final Order December 19, 2000): The consent order permits the merger of Novartis and *AstraZeneca PLC* into a new Swiss company, Syngenta AG. The order requires Novartis to divest its worldwide foliar fungicide business based on the strobilurin chemical class to Bayer Ag; and requires AstraZeneca to divest its worldwide corn herbicide business based on the active ingredient acetochlor to Dow AgroSciences LLC.
65. \* *PacifiCorp* (Proposed Consent Agreement Withdrawn and Investigation Closed June 30, 1998): The Commission withdrew a proposed consent agreement that settled allegations that PacificCorp's proposed acquisition of *The Energy Group PLC* would lead to increases in wholesale and retail electricity prices in the United States. During the comment period PacificCorp withdrew its bid after the Texas Utilities Company announced a competing tender offer for The Energy Group.
66. \* *Pfizer Inc.* (Final Order July 28, 2000): Final consent order permits Pfizer's merger with *Warner-Lambert Company* and requires divestitures in several pharmaceutical markets including: Pfizer's RID brand of head lice treatment; Pfizer's antidepressant drug, Celexa; Warner's Cognex, a drug used in the treatment of Alzheimer's disease; and assets relating to the Epidermal Growth Factor receptor tryosine kinase inhibitor, drugs under development to treat solid cancerous tumors such as head and neck, non-small cell lung, breast, ovarian, pancreas and colorectal cancers.
67. \* *Philip Morris Companies, Inc.* (Final Order February 27, 2001): The consent order permits the merger of Philip Morris and *Nabisco Holdings Corporation* while settling charges that the merger of the two food companies would reduce competition in the already highly-concentrated market. Under terms of the order, the parties are required to divest Nabisco's dry-mix gelatin, dry-mix pudding, no-bake dessert, and baking powder assets to The Jel Sert Company and

Nabisco's intense mints assets to Hershey Foods Corporation.

68. \* *Phillips Petroleum Company* (Final Order March 28, 1997): Consent order settles charges that the acquisition of gas gathering assets from *ANR Pipeline Company* would reduce competition for natural gas gathering services in five Oklahoma counties. The order permits the acquisition but requires the divestiture of 160 miles of pipeline system in the Anadarko Basin within 30 days to a Commission-approved buyer.

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

70. \* *Provident Companies, Inc.* (Final Order September 20, 1999): The consent order ensures that the merged firm of Provident and *UNUM Corporation* will continue to participate in industry-wide solicitations for data to make actuarial predictions on probable future claims by applicants who hold policies with providers of individual disability insurance. The order requires UNUM/Provident to provide data to the Society of Actuaries and/or the National Association of Insurance Commissioners for studies and reports.

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

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

73. \* *RHI AG* (Proposed Consent Agreement Accepted for Public Comment December 30, 1999): A proposed consent agreement permits the acquisition of *Global Industrial Technologies, Inc.* and requires the divestiture of two refractories manufacturing facilities – Global's Hammond, Indiana and Marelan,

Quebec plants – to Resco Products, Inc. According to the complaint, the proposed acquisition would create the largest producer of refractories in North America with dominant positions in the magnesia - carbon brick refractory market and in the high alumina brick refractory market. Refractories are used to line furnaces in many industries that involve the heating or containment of solids, liquids, or gases at high temperatures.

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

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

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

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

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

79. \* *Service Corporation International* (Final Order May 4, 1999): Consent order permits the acquisition of *Equity Corporation International*, the fourth largest funeral home and cemetery company in the United States, and requires SCI to divest funeral service and cemetery properties in 14 markets to Carriage Services, Inc. to remedy the anticompetitive effects of the acquisition.
80. \* *Shaw's Supermarkets, Inc.* (Final Order April 5, 2000): A consent order settled charges that Shaw's proposed acquisition of *Star Markets, Inc.* could eliminate supermarket competition and increase prices in the greater Boston metropolitan area. The consent order permits the acquisition and requires the divestiture of three Shaw supermarkets and seven Star markets in eight communities.
81. \* *Shell Oil Company* (Final Order April 21, 1998): Shell Oil and *Texaco* settled allegations that their proposed joint venture would reduce competition and could raise prices for gasoline in Hawaii, California, and Washington and the price of asphalt in California. The consent order requires Shell to divest a package of assets, including Shell's Anacortes, Washington refinery; a terminal and retail gasoline stations in Oahu, Hawaii and retail gas stations, and a pipeline in California.
82. \* *Shell Oil Company* (Final Order December 21, 1998): Final consent requires Shell Oil and its Tejas Energy, LLC, subsidiary, to divest parts of the ANR pipeline system in Oklahoma and Texas to settle charges that its acquisition of gas gathering assets of *The Coastal Corporation* would lead to anticompetitive increases in gas gathering rates and an overall reduction in gas drilling and production in the two states.
83. \* *Sky Chefs, Inc.* (Final Order September 18, 1998): Sky Chefs restricted its acquisition plans, excluding Ogden Corporation's in-flight catering operation at the McCarran International Airport in Las Vegas, Nevada from its purchase agreement to settle Commission concerns that the consolidation of the two firms in Las Vegas would lead to higher prices for airline catering services. The consent order prohibits Sky Chefs from making certain acquisitions without Commission approval for 10 years.
84. \* *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.

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

86. \* *Tenet Healthcare Corporation* (Final Order May 20, 1997): The proposed consent order permits the acquisition of *OrNda Healthcorp* but requires the divestiture of Tenet's French Hospital Medical Center and related OrNda assets in San Luis Obispo County, California by August 1, 1997. This is the shortest divestiture period ever imposed on a hospital merger order.

87. *Time Warner Inc.* (Final Order February 3, 1997): Final consent order requiring the restructuring of the acquisition of *Turner Broadcasting System, Inc.* settles antitrust concerns that the acquisition would restrict competition in cable television programming and distribution. The order requires Tele-Communications, Inc., the nation's number one cable operator, to divest its interests in Turner; reduces contractual agreements between TCI, Turner and Time Warner to carry certain programming; reduces opportunities for bundling programming; prohibits price discrimination against competing cable systems; and requires Time Warner's cable systems to carry a rival news channel to compete with CNN.

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

89. \* *Tyco International, Ltd.* (Final Order December 5, 2000): Tyco agreed to divest its endotracheal tube business to Hudson RCI to settling antitrust

concerns relating to its acquisition of *Mallinckrodt, Inc.* The final order permitted the acquisition.

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

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

92. *Wesley-Jessen Corporation* (Final Order January 3, 1997): Final order preserves competition in the production and sale of opaque contact lenses. The order permits the acquisition of *Pilkington Barnes Hind International, Inc.* but requires the divestiture of the opaque contact lens business within four months to a Commission approved acquirer.

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

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

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

## B. Authorizations to Seek Preliminary Injunctions

1. \* *BP Amoco p.l.c.* (February 2, 2000): Commission authorized staff to file a motion in federal district court to prevent the merger of BP Amoco p.l.c. and *Atlantic Richfield Company*. The complaint, filed in the U.S. District Court for the Northern District of California, San Francisco Division on February 4, 2000, alleged that the merger would reduce competition in the exploration and production of Alaska North Slope crude oil and its sale to West Coast refineries, and in the market for pipeline and storage facilities in Cushing, Oklahoma. The merger would combine: (1) the two largest producers of crude oil on the North Slope of Alaska; (2) the two largest suppliers of Alaska North Slope crude oil to refineries in California and Washington; (3) and the two most successful competitors in bidding for exploration leases on the North Slope. On March 15, 2000, five days before the start of the trial, the defendants and the Commission agreed to seek adjournment of the federal court proceedings to enter into consent negotiations.
  
2. \* *Cardinal Health Inc.* (March 3, 1998): The Commission authorized staff to file separate motions in federal district court to block the mergers of the nation's four largest drug wholesalers into two wholesale distributors of pharmaceutical products. The Commission charged that Cardinal's proposed acquisition of *Bergen Brunswig Corporation* and McKesson Corporation's proposed acquisition of *AmeriSource Health Corp.* would substantially reduce competition in the market for prescription drug wholesaling and lead to higher prices and a reduction in services to the companies' customers -- hospitals, nursing homes and drugstores -- and eventually to consumers. Two separate motions for preliminary injunctions were filed in the U.S. District Court for the District of Columbia March 6, 1998. On July 31, 1998, the District Court granted the Commission's motions enjoining both proposed mergers. The parties abandoned their respective merger plans soon after the decision.
  
3. \* *Conso International Corporation* (August 2, 2000): Conso International Corporation, owner of the Simplicity brand of home sewing patterns, abandoned its proposed acquisition of *McCall Pattern Company* after the Commission filed a motion for a preliminary injunction in the United States District Court for the Southern District of New York. The complaint charged that the acquisition would reduce the number of United States sewing pattern designers and producers from three to two, creating a firm with more than 75% of the domestic unit sales of domestic home sewing patterns.
  
4. \* *H.J. Heinz Company* (July 7, 2000): The Commission authorized staff to file a motion for a preliminary injunction in federal district court on

grounds that the proposed \$185 million acquisition of *Milnot Holding Company*, owner of Beech-Nut Nutrition Corporation, would reduce the number of competitors in the baby food market from three to two – creating a duopoly. The complaint was filed in the U.S. District Court for the District of Columbia on July 14, 2000. At the request of the Commission, the U.S. District Court of Appeals for the District of Columbia enjoined the acquisition on November 8, 2000 after the district court denied the Commission's request for a preliminary injunction.

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

6. \* *McKesson Corporation* (March 3, 1998): Refer to the discussion under Cardinal Health Inc., number 2 above.

7. \* *Mediq Inc.* (July 29, 1997): *Mediq* abandoned its proposed acquisition of *Universal Hospital Services* after the Commission filed a complaint and motion for a preliminary injunction to block the merger of the nation's two largest firms engaged in the rental of hospitals of movable medical equipment, such as respiratory, infusion, and monitoring devices. The complaint, filed in the U.S. District Court for the District of Columbia, alleged that the merger would create a monopoly which would raise the rental prices of movable medical equipment rental in many major metropolitan areas across the nation.

8. \* *Staples, Inc.* (March 10, 1997): Staff authorized to file a motion for a preliminary injunction to block the proposed acquisition of *Office Depot, Inc.* on grounds that the \$4 billion acquisition would allow the combined firm to control prices for the sale of office supplies in numerous metropolitan areas in the United States. On June 30, 1997, the U.S. District Court for the District of Columbia granted the Commission's motion for the injunction. Staples abandoned its acquisition plans in July 1997.

9. \* *Swedish Match AB* (June 22, 2000): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of *National Tobacco Company, L.P.* on grounds that the \$165 million acquisition would lessen competition in the market for loose leaf chewing tobacco and that Swedish



Match's market share would increase to 60 percent. On December 14, 2000, the U.S. District Court for the District of Columbia issued a 42-page opinion granting the Commission's motion for the injunction. On December 22, 2000, the parties abandoned the transaction.

10. \* *Tenet Healthcare Corporation* (April 16, 1998): Staff authorized to file a motion for a preliminary injunction to block the proposed acquisition of Doctors Regional Medical Center in Poplar Bluff, Missouri. On July 30, 1999, the U.S. District Court for the Eastern District of Missouri granted the Commission's motion for the injunction. Tenet filed a notice of appeal in the Eighth Circuit on August 10, 1999. An administrative complaint was issued August 20, 1998 charged that the proposed merger of the only two general hospitals in Poplar bluff would eliminate price, cost and quality competition and put consumers at risk of paying more for health care.

### C. *Commission Opinions/Initial Decisions*

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

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

### D. *Court Decisions*

1. *Blodgett Memorial Medical Center* (July 8, 1997): The U.S. Court of Appeals for the Sixth Circuit upheld a decision by the District Court in the Western District of Michigan that denied the Commission's motion for a preliminary injunction to block the merger of Blodgett and *Butterworth Health Corporation*. The complaint charged that the merger would substantially reduce competition for acute care inpatient hospital services in the Grand Rapids area.

2. ***H.J. Heinz Company*** (November 8, 2000): After the federal district court in Washington, D.C. denied the Commission's motion for a preliminary injunction, the Court of Appeals for the District of Columbia enjoined the Heinz's proposed acquisition of *Milnot Holding Company*, the owner of Beech-Nut Nutrition Corporation, pending the Court's ruling on the Commission's appeal. The Commission's complaint charged that the acquisition, if consummated, would reduce competition in the market for jarred baby food.

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

## ***E. Order Violations***

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

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

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

4. \* *Red Apple Companies, Inc.* (February 23, 1997): Judgment entered requiring Red Apple and its chairman, John Catsimatidis, to pay a \$600,000 civil penalty to settle charges that they violated a 1994 consent order when they failed to divest five New York City supermarkets by March 1996. The complaint and proposed settlement were filed in the U.S. District Court for the Southern District of New York by Commission attorneys. The consent agreement settled allegations in an administrative complaint that the acquisitions of *Sloan's* supermarkets substantially reduced competition in four areas of Manhattan.

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

6. \* *Schnuck Markets, Inc.* (July 28, 1997): Schnuck agreed to pay a \$3 million civil penalty to settle charges that the supermarket chain allowed numerous stores, designated for divestiture under a 1995 consent order, to deteriorate before being sold. The settlement requires Schnuck to divest two closed supermarkets in the St. Louis area within six months to a Commission approved acquirer. The complaint and settlement were filed in U.S. District Court for the Eastern District of Missouri.

## ***F. Other Commission Orders***

1. *Blodgett Memorial Medical Center* (September 26, 1997): The Commission ended its administrative challenge of the proposed merger of Blodgett and Butterworth Health Corporation, two acute care inpatient hospitals in the Grand Rapids, Michigan area, concluding that further litigation in the case was not in the public interest. The complaint was dismissed under a 1995 policy statement in which the Commission determines on a case-by-case basis whether to pursue administrative litigation in merger cases after a federal district court declined to bar the firms from merging pending the outcome of an administrative trial. The hospitals merged in 1997.

2. *Tenet Healthcare Corporation* (December 23, 1999): The Commission decided not to continue with administrative litigation of the complaint that

charged that the proposed merger of Tenet and *Doctors Regional Medical Center* would eliminate price, cost and quality competition and put consumers at risk of paying more for health care in Poplar Bluff, Missouri. The case was dismissed under the agency's 1995 policy to determine on a case-by-case basis whether to pursue administrative litigation in merger cases after a federal court has decline to bar the companies from merging pending the outcome of an administrative trial.

## G. *Complaints*

1. \* *Automatic Data Processing, Inc.* (November 13, 1996): An administrative complaint charged that the 1995 acquisition of *AutoInfo, Inc.* created a monopoly and raised prices in the automobile salvage yard information management industry. A final order (October 10, 1997) requires the divestiture of specific integrated computer systems for auto parts inventory exchange.

2. *Blodgett Memorial Medical Center* (November 18, 1996): The administrative complaint charged that the proposed merger of Blodgett and *Butterworth Hospital* would substantially reduce competition for acute-care inpatient hospital services in the Grand Rapids, Michigan area. The Commission ended its litigation after the federal district court's decision to deny the Commission's motion for a preliminary injunction was upheld by the U.S. Court of Appeals for the Sixth Circuit.

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

4 \* *Monier Lifetile LLC* (September 22, 1998): An administrative complaint charged that the Monier joint venture formed by concrete roofing tile manufacturing division of *Boral Ltd.* and *LaFarge SA* could significantly diminish competition in areas of the Southwest and Florida. A proposed consent order accepted for public comment (March 2, 1999) requires the divestiture of production facilities in Casa Grande, Arizona; Corona, California; and Fort Lauderdale, Florida.

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

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

## H. *Other*

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

2. *Clayton Act -- Section 8* (Effective January 19, 2001): Changes in two threshold figures, based on the change in the Gross National Product, define when it is unlawful for an individual to serve as an officer or director of two or more competing corporations: (1) each of the two companies has capital, surplus and undivided profits in excess of \$18,142,000; and (2) the competitive sales of each corporation exceed \$1,814,200.

3. *Horizontal Merger Guidelines* (Effective April 8, 1997): The Commission and the Department of Justice revised their joint *1992 Horizontal Merger Guidelines* to clarify how they analyze efficiency claims in mergers under review and what merging firms must do to demonstrate claimed efficiencies. The revisions explain how efficiencies may affect the analysis of whether a proposed merger may lessen competition substantially in a relevant market. The revisions define more precisely which efficiencies are attributable to a proposed merger and

which could be achieved in other ways, clarify what parties must do to demonstrate claimed efficiencies, and explain how efficiencies are factored into the analysis of the competitive effects of a merger.

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

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

## **II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement**

### **A. Court Decisions**

None

### **B. Consent Orders**

1. \* *Blackstone Capital Partners II Merchant Banking Fund L.P.* (March 31, 1999): Blackstone and one of its general partners, Howard A. Lipson, paid \$2,835,000 to settle charges that they failed to file notification before acquiring the *Prime Succession, Inc.* chain of funeral homes. When the Blackstone notification and report form was submitted, Mr. Lipson certified the filing to be "true, correct and complete". That filing contained no documentation relating to the Prime acquisition, later discovered by the antitrust agencies through documentation submitted by another filing person in an unrelated transaction. Under terms of the settlement, Blackstone will pay \$2,785,000; Mr. Lipson will pay \$50,000. This is the first time HSR civil penalties have been imposed on an individual for improper certification of an HSR Notification and Report Form. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.
2. \* *Harry E. Figgie, Jr.* (February 13, 1997): Mr. Figgie agreed to pay a \$150,000 civil penalty to settle charges that he acquired restricted voting securities in *Figgie International Inc.* without notifying the two federal antitrust enforcement agencies under the HSR Act. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys serving as special attorneys to the U.S. Attorney General.
3. \* *The Laitram Corporation* (April 12, 1999): Input/Output, Inc. and The Laitram Corporation each paid \$225,000 in civil penalties to settle charges that Input/Output merged its operations with Laitram's DigiCOURSE subsidiary before observing the statutory waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. According to the complaint, the parties filed notification under HSR in October 14, 1998, but Input/Output began its control over DigiCOURSE on October 10, 1998. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.

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

5. \* *Mahle GmbH and Metal Leve S.A.* (February 27, 1997): Mahle, a German piston manufacturer, and *Metal Leve*, a Brazilian competitor, agreed to pay a record \$5.6 million civil penalty for failing to comply with the premerger notification and waiting period requirements before Mahle acquired more than a 50 percent interest in Metal Leve. The complaint, filed in the U.S. District Court for the District of Columbia by Commission attorneys, alleged that the parties knew that the transaction posed serious antitrust concerns and consummated the deal knowing that they were violating the provisions of the HSR Act. The civil penalty is the largest amount collected for a violation of this type.

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

None

### ***D. Rules and Formal Interpretations***

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

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

3. *Affidavits and Certifications - Formal Interpretation 16* (Effective



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

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

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

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

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

## **E. Other**

1. *Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (March 25, 1997): Eighteenth Annual Report (Fiscal Year 1995).
2. *Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (August 25, 1997): Nineteenth Annual Report (Fiscal Year 1996).
3. *Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (May 29, 1998): Twentieth Annual Report (Fiscal Year 1997).
4. *Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (March 1999): Twenty-first Annual Report (Fiscal Year 1998).
5. *1999 Premerger Notification Source Book (April 1999)*: A compilation of the Hart-Scott-Rodino Rules and Regulations; Federal Register Publications; Form Filing Information; Formal Interpretations; Press Releases; Speeches; Annual Report and the 1997 Horizontal Merger Guidelines. The 1999 Source Book replaces the 1990 version. Available from the U.S. Government Printing Office (stock number 018-000-00361-9).
6. *Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976* (August 18, 2000): Twenty-second Annual Report (Fiscal Year 1999).

### **III. Non-Merger Enforcement**

#### **HORIZONTAL ENFORCEMENT**

##### **A. Commission Opinions/Initial Decisions**

1. *International Association of Conference Interpreters* (March 14, 1997): The Commission upheld the administrative complaint and ruled that the association had engaged in a decades-long collusive scheme to fix prices for language interpreters. The order, among other things, would bar AIIC from creating and distributing fee schedules for interpretation, translation or other language services performed in the United States.

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

##### **B. Court Decisions**

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

### **C. *Authorizations to Seek Preliminary/Permanent Injunctions***

None

### **D. *Consent Orders***

1. \* *Abbott Laboratories* and Geneva Pharmaceuticals, Inc. (Final Orders May 22, 2000): Abbott and *Geneva Pharmaceuticals* settled charges that the two firms entered into an illegal agreement to stop the marketing and development of a competing generic drug. According to the complaint, Abbott, manufacturer of Hytrin – the brand name for terazosin HCL, a prescription drug used to treat hypertension and benign prostatic hyperplasia, entered into an agreement with Geneva Pharmaceuticals whereby Abbott would pay Geneva millions of dollars not to market a generic version of Hytrin. The orders barr Abbott and Geneva, among other things, from entering into agreements in which a generic company agrees with a manufacturer of a branded drug to delay or stop the production of a competing drug. This provision remains in effect for a period of ten years.

2. \* *Alaska Healthcare Network* (Proposed Consent Agreement Accepted for public Comment September 6, 2000): An association of 86 physicians practicing in the Fairbanks, Alaska area agreed to settle charges that the Alaskan Healthcare Network illegally formulated a fee schedule based on its members' current prices for use in negotiations with third-party payers in an effort to obtain higher prices for medical services.

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

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

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

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

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

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

8. \* *Colegio de Cirujanos Dentistas de Puerto Rico* (Final order June 12, 2000): The dental association with a membership of more than 1800 dentists practicing in Puerto Rico agreed not to encourage its members to enter into agreements that set or fixed the fees charged or terms and conditions under which

dentists would deal with health insurance plans or other payers in an attempt to obtain higher reimbursement rates for dental services.

9. \* *College of Physicians and Surgeons of Puerto Rico* (September 29, 1997): The Commission authorized staff to file a complaint and settlement in federal district court to settle allegations that the College and three physician groups engaged in an illegal boycott in an effort to coerce the government to make price-related changes under Puerto Rico's government-managed care plan for the indigent. According to the complaint, filed by the Commission and Puerto Rico's Attorney General in the U.S. District Court of Puerto Rico on October 2, 1997, the College and physicians engaged in an eight day boycott of all physician services for non-emergency patient care, which caused many people to be treated at area hospital emergency rooms and forced others to completely forego medical care. The proposed settlement would prohibit such practices in the future and in addition, the proposed order will require the College to pay \$300,000 to the catastrophic fund administered by the Puerto Rico Department of Health.

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

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

12. *Detroit Automobile Dealers Association* (Final Order June 3, 1997): Consent order settles charges against the eleven remaining dealerships in this litigated matter. The administrative complaint charged that the association and its more than 200 member dealerships and individuals illegally conspired to limit their showroom hours in an attempt to restrain competition in the sale of new cars in the Detroit area. Certain dealers and associations settled the case in 1994. In June 1995, the Commission ruled against the remaining respondents, finding that the dealers' agreement harmed consumers by restricting their ability to comparison shop and that the dealers were not entitled to the nonstatutory labor exemption of the antitrust laws. The order binds the dealerships to the 1995 order with one modification; the requirement that the dealerships remain open for a

minimum number of hours per week for one year has been shortened to the time during which the respondents complied with the provision while the matter was under appeal. In addition, the Commission determined that the effective date of the consent order be construed to be the effective date of the June 1995 decision.

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

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

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

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

17. \* *Institutional Pharmacy Network* (Final Order August 11, 1998): A final order prohibits five institutional pharmacies from engaging in any joint price

negotiation or price agreements for the provision of prescription drugs in an attempt to maximize reimbursement rates with managed care organizations.

18. \* *M.D. Physicians of Southwest Louisiana, Inc.* (Final Order August 31, 1998): A group of physicians in the area of Lake Charles, Louisiana settled charges that they illegally conspired to fix the prices for professional services by engaging in joint price negotiations with third-party payers. The final consent order prohibits such practices but does allow the MDP to engage in legitimate joint conduct.
  
19. *Mesa County Physicians IPA* (Final Order May 4, 1999): A Colorado physicians' organization settled charges issued in an administrative complaint alleging that the Mesa County IPA conspired with its members to increase prices for physician services and thereby prevented third party payers such as preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives from offering alternative health insurance programs to consumers in Mesa County.
  
20. \* *Michael T. Berkley, D.C. and Mark A. Cassellius, D.C.* (Final Order April 11, 2000): A final order settled charges that Drs. Michael T. Berkley and Mark A. Cassellius conspired to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan in an attempt to obtain higher reimbursement for chiropractic services in the La Crosse, Wisconsin area.
  
21. \* *Montana Associated Physicians, Inc. and Billings Physician Hospital Alliance, Inc.* (Final Order January 13, 1997): Consent order prohibits Montana Associated and Billings Physician from engaging in any agreement with physicians to negotiate or refuse to deal with any health care maintenance organization or preferred provider organization and from fixing the fees charged for physician services.
  
22. \* *Nine West Group Inc.* (Final Order April 11, 2000): Nine West Group Inc. settled charges that it entered into agreements with retailers and coerced other retailers into fixing the retail prices for their shoes and restricted periods when retailers could promote sales at reduced prices. The order prohibits Nine West from fixing the price at which dealers may advertise, promote or sell any product. Nine West is one of the country's largest suppliers of women's shoes.
  
23. \* *North Lake Tahoe Medical Group, Inc.* (Final Order July 21, 1999): Physicians practicing in the North and South Lake Tahoe areas settled charges that they conspired to fix the prices and terms for professional services. The proposed consent agreement would prohibit the IPA from engaging in collective



negotiations to fix prices, refusing to deal with third party payers and from coercing payers into accepting IPA fee schedules and minimum reimbursement rates.

24. \* *Sensormatic Electronics Corporation* (Final Consent Order April 6, 1998): Refer to the discussion under Checkpoint Systems, Inc., number 2 above.

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

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

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

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

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

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

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

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

33. \* ***Urological Stone Surgeons, Inc. and Parkside Kidney Stone Centers*** (Final Order April 6, 1998): Consent order settles allegations that

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

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

## ***E. Complaints***

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

2. \* *Mesa County Physicians Independent Practice Association* (May 12, 1997): An administrative complaint alleged that the Mesa County Physicians IPA conspired to fix the prices for physician services and encouraged its member physicians not to deal with certain health insurance companies or other third party payers. A 1999 consent order settled all charges in the administrative complaint.

3. \* *Summit Technology, Inc. and VISX, Inc.* (March 24, 1998): An administrative complaint alleged that Summit and VISX, the only two firms that market laser equipment for vision correcting eye surgery, engaged in a price fixing conspiracy that eliminated price competition and product expansion through the establishment of a patent pool, to which each firm contributed a patent, and then shared in the proceeds each time a Summit or VISX laser was used. A consent order settled charges under Counts I and II of the complaint. Administrative

hearings were held on Count III.

## **F. Other**

### **Policy Statements**

1. **Midwest Gas Price Investigation** (Interim report to Congress announced July 28, 2000): Report discusses factors that may have led to the price spikes of reformulated gasoline in the Midwest region of the United States. The Commission investigation is being coordinated with Attorneys General in Wisconsin, Illinois, Michigan, Ohio, Indiana, Missouri, Iowa, Minnesota, Kentucky, South Dakota, and West Virginia.

### **Commission Studies**

1. **Generic Drugs** (Announced October 11, 2000): Commission proposes to conduct a study of generic drug competition to study the business relationships between brand-name and generic drug manufacturers to ensure that agreements between the two do not delay competition from generic versions of patent-protected drugs.

### **Advisory Opinions**

1. **Northeast Pharmacy Service Corporation** (July 27, 2000): Network of independent pharmacies in Massachusetts and Connecticut offering a package of medication-related patient care service.
2. **BJC Health System** (November 9, 1999): Sale of pharmaceutical by non-profit hospital system to the system's employees, affiliated managed care program enrollees, home care subsidiary
3. **Orange Pharmacy Equitable Network** (May 19, 1999): Network of retail pharmacies and pharmacists offering drug product distribution and disease management services.
4. **Wesley Health Care Center, Inc.** (April 29, 1999): Sale of pharmaceutical by non-profit skilled nursing facility to volunteers working at the facility.

5. *Associates in Neurology* (August 13, 1998): Eleven independent Los Angeles neurologists plan to establish a provider association to provide in-office services and hospital visits on a capitated basis.
6. *Phoenix Medical Network, Inc.* (May 20, 1998): Network of physicians in Erie, Pennsylvania to provide medical services for a percentage of the insurance premiums collected by the payers.
7. *Alliance of Independent Medical Services, LLC* (December 22, 1997): Network of ambulance and ambulance services providers formed to contract for transportation services with third party payers.
8. *Direct Marketing Association* (October 14, 1997): Staff advised that the association could require its members to (1) honor requests from consumers that direct marketers not contact them, (2) disclose to consumers how their members sell personal information about those consumers, and (3) honor consumers' requests that the members not sell or transfer their personal information.
9. *New Jersey Pharmacists Association* (August 12, 1997): Pharmacist network offering health education and monitoring services to diabetes and asthma patients.
10. *First Look, L.L.C.* (June 19, 1997): Network of optical firms organized to respond to requests for proposals for employer contracts for optical and vision services.
11. *Yellowstone Physicians, LLC* (May 17, 1997): Multispecialty physician network joint venture formed to contract with third party payers.
12. *Foundation for the Accreditation of Hematopoietic Cell* (April 18, 1997): Standard-setting and accreditation program for organizations involved in medical or laboratory practice related to hematopoietic progenitor cell therapy.
13. *Henry County Memorial Hospital* (April 10, 1997): Sales of pharmaceuticals by non-profit hospital to patients of the hospital's PHO.
14. *Ohio Ambulance Network* (January 23, 1997): Network of ambulance and ambulance services providers formed to contract for transportation services with third party payers.
15. *Mobile Health Resources* (January 23, 1997): Network of ambulance companies formed to contract for transportation services with third party payers.

16. *Southwest Florida Oral Surgery Associates* (December 2, 1996): Cooperative of oral and maxillofacial surgery practices formed to jointly market services to third party payers.

17. *North Ottawa Community Hospital* (October 22, 1996): Sales of pharmaceuticals by non-profit hospital to unaffiliated, non-profit hospice.

18. *Business Health Companies, Inc.* (October 18, 1996): Survey of hospital prices by third party consultant.

19. *North Mississippi Health Services* (October 3, 1996): Sales of pharmaceuticals by non-profit medical center to retired employees.

### *Workshops*

1. *Slotting Allowances* (May 31; and June 1, 2000): Commission held two public workshops on "Slotting Allowances" – lump sum, up-front payments that food manufacturers pay to get new products placed on supermarket shelves. The workshop provides manufacturers, retailers and other interested persons who have had actual-hands on experience with grocery marketing practices with a forum to discuss the nature of slotting allowances to assess whether they raise competitive concerns.

## ***VERTICAL ENFORCEMENT***

### ***A. Commission Opinions/Initial Decisions***

1. *Toys "R" Us* (Commission Decision November 11, 2000 - Final Order. October 14, 1998; Initial Decision September 30, 1997): An Administrative Law Judge issued an initial decision that, if made final, would prohibit Toys "R" Us from entering into agreements with toy manufacturers and others that result in restrictions on sales to warehouse clubs. TRU threatened to stop buying products that were sold to warehouse clubs, which resulted in major toy makers halting the sale of certain products to clubs. The ALJ found that these practices reduced competition and led to higher toy prices. The initial decision would prohibit the toy chain from entering into any agreement with a supplier to restrict sales to any toy discounter; from facilitating agreements among suppliers that would limit sales to any retailer; and for five years, from refusing to or announcing it will refuse to purchase from a supplier because the supplier sells to a toy discounter. On October 14, 1998 the Commission issued its decision that Toys R Us had orchestrated horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs. On December 7, 1998, Toys R Us filed a notice of appeal in the U.S. District Court for the Seventh Circuit. Complaint upheld by Seventh Circuit Court of Appeals.

### ***B. Court Decisions***

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

### ***C. Authorization to Seek Preliminary/Permanent Injunctions***

1. \* *Mylan Laboratories, Inc.* (December 22, 1998): Complaint filed in the U.S. District Court for the District of Columbia charged Mylan with restraint of trade, monopolization and conspiracy to monopolize the market for two generic drugs used to treat anxiety, lorazepam and clorazepate, through exclusive dealing arrangements. The complaint seeks consumer redress of at least \$120 million and to enjoin the alleged illegal exclusive licensing agreements. Federal District Court Judge Hogan released a 46 page decision upholding the Commission's authority to seek restitution in antitrust injunction actions under Section 13(b) of

the Federal Trade Commission Act. November 29, 2000: Commission approved a \$100 million settlement—the largest monetary settlement in Commission history. The settlement would settle Commission concerns that Mylan, Gyma laboratories of America, Inc., Cambrex Corporation and Profarmaco S.R.L. conspired to deny Mylan's competitors ingredients necessary to manufacture lorazepam and clorazepate. Upon approval of the proposed settlement by the federal district court, Mylan will pay the money into a fund for 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.

#### **D. Consent Orders**

1. \* *American Cyanamid* (Final Order May 12, 1997): The final consent order settles charges that American Cyanamid entered into written agreements with its retail dealers to offer substantial rebates to dealers who sold the company's agricultural chemical products at or above specified minimum resale prices. The order prohibits American Cyanamid from conditioning the payment of rebates or other promotionals on the resale prices its dealers charge for its products.
2. \* *Hale Products, Inc.* (Final Order November 25, 1997): Hale and Waterous Company, Inc. agreed to settle charges that for more than 50 years they sold fire pumps on an exclusive basis to fire truck manufacturers in an attempt to allocate the customers each would serve, thereby making it more difficult for other pump makers to enter the market. The two consent orders prohibit each company from enforcing any requirement that fire truck manufacturers refrain from purchasing mid-ship mounted fire pumps from any other company, or that they purchase or sell only the relevant Hale or Waterous pumps.
3. \* *McCormick & Company* (Final Order April 27, 2000): McCormick & Company agreed to settle charges that it violated the Robinson-Patman Act when the firm charged some retailers higher net prices for its spice and seasoning products than it charged other retailers. According to the complaint, McCormick, the world's largest spice company, offered its products to some retailers at substantial discounts using a variety of different discounting schemes, such as slotting allowances, free goods, off-invoice discounts and cash rebates. The order prohibits McCormick from engaging in price discrimination and from selling its products to any purchaser at a net price higher than McCormick charged the purchaser's competitor.



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

### ***E. Complaints***

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

### ***F. Other***

None

***SINGLE FIRM ENFORCEMENT***

**A. Commission Opinions/Initial Decisions**

None

**B. *Court Decisions***

None

**C. *Consent Orders***

None

**D. *Complaints***

None

**E. *Other***

None

## ***IV. International Activities***

As economies across the globe continue to become increasingly interconnected, our antitrust policies have evolved to meet the challenge of globalization. This has developed through bilateral cooperation, both through intergovernmental agreements and on individual cases, participation in multilateral, and the provision of technical assistance.

1. **Bilateral Cooperation.** The FTC cooperates routinely with many foreign antitrust agencies to enforce the antitrust laws in cases in which the parties and the effects of their conduct may be subject to scrutiny in foreign countries as well as well as in the United States. For example, in major transnational mergers such as AOL/Time-Warner, Time-Warner/EMI, Boeing/Hughes, Exxon/Mobil, and AstraZeneca/Novartis, as well as in non-merger matters such as Covisint, our staff has worked closely with that of the European Commission and other foreign antitrust authorities to coordinate our analyses and remedies. We believe this has produced substantial benefits, both in particular cases and in fostering substantive and procedural convergence, for the agencies and the parties.

Along with the Department of Justice, the Commission has formalized our cooperative relationships by entering into inter-governmental agreements, including, most recently, a cooperation agreement with Mexico in July 2000. We hope to enter into an enhanced agreement on positive comity with Canada, along the lines of our 1998 agreement with the European Community, in the near future. FTC, DOJ, and the European Commission staff also participate in a Mergers Working Group to pursue further convergence - the Working Group has already made progress in the area of remedies, and will be exploring other subjects in the coming year.

2. **International Fora.** The Commission participates in international organizations, such as the Organization for Economic Cooperation and Development (OECD), the World Trade Organization (WTO), NAFTA, and the Asia Pacific Economic Cooperation (APEC), to promote competition policies and enforcement practices that can benefit all member countries and are consistent with the goals of maintaining competition and open markets and enhancing consumer welfare. We are also exploring ways in which the proposed Global Competition Initiative ("GCI") can deal with the challenges that continuing globalization poses for competition policy. We participate in the Negotiating Group on competition Policy in the Free Trade Area of the Americas negotiation which is considering the role of competition policy in a hemispheric free trade agreement, and are involved in negotiating possible competition provisions in new Free Trade Agreements with Singapore and Chile.

OECD. We are active participants in the OECD's efforts to promote sound

competition policy, including in dealing with the issues posed to enforcers and parties involved in multi-jurisdictional mergers. We are also participating in the OECD's in-depth review of members' experiences with regulatory reform process, and look forward to the upcoming OECD Global Forum which will include significant participation by non-members including developing countries.

**WTO.** In 1996, the WTO established a working group to study the interaction between trade and competition policies. This has been a valuable educative process, especially given the broad and diverse membership of the WTO. We look forward to continuing to contribute to the work of this group in building a worldwide culture of competition, while resisting what we believe are premature and ill-advised initiatives to enact multilateral competition rules in the WTO.

**GCI.** Initially recommended by ICPAC, the proposed GCI has generated interest on the part of governments, bar groups, and international organizations. The FTC is participating in the ongoing dialogue to explore the organization and role of a GCI in dealing with the international antitrust agenda.

3. **Technical Assistance.** The increasing acceptance of the benefits of open markets has been accompanied by a proliferation of new competition laws. With the help of funding from the United States Agency for International Development and international organizations, the FTC along with the Department of Justice continues to undertake short and long-term projects to assist nascent antitrust enforcement agencies in Central and Eastern Europe, the former Soviet Union, Latin America, Asia, and Africa in designing and implementing sound antitrust policies.

## V. *Competition Speeches*

1. **"The Evolving Approach to Merger Remedies"** (May 2000) Richard G. Parker, Bureau Director and David a. Balto, Assistant Director, article published in *Antitrust Report*.
2. **"Report from the Bureau of Competition"** (April 7, 2000) American Bar association spring Meeting 2000.
3. **"Emerging Antitrust Issues in Electronic Commerce"** (November 12, 1999): David A. Balto, Assistant Director, Antitrust Institute, Distribution Practices: Antitrust Counseling in the New Millennium, Columbus, Ohio.
4. **"Global Merger Enforcement"** (September 28, 1999): Richard G.

Parker, Bureau Director, International Bar Association, Barcelona, Spain.

5. **“Enforcement Cooperation Among Antitrust Authorities”** (May 19, 1999): John J. Parisi, IBC UK Conferences Sixth Annual London Conference on BC Competition Law.
6. **“Report from the Bureau of Competition”** (April 15, 1999): William J. Baer, Bureau Director, ABA Spring Meeting, Washington, DC.
7. **“Antitrust Enforcement and High Technology Markets”** (November 12, 1998): William J. Baer, Bureau Director, American Bar Association, Sections of Business Law, Litigation, and Tort and Insurance Practice, San Francisco, California.
8. **“Report from the Bureau of Competition”** (April 2, 1998): William J. Baer, Bureau Director, American Bar Association, Antitrust Section Spring Meeting 1998, Federal Trade Commission, Washington, DC.
9. **“FTC Perspectives on Competition Policy and Enforcement Initiatives in Electric Power”** (December 4, 1997): William J. Baer, Bureau Director, Conference on The New Rules of the Game for Electric Power: Antitrust & Anticompetitive Behavior, Washington, DC.
10. **“New Myths and Old Realities: Perspectives on Recent Developments in Antitrust Enforcement”** (November 17, 1997): William J. Baer, Bureau Director, Bar Association of the City of New York, New York, NY.
11. **“Government Enforcement and Guidance in Health Care Antitrust: Maintaining the Balance”** (August 5, 1997): Robert Leibenluft, Assistant Director, American Bar Association 1997 Annual Meeting.
12. **“Report from the Bureau of Competition”** (April 9-10, 1997): William J. Baer, Bureau Director, American Bar Association, Antitrust Section, Spring Meeting 1997, FTC and Clayton Act Committees, Washington, DC.
13. **“Merger Remedies”** (April 10, 1997): George S. Cary, Senior Deputy Director, American Bar Association, Antitrust Section, Spring Meeting 1997, Washington, D.C.
14. **“Overview of the Advisory Opinion Process at the Federal Trade Commission”** (February 13-14, 1997): Judith A. Moreland, Staff Attorney, National Health Lawyers Association Antitrust in the Health Care Field, Washington, DC.

15. **“The Convergence of International Competition Regimes -- The European Union: Prospects & Challenges, International Antitrust Cooperation”** (February 28, 1997): William J. Baer, Bureau Director, Management Centre Europe, Rue de l’Aqueduc 118, B-1050 Brussels, Belgium.
16. **“Distribution & Marketing -- Federal Enforcement: Federal Trade Commission”** (February 7, 1997): William J. Baer, Bureau Director, PLI’s 37th Annual Advanced Antitrust Workshop, Beverly Hills, CA.
17. **“International Antitrust Cooperation & Current Enforcement Issues -- Issues of Interest Arising from the FTC’s Global Competition Hearings”** (January 26 - 28, 1997): William J. Baer, Bureau Director, ABA Antitrust Section’s MidWinter Leadership Meeting, Kona, HA.
18. **“Competition and Market Power in a Restructured Industry and the Effects of Mergers on Consumers”** (December 10, 1996): William J. Baer, Bureau Director, Consumer Energy Council of America Research Foundation, Washington, DC.
19. **“The Changing Nature of Competition: An Antitrust Policy Institute -- ‘Competition and Efficiencies’”** (November 7, 1996): William J. Baer, Bureau Director, The Section of Antitrust Law of the American Bar Association, Washington, DC.
20. **“Reflections on 20 Years of Merger Enforcement under the Hart-Scott-Rodino Act”** (October 29, 1996; October 24, 1996 ): William J. Baer, Bureau Director, The Conference Board, Washington, DC; and The 35th Annual Corporate Counsel Institute, Northwestern University School of Law, Corporate Law Center, San Francisco, CA
21. **“Current Issues in Health Care Antitrust Enforcement of the Federal Trade Commission”** (October 24, 1996): William J. Baer, Bureau Director, American Bar Association, Antitrust and Health Care: New Approaches and Challenges, Omni Royal Orleans, New Orleans, LA.
22. **“Antitrust 1997: A Briefing for Corporate Counsel”** (October 21, 1996): William J. Baer, Bureau Director, Business Development Associates/Federal Bar Association Program, Washington, DC.

## *VI. Statistics*

### *Enforcement Statistics<sup>2</sup>* *Federal Trade Commission* *Bureau of Competition* *Fiscal Year 1997 - March 15, 2001*

#### *Merger Enforcement*

Preliminary Injunctions Authorized	10
Part III Administrative Complaints	2
Part II Consents	89
Civil Penalty Actions	11
(g)(1) Actions	5
Other	6
Transactions Abandoned after Second Request Issued	37
<b><i>Total Merger Actions</i></b>	<b>159</b>

#### *Non-merger Enforcement*

Part III Administrative Complaints	4
Part II Consents	33
Civil Penalty Actions	0
Preliminary/Permanent Injunctions	1
<b><i>Total Non-Merger Actions</i></b>	<b>37</b>

---

<sup>2</sup> To avoid double counting, this chart includes only those enforcement actions (preliminary injunctions, Part II consents placed on the public record for comment, Part III administrative complaints, and civil penalty actions) in which the Commission took its first public action during the period.

**Merger Cases**  
**Fiscal Year 1997 - March 15, 2001**

***Proposed Consent Agreements Accepted for Comment***

*ABB*

*Agrium, Inc.*

*Albertson's Inc. (American Stores)*

*Albertson's Inc. (Buttrey)*

*American Home Products*

*AmericanOnline, Inc.*

*Associated Octel Company Limited*

*Autodesk, Inc.*

*Baxter International Inc.*

*Boeing Company, The (Hughes Space and Communications)*

*Boeing Company, The (Rockwell International Corporation)*

*British Petroleum Company p.l.c. (Amoco)*

*Cablevision Systems Corp.*

*Cadence Design Systems, Inc.*

*Ceridian Corporation*

*Ciba-Geigy Limited*

*CMS Energy Corp.*

*Commonwealth Land Title Insurance Company*

*Computer Sciences Corporation*

*Cooperative Computing, Inc.*

*CUC International, Inc.*

*CVS Corporation*

*Degussa Corporation*

*Delhaize Freres et cie "Le Lion" S.A.*

*Dominion Resources, Inc.*

*Dow Chemical Company (Union Carbide Corporation)*

*Dow Chemical Company (Sentrachem Limited)*

*Duke Energy Corporation*

*Dwight's Energydata, Inc.*

*El Paso Energy Corporation (PG&E)*

*El Paso Energy Corporation (Coastal Corporation)*

*El Paso Energy Corporation (Sonat Inc.)*

*Exxon Corporation (Mobil)*

*Exxon Corporation (Royal Dutch Shell)*

*Federal-Mogul Corporation*

*Fidelity National Financial*



**Merger Cases**  
**Fiscal Year 1997 - March 15, 2001**

*FMC Corporation*  
*General Mills, Inc.*  
*Global Industrial Technologies, Inc.*  
*Guinness PLC*  
*Hoechst AG*  
*Insilco Corporation*  
*Intel Corporation (Digital Equipment)*  
*J.C. Penney Company (Eckerd Corporation)*  
*J.C. Penney Company (Rite Aid Corporation)*  
*Jitney-Jungle Stores of America, Inc.*  
*Koch Industries, Inc.*  
*Koninklijke Ahold NV (Giant Food)*  
*Kroger Company (Fred Meyer Stores, Inc.)*  
*Kroger Company (John C. Groub Company)*  
*LaFarge Corporation*  
*Landamerica Financial Group, Inc.*  
*MacDermid, Inc.*  
*Mahle GmbH*  
*Manheim Auctions, Inc.*  
*Medtronic, Inc. (Avecor)*  
*Medtronic, Inc. (Physio-Controls)*  
*Merck and Co., Inc.*  
*Nortek, Inc.*  
*Novartis AG*  
*PacifiCorp*  
*Pfizer Inc.*  
*Philip Morris Companies (Nabisco Holdings)*  
*Phillips Petroleum Company (ANR Pipeline)*  
*Precision Castparts Corporation*  
*Provident Companies, Inc.*  
*Quexco Inc.*  
*Reckitt & Colman*  
*RHI AG*  
*Rhodia, Donau Chemie*  
*Roche Holdings Ltd.*  
*Rohm & Haas Company*  
*S.C. Johnson & Son, Inc.*  
*Service Corporation International (Equity)*  
*Service Corporation International (La Grone)*  
*Shaw's Supermarkets, Inc.*

**Merger Cases**  
**Fiscal Year 1997 - March 15, 2001**

*Shell Oil Company (Coastal)*  
*Shell Oil Company (Texaco)*  
*Sky Chefs, Inc.*  
*SmithKline Beecham plc*  
*SNIA S.p.A.*  
*Tenet Healthcare Corporation*  
*TRW Inc.*  
*Tyco International, Ltd.*  
*Valspar Corporation*  
*VNU N.V.*  
*Williams Companies*  
*Winn-Dixie Stores, Inc.*  
*Zeneca Group PLC*

***Preliminary Injunctions Authorized***

*BP Amoco p.l.c.*  
*Cardinal Health Inc.*  
*Conso International Corporation*  
*H.J. Heinz Company*  
*Kroger Company (Winn-Dixie)*  
*McKesson Corporation*  
*Mediq Inc.*  
*Staples Inc.*  
*Swedish Match AB*  
*Tenet Healthcare Corporation*

***Part III Administrative Complaints***

*Automatic Data Processing, Inc.*  
*Monier Lifetile*

***Merger Cases***  
**Fiscal Year 1997 - March 15, 2001**

***Civil Penalty Actions***

***Section 7A (g)(1)***

*Blackstone Capital Partners II Merchant Banking Fund L.P. and Howard A. Lipson  
Harry E. Figgie, Jr.  
Laitram Corporation  
Loewen Group Inc. and Loewen Group International  
Mahle GmbH*

***Section 7A (g)(2)***

*none*

***Order Violations***

*Boston Scientific Corporation  
Columbia/HCA Healthcare Corporation  
CVS Corporation  
Red Apple Companies, Inc.  
Rite Aid Corporation  
Schmuck Markets, Inc.*

**Non-Merger Cases**  
**Fiscal Year 1997 - March 15, 2001**

***Proposed Consent Agreements Accepted for Comment***

*Abbott Laboratories*  
*Alaska Healthcare Network*  
*American Cyanamid*  
*Asociacion de Farmacias Region de Arecibo*  
*Bertlesmann Music Group, Inc.*  
*Capitol Records, Inc. (EMI Music Distribution)*  
*Checkpoint Systems, Inc.*  
*Chrysler Dealers*  
*Colegio de Cirujanos Dentistas de PR*  
*College of Physicians and Surgeons in Puerto Rico*  
*Columbia River Pilots Association*  
*Dentists of Juana Diaz, Coamo*  
*Ethyl Corporation*  
*Fastline Publications*  
*FMC Corporation*  
*Geneva Pharmaceuticals*  
*Institutional Pharmacy Network*  
*Mark A. Cassellius, D.C. and Michael T. Berkley, D.C.*  
*McCormick & Company*  
*M.D. Physician of Southeast Louisiana, Inc.*  
*MT Associated Physicians, Inc.*  
*Nine West Group Inc.*  
*North Lake Tahoe Medical Group, Inc.*  
*Sensormatic Electronics Corporation*  
*Sony Music Entertainment*  
*South Lake Tahoe Lodging Association*  
*Southern Valley Pool Association*  
*Stone Container Corporation*  
*Texas Surgeons*  
*Time Warner*  
*Universal Music*  
*Urological Stone Surgeons, Inc.*  
*Wisconsin Chiropractic Association*

***Non-Merger Cases***  
***Fiscal Year 1997 - March 15, 2001***

***Part III Administrative Complaints***

*Hoechst Marion Roussel*

*Intel Corporation*

*Mesa County Physicians IPA*

*Summit Technology, Inc. and VISX, Inc.*

***Civil Penalty Actions***

*None*

***Preliminary/Permanent Injunctions***

*Mylan Laboratories, Inc.*

## *INDEX of CASES and SUBJECTS*

*(Fiscal Year 1997 through March 15, 2001)*

ABB 1  
Abbott Laboratories 32  
Advisory Opinions 40  
Agrium, Inc.  
Alaska Healthcare Network 32  
Albertson's, Inc. 1 2  
Alliance of Independent Medical Services 41  
American Cyanamid 44  
American Home Products Corporation 2  
AmericaOnline, Inc. 2  
Asociacion de Farmacias Region de Arecibo 32  
Associated Octel Company 2  
Associates in Neurology 41  
Autodesk, Inc. 2  
Automatic Data Processing 24  
Baxter International Inc. 3  
Bertlesmann Music Group 32  
BJC Health System 40  
Blackstone Capital Partners II Merchant Banking Fund L.P. 27  
Blodgett Memorial Medical 21 24  
Boeing Company, The 3  
Boston Scientific Corporation 22  
BP Amoco p.l.c. 3 19  
British Petroleum Company p.l.c. 4  
Business Health Companies, Inc. 42  
Business-to-Business 25  
Cablevision Systems Corp. 4  
Cadence Design Systems, Inc. 4  
California Dental Association 33  
Capitol Records, Inc. 33  
Cardinal Health Inc. 19  
Castle Harlan Partners, II L.P. 4  
Ceridian Corporation 4  
Checkpoint Systems, Inc. 33  
Chrysler Dealers 33  
Ciba-Geigy Limited 5  
Clayton Act -- Section 8 25  
CMS Energy Corporation 5  
Colegio de Cirujanos Dentistas de PR 33

## *INDEX of CASES and SUBJECTS*

*(Fiscal Year 1997 through March 15, 2001)*

College of Physicians and Surgeons in Puerto Rico	34
Columbia/HCA Healthcare Corporation	22
Columbia River Pilots	34
Columbine Family Health Center	42
Commonwealth Land Title Insurance Company	5
Computer Sciences Corp.	5
Conso International Corp.	
Cooperative Computing, Inc.	5
Council of Fashion Designers of America	35
CUC International, Inc.	6
CVS Corporation	6 22
Degussa Corporation	6
Delhaize Freres et cie "Le Lion" S.A.	6
Dentists of Juana Diaz, Cuamo	34
Detroit Automobile Dealers Association	34
Direct Marketing Association	41
Divestiture Study	26
Dominion Resources, Inc.	6
Dow Chemical Company	7
Duke Energy Corp.	7
Dwight's Energydata, Inc.	7
El Paso Energy Corporation	6 7
EMI Music Distribution	33
Ethyl Corporation	35
Exxon Corporation	7
Fastline Publications	35
Federal-Mogul Corporation	7
Fidelity National Financial	7
First Look L.L.C.	41
FMC Corporation	7 35
Foundation for the Accreditation of Hematopoietic Cell	41
Fresenius A.G.	8
General Mills, Inc.	8
Generic Drugs	40
Geneva Pharmaceuticals	35
Global Industrial Technologies, Inc.	8
Guinness PLC	8
Hale Products	44
Harry E. Figgie, Jr.	27
Hart-Scott-Rodino Reform	29

## *INDEX of CASES and SUBJECTS*

*(Fiscal Year 1997 through March 15, 2001)*

Healthcare	
1996 Statements of Antitrust Enforcement Policy in Health Care	40
Henry County Memorial Hospital	41
H.J. Heinz Company	19 22 24
Hoechst AG	9
Hoechst Marion Roussel	39
Horizontal Merger Guidelines	25
Insilco Corporation	9
Institutional Pharmacy Network	35
Intel Corporation	10 45
International Activities	47
International Association of Conference Interpreters	31
J.C. Penney Company	10
Jitney-Jungle Stores of America, Inc.	10
Koch Industries, Inc.	10
Koninklijke Ahold NV	11
Kroger Company	11 20
LaFarge SA	11
Laitram Corporation	27
Landamerica Financial Group, Inc.	11
Loewen Group and Loewen Group International	
MacDermid, Inc.	11
Mack A. Cassellius, D.C.	36
Mahle GmbH	12 28
Manheim Auctions, Inc.	12
McCormick & Company	44
McKesson Corporation	20
M.D. Physicians of Southwest Louisiana	36
Mediq Inc.	20
Medtronic, Inc.	12
Merck and Co., Inc.	12
Mesa County Physicians IPA	36 39
Michael T. Berkley, D.C.	36
Midwest Gas Price Investigation	40
Mobile Health Resources	41
Monier Lifetile LLC	24
Montana Associated Physicians, Inc.	36
Mylan Laboratories, Inc.	43
New Jersey Pharmacists	41
NGC Corporation	13



## ***INDEX of CASES and SUBJECTS***

*(Fiscal Year 1997 through March 15, 2001)*

Nine West Group Inc.	36
Nortek, Inc.	13
Northeast Pharmacy Service	40
North Mississippi Health Services	42
North Lake Tahoe Medical Group, Inc.	36
North Ottawa Community Hospital	42
Novartis AG	13
Ohio Ambulance Network	41
Orange Pharmacy Equitable Network	40
PacifiCorp	13
Pfizer Inc.	13
Philip Morris Companies	13
Phillips Petroleum Company	13 14
Phoenix Medical Network, Inc.	41
Precision Castparts Corporation	14
Premerger Notification	27
Annual Reports	30
Premerger Source Book	30
Rules and Formal Interpretations	28
Protocol	26
Provident Companies, Inc.	14
Quexco Inc.	14
Raytheon Company	14
Reckitt & Colman plc	14
Red Apple Companies, Inc.	23
Reuters America, Inc.	36
RHI AG	14
Rhodia, Donau Chemie AG	15
Rhone Poulenc	8
Rite Aid	23
Roche Holdings Ltd.	15
Rohm & Haas Company	15
Schnuck Markets, Inc.	23
S.C. Johnson & Son, Inc.	15
Second Requests Procedures	29
Service Corporation International	15 16
Shaw's Supermarkets, Inc.	16
Shell Oil Company	16
Sky Chefs, Inc.	16
Slotting Allowances	42

## ***INDEX of CASES and SUBJECTS***

*(Fiscal Year 1997 through March 15, 2001)*

SmithKline plc	16				
SNIA S.p.A.	17				
Sony Music	37				
South Lake Tahoe Lodging Association	37				
Southern Valley Pool Association	37				
Southwest Florida Oral Surgery Associates	42				
Speeches	48				
Staples, Inc.	20				
Statistics	51				
Stone Container Corporation	37				
Summit Technology, Inc.	31,	38	39		
Swedish Match AB	20	21	25		
Tenet Healthcare Corporation	17	21	22	25	
Texas Surgeons, P.A.	38				
Time Warner Inc.	17	38			
Toys "R" Us	43				
TRW Inc.	17				
Tyco International	17				
Universal Music	38				
Urological Stone Surgeons, Inc.	38				
Valspar Corporation	18				
VISX, Inc.	31	38	39		
VNU N.V.	18				
Waterous Company, Inc.	45				
Wesley Health Care Center, Inc.	40				
Wesley-Jessen Corporation	18				
Williams Companies	18				
Winn-Dixie Stores	18				
Wisconsin Chiropractic Association	39				
Yellowstone Physicians, LLC	41				
Zeneca Group PLC	18				



