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Annual Report of the
FEDERAL TRADE
COMMISSION
1971

Annual
Report
of the

Federal Trade Commission

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Letter of Transmittal

FEDERAL TRADE COMMISSION

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A YEAR IN REVIEW

The Federal Trade Commission's major reorganization plan with its effective date of July 1, 1970 -- heralded an extremely active and productive year for the agency.

The reorganization created a new framework for especially vigorous and efficient enforcement of the multiple statutes involving both consumer protection and antitrust that are administered by the FTC.

While mere numbers are not a precise measure of performance, they do reflect the Commission's rising determination to carry out its objective of assuring fair and free business competition as well as protecting the consumer.

For example, during fiscal year 1971, 318 investigations were approved for ~~pre~~for
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Concurrent with the decision to concentrate on national television advertising, the Commission began to

product markets in which the consumer holds a substantial stake.
Discharging the Commission's antitrust enforcement

substance has been done about this structural feature of markets. Antitrust policy continues to focus largely upon market practices in the determination of illegality. There seem to be two reasons for this: (1) Incomplete knowledge about the relationship between high concentration and market performance in several dimensions, not just that of price, creates uncertainty that reductions in high concentration will in fact improve overall performance; and (2) given this uncertainty, it is argued that prohibition of market behavior which purposely attempts to thwart the competitive process will

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CONSUMER PROTECTION

The Commission reorganization brought all direct consumer-oriented activities under the new Bureau of Consumer Protection. The Bureau's responsibility extends not only to the traditional enforcement of consumer protection

prove that the specific practice engaged in by the charged company was unfair or deceptive, since a Guide does not constitute an advance finding of that fact but is merely an advisory interpretation.

Trade Regulation Rules, on the other hand, are legally binding upon all parties within the intended scope of the stated principles. Issued only after full open hearings at which all interested parties are given an opportunity to participate, a Rule is always based on a finding by the Commission that the practices in question are inherently unfair or deceptive when engaged in contrary to the Rule's provisions.

During the past fiscal year, several new Rules and Guides were issued by the Commission while a variety of others continued to receive attention at varying stages of preparation. Many of these are of great importance to the consumer, either because of the nature of the problem attacked, or because of the manner chosen to achieve the desired result, or both.

One such action, a Trade Regulation Rule relating to Incandescent Lamps (light bulbs), was taken because the Commission determined that, contrary to the belief held by most consumers, light bulbs of the same wattage level may be marketed with different rated lives as well as varying amounts of actual light output. In order to permit consumers to balance greater light output against longer life, the new Rule requires the disclosure of this information on the bulbs or their packages.

Another Trade Regulation Rule adopted during the year seeks to aid the consumer who wants to take advantage of an advertised special at a supermarket. The new Rule requires stores to maintain an adequate stock of all such products, and to make them readily and conspicuously available at or below the advertised price.

Other important Rules are still in a preliminary stage.

For example, consumer awareness of the octane number of a gasoline is important since octane requirements vary from one make or model of automobile to another. Knowing the precise octane level of a given fuel would enable the consumer to select one which meets his car's requirements, while avoiding unnecessarily high octane and, therefore, more expensive gasoline. Thus, the Commission has issued a Rule requiring such ratings to be posted on gasoline pumps.

The Commission also proposed and accordingly held public hearings on, a Rule providing for a three-day "cooling-off" period for all door-to-door sales. This would, among other provisions, allow the consumer who has made a hasty agreement at the instance of some high-pressure salesman to reconsider and cancel, if desired.

A Rule was also proposed last year which would preserve a buyer's claims and defenses against the seller or lessor of a consumer product or service even if the contract, promissory note, or other instrument of indebtedness is assigned to a third party, e.g., a finance company.

Consumer complaints about computerized billing for charge accounts prompted a proposed Rule which would require the suspension of dunning statements where a consumer has complained, pending an investigation and report on the dispute by the creditor.

The Rule would also require creditors to advise account holders in detail whenever they furnish adverse credit information to others.

Other proposed Rules still in early stages of development involve such diverse subjects as pricing of automobiles, negative option sales plans (book and record clubs), power output ratings for home entertainment systems, care labeling of textile products, and the advertising of pesticides.

The Division also proposed or issued Guides for wigs, watches, feather and down products, wall paneling, home furnishings, and private vocational and home study schools. Additionally, much work has been done by the Division on subjects expected to surface as proposed Rules or Guides during fiscal 1972, as the Commission's rulemaking activity gathers still greater momentum.

Food & Drug Advertising

This Division is responsible for regulating national advertising practices. During the past year, the Division initiated a variety of innovative approaches in its attempt to bring more effective regulation to those practices.

In response to the 1970 Commission directive to the staff indicating that "the Commission is receptive to novel and imagina-

tive provisions in orders seeking to remedy alleged violation," the Division began to seek remedies which would not only stop past illegal practices, but which would also dispel residual consumer deception, and help restore competition to the level which prevailed before unfair practices or deceptions improperly influenced the market. Corrective advertising was perhaps the most noted remedy proposed by the Division.

A second example of the use of innovative remedies was the staff's proposed application of the doctrine of affirmative disclosure. The staff's position in one complaint, for example, was that a product's potential harm to health or property must be clearly displayed in advertising for that product, and that if it is shown that such a disclosure is insufficient to adequately warn consumers, a total product ban should be sought.

These remedies, as well as traditional "cease and desist" remedies, were sought in cases involving several types of advertising claims. In the food and beverage area, special attention was focused on questionable nutritional and weight reduction claims. For example, action was taken against the manufacturers of two fruit drinks, a large manufacturer of bakery goods, and a candy company, alleging the nutritional claims addressed to children by these companies were false and misleading.

In a variety of other recent cases, the Division tackled alleged deceptive practices in sweepstakes and contests, claiming misrepresentations in both the methods used in awarding prizes and the quantity and value of the prizes awarded.

Because of recent, widespread concern with the effect of commercial products on the environment, advertising based on claims of beneficial environmental effects were subjected to intensive scrutiny. These environmental issues included anti-pollution claims for gasoline which were challenged by the staff as false. While the environmental effect of detergents was being dealt with by a Trade Regulation Rule proceeding, the staff challenged claims by several detergent manufacturers that their enzyme detergents could remove stains of any nature. Consent orders were obtained from the companies prohibiting undue claims of efficacy.

Products' impact on the health of the consumer and his property have, of course, also received much attention. In one Commission proceeding, the proposed order would prevent an antifreeze manufacturer from disseminating any future advertising which does not warn customers that the product can cause damage to the cooling system of their car. The Commission also advised Congress that as a result of a staff recommendation, it intended to issue complaints against the six major cigarette advertisers, alleging that the failure of the companies to include a clear and conspicuous disclosure of the health hazards of cigarette smoking in their advertisements constituted a violation of the FTC Act.

Perhaps the most significant action of the year was the adoption of the Advertising Substantiation Program. Under this program, the Commission announced plans to select numerous important industries each year, and to require major advertisers in those industries to submit whatever documentation they have to substantiate those aspects of their advertising which constitute measurable claims of safety, performance, efficacy, quality, and comparative price. To implement this program immediately, the staff prepared Orders to File Special Reports for issuance to domestic and foreign automobile manufacturers, with the response to those reports (aside from trade

General Litigation

and exaggeration of the value to be derived from home improvements were also investigated and challenged.

An investigation was also made of large national firms that are engaged in the preparation of income tax forms for the public. This investigation was related to possible misrepresentation of the nature of guarantees provided by these firms and their undisclosed use of information secured from the taxpayer for non-tax purposes such as the sale of loans, mutual funds, and insurance. Enforcement efforts in this area were directed toward requiring these firms to disclose their use of such information and to secure the taxpayers consent to such use.

Special Projects

During the year, enforcement of the Truth in Lending Act reached maximum proportions. Previously, the staff had placed major emphasis on creditor education and voluntary compliance, as many creditors had never before been subject to Federal regulation.

During fiscal year 1971, the second year of this Division's enforcement of the Truth in Lending Act, the staffs creditor education and interpretive efforts were balanced with increased emphasis upon enforcement through formal action, with a number of resulting significant complaints and consent orders.

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this area, a high degree of compliance appears to have been achieved early in the life of this amendment.

During the year, the Fair Credit Reporting Act, effective April 25, 1971, became an additional enforcement responsibility of the FTC. The law gives consumers the right to access to information in their credit files, and gives them the means for correcting erroneous information. In addition to the rendering of informal staff advice, and the publication of an extensive staff discussion pamphlet to aid in obtaining compliance, the Commission issued procedural rules for administration of this legislation.

Further implementation of the Fair Packaging and Labeling Act during the fiscal year 1971 included issuance of regulations governing the marking of specialty packaging involving such commodities as camera film, chamois, Christmas decorations and variety and and

land in an attempt to obtain their cooperation in preventing the importation into the United States of dangerously flammable products subject to the Flammable Fabrics Act.

On April 16, 1971, a Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70) applicable to carpets and rugs of a dimension larger than 24 square feet became effective. The Commission's inspection and enforcement duties under the Flammable Fabrics Act were extended to carpets and rugs as a result of that standard.

Due to the already increased volume of activity in the Commission's laboratory, and the expected additional increase due to the new standards of flammability in categories not presently covered under the Flammable Fabrics Act, the Commission approved additional technicians and an enlargement of the laboratory's physical facilities.

As part of the Division's administration of the Wool Products Labeling Act, a survey was initiated to determine the extent to which reworked fibers are being used in wool products and if such products are properly labeled.

The Commission, in administering the Textile Fiber Products Identification Act through this Division, is charged with establishing generic names for manufactured textile fibers. During fiscal year 1971, a number of applications to establish generic names for new or different textile fibers were received and evaluated by the staff.

In an effort to obtain more efficient enforcement of the Fur Products Labeling Act in the area of dyeing or color altering of furs, a regulation was issued which requires that fur pelts used in garments be stamped to indicate whether they are artificially colored or natural. A special investigation of fur garment manufacturers was made during the fiscal year concerning the practices of certain concerns alleged to be labeling dyed fur products as natural. In instances where violations of the Fur Products Labeling Act were found, formal Commission action was undertaken.

Consumer Education

This Division develops and implements programs to increase consumer competence and to make services of the Commission more readily available to consumers.

During the year, pilot projects were started with the help of the professional persons who, as leaders of consumer organizations, Commission's Regional Offices to train professional and para-professional persons who, as leaders of consumer organizations, can exert a "multiplier effect" for dissemination of information about FTC programs and ways of protecting consumers against deceptive and unfair trade practices.

Arrangements were made to start such programs through consumer leaders in farm and labor organizations, civic associations, and community action groups, as well as through the school system. By year's end, consumer education material was being furnished to over 600 teachers and leaders of consumer education, with over 4,000 items being distributed per month. New printed and audio-visual material was being developed month by month, with special emphasis on needs of military personnel, youths, the aged, low-income and disadvantaged consumers.

The Division also worked to develop state and local cooperation among governmental agencies with consumer protection responsibilities. In accordance with Commission recommendation, six states during the year enacted laws similar to the FTC Act to prevent deceptive and unfair trade practices, bringing to 36 the number of states having such legislation.

Consumer protection at state and local level was furthered by the Division's supplying responsible officials with information to encourage and aid them in taking action to combat fraudulent, deceptive and unfair trade practices. This included FTC advice and expertise in the identification and handling of local consumer problems, and the development of adequate legislation and procedures to cope with such problems.

The Commission also spearheaded the formation of Consumer Protection Coordinating Committees in major metropolitan areas. (See Chapter V, Regional Operations.)

During the latter part of the fiscal year, the Division began to explore the possibility of establishing a Consumer Fraud Clearing-

with the Safety Panel of the Subcommittee on Pesticides, President's Cabinet Committee on the Environment. The Division also participated in establishing a regular liaison between FTC and the Environmental Protection Agency. Similar liaison was established with the National Bureau of Standards, the Bureau of Radiological Health (HEW), different bureaus of USDA, and the Naval Research Laboratory.

The Commission's Tobacco Testing and Research Laboratory continued the testing of all domestic varieties of cigarettes for "tar" and nicotine content. This is the only government laboratory that tests cigarettes exclusively and is one of two such laboratories in this country. During the fiscal year, 125 brands and types were tested, which involved the smoking of some 300,000 cigarettes. Reports of the results of these tests are made available to the Congress and the public.

Compliance

This Division enforces the more than 7,500 Commission cease and desist orders issued to prevent false, misleading and deceptive trade practices under the Federal Trade Commission Act; Truth in Lending Act; Wool Products Labeling Act; Fur Products Labeling Act and Textile Fiber Products Identification Act. Investigations by the Division to determine whether respondents are complying with the mandates of an order start in many different ways. The Commission may have been dissatisfied with respondent's initial effort to demonstrate compliance or respondent may not have submitted a compliance report as required by the Commission's order; alleged violations are also brought to the Division's attention by consumer complaints, congressional inquiries, or competitors of the respondent. During the past year, the Division began to survey many orders issued during the 1960's to determine the degree of present compliance.

The Federal Trade Commission Act provides for a civil penalty of up to \$5,000 for each violation of a Commission order. When investigation of respondent's practices discloses violations, the Division prepares the necessary pleadings for certification to the

Attorney General, who is requested to bring suit for the recovery of money penalties. Twelve cases are currently in various stages of litigation in United States courts around the nation.

COMPETITION

The Bureau of Competition is charged by the Commiss

"power-buyer" and others on the conduct of dominant marketers, were in the process of development at the year's close.

In the merger area last year, the Bureau's work continued unabated, with 10 adjudicative cases challenging particular transactions. The Bureau continued its enforcement of the Robinson-Patman Act in keeping with its objective of initiating meaningful and economically significant discrimination cases.

Complaints

During the fiscal year, the Commission issued 33 restraint of trade complaints: 10 involved charges of price discriminations (Robinson-Patman Act), 19 involved unfair practices (section 5, Federal Trade Commission Act);,and 9 involved mergers or acquisitions (section 7, Clayton Act). Some cases involved charges under more than one statute.

During fiscal year 1971, the Bureau received 1,827 applications for complaint. Of these complaints, 193 were the subject of preliminary investigation. As a result of analysis of both the preliminary investigations and some applications which on their face were considered serious, 144 more extensive formal investigations were begun.

The petroleum, milk, bread, and energy industries all received attention during the year as did such specialized problems as franchising and reciprocity, all with an eye toward the development of sufficient, reliable data that would permit the Commission to determine what action should be taken.

The several merger guidelines previously issued continued in effect, and consideration was given to new guidelines for other industries where concentration and merger activity indicate that such direction would be useful.

The Robinson-Patman cases included such industries as wearing apparel, prescription and proprietary drug products, surgical and medical apparatus, sugar, and radio equipment.

The section 5, FTC Act, complaints included the following industries: hi-fidelity components, dictating equipment, consumer electronic products, home cleaners, toiletries, perfume and cosmetics, grocery store products, watches, dairy products, guns,

well construction materials, beer, and ladies garments. These cases involved issues of resale price maintenance, restrictions on sales of repair parts, exclusive dealing and tying arrangements, full line forcing, misrepresentations, unreasonable territorial and customer restrictions, receipt of discriminatory promotional allowances, boycott, sales below cost, coercion, monopoly, and illegal consignment.

The Bureau also started a broad scale inquiry into the effectiveness of past Robinson-Patman orders.

In the merger area, the complaints issued involved rope, automotive parts, fresh fruits and vegetables, canned and frozen seafood, truck and trailer bodies, plywood, insurance and drugs.

Final Orders

There were a number of significant final orders issued in the merger area in fiscal year 1971. In OKC Corporation, a final order required the divestiture of a ready-mix concrete company. This matter was one of a series of complaints brought in the cement industry involving forward vertical integration, and is particularly significant because it is the second time that the Commission obtained an injunction under the All Writs Act prohibiting the breaking up of the acquired company until the matter could be fully adjudicated. This case is now being appealed by the respondent.

The Commission's final order requiring the divestiture by Kennecott Copper Corporation of Peabody Coal Company marks the Commission's first section 7 case in the coal industry. This matter is on appeal by respondent. The last final order which the Commission issued in fiscal 1971 was against The Stanley Works Co. which required the divestiture of the acquired Amerock Corporation.

Compliance

The last step in the Bureau's litigation activity is to obtain compliance with final orders. This involves obtaining and pro-

cessing initial reports of compliance, and frequently undertaking compliance investigations to determine whether the orders are being complied with by the parties. In the section 7 area, compliance activity includes enforcement of the required divestitures as well as the handling of requests to make acquisitions under the orders issued.

In the event it is determined that an order has been violated, a civil penalty action is instituted by certification of the facts to the Department of Justice, which in turn files a case in an appropriate district court.

Two new cases were filed during fiscal year 1971: U.S. v. Ancorp. alleging inducement of allowances violative of section 5 of the FTC Act, and U.S. v. Beatrice Foods Company, involving the acquisition by Beatrice of an interest in dairies without prior Commission approval.

Two civil penalty cases were successfully concluded during the year. Respondent ABC Vending Company was charged with failing to divest theater concessions as required by an FTC order. The matter was settled with respondent paying penalties of \$200,000 and agreeing to divest the designated properties. The other matter concerned joint advertising by Frito-Lay and Pepsi Co. which was concluded with the simultaneous filing of a complaint and entry of a judgment in the amount of \$15,000. Two other civil penalty cases are under review at the Department of Justice following Commission certification of the facts.

USDA Liaison

To avoid unnecessary duplication of efforts by the two agencies, the Bureau conducts and maintains liaison activities for the Commission with the Packers & Stockyards Division of the U.S. Department of Agriculture, which has related responsibilities with respect to meat Packers.

Accounting

During fiscal 1971, accountants in the Bureau furnished

accounting services in connection with 17 price discrimination and discriminatory allowances cases,
16 anti-merger cases

A large part of the Bureau's resources during fiscal 1971 was devoted to study plans for extensive analyses of concentrated industries. While this effort has not yet resulted in finished studies of these industries, it has laid the groundwork for future publications which should be of significant value.

Statistical Reports

During 1971 two annual statistical reports on merger activity were issued. Entitled Current Trends in Merger Activity, 1970 and Large Mergers in Manufacturing and Mining 1948-1970, they serve as standard statistical sources for researchers in the merger field.

As noted earlier, recorded merger activity declined sharply in all major sectors of the economy during 1970. As in previous years, the largest number of acquisitions were recorded in the manufacturing area. In manufacturing and mining combined, the number of acquisitions declined from 2,307 in 1969 to 1,344 in 1970. (Appendix IV-2, page 35.) Assets acquired fell even more sharply from \$11.0 billion in 1969 to \$5.4 billion in 1970.

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The first, *The Quality of Data as a Factor in Analyses of Structure-Performance Relationships*, illustrates the serious problems created by the lack of detailed, publicly available information about large firms. Diversified firms do not generally report sales or profits on a divisional basis. As a result, the FTC's ability to determine the effect of market concentration and other structural variables on various measures of performance is severely handicapped.

This economic report highlights the problem by testing a basic structure-performance hypothesis using two sets of data—one derived from published sources, the other based on detailed product information gathered by the Federal Trade Commission in 1950 for the 1,000 largest manufacturing companies.

The results, for a sample of food manufacturing firms, show that publicly available data do not provide an adequate

During fiscal year 1971, five reports analyzing various aspects of the automobile insurance industry were also published. These reports were prepared by consultants to the Bureau of Economics and were published by the Department of Transportation. The focus of the reports was upon the "high-risk" automobile insurance market, examining characteristics of drivers who find difficulty in obtaining insurance, price and availability problems confronting such drivers, and institutional arrangements such as assigned risk plans developed to serve the high-risk market.

The titles of the reports are:

- The Price and Availability of Automobile Liability Insurance in the Nonstandard Market.
- Price Variability in the Automobile Insurance Market.
- An Analysis of Complaints in Selected Automobile Insurance Markets.
- A Study of Assigned Risk Plans. Insolvencies Among Automobile Insurers,

Copies of these reports may be obtained from the Government Printing Office.

Major Concentrated Industries

A substantial amount of research and planning during the year was devoted to extensive studies of major concentrated industries to be conducted in subsequent years. A tentative list of industries to be studied includes prescription drugs, electrical machinery, the energy sector, and autos. These industries are large and of vital importance to the economy. At the same time, their concentrated structures raise serious questions as to the effectiveness of competitive performance. The essential tasks of the studies will be to gain a better understanding of how each industry functions in a competitive sense, what deficiencies in performance are evident, and what policy approaches may yield future improvements.

In addition to existing competitive problems, structural and technological trends in some of the concentrated industries are also of interest. The energy sector is a complex of industries

inception of the program and are now being routinely required from all firms which are acquired under the program. Not only are the special reports received under the Pre-merger Notification Program invaluable as a screening tool for discerning possible violations of section 7 of the Clayton Act, but they are also being processed to yield useful information relating to the economic impact of large mergers on individual industries and in evaluating trends in mergers and acquisitions involving large corporations.

Another important activity which received increased attention during the past year and will continue at an increased commitment in fiscal year 1972, is a review of the FTC's enforcement efforts. Three studies underway in this regard are: (1) a pilot study of a sample of Robinson-Patman orders to determine the degree of compliance and of effectiveness in maintaining competition; (2) an investigation of orders in merger actions to determine the consequences of relief; (3) a study of the dairy industry with a view toward advising the Commission about the continuance of merger orders against some large dairy concerns. The results of these studies will help the Commission to allocate its enforcement dollars so as to provide the maximum social benefit.

Financial Statistics

The Bureau's Financial Statistics Division designs and maintains on a current basis statistical cross sections (probability samples) of corporate enterprises; it collects, analyzes, and summarizes periodically uniform and confidential reports from these enterprises; it estimates national aggregates based on these reports; and it compiles the Quarterly Financial Report for Manufacturing Corporations (QFR) in which, for selected industry groups and assets sizes, are published statements of income and retained earnings, balance sheets, profit rates (rates of return), and related financial and operating statistics.

Four issues of the QFR were published during the year. For the first time, multi-billion-dollar enterprises accounted for more than half the total assets of all manufacturing corporations. (See Appendix IV-3, page 36.) Appendix IV-3 also gives the relative importance, classified by asset size, of all manufacturing corporations in the first quarter of calendar year 1971.

Profit rates (rates of return) in the fourth quarter of 1970 reached the lowest level since the first quarter of 1961. Profit rates of all manufacturing corporations on stockholders' equity and sales, both before and after taxes, for each quarter in the 1961-1971 period are given in Appendix IV-4, page 37. This table shows the quarter-by-quarter profit rates from the first quarter 1961 through to the second quarter 1966 peak to the fourth quarter 1970 through, and the profit rates for the first two quarters in 1971.

APPENDIX IV-4

Distribution of Manufacturing Industries by 4-Firm
Concentration - Ratio Quartiles, 1966

Concentration quartile (percent)	Number Of <u>industries</u>		Value of <u>shipments</u>
	No.	Percent	\$Billions

Appendix IV-2

MANUFACTURING AND MINING FIRMS ACQUIRED
1948 - 1970

EXHIBIT - TEXT NOT AVAILABLE - SEE IMAGE

APPENDIX IV-3

Composition of the QFR Sample, by Total Assets,
1st Quarter 1971

Asset size	Total assets of all manufacturing corporations		Number of manufacturing corporations in QFR sample
	Million dollars	Per cent ¹	
\$1,000 million and over	296,610	51	111
\$250 million to \$1,000 million	108,155	19	222
\$100 million to \$250 million	47,820	8	309
\$100 million and over	452,585	77	642
\$50 million to \$100 million	25,523	4	368
\$25 million to \$50 million	19,631	3	539
\$10 million to \$25 million	9,379	3	1,191
\$10 million and over	517,018	88	2,740
\$5 million to \$10 million	12,527	2 }	6,925
\$1 million to \$5 million	28,063	5 }	
Under \$1 million	26,645	5 }	
All asset sizes	584,253	100	9,665

¹ Figures are rounded and will not necessarily add to totals.

SOURCE: Division of Financial Statistics, Federal Trade Commission, Quarterly Financial Report for Manufacturing Corporations, first quarter 1971, p. 61.

APPENDIX IV-4

Profit Rates of All Manufacturing Corporations 1961 - 1971

EXHIBIT - TEXT NOT AVAILABLE - SEE IMAGE

REGIONAL OPERATIONS

Reorganization and Responsibilities

A major goal of the Commission's reorganization was to increase the participation of the regional personnel in the overall FTC law-enforcement efforts. Regional Office activities are carried on in

sumer Protection Specialists do much of the work involved in business and consumer education, textile and fur and truth-in-lending inspections and investigations, and federal-state coordination.

of

Coordinating Programs

The Regional Offices are deeply involved in the Commission's program of coordinating the law-enforcement efforts of Federal, state and local agencies having consumer protection authority. This coordination is achieved through the so-called "Consumer Protection Coordinating Committees" now organized and functioning in seven major metropolitan areas - Chicago, Boston, Detroit, Los Angeles, New York, Philadelphia and San Francisco. Representatives of consumer-oriented agencies from all levels of government meet regularly as a committee to discuss problems, plan programs, and exchange information. In addition, all use a computerized data processing system to record, analyze, and report upon complaints they receive. All have set up systems for forwarding to proper agencies complaints received by any member, and several have also established one-stop complaint services under which consumers are invited to submit all complaints to one office. These complaints are then forwarded to the agencies best able to handle them.

The data processing print-outs, made for the use of all Committee members, disclose pãtterc. e

agencies, boards of education, university departments, consumer organizations, and many others. These boards are sources of information concerning consumer problems, desires and attitudes, and serve as channels through which information can economically be passed to large groups of consumers.

Other Regional Offices maintain similar types of relationships with such groups in their areas, although without the existence of formally organized committees and boards.

Public Hearings

On occasion, the Regional Offices will hold public hearings on pressing problems affecting a specific geographical jurisdiction. For example, during the past fiscal year the Cleveland Regional Office held more than three weeks of consumer hearings in that city's middle and lower economic areas. The results were published by the Commission and provide considerable insight into problems facing Cleveland consumers.

Often, too, Regional Offices will host hearings related to Trade Regulation Rules proposed by the Commission. Such hearings supplement the record developed in Washington. During the past year, for example, both the New York and Chicago Regional Offices held proposed Trade Rule hearings.

A major factor contributing to the Commission's increased complaint action during fiscal year 1971 was the work of the Regional Offices. Appendix V-1 on page 42 gives the caseload, statistics.

The Regional Offices' ability to meet the challenge of their new responsibilities during the past year affirms the soundness of the Commission's decision to give them full partnership in its law enforcement effort.

APPENDIX V-1

HEARING EXAMINERS

Hearing examiners sit as administrative trial judges to hear and initially decide contested cases involving alleged violations of the laws administered by the Commission. The caseload in fiscal year 1971 increased by eighteen percent over that of the previous year. The 11 hearing examiners also devoted nearly 50 percent more time to evidentiary hearings and prehearing conferences than they had the year before.

Appendix VI-1 on page 44 gives the hearing examiners' workload comparison for the fiscal years 1970 and 1971.

The hearing examiners also continued to provide adjudicative services to a variety of other government agencies. In addition to adjudicating Commission cases, the hearing examiners spent nearly 275 days hearing cases for eight other Federal agencies and sitting as Special Masters for United States Courts of Appeals.

APPENDIX VI-1

reports and comments on legislative proposals and bills prepared by other Federal agencies. Frequent conferences were held with Congressmen and other agencies to assist them in preparing bills and to give them the Commission's views. The Office also helped draft statements for the Chairman and key staff members who testified before congressional committees. Committee appearances were made concerning legislation dealing with:

- Amendments to the Federal Trade Commission Act that would strengthen its enforcement machinery.
- "Truth in Warranties" or bills which would require complete disclosure of warranty terms and conditions.
- Amendments to the Flammable Fabrics Act which would require premarketing testing of potentially dangerous fabrics and increase penalties for violations of that Act.
- Consumer protection bills including both proposals which would expand the responsibilities of the Federal Trade Commission, and those which would create a new agency for consumer protection matters.
- Required labeling of textile products to include cleaning instructions.
- The elimination of combination gas-electric utility companies.
- Means to promote greater safety in the design of motor vehicles.
- Amendments to the patent laws in the field of patent misuse.
- The acquisition by oil companies of competing energy sources.

APPENDIX VII-1

FTC CASES IN THE COURTS

This Appendix summarizes the significant Federal Trade Commission cases handled by the Office of the General Counsel in the courts during fiscal year 1971, together with a brief discussion of what is involved in each case or group of cases.

RESTRAINT OF TRADE CASES

The

In L. G. Balfour Co. (D. 8435), the Seventh Circuit (Chicago), holding section 5 to be a flexible and remedial statute containing a broad standard to prohibit practices that run counter to the public policy declared in the Sherman and Clayton Acts, affirmed the Commission's finding that Balfour, in violation of section 5, had monopolized the national college fraternity insignia products market and had engaged in unfair acts and practices in maintaining and fostering its monopoly, including the secret operation of a "competitor." The court also upheld the Commission's finding that certain term purchase agreements used in connection with the sale of high school class rings had the effect of unreasonably restricting competition in violation of section 5. The court affirmed and enforced the Commission's order requiring the termination of all existing contracts between Balfour and fraternities establishing limits on the duration and nature of future contracts, and prohibiting sales by Balfour to certain fraternities for a period of 5 years. In addition, the court sustained the Commission's determination as to the nature of the relevant market monopolized by Balfour and the

had not violated section 2(a) because it granted the lower discriminatory prices in good faith to meet the equally low prices of a competitor as permitted by section 2(b). The court sustained the Commission's finding that Kroger, by misrepresenting the nature of competitive offers it received, was thus precluded from receiving any benefit from Beatrice's successful section 2(b) "good faith" defense. Kroger has petitioned the Supreme Court for a writ of certiorari

Colonial Stores (D. 8768), pending in the Fifth Circuit (New Orleans), involves the question of whether a firm may be held liable for a violation of section 2(a) if it shows that it was in a competitive market with a competitor who was in a position to meet its discriminatory prices in good faith to meet the equally low prices of a competitor as permitted by section 2(b). The court sustained the Commission's finding that Kroger, by misrepresenting the nature of competitive offers it received, was thus precluded from receiving any benefit from Beatrice's successful section 2(b) "good faith" defense. Kroger has petitioned the Supreme Court for a writ of certiorari

cement in the Memphis, Kansas City and Cincinnati metropolitan markets. Mississippi has challenged the Commission's decision on the grounds (1) that these acquisitions enable it to enter concentrated markets successfully, thus having pro-competitive effects; (2) that a key witness was denied the right to counsel; and (3) that the Commission's "Mississippi River treatment," whereby sensitive customer and sales information in the case obtained from competitors was turned over for purposes of confidentiality to an independent accounting firm for compilation, and to which evidence Mississippi was refused direct access, constituted a denial of due process by depriving Mississippi of its right to adequately cross-examine. The Eighth Circuit has directed reargument of the case.

Other pending merger cases include: United States Steel Corp. (D. 8655) in the Sixth Circuit (Cincinnati), on remand to the Commission for further consideration of respondent's "failing company" defense in light of the Supreme Court's *Citizens Publishing Co.* decision. In fiscal year 1971, the court clarified its mandate, thus in effect sustaining the Commission's position that post-acquisition evidence need not be considered in determining whether the acquired company's prospects for surviving bankruptcy or similar proceedings were "dim or nonexistent." The pending Kennecott Copper Corporation case (D. 8765) in the District of Columbia Circuit is a conglomerate merger case of far-reaching significance involving the future enforcement of section 7 in the energy field.

DECEPTIVE PRACTICE CASES

The Supreme Court denied certiorari in two "door-to-door" selling cases in fiscal 1971, both decided in fiscal year 1970 in the Commission's favor. In *All-State Industries of North Carolina, Inc.* (D. 8738), the Fourth Circuit (Richmond) had affirmed the Commission's findings and order involving deceptive sales methods employed by a company engaged in the installment of aluminum siding and other products. In *P.F. Collier & Son Corp., P.R. Collier, Inc., and Crowell Collier and MacMillan, Inc.* (D. 7751), the Sixth Circuit (Cincinnati) had upheld the Commission's order involving sales of encyclopedias.

Two significant deceptive practice cases were decided this year in courts of appeals, both upholding the Commission. In Leon A. Tashof (d/b/a New York Jewelry Co.) (D. 8714), an important "pilot" case involving misrepresentations as to prices and the extension of credit terms in the framework of "ghetto" merchandising, the District of Columbia Circuit affirmed the Commission's findings and order. One of the company's principal contentions, rejected by the court, was that the Commission had exceeded its authority in requiring it to conduct a "statistically significant survey" to establish that the prevailing market price of any item of merchandise is substantially higher than the company's price before advertising the sale of that item at a "discount." In Windsor Distributing Company (D. 8773), the Third Circuit (Philadelphia) affirmed and directed enforcement of the Commission's order. The order requires the company, inter alia to inform all prospective customers orally and in writing in all contracts that the contract may be cancelled for any reason by the customer by notifying the company in writing within three days from the date of execution (so-called "three-day cooling-off period"). The order also provides that no contract is complete and final unless and until the company has performed its obligations thereunder to the satisfaction of the customer and has obtained a signed statement from the customer indicating his satisfaction.

With regard to deceptive advertising of foods, drugs, devices, and cosmetics under section 12 of the Federal Trade Commission Act, the United States District Court for the Eastern District of California, after the Commission's application, entered a temporary injunction in Medi-Hair International (File 712 3329) requiring the company, inter alia, to disclose affirmatively that its hair replacement system involves a surgical procedure with attendant risks of pain, infection, skin disease and scarring. The injunction further requires Medi-Hair to disclose additional medical risks and affords customers a "three-day cooling-off period" within which to rescind a contract for treatment.

Pending deceptive practice cases in courts of appeals at the close of the fiscal year included: Arthur Murray Studio of Washington, Inc., Bethesda, Inc., and Silver Spring, Inc. (Docket 8776). This case,, pending in the Fifth Circuit (New Orleans), involves primarily the authority of the Commission to include in

its order a limitation preventing these dance studios from entering into agreements for dance instructions obligating any individual to pay a total amount which at any one time exceeds \$1,500. Other pending cases: Star Office Supply Co. (D. 8749) in the Second Circuit (New York), involving misrepresentations in connection with the sale of office stationery; Universal Electronics Corp. (D. 8815) in the Eighth Circuit (St. Louis), involving misrepresentations on the part of a distributor of radio and TV tube testing machines and supplies in the sale of franchised dealerships; Marco Sales Company (D. 8770) in the Second Circuit (New York), involving the sale or distribution of merchandise by means of "pushcards" or other games of chance.

In addition to the above, a petition for review filed by S.O.U.P., Inc. (Students Opposing Unfair Practices) was pending in the District of Columbia Circuit at the close of fiscal 1971. S.O.U.P. is challenging a Commission order accepting a consent decree in an adjudicative proceeding involving Campbell Soup Company (C-1741), and also the Commission's refusal to grant S.O.U.P. full rights to intervene in the agency action. The court has denied a motion filed by S.O.U.P. for leave to proceed in forma pauperis.

SUITS FOR ENFORCEMENT BROUGHT BY THE COMMISSION

During fiscal 1971, the Commission brought two actions pursuant to section 6 of the Flammable Fabrics Act for the seizure and confiscation of articles of clothing which the Commission had reason to believe were dangerously flammable. In Approximately 500 Dozen Flammable Chenille Berets, More or Less (M. Grossman & Son, Inc., et al.) (File 712 3172), the United States District Court of the District of

Handkerchief

an order of the United States District Court for the Southern District of Iowa adjudging defendant in civil contempt for failure to comply with the court's order enforcing a Commission subpoena. The court of appeals dismissed the appeal as moot in view of defendant's full compliance with the subpoena.

Awaiting decision at the close of fiscal 1971 was the subpoena enforcement proceeding Gibson Products Company (H. R. Gibson, Sr., H. R. Gibson, Jr., G. P. Gibson) (File 691 0058), in the United States District Court for the Northern District of Texas.

In addition to subpoena matters, there were two court actions in fiscal 1971 to obtain compliance with Commission section 6(b) orders calling for the filing of special reports: Litton Industries Inc. (File 691 0629), in the United States District Court for the Central District of California, and Triple A Specialty Co. (File 99-103) in the United States District Court for the Northern District of Illinois. In Litton, three days of hearings have been held with a fourth hearing scheduled after the close of the fiscal year. Respondent, after suit was filed, complied with the Commission's order in Triple A Specialty, and the question of the assessment of penalties was pending at the close of the fiscal year.

Two cases to enforce section 6(b) orders that were pending at the beginning of the year, Chicago Casket Co. (File 3944-280) in the United States District Court for the Northern District of Illinois, and Victor Gloves, Inc. (File 23-44-515) in the United States District Court for the Southern District of New York, were concluded after respondents complied with the Commission's order.

COLLATERAL SUITS AGAINST THE COMMISSION FOR INJUNCTIVE AND OTHER RELIEF

For the past several years, the Commission has been faced with increasing numbers of collateral suits in federal courts for injunctive, declaratory judgment and for other relief. In fiscal 1971, the Commission was involved in defending approximately thirty such actions.

In Sterling Drug, Inc. (D. 8600), plaintiff requested the United States District Court of the District of Columbia to require the

Commission to grant access to various documents in the Commission's files alleged to be relevant and material to plaintiff in its defense of a Commission section 7 proceeding against it or, in the alternative, to enjoin the Commission from continuing the administrative proceeding until the documents were made available. The action was based upon the Administrative Procedure Act and the Freedom of Information Act. The district court granted summary judgment in favor of the Commission holding (1) that it lacked jurisdiction to interfere with the Commission's administrative proceeding, and (2) that the documents requested by plaintiff were exempted under the Freedom of Information Act.

The case has been fully briefed and argued on appeal to the District of Columbia Circuit, whose decision was awaited at the close of the year.

A complaint for declaratory judgment and injunctive relief filed in Missouri Portland Cement Co. (D. 8783) seeks an order from the United States District Court for the District of Columbia enjoining the Commission from conducting its pending administrative proceeding under section 7 and from withholding certain agency records. A subsequent effort by plaintiff to depose several present and former Commission employees was barred by a protective order entered by the court.

In Maremont Corp. (D. 8763), the Seventh Circuit (Chicago) affirmed the dismissal by the United States District Court for the Northern District of Illinois of Maremont's complaint for declaratory judgment and injunctive relief on the ground of failure to exhaust administrative remedies. Maremont had alleged that the conduct of the Commission's administrative proceeding under section 7 was depriving the company of various statutory and constitutional rights.

In Bristol-Myers Co. (Trade Reg. Rule 215-14), the company sought to enjoin the Commission from continuing a pending analgesic rulemaking proceeding on jurisdictional grounds, and to compel the Commission to produce certain documents from its files under the Freedom of Information Act. The Supreme Court denied Bristol-Myers' petition for writ of certiorari from the District of Columbia Circuit which upheld the dismissal by the United States District Court for the District of Columbia of the jurisdictional question as premature. The appellate court over-

In *Jewel Companies, Inc., et al.* (Docket 8786-8790), plaintiffs had requested the United States District Court for the Northern District of Illinois to enjoin the Commission from prosecuting administrative complaints against them charging violations of section 2(c) of the Clayton Act. Plaintiffs had alleged (1) that the Commission's complaints did not state a cause of action; (2) that one of the Commissioners misconstrued his discretionary power in issuing the complaints by failing to consider the "public interest factors;" (3) that the Commission's failure to make a "public interest" finding invalidated the complaints; and (4) that exclusive jurisdiction to proceed in these matters was vested in the Secretary of Agriculture. Following the district court's denial of the Commission's motion to dismiss, the Seventh Circuit (Chicago) reversed the district court's holding as to contentions 1, 3 and 4, but held that the lower court had jurisdiction to pass upon contention number 2, and the case was remanded to the lower court for that purpose. Following authorization from the district court, the Commission subsequently reconsidered its decision to issue the complaints and found their issuance to be in the public interest. Plaintiffs' motion for summary judgment and the Commission's motion to dismiss for mootness

of Columbia, a companion suit to one filed in the District of Columbia Circuit, seeks injunctive relief against the Commission for denying the Union's motion to intervene as a party. The district court stayed further proceedings pending the outcome of the action in the court of appeals. In the court of appeals case, plaintiff appealed from the Commission's denial of its application to intervene as a party. Following the Commission's entry of divestiture order in D. 8765 against Kennecott Copper Corporation, the Union moved for leave to withdraw its petition for review which the court of appeals granted. The district court case is scheduled for a calendar call in September 1971.

The complaint in Genuine Parts Co. (File 671 0673), in the United States District Court for the Northern District of Georgia, sought an injunction against the enforcement of a Commission section 6(b) order requiring the filing of a special report. Plaintiff also sought a declaratory judgment to the effect that the order was harassing, oppressive and unreasonable and, therefore, in violation of plaintiff's constitutional rights.

The Commission filed a counterclaim seeking enforcement of its order and moved for summary judgment. The court directed enforcement of substantially all of the Commission's order. A decision is being awaited on the pending appeal in the Fifth Circuit (New Orleans).

In Carpetland, Inc. (File 712 3228), the United States District Court for the Southern District of Ohio was requested to declare that Carpetland, Inc., was not required to comply with a Commission subpoena. Following the expiration of an ex parte temporary restraining order by the court, plaintiff agreed to furnish the documents in question and the court action was voluntarily dismissed.

In William H. Rodgers, Jr., a case now pending in the United States District Court for the Western District of Washington, plaintiff requests that the court direct the Commission to investigate certain activities alleged by plaintiff to constitute unfair trade practices, and that the court declare the alleged practices to be violative of the Federal Trade Commission Act and the Sherman Act. The Commission has moved to dismiss.

In Orlan A. Saucke, the United States District Court for the Northern District of Georgia has been petitioned to require the

Commission

The courts were requested to declare the regulations or interpretations invalid and to enjoin enforcement thereof. In *Continental Oil*, the court granted the Commission's and Board of Governor's motion for summary judgment, and no appeal was taken. The district court in *Gardner and North Roofing* also granted summary judgment in favor of the Commission and the Board of Governors. That case has been appealed to the Court of Appeals for the District of Columbia. Briefs have been filed and the matter is awaiting hearing. The *Freed* case is still pending in the District Court.

POLICY PLANNING AND EVALUATION

The Office of Policy Planning and Evaluation is a newly formed unit of the Commission created as a result of the Commission's July 1970 internal reorganization. The Office's primary mission is to suggest both long- and short-range alternative courses of action to the Commission, and to evaluate new program and investigational proposals against such alternatives.

In meeting this charge, the Office works closely with the operating Bureaus, the Office of the Executive Director, as well as the Chairman and the individual Commissioners.

During the first year of its operations, the Office took significant steps along several fronts to establish ongoing policy planning mechanisms for the Commission including a continuing computerized data bank on FTC regulatory activity showing professional manpower resources costs on individual matters. When completed, the data will be grouped for each matter according to such important planning elements as:

- Industry and product category involved.
- Type of business practice and transaction addressed.
- Size and relative market significance of the entities involved.
- Economic significance and geographic dimensions of affected markets.
- Relevant statutory provisions.
- Special consumer effects, if any, according to demographic factors, and
- Status within the agency.

In the very near future, this "policy planning inventory" will very likely become the nucleus of a total management information system for the Commission.

Substantial progress was also made in developing a program to compare the Commission's resource commitment patterns with objective extrinsic estimates of the economic and consumer importance of the product or service area involved. This program will enable the Commission to make preliminary judgments and determinations of the amount of resources it wishes to spend in product or industry categories under its jurisdiction. When fully developed, the program will consist of a formal set of systematic resource allocation criteria which will be applied to the various industry and product areas falling within the responsibility of the Commission.

In the antitrust area, such criteria will include elements such as:

- Degree of concentration and concentration trends;
- Rate of merger activity;
- Profitability in relation to applicable normative standards; and
- The absolute size and extent of diversification of firms within given industry and product lines.

In the consumer protection area, the criteria will include;

- The relative importance of products in terms of the proportion of consumer retail spending involved;
- The numbers of consumers affected;
- Advertising intensity relative to total sales of the product;
- The prevalence of consumer complaints; and
- The existence of health and safety factors.

Last year, the Office also worked on priority guidelines to assist the staff in opening and closing investigations as well as recommending complaints. The first such guidelines were for the Regional Offices and were developed in part on recommendations submitted by the operating Bureaus and the Regional Offices.

Because the Office of Policy Planning and Evaluation uses social science and other behavioral perspectives in making resource, judgments in the consumer protection area, the staff met at length during the year with a number of leading academic

FUNDS AVAILABLE
TO THE COMMISSION
DURING FISCAL YEAR 1971

For fiscal year 1971, funds totaling \$22,490,000 were available to the Commission. Public Law