Second, the majority suggests that the "principal forms" of discriminatory practices that led to the complaints have been replaced with other pricing strategies that "may limit the potential benefits of the proposed consent agreements." This rationale for dismissal does not suggest a conclusion that the respondents did not violate the law but rather appears to reflect a concern about the remedial effectiveness of the proposed orders. [3] Traditionally, an order of the Commission addressing unlawful price discrimination requires the respondent to cease and desist from such conduct in the future. [4] Such an order is not easily outmoded by changing fashions in discriminatory practices. To the extent that the proposed consent orders were inadequate, the usual options have been available to the Commission to seek appropriate relief: The Commission could have sought appropriate revisions in the proposed consent orders, or it could have rejected the orders and returned the matters to adjudication.

Third, the majority expresses dismay that orders against the six book publishers may be ineffective, because the respondents would be free to use the "meeting competition" defense [5] to meet the prices of publishers not subject to Commission order. Of course, the respondents would be free to meet competition. That is what the defense is for. If what the majority means to suggest is that book publishers not under order also are engaging

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[3] To the extent that the majority may intend to suggest that the specific practices that led to the complaints have been abandoned, it should be noted that abandonment is not a sufficient basis, under well-established precedent, to avoid a Commission order. See, e.g., Warner Communications, Inc., 105 F.T.C. 342 (1985).

[4] E.g., YKK (U.S.A.) Inc., 98 F.T.C. 25 (1981). See also the form of notice order the Commission issued with each of the complaints in these six cases: "[R]espondent shall . . . cease and desist from discriminating in price" by selling to two purchasers at different prices.

[5] Section 2(b) of the Robinson-Patman Act, 15 U.S.C. § 13(b).

in discriminatory pricing, the solution would appear to be to initiate additional investigations, not to dismiss these complaints. As far as I know, the Commission never before has deemed enforcement of the Robinson-Patman Act fruitless on the ground that a respondent under order could lawfully meet the presumptively lawful prices of its competitors, and it seems a very odd proposition to adopt.

Finally, the majority cites the success that the American Booksellers Association has had in its private Robinson-Patman suits against several publishers. The Association has negotiated settlements with four publishers. The implication is that the Association's success should somehow stand in for the Commission's law enforcement. This is very confusing, when the same majority suggests that a mere six FTC orders would have been ineffective.

The unfortunate choice to dismiss the complaints may indeed save "scarce public resources" from further expenditure in these cases, but it is an imprudent waste of the substantial law enforcement resources that this agency already has expended.

I dissent.