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Annual Report of the

FEDERAL TRADE COMMISSION

1970

Annual Report of the FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

June 30, 1970

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Letter of Transmittal

FEDERAL TRADE COMMISSION
Washington, D.C.

To the Congress of the United States:

It is a pleasure to transmit the fifty-sixth Annual Report of the Federal Trade Commission Covering its accomplishments during the fiscal year ended June 30, 1970.

By direction of the Commission.

MILES W. KIRKPATRICK,
Chairman.

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

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Chapter I

A YEAR IN REVIEW

Progress was made in three major areas in fiscal year 1970:

- First, there were a number of internal improvements designed to speed up procedures at all levels of Commission activity and to establish priorities for the allocation of money and manpower resources.
- Second, there was a substantial increase in the number of points of contact between the Commission and the public, benefiting both consumers and business.
- Third, there was increased use of the Commission's statutory powers.

Internal Improvements

To improve internal procedures, a major reorganization plan was developed and adopted. The reorganization, effective July 1, 1970, divides the Commission into two principal operating bureaus, the Bureau of Competition and the Bureau of Consumer

The field offices also will be in the forefront of the Commission's expanded program of consumer education. Particularly important in this regard is the program the Commission inaugurated early in calendar year 1970, involving the employment and training of Consumer Protection Specialists. These nonlegal investigators, originally conceived of for the Truth-in-Lending Act enforcement program, now have a sufficiently broad training to enable them to detect and report on a multitude of consumer problems in of

mate and illegitimate, by both consumers and businessmen, which can only result in a fairer marketplace for all.

Allocation of Resources

Making the best out of its resources is essential if the Commission is to

These, then, were the three principal areas of Commission progress during the past year. Work proceeded, too, on many other fronts-in pursuing economic studies, in preparing and trying cases, and in publishing information materials. This annual report attempts, in some measure, to describe this activity.

* * *

Caspar W. Weinberger became the 41st Chairman of the Federal Trade Commission when he was sworn in on December 31, 1969. He had been nominated by President Nixon to be a Commissioner on October 2, 1969. He was confirmed by the Senate on November 19, 1969.

Mr. Weinberger resigned as FTC Chairman on August 7, 1970, to become Deputy Director of the Office of Management and Budget.

Chapter II

More than 238,000 newspaper and magazine advertisements and radio and television commercial scripts were screened during the year. Of those, more than 8,000 were referred to members of the Commission's staff who bad asked to be kept advised of trends and developments in the advertising themes used to promote specific commodities.

In the area of general investigations with a view toward litigation a significant amount of effort was focused throughout the year on "pyramid selling," a variation of conventional franchising which involves recruitment of multiple levels of distributors of a product to such an extent that the number of prospects inevitably is exhausted. Attention was also given to the sale of franchises through exaggerated profit potentials or other attempts to deceive or mislead franchisees. Close liaison was maintained with the Congress in connection with the hearings on franchises which were held by the Senate Select Committee on Small Business.

A similar amount of effort was given to door-to-door magazine and encyclopedia selling that involved misrepresenting such aspects as the fact that a sales presentation was being made, or that the cost was less, than it actually was, the buyer's cancellation rights, the terms of payment and the like.

Bogus contests, instances of bait-and-switch selling, fictitious pricing of automobiles, misrepresentation of guarantees, failure to offer a refund for a discontinued magazine, exaggerations of the value to be derived from home improvements and correspondence schools and deceptive or unfair debt collection techniques were also investigated and challenged when a law violation was found.

In the field of food and drug advertising practices which might be the basis for complaint, one of the Bureau's most meaningful and effective programs complaint, Tc 0.03 Tw ( ) Tj 2.16 0 TD -0.0340TD 0 Tc 0.03 Tw (screen04 0 TD6 000.009 Tc 0

tices in the food industry was another very important program developed during the past year. Investigations were begun concerning advertising claims for (1) high cholesterol content nondairy substitutes, (2) cereals,

sary to identify and locate medical specialists or other scientists who had first-hand knowledge of the therapeutic and other properties of the various commodities whose advertising was under review or being challenged.

For example, in connection with the investigation of enzyme detergents the American Academy of Allergy was contacted with the result that the study is a joint effort of the Federal Trade Commission, the Food and Drug Administration, the Office of the Special Assistant to the President for Consumer Affairs, and the Presidents Office of Science and Technology.

Similarly, in performing this function, liaison was maintained with such other agencies as the Food and Drug Administration, Bureau of Radiological Health, National Clearinghouse for Smoking and Health, National Cancer Institute, National Institute of Environmental Health Sciences, Department of Agriculture, Federal Committee on Pest Control, and National Committee on Product Safety, the American Cancer Society, American Medical Association, American Heart Association, American Public Health Association, The Arthritis Foundation, National Tuberculosis Association, and the Coordinating Conference on Health Information.

During the year, a review of the 429 National Academy of Sciences/National Research Council panel reports on nonprescription drugs for which New Drug Applications had been filed with the Food and Drug Administration was completed and comments were submitted to that agency. In connection with this activity, Bureau personnel worked with the Food and Drug Administration in formulating new patterns of labeling to be promulgated by FDA, which will be applied to the advertising of these and similar products.

Other continuing projects involved mood advertising of analgesics, weight-reducing products and devices, X-radiation emission and other hazards involving television receivers and microwave ovens, chemical weapons, evaluation of research data for mouthwashes, danger of sauna and steam baths, and toothpaste advertising. As part of the X-radiation advertising of

from the standpoints of both public health and size. The Commission's cigarette testing laboratory completed three rounds of testing of all domestic varieties and provided the public with information as to their tar and nicotine yields. Similarly, a trade regulation rule proceeding was started to require disclosure in advertising of the tar and nicotine content of all brands and varieties of cigarette. Hearings were scheduled for early in fiscal year 1971.

In a related connection, public hearings were held on the first day of fiscal year fiscal fiscal a pu [illegible]

standard and

Approximately

tees will be made up of Federal, State and local enforcement officials, consumer organizations and community action representatives and will, through cooperative efforts, work toward achieving a more effective surveillance of the marketplace by public agencies. The boards represent business, consumer and community groups and are set up to assist the Commission.

The Bureau of Deceptive Practices was also responsible for obtaining and maintaining compliance with the approximately 7,000 orders to cease and desist from false and deceptive trade practices under sections 5 and 12 of the Federal Trade Commission Act. The investigations to insure this compliance fall into three general Categories: (1) Penalty, (2) compliance and (3) spot check. A penalty investigation involves the gathering of probative evidence of violations of an order in a form suitable for use in a penalty proceeding. A compliance investigation, on the other hand, is conducted in order to obtain sufficient information on which to base a determination of compliance or noncompliance with an order. A spot check investigation is generally used merely to locate a respondent, to obtain specific documentation, or to resolve a similar question of limited scope.

When the penalty investigation dis[illegible]

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MAINTAINING FREE AND FAIR BUSINESS COMPETITION

The competitive structure of the American economy becomes more complex each year, with changes which the business community initiates through its imagination, technical improvements, production and service. These lead to profitable and burgeoning American business. But, American business' investment and expertise must function within our free enterprise system under the antitrust laws. It is the basic responsibility of the Commission's Bureau of Restraint of Trade to administer and enforce the antitrust laws, which include section 5 of the FTC Act and sections 2, 3, 7 and 8 of the Clayton Act.

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During

Informal cases:

Initiated	36
Disposed of during year (exclusive of matters disposed of by acceptance of Assurances of Voluntary Compliance)	178
Disposed of by Assurances of Voluntary Compliance	21
Pending	91

Compliance matters (apparel):

Compliance reports forwarded for acceptance	42
Compliance reports rejected	2
Compliance investigations open, June 30, 1970	12

Formal cases:

Complaints issued	11
Contested orders issued	3
Consent orders issued	4
Cases pending in litigation June 30, 1970	8

A review of major cases decided or pending during fiscal year 1970 follows:

In Associated Pest Control Services, Inc., et al. (C-1638), the agreed-upon complaint charged an association of about 40 pest control organizations and one member corporation individually and as a representative of every member organization of the association with violation of section 2(f) of the amended Clayton Act. Under the order, respondents are to cease and desist from inducing and receiving or receiving lower net prices from suppliers than those available to other purchasers where the association or any member competes either with the av

tion

the market structure generally, had consistently played one dairy company against another, leading Beatrice (as well as others) to false conclusions as to the bids of competition. Despite the fact that Beatrice in fact discriminated in favor of Kroger, the good-faith efforts of Beatrice to prevent that occurrence were sufficient to cause the charge to be dismissed. Kroger having actively induced the discriminatory prices, could not avail itself of the defense of the dismissal as to Beatrice, and the Commission's order issued against it. The matter is presently on appeal before the U.S. Court of Appeals for the Sixth Circuit.

In Colonial Stores Inc. (D. 8768), the Commission found that this major regional food chain had knowingly induced and received discriminatory payments and allowances from suppliers in consideration of services and facilities furnished by Colonial in connection with the sale of products of those suppliers during certain special promotions Colonial had originated. Colonial, the Commission found, knew or should have known that such payments or allowances were not made available on proportionally equal terms to those other customers of the suppliers who competed with Colonial in the resale of the suppliers' products.

Cases pending at various stages in the litigative process are as follows:

The Borden Co., (D. 8809), where the complaint alleges that this second-largest manufacturer of ice cream has violated section 2(a) of the amended Clayton Act by discriminating in price in its sale of ice cream and other frozen dessert products to the Kroger Co., Inc.

United Fruit Co., et al., (D. 8795), where the Commission has charged United Fruit with violating section 2(a) of the amended Clayton Act by selling bananas to Harbor Banana Distributors, Inc. (another named respondent) at prices lower than those charged other wholesalers, to the detriment of those competing wholesalers. United Fruit is also charged with having violated section 5 of the Federal Trade Commission Act by aiding and abetting Harbor Banana's attempts to establish a monopoly in the wholesale handling and selling of bananas. The complaint also charges Harbor with having violated section 5 of the act by its attempts to monopolize, as well as with violations of sections 2(f) and 7 of the amended Clayton Act.

Connell Rice & Sugar Co., Inc., Foremost-McKesson, Inc., and Standard Brands Inc. (D. 8736), in which the unresolved portion of the complaint charges Standard Brands with violation of sections 2 (a) and 2(c) of the Clayton Act, as amended, and section 5 of the Federal Trade Commission Act. Specifically, Standard Brands is charged with price discrimination, the payment of illegal brokerage and anticompetitive conspiracy in connection with the sale of corn products, including corn syrup and sweeteners.

Practices involving general trade restraints violative of section 5 of the FTC Act resulted in the initiation of 40 investigations in 17 industries involving 9 different charges.

Following is a summary of general trade restraint casework in fiscal 1970:

Informal cases:	
Initiated	85
Disposed of during year	136
Pending June 30, 1970	192

Formal cases:	
Complaints issued	6
Contested orders	---
Consent orders	5
Cases pending litigation June 30, 1970	4

In dealing with general trade restraint violations in their incipiency, 211 matters were inquired into under the small business procedure. During the fiscal year, 125 matters were closed, 34 of which were satisfactorily resolved.

Important and substantial investigations in the general trade restraint area were undertaken involving the franchising business and the activities of certain food retailers and food

Three cases involving general trade restraints were acted on by the circuit courts.

In Lenox, Inc. (D. 8718) the complaint charged Lenox with maintaining an unlawful resale price maintenance scheme in connection with the sale and distribution of its china. The Commission found that the allegations of the complaint were supported by the evidence of record, and issued an order which

Informal cases:

Initiated	34
Disposed of during year	72
Pending June 30, 1970	98

This Division handled hundreds of matters affecting compliance with Commission orders. These included, for example, the achievement of divestiture of approximately 40 plants or facilities in 10 cases where respondent companies were required to make divestitures as a result of orders designed to alleviate undue concentration in industries such as milk, chain grocery stores, baking, cement, corrugated paper, vending routes and petrochemical.

Some 53 active antimerger orders have required and will continue to require constant compliance surveillance and enforcement, since they prohibit acquisition without prior Commission approval in -a variety of industries. For example, 21 of these orders will remain effective at least into the 1980's.

In the Robinson-Patman Act area, compliance was achieved with final orders proscribing price and other forms of discrimination in product lines, among others, as food, furniture, automotive parts, dairy and carpets.

Compliance achievements affecting orders, issued pursuant to the provisions of section 5 of the Federal Trade Commission Act, were accomplished in industries as scrap steel, dental supplies, grocery stores, food products and sporting goods.

During the past fiscal year, three restraint of trade civil penalty cases were certified by the Commission to the Attorney General.

As of the end of fiscal 1970 active cases in this Division included the following:

Clayton Act, as amended:	
Section 7	60
Other sections	48
Section 5 Federal Trade Commission Act	38

Total	146

Cases disposed of during fiscal 1970	125

During fiscal 1970, the Division of Accounting furnished accounting services in connection with 17 price discrimination cases, 10 antimerger cases and 32 cases involving charges of unfair methods of competition and deceptive practices. The Division also furnished accounting services in connection with the conglomerate merger studies by the Bureau of Economics.

The computation of rates of return showing the profitableness of industrial companies in selected manufacturing industries for the calendar year 1968 was completed and published, and preparation for the Rates of Return Report for the year 1969 was initiated. Financial data contained in this report are used by other Government agencies, economists, universities and by private industry in studies of various companies and industries.

During the fiscal year, the Commission, under provisions of the Packers and Stockyards Act, as amended September 2, 1958 (7 U.S.C. 226, 227), continued its liaison with the U.S. Department of Agriculture. During the year, the Commission notified the Department that the Commission intended to conduct investigations of certain practices in two separate matters; the Department notified the Commission in one separate matter.

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THE INDUSTRY GUIDANCE PROGRAM

More than in any year since the establishment of the procedure, the Commission sought to use trade regulation rules to augment the industry guidance function, while dealing swiftly and decisively with important problem areas. Two new rules were adopted, while staff work and public hearings went forward in connection with a number of proceedings conducted in connection with proposed rules.

The Trade Regulation Rule for Games of Chance in the Food and Gasoline Industries was issued by the Commission to be effective in October 1969. In essence, the rule prohibits users, promoters or manufacturers of games from directly or indirectly misrepresenting the chances of winning a prize by those who participate. The rule also provides for specific disclosures to be made in advertising, details a formula for the mixing and distribution of game pieces, and prohibits promotion and sale of any game in which winning pieces or prizes are predetermined or preidentified by methods other than random distribution to the participating public. Other provisions of the rule require disclosure to the Commission and the general public of such information as a list of names and addresses of winners together with the amount or value of the prize won by each and a disclosure of the total number of game pieces distributed. Finally, the rule sets forth a formula to enable users, promoters and manufacturers of games to determine the length of time which must elapse between the conclusion of one game and the commencement of another, new game.

The Trade Regulation Rule on the Unsolicited Mailing of Credit Cards was adopted and made effective in May 1970. The rule very plainly states that it is a violation of section 5 of the Federal Trade Commission Act to mail credit cards on an unsolicited basis, i.e. without the prior expressed request or expressed consent to the mailing by the recipient.

In its report announcing issuance of the rule, the Commission advised that it had excluded banks, common carriers and air carriers which in their operations are not subject to the jurisdiction of the Federal Trade Commission. The Commission further advised, however, that to the extent that firms falling within these categories issue credit cards for use in connection with the sale of merchandise or services or for other purposes outside their principal function in commerce, the Commission considers that they are within its jurisdiction and will deal with violations on a case-by-case basis, not in reliance upon the rule but in accordance with Commission procedures under the Federal Trade Commission Act.

At the close of the year, staff work had been completeTj 1.8 Tw 0.03 Tw ( )i6trj 14.4 0 TD 0rj 1.8 0 TD 0.tD0.0358 Tc 0 Tw (sta

In another, public hearings were scheduled in connection with the proposed Rule Relating to the Use of Negative Option Plans by Sellers, which plans require consumers to inform sellers they do not wish to receive the product offered. If adopted by the Commission in its proposed form, the rule would prohibit the use of negative option plans entirely in connection with the sale in commerce of goods and merchandise.

In the third, a proposed rule concerning Unordered Merchandise was scheduled for public hearing early in the new fiscal year. As released by the Commission, the rule provides that, with clearly stated exceptions, the shipment of unordered merchandise constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act. The proposal further provides that merchandise shipped in violation of the rule may be treated as a gift by the recipient without obligation whatsoever to the sender.

In the fourth matter, 4 days of public bearings were conducted by the staff in connection with the proposed Rule Relating to Retail Food Commission Federal

insure that the utility and appearance of the product will not be impaired.

In connection with its guides program, the Commission authorized an industry-wide investigation to look into three separate practices allegedly being engaged in by publishers of law books. In announcing the investigation, the Commission noted that the alleged practices may be contrary to provisions of the Trade Practice Rules for the Subscription and Mail Order Book Publishing Industry and that ifto and

ing the views, suggestions and objections of interested parties was developed, the record was analyzed by the staff and a final report with recommendations was prepared. The Commission thereafter directed that the staff should conduct a public hearing on guides 5 and 12 dealing with problems involving the disclosure of constituent fibers making up the fabric used in the outer coverings of furniture and matters involving guarantees and warranties of industry products.

Also, a proposed Guide Concerning Use of the Word "Free" and Similar Representations was forwarded to the Commission together with recommendations concerning adoption of the proposal in final form.

As part of the Commission's consumer education program, a consumer bulletin, "Advice for Persons who are Considering An Investment In A Franchise Business," was prepared and issued to the public. By providing this type of educational material to consumers, they will be able to acquaint themselves with the pitfalls which a a0 Tc [illegible]

The advisory opinions rendered, as has been the case for many years, covered virtually the entire spectrum of Commission administered law. They varied from tripartite promotional assistance plans falling under section 2 of the amended Clayton Act, to franchising programs under section 5 of the FTC Act, to questions of the appropriate disclosure of the foreign origin of goods and materials imported into the United States, the applicability of flammability standards under the Flammable Fabrics Act, to merger questions, the advertising of drugs, packaging problems covered by the Fair Packaging and Labeling Act, and many others.

While the various opinions were of obvious assistance to those applying for them, thus permitting the applicants to abide by the law, the entire industry guidance function was further enhanced because of the continued publication of advisory opinion digests designed for the use and assistance of businessmen generally.

In addition, the Commission continued dissemination of the compilation of advisory opinion digests which were incorporated into one volume covering the period from the inception of the procedure through the close of calendar year 1968.

Two hundred and fourteen Assurances of Voluntary Compliance were negotiated by the staff and accepted by the Commission during the year, as compared to 236 such assurances obtained during the previous year.

TEXTILES AND FURS

The Commission's Bureau of Textiles and Furs is responsible for protecting American consumers from dangerously flammable fabrics and wearing apparel through its enforcement of the Flammable Fabrics Act. The Bureau also is responsible for enforcement of the Wool Products Labeling Act, Textile Fiber Products Identification Act and the Fur Products Labeling Act to keep misbranded textiles and furs out of the marketplace and to have noncomplying products removed from it.

Investigators make inspections of mills and the places of business of manufacturers, wholesalers, importers and retailers. More than 14,000 inspections under the four acts were made during the fiscal year, 4,776 of which were- under the Flammable Fabrics Act. This inspection work of the Bureau turned up approximately 3,000,000 misbranded textile and wool products valued at approximately $40,000,000. Minor deficiencies were corrected by correspondence with industry. Major deficiencies were corrected by formal action of the Commission, including issuance of complaints.

In all, the Bureau initiated some 240 formal investigations, which were added to 260 investigations carried over from the previous year, making a total of 500 handled during the year. Also during the fiscal year 1970, the Bureau disposed of 209 formal investigations, 139 with Commission orders, 20 with Assurances of Voluntary Compliance, and 50 for other reasons.

Of the initiated cases, 156 were brought under the Flammable Fabrics Act and involved fabrics, dresses, baby shirts, dresses,Flamma6 T

and infants' shirts which failed the flammability test. All of the unsold flammable goods were removed at once from the channels of commerce through the efforts of the Bureau, and the

tions under the Textile Fiber Products Identification Act and the Fur Products Labeling Act to specify appropriate

ECONOMIC STUDIES AND EVIDENCE

Some of the Commission's most important instruments of consumer protection and anti-monopoly action are the economic reporting of facts coupled with well-reasoned economic analysis. It is not enough for the Commission to simply put out the fires of illegality. As the legislative history of the Federal Trade Commission clearly establishes, it was the congressional intent that the economic fact finding and reporting functions of the Commission should be used as one of the principal means of curbing monopoly power. Important work in the area of economic studies and evidence during the fiscal year are set forth in this chapter.

Economic Studies and Reports

During the year the Commission issued its annual reports on Current Trends in Merger Activity, 1969, and on Larger Mergers in Manufacturing and Mining, 1958-69. These reports indicate a record-breaking total of mergers for 1969: 4,550 firms disappeared through acquisition, 16 percent more than the total for 1968. (See table 1.) Acquisitions by manufacturing companies continued to represent the largest single segment of the total, accounting for about 57 percent of all acquisitions recorded. Merger activity, however, grew more rapidly in other sectors of the economy. The most spectacular growth occurred in services. In 1969, more than 1,000 acquisitions were recorded in this sector, up 48 percent from the preceding year and more than triple the rate for 1967. As merger activity attained the record levels of recent years, its impact spread to embrace all major sectors of the economy.

The pattern of mergers within manufacturing and mining was similar to previous years. Most manufacturing and mining firms were acquired by other manufacturers, and the greatest number of acquisitions were made by firms classified in the electrical and nonelectrical machinery, chemical, and food industries. The trend to-

TABLE 1. - Number of mergers and acquisitions recorded, by industry of acquiring company, 1960-69

TABLE - TEXT NOT AVAILABLE - SEE IMAGE

ward a greater degree of variety in mergers accelerated last year. Of all acquisitions of manufacturing and mining companies in 1969, 19 percent were made by firms in other economic sectors. The corresponding figures for earlier years were 16 percent in 1968, 12 percent in 1967, and only 8 percent in 1960.

During the year, the Bureau completed and published Economic Report on Corporate Mergers, a comprehensive study of conglomerate mergers. The report includes an analysis of various aspects of the current merger movement, its general causes and motivations, its dimensions and structural characteristics, and its impact on competition and the centralization of economic power. It also describes the effect of the merger movement on the geographic centralization of corporate control. The report makes recommendations regarding future merger enforcement policy, suggests certain administrative and legislative steps designed to reduce financial and tax incentives for merger, recommends legislation to strengthen the rules against interlocking directorates and makes recommendations for improvement of public corporate reporting.

In unprecedented fashion, the current merger movement has centralized and consolidated corporate control and decision-making among a relatively few vast companies. By the end of 1968, the 200 largest industrial corporations controlled over 60 percent of the total assets held by all manufacturing corporations. (See fig. 1.) The share of manufacturing assets held by the 100 largest corporations in 1968 was greater than the share of manufacturing assets held by the 200 largest corporations in 1950, the year Congress enacted the Celler-Kefauver amendment to section 7 of the Clayton Act. The 200 largest manufacturing corporations in 1968 controlled a share of assets equal to that held by the 1,000 largest in 1941.

The current merger movement has played a key role in this process of centralization. The report, which deal,

Figure 1

CHANGE IN CONCENTRATION OF CORPORATE MANUFACTURING ASSETS
COMPARED WITH MOST ACTIVE MERGER PERIODS, 1925 THROUGH 1968

GRAPH - TEXT NOT AVAILABLE - SEE IMAGE

1960's. Acquired manufacturing and mining assets averaged about 85 billion annually

Figure 2

Number and Total Assets of Manufacturing and Mining Firms Acquired, 1948-1968

GRAPH - TEXT NOT AVAILABLE - SEE IMAGE

the energy industries, but, through additional mergers, have become widely diversified conglomerates.

The current merger movement, as this study reveals, had done more than merely increase the concentration of industrial assets in a relatively few multi-market corporations. There is evidence of important and increasing connecting links between this growing centralization of industrial resources in a few hundred vast corporations and the performance of competition in particular markets.

The report further indicates the following:

(1) There are numerous special reasons why many business managers prefer to grow by merger rather than by internal growth.

this context, there is little reason to expect significant social benefits to flow from the continuation of current trends.

(2) The largest corporations have generally acquired very profitable companies, frequently those holding leading positions in their industries, while small companies have usually acquired less profitable firms. Most large company acquisitions have not involved purchases of unprofitable companies operating on the fringes of their industries, or foothold acquisitions of smaller companies that might be expanded in a fashion that, as some have hoped, might challenge the market position of dominant firms, thereby bringing about deconcentration.

(3) The great majority of merging companies operated in the same broad industry group, e. g., all chemical products or all food and kindred products, and many of these so-called product related mergers may have eliminated important potential competitors.

(4) Many large acquiring corporations are multi-market enterprises that hold commanding positions in one or more highly concentrated industries and enjoy high, noncompetitive profits in some markets. The multi-market firm, therefore, has the power to employ competitive strategies seldom available to single-market or less diversified firms. This study, together with the Commission's experience in several litigated cases, reveals that conglomerate-derived market power may be used to defend or expand the firm's position in ways inimical to competition.

(5) The conglomerate form of organization also created the opportunity and incentive to engage in extensive reciprocal buying the practices of "You buy from me if I buy from you." This study shows that when large conglomerate corporations engage in this practice, there is a tendency to create more rigid pricing behavior, heighten barriers to entry, discourage potential large competitors from entering each other's markets, and entrench firms in dominant positions in highly concentrated markets. Although the impact of the various advantages enjoyed by large conglomerate corporations often eludes precise measurement, the evidence discloses that (a) manufacturing industries are becoming increasingly dominated by the large conglomerate corporations, and (b) that there is a tendency for market concentration to increase in industries where these corporations are major participants.

(6) The country's largest industrial corporations are increas-

Data developed in this study indicate that companies using the direct distribution method in contrast to independent agency system realized higher premium growth rates from 1955 to 1968. Even though the rate of growth was quite uneven among individual insurers in both groups, the simple average compound growth rate for seven direct writers among the 20 largest auto insurance groups of 1968 was 10.3 percent compared to 9.1 percent for 13 agency writers. Four direct writing groups and five agency groups had a growth rate of over 10 percent during the period. A high rate of growth for an individual company or group is usually associated with merger activity or direct distribution.

The auto insurance industry in recent years has experienced a decrease in the number of new entrants and an increase in the number of exits. The number of new auto insurers incorporated declined from an average of 15 per year nationally for the 10-year period 1955-64 to an average of 6.5 new entrants per year during the period 1965-68. Furthermore, 14 of the 26 new entrants in the recent period were closely affiliated with an existing insurance company.

The second of the staff studies, Insurance Accessibility for the Hard-to-Place Driver, May 1970, was also published by the Department of Transportation. Its major purpose was to study the problems of insurance access and price variability for the hard-to-place driver, that is, the driver who is unable to obtain insurance from standard market companies.

The major finding of this report was that the hard-to-place driver problem is not confined to those with the poorest driving records. Both theory and market data indicate that the hard-to-place problem is a byproduct of underwriting competition and an integral part of the competitive functioning of the automobile insurance industry. Insurers do not find it profitable to grant coverage to all applicants because even with the most highly developed rating classification systems, there are still some drivers within individual classifications who have distinctly higher than average loss potential.

Although problems of estimation exist with respect to the size of the hard-to-place problem, current data indicate that 8 percent of all automobile insurance business in 1968 could be classified as nonstandard. In some lines, the share was as high as 10 percent. Assigned risk plans, originally conceived as the solution to assure insurance availability, currently serve no more than half of the substandard liability market.

In addition to the problem of access, the hard-to-place driver often faces extreme 8

ance Plans-are under active consideration. Both recommend that eligibility standards be modified to require only a valid driver's license and the payment of the premium. Coverages are broadened to include both higher liability limits and first-party coverages. A provision for installment premium financing is also suggested. A number of State plans have already been modified to reflect these proposals.

Beyond improvements in existing assigned risk plans, even more fundamental modifications have been suggested to improve marketing access and to reduce the delays and inconvenience now involved in obtaining coverage under assigned risk plans. These proposals call for the establishment of a "placement facility" through which any applicant with a valid driver's license could receive immediate binding from any agent he approached. Such a facility now exists in Canada and serves [illegible]

Evidence of the Bureau of Economics. About 53 of these investigations concerned the competitive aspects of mergers and acquisitions. Economists prepared analyses and exhibits, testified as expert witnesses at hearings, and helped in other ways with the complaints and findings in nine formal cases, all involving acquisitions. An additional 10 matters were reviewed by staff members for probable economic effects where compliance with Commission orders was the problem.

Fiscal 1970 ended the first full year of operation of the Premerger Notification Program and it proved that this program is, among other things, a valuable screening tool for the enforcement of section 7 of the Clayton Act. Under this program, all corporations subject to FTC jurisdiction and having total assets of $250 million or more are required to file a special report whenever an acquisition of a firm with $10 million or more in total assets is made by any of them. For purposes of this program, an acquisition may be either of assets or of 10 percent or more of voting stock. By the end of fiscal 1970, about 180 special reports had been received from the acquiring companies, of which about 21 were subject to further investigation. An additional 45 were cleared for investigation to the Department of Justice. The information received under this program also will be used to study trends in mergers and acquisitions among large firms.

An industry-wide survey of the food distribution industry, conducted under section 6(b) of the FTC Act, was completed. The data received will be related to those gathered in an earlier survey to assess the chanFa0 TD 0 Tc 0.03 Tw ( ) Tj 3.

factoring corporations in all manufacturing industries. These quarterly estimates account for more than 97 percent of all manufacturing activity, more than one-half of all corporate profits, and nearly one-third of the national income. Each issue contains estimated national totals for 13 items of income and retained earnings, 14 asset sizes, 16 items of liabilities items 110.08 0 0 TD -0.0341 $250.0 and stockholders' equity, and 43 financialsi1.64 0 TD 0acc52 11.76 3 Tw (corporations) Tj 58.04 0 TD 0Tc 0a2Aul01w312 0 TD -0.0 14.4 0 .68.18 TD 0.06Tc 0 i2 (of)ns

the largest manufacturing corporations, classified by asset size, in the first quarter of calendar year 1970.

Rates of return (profit rates after taxes) on stockholders' equity for all manufacturing corporations averaged 11.5 percent for the four quarters

Chapter VII

FIELD OPERATIONS

The

the requirements of the statute. There were 10,129 minor violations investigations instituted under Truth-in-Lending during the fiscal year, in which 8,331 corrections were obtained. Issuance of complaints was recommended by the field in nine Truth-in-Lending cases. Field office attorneys delivered speeches on Truth-in-Lending requirements to interested groups on 691 occasions during the past fiscal year. Attendance at these meetings ranged from 25 to 1,000 persons.

During fiscal year 1970, the Commission undertook two new program

large groups of consumers represented by the board. Third, the board can provide the Commission with insight into novel or emerging consumer problems which may require legislative remedies or provide a basis for direct action in the form of test cases.

Complaints filed with private and quasi-public agencies such as OEO assistance offices, Urban Leagues and Better Business Bureaus will not be entered into the Coordinating Committees' complaint system. Yet, complaints made to such agencies can also reveal patterns of violations as important as those disclosed by the complaints filed with law enforcement bodies.

In reverse, the members of the advisory boards can contribute to law enforcement processes by providing important channels of information to interested consumer groups for such consumer education materials as may, from time to time, be published by the Commission.

Field offices were authorized to start preliminary investigations without prior permission from headquarters in order to expedite handling of complaints received from the public. This program was begun in October 1969 on a 6-month pilot project. Before the 6-month period had expired, the program had pointed to sufficient promise and success for the Commission to feel warranted in incorporating this function in the enlarged responsibilities and duties which

Preliminary investigations are a bridge between the informal activities of the field offices and the formal full-scale investigations. The informal activities of the field offices during fiscal 1970 involved some 60,359 telephone, written and personal contacts from the public with the field offices

plaints and orders to the field staff for negotiation of consent orders with proposed respondent.

Fifty investigational subpoenas prepared in the field were served in cases in which respondents refused information required in investigations undertaken by the field offices.

HEARING EXAMINERS

Although continuing to reflect the Commission's emphasis on the achievement of law observance by means other than formal litigation, the number of cases handled by hearing examiners during the fiscal year 1970 showed an increase of nearly 30 percent over the previous fiscal year. In fiscal year 1970, the litigation workload totaled 66 cases, compared to 51 in fiscal year 1969.

As the year began, 27 cases were pending before hearing examiners. To this caseload, 34 new cases were added, and five cases were reopened or remanded. Of this total of 66 cases, 28 cases were disposed of-17 by litigation and 11 by consent settlement or by other procedures-leaving 38 cases pending at the end of the year. Of the 24 cases disposed of during the previous fiscal year, 16 were litigated and eight were settled or otherwise terminated.

The increased caseload resulted in an increase in the number of days devoted to evidentiary hearings and to preheating conferences -278 days in fiscal year 1970, compared to 247 days in fiscal year 1969.

As in previous years, the special capabilities of the hearing examiners were used in various other ways by other government entities. In addition to adjudicating Commission cases, hearing examiners sat as special masters for U.S. courts of appeals and heard cases for various other Federal agencies.

GENERAL COUNSEL

The Office of General Counsel serves as the Commission's attorney. Its principal functions are to represent the Commission before the courts; provide advice on matters of law, policy and procedure to the Commission, individual Commissioners and the agency's operating bureaus; and to analyze laws proposed by the Congress and State legislatures which have bearing upon the Commission's mission.

Court Actions

In fiscal 1970, the General Counsel's Office was involved in a substantial amount of litigation. Court proceedings which involve the agency arise in a number of ways. Any individual or company against which the Commission has issued an order to cease and desist may petition a U.S. circuit court of appeals to review and set aside the order. In the event of disobedience to a Commission subpoena, the Commission may request the Department of Justice to file a petition for enforcement in a U.S. district court. The Commission may also request the Department of Justice to institute civil proceedings to compel the filing of a special or annual report ordered by the Commission and to recover forfeitures for failure to comply with the Commission's order. Disobedience of a court's decree enforcing a Commission order or subpoena may be punished by the court as a contempt. Collateral suits challenging the Commission's jurisdiction or methods of procedure may be brought under certain circumstances in a U.S. district court. The Commission's interest in these collateral matters is defended by the Department of Justice with the assistance of the Commission's General Counsel. It is the Department's usual practice to refer such cases to the local U.S. attorneys who in turn accept the services of the General Counsel with respect to briefing and pleading the Commission’s position.

The more significant area of litigation during the fiscal year involved the defense of Commission orders before the appellate

courts. Eleven cases involving appeals from Commission cease and desist orders were briefed and argued. Eleven decisions were rendered by the circuit courts, 10 affirming, or sustaining in substantial part, Commission determinations.

These appellate matters covered the principal areas of the agency's law enforcement responsibility. Three cases involved anticompetitive

from distribution (by seizure, impounding or otherwise) fabrics discovered to be dangerously flammable; and

Review and study of Commission procedures designed to ensure maximum compliance with the requirements of the "Jencks" rule and the Freedom of Information Act.

APPROPRIATIONS AND FINANCIAL OBLIGATIONS

FUNDS AVAILABLE TO THE COMMISSION DURING FISCAL YEAR 1970

For fiscal year 1970, funds totaling $20,889,213 were available to the Commission. Public Law 91-126 authorized $19,500,000; and Public Law 91-305, title II, provided $1,000,000. Also, title III of Public Law 91-305 authorized $389,213 for increased pay costs related to the Federal Employees Salary Act of 1970. The Commission's adjusted obligational authority for 1970 was $20,785,993, which reflects a transfer of $103,220 to the General Services Administration for space rental.

Obligations by activities, fiscal year 1970

1. Maintaining competition:

Investigation and litigation	$ 6,648,184
Economic and financial reports	1,189,955
Trade regulation rules and industry guides	401,118
General activities and special projects	181,609
Total-Maintaining competition	8,420,866

Consumer protection:

Investigation and litigation	5,834,889
Consumer credit enforcement	1,300,774
kaging and labeling	273,106
fur	
	1,994,726
uides	802,238
s	128,057

Total-Consumer protection . . . 10,333,790

Total-Obligations FY 1970 . . . 20,785,993

APPENDIX (A)

FTC Cases in the Courts

The following is a summary of significant Federal Trade Commission cases before the courts during fiscal 1970, together with a brief discussion of what is involved in each case or groups of cases.

RESTRAINT OF TRADE CASES

The most significant restraint of trade decisions in fiscal 1970 were in the merger field (section 7 of the Clayton Act). In three cases, the Sixth Circuit (Cincinnati) upheld the Commission's determination that challenged acquisitions were unlawful:

Abex Corp. (D. 8622) involved the acquisition by Abex (formerly American Brake Shoe Co.), a large diversified manufacturer of railroad products, hydraulic products, castings and friction materials, of the S. K. Wellman Co., the Nation's largest manufacturer of sintered metal friction materials. The court affirmed the Commission's findings that sintered metal friction materials constituted a valid product submarket and that the acquisition may have adverse competitive effects. The court also upheld the Commission's order of divestiture and the inclusion in the order of a proviso prohibiting Abex from acquiring any other company engaged in the manufacture or sale of sintered metal friction materials for 10 years without the prior approval of the Commission. Abex has filed a petition for certiorari.

The Seeburg Corp. (D. 8682) involved the acquisition by Seeburg, a manufacturer of a broad line of vending machines, of Cavalier Corp., a vending machine manufacturer engaged largely in the production of machines used to dispense soft drinks in bottles and cans. The court sustained the Commission's finding of probable adverse competitive effect, agreeing that the appropriate product markets within which to consider such effects were (1) the overall market for vending machines of all types and (2) the submarket for bottle vending machines. The court also upheld the Commission's order of divestiture and its 10-year ban on future acquisitions of vending machine manufacturing concerns. (Subsequent to this decision, the Commission filed with the court an emergency petition requesting the entry of a protective order preventing Seeburg from dissipating the assets of Cav-

alier pending divestiture. At the close of the fiscal year, the court had entered a temporary restraining order pending resolution of the petition.) Seeburg is expected to file a petition for certiorari.

While Abex and Seeburg were "horizontal" mergers, the Sixth Circuit also decided an important "vertical" case this year in the Commission's favor, United States Steel Corp. (D. 8655). This case involved the acquisition of Certified Industries, the largest nonintegrated consumer of portland cement among ready-mixed concrete manufacturers in the New York City metropolitan area, by United States Steel, the largest nonintegrated supplier of portland cement in that area. In an exhaustive opinion, the Sixth Circuit sustained the Commission's finding that portland cement and ready-mixed concrete were appropriate product markets or relevant lines of commerce within which to test the acquisition, and affirmed the Commission's determination of probable anticompetitive effects. On the latter issue, the court discussed in detail and applied "several functional factors" as indicia for determining legality: (1) The degree of foreclosure of competitors from market segments previously open to them; (2) the "nature and purpose" of the vertical arrangement between the companies involved; (3) the likely effects of the acquisition upon local industries and small businesses; (4) the level and trend of industry concentration, including a trend toward domination by a few leading firms; (5) the existence of a trend toward vertical integration and consolidation in previously independent industries; and (6) the ease with which potential entrants might overcome entry barriers and compete effectively with existing operating companies.

The United States Steel case is especially noteworthy as regards the court's consideration of the Commission's ruling upon the so-called "failing-company" doctrine. It was the contention of United States Steel that the acquired ready-mix company would have failed but for its intervention, and that the acquisition was, therefore, immunized under the Supreme Court's 1930 decision in International Shoe v. Federal Trade Commission. It was the Commission's conclusion that under the law this defense was not absolute, but merely relative, and that the continued existence of Certified as a giant, vertically integrated concern would adversely affect competitive conditions in the cement and ready-mixed concrete industries more so than the elimination of Certified from the market by business failure. In a carefully reasoned opinion, the court analyzed the "failing-company" defense in light of the Supreme Court's 1969 decision in Citizens Publishing Co. That decision, the Court noted, emphasized the "present narrow scope" of the doctrine and specified three essential conditions for its application: (1) The evidence must show that the financial condition and resources of the acquired company are so impaired that "it faced the grave probability of a business failure;" (2) there is "no other prospective purchases' than the acquiring corporation; and (3) the prospects of the acquired company's emerging from reorganization as a viable competitive unit must be "dim or Twonex1 c2Tc 0 Tw ("it). ( ) Tj 1.56 0.aa23Tj other prospective

stage of an administrative proceeding, as contrasted with informal procedures the Commission may utilize at the nonadjudicative compliance stage.

In addition, the Supreme Court denied the petition for certiorari filed on the Commission's behalf in Columbia Broadcasting System, Inc. (D. 8512). In that case, the Commission had found an unlawful lessening of competition in violation of section 5 in the mail-order record club market by virtue of the company's restrictive licensing agreements with competitors. (In fiscal 1969, the Seventh Circuit (Chicago) affirmed the Commission's order in part, reversed in part and remanded the case to the Commission for additional evidence and further consideration.)

There were two important section 5 restraint of trade cases pending in courts of appeals at the close of the fiscal year following the submission of briefs and oral argument: Sperry & Hutchinson Co. (D. 8671) in the Fifth Circuit (New Orleans), which involves various restrictive practices in the distribution and redemption of trading stamps, and L. G. Balfour Co. (D. 8435) in the Seventh Circuit (Chicago), which involves monopolization and other unfair acts and practices in the national college fraternity insignia products market, and additional unfair practices in the sale and distribution of high school class rings.

In the area of discriminatory pricing under the Robinson-Patman Act in fiscal 1970, the Supreme Court in Tri Valley Growers (formerly Tri-Valley Packing Association, Ds. 7225 and 7496) denied a petition for certiorari filed by Tri Valley to review a fiscal 1969 decision of the Ninth Circuit (San Francisco) sustaining the Commission's findings of violation of sections 2(a) and (d) in the distribution of canned fruits and vegetables and modifying the section 2(d) portion of the Commission's order to accord with the Supreme Court's Fred Meyer decision.

Two discriminatory pricing matters were pending in courts of appeals at the close of fiscal 1970: The Kroger Co. (D. 8663) in the Sixth Circuit (Cincinnati), in which the company has challenged the Commission's finding that it knowingly induced

DECEPTIVE PRACTICE CASES

There was considerable court activity in fiscal 1970 in deceptive practice cases under sections 5 and 12 of the Federal Trade Commission Act.

The Supreme Court denied petition for certiorari in Sydney N. Floersheim (D. 8721), declining to review a decision of the Ninth Circuit (San Francisco) upholding a Commission order prohibiting the dissemination of deceptive "debt collection" forms.

There were several decisions in courts of appeals: In All-State Industries of North Carolina, Inc. (D. 8738), the Fourth Circuit (Richmond) affirmed the Commission's determination that a company engaged in the sale a

In Joseph L. Portwood (D. 8681) the Tenth Circuit (Oklahoma City) upheld the Commission's finding that petitioners, in operating a philatelic stamp business, made various misrepresentations with regard to unsolicited merchandise mailed to prospective purchasers. The court, however, directed modification of the affirmative disclosure requirement in the Commission's order so as to clarify the recipient's obligations on receipt of such material.

In Cinderella Career & Finishing Schools, Inc., Stephen Corporation, and Vincent Melzac (D. 8729) the Commission had found various false and deceptive advertising representations in connection with offering to train young women for careers [illegible]

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District of Virginia granting the Commission's motion for summary judgment and denying a cross-motion for summary judgment filed by Lehigh. Lehigh had contended, in a complaint for declaratory judgment and injunction, that the Commission's section 7 proceeding against it was prejudiced by press releases and by the Commission's industry-wide investigation concerning 'vertical integration in the cement and ready-mixed concrete industries.

In Papercraft Corp. (D. 8779) the U.S. District Court for the Western District of Pennsylvania granted the Commission's motion for summary judgment and denied the motion for summary judgement filed by plaintiff. Papercraft had sought an order requiring the Commission requiring

A complaint filed in Central Dairy Products Co. in the U.S. District Court for the District of Columbia seeks the disclosure, pursuant to the Public Information Act, of information contained in certain of the Commission's investigational files for the use of Central Dairy in connection with private antitrust litigation. The Commission had granted disclosure of part of the requested material but has withheld disclosure of other portions.

In Koppers Co. (D. 8755) in the U.S. District Court for the Eastern District of Virginia, the Commission has filed its answer to the complaint following the denial of Koppers' motion for a temporary restraining order. The company has sought to enjoin the Commission's section 5 proceeding alleging that certain interlocutory rulings have deprived it of needed discovery in that case.

Also pending at the close of fiscal 1970 were three cases seeking declaratory and injunctive relief against the Commission (and the Board of Governors of the Federal Reserve System), alleging that a portion of Regulation Z promulgated under the Truth-In-Lending Act is unauthorized: N. C. Freed Co. and International Roofing Corp. (File 99-90) in the U.S. District Court for the Western District of New York; Gardner TU.S.Fh Twu .48r0ed99-against the e f a D

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In Triangle