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Organisation for Economic Co-operation and Development

27-May-2001

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**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY**

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN THE UNITED STATES**

-- From 1 October 1999 to 30 September 2000 --

*This report is submitted by the Delegation of the United States to the Committee on Competition Law and Policy
FOR CONSIDERATION at its forthcoming meeting to be held on 31 May-1 June 2001.*

JT00108424

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UNITED STATES

(From 1 October 1999 to 30 September 2000)

Table of contents

Introduction	4
I. Changes in law or policies	4
A. Changes in Antitrust Rules, Policies, or Guidelines	4
B. Proposals to Change Antitrust Laws, Related Legislation or Policies	5
C. International Antitrust Cooperation Developments.....	6
II. Enforcement of antitrust laws and policies: actions against anticompetitive practices.....	7
A. Department of Justice and FTC Statistics	7
1) DOJ Staffing and Enforcement Statistics.....	7
2) FTC Staffing and Enforcement Statistics.....	7
B. Antitrust Cases in the Courts	8
1) United States Supreme Court.....	8
2) U.S. Court of Appeals Cases.....	8
a. Significant DOJ Cases Decided in FY2000.....	8
b. Significant FTC Cases Decided in FY2000.....	8
3) Private Cases Having International Implications.....	9
C. Statistics on Private and Government Cases Filed	10
D. Significant DOJ and FTC Enforcement Actions.....	10
1) DOJ Criminal Enforcement	10
2) DOJ Civil Non-Merger Enforcement.....	11
3) Modification or Termination of DOJ Consent Decrees	12
4) FTC Non-Merger Enforcement Actions	13
a. Commission Administrative Decisions.....	13
b. Federal District Court Decisions	14
E. Business Reviews Conducted by the Department of Justice	14

III.	Enforcement of antitrust laws and policies: mergers and concentrations.....	15
A.	Enforcement of Premerger Notification Rules	15
B.	Significant Merger Cases	15
1)	DOJ Merger Challenges or Cases	15
2)	FTC Merger Challenges or Cases	18
a.	Preliminary Injunctions Authorized	18
b.	Commission Administrative Decisions	20
IV.	Regulatory and trade policy matters.....	20
A.	Regulatory Policies	20
1)	DOJ Activities: Federal and State Regulatory Matters.....	20
2)	FTC Staff Activities: Federal and State Regulatory Matters	21
B.	DOJ and FTC Trade Policy Activities	22
V.	New studies related to antitrust policy	22
A.	Antitrust Division Economic Analysis Group Discussion Papers	22
B.	Commission Workshops, Studies and Reports, and Economic Working Papers.....	23
1)	Workshops	23
2)	Studies and Reports	24
3)	Economic Working Papers	25
	Appendices.....	26
	Federal Trade Commission: Fiscal Year 2000 Full Time Equivalent (“FTE”) and Budgeted Amount by Program/Bureau.....	26
	Department of Justice: Fiscal Year 2000 FTE and Budgeted Amount by Enforcement Activity	27

**ANNUAL REPORT ON COMPETITION POLICY
DEVELOPMENTS IN THE UNITED STATES**

(October 1, 1999 through September 30, 2000)

Introduction

1. This report describes federal antitrust developments in the United States for the period October 1, 1999, through September 30, 2000 ("FY2000"). It summarizes the activities of both the Antitrust Division ("Division") of the U.S. Department of Justice ("Department" or "DOJ") and the Bureaus of Competition and Economics of the Federal Trade Commission ("Commission" or "FTC").

2. Assistant Attorney General Joel I. Klein resigned from the Antitrust Division at the end of September 2000. A. Douglas Melamed became Acting Assistant General at that time. On July 3, 2000, the DOJ announced the appointment of Joseph V. Farrell as Deputy Assistant Attorney General for economic analysis.

I. Changes in law or policies

11. FTC Chairman Robert Pitofsky testified before the Senate Committee on the Judiciary that the antitrust laws do not pose potential obstacles to self-regulatory ratings systems by the entertainment industry designed to guard against the targeted marketing to children of violent entertainment products,

II. Enforcement of antitrust laws and policies: actions against anticompetitive practices

A. Department of Justice and FTC Statistics

1) DOJ Staffing and Enforcement Statistics

16. At the end of FY2000, the Division employed 824 individuals: 351 attorneys, 56 economists, 183 paralegals, and 234 other professional staff. For FY2000, the Division received an appropriation of \$110,000,000.

17. During FY2000, the Antitrust Division opened 277 investigations and filed 86 civil and criminal cases in federal district court. The Division was a party to three antitrust cases decided by the federal Courts of Appeals.

18. During FY2000, the Division filed 63 criminal cases in which it charged 40 corporations and 60 individuals. Twenty-six corporate defendants and 43 individuals were assessed fines totaling \$308 million and 18 defendants were sentenced to a total of 5,584 days of incarceration. Twenty individuals were sentenced to spend a total of 2,567 days in some form of alternative confinement.

19. During FY2000, 4,926 proposed mergers and acquisitions were reported for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). In addition, the Division screened a total of 1,373 bank mergers. The Division further investigated 177 mergers and challenged 21 of them. An additional 27 transactions were restructured or abandoned prior to the filing of a complaint as a result of the Division’s announcement that it would otherwise challenge the transaction. The Division opened 218 civil investigations, (merger and non-merger), and issued 951 civil investigative demands (a form of compulsory process). The Division filed two non-merger civil complaints. Also during FY2000, the Division responded to nine requests for review of written business proposals.

2) FTC Staffing and Enforcement Statistics

20. At the end of FY2000, the FTC's Bureau of Competition had 251 employees: 159 attorneys, 39 other professionals, 24 honors paralegals and 29 clerical staff. The FTC also employs about 40 economists who participate in its antitrust enforcement activities. In FY 2000, \$25,486,200 was allocated to the Commission’s competition mission.

21. During FY2000, the Commission brought 47 enforcement actions. Based on its review of premerger notification filings, the Commission staff opened 210 initial phase investigations and issued requests for additional information (“second requests”) in 43 transactions. The Commission challenged 32 transactions. Five preliminary injunctions were authorized. Four of those transactions were ultimately abandoned; one produced a consent order. Nine transactions were abandoned after the issuance of the second requests. In 18 transactions the Commission accepted consent orders; final decisions and orders were issued in 12 of those matters during the fiscal year, while final decisions were pending in 6 cases.

22. In the non-merger area, the Commission brought 15 enforcement actions challenging a variety of anticompetitive conduct, of which 14 were resolved by consent agreements. Of these, 8 were issued as final decisions and orders by the end of FY2000 and 6 were pending.

23. Staff of the Bureau of Competition provided guidance to industry through an advisory opinion letter on whether the purchase of pharmaceuticals by a hospital and affiliated nonprofit institutions might violate antitrust laws.

BA. Antitrust Cases in the Courts

1) *United States Supreme Court*

24. The United States Supreme Court did not decide any antitrust cases in FY2000. A direct appeal to the Supreme Court in *Microsoft Corporation v. United States* was denied, and the case was remanded to the Court of Appeals. 121 S. Ct. 25 (2000).

2) *U.S. Court of Appeals Cases*

a. Significant DOJ Cases Decided in FY2000

25. There were three dispositions by the Courts of Appeals in Antitrust Division cases in FY2000, and two dispositions in cases in which the Division had participated as *amicus curiae*. All three Antitrust Division cases were criminal antitrust cases. One criminal case is discussed immediately below, and one of the *amicus* cases, *Carpet Group Int'l v. Oriental Rug Importers Ass'n*, is discussed in Section II. B. 2)(c).

26. In *United States v. Andreas*, 216 F.3d 645 (7th Cir.),

3) *Private Cases Having International Implications*

29. In *Virgin Atlantic Airways Limited v. British Airways PLC*, 69 F.Supp.2d 571 (S.D.N.Y. 1999), Virgin alleged that British Airways (BA) had used incentive agreements with travel agents and corporate customers to leverage or achieve monopoly power in the market for air travel to, through and from Heathrow airport, and that the incentive agreements unlawfully restrained trade, in violation of Sections 1 and 2 of the Sherman Act. The district court granted summary judgment for BA, holding that (1) expert testimony relating to “predatory foreclosure” was based on unsubstantiated assumptions relating to extra flights by BA, (2) conclusions with respect to the “bundling” of BA’s monopoly and competitive routes in the incentive programs were not based on any evidence of actual consumer choices, and (3) therefore there was no evidence produced with respect to the Section 1 claim of anticompetitive effects from the alleged unlawful restraint.

30. In *Access Telecom, Inc. v. MCI Telecommunications Corporation*, 197 F.3d 694 (5th Cir. 1999), Access Telecom, Inc. (ATI), a Texas corporation, had in 1993 and 1994 sold U.S. phone services to customers in Mexico by providing “reorigination” services. A Mexican customer would call ATI in Texas and enter the phone number it was trying to reach in the U.S.; ATI would dial this number and splice the new call to the incoming call, allowing the customer to benefit from cheaper rates than Mexico’s monopoly provider, Telmex, would have charged for the entire call. The Mexican leg of the ATI call was carried on

C. *Statistics on Private and Government Cases Filed*

32. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 877 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in FY2000.

D. *Significant DOJ and FTC Enforcement Actions*

1) *DOJ Criminal Enforcement*

33. Vitamins: On May 5, 2000, the DOJ announced that two German pharmaceutical manufacturers - Merck KGaA and Degussa-Huls AG -- and two U.S. pharmaceutical companies -- Nepera Inc. and Reilly Industries -- had agreed to plead guilty and pay criminal fines totaling \$33 million for participating in an international conspiracy to suppress and eliminate competition in the vitamin industry. In addition, two former executives of Nepera, U.S. citizens, agreed to plead guilty, pay a fine of \$150,000, and to serve prison time for their role in the cartel. On April 6, 2000, the DOJ announced that three former executives of BASF AG and one former executive of F. Hoffmann-La Roche Ltd. (all foreign nationals) had agreed to plead guilty, submit to the jurisdiction of the federal court in Dallas, serve prison sentences ranging from three to four months, and pay fines ranging from \$75,000 to \$350,000 for their participation in the cartel. Including these cases, the Division has prosecuted 24 cases resulting from its continuing investigation of the worldwide vitamin industry.

34. Flame Retardant and Fumigant Products: An Israeli chemical company, Dead Sea Bromine Company Ltd., pled guilty and paid a \$7 million criminal fine for participating in a price-fixing conspiracy to suppress and eliminate competition in connection with the sale of certain flame retardant and fumigant products in the United States. In a one-count criminal case filed in U.S. District Court in Dallas on July 27, 2000, the Department charged the company with conspiring to allocate customers and fix, increase, and

contracts funded by the United States Agency for International Development (USAID) in the Arab

41. Tomato Seeds: On September 15, 2000, the Department filed a civil antitrust suit against LSL Biotechnologies Inc., Seminis Vegetable Seeds Inc., and their joint venture, LSL PlantScience, to void an agreement that prohibits a competitor, Hazera Quality Seeds Inc., from competing to develop and sell seeds for the production of long-shelf-life tomatoes in North America. The Department said the agreement had reduced competition in the development and sale of tomato seeds. According to the complaint, LSL and Hazera entered into a contract to develop seeds that produce long-shelf-life tomatoes, which enable farmers to grow vine-ripened tomatoes during the winter months and ship them to market before spoiling. The contract expired many years ago except for a provision that prohibits Hazera from developing and selling a competing long-shelf-life tomato seed in North America. Currently, LSL and Seminis together are the dominant sellers of seeds used to grow fresh-market tomatoes in North America during the winter. The Department's lawsuit alleges that Hazera, one of the largest producers of seeds in Europe and the

48. The Commission accepted consent decrees to settle charges that two drug makers, Abbott Laboratories and Geneva Pharmaceuticals, Inc., entered into an anticompetitive agreement in which Abbott paid Geneva substantial sums to delay bringing to market a generic alternative to Abbott's brand-name hypertension and prostate drug, Hytrin. (C-3945; C-3946) The Commission also charged in an administrative complaint that Hoechst Marion Roussel (now Aventis) engaged in similar practices by agreeing to pay Andrx millions of dollars to delay bringing to market its generic drug that would compete with Hoechst's Cardizem CD, a widely prescribed drug for the treatment of hypertension and angina. (D.09293)

LLC -- to offer multiple behavioral health care specialities in North Dakota and Northwestern Minnesota.

III. Enforcement of antitrust laws and policies: mergers and concentrations

A. Enforcement of Premerger Notification Rules

53. No cases were filed during FY2000 involving enforcement of the pre-merger notification rules.

B. Significant Merger Cases

1) DOJ Merger Challenges or Cases

54. Case/New Holland: On November 4, 1999, the Department announced that New Holland and Case Corp. had agreed to sell New Holland's four-wheel-drive and large two-wheel-drive tractor businesses and Case's interest in its hay tool business, in order to eliminate antitrust concerns involving New Holland's proposed \$4.3 billion acquisition of Case Corporation. Without the divestitures, the merger would likely result in higher prices for this farm machinery. The consent decree requires that the purchaser of the divested assets continue to operate them in the manufacture and distribution of four-wheel-drive tractors, large two-wheel-drive tractors, and hay tools. New Holland and Case compete directly in the manufacture and distribution of large two-wheel-drive and four-wheel-drive agricultural tractors in North America. They also compete directly in the manufacture and sale of a variety of hay tools. According to the Department's complaint, the acquisition would likely have harmed competition in the approximately \$1.5 billion market for agricultural tractors and in the \$250 million hay tools markets.

55. Alcoa/Reynolds: On May 3, 2000 the Department announced that Alcoa Inc. and Reynolds Metals Company -- two of the world's largest aluminum companies -- had agreed to sell a Reynolds refinery in Corpus Christi, Texas, and Reynolds' controlling interest in a high volume, state-of-the-art, refinery in Australia, to resolve the Department's antitrust concerns involving their proposed \$5 billion merger. The required divestitures involve refineries that produce alumina, a powder used in aluminum and other products. According to the Department's complaint, the proposed acquisition would have substantially lessened competition in the refining and sale of smelter grade alumina (SGA) and chemical grade alumina (CGA). The acquisition of Reynolds by Alcoa, as originally proposed, would have resulted in higher prices to aluminum manufacturers and their customers, as well as to consumers who purchase products containing alumina. Without the proposed divestitures, Alcoa, as a result of the acquisition of

momentum wheels; and inertial systems. In each of the identified product areas, the merger of AlliedSignal and Honeywell would have left at most two or three major competitors. As a result, the Department alleged that those competitors would have been able to coordinate their pricing and more easily raise prices to customers. The Department cooperated closely with the European Commission in its review of this case.

57. Compuware/Viasoft: On October 29, 1999, the Department filed a civil antitrust lawsuit to block Compuware Corporation from acquiring Viasoft. The Department challenged the transaction because it would have reduced competition substantially in the markets for two types of mission-critical software

businesses. The proposed merger, between two of the three largest U.S. telecommunications companies, is the largest merger challenge by the Department. In the residential long distance telephone markets and several other telecommunications markets, WorldCom and Sprint are the only substantial competitors to AT&T and to each other. Each has constructed national and international fiber optic networks and developed sophisticated systems for handling millions of customer accounts, hired and trained large workforces capable of providing a variety of high-quality telecommunications services to customers throughout the nation, and invested billions of dollars over many years to establish widely known and trusted brands. On July 13, 2000, WorldCom and Sprint announced they were abandoning their merger plans. The Department cooperated closely with the European Commission in its review of this case.

61. Clear Channel/AMFM: On July 20, 2000, the Department announced that Clear Channel Communications Inc. and AMFM Inc. had agreed to sell 99 radio stations in 27 markets nationwide after the Department expressed antitrust concerns about Clear Channel's pending \$23.5 billion merger with AMFM. The Department said the merger was the largest radio transaction ever to be reviewed by the Antitrust Division. Clear Channel is one of the largest radio broadcast companies in the United States. Without the divestitures, the Department said the proposed transaction would have led to a loss of head-to-head competition between the two companies, resulting in increased prices for radio advertising in the 27 markets where divestitures are required. The value of the divestitures required by the Department is

64. Bell Atlantic/GTE/Vodafone: As noted in paragraph 78 of last year's report, the Department required divestitures of 62 overlapping wireless telephone systems to resolve antitrust concerns about Bell Atlantic Corporation's merger with GTE Corporation. On December 6, 1999, the Department announced

67. BP Amoco/Arco: In *FTC v. BP Amoco, PLC*, Civ. No. 00-416 (N.D. Cal.), the Commission sought a preliminary injunction to block a transaction that would create the third-largest private petroleum company in the world and the largest U.S. oil producer and refiner. In its complaint, the Commission alleged three separate relevant markets: (1) the production, sale, and delivery of crude oil to West Coast refineries; (2) bidding for rights to explore the Alaska North Slope; and (3) pipeline and oil storage services in Cushing, Oklahoma. The Commission alleged that the effects of the merger would be to eliminate ARCO as an effective competitor, eliminate substantial actual competition between BP and ARCO, eliminate the likelihood of even greater competition between BP and ARCO in the future, and increase the market power that BP exercises in the sale of crude oil to targeted West Coast refiners. After the proposed merger, BP would control over 40 percent of the pipeline and storage capacity serving Cushing. The court case was adjourned by agreement of the parties and a final consent order was entered on August 29, 2000. BP Amoco was required to divest to Phillips Petroleum Company ARCO's complete, free-standing businesses, including oil and gas interests, tankers, pipeline interests, real estate exploration data and selected long-term supply agreements. To address the competitive concerns involving pipeline and oil storage services in Cushing, Oklahoma, the order required that BP Amoco divest ARCO's crude oil terminal facilities in Cushing and Midland, Texas, as well as other pipeline holdings. (C-3938)

68. Kroger/Winn-Dixie: In *FTC v. The Kroger Company*

Tentative Agreements among ICANN, the U.S. Department of Commerce, and Network Solutions, Inc. (Oct. 29, 1999)

B. *DOJ and FTC Trade Policy Activities*

81. The Division is extensively involved in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade policy. The Division participates in interagency trade policy discussions chaired by the Office of the U.S. Trade Representative and is a participant in the trade policy activities of the National Economic Council (NEC), a cabinet-level advisory group. The Department provides antitrust and other legal advice to U.S. trade negotiators. Both DOJ and FTC participate in bilateral and multilateral discussions and work projects to improve cooperation in the enforcement of competition laws.

82. The Division and FTC participate in a number of negotiations and working groups related to regional trade agreements. The Division participates with the Office of the U.S. Trade Representative, the FTC, and State and Commerce Departments in competition policy groups associated with the Free Trade Area of the Americas and Asia-Pacific Economic Cooperation. The antitrust agencies also have played an important role in the working group established in 1997 by the World Trade Organization to study issues relating to the interaction between trade and competition policy.

83. The Division represents the Department on the Committee on Foreign Investment in the United States ("CFIUS"), an interagency group chaired by the Treasury Department that advises the President on enforcement of the Exon-Florio provision, a 1988 statute that permits the President to block or suspend foreign acquisitions of U.S. assets that "threaten to impair the national security."

84. The Department and the FTC have an extensive program to provide technical assistance in antitrust development to countries with emerging market economies. In addition to advancing the adoption of competition policies that incorporate sound economic principles and effective enforcement mechanisms, these programs create long-term cooperative relationships with policy and enforcement officials in the countries involved.

85. The Division co-chairs (with the Office of the U.S. Trade Representative) the Structural Issues Working Group under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy. In these discussions, the United States has urged the Japanese government to strengthen its enforcement of Japan's antimonopoly law, to make its administrative procedures fair and open, and to accelerate an effective program of deregulation to open markets to competition.

V. *New studies related to antitrust policy*

A. *Antitrust Division Economic Analysis Group Discussion Papers*

Romeo, Charles, *A Gibbs Sampler for Mixed Logic Analysis of Differentiated Product Markets Using Aggregate*, EAG 00-6, September 18, 2000.

Estache, Antonio, *Andrea Goldstein, and Russell Pittman, Privatization and Regulatory Reform in Brazil: The Case of Freight Railways*, EAG 00-5, September 16, 2000.

Schwartz, Marius, *The Economic Logic for Conditioning Bell Entry into Long Distance on the Prior Opening of Local Markets*, EAG 00-4, March 15, 2000.

Nye, William W., *Fable in Another Key: Path Dependence and the Licensing of Music Performance Rights*, EAG 00-3, March 31, 2000.

Sullivan, Mary W., *The Effect of the Big Eight Accounting Firm Mergers on the Market for Audit Services*,

automobile market, the Commission could not say that implementation of the Covisint venture would not cause competitive concerns.¹⁰

89. Slotting Allowances and Other Grocery Marketing Practices. Slotting allowances are lump-sum, up-front payments from a manufacturer or producer to a retailer to have a new product carried by the retailer and placed on its shelf. The Commission held a 2-day workshop to learn more about the nature and function of these and other grocery marketing practices, drawing on the experiences and insights of grocery manufacturers and retailers, antitrust practitioners, and academics. The workshop, which included over 40 panelists and drew 200 attendees, explored concerns expressed by small manufacturers, the substantial debate over the competitive impact of various grocery marketing practices, and possible

3) *Economic Working Papers*

93. The following may be obtained from the FTC home page, <http://www.ftc.gov/be/econwork.htm>:

The Effect of Asymmetric Entry Costs on Bertrand Competition (WP #228), Charles J. Thomas, October 1999.

Complements Integration and Leverage: The Case of the Middleman (WP #229), Christopher Garmon, December 1999.

How Do Retailers Adjust Prices?: Evidence From Store-Level Data (WP #230), Daniel Hosken, David Matsa and David Reiffen, January 2000.

A Comparison of Auctions and Multilateral Negotiations (WP #231), Charles J. Thomas and Bart J. Wilson, July 2000.

Import Competition and Market Power: Canadian Evidence (WP #232), Aileen J. Thompson, July 2000.

Innovation, Market Structure and the Holdup Problem With Horizontal Product Differentiation (WP #233), Abraham L. Wickelgren, August 2000.

Appendices

Federal Trade Commission: Fiscal Year 2000 Full Time Equivalent (“FTE”) and Budgeted Amount by Program/Bureau

	FTE	AMOUNT
Total Direct Mission	469.5	\$58899.1
Bureau of Competition	251.8	\$25,486.2
Bureau of Economics	69.7	\$6974.1
Regional Offices	33.2	\$3,351.8
Mission Support	114.8	\$23,087.0
Premerger Notification	30.9	\$2,786.1
Bureau of Competition	30.2	\$2,720.1
Bureau of Economics	.01	9.8
Regional Offices	0.6	\$56.2
Merger & Joint Venture Enforcement	208.6	\$21,359.0
Bureau of Competition	139.3	\$14,492.6
Bureau of Economics	46.0	\$4,510.9
Regional Offices	23.3	\$2,355.5
Merger & Joint Vent6 nt Veeeci8.4 ET8 f .25701 206.76 -Bureau of Competition	30.2	

Other Direct Mission Resources	16.4	\$1,967.3
Bureau of Competition	10.6	\$1,204.1
Bureau of Economics	4.9	\$615.0
Regional Offices	0.9	\$148.2

Department of Justice: Fiscal Year 2000 FTE and Budgeted Amount by Enforcement Activity

	FTE	AMOUNT
Merger Enforcement	271	\$39,362,000
Civil Non-Merger Enforcement	143	\$20,823,000
Criminal Enforcement	190	\$27,356,000
Competition Advocacy	25	\$3,942,000
TOTAL¹²	629	\$91,483,000

¹² The 629 employee and \$91,483,000 totals reflect full time employees and budget allocation in the areas of Merger,