Annual Report of the

FEDERAL TRADE

COMMISSION

1981

Annual Report of the FEDERAL TRADE COMMISSION

For the Fiscal Year Ended

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FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION
1981 ANNUAL REPORT

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SUMMARY

Fiscal 1981 was a year of continuity within transition. Despite several changes at the Commission, the agency carried forward a range of activities designed to free the marketplace of deception and anticompetitive restraints.

During fiscal 1981, Commissioner Paul Rand Dixon completed his extraordinary 43-year career of government service. Commissioner Robert Pitofsky, whose intellectual discipline and commitment to effective law enforcement enriched the Commission, returned to the teaching of law. Commissioner Michael Pertschuk ended nearly four years of service as Chairman, and Commissioner David A. Clanton led the agency as Acting Chairman for the remainder of the year.

As the pages that follow make clear, however, these changes did not alter the Commission's commitment in carrying forward its statutory responsibilities. Three overall themes predominated:

FOCUSED CASE ENFORCEMENT AND RULEMAKING

In fiscal 1981, the Commission transferred resources from broad industry-wide projects to more precisely defined and manageable case enforcement activities, where concrete benefits to competition and consumers could be achieved. However, the Commission did take final action in two major trade regulation rulemakings and continued proceedings in several others.

GUIDANCE TO BUSINESS

The Commission recognizes its responsibility to provide as much specific content as possible to its statutory framework. The commands of the FTC Act are necessarily broad, but in order to help businesses comply with the law, and as a matter of sound self-restraint, the Commission ought, where appropriate, to spell out the principles that undergird its enforcement. To that end, the Commission approved a letter in December 1980, delineating its standards under its "unfair acts or practices" jurisdiction. Moreover, in the spring of 1981, the Commission directed the staff to undertake comparable projects with respect to merger policy and the "unfair methods of competition" element of Section 5.

PRESERVATION OF FTC JURISDICTION

The Commission believes that individual groups ought not to be granted special immunity from the law that all others are expected to obey. Much injury to competition and consumers would result from this kind of erosion of Commission jurisdiction. Thus in fiscal 1981, the Commission strongly opposed such an exemption for professionals, i.e., doctors, lawyers, etc. The Commission's activities involving the professions during the year reflected the balance that current law permits - in Acting Chairman Clanton's words, "enhancing competition through market freedom without, at the same time, harming other important social values."

The organization of the Commission is divided into three bureaus which carry out the Congress' two mandates: that of maintaining competition in the marketplace and protecting the consumer. The following is a summary of the Federal Trade Commission's accomplishments in 1981.

MAINTAINING COMPETITION MISSION

The mission of the Bureau of Competition is to enhance the welfare of consumers by maintaining the competitive operation of our economic system of private enterprise operating in free markets. The bureau fulfills this mission through enforcement of the antitrust provisions of the Clayton Act and the Federal Trade Commission Act, as well as by serving as a vigorous advocate of competition to the Congress and other governmenta physicians and from preventing physicians from working for hospitals on a salaried basis. That decision resulted in an appeal to the U.S. Court of Appeals which affirmed the Commission's decision, and to a petition for certiorari by the AMA to the Supreme Court. As a result of the Commission's action, consumers should have better information about fees and services, and hospitals and health maintenance organizations will be assisted in controlling health care costs by hiring physicians on a salaried basis.

The Commission also sought to prevent mergers which would lessen competition in the health care fields. In a consent order, American Hospital Supply Corp., agreed to divest the urological-catheter assets of American Cystoscope Makers. Also, SmithKline Corp. consented to divest its Sea & Ski subsidiary, settling charges that SmithKline's acquisition of Allergan Pharmaceuticals eliminated competition between the two firms in the sale of suncare products. A complaint alleged that American Medical International, the third largest commercial hospital chain in the U.S., had attempted to monopolize the hospital market in San Luis Obispo County (Calif.) and had reduced competition in that market with the acquisition of its third hospital there.

FOOD INDUSTRY

Several significant actions by the Commission affected alleged anticompetitive practices in the food industry. These actions ranged from small retail food stores to the largest food manufacturers.

An initial decision by one of the Commission's administrative law judges (ALJ) prohibited ITT Continental Baking Co., the world's largest baker, from discriminating in the prices that it charged competing purchasers for its bread products. Another ALJ decision held that Beatrice Food Co. must sell Tropicana Products because its acquisition substantially lessened competition in the processing, distribution, and sale of chilled orange juice to retail food stores in the U.S. The Commission also accepted a consent order from Albertson's, Inc., one of the country's 10 largest grocery store chains, that will prohibit it from making further acquisitions where those acquisitions would be likely to reduce competition in the retail grocery market.

At the manufacturing level, the Commission accepted a consent order requiring Sunkist Growers to divest its Arizona Products Division and to limit its affiliations with commercial packinghouses. The Commission also issued a complaint charging that Flowers Industries' acquisition of a bakery in the southeastern U.S. may have substantially reduced competition in that industry. Finally, the U.S. Court of Appeals remanded decisions against the Coca-Cola Co. and PepsiCo, Inc. to the Commission because of the enactment of the 1980 Soft Drink Interbrand Competition Act. The Commission subsequently dismissed charges against Coca-Cola, PepsiCo, and five other soft drink bottlers.

ENERGY

In order to help consumers keep the price of e tween Pillsbury and Kraft, Inc. was ordered changed by the Commission. Under the arrangement, Kraft had the right to be Pillsbury's principal distributor, in return for which it agreed not to distribute the products of any of Pillsbury's competitors. As a result, Pillsbury can sell or distribute its dough products through other distributors, and Kraft can distribute refrigerated dough products made by other manufacturers.

Other consumers should receive substantial redress from Binney & Smith, Inc., Milton Bradley, Co., and American Art Clay under the terms of a consent order accusing them of inflating prices through an unlawful price-fixing conspiracy. Under the order, the respondents will establish escrow funds totaling $1.225 million for distribution to states whose school systems were the principal victims of the conspiracy.

CONSUMER PROTECTION MISSION

Bureau of Consumer Protection activities in fiscal year 1981 continued to focus on those sections of the market that account for the most significant portions of consumer spending. The five sectors targeted were health care, food, energy, housing and transportation. Two other areas, credit and advertising, had an overreaching influence on all of these sectors.

I. CRITICAL SECTORS

HEALTH CARE

The Federal Trade Commission was successful in a number of efforts to stop advertisers from making allegedly unsubstantiated claims about products' effectiveness and ability to treat a variety of health-related conditions. For example, an administrative law judge found that Sterling Drug, Inc. made effectiveness and superiority claims for Bayer aspirin and other analgesics that were not based on reliable evidence. Sterling Drug would be ordered, among other things, to substantiate all future efficacy and therapeutic superiority claims for over-the-counter (OTC) drugs. This case continues to be on appeal to the Commission. Teledyne, Inc. agreed to have a reasonable basis for challenged claims about Water Piles ability to help prevent gum disease, and was further ordered to cease misrepresenting the results of a survey without an unbiased sampling of the particular population, or the therapeutic abilities of any device without scientific tests to substantiate such statements. The Sperry Corp. and DKG Advertising agreed not to claim that the "Black Man's Shave" would eliminate or treat razor bumps without adequate scientific evidence. Sperry agreed to offer refunds to dissatisfied buyers. Total consumer redress in this could reach $100,000.

The annual cigarette tar, nicotine and carbon monoxide reports were published. Also, an FTC report based on two decades of evidence on the medical effects of cigarette smoking was forwarded to the Congress and publicly released. The staff report concludes that cigarette smoking is more dangerous to health than was thought in 1964. Furthermore, many consumers still do not adequately understand the dangers of smoking. The report mentions a number of options that might be appropriate for actions by the FTC, Congress, other government agencies, or private organizations. A Federal Register notice describing the staff findings and recommendations and asking for comments was also published.

The Commission decided to close its Over-the-Counter Drug Rulemaking proceeding. The proposed rule would have limited advertising claims about a drug's purpose for which the Food and Drug Administration has found the d

TRANSPORTATION

The Commission's efforts to remedy and/or prevent economic or personal damage to consumers in the transportation area were successfully concluded in a number of cases. The Commission issued a complaint against International Harvester. The complaint alleged instances of severe injury and at least one death by fire caused by a faulty gas tank design on some of this company's tractors. The Commission issued a complaint against Volkswagen of America, charging the company failed to disclose that an abnormally high number of 1974-1979 Volkswagens and Audis needed engine repairs related to high oil consumption. The American Honda Motor Co., Inc. agreed to provide owners of its 1975-1978 Honda Civics and Accords with repairs or reimbursements because of economic loss due to front fender rusting. Mobil Oil Corp. was ordered to stop advertising that "Mobil 1" motor oil results in reduced consumption of oil unless specific disclosures are made.

The final Used Car Rule was unanimously adopted by the Commission and published in the Federal Register. The rule was substantially modified from the one tentatively adopted by the Commission in May 1980. The final rule requires disclosure of warranty information, and of certain defects if the dealer knows of them. It was transmitted to the Congress for consideration under the legislative review procedures of the FTC Improvements Act of 1980.

CREDIT

The Commission successfully acted upon numerous alleged violations of the Fair Debt Collection Practices Act (FDCPA). The Universal Collection Bureau, Inc. was ordered to pay a $90,000 penalty in settlement of FTC charges that it harassed debtors in its attempt to collect debts. Complaints were filed in federal district courts against five other debt collection organizations seeking civil penalties for abusive, unfair and/or deceptive collection practices. Aldens, Inc., the nations's fifth largest mail order firm, agreed not to contact third parties in attempts to collect delinquent accounts. Budget Marketing was ordered to pay $125,000 in civil penalties in settlement of charges that it used deceptive sales and debt collection practices.

In other credit-related areas, the Commission obtained an agreement from Zale Corp., charged with improperly handling billing disputes, to conform to the provisions of the Fair Credit Billing Act. Equifax, Inc., one of the nation's largest consumer-credit reporting agencies, was ordered to end several practices that allegedly violate the Fair Credit Reporting Act. Practices alleged to have violated the law include: pressuring employees to uncover unfavorable information, having employees exaggerate information in credit investigation reports or invent sources and comments, and failing to properly respond to consumer questions and complaints. Equifax appealed the decision to the U.S. Court of Appeals.

The Chrysler Corp. was ordered to provide its dealerships with new accounting procedures designed to protect the rights of credit customers by ensuring that if their cars or trucks are repossessed, they receive prompt and correct payment of any profits from the dealer's resale of these vehicles. Under a related consent agreement, Aurora-Chrysler Plymouth Inc., a Seattle dealership, was ordered to repay all repossession surpluses it generated since February 10, 1973.

George Irvin, a Denver car dealership, agreed to follow standards to insure that its T.V. advertisements of credit terms make federally required disclosures clearly and conspicuously.

ADVERTISING

The Commission acts in a variety of fields to prevent misleading, unfair or deceptive advertising. The following are examples of issues considered.

The FTC ordered Litton Industries,

In total, the FTC obtained $1,359,000 in civil penalties for violations of previously issued orders, or for violations of FTC rules. Up to another $45,749,000 may be obtained by consumers in redress resulting from cases concluded in 1981.

A complaint was filed in U.S. District Court against Union Circulation because this magazine subscription firm, selling door-to-door, allegedly failed to tell customers of their right to cancel, failed to give them the necessary forms, and did not make timely refunds. Such practices are in violation of the cooling-off period called for by the Door-to-Door Sales Trade Regulation Rule.

Sure Products, Inc. agreed not to ship or bill for unordered merchandise, or ship orders taken over the phone without verifying their authority. A $30,000 civil penalty was paid

II. CONSUMER EDUCATION AND EFF

ECONOMIC ACTIVITIES

The FTC's Bureau of Economics has three main responsibilities: to provide economic support to the agency's antitrust and consumer protection activities; to advise the Commission about the impact of government regulation on competition; and to gather and analyze information on the Americ new homes and the carefulness of construction. Research on the residential real estate brokerage industry also continued. The project seeks to evaluate the economic performance of real estate brokers and to consider possible policy actions to improve industry performance.

In the area of regulation, economists continued work on a study of the effects of the regulation of retail milk prices by states. The purpose of this study, which draws on information developed in an earlier legal investigation, is to provide information to the states and the Congress. The bureau also began preliminary work on a study of the effect of state drug substitution laws. Since the early 1970's, many states have adopted a variety of different statutes to allow the pharmacist to substitute a generic product for a brand-name drug prescribed by the physician. The study will examine the effects of the different state laws to determine their impact on the prices paid by consumers. Finally, economists completed the research protocol for an analysis of the impact of state advertising restrictions upon the price of legal services. The study will provide insight into the effects upon prices of a variety of different restrictions. It should be of substantial interest to states considering alternative regulations.

THE REGIONAL OFFICES

The regional offices play an important role in implementing the policies and law enforcement responsibilities of the Commission. Ideally, the regional offices, since they are located in the areas they serve, help develop and carry out those law enforcement activities which are best suited to the economic realities of their respective areas. The regional offices also help to monitor federal antitrust and consumer protection laws, provide important guidance and education to businesses and consumers, and coordinate efforts with local and state law enforcement agencies.

During fiscal 1981, the regional offices contributed to the Commission's law enforcement efforts, returning hundreds of thousands of dollars to the American public through consumer redress cases. The regional offices were responsible for handling significant litigation and achieving important settlements during fiscal 1981. These matters included the establishment of a $1.2 million escrow account for distribution to states whose school systems were the principal victims of an unlawful price-fixing conspiracy; substantial refunds to consumers who had billing-error claims under the Fair Credit Billing Act; and litigation of numerous major matters.

Through their outreach effort, the regional offices handled thousands of inquiries and complaints from consumers, businesses and members of Congress. These offices provided important law enforcement guidance and education to members of the public, small business associations, and local interest groups of numerous types. Overall, regional offices have assisted the Commission in carrying out its mission in a more effective manner.

EXECUTIVE DIRECTION, ADMINISTRATION AND MANAGEMENT

The Federal Trade Commission is committed to improving its own efficiency through the implementation of more effective agency administration. In addition to a long-standing dedication to recruiting top level attorneys, economists, and management officials, the agency has adopted important data processing support cap

APPENDIX

PART II (Investigative Stage)
CONSENT AGREEMENTS ACCEPTED
AND PUBLISHED FOR PUBLIC COMMENT

COMPETITION MISSION

Onkyo U.S.A. Corp.

On

Ball-Matic Corp.

Ball-Matic Corp. agreed to stop making claims that its valve increases fuel efficiency.

Great North American Industries, Inc.

Great North American Industries, Inc. which markets Tephguard, an engine-oil additive, has entered into a consent agreement that requires the company to not make any claims of substantial gas savings resulting from Tephguard or other similar products without competent scientific evidence. Furthermore, Great North American Industries must use appropriate Environmental Protection Agency procedures to support all fuel-economy claims.

Tomy Corp.

Tomy Corp. entered into a consent agreement which bars Tomy from showing any group of toys in an ad unless they are sold as a set or the ad describes that they are "sold separately." The order also requires Tomy's ads to state when an advertised item is available on a limited basis.

Chrysler Corp.

Chrysler Corp. agreed to notify owners of 700,000 Japanese-made Chrysler cars and trucks that they should be using special strength oil filters in order to avoid engine damage that could involve repairs costing an average of $500. Chrysler also must run ads in "Automotive News" advising the trade that a technical data service on filters and other Chrysler specifications is available.

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PART II (Investigative Stage)
CONSENT AGREEMENTS
ISSUED IN FINAL FORM

COMPETITION MISSION

Murata Manufacturing Co.

This consent agreement allows Murata Manufacturing Co. to acquire Erie Technological, a capacitor industrial firm. The terms for this consent requires Murata Manufacturing to divest Erie's "Arizona Division" within nine months. Murata must also run Erie as a separate company until the Arizona Division is sold to a buyer approved by the Commission. If Murata cannot find an acceptable purchaser for the Arizona Division within nine months, it must divest all of Erie Technological within four months thereafter.

Owens-Corning Fiberglas Corp.

Owens-Corning Fiberglas Corp., a major manufacturer of glass fiber and other construction materials, has agreed to divest four asphalt roofing plants. The Commission charged that Owens-Corning's acquisition would substantially lessen competition in seven western states. Under the consent agreement, Owens-Corning must divest the four plants producing asphalt roofing products within two years of the effective date of the order to a person or persons approved by the Commission. In addition, Owens-Corning is prohibited for ten years from acquiring, without Commission approval, any interest in western asphalt roofing plants.

Pillsbury Co. and Kraft, Inc.

This consent agreement requires Pillsbury Co. and Kraft, Inc. to change a thirty-year contractual arrangement under which Kraft was appointed the principal distributor for Pillsbury's refrigerated dough products on the condition that Kraft not distribute or sell the products of Pillsbury's competitors. This contractual arrangement was found to substantially lessen competition in the sale, distribution and purchase of refrigerated dough products. Under the order, Pillsbury can sell or distribute its dough products through other distributors, and Kraft can sell or distribute other manufacturers products.

Albertson's, Inc.

Albertson's, Inc., one of the nation's largest grocery chains, has agreed not to purchase more than four grocery stores in any one state where it already owns stores, without consent of the Commission. Albertson's must also seek permission before purchasing any grocery stores within 500 miles of one of its warehouses or within 300 miles of any Albertson's grocery store. The restriction applies to acquisitions of five or more stores located in any of fifteen states. The order charges that Albertson's 1978 acquisition of the Fazio grocery business eliminated competition within the Los Angeles and Orange County areas of California.

Godfrey Co.

Godfrey Co., the second largest grocery chain in the Milwaukee area, must divest seven stores. Godfrey agreed to sell three of its own stores and four stores previously owned by jewel Co. to FTC-approved buyers within six months. The consent order contended that Godfrey's 1980 acquisition of eleven jewel Co. stores may encourage further mergers among other leading grocery stores in the Milwaukee area and may lead to a monopoly in the grocery business.

American Hospital Supply Corp.

American Hospital Supply Corp. has agreed to divest the catheter-making assets of recently acquired American Cystoscope Makers Inc. The consent charged that the acquisition of American Cystoscope by American Hospital Supply Corp. would create a monopoly in the $70.4 million dollar catheter industry. American Hospital Supply will have 18 months to divest American Cystoscope assets used in the manu

Miles Laboratories

Miles Laboratories agreed not to discriminate in their promotional programs aimed at retail customers. The complaint charged that Miles' promotional programs may have given larger customers an advantage over smaller ones. Under the agreement, Miles will notify its retail customers of advertising and promotional programs. The company will also notify each of its customers of its revised advertising and promotional policy. Miles will also send letters to those retail customers who purchased less than $5,000 of advertising and promotional programs stating the company has revised its compensation policy to encourage greater participation in its promotional program by small retailers.

Palm Beach

In a consent agreement with Palm Beach Men's Division, the company will no longer maintain the resale price at which its men's clothes are to be advertised or sold. According to a complaint, Palm Beach allegedly refused to deal with any retailer who sold their products below their set resale prices. Under terms of the consent order, Palm Beach may not suggest resale prices for any product for three years. After the three-year period, Palm Beach may recommend resale prices and sale periods only if it clearly states that these are simply suggestions and that the retailers are free to set their own sale terms.

British Petroleum Co. Limited

British Petroleum agreed to divest 6.8 percent of its holdings in Amax Inc. within thirty months. A complaint alleged that British Petroleum's acquisition of Kennecott Corp. may reduce competition in the U.S. production of molybdenum, a metallic element used in steel production. The agreement bars British Petroleum from entering into a venture with any other company producing more than three percent of the U.S. molybdenum output and also bars the acquisition of stock of other producers. In addition, the order prohibits interlocks of officers, directors or employees of British Petroleum with other molybdenum producers.

Kennecott Corp.

Kennecott Corp. agreed to divest a subsidiary that produces industrial air pollution equipment. The complaint alleged that Kennecott's purchase of Dorr-Oliver violated the Clayton Act by reducing competition between the two manufacturers by significantly increasing its share of the fabric air filter bag market. Under the agreement, Kennecott must divest the Filter Media Division in a manner calculated to preserve the division's assets and business as a viable competitor. In addition, the agreement calls for Kennecott to operate National Filter Media Corp., a subsidiary of Dorr-Oliver, as a separately managed subsidiary.

SmithKline Corp.

The SmithKline Corp. agreed to divest its Sea & Ski suncare products subsidiary. The that its advertising claims contradicted government-required label warnings.

Universal Bodybuilding, Inc.

Universal Bodybuilding, Inc., a Michigan mail-order company, has agreed not to make unsubstantiated advertising or promotional claims about its bodybuilding programs.

Darworth Co.

Darworth Co., a Connecticut manufacturer of wood stain and preservative products has agreed stop making claims that its product was endorsed by [illegible]

Shaller Rubin Associates

Shaller Rubin Associates agreed to stop making any contraceptive effectiveness claims in advertisements regarding Encare which use the words "effective" or "reliable" in conjunction with any performance or quality heightening modifiers such as "highly" or "extremely." In addition, the company may not misrepresent the effectiveness of any over-the-counter contraceptive product.

Citicorp Financial, Inc.

Citicorp Financial, Inc. agreed to comply with a 1973 consent order against Arlen Realty and Development ficient or produce more heat than other electric heaters of the same wattage. The complaint alleged that Boekamp falsely claimed its infrared quartz heaters provided superior efficiency when, in fact, it operated at the same efficiency and produced the same amount of heat per watts consumed as other electric resistance heaters.

Energy Efficient Systems, Inc.

Energy Efficient Systems, a firm which distributes Boekamp's Quartz Energy Saver Heater, agreed to stop making unsubstantiated claims about the efficiency and heat-producing qualities of the Quartz Energy Saver Heater. The company agreed to make future claims only if they were supported by competent and reliable scientific testing.

Sperry Corp.

Sperry Corp. agreed to stop claiming that the "Black Man's Shaver" will eliminate or effectively treat razor bumps and similar claims without adequate medical basis for such claims. Sperry was also required to offer dissatisfied purchasers of the Black Man's Shaver an opportunity to request a refund.

DKG Advertising, Inc.

DKG Advertising Agency agreed to stop advertising that the "Black Man's Shaver" would effectively treat razor bumps. The agency may not misrepresent in ads that a medical device is unique or use ads which are inconsistent with accepted medical opinion.

Zale Corp.

Zale Corp. agreed to settle customers' billing-error claims and to follow the Fair Credit Billing Act in future transactions. Under terms of the agreement, Zale would send forms to customers requesting information about past billing errors. After receiving a complaint Zale would investigate the claim, and if the customer is correct, Zale would pay the refund due. Zale would correct the credit ratings of customers who claimed that the dispute hurt their credit ratings. In addition, Zale must disclose in future billings the existence of any credit balances, and refund past credit balances plus six percent interest.

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PRELIMINARY INJUNCTIONS

COMPETITION MISSION

Weyerhaeuser Co.

The Commission sought a preliminary injunction barring Weyerhaeuser Co.'s proposed acquisition of the Manasha Corp. The complaint charged the acquisition would violate Federal antitrust laws by substantially reducing competition in the West Coast production of corrugating medium, a material used to make cardboard boxes. If the acquisition was allowed, Weyerhaeuser would become the nation's leading producer of corrugating medium with more than twenty percent of the market. The preliminary injunction was denied and the Commission issued an administrative complaint against the merger.

LTV Corp.

The Commission applied for a preliminary injunction to prohibit the proposed merger of Wilson Oil Rig Manufacturing by the LTV Corp. The injunction was sought because the Commission needed more time to study the effects of the merger on the oil field equipment industry. The Commission has requested additional information from LTV Corp. and Wilson Oil Rig Manufacturing before its final review. This marked the first time the Commission invoked Sec. 7A(g)(2) of the Clayton Act to request a temporary restraining order. LTV cancelled its takeover attempt before the case was heard.

Great Lakes Chemical Corp.

The Commission authorized its staff to seek a preliminary injunction barring Great Lakes Chemical Corp.'s proposed acquisition of part of Velsicol Chemical Corp. It argued that the acquisition could substantially lessen competition in the elemental bromine and brominated flame retardant products market, because it would increase Great Lakes Chemical's 33.6 percent share of the bromine market to 38 percent. The company already owned a fifty percent interest in the fourth largest bromine producer, Arkansas Chemicals, which had 8.4 percent of the bromine market. The preliminary injunction was denied and the Commission issued an administrative complaint against the acquisition.

CONSUMER PROTECTION MISSION

Marketing Associates, Inc.

The Commission sought and was granted a preliminary injunction restraining the company from further. violations of the Franchise Rule and from defrauding investors.

CIVIL PENALTY ACTIONS

COMPETITION MISSION

Joseph Dixon Crucible Co.

The Federal Trade Commission charged in federal court that Joseph Dixon Crucible Co. inflated prices through a price-fixing conspiracy. The complaint alleges that Joseph Dixon Crucible violated an FTC cease and desist order by agreeing with competitors to fix prices, terms and discounts at which its art materials were sold and by exchanging related information with competitors. The court was asked to order Joseph Dixon Crucible Co. to refund excess payments made by consumers and to pay civil penalties of up to $10,000 for each law violation,

Binney & Smith, Inc., Milton Bradley Co., and American Art Clay Co.

In related actions, the Commission accepted consent agreements with Binney & Smith, Milton Bradley, and American Art Clay in which they agreed to pay a total of $1.25 million in redress to consumers of their products. The complaint prepared as a part of the settlement alleged that the three manufacturers had conspired to raise the prices of art supply products in the period between 1972 and 1979. Redress funds were ordered paid into an escrow account from which consumers, primarily state school boards, would be refunded overcharges. Refunds were directed to be paid within three years in a manner to be determined by Commission staff, after which any funds remaining would be returned to the companies.

Louisiana-Pacific Corp.

The Commission charged Louisiana-Pacific with failing to divest its Rocklin, California medium density fiberboard plant as required by an FTC order, Louisiana-Pacific, the nation's second-largest producer of particle board, had agreed to sell the plant by March 27, 1981, but failed to do so. The Commission sought civil penalties of up to $10,000 a day against the company for violating the consent order. In addition to civil penalties, the Commission requested an injunction against future violations of the order.

CONSUMER PROTECTION MISSION*

Budget Marketing, Inc.

This company agreed to a civil penalty consent decree in the amount of $125,000 for allegedly using unfair and deceptive practices in telephone sales and debt collection. In addition, the company must make certain disclosures in telephone solicitations, give refunds, and give future telephone sales customers a right to cancel.

Riccardo Pagnini (America) Corp.

This company agreed to a civil penalty consent decree in the amount of $20,000 for allegedly falsely labeled wool-blend fabrics. In addition, the company agreed not to mislabel wool products, to have an independent laboratory test to determine fiber content of imported wool products and to correct the labels of products the tests show to be inaccurately labeled.

Associated Dry Goods Corp.

This company agreed to a civil penalty consent decree in the amount of $75,000 for allegedly violating a 1975 cease and desist order that prohibited writing off credit balances due consumers. In addition, the company must devise a new billing system, send notices to consumers, and provide refunds.

Atlantic Hosiery, Inc.

This company agreed to a civil penalty consent decree in the amount of $16,000 for allegedly violating a 1974 cease and desist order. In addition, the company must disclose the identity and percentage of the constituent fibers on all of their textile fiber products.

Universal Collection Bureau, Inc.

This company agreed to a civil penalty consent decree in the amount of $90,000 for allegedly violating the Fair Debt Collection Practices Act. The company must also immediately notify the Commission of impending bankruptcy proceedings or other actions that might diminish its assets.

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* All civil penalty actions include a permanent injunction enjoining future violations.

Credit Rating Bureau, Inc.

This company agreed to a civil penalty consent decree in the amount of $10,000 for allegedly violating the Fair Debt Collection Practices Act. In addition, the company must delete the words "crei9diHteon, the compa ny must delete the

Westminster Co.

This company agreed to a civil penalty consent decree in the amount of $50,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

The Korman Corp.

This company agreed to a civil penalty consent decree in the amount of $35,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Wauwatosa Realty Co., Inc.

This company agreed to a civil penalty consent decree in the amount of $15,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Bob Scarborough, Inc.

This company agreed to a civil penalty consent decree in the amount of $50,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Pulte Home Corp.

This company agreed to a civil penalty consent decree in the amount of $70,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Centex Homes Midwest, Inc.

This company agreed to a civil penalty consent decree in the amount of $50,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Kettler Brothers, Inc.

This company agreed to a civil penalty consent decree in the amount of $25,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

U.S. Home Corp.

This company agreed to a civil penalty consent decree in the amount of $90,000 for allegedly using unfair or deceptive practices in its advertising of real estate credit terms.

Young Ford, Inc.

This company agreed to a civil penalty in the amount of $10,000 for allegedly violating the disclose the required Surgeon General's warning in all cigarette advertisements.

Phillip Morris, Inc.

This company agreed to a civil penalty consent decree in the amount of $100,000 for allegedly failing to clearly and conspicuously disclose the required Surgeon General's health warning in all cigarette advertisements.

ADMINISTRATIVE COMPLAINTS

COMPETITION MISSION

Flowers Industries, Inc.

The Commission's complaint alleged this Georgia-based bread producer's bakery acquisitions in the southeastern U.S. may have substantially reduced those markets, in violation of federal antitrust laws. In a notice accompanying the complaint, the Commission indicated that if a law violation is found, an order might require Gulf & Western to divest the acquire tion. If a violation is found, American Medical may be asked to divest French Hospital.

CONSUMER PROTECTION MISSION

International Harvester Co.

The complaint alleges that this company knew or should have known that its tractors were subject to fuel geysering due to pressure build-up in the fuel tank but failed to disclose the defect to consumers.

Thompson Medical Co.

The complaint alleges that this company and its advertising agency, Ogilvy & Mather, Inc., misled consumers by making unsubstantia

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PART III (Adjudicative Stage)
CONSENT AGREEMENTS ACCEPTED AND PUBLISHED FOR PUBLIC COMMENT

COMPETITION MISSION

Lehigh Portland Cement Co.

Lehigh Portland Cement Co. was ordered to sell its Hannibal, Mo., cement plant and three cement distribution terminals. The complaint alleged that the acquisition of the new cement plants could substantially reduce competition in the manufacture of portland cement in the Midwest. Under the agreement, Lehigh must divest, within two years, all rights to the Hannibal cement manufacturing plant, as well as cement distribution terminals in Summit, Ill., Bellendorf, Iowa and St. Louis, Mo. The properties must remain operational until they are sold, and Lehigh must not permit any deterioration beyond normal wear and tear. In addition, Lehigh may not acquire cement plants or distribution terminals in Missouri, Iowa, Minnesota, Wisconsin or Illinois for ten years without prior Commission approval.

The Times Mirror Co., Inc.

The Times Mirror Co., publisher of The L

Chrysler Corp. and Aurora Chrysler-Plymouth, Inc.

Chrysler entered into a consent agreement which requires that its official accounting manual must include procedures for dealers to calculate and refund surpluses to consumers whose vehicles were repossessed. In addition, Chrysler agreed to ensure that dealers it owns or controls make refunds to consumers whose vehicles were sold at a profit in the past.

George Irvin Chevrolet Co.

This company has entered into a consent agreement which requires that it presents clear and conspicuous credit information In its television advertisements. The company allegedly violated provisions of the Truth-in-Lending Act and Regulation Z.

Teledyne, Inc. and J. Walter Thompson Co.

Teledyne and its advertising agency have agreed to a consent agreement which requires that they have a reasonable basis for

have

PART III (Adjudicative Stage)
CONSENT AGREEMENTS ISSUED IN FINAL FORM

COMPETITION MISSIONAL FORM

Ross, a competitor in the manufacture of electrical busways and conduit fittings, and Narco, a competitor in the manufacture and sale of electronic medical devices. The complaint alleged that the interlock violated Sec. 8 of the Clayton Act, which prohibits interlocks between boards of competing companies where the elimination of competition between them by agreement "would constitute a violation of the provisions of any of the antitrust laws." The order is limited to interlocks in product markets in which at least one of the companies involved in the interlock has at least one percent or ten million dollars of that company's sales.

Sherman Hope, M.D.

Five doctors in Brownfield, Texas were ordered to refrain from interfering with the recruitment plans of hospitals, or with any contractual arrangement between a hospital and a doctor. According to the complaint, the five doctors boycotted the Brownfield Medical Center, because it recruited doctors by offering them guaranteed income. The five doctors were the only active ones in the Brownfield area of west Texas, and had specialties including surgery, internal medicine, and family

INITIAL DECISIONS

COMPETITION MISSION

Beatrice Food Co.

In an initial decision issued by an administrative law judge, Beatrice Food Co., a large producer of orange juice, was required to divest Tropicana, a producer of ready-to-drink orange juice and other citrus products, because its 1978 acquisition of Tropicana violated the antitrust laws. The judge found that the merger would increase the already high concentration in the market, and thus reduce competition, because it gave Tropicana distribution advantages in areas where its shipping costs would otherwise have prevented it from becoming dominant. Beatrice was also prohibited from making acquisitions in the ready-to-drink orange juice industry without Commission permission for a period of ten years.

ITT Continental Baking Co.

An administrative law judge found that ITT Continental Baking Co., the world's largest baker, had attempted to monopolize the wholesale white bread market by engaging in price discrimination and predatory pricing. The decision prohibits Continental from discriminating among competing purchasers of its bread products where such an action would decrease competition among the purchasers. The decision also banned subsidizing below-cost prices in one market area through higher prices in a second area, except when necessary to prevent erosion of sales volume to competitors who are selling below Continental's costs. Finally, the order requires the company to keep records of its costs for ten years.

Ethyl Corp.

Ethyl

petitor's price, or using a most favored nation clause. Under the order, customers must also be informed of transportation costs which are included in the price and allowed to instead furnish transportation for the shipment.

Michigan State Medical Society

The Michigan State Medical Society conspired to fix physician fees and influence reimbursement policies of Blue Cross and Blue Shield an administrative law judge found. The judge also rejected the medical society's argument that it was exempt from antitrust scrutiny. Under the order, the society may not act as an agent for members who are deciding whether to accept the terms of a participation agreement with a health-care plan, nor may the society make any collective threats to coerce a third-party payer to accept a position taken by members concerning reimbursement or terms of any particular agreement.

Russell Stover Candies, Inc.

An administrative law judge dismissed a complaint against Russell Stover Candies, Inc. Relying upon the Supreme Court's decision in United States v. Colgate, the administrative law judge held that the company had lawfully exercised its own independent discretion as to whom it would deal with. Russell Stover Candies had been charged with suggesting retail prices for its candy and refusing to do business with stores that discounted which, together with the acquiescence of many complaint stores, was alleged to demonstrate a tacit agreement to maintain prices. However, in the absence of evidence of agreement or coercion, the administrative law judge held, Colgate controlled, and tinder Colgate, merely suggesting prices and refusing to deal with discounters was not a violation of the Sherman Act.

Kellogg, Inc.

An administrative law judge ruled that the FTC's lawyers had failed to prove either conspiracy or monopolization charges against the nation's three largest ready-to-eat cti5caggsinthe nation's thr of house brand cereals were found to have been done independently and without collusion; heavy industry advertising expenditures were found to be competitive rather than exclusionary; and there was sufficient evidence to support allegations that a shelf allocation program was anticompetitive.

Soft-Drink Manufacturers

An administrative law judge discharged the complaints against five soft-drink companies at the request of Commission attorneys. The complaints had charged that Crush International Ltd., Dr Pepper Co., The Seven-Up Co., Royal Crown Cola Co., and Norton Simon, Inc. had lessened or eliminated competition in the distribution and sales of syrup and soft-drink products. The judge based his decision on the Commission's dismissal of similar complaints against Coca-Cola and PepsiCo subsequent to the passage of the Soft Drink Interbrand Competition Act of 1980.

CONSUMER PROTECTION MISSION

Sterling Drug

An FTC administrative law judge prohibited the maker of Bayer Aspirin, Bayer Children's Aspirin, Vanquish, Cope and Midol from making effectiveness and superiority claims without reliable scientific evidence to back them up and to disclose the presence of aspirin.

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FINAL COMMISSION ORDERS

COMPETITION MISSION

Tenneco, Inc.

The Commission overruled an administrative law judge's decision and held that Tenneco's acquisition of Monroe Auto Equipment Co. was illegal, and ordered it to sell the shock absorber manufacturer. The Commission found that Tenneco was uniquely capable of entering the shock absorber market on its own, and its merger with Monroe would remove a significant potential competitor from the market, thus reducing competition. Responding to the administrative law judge's finding that there was no evidence that Tenneco was actually planning to enter the shock absorber field, the Commission said that Tenneco had eliminated the benefits of a perceived potential competitor, who had, in the recent past, affected the behavior of firms in the highly concentrated market merely by the threat of entry. The order also banned further acquisitions without prior Commission approval for ten years.

Exxon Corp.

The Commission accepted the recommendation of the Bureau of Competition to dismiss a major antitrust suit against eight oil companies. The dismissal resulted from a consensus that the limited progress to date held out little hope of further progress in the future, and that continuing litigation would, therefore, not be in the public interest. Exxon Corp., Texaco, Inc., Gulf Oil Corp., Standard Oil of California, Standard Oil of Indiana, Shell Oil Co., Atlantic Richfield and Mobil Oil were all charged with a range of anticompetitive practices involving production, refining and other aspects of the petroleum industry. The complaint was dismissed without prejudice, and the Commission stated that the dismissal did not necessarily mean that there had not been problems in the competitive performance of the oil industry and left open the possibility that the Commission would address problems in the oil industry through a more focused proceeding.

Soft-Drink Companies

The Commission upheld the initial decision to dismiss antitrust complaints against five soft-drink companies: Crush International Ltd., Dr Pepper Co., The Seven Up Co., Royal Crown Cola Co., and Norton Simon, Inc., had been charged with restraining competition by means of exclusive territorial provisions in their licensing agreements with bottlers. The Commission affirmed dismissal of the cases on grounds that the Soft Drink Interbrand Competition Act of 1980 had undercut their legal basis. suronCo

American General Insurance Co.

The Commission dismissed a 1971 complaint challenging the American General Insurance Co.'s acquisition of Fidelity and Deposit Co. of Maryland. The complaint had charged that the merger could reduce competition in the fidelity and surety bond markets. However, on remand from the Ninth Circuit Court of Appeals ten years later, the Commission decided to dismiss the case on grounds that American General had sold the Fidelity and Deposit Co. of Maryland in late 1980, and had thus removed itself from the markets which were the subject of antitrust concern. The Commission noted that American General had reaped the fruits of the illegal acquisition, but determined that it would not be in the public interest to issue an order against the company.

Equifax, Inc.

The Commission also dismissed a complaint against Equifax, Inc., a consumer-credit reporting agency, on remand from the

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Heublein, Inc.

The Commission overturned an initial decision and dismissed a complaint that Heublein's acquisition of United Vintners violated federal antitrust laws. The initial decision contained three antitrust theories: that the merger eliminated existing competition between the companies; that it eliminated Heublein as a potential entrant into the vine market; and that Heublein's strength in the alcoholic beverage industry would unduly entrench United's position as a market leader. The Commission found that in light of Heublein's extremely small market share and the small shares of market leaders, there was insufficient evidence of injury to competition to establish a violation of Sec. 7 of the Clayton Act.

CONSUMER PROTECTION MISSION

Equifax, Inc.

The Commission ordered Equifax, a consumer credit reporting agency, to end practices that violate the Fair Credit Reporting Act and Sec. 5 of the Federal Trade Commission Act.

Litton Industries, Inc.

The Commission ordered Litton to refrain from advertising that its microwave ovens are superior to others and that independent technicians prefer Litton ovens over competing products unless there is a reasonable basis for such claims.

Montgomery Ward and Co., Inc.

The Commission ordered Montgomery Ward to have binders containing warranty information, or signs directing customers to them, "in a prominent location" on each sales floor in their stores.

Horizon Corp., et. al.

The Commission ordered Horizon to pay $14.5 million in restitution and spend over the next 20 years an additional $45 million for improvements. The company misrepresented and omitted facts which led purchasers to believe that their underdeveloped land was an excellent, risk-free investment that would mature over a short term.

Household Finance Co.

The Commission dismissed a complaint charging Household Finance with violating the Truth-in-Lending Act.

American Home Products Corp.

The Commission ordered the makers of Anacin to discontinue advertisements that claim the product "contains the pain reliever most recommended by doctors" without disclosing that the pain reliever is aspirin and that the product relieves tension.

Kroger Co.

The Commission ordered Kroger to refrain from advertising any survey generalizing the results to products not actually surveyed unless the survey is conducted in a competent and reliable manner or unless the ad fairly and impartially presents conclusions that may be drawn from the survey.

APPELLATE COURT REVIEW OF COMMISSION ORDERS

American Medical Association

On October 7, 1980, the Court of Appeals for the Second Circuit enforced as modified the Commission's order requiring the American Medical Association to cease and desist from regulating certain business aspects of the medical profession and to disaffiliate any component medical society that fails to comply with the order. The Supreme Court subsequently affirmed the Court of Appeals' decision by an evenly divided vote.

Francis Ford, Inc.

On August 24, 1981, the Court of Appeals for the Ninth Circuit vacated the Commission's order on the ground that the Commission exceeded its authority by preceding to change existing law by adjudication rather than by rulemaking. The Commission has filed a petition for certiorari in the Supreme Court.

Kaiser Aluminum & Chemical Corp.

On July 7, 1981, the Court of Appeals for the Seventh Circuit remanded this merger case to the Commission for further proceedings, holding that the Commission did not define the relevant markets properly and that correct legal principles were not applied in reaching the determination that the effect of the acquisition might be substantially to lessen competition.

TRW, Inc.

On June 8, 1981, the Court of Appeals for the Ninth Circuit affirmed the Commission's finding that respondents violated the Clayton Act's prohibition against interlocking directorates, but vacated the Commission's order on the ground that prospective relief was unnecessary in the circumstances of this case.

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SUPREME COURT REVIEW OF COMMISSION ORDERS

Official Airline Guides, Inc.

On February 23, 1981, the Supreme Court denied the Commission's petition for certiorari, thus letting stand the Second Circuit's decision vacating the Commission's order and holding that the Commission erred in holding that, as a monopolist, the publisher of the Airline Guide had a duty not to discriminate unjustifiably between classes of carriers so as to place one at a competitive disadvantage.

SCM Corp.

On October 6, 1980, the Supreme Court denied respondent's petition for certiorari, thus letting stand the Second Circuit's decision upholding the Commission's final order. The Commission's order was directed at an interlocking directorate.

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ECONOMIC REPORTS

Petroleum Product Price Regulations, Output Efficiency, and Competitive Effects, by Scott Harvey and Calvin T. Roush, Jr., February 1981.

This report examines the effects of the Department of Energy regulations that governed the price of refined petroleum products (as opposed to crude oil) from May 1973 to January 1981. Theoretical models are used to determine the profit incentives created by the regulations as compared to the incentives faced by firms operating in an unregulated market. It is shown that the regulations: 1) encouraged the allocation of excessive resources toward supplying petroleum products; 2) caused market shares to be determined largely by historical accident rather than relative efficiency; 3) encouraged an inefficient degree of vertical integration; and 4) tended to cause refiners and marketers to use inefficient methods to produce and supply petroleum products. It is also shown that the inefficiencies induced by the product price ceiling regulations may have caused prices to be higher than they would have been in the absence of those regulations.

Strategy, Predation, and Antitrust Analysis, Steven C. Salop, editor, September 1981.

This volume contains the proceedings of a conference held at the Federal Trade Commission. Conference papers focus upon the antitrust implications of the growing economic and legal literature on strategy and predation. The literature views firms as sophisticated business strategists who formulate tactics by considering the likely reactions of their competitors. The seven papers in the volume provide the background and theory underlying strategic antitrust analysis as well as applications of that analysis to specific situations.

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INTERVENTION BEFORE OTHER FEDERAL AND STATE AGENCIES

International Trade Commission

The Bureaus of Economics and Competition presented comments before the International Trade Commission concerning the costs and benefits of tariffs and/or quotas on imported automobiles. The comments concluded that tariffs and quotas appear to be very inefficient ways to increase employment and provide additional capital to the U.S. automobile industry. Tariffs and quotas would increase the prices of most cars sold in the U.S., and only a fraction of the extra dollars spent by consumers would go to providing additional jobs or capital. In additional the comments note that, on balance, tariffs or quotas would tend to be anticompetitive. Although tariffs and quotas would provide additional funds to the industry, and thereby decrease the likelihood of bankruptcy of domestic auto companies, the comments concluded that there appear to be less expensive means of providing additional capital and employment.

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ISSUE PAPERS

Physician Control of Blue Shield Plans: A Further Discussion of the Issues by Keith Anderson, David Kass, and Paul Pautler (January 1981)

This study supplements a 1979 economic report. The study concludes that where medical societies control selection of Blue Shield board members, plans have higher average reimbursement rates for selected procedures. However, the relationship is evident only when control is exercised by an organized group of physicians. The mere presence of doctors on a plan's board of directors is not associated with higher fees.

Efficiency Considerations in Merger Enforcement by Alan A. Fisher and Robert H. Lande (September 1981)

This paper analyzes the Congressional and judicial background of the efficiency defense as an offset to the market-power effects of mergers. The authors demonstrate that existing methodologies are incapable of generating accurate estimates of any efficiencies due to mergers. Accordingly, the paper concludes that allowing an efficiency defense from individual mergers would create substantial problems.