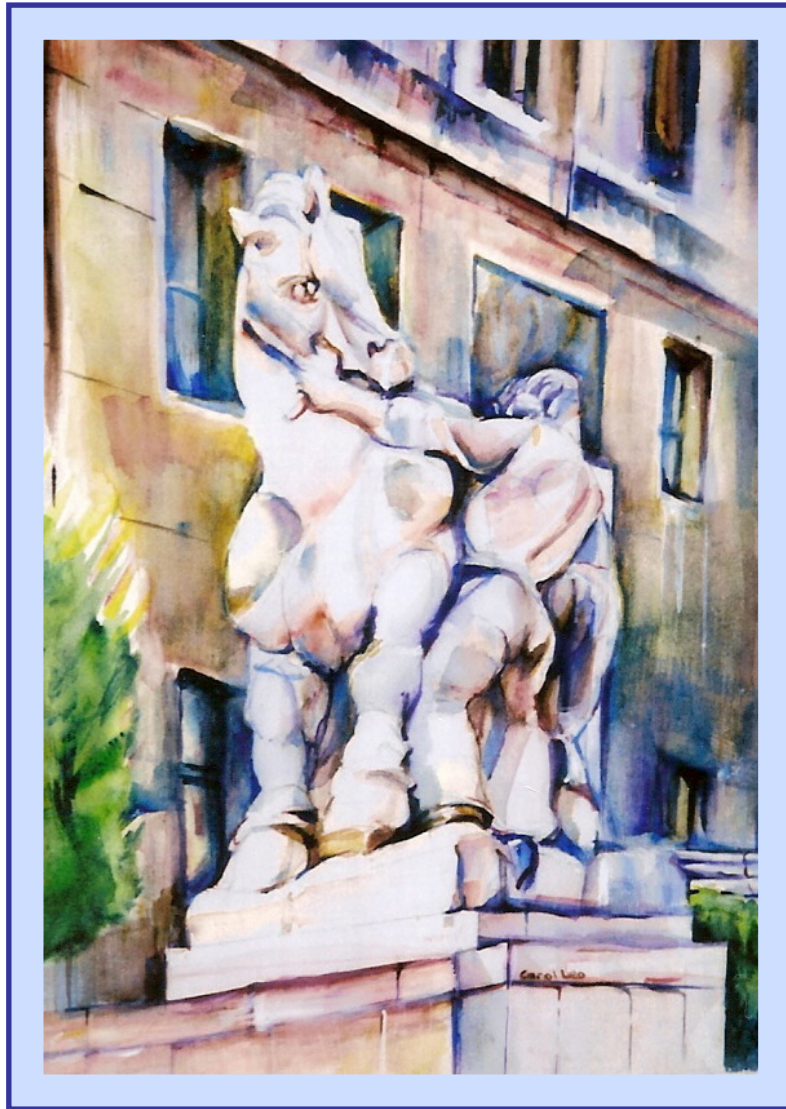


# Federal Trade Commission

## Bureau of Competition

Jeffrey Schmidt, Director



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**Antitrust Enforcement Activities  
Fiscal Year 2003 - March 31, 2007**

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**ABA Antitrust Section Spring Meeting 2007**

**ABA ANTITRUST SECTION  
SPRING MEETING**

**Summary of Bureau of Competition Activity  
Fiscal Year 2003 Through March 31, 2007**

**Table of Contents**

<b>I.</b>	<b>Mergers .....</b>	<b>1</b>
<b>A.</b>	<b>Consent Orders .....</b>	<b>1</b>
	American Air Liquide, Inc. ....	1
	Allergan, Inc. ....	2
	Aspen Technology, Inc. ....	2
	Baxter International, Inc. ....	2
	Barr Pharmaceutical, Inc. ....	2
	Buckeye Partners, L.P. ....	2
	Boston Scientific Corp ....	3
	Cemex, S.A. ....	3
	Cephalon, Inc. ....	3
	Chevron Texaco Corporation ....	3
	Cytec Industries, Inc. ....	3
	Dainippon Ink and Chemicals, Inc. ....	3
	DaVita Inc. ....	4
	DSM N.V. ....	4
	Enterprise Products Partners L.P. ....	4
	Enterprise Products Partners L.P. ....	4
	Fresenius AG ....	4
	GenCorp Inc. ....	4
	General Dynamics Corporation ....	5
	General Electric Company ....	5
	General Electric Company ....	5
	Genzyme Corporation ....	5
	Hologic, Inc. ....	5
	Hospira, Inc. ....	6
	Itron, Inc. ....	6
	Johnson & Johnson ....	6
	Johnson & Johnson ....	6
	Kinder Morgan, Inc. ....	6
	Libbey, Inc. ....	7
	Linde, AG. ....	7
	Magellan Midstream Partners, L.P. ....	7
	MSC. Software Corporation ....	7
	Novartis AG ....	8
	Occidental Chemical Corporation ....	8
	Penn National Gaming, Inc. ....	8

	Pfizer Inc.....	8
	Phillips Petroleum Company .....	8
	Quest Diagnostics, Inc. ....	8
	Sanofi-Synthélabo .....	9
	Service Corporation International .....	9
	Shell Oil Company .....	9
	Southern Union Company.....	9
	Teva Pharmaceutical Industries Ltd.....	9
	The Procter & Gamble Company .....	9
	The Boeing Company .....	10
	Thermo Electron Corporation.....	10
	Valero L.P.....	10
	Wal-Mart Stores, Inc.....	10
	Watson Pharmaceuticals, Inc. ....	11
B.	Authorizations to Seek Preliminary Injunctions .....	11
	Aloha Petroleum, Ltd .....	11
	Arch Coal, Inc. ....	11
	Kroger Company/Raley’s Corporation .....	11
	Nestlé Holdings, Inc. ....	11
	Vlasic Pickle Company .....	12
C.	Commission Opinions/Initial Decisions .....	12
	Chicago Bridge & Iron Company .....	12
	Northwestern Healthcare Corporation.....	12
D.	Court Decisions .....	13
	Arch Coal, Inc. ....	13
E.	Order Violations.....	13
	Boston Scientific Corporation.....	13
	RHI AG .....	14
F.	Other Commission Orders .....	14
G.	Administrative Complaints .....	14
	Equitable Resources, Inc. ....	14
H.	Other .....	14
	Horizontal Merger Investigation Data.....	14
	Conference on the Price Effects of Mergers and Concentration in the United States Petroleum Industry.....	15
	Horizontal Merger Investigation Data.....	15
	Merger Efficiency Roundtable.....	15
	Merger Enforcement Workshop .....	15
	Merger Remedies - Second Workshop.....	15
II.	<b>Hart-Scott-Rodino Antitrust Improvements Act Enforcement .....</b>	<b>16</b>
A.	Court Decisions .....	16
	Scott R. Sacane .....	16
	William H. Gates, III .....	16
B.	Consent Orders .....	16
C.	Complaints - Filed.....	16
	Blockbuster, Inc. ....	16

D.	Complaints - Authorized .....	17
	Arch Coal, Inc. ....	17
E.	Rules and Formal Interpretations .....	17
F.	Other .....	18
<b>III.</b>	<b>Non-Merger Enforcement .....</b>	<b>19</b>
A.	Commission Opinions/Initial Decisions .....	19
	Kentucky Household Goods Carriers Association, Inc. ....	19
	North Texas Specialty Physicians .....	19
	Rambus, Inc. ....	20
	South Carolina State Board of Dentistry .....	21
	Union Oil of California .....	21
B.	Court Decisions .....	21
	PolyGram Holding, Inc. (The Three Tenors) .....	21
	Schering-Plough Corporation .....	22
C.	Authorizations to Seek Preliminary/Permanent Injunctions .....	22
	Alpharma, Inc. and Perrigo Company .....	22
	Warner Chilcott .....	23
D.	Consent Orders .....	23
	Advocate Health Partners .....	23
	Alabama Trucking Association, Inc. ....	23
	American Institute for Conservation of Historic and Artistic Works .....	23
	Anesthesia Service Medical Group, Inc. and Grossmont Anesthesia Services Medical Group .....	24
	Austin Board of Realtors .....	24
	Biovail Corporation .....	24
	Bristol-Myers Squibb Company .....	24
	California Pacific Medical Group dba Brown and Toland Medical Group .....	25
	Carlsbad Physician Association .....	25
	Clark County, Washington Attorneys .....	25
	Evanston Northwestern Healthcare Corporation .....	25
	Health Care Alliance of Laredo, L.C., .....	25
	Indiana Household Movers and Warehousemen, Inc. ....	26
	Information and Real Estate Services, LLC .....	26
	Institute of Store Planners .....	26
	Iowa Movers and Warehousemen’s Association .....	26
	Maine Health Alliance .....	26
	Memorial Hermann Health Network Providers .....	26
	Minnesota Transport Services Association .....	26
	MiRealSource, Inc. ....	27
	Missouri Board of Embalmers and Funeral Directors .....	27
	Monmouth County Association of Realtors .....	27
	Movers Conference of Mississippi, Inc. ....	27
	National Academy of Arbitrators .....	27
	New Hampshire Motor Transport Association .....	28
	New Century Health Quality Alliance, Inc. ....	28
	New Millennium Orthopaedics .....	28

	<b>Northern New England Real Estate Network, Inc.</b> .....	28
	<b>Partners Health Network, Inc.</b> .....	28
	<b>Physician Network Consulting, L.L.C.</b> .....	28
	<b>Piedmont Health Alliance, Inc.</b> .....	29
	<b>Preferred Health Services, Inc.</b> .....	29
	<b>Professionals in Women’s Care</b> .....	29
	<b>Puerto Rico Association of Endodontists, Corp.</b> .....	29
	<b>Realtors Association of Northeast Wisconsin, Inc.</b> .....	30
	<b>San Juan IPA</b> .....	30
	<b>Southeastern New Mexico Physicians IPA</b> .....	30
	<b>South Georgia Health Partners, L.L.C.</b> .....	30
	<b>SPA Health Organization dba Southwest Physician Associates</b> .....	30
	<b>Surgical Specialists of Yakima</b> .....	30
	<b>Tenet Healthcare Corporation</b> .....	31
	<b>Union Oil Company of California</b> .....	31
	<b>Valassis Communications, Inc.</b> .....	31
	<b>Virginia Board of Funeral Directors and Embalmers</b> .....	31
	<b>Washington University Physician Network</b> .....	32
	<b>White Sands Health Care System, L.L.C.</b> .....	32
	<b>Williamsburg Area Association of Realtors, Inc.</b> .....	32
<b>E.</b>	<b>Administrative Complaints</b> .....	32
	<b>MiRealSource, Inc.</b> .....	32
	<b>RealComp II Ltd.</b> .....	32
<b>F.</b>	<b>Other</b> .....	33
	<b>Public Documents/Policy Statements/Conferences</b> .....	33
	<b>Commission Studies/Guidelines</b> .....	33
	<b>Advisory Opinions</b> .....	35
	<b>Advocacy Filings</b> .....	36
	<b>Workshops/Hearings/Conferences</b> .....	43
	<b>Intellectual Property and Patent Law</b> .....	45
	<b>Other</b> .....	46
<b>IV.</b>	<b>International Activities</b> .....	<b>47</b>
<b>V.</b>	<b>Competition Speeches</b> .....	<b>48</b>
<b>VI.</b>	<b>Statistics</b> .....	<b>57</b>
<b>A.</b>	<b>Fiscal Year 2007 (October 1, 2006 though March 31, 2007)</b> .....	57
<b>B.</b>	<b>Fiscal Year 2006</b> .....	58
<b>C.</b>	<b>Fiscal Year 2005</b> .....	59
<b>D.</b>	<b>Fiscal Year 2004</b> .....	60
<b>E.</b>	<b>Fiscal Year 2003</b> .....	62

# ABA ANTITRUST SECTION SPRING MEETING

## *Bureau of Competition Activity Fiscal Year 2003 through March 31, 2007*

Fiscal Year	Total Enforcement Actions	Consents		Complaints	Preliminary and/or Permanent Injunctions	Civil Penalty Cases	Abandoned or Fix-it-First Transactions
		Merger	Non Merger	Merger and Non Merger			
2003	44	7	16	8	3	0	10
2004	26	10	7	2	2	2	3
2005	20	9	4	0	1	2	4
2006	22	9	5	0	1	0	7
2007 (Oct-Mar)	20	9	7	3	0	0	1

## I. Mergers

### A. Consent Orders

#### **American Air Liquide, Inc.**

(Final Order June 29, 2004): L' Air Liquide was permitted to acquire Messer Griesheim GmbH, a leading industrial gas producer. Under terms of the order, Air Liquide is required to divest six air separation units operated by Messer in California, Texas, Louisiana, and Mississippi within six months. According to the complaint, the transaction as proposed would substantially lessen competition in the market for liquid argon, liquid oxygen and liquid nitrogen.

**Allergan, Inc.**

(Final Order April 21, 2006): The consent order requires that Allergan and Inamed divest the rights to develop and distribute Reloxin, a potential Botox rival, to settle charges that Allergan's \$3.2 billion purchase of Inamed would reduce competition and force consumers to pay higher prices for botulinum toxin type A products. Under the terms of the FTC settlement, the companies will return the development and distribution rights to Reloxin to Ipsen Ltd., its U.K.-based manufacturer.

**Aspen Technology, Inc.**

(Final Order December 20, 2004) Under terms of a consent order, Aspen agreed to divest Hypotech's continuous process and batch process assets and Aspen's operator training software and service business to a Commission-approved buyer to settle charges in the complaint and resolve the administrative proceedings. The Commission issued an administrative complaint on August 6, 2003 that challenged Aspen's 2002 acquisition of Hyprotech, Ltd. alleging that the acquisition eliminated a significant competitor in the provision of process engineering simulation software for industry. According to the complaint, the acquisition has led to reduced innovation competition in six specific process engineering simulation software markets.

**Baxter International, Inc.**

(Final Order February 3, 2003): Baxter settled Commission concerns stemming from its \$316 million proposed acquisition of Wyeth Corporation's generic injectable drug business and agreed to divest several pharmaceutical products. The Commission charged that the acquisition would reduce competition in the manufacture and sale of propofol (a general anesthetic); new injectable iron replacement therapies; metoclopramide (used to treat nausea); and vecuronium and pancuronium (neuromuscular blocking agents used to temporarily freeze muscles during surgery). The consent order requires divestitures in each of the pharmaceutical markets.

**Barr Pharmaceutical, Inc.**

(Final Order December 8, 2006): The consent order settles charges that Barr Pharmaceutical, Inc.'s proposed acquisition of Pliva d.d for approximately \$2.5 billion would have eliminated current or future competition between Barr and Pliva in certain markets for generic pharmaceuticals treating depression, high blood pressure and ruptured blood vessels, and in the market for organ preservation solutions, thereby increasing the likelihood that consumers would pay more for these vital products. In settling the Commission's charges, Barr is required to sell its generic antidepressant trazodone and its generic blood pressure medication triamterene/HCTZ. Barr also is required to divest either Pliva's or Barr's generic nimodipine for use in treating ruptured blood vessels in the brain. Finally, Barr is required to divest Pliva's branded organ preservation solution Custodial.

**Buckeye Partners, L.P.**

(Final Order December 17, 2004): Buckeye agreed to notify the Commission before acquiring any interest in the Niles petroleum terminal for a period of ten years under provisions of a consent order. The consent order settled charges that Buckeye's proposed acquisition of five refined petroleum products pipelines and 24 petroleum products terminals in the United States

from Shell Oil Company would reduce competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area of Niles, Michigan.

### **Boston Scientific Corp**

(Final Order July 25, 2006): The consent order settles charges that the \$27 billion acquisition of Guidant Corporation by Boston Scientific Corporation would harm competition and consumers in several significant medical device markets. Guidant Corporation by Boston Scientific Corporation are the largest market shareholders in several coronary medical device markets in the U.S., together accounting for 90% of the U.S. PTCA balloon catheter market and 85% of the U.S. coronary guidewire market. The consent order required the divestiture of Guidant's vascular business to an FTC-approved buyer.

### **Cemex, S.A.**

(Final Order March 25, 2005): Cemex S.A. agreed to settle concerns stemming from its proposed \$5.8 billion acquisition of RMC Group PLC. The final consent order required Cemex to divest RMC's five ready-mix concrete plants in the Tucson, Arizona area, at no minimum price to a Commission-approved buyer.

### **Cephalon, Inc.**

(Final Order September 20, 2004): The consent order settled charges that Cephalon's proposed acquisition of Cima Labs, Inc. would allow Cephalon to continue its monopoly in the United States market for drugs that eliminate or reduce the spikes of severe pain that chronic cancer patients experience. The consent order required Cephalon to grant Barr Laboratories, Inc. a fully paid, irrevocable license to make and sell a generic version of Cephalon's breakthrough cancer pain drug, Actiq, in the United States.

### **Chevron Texaco Corporation**

(Final Order July 27, 2005): Under the terms of the consent orders Chevron and Unocal will cease enforcing Unocal's patents covering reformulated gasoline that complies with California Air resources Board Standard, will not undertake any new enforcement efforts related to the particular patents, and will cease all attempts to collect damages, royalties, or other payments related to the use of any of the patents. In addition, the companies will dismiss all pending legal actions related to alleged infringement of the patents. According to the complaint, the acquisition of the Unocal patents by Chevron would have facilitated coordinated interaction among downstream refiners and marketers of CARB gasoline.

### **Cytec Industries, Inc.**

(Final Order April 7, 2005): A final consent order requires Cytec Industries, Inc. to divest UCB's Amino Resins Business in Massachusetts and Germany to a Commission-approved buyer. According to the complaint issued with the agreement, the acquisition as proposed would eliminate direct competition between the two firms in the market for amino resins used for industrial liquid coatings and rubber adhesion promotion.

### **Dainippon Ink and Chemicals, Inc.**

(Final Order March 13, 2003): Dainippon agreed to divest the perylene business of its U.S. subsidiary, Sun Chemical Corporation, to Ciba Specialty Chemicals Inc. and Ciba Specialty



Chemicals Corporation to settle allegations that its proposed acquisition of Bayer Corporation's high-performance pigment manufacturing facility would eliminate competition in the highly concentrated world market for perylenes – organic pigments used to impart unique shades of red color to products, including coatings, plastics and fibers.

**DaVita Inc.**

(Final Order November 18, 2005): The consent order resolves the competitive issues raised by DaVita's proposed \$3.1 billion purchase of rival outpatient dialysis clinic operator Gambro Healthcare Inc. from Gambro AB. Pursuant to the order, DaVita sold 69 dialysis clinics and end two management services contracts in 35 markets across the United States within 10 days of consummating its purchase of Gambro. The Commission has approved Renal Advantage Inc. as the buyer of most of the clinics to be divested, and entered into an order to maintain assets with DaVita.

**DSM N.V.**

(Final Order January 6, 2004): A consent order permitted DSM N.V. to acquire the Vitamins and Fine Chemicals Division of Roche Holding AG but requires DSM to divest its phytase business to BASF AG within 10 days after the transaction is completed. Phytase is an enzyme added to certain animal feed to promote the digestion of nutrients necessary for livestock production.

**Enterprise Products Partners L.P.**

(Final Order November 23, 2004): Enterprise Products Partners L.P. settled charges that its \$13 billion merger with GulfTerra Energy/Partners L.P. would eliminate competition in two markets: the pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico; and propane storage and terminaling services in Hattisburg, Mississippi. The consent order requires the divestiture of an interest in a pipeline transportation system and an interest in a propane facility that serves the Dixie Pipeline.

**Enterprise Products Partners L.P.**

(Final Order November 3, 2006): Enterprise Products Partners L.P. settled charges that its \$1.1 billion acquisition of TEPPCO Partners' NGLs salt dome storage businesses would likely result in higher prices and service degradations by reducing the number of commercial salt dome NGL storage providers in Mont Belvieu, Texas, from four to three. The FTC's order required TEPPCO to divest its interests in the world's largest NGL storage facility in Mont Belvieu, Texas, to an FTC-approved buyer.

**Fresenius AG**

(Final Order July 6, 2006): Fresenius AG settled charges that its purchase of rival dialysis provider Renal Care Group, Inc. would likely have resulted in higher prices for dialysis services. The consent order requires that Fresenius AG will sell 91 outpatient kidney dialysis clinics and financial interests in 12 more.

**GenCorp Inc.**

(Final Order December 19, 2003): A consent order allowed GenCorp Inc. to acquire Atlantic Research Corporation while requiring the divestiture of Atlantic's in-space liquid propulsion business within six months of consummating the transaction. According to the complaint issued

with the consent order, the transaction as originally planned would have lessened competition in the United States in four different types of in-space propulsion engines: monopropellant thrusters; bipropellant apogee thrusters; dual mode apogee thrusters; and biopropellant attitude control thrusters.

### **General Dynamics Corporation**

(Final Order February 9, 2007): The consent order settled charges that General Dynamics' proposed \$275 million acquisition of SNC Technologies, Inc. and SNC Technologies, Corp. (collectively, SNC) would likely undermine competition by bringing together two of only three competitors providing the U.S. military with melt-pour load, assemble, and pack (LAP) services used during the manufacture of ammunition for mortars and artillery. Absent relief, the proposed acquisition would likely force the U.S. military to pay higher prices for these munitions. General Dynamics is required to sell its interest in American Ordnance to an FTC-approved buyer within four months of acquiring SNC.

### **General Electric Company**

(Final Order January 28, 2004): A final consent order settled antitrust concerns stemming from General Electric Company's proposed acquisition of Agfa-Gevaert N.V.'s nondestructive testing business. According to the complaint issued with the consent order, the transaction as proposed would have eliminated competition in the United States markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages - equipment used to inspect the tolerance of materials without damaging them or impairing their future usefulness. The consent order requires General Electric to divest its worldwide Panametrics Ultrasonic NDT business to R/D Tech, Inc. within 20 days after the transaction is completed.

### **General Electric Company**

(Final Order October 25, 2004): General Electric was permitted to acquire InVision Technologies, Inc. with conditions that it divest InVision's YXLON x-ray nondestructive testing and inspection equipment to a Commission approved acquirer. According to the complaint issued with the consent order, the two firms are direct competitors in a highly concentrated market. The consent order protects competition in the United States market for specialized x-ray testing and inspection including standard x-ray cabinets; x-ray systems equipped with automated defect recognition software; and high-energy x-ray generators.

### **Genzyme Corporation**

(Final Order January 31, 2005): A consent order allowed Genzyme's acquisition of ILEX Oncology, Inc., but requires the companies to divest certain assets in the market for solid organ transplant acute therapy drugs. Specifically, Genzyme is required to divest all contractual rights related to ILEX's Campath®, an immunosuppressant antibody used in solid organ transplants to Schering AG.

### **Hologic, Inc.**

(Final Order August 9, 2006): The Commission approved a final consent order to ensure the maintenance of competition in the market for prone stereotactic breast biopsy systems (SBBSs). The Commission had challenged this merger which was consummated in 2005. The order

required the divestiture of all prone SBBS assets to Siemens, a company well-positioned to become a competitor in this market.

**Hospira, Inc.**

(Final Order March 23 18, 2007): The consent order settles charges that Hospira Inc.'s proposed \$2 billion acquisition of rival drug manufacturer Mayne Pharma Ltd. Would likely reduce competition and harm consumers. In settling the Commission's charges, the companies have agreed to divest to Barr Pharmaceuticals, Inc. (Barr), within 10 days of the acquisition, Mayne's rights and assets related to the following products: hydromorphone hydrochloride (hydromorphone), nalbuphine hydrochloride (nalbuphine), morphine sulfate (morphine), preservative-free morphine, and deferoxamine mesylate (deferoxamine).

**Itron, Inc.**

(Final Order August 5, 2004): The consent order, designed to preserve competition in the market for the manufacture and sale of mobile radio frequency automatic meter reading technologies for electric utilities in the United States, permitted Itron's \$255 million acquisition of Schlumberger Electricity, Inc. The consent order requires Itron to grant a royalty-free, perpetual, and irrevocable license to Hunt Technologies, Inc., creating an effective competitor in this market that allows utility companies and others to gather electric consumption data automatically and remotely from electricity meters.

**Johnson & Johnson**

(Final Order December 12, 2005): The consent order protects competition in three medical device product markets affected by Johnson & Johnson's proposed \$25.4 billion acquisition of Guidant Corporation. Under the terms of the order, J&J is required to 1) grant to a third party a fully paid-up, non-exclusive, irrevocable license, enabling that third party to make and sell drug eluting stents with the Rapid Exchange delivery system, 2) divest to a third party J&J's endoscopic vessel harvesting product line, and 3) end its agreement to distribute Novare Surgical System, Inc.'s proximal anastomotic assist device. On May 31st, 2006 the Commission granted a petition filed by Johnson and Johnson Corporation, requesting that the FTC reopen and set aside the entire decision and order concerning the proposed acquisition of Guidant Corporation.

**Johnson & Johnson**

(Final Order January 19, 2007): The consent order settles charges that Johnson & Johnson's (J&J) proposed \$16.6 billion acquisition of Pfizer Inc.'s (Pfizer) Consumer Healthcare business would likely reduce competition in the U.S. markets for over-the-counter (OTC) H-2 blockers used to prevent and relieve heartburn, OTC hydrocortisone anti-itch products, OTC night-time sleep aids, and OTC diaper rash treatments. In settling the Commission's charges, the companies have agreed to sell Pfizer's Zantac H-2 blocker business to Boehringer Ingelheim Pharmaceuticals Inc. (Boehringer), and Pfizer's Cortizone hydrocortisone anti-itch business, Pfizer's Unisom night-time sleep aid business, and J&J's Balmex diaper rash treatment business to Chattem, Inc.

**Kinder Morgan, Inc.**

(Final Order March 16, 2007): The order settles charges that the proposed \$22 billion deal whereby energy transportation, storage, and distribution firm Kinder Morgan, Inc. (KMI) would

be taken private by KMI management and a group of investment firms, including private equity funds managed and controlled by The Carlyle Group (Carlyle) and Riverstone Holdings LLC (Riverstone) would threaten competition between KMI and Magellan in eleven metropolitan areas in the Southeast, likely resulting in higher prices for gasoline and other light petroleum products. The order requires that Carlyle's and Riverstone's interest in Magellan become a passive investment, by requiring them to: (1) removing all of their representatives from the Magellan Board of Managers and its boards of directors, (2) ceding control of Magellan to its other principal investor, Madison Dearborn Partners, and (3) not influencing or attempting to influence the management or operation of Magellan.

### **Libbey, Inc.**

(Final Order October 7, 2002): The Commission authorized staff to seek a preliminary injunction to block Libbey's proposed \$332 million acquisition of Anchor Hocking, a subsidiary of Newell Rubbermaid, Inc., on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. The district court granted the Commission's request for an injunction on April 22, 2002. An administrative complaint, issued on May 9, extend the injunction until the conclusion of the administrative proceedings. Pursuant to the delegation of authority, the Commission withdrew the matter from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

### **Linde, AG**

(Final Order September 5, 2006): In August 2006, the FTC approved a final consent order relating to the proposed \$14.4 billion acquisition of the BOC Group by Linde requiring Linde to divest Air Separation Units (ASUs), bulk refined helium assets, and other assets in eight localities across the United States. The consent order aims to maintain competition in the markets for liquid oxygen, liquid helium, and bulk refined helium in several U.S. markets.

### **Magellan Midstream Partners, L.P.**

(Final Order November 23, 2004): Under terms of a consent order, Magellan completed its acquisition of pipelines and terminals in the Midwestern United States and a refined petroleum products terminal in Oklahoma City that supplies light petroleum products such as gasoline and diesel fuel from the Shell Oil Company. The consent order required Magellan to divest the Shell Oklahoma City terminal to a Commission-approved buyer within six months after the transaction is consummated.

### **MSC. Software Corporation**

(Final Order October 29, 2002): MSC settled charges that its 1999 acquisitions of Universal Analytics, Inc. and Computerized Structural Analysis & Research Corp. eliminated competition between the three firms in the development and application of engineering software. The administrative complaint issued October 2000, alleged that the two acquisitions would eliminate competition for advanced versions of Nastran, an engineering simulation software program used throughout the aerospace and automotive industries. The consent order required MSC to divest at least one clone copy of its current advance Nastran through royalty-free perpetual, non-exclusive licenses to one or two acquirers approved by the Commission.

**Novartis AG**

(Final Order September, 21 2005): To resolve overlaps for three generic pharmaceuticals that arose from Novartis AG's acquisition of Eon Labs, Inc., under the terms of a consent order, Novartis is required to divest all the assets necessary to manufacture and market generic desipramine hydrochloride tablets, orphenadrine citrate extended release (ER) tablets, and rifampin oral capsules in the United States to Amide within 10 days of Novartis's acquisition of Eon. Further, Novartis, through its Sandoz generic pharmaceuticals division, will supply Amide with orphenadrine citrate ER and desipramide hydrochloride tablets until Amide obtains Food and Drug Administration (FDA) approval to manufacture the products itself, and will assist Amide in obtaining all necessary FDA approvals.

**Occidental Chemical Corporation**

(Final Order July 13, 2005): A consent order allows Occidental Chemical Company's purchase of the chemical assets of Vulcan Materials Company, provided Occidental divests Vulcan's Port Edwards, Wisconsin, chemical facility and related assets. The consent order alleviates the alleged anticompetitive impact of the acquisition in the markets for potassium hydroxide, anhydrous potassium carbonate (APC), and potassium carbonate, which includes APC and liquid potassium carbonate. The Port Edwards facility will be divested to ERCO Worldwide or to another Commission-approved buyer within six months if a problem is encountered with ERCO sale.

**Penn National Gaming, Inc.**

(Final Order September 15, 2005): A consent order permitted Penn National Gaming, Inc.'s acquisition of Argosy Gaming Company, provided Penn sells Argosy's Baton Rouge casino to Columbia Sussex Corporation within four months of the order becoming final.

**Pfizer Inc.**

(Final Order May 27, 2003): A final consent order permits Pfizer Inc.'s acquisition of Pharmacia Corporation while requiring the divestiture of various products including extended release drugs used in the treatment of an overactive bladder; hormone replacement therapies; erectile dysfunction; canine arthritis; and motion sickness. Novartis AG, Neurocrine Biosciences, Inc., Schering-Plough Corporation, Johnson & Johnson, Insight Pharmaceuticals Corporation, and Cadbury Schweppes are named in the order as potential buyers of the various pharmaceuticals and products.

**Phillips Petroleum Company**

(Final Order February 7, 2003): A final consent order allows the merger of Phillips Petroleum and Conoco Inc. but requires certain divestitures and other relief to maintain competition in the gasoline refining market in specific areas of the United States. Among the assets to be divested are refineries, propane terminals, and natural gas gathering facilities. The combined firm will be known as ConocoPhillips.

**Quest Diagnostics, Inc.**

(Final Order April 3, 2003): Quest Diagnostics settled antitrust concerns that its proposed acquisition of Unilab Corporation would substantially increase concentration in the clinical

laboratory testing services market by agreeing to divest clinical laboratory testing assets in Northern California to Laboratory Corporation of America.

### **Sanofi-Synthélabo**

(Final Order September 20, 2004): The consent order settled antitrust concerns that Sanofi's proposed \$64 billion acquisition of Aventis would create significant overlaps in several markets for pharmaceutical products while creating the world's third largest pharmaceutical company. Under terms of the consent order, Sanofi must: 1) divest its Arixtra factor Xa inhibitor to GlaxoSmithKline, plc; 2) divest its key clinical studies for the Campto® cytotoxic colorectal cancer treatment to Pfizer, Inc. and 3) divest Aventis' contractual rights to the Estorra insomnia drug either to Sepracor, Inc. or to another Commission-approved buyer.

### **Service Corporation International**

(Final Order January 5, 2007): The consent order settled charges that Service Corporation International's (SCI) proposed acquisition of Alderwoods Group Inc. would likely lessen competition in 47 markets for funeral or cemetery services, leaving consumers with fewer choices and the prospect of higher prices or reduced levels of service. Under the settlement, SCI must sell funeral homes in 29 markets and cemeteries in 12 markets across the United States. In six other markets, SCI must sell certain funeral homes that it plans to acquire or end its licensing agreements with third-party funeral homes affiliated with SCI.

### **Shell Oil Company**

(Final Order November 18, 2002): Shell Oil Company was allowed to complete its \$1.8 billion acquisition of Pennzoil-Quaker State Company but required to divest certain assets to maintain healthy competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. Under terms of the consent order, Shell and Pennzoil must divest its 50 percent interest in Excel Paralubes (a base oil refinery in Westlake, Louisiana) and freeze Pennzoil's right to obtain additional Group II supply under a contract with ExxonMobil at approximately current levels (up to 6,500 barrels of base oil per day).

### **Southern Union Company**

(Final Order July 16, 2003): Southern Union Company settled antitrust concerns stemming from its proposed acquisition of the Panhandle pipeline from CMS Energy Corporation. The consent order permitted the acquisition but required Southern Union to terminate an agreement to manage the Central pipeline which transports natural gas to several counties in Missouri and Kansas.

### **Teva Pharmaceutical Industries Ltd**

(Final Order March 7, 2006): The consent order allowed Teva to acquire IVAX Corporation, provided the companies sell the rights and assets needed to manufacture and market 15 generic pharmaceutical products. Among the drugs sold were several forms of generic amoxicillin and amoxicillin clavulanate potassium that are widely used in the United States.

### **The Procter & Gamble Company**

(Final Order December 16, 2005): The consent order permitted The Procter & Gamble Company's acquisition of rival consumer products manufacturer The Gillette Company,

provided the companies divest: 1) Gillette's Rembrandt at-home teeth whitening business; 2) P&G's Crest SpinBrush battery-powered and rechargeable toothbrush business; and 3) Gillette's Right Guard men's antiperspirant deodorant business. In addition, P&G must amend its joint venture agreement with Philips Oral Health Care, Inc. regarding the Crest Sonicare IntelliClean System rechargeable toothbrush to allow Philips to independently market and sell rechargeable toothbrushes.

### **The Boeing Company**

(Proposed Consent Agreement Accepted for Public Comment on October 3, 2006): The Commission intervened in the formation of United Launch Alliance (ULA), a proposed joint venture between the Boeing Corp. and Lockheed Martin Corp. The FTC's complaint alleged that the formation of ULA as originally structured would have reduced competition in the markets for U.S. government medium to heavy launch services and space vehicles. In settling the Commission's charges, the parties agreed to take certain actions (such as nondiscrimination requirements and firewalls) to address ancillary competitive harms not inextricably tied to the national security benefits of ULA.

### **Thermo Electron Corporation**

(Final Order December 5, 2006): The consent order settled charges that charged that Thermo Electron Corporation's proposed \$12.8 billion acquisition of Fisher Scientific International, Inc. would harm competition in the U.S. market for high-performance centrifugal vacuum evaporators (CVEs) in violation of the antitrust laws. Thermo and Fisher are the only two significant suppliers of high-performance CVEs in the United States and the proposed transaction would eliminate the direct price, service, and innovation competition that exists between them. To settle the Commission's charges, Thermo is required to divest Fisher's Genevac division, which includes Fisher's entire CVE business, within five months of the date the consent agreement was signed.

### **Valero L.P.**

(Final Order July 27, 2005): The consent order permitted Valero L.P. to acquire Kaneb Services LLC and Kaneb Pipe Line Partners subject to the divestitures of assets that will preserve existing competition for petroleum transportation and terminaling in Northern California, Pennsylvania, and Colorado, and avoid a potential increase in bulk gasoline and diesel prices. The order also requires Valero to develop an information firewall and maintain open, non-discriminatory access to two retained Northern California terminals, in order to ensure access to ethanol terminaling in Northern California.

### **Wal-Mart Stores, Inc.**

(Final Order February 27, 2003): A consent order settled Commission concerns that Wal-Mart's proposed acquisition of the largest supermarket chain in Puerto Rico, Supermercados Amigo, Inc., would eliminate competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned or controlled by Amigo. While the consent order permits the acquisition, it requires Wal-Mart to divest four Amigo supermarkets in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico to Supermercados Maximo.

**Watson Pharmaceuticals, Inc.**

(Final Order December 12, 2006): A consent order settled charges that Watson Pharmaceuticals, Inc.'s proposed \$1.9 billion acquisition of Andrx Corporation, would have likely led to competitive problems in the markets for 13 generic drug products. Watson was required to end its marketing agreements with Interpham Holdings, divest Andrx's right to develop, make, and market generic extended release tablets that correct the effects of type 2 diabetes, and divest Andrx's rights and assets related to the developing and marketing of 11 generic oral contraceptives.

**B. Authorizations to Seek Preliminary Injunctions****Aloha Petroleum, Ltd**

(July 26, 2005): The Commission authorized staff, in conjunction with the Hawaii Attorney General, to seek a preliminary injunction to block Aloha Petroleum's proposed acquisition of Trustreet Properties. Aloha sought to acquire Trustreet's half interest in the Barber Point petroleum importing terminal, when Aloha already owned the other half interest. The proposed acquisition would have reduced the number of marketers with ownership or access to a refinery or importing terminal from five to four, and the number of suppliers selling to unintegrated retailers from three to two. After Aloha subsequently announced a long-term agreement with a third party, Mid-Pac Petroleum that would enable Mid-Pac to replace Trustreet as a bulk gasoline supplier, the Commission sought to dismiss its federal court complaint on the ground of changed circumstances.

**Arch Coal, Inc.**

(March 30, 2004): The Commission authorized staff to file a complaint to block Arch Coal, Inc.'s proposed acquisition of Triton Coal Company, L.L.C. from New Vulcan Holdings, L.L.C. on grounds that the acquisition would increase concentration and tend to create a monopoly in the market for coal mined from the Southern Powder River Basin and in the production of 8800 British Thermal Unit coal. On April 1, 2004, the complaint was filed in the U.S. District Court for the District of Columbia. On June 13, 2005 the Commission announced that it was closing its investigation, saying that it will not continue with administrative litigation challenging the deal.

**Kroger Company/Raley's Corporation**

(October 2, 2002): The preliminary injunction authorized by the Commission during the investigation into Kroger's acquisition of 18 Raley's supermarkets in the Las Vegas, Nevada area was not filed. After staff determined that the transaction would promote healthy competition in the Las Vegas/Henderson area due to the rapid growth of the market and the presence of Wal-Mart, Albertson's, Kroger and Safeway - the four major competitors in the area, the investigation was closed.

**Nestlé Holdings, Inc.**

(March 4, 2003): The Commission authorized staff to seek a preliminary injunction to block the merger of Nestlé and Dreyer's Grand Ice Cream, Inc. on grounds that the merger would reduce competition in the highly concentrated market for superpremium ice cream. Nestlé markets



superpremium ice cream under the Häagen Dazs brand; Dreyer's superpremium brands include Dreamery, Godiva and Starbucks. Before the complaint was filed in a federal district court, the parties agreed to enter into a consent agreement to settle the charges. The final order requires the divestiture of superpremium ice cream brands Dreamery and Godiva, the Whole Fruit sorbet brand, and Nestlé's distribution assets to CoolBrands International, Inc.

### **Vlasic Pickle Company**

(October 22, 2002): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of Claussen Pickle Company by Hicks, Muse, Tate & Furst Equity Fund V L.P., the owner of Vlasic Pickle Company on grounds that the transaction would combine the dominant firm in the market for refrigerated pickles (Claussen) with its most significant competitor in refrigerated pickles (Vlasic). Six days after the complaint was filed in federal district court, the parties abandoned the transaction.

## **C. Commission Opinions/Initial Decisions**

### **Chicago Bridge & Iron Company**

(January 7, 2005): The Commission upheld in part the ruling of an administrative law judge that Chicago Bridge & Iron's acquisition of the Water Division and the Engineered Construction Division of Pitt-Des Moines, Inc. created a near-monopoly in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. In an effort to restore competition as it existed prior to the merger, the Commission ordered Chicago Bridge to reorganize the relevant product business into two separate, stand-alone, viable entities capable of competing in the markets described in the complaint and to divest one of those entities within six months.

With an administrative complaint issued on October 25, 2001, the Commission challenged the February 2001 purchase of the Water Division and Engineered Construction Division of Pitt-Des Moines, Inc. alleging that the acquisition significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. The initial decision filed June 27, 2003 upheld the complaint.

On June 27, 2004, an administrative law judge upheld the complaint and ordered the divestiture all of the assets acquired in the acquisition. In December 2004, the Commission approved an interim consent order prohibiting Chicago Bridge & Iron from altering the assets acquired from Pitt-Des Moines, Inc. except "in the ordinary course of business." These assets included but were not limited to real property; personal property; equipment; inventories; and intellectual property.

### **Northwestern Healthcare Corporation**

(October 17, 2005): In an Initial Decision the Administrative law judge found that Evanston Northwest Healthcare Corporation's acquisition of an important competitor, Highland Park Hospital, resulted in higher prices and substantially lessened competition for acute care inpatient services in parts of Chicago's northwestern suburbs. The Administrative law judge found that the evidence established that the merged hospital exercised its enhanced post-merger market power to obtain price increases significantly above its premerger prices and substantially larger

than price increases obtained by comparable hospitals. The ALJ also found that the evidence ruled out explanations for the price increase, other than the exercise of market power. The ALJ entered an order that would require the divestiture of the acquired hospital.

The hospital's appeal of the ALJ's decision and order requiring divestiture of Highland Park Hospital is now pending before the Commission.

On February 10, 2004 the Commission issued an administrative complaint alleging that following Evanston Northwestern Healthcare Corporation's acquisition of Highland Park Hospital prices charged to health insurers for medical services increased and, therefore, higher costs for health insurance were passed on to consumers of hospital services in the Cook and Lake counties of Illinois. The complaint also alleges that a physicians group affiliated with both hospitals, Highland Park Independent Physician Group, negotiated prices for physicians on staff at Evanston as well as for several hundred independent physicians not affiliated with either hospital. According to the complaint, these actions constitute illegal price fixing among competing physicians or physician groups and deny consumers the benefits of competition in physician services.

In May, 2005, the Commission approved a final consent order to resolve a separate count in the complaint involving alleged price fixing by doctors associated with the two hospitals.

## **D. Court Decisions**

### **Arch Coal, Inc.**

(August 13, 2004): The U.S. District Court for the District of Columbia denied the Commission's request for a preliminary injunction to block Arch Coal, Inc.'s proposed acquisition of Triton Coal Company, L.L.C. from New Vulcan Holdings, L.L.C. The parties consummated the deal after the Circuit Court of Appeals for the District of Columbia refused to issue a stay pending an appeal of the district court decision.

The administrative complaint issued on April 6, 2004 challenged the proposed acquisition of all the assets of Triton Coal Company, L.L.C. from New Vulcan Coal Holdings, L.L.C. According to the complaint, the acquisition would have combined two of the four leading producers of coal in Wyoming's Southern Powder River Basin. On September 10, 2004, the administrative complaint was withdrawn from adjudication. The Commission decided not to pursue an appeal of the decision of the U.S. District Court for a preliminary injunction to block the sale of Triton to Arch Coal. On June 13, 2005 the Commission announced that it was closing its investigation, saying that it will not continue with administrative litigation challenging the deal.

## **E. Order Violations**

### **Boston Scientific Corporation**

(March 31, 2003): A federal district judge ordered Boston Scientific Corporation to pay \$7,040,000 in civil penalties to settle charges that it violated a 1995 consent order when it failed to provide Hewlett-Packard Company with a license to all of its intellectual property and technical information relating to intravascular ultrasound catheters. The complaint was filed on

October 31, 2000 by the Department of Justice on behalf of the Commission. The trial was held in August 2002.

### **RHI AG**

(April 1, 2004): RHI AG paid a total civil penalty of \$755,686.41 to settle charges that it violated a 1999 consent order concerning its acquisition of Global Industrial Technologies, Inc.

According to the complaint, filed in the United States District Court for the District of Columbia, RHI not only failed to divest the two refractories plants and other assets to Resco Products, Inc., but it did not completely comply with other provisions required by the settlement agreement.

## **F. Other Commission Orders**

None

## **G. Administrative Complaints**

### **Equitable Resources, Inc.**

(March 15, 2007): The Commission authorized staff to file an administrative complaint challenging Equitable Resources, Inc.'s (Equitable) proposed acquisition of The Peoples Natural Gas Company (Dominion Peoples). Equitable and Dominion Peoples are each other's sole competitors in the distribution of natural gas to nonresidential customers in certain areas of Allegheny County, Pennsylvania, which includes Pittsburgh. The complaint alleges that the proposed transaction would result in a monopoly for many customers that now enjoy competition.

## **H. Other**

### **Horizontal Merger Investigation Data**

Fiscal Years 1996 – 2005. Staff analysis of horizontal investigations. The staff tabulated certain market structure information as it relates to the Commission's decision whether or not to seek relief in specific markets investigated. Released January 25, 2007.

### **2006 Report on Ethanol Market Concentration**

The study examines the current state of ethanol production in the United States and measures market concentration using capacity and production data. Released December 5, 2006.

### **2005 Report on Ethanol Market Concentration**

The study examines the current state of ethanol production in the United States and measures market concentration using capacity and production data. Released December 2, 2005.

## **Reforms to the Merger Review Process**

(Effective February 17, 2006): Reforms to the agency's merger review process establishing that the FTC will:

- limit the number of employees required to provide information in response to a second request, provided the party complies with specified conditions;
- reduce the time period for which a party must provide documents in response to the second request;
- allow a party to preserve far fewer backup tapes and produce documents on those tapes only when responsive documents are not available through more accessible sources; and
- significantly reduce the amount of information parties must submit regarding documents they consider to be privileged.

## **Conference on the Price Effects of Mergers and Concentration in the United States Petroleum Industry**

(January 14, 2005, Washington, DC.) The conference reviewed two studies that examined price effects within the petroleum industry: the March 2004 case study of the effects of the Marathon/Ashland Corporation joint venture; the second, the May 2004 report by the Government Accountability Office that examined the effects of mergers and market concentration in the United States petroleum industry.

## **Horizontal Merger Investigation Data**

Fiscal Years 1996 – 2003. Staff analysis of horizontal investigations. The staff tabulated certain market structure information as it relates to the Commission's decision whether or not to seek relief in specific markets investigated. Released February 2004.

## **Merger Efficiency Roundtable**

(December 9 - 10, 2002; Washington, DC): Experts in mergers and acquisitions from the academic, consulting, and business communities gave presentations on how to determine whether a proposed transaction is likely to generate merger efficiencies.

## **Merger Enforcement Workshop**

(February 17 - 19, 2004) sponsored by the Federal Trade Commission and the Department of Justice. Topics discussed:

- Hypothetical Monopolist Test
- Concentration & Market Shares
- Monopsony
- Non-Price Competition/Innovation
- Unilateral Effects
- Coordinated Effects
- Uncommitted Entry
- Efficiencies/Dynamic Analysis/Integrated Analysis

## **Merger Remedies - Second Workshop**

(October 23, 2002; New York, New York): Workshop, co-hosted by the Antitrust and Trade Regulation Committee of The Association of the Bar of the City of New York, was designed to

gather information from a broad range of interested parties regarding consent order remedies in merger and acquisition matters.

## **II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement**

### **A. Court Decisions**

#### **Scott R. Sacane**

(September 26, 2005): A Connecticut-based hedge fund manager who failed to report several large stock purchases before they were made, as required by the Hart-Scott-Rodino (HSR) Premerger Notification Act, paid a \$350,000 civil penalty to settle Federal Trade Commission charges. The complaint alleged that Scott Sacane, manager of the Durus Life Sciences Master Fund, failed to make four required premerger notification filings. His failure to do so violated the HSR Act for each transaction.

#### **William H. Gates, III**

(May 4, 2004): William H. Gates, III paid \$800,000 in civil penalties to settle charges that he acquired more than ten percent of the voting securities of Republic Services, Inc. without observing the filing and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The complaint was filed in the federal district court in Washington, DC.

### **B. Consent Orders**

None

### **C. Complaints - Filed**

#### **Blockbuster, Inc.**

(March 4, 2005): The Commission filed a complaint under Section 7A(g)(2) of the Clayton Act in U.S. District Court for the District of Columbia to require Blockbuster, Inc. to provide sufficient and accurate pricing data in compliance with the second request issued by the Commission under the statutory rules of the Hart-Scott-Rodino Act. Blockbuster cannot proceed with its proposed acquisition of Hollywood Entertainment Corporation until 30 days from the date it has substantially complied with the second request.

## **D. Complaints - Authorized**

### **Arch Coal, Inc.**

(February 23, 2004): The Commission authorized staff to file a complaint in federal district court for a temporary restraining order under Section 7A(g)(2) of the Clayton Act to block Arch Coal's proposed acquisition of Triton Coal Company until Arch Coal substantially complied with the Commission's request for additional information under the Hart-Scott-Rodino Act. After Arch Coal was notified that the Commission authorized a Section 7A(g)(2) complaint, Arch withdrew its Certification of Substantial Compliance with the second request and provided additional information. On June 13, 2005 the Commission announced that it was closing its investigation, saying that it will not continue with administrative litigation challenging the deal.

## **E. Rules and Formal Interpretations**

### **Hart-Scott Final Rulemaking**

(Effective February 21, 2007): The notification and filing thresholds under the premerger rules have been revised as required by the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the Commission to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004.

### **Hart-Scott Final Rulemaking**

(Effective July 23, 2006): The Federal Trade Commission and the Department of Justice's Antitrust Division implemented an electronic filing system that allows merging parties to submit via the Internet premerger notification filings required by the Hart-Scott-Rodino Act.

### **Hart-Scott Final Rulemaking**

(Effective February 18, 2006): The notification and filing thresholds under the premerger rules have been revised as required by the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the Commission to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004.

### **Hart-Scott Rodino Reform / Amended Final Rules**

(Effective January 11, 2006): Amendments to Parts 801 and 802 of the Premerger Notification Rules allowing filing persons to provide an Internet address linking directly to the documents required by Items 4(a) and (b) in lieu of providing paper copies.

### **Hart-Scott Rodino Reform / Amended Final Rules**

(Effective December 12, 2005): Amendments to Parts 801 and 802 of the Premerger Notification Rules requiring use of 2002 NAICS rather than 1997 NAICS when reporting economic data by industry and product codes.

**Hart-Scott Rodino Final Rulemaking**

(Effective April 7, 2005): Final rules adopted from proposed rules published April 8, 2004. The amendments require notification of acquisitions of interests in unincorporated entities and formations of unincorporated entities. The rules also extend the application of certain exemptions, including the intraperson exemption, to unincorporated entities.

**Hart-Scott Final Rulemaking**

(Effective March 2, 2005): The notification and filing thresholds under the premerger rules have been revised as required by the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the Commission to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with section 8(a)(5) for each fiscal year beginning after September 30, 2004.

## **F. Other**

**Model Retail Second Request**

(April 28, 2004) Model Request for Additional Information and Documentary Material (Second Request) for transactions involving retail industries.

**Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976**

(August 1, 2003): Twenty-fifth Annual Report (Fiscal Year 2002).

**Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976**

(September 7, 2004): Twenty-sixth Annual Report (Fiscal Year 2003).

**Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976**

(August 16, 2005): Twenty-seventh Annual Report (Fiscal Year 2004).

**Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976**

(September 8, 2006): Twenty-eighth Annual Report (Fiscal Year 2005).

### **III. Non-Merger Enforcement**

#### **A. Commission Opinions/Initial Decisions**

##### **Kentucky Household Goods Carriers Association, Inc.**

(June 21, 2004): An administrative law judge upheld an administrative complaint that charged a group of affiliated intrastate movers with engaging in horizontal price-fixing by filing collective rates on behalf of its member motor common carriers for the intrastate transportation of property within the Commonwealth of Kentucky. The judge also ruled that the association's conduct was not protected by the state action doctrine because the State of Kentucky did not supervise the rate-making practices of the group. On July 12, 2004, the Kentucky Household Goods Carriers Association, Inc. filed an appeal of the initial decision with the Commission. The oral argument was held January 24, 2005. On June 22, 2005, the Commission issued a unanimous opinion upholding the Initial Decision finding that the Kentucky Household Goods Carriers Association, Inc., consisting of competing firms, engaged in illegal price-fixing by jointly filing tariffs containing collective rates on behalf of its members, and that the state action doctrine does not immunize that activity from antitrust liability. On August 22, 2006, the Sixth Circuit Court of Appeals affirmed the opinion of the Commission in Kentucky Household Goods Carriers Association, Inc., finding that the Association's ratemaking activities constituted unlawful price fixing and were not exempt from the antitrust laws under the state action doctrine.

The administrative complaint issued on July 8, 2003 by the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Kentucky. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny.

##### **North Texas Specialty Physicians**

(November 8, 2004): An administrative law judge upheld the administrative complaint that charged that the North Texas Specialty Physicians, a physician group practicing in Fort Worth, Texas, collectively determined acceptable fees for physician services in negotiating contracts with health insurance plans and other third party payers. The judge ruled that complaint counsel proved that North Texas Specialty Physicians engaged in horizontal price fixing. The accompanying order prohibits the group from negotiating, on behalf of its members, collective pricing of contracts with health plan services for the provision of physician services. On January 14, 2005, North Texas Specialty Physicians filed a notice of appeal of the initial decision. On December 1, 2005, the Commission issued a unanimous decision upholding the allegations that North Texas Specialty Physicians negotiated agreements among participating physicians on price and other terms, refused to negotiate with payers except on terms agreed to among its members, and refused to submit payor offers to members if the terms did not satisfy the group's demands. The Commission concluded that the group's contracting activities with payors "amount[s] to unlawful horizontal price fixing" and that respondent's efficiency claims were not legitimate and not supported by the evidence. The respondent has appealed the Commission decision to the U.S. Court of Appeals for the Fifth Circuit. On March 7, 2007, the Fifth Circuit Court of Appeals heard oral arguments in the appeal by respondents of the Commission's opinion in North Texas Specialty Physicians.



The administrative complaint, issued on September 16, 2003 by the Commission, charged that the corporation of 600 physicians negotiated the price and other terms of medical services that its participating physicians would accept in contracting with third party payers. According to the complaint, the exchange of prospective price information among otherwise competing physicians reduced competition and enabled the physicians to achieve supra-competitive prices.

**Rambus, Inc.**

(June 19, 2002) The Commission filed a complaint with an administrative law judge charging that between 1991 and 1996 Rambus, Inc. joined and participated in the JEDEC Solid State Technology Association (JEDEC), the leading standard-setting industry for computer memory. According to the complaint, JEDEC rules require members to disclose the existence of all patents and patent applications that relate to JEDEC's standard-setting work. While a member of JEDEC, Rambus observed standard-setting work involving technologies which Rambus believed were or could be covered by its patent applications, but failed to disclose this to JEDEC. In 1999 and 2000, after JEDEC had adopted industry-wide standards incorporating the technologies at issue and the industry had become locked in to the use of those technologies, Rambus sought to enforce its patents against companies producing JEDEC-compliant memory, and in fact has collected substantial royalties from several producers of DRAM (dynamic random access memory).

(February 17, 2004) The administrative law judge dismissed all charges against Rambus, ruling that Commission staff had failed to sustain their burden of proof with respect to all three violations alleged in the complaint. The Initial Decision found that Rambus' conduct before the JEDEC standard-setting organization did not amount to deception and did not violate any extrinsic duties, such as a duty of good faith to disclose patents or patent applications. The Initial Decision also found that there was insufficient evidence that there were viable alternatives to Rambus' technology before the standard setting organization.

(August 2, 2006) The FTC issued an opinion by Commissioner Pamela Jones Harbour concluding that Rambus unlawfully monopolized markets for four computer memory technologies that have been incorporated into industry standards DRAM chips. DRAMs are widely used in personal computers, servers, printers, and cameras. The Commission found that, through a course of deceptive conduct, Rambus was able to distort a critical standard-setting process and engage in an anticompetitive "hold up" of the computer memory industry. The Commission held that Rambus's acts of deception constituted exclusionary conduct under Section 2 of the Sherman Act and contributed significantly to Rambus's acquisition of monopoly power in the four relevant markets.

(February 5, 2007) Chairman Majoras issued the opinion of the Commission on remedy in the Rambus matter. In this opinion, the Commission prescribed a set of remedies barring Rambus from making misrepresentations or omissions to standard-setting organizations, requiring Rambus to license its SDRAM and DDR SDRAM technology and setting limits to the royalty rates it can collect under the licensing agreements including with those firms that may have already incorporated its DRAM technology, and requiring Rambus to employ a Commission-approved compliance officer to ensure it discloses relevant patent information to any standard-setting organizations in which it participates.

### **South Carolina State Board of Dentistry**

(July 30, 2004) The Commission denied the motion of the Board to dismiss the complaint on grounds that its actions were protected from antitrust scrutiny under the state action doctrine. The South Carolina State Board of Dentistry brought an interlocutory appeal to the Fourth Circuit Court of Appeals arguing that the denial of immunity under the State Action doctrine was a collateral order that could be appealed before a final decision. On May 1, 2006, the Fourth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction, and subsequently, the Supreme Court denied the board's petition for certiorari.

An administrative complaint issued on September 12, 2003 charged that the South Carolina State Board of Dentistry prevented dental hygienists from providing dental care and services on-site to children in South Carolina schools. According to the complaint, the Board passed regulation that required the children to have a dentist examine the children before they would be eligible for the school dental program. The complaint further alleged that this provision decreased competition in the delivery of preventive dental services to school-aged children. On July 30, 2004,

### **Union Oil of California**

(November 25, 2003): An administrative law judge dismissed a complaint in its entirety against Union Oil of California that charged the company with committing fraud in connection with regulatory proceedings before the California Air Resources Board regarding the development of reformulated gasoline. The judge ruled much of Unocal's conduct was permissible activity under the Noerr-Pennington doctrine and that the resolution of the issues outlined in the complaint would require an in depth analysis of patent law which he believed were not within the jurisdiction of the Commission. In July 2004, the Commission reversed the judge's ruling and reinstated charges that Unocal illegally acquired monopoly power in the technology market for producing a "summer-time" low-emissions gasoline mandated for sale and use by the California Air Resources Board for use in the state for up to eight months of the year. While the case was pending before the administrative law judge, a consent agreement was signed

## **B. Court Decisions**

### **PolyGram Holding, Inc. (The Three Tenors)**

(July 24, 2003): The Commission upheld the ruling of an administrative law judge and prohibited PolyGram from entering into any agreement with competitors to fix the prices or restrict the advertising of products they have produced independently. The administrative complaint, issued on July 30, 2001, generally known as The Three Tenors and involving respondents PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation charged PolyGram with entering into an illegal price fixing agreement not to advertise or discount earlier albums and video recordings of concerts featuring the Three Tenors in an effort to promote the latest concert, thought to be less appealing to the public. The Commission ordered the respondents to cease and desist from entering into any combination, conspiracy, or agreement - with producers or sellers at wholesale of audio or video products - to "fix, raise, or stabilize prices or price levels" in connection with the sale in or into the United States of any audio or video product. In July 2005, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's decision in *Polygram*

*Holding Inc.*, validating the Commission's approach to analyzing horizontal conduct among competitors.

### **Schering-Plough Corporation**

(March 8, 2005) The United States Court of Appeals for the Eleventh Circuit set aside and vacated the Commission decision that found that Schering-Plough entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering's branded K-Dur 20, a prescribed potassium chloride supplement. The Commission filed a petition for writ of certiorari with the U.S. Supreme Court in August 2005, arguing that the lower court failed to recognize how some agreements limiting entry during the term of a patent can still be improper; the decision jeopardizes particularly important consumer interests; and the court of appeals misapplied the substantial evidence standard of review. The Supreme Court denied the petition.

In the complaint dated March 30, 2001 the Commission alleged that Schering - Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with Upsher-Smith Laboratories and American Home Products Corporation to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher-Smith \$60 million and paid American Home Products \$15 million to keep the low-cost generic version of the drug off the market. The charges against American Home Products were settled by a consent agreement.

An initial decision filed July 2, 2002 dismissed all charges against Schering - Plough and Upsher-Smith Laboratories. On December 8, 2003 the Commission reversed the administrative law judge's initial decision that had dismissed all charges. The Commission found that Schering-Plough Corporation entered into agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering's branded K-Dur 20. According to the opinion, the parties settled patent litigation with terms that included unconditional payments by Schering in return for agreements to defer introduction of the generic products. The Commission entered an order that would bar similar conduct in the future.

## **C. Authorizations to Seek Preliminary/Permanent Injunctions**

### **Alpharma, Inc. and Perrigo Company**

(August 11, 2004): The Commission authorized staff to file a complaint in federal district court charging that Alpharma, Inc. and Perrigo Company drove up the prices for over-the-counter store-brand children's liquid ibuprofen through an agreement eliminating competition between the two firms and allowing Perrigo to raise its prices creating higher profits to then be shared between the firms. According to the complaint, while both Alpharma and Perrigo filed for U.S. Food and Drug Administration approval to sell a generic version of children's liquid Motrin, Alpharma was eligible to sell its product at least six months before approval would be granted to Perrigo. The two companies entered into an agreement not to compete whereby Perrigo would sell the children's liquid ibuprofen for seven years and Alpharma, while would not marketing a competing product, would receive an up-front payment and a royalty on Perrigo's sales of the product. To settle the charges, Alpharma and Perrigo paid a total of \$6.25 million in illegal

profits and agreed not to enter into agreements not to compete when one party to the agreement is a first filer of an abbreviated new drug application.

### **Warner Chilcott**

(November 5, 2005) A complaint was filed in District Court for the District Columbia seeking to put an end to an agreement between drug manufacturers Galen Chemicals Ltd. (now known as Warner Chilcott) and Barr Laboratories that denies consumers the choice of a lower-priced generic version of Warner Chilcott's Ovcon® oral contraceptive. According to the FTC's complaint, Barr planned to launch a generic version of Ovcon as soon it received regulatory approval from the Food and Drug Administration. Warner Chilcott expected to lose half its Ovcon sales within the first year if Ovcon faced competition from a generic equivalent. Faced with this prospect, instead of competing with Barr, Warner Chilcott entered into an agreement with Barr, preventing entry of Barr's generic Ovcon into the United States for five years. In exchange for Barr's promise not to compete, Warner Chilcott paid Barr \$20 million. In September 2006, under the threat of a preliminary injunction sought by the Commission, Warner Chilcott waived the exclusionary provision in its agreement, and the next day Barr announced its intention to start selling generic Ovcon in the United States. Under the terms of the October 2006 order settling the Commission's charges, Warner Chilcott agreed to certain terms to protect generic entry into the market. Though Warner Chilcott settled, the FTC's case against Barr continues.

## **D. Consent Orders**

### **Advocate Health Partners**

(Final Order February 9, 2007) The final consent order settles charges that the conduct of several organizations representing more than 2,900 independent Chicago-area physicians for agreeing to fix prices and for refusing to deal with certain health plans except on collectively determined terms. The order will prohibit the respondents from engaging in such anticompetitive conduct in the future.

### **Alabama Trucking Association, Inc.**

(Final Order October 28, 2003) With an administrative complaint issued on July 8, 2003 the Commission charged that the association of household goods movers engaged in the collective filing of tariffs on behalf of its members who compete in the provision of moving services in the state of Alabama. Under terms of a final consent order, Alabama Trucking Association, Inc. agreed to stop filing tariffs containing collective intrastate rates and to void collectively filed tariffs currently in effect in Alabama.

### **American Institute for Conservation of Historic and Artistic Works**

(Final Order October 30, 2002): A consent order settled charges that the American Institute for Conservation of Historic and Artistic Works adopted and enforced provisions in its rules of conduct that prohibited professional conservators to work for free or at reduced fees. The association agreed to remove all provisions from its Code of Ethics, and its Commentaries to the Guidelines for Practice that are inconsistent with the order. Professional conservators manage

and preserve cultural objects (including historical scientific, religious, archaeological and artistic objects).

### **Anesthesia Service Medical Group, Inc. and Grossmont Anesthesia Services Medical Group**

(Final Order July 11, 2003): Two anesthesiologists groups settled charges that they entered into joint agreements to establish fees and services from Grossmont Medical Hospital in San Diego County. Specifically, the groups agreed on fees that both would demand from health care insurance companies and other third party payers for taking call for obstetrics and providing services to uninsured emergency room patients. Together, the two groups are composed of approximately 200 physicians that provide competing anesthesiology services in the San Diego area.

### **Austin Board of Realtors**

(Final Order September 6, 2006): The Commission entered into a final consent order settling charges against the Austin Board of Realtors (ABOR) for its practice of preventing consumers with listing agreements for potentially low-cost, unbundled brokerage services from marketing their listings on public real estate-related Internet sites. In settling the charges, ABOR is prohibited from adopting or enforcing any rule that treats one type of real estate listing agreement more advantageously than any other, or from interfering with its members ability to enter into any lawful listing agreement with home sellers.

### **Biovail Corporation**

(Final Order October 2, 2002): The Commission charged Biovail Corporation with illegally acquiring an exclusive patent license for Tiazac, a pharmaceutical used to treat high blood pressure and chronic chest pain. The complaint further alleged that Biovail, in an effort to maintain its monopoly, wrongfully listed the acquired license in the U.S. Food and Drug Administration's "Orange Book" for the purpose of blocking generic competition to its branded Tiazac. The consent order requires Biovail to divest part of its exclusive rights to DOV; prohibits the firm from taking any action that would trigger additional statutory stays on final FDA approval of a generic form of Tiazac; and also prohibits Biovail from wrongfully listing any patents in the Orange Book for a product for which the company already has a New Drug Application from the FDA.

### **Bristol-Myers Squibb Company**

(Final Order April 14, 2003): Bristol-Myers Squibb Company (BMS) settled charges that it engaged in illegal business practices to delay the entry of three low price generic pharmaceuticals that would be in direct competition with three of its branded drugs. The complaint alleged that BMS purposely made wrongful listings in the Orange Book of the U.S. Food & Drug Administration and that it also paid a potential competitor over \$70 million to delay the entry of its generic drug. The three drugs involved in the complaint are: Taxol (containing the active ingredient paclitaxel) – used to treat ovarian, breast, and lung cancers; Platinol (containing the active ingredient cisplatin) – used for the treatment of various forms of cancer; and BuSpar (containing the active ingredient buspirone) – used to manage anxiety disorders.

### **California Pacific Medical Group dba Brown and Toland Medical Group**

(Final Order February 3, 2004): With an administrative complaint issued on July 8, 2003 the Commission charged a San Francisco, California physicians' organization with engaging in an agreement under which its competing members agreed collectively on the price and other terms on which they would enter into contracts with health plans or other third party payers. The complaint also alleged that Brown and Toland directed its physicians to end their preexisting contracts with payers and required its physician members to charge specified prices in all Preferred Provider Organization contracts. A final consent order prohibits Brown and Toland from negotiating with payers on behalf of physicians, refusing to deal with payers, and setting terms for physicians to deal with payers, unless the physicians are clinically or financially integrated.

### **Carlsbad Physician Association**

(Final Order June 13, 2003): A New Mexico physician organization settled charges that it and its members entered into agreements to fix prices and to refuse to deal with third party payers and other health care plans except on collectively agreed-upon terms.

### **Clark County, Washington Attorneys**

(Final Order July 23, 2004): Private attorneys in Clark County, Washington who provide criminal legal services for indigent defendants under a county contract settled charges that they illegally entered into an agreement known as the "Indigent Defense Bar Consortium Contract" to collectively demand higher fees for certain types of cases and refuse to accept specific additional cases unless the Clark County complied with their demands. The county was forced to substantially increase the reimbursement rate for each of the case categories specified in the Consortium Contract. According to the Commission, the conduct of the attorneys was identical to the boycott staged by criminal defense attorneys in Washington, DC which was ruled to be price fixing by the U.S. Supreme Court in the matter of Superior Court Trial Lawyers Association. Robert Lewis, James Sowder, Gerald Wear, and Joel R. Yoseph, the four attorneys who led the activities and served as the representatives of the 43 attorneys who signed the Consortium Contract, were named in the complaint and in the consent order.

### **Evanston Northwestern Healthcare Corporation**

(Final Order May 17, 2005): Under terms of a consent order, Evanston Northwestern Healthcare Corporation agreed not to collectively negotiate fee-for-service contracts. The order settled charges of one count of an administrative complaint issued February 10, 2004. The count alleged that a physician group associated with a hospital negotiated prices for several hundred independent physicians who were not financially or clinically integrated with the group.

### **Health Care Alliance of Laredo, L.C.,**

(Final Order March 28, 2006): A physicians' independent practice association in Texas agreed to settle charges that it engaged in unlawful collective bargaining to set fees its members would accept from health insurance plans and advised its members against dealing individually with plans. The Commission charged that both practices resulted in higher medical costs for consumers. The consent order settling the FTC's charges will prohibit the IPA from engaging in such anticompetitive conduct in the future.

### **Indiana Household Movers and Warehousemen, Inc.**

(Final Order April 25, 2003): The corporation that represents household goods movers in Indiana settled charges that it filed collective intrastate rate tariffs with the State's Department of Revenue on behalf of its members. According to the complaint issued with the consent order, these collective filings reduced competition for household goods moving services within the state.

### **Information and Real Estate Services, LLC.**

(Final Order December 1, 2006): The Commission settled charges that Information and Real Estate Services, LLC (IRES) adopted rules that withheld valuable benefits of the Multiple Listing Services (MLSs) they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. The consent order settling the FTC's charges will prohibit IRES from discriminating against non-traditional listing arrangements.

### **Institute of Store Planners**

(Final Order May 27, 2003): Under the terms of a final consent order, The Institute of Store Planners is required to remove from its Code of Ethics any provision that prohibits its members from providing their services for free and any provision that prohibits competition with other members for work on the basis of price. Its members provide architectural store design and store and merchandise planning to retail stores.

### **Iowa Movers and Warehousemen's Association**

(Final Order September 10, 2003): The Iowa Movers and Warehousemen's Association settled allegations that it filed collectively established tariffs for intrastate moving rates in Iowa - a practice which did not meet the requirements of the state action doctrine. Under the state action doctrine, some practices of private firms are protected against scrutiny by the federal antitrust laws.

### **Maine Health Alliance**

(Final Order August 27, 2003): A network of doctors, hospitals, and its executive director, William R. Diggins, settled charges that they illegally engaged in price-fixing activities that raised health care costs in five Maine counties by negotiating jointly with third-party payers in an effort to obtain higher compensation and more advantageous contract terms for its members.

### **Memorial Hermann Health Network Providers**

(Final Order January 18, 2004): Memorial Hermann Health Network Providers settled charges that it negotiated fees and other services for medical care provided by its member physicians in the Houston, Texas area in an effort to obtain higher fees and more advantageous terms. According to the complaint these alleged price fixing practices increased costs for consumer, employers, and health plans.

### **Minnesota Transport Services Association**

(Final Order September 15, 2003): A consent order settled charges that the household goods movers association filed collectively established rate tariffs for its members in Minnesota, conduct that was not protected by the state action doctrine. Under a state action doctrine, some

private companies may be protected from the federal antitrust laws if the state authority regulates and regularly reviews the operations and practices of the companies.

### **MiRealSource, Inc.**

(Final Order March 23, 2007): The Commission filed a Part 3 administrative complaint challenging a set of rules adopted by MiRealSource, Inc. to keep Exclusive Agency Listings from being listed on its MLS, as well as other rules that restricted competition in real estate brokerage services. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS or from public Web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along. On February 5, 2007 the Commission approved a consent order for public comment settling the complaint. Under the terms of the final consent order, MiRealSource has agreed to abandon such collusive conduct and provide its services to all member brokers representing potential home sellers, regardless of the type of listing contract that they choose.

### **Missouri Board of Embalmers and Funeral Directors**

(Proposed Consent Agreement Accepted for Public Comment on March 9, 2007): Under the terms of the proposed consent order, the Missouri Board of Embalmers and Funeral Directors (Board) agreed to settle charges that it deterred competitive entry in the retail sale of caskets by adopting a rule that only licensed funeral directors could sell caskets to consumers on an at-need basis. Under the proposed settlement, the Board must include in various forms of communications to the public that it is not necessary to obtain a license from the Board to offer for retail sale caskets and other funeral merchandise to customers in Missouri.

### **Monmouth County Association of Realtors**

(Final Order December 1, 2006): The Commission settled charges that Monmouth County Association of Realtors (Monmouth) adopted rules that withheld valuable benefits of the Multiple Listing Services (MLSs) they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. The consent order settling the FTC's charges will prohibit Monmouth from discriminating against non-traditional listing arrangements.

### **Movers Conference of Mississippi, Inc.**

(Final Order October 28, 2003): With an administrative complaint issued on July 8, 2003 the Commission charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Mississippi. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny. Under terms of a final consent order the Movers Conference agreed to stop filing tariffs containing collective intrastate rates.

### **National Academy of Arbitrators**

(Final Order January 13, 2003): The National Academy of Arbitrators is prohibited from adopting policies that restrict its members from advertising truthful information about their services, including prices and conditions of services, under terms of a consent order. The



association is required to remove all provisions that do not conform to the provisions in the consent order from: (1) its Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; (2) its Formal Advisory Opinions; (3) any Statements of Policy; and (4) its Web site.

**New Hampshire Motor Transport Association**

(Final Order December 4, 2003): The New Hampshire Motor Transport Association settled charges that it filed tariffs containing rules that called for automatic increases in intrastate rates. In addition, the organization agreed to void its collectively filed tariffs current in effect in New Hampshire.

**New Century Health Quality Alliance, Inc.**

(Final Order October 6, 2006): The Commission approved a final consent order settling Commission charges alleging that two independent practice associations (IPAs) and 18 member physician practices in the Kansas City, MO area, refused to deal with health care plans, except on collectively agreed-upon prices and other terms.

**New Millennium Orthopaedics**

(Final Order June 13, 2005): The Commission settled charges with two small groups of orthopaedic physicians in the Cincinnati area that had formed an independent practice association that jointly negotiated contracts regarding the rates its physician members would charge health plans and other payors for their services. In addition to the usual prohibitions on joint negotiations, the Commission's order disbanded the IPA and prohibited future collective bargaining.

**Northern New England Real Estate Network, Inc.**

(Final Order December 1, 2006): The Commission settled charges that Northern New England Real Estate Network, Inc. adopted rules that withheld valuable benefits of the Multiple Listing Services (MLSs) they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. The consent order settling the FTC's charges will prohibit Northern New England Real Estate Network, Inc. from discriminating against non-traditional listing arrangements.

**Partners Health Network, Inc.**

(Final Order September 23, 2005): A physician-hospital organization operating in northwestern South Carolina, agreed to settle charges that it orchestrated and carried out agreements among its physician members to set the prices they would accept from health plans, and to refuse to deal with health plans that did not agree to its collectively determined prices. The consent order settling the FTC's charges prohibits the PHO from collectively negotiating with health plans on behalf of its physicians and from setting terms of dealing with purchasers.

**Physician Network Consulting, L.L.C.**

(Final Order August 27, 2003): The Physician Network Consulting, L.L.C. of Baton Rouge Louisiana; Michael J. Taylor; Professional Orthopedic Services, Inc; The Bone and Joint Clinic of Baton Rouge, Inc.; Baton Rouge Orthopaedic Clinic, L.L.C.; and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. settled charges that they entered into agreements to fix prices

and other terms on which they would deal with United HealthCare of Louisiana, Inc., a health insurance company. Physician Network Consulting is an agent for Professional Orthopedic Services' members.

**Piedmont Health Alliance, Inc.**

(Final Order October 1, 2004): With an administrative complaint issued on December 22, 2003 the Commission charged Piedmont Health Alliance, Inc. with collectively setting prices it demanded for physician services with third party payers. According to the complaint, the physician-hospital organization entered into signed agreements on behalf of its member physicians to participate in all contracts negotiated and to accept the negotiated physician fees. The complaint further alleges that these practices eliminated price competition among physicians in the North Carolina counties of Alexander, Burke, Caldwell and Catawba. The complaint also names ten individual physicians who participated in the alleged price fixing services. On August 10, 2004, the organization and physicians agreed to settle charges that they fixed prices for medical services. A final consent order prohibited Piedmont Health Alliance, Inc. and the ten physicians from entering into any such agreements with physicians in the area that negotiate fees or terms of services with health insurance companies or other third party payers. Also refer to settlement entered with Tenet Healthcare Corporation (Frye Regional Medical Center, Inc.).

**Preferred Health Services, Inc.**

(Final Order April 13, 2005): The order prohibits Preferred Health Services from orchestrating collective agreements and other terms for physician services when negotiating with health insurance plans and other third party payers. According to the complaint these agreements among the physician-hospital organization of doctors and the Oconee Memorial Hospital in northwestern South Carolina to collectively negotiate fees and terms of services could lead to higher health care costs and limited physician access.

**Professionals in Women's Care**

(Final Order October 2, 2002): Eight Denver, Colorado physician groups specializing in obstetrics and gynecology and their non-physician agent settled allegations that the practice group and other physicians entered into collective contracts in an effort to increase prices and terms of services when dealing with health insurance firms and other third-party payers. The consent order prohibits the following respondents from entering into such agreements in the future: R.T. Welter and Associates, Inc.; R. Todd Welter; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OG/GYN Associates, P.C.; The OB-GYN, P.C.; The Women's Health Group, P.C.; Cohen and Womack, M.D., P.C.; and Westside Women's Care, L.L.P.

**Puerto Rico Association of Endodontists, Corp.**

(Final Order August 29, 2006): The Commission approved a final consent order settling charges alleging that thirty competing association members acted unlawfully by agreeing to set the prices they would charge dental insurance plans, and by refusing to deal with plans that would not accept the collectively determined prices.

**Realtors Association of Northeast Wisconsin, Inc.**

(Final Order December 1, 2006): The Commission settled charges that Realtors Association of Northeast Wisconsin, Inc. adopted rules that withheld valuable benefits of the Multiple Listing Services (MLSs) they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. The consent order settling the FTC's charges will prohibit Realtors Association of Northeast Wisconsin, Inc. from discriminating against non-traditional listing arrangements.

**San Juan IPA**

(Final Order June 30, 2005): San Juan IPA, Inc., a physicians' independent practice association operating in northwestern New Mexico, agreed to settle Commission charges that it orchestrated and carried out agreements among its member doctors to set the price that they would accept from health plans, to bargain collectively to obtain the group's desired price terms, and to refuse to deal with health plans except on collectively determined price terms. According to the complaint, the effect of this conduct was higher prices for medical services for the area's consumers. The consent order prohibits the association from collectively negotiating with health plans on behalf of its physicians and from setting their terms of dealing with such purchasers. This consent involves 120 physicians who make up about 80 percent of the doctors practicing independently in the area of Farmington, New Mexico.

**Southeastern New Mexico Physicians IPA**

(Final Order August 6, 2004): A Roswell, New Mexico physicians' association, Southeastern New Mexico Physicians IPA, settled charges that it and two of its employees entered into collective agreements among physician members on fees and refused to deal with health plans that did not accept the collective agreed-upon terms. According to the complaint, these practices increased the price of health care in the Roswell area. The consent order prohibits the IPA and its employees named in the consent from orchestrating agreements between physicians to negotiate with health insurance plans on behalf of any physician and deal or refuse to deal individually with any third party payer.

**South Georgia Health Partners, L.L.C.**

(Final Order October 31, 2003): A Georgia physician-hospital organization and its other associated physician groups settled charges that they entered into agreements to fix physician and hospital prices and refused to deal with insurance companies, except on collectively agreed-upon terms.

**SPA Health Organization dba Southwest Physician Associates**

(Final Order July 17, 2003): A physician group in the Dallas/Fort Worth, Texas area settled charges that it collectively bargained on behalf of its members to negotiate fee schedules with third party payers and other health insurance companies. According to the complaint, issued with the consent order, these practices decreased competition and increased prices for the provision of medical services to area consumers.

**Surgical Specialists of Yakima**

(Final Order November 11, 2003): The Surgical Specialists of Yakima, Cascade Surgical Partners, Inc., P.S. and Yakima Surgical Associates, P.S. settled charges that they jointly entered

into agreements for their members to fix prices and terms for the provision of medical services when dealing with health care insurers.

### **Tenet Healthcare Corporation**

(Final Order January 29, 2004): A consent order prohibits Frye Regional Medical Center, Inc., an acute care hospital in Hickory, North Carolina, and its parent company Tenet Healthcare Corporation from entering into any agreement to negotiate fees on behalf of any physician practicing in four North Carolina counties and from refusing to deal with insurance companies and other payers. Also refer to related administrative complaint issued to Piedmont Health Alliance. This settlement is the first case in which the Commission has named a hospital as a participant in an alleged physician price-fixing conspiracy.

### **Union Oil Company of California**

(Final Order August 2, 2005): With an administrative complaint issued on March 4, 2003 the Commission charged that Union Oil Company of California (Unocal) made misleading statements concerning its emissions results for the production of “summer-time” gasoline mandated by the California Air Resources Board (CARB) for use March through October. According to the complaint, Unocal lead producers of the CARB gasoline to believe that its research was non-proprietary and in the public interest, while at the same time it failed to disclose that it had patent pending claims on the research results with the U.S. Patent and Trademark Office. As a result of the patent being allowed, Unocal is now in a position to enforce its patent rights – requiring companies that produce the “summer-time” CARB gasoline to pay substantial royalties to Unocal if they use the patented technology. An initial decision dismissing the complaint was filed on February 17, 2004.

A consent order settled the Commission’s monopolization complaint against Unocal. Under the terms of the settlement, Unocal will stop enforcing the relevant reformulated gasoline patents, which the Commission alleged could have imposed additional costs of over \$500 million per year on California consumers. In addition, Unocal will release all relevant gasoline patents to the public.

### **Valassis Communications, Inc.**

(Final Order April 28, 2006): Valassis, a leading producer of free-standing newspaper inserts (FSIs) in the United States, has settled charges that it attempted to collude with News America Marketing, its only FSI rival, to eliminate competition between the two companies. Under the consent order settling the FTC’s complaint, Valassis is barred from engaging in collusive agreements with other FSI publishers or attempting to collude with its competitors.

### **Virginia Board of Funeral Directors and Embalmers**

(Final Order October 1, 2004): The Virginia Board of Funeral Directors and Embalmers settled charges that it prohibited Virginia funeral directors and service providers from engaging in truthful advertising to notify consumers of prices and discounts for funeral products and services. Under terms of the consent order, the Board is prohibited from engaging in such practices in the future and is required to amend its regulation prohibiting Board licensees from advertising funeral services including those services that can be contracted prior to the death of the person whose funeral is being planned.

**Washington University Physician Network**

(Final Order August 22, 2003): A consent order prohibits a St. Louis, Missouri physicians' organization from negotiating with third party payers on behalf of its member physicians and from refusing to deal with health insurance companies.

**White Sands Health Care System, L.L.C.**

(Final Order January 11, 2005): A consent order settled charges that the White Sands Health Care System refused to deal with health care insurers that resisted the collectively negotiated prices set by its member physicians and nurse anesthetists. The complaint alleged that these practices increased costs for health care for consumers in the Alamogordo, New Mexico area. White Sands, a physician-hospital organization, consists of Alamogordo Physicians, an independent practice association; Gerald Champion Regional Medical Center, and 31 non-physician health care providers, including all five nurse anesthetists in the area.

**Williamsburg Area Association of Realtors, Inc.**

(Final Order December 1, 2006): The Commission settled charges that Williamsburg Area Association of Realtors, Inc. adopted rules that withheld valuable benefits of the Multiple Listing Services (MLSs) they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. The consent order settling the FTC's charges will prohibit Williamsburg Area Association of Realtors, Inc. from discriminating against non-traditional listing arrangements.

## **E. Administrative Complaints**

**MiRealSource, Inc.**

(October 12, 2006): The Commission filed a Part 3 administrative complaint challenging a set of rules adopted by MiRealSource, Inc. to keep Exclusive Agency Listings from being listed on its MLS, as well as other rules that restricted competition in real estate brokerage services. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS or from public Web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along. On February 5, 2007 the Commission approved a consent order for public comment settling the complaint. Under the terms of the proposed consent order, MiRealSource has agreed to abandon such collusive conduct and provide its services to all member brokers representing potential home sellers, regardless of the type of listing contract that they choose.

**RealComp II Ltd.**

(October 12, 2006): The Commission filed a Part 3 administrative complaint challenging a set of rules adopted by RealComp II Ltd. that prohibited information on Exclusive Agency Listings and other forms of nontraditional listings from being transmitted from the MLS it maintains to public real estate Web sites. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS or from public Web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along.

## **F. Other**

### **Public Documents/Policy Statements/Conferences**

**Enforcement Perspectives on the Noerr-Pennington Doctrine** (November 2, 2006): The report provides enforcement perspectives on the Noerr-Pennington doctrine, which precludes enforcement of the antitrust laws against certain private acts that urge government action.

**Policy Statement on Monetary Equitable Remedies in Competition Cases** (July 25, 2003): The Commission issued a policy statement that identified three factors that will be considered in determining whether the Commission will seek disgorgement or restitution in competition cases. First, the Commission will ordinarily seek monetary relief when the underlying violation is clear. Second, there must be a reasonable basis for calculating the amount of remedial payment. Third, the Commission will consider the value of seeking monetary relief in light of other remedies available in the matter including private actions and criminal proceedings.

**FTC Antitrust Actions in Pharmaceutical Services and Products** (November 8, 2002): Summary of health care antitrust matters involving the pharmaceutical industry and enforcement policy prepared by the FTC Health Care Services and Products Division Staff.

### **Commission Studies/Guidelines**

***Agreements Filed With the Federal Trade Commission Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Summary of Agreements Filed in Fiscal Year 2006: A Report by the Bureau of Competition*** (January 17, 2007): Summary of agreements filed with the Commission in fiscal year 2006 (ending September 30, 2006) by generic and branded drug manufacturers.

***Municipal Provision of Wireless Internet: A Report of the Staff of the Federal Trade Commission*** (October 10, 2006): The report describes the various wireless Internet technologies currently in use or under development, identifies a range of operating models that have been used to provide or facilitate wireless Internet service, summarizes the major arguments for and against municipal participation, and describes various types of legislative proposals related to municipal Internet service.

***Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases: A Report by the Federal Trade Commission*** (May 22, 2006): The report details the results of an intensive, Congressionally-mandated Commission investigation into whether gasoline prices nationwide were “artificially manipulated by reducing refinery capacity or by any other form of market manipulation or price gouging practices” and into gasoline pricing by refiners, large wholesalers, and retailers in the aftermath of Hurricane Katrina.

***Agreements Filed With the Federal Trade Commission Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Summary of Agreements Filed in Fiscal Year 2005: A Report by the Bureau of Competition*** (April 24, 2006): Summary of agreements filed with the Commission in fiscal year 2006 (ending September 30, 2005) by generic and branded drug manufacturers.

***Agreements Filed with the Federal Trade Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Summary of Agreements Filed in FY 2004: A Report by The Bureau of Competition*** (January 7, 2005): Information regarding the 22 agreements that were filed with the Commission in fiscal year 2004.

***The Petroleum Industry: Mergers, Structural Change and Antitrust Enforcement: A Report of the Staff of the Federal Trade Commission, Bureau of Economics*** (August 2004): The staff report describes the Commission's merger enforcement actions in petroleum-related markets during the past 20 years; provides an overview of industry trends in production and pricing; provides an analysis of merger activity for the period 1985 through 2001; and examines trends at specific industry levels: crude oil production and reserves; bulk transport of crude oil; refining; bulk transport of refined products; and product terminals and gasoline marketing.

***Improving Health Care: A Dose of Competition: A Report by the Federal Trade Commission and the Department of Justice*** (July 23, 2004): Joint report to inform consumers, businesses, and policy-makers on a range of issues affecting the cost, quality, and accessibility of health care.

***Fulfilling the Original Vision: The FTC at 90*** (April 2, 2004): Report highlights some of the Commission's accomplishments from the past year and outlines several goals to guide the agency's twin missions of competition and consumer protection.

***Possible Anticompetitive Barriers to E-Commerce: Contact Lenses: A Report from the Staff of the Federal Trade Commission*** (March 29, 2004): The staff report concludes that e-commerce offers consumers greater choices and more convenience in the contact lens market.

***Pharmaceutical Agreement Notification Filing Requirements*** (Effective January 7, 2004): Agreements between Brand-name and generic pharmaceutical companies regarding the manufacture, marketing, and sale of generic versions of brand-name drug products are required to be filed with the Commission and the Department of Justice, pursuant to Section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

***Slotting Allowances in the Retail Grocery Industry: Selected Case Studies of Slotting Allowances in Five Product Categories*** (November 14, 2003): Slotting allowances paid to certain retailers in certain geographic areas for five product categories: fresh bread, hot dogs, ice cream and frozen novelties, shelf-stable pasta, and shelf-stable salad dressing.

***To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy, A Report by the Federal Trade Commission*** (October 2003): The report is the first of two reports about how to maintain that balance. The report concludes that questionable patents are a

significant competitive concern and can harm innovation. The report makes recommendation to reduce the number of questionable patents that are issued and upheld.

***Report of the State Action Task Force: Recommendations to Clarify and Reaffirm the Original Purposes of the State Action Doctrine to Help Ensure that Robust Competition Continues to Protect Consumers*** (September 23, 2003): The staff report concludes that the scope of the antitrust state action doctrine has expanded dramatically since its articulation by the Supreme Court. The report recommends clarifications of the doctrine, including more rigorous application of the “clear articulation” and “active supervision” requirements.

***Possible Anticompetitive Barriers to E-Commerce: Wine*** (July 3, 2003): Staff report concludes that e-commerce offers consumers lower prices and more choices in the wine market. Report concludes that state bans on interstate direct shipping imposes the largest regulatory barrier to expanded e-commerce in wine.

### **Advisory Opinions**

**St. John's Health System.** Staff letter concerning the provision of pharmaceuticals by St. John's Regional Health Center, a non-profit hospital, to three hospital-owned pharmacy sites, under the Non-Profit Institutions Act (September 13, 2006).

**Alpena Public Schools.** Staff letter concerning a program to transfer pharmaceuticals at cost between a non-profit hospital and a non-profit public school system (June 16, 2006.)

**Suburban Health Organization.** Staff letter concerning the antitrust implications of a proposal to undertake a program involving partial integration among eight independent Suburban Health Organization member hospitals and the 192 primary care physicians that, in total, they employ (March 28, 2006).

**North Mississippi Health Services.** Staff letter concerning the transfer of pharmaceuticals at cost by non-profit hospital to patients of non-profit clinic and hospice (August 16, 2005).

**Stevens Hospital, of Edmonds, Washington.** Staff letter concerning the Applicability of the Non-Profit Institutions Act Amendments to the Robinson-Patman Act to Stevens Proposed Pricing of Pharmaceuticals (April 18, 2005).

**Bristol-Myers Squibb.** Staff advised Bristol-Myers Squibb that its proposed settlement with Teva Pharmaceuticals USA, inc. does not raise issues under Section 5 of the Federal Trade Commission Act. (May 2004)

**Dunlap Memorial Hospital in Orville, Ohio.** Staff concluded that Dunlap's provision of pharmaceuticals to the Viola Startzman Free Clinic falls within the scope of the Non-Profit Institutions Act. (January 9, 2004)



**Medical Group Management Association:** Letter from Jeffrey W. Brennan to Gerald Niederman. An association of medical practice administrators requested an opinion concerning its proposal to conduct and publish the results of a survey of physician practices. (November 3, 2003)

**Partlinx LLC.** Letter advising that FTC staff does not presently intend to recommend law enforcement action in connection with Partlinx's proposed e-commerce joint venture. (October 10, 2003)

**Bay Area Preferred Physicians.** Letter advising that FTC staff does not presently intend to recommend an enforcement action if Bay Area Preferred Physicians establishes a physician network to create new contracting opportunities between physicians and health plans and other third-party payers. (September 23, 2003)

**Valley Baptist Medical Center.** Letter regarding sale of pharmaceuticals to contracted workers who provide services at VBMC. (March 18, 2003)

**Arkansas Children's Hospital.** Letter regarding sale of pharmaceuticals to patients seen in clinics that are located on ACH's campus but are operated by the University of Arkansas for Medical Sciences. (March 18, 2003)

**PriMed Physicians :** Letter regarding proposal by physician group to create with other Dayton, Ohio area physicians an advocacy group to undertake "a campaign to inform and educate the general public" of policies and procedures by third party payers in Dayton. (February 6, 2003)

#### **Advocacy Filings**

**Comments of the Federal Trade Commission Staff** before the Louisiana State Bar Association Rules of Professional Conduct Committee regarding proposed rules on lawyer advertising and solicitation (March 14, 2007).

**Joint Amicus Brief Filing with the U.S. Department of Justice** in *Leegin Creative Leather Products, Inc., Petitioner, v. PSKS, Inc* concerning vertical minimum resale price maintenance Agreements in the Supreme Court of the United States, On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit) (Case No. 06-480) (January 22, 2007).

**Joint Amicus Brief Filing with the U.S. Department of Justice** in *Credit Suisse Securities (USA) LLC, et al. Petitioners, v. Glen Billing, et al.,* concerning certain antitrust immunity issues (In the Supreme Court of the United States, On Writ of Certiorari to the United States Court of Appeals for the Second Circuit) (Case No. 05-1157) (January 22, 2007).

**Comments of the Federal Trade Commission Staff** to The Honorable Terry G. Kilgore Concerning Virginia House Bill No. 945 to regulate the contractual relationship between pharmacy benefit managers and both health benefit plans and pharmacies (October 2, 2006).

***Comments of the Federal Trade Commission Staff*** before the Office of Court Administration of the New York State Unified Court System concerning proposed amendments to rules governing attorney advertisement (September 14, 2006).

***Joint Amicus Brief Filing with the U.S. Department of Justice*** in Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc. concerning predatory bidding in the Supreme Court of the United States, On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (Case No. 05-381) (August 25, 2006)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to the Honorable Helene E. Weinstein Regarding New York A.B. A05596 to establish that certain services related to real estate transactions may be provided only by attorneys (June 21, 2006).

***Joint Amicus Brief Filing with the U.S. Department of Justice*** in Latino Quimica-Amtex, S.A. et al. v. Atofina S.A. et al. Concerning the D.C. Circuit's Empagran Decision in the Second Circuit (Case No.: 05-5754-cv) (June 1, 2006).

***Joint Amicus Brief Filing with the U.S. Department of Justice*** in Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co., Inc. concerning predatory bidding in the Supreme Court (Case No.: 05-381) (May 31, 2006).

***Comments of the Federal Trade Commission Staff*** before the Professional Ethics Committee of the State Bar of Texas concerning online attorney matching programs (May 26, 2006).

***Comments of the Federal Trade Commission Staff*** to the Honorable Noble E. Ellington Concerning Louisiana S.B. 642 to define more clearly the type of seller that must be licensed as an auctioneer (May 26, 2006).

***Comments of the Federal Trade Commission Staff*** before the Department of Commerce Patent and Trademark Office in the matter of changes to practice for continuing applications, requests for continued examination practice, and applications containing patentably indistinct claims (May 3, 2006).

***Comments of the Federal Trade Commission Staff*** to the Honorable Paula Dockery concerning Florida Senate Bill 282, a bill to allow direct shipment of wine to Florida consumers from manufacturers inside or outside Florida (April 10, 2006).

***Modernization of Antitrust Law:*** Antitrust Modernization Commission (March 21, 2006)

***Comments of the Federal Trade Commission Staff*** to The Honorable Eric D. Fingerhut concerning Ohio S.B. 179 to allow direct shipment of wine to Ohio consumers (March 22, 2006).

***Comments of Staff of the Federal Trade Commission*** Bureau of Economics to file a comment with the Federal Communications Commission regarding the auction of advanced wireless services licenses (March 10, 2006).

***Comments of the Federal Trade Commission Staff*** before the New Jersey Supreme Court Concerning Attorney Advertising (March 1, 2006).

***Comment of the Federal Trade Commission*** to the Federal Energy Regulatory Commission Concerning Market-Based Rates for Public Utilities (January 18, 2006).

***Comments of Staff of the Federal Trade Commission*** to the Honorable Bill Seitz Concerning Ohio H.B. 306 to Amend the Operation of Wine Wholesale Franchises (December 12, 2005).

***Federal Trade Commission Civil Remedies:*** Antitrust Modernization Commission (December 1, 2005).

***Statutory Immunities and Exemptions:*** Antitrust Modernization Commission (December 1, 2005).

***The Hart-Scott-Rodino Second Request Process:*** Antitrust Modernization Commission (November 17, 2005).

***Treatment of Efficiencies in Merger Enforcement:*** Antitrust Modernization Commission (November 17, 2005).

***Patent Law Reform:*** Antitrust Modernization Commission (November 8, 2005).

***Federal Antitrust Enforcement Institutions :*** Antitrust Modernization Commission (November 3, 2005).

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to The Honorable Alan Sanborn Concerning Michigan H.B. 4849, Which Would Impose Minimum Service Requirements on Real Estate Brokers (October 18, 2005)

***State Action Doctrine:*** Antitrust Modernization Commission (September 29, 2005).

***Comments of Staff of the Federal Trade Commission,*** Bureau of Economics, Bureau of Competition and the Office of Policy Planning to the Honorable Wesley Chesbro Concerning the Proposed California Franchise Act to Govern Contractual Relationships Between Beer Manufacturers and Wholesalers (August 26, 2005).

***Comment of the Federal Trade Commission*** to the Federal Energy Regulatory Commission Concerning Information Requirements for Available Transfer Capability (August 23, 2005).

***Comments of Staff of the Federal Trade Commission*** to the Federal Energy Regulatory Commission concerning Long Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators (August 23, 2005).

***Brief Amicus Curiae*** Illinois Tool Works, Inc. et al. v. Independent Ink, Inc. (Supreme Court) (Case. No. 04-1329)) Supporting Petitioners on the Issue of Whether a Patent is Presumed to Confer Market Power in a Tying Case (August 5, 2005).

***Brief Amicus Curiae*** Texaco, Inc. v. Dagher et al. (Supreme Court (Case Nos. 04-805 and 04-814)). Concerning Whether an Agreement on Pricing Between Joint Venture Owners is a Per se Violation of the Sherman Act When the Owners do not Compete in those Products (May 31, 2005).

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to the Honorable Matt Blunt Concerning Missouri H.B. 174 to Impose Minimum Service Requirements on Real Estate Brokers (May 24, 2005).

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to the Alabama Senate Concerning Alabama H.B. 156 to Impose Minimum Service Requirements on Real Estate Brokers (May 12, 2005).

***Joint Comments of the Federal Trade Commission and the Department of Justice*** before the Texas Real Estate Commission Concerning Proposed Amendments to 22 Tex. Admin Code § 535.2 to Impose Minimum Service Requirements on Real Estate Brokers (April 20, 2005)

***Comment of the Federal Trade Commission*** to the Food and Drug Administration Concerning Response to Citizen Petition by IVAX Pharmaceuticals Relating to Generic Drug Application (Apr. 2005).

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning regarding three bills that the Virginia Assembly considered: HB 2518 - would loosen current restrictions on competition between commercial and independent optometrists; and HB 160 and SB 272 - would further impair competition between these groups of eye care professionals. (March 9, 2005)

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning to North Dakota State Senator Richard L. Brown concerning HB 1332 which might have the unintended consequences of increasing the price of pharmaceuticals within the state and ultimately decrease the number of North Dakotans with insurance coverage for pharmaceuticals. (March 8, 2005)

***Joint Amicus Brief Filing with the U.S. Department of Justice:*** Empagran, S.A. v. Hoffmann-LaRoche, Ltd., No. 01-7115 (D.C. Cir.). International cartels. (February 18, 2005)

***Brief Amicus Curiae*** Teva Pharmaceuticals USA, Inc. v. Pfizer, Inc. Case No. 04-1186 (Fed. Cir.) Teva, in an effort to market its generic version of Pfizer's Zoloft drug, sued Pfizer challenging the patent for Zoloft. (February 11, 2005)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to Chief Justice McFarland of the Kansas Supreme Court concerning the Unauthorized Practice of Law

Committee of the Kansas Bar Association's proposal to define the practice of law. (February 4, 2005)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** urging the Massachusetts Bar Association to narrow or reject a proposal that would reduce competition between nonlawyers and lawyers to provide certain services. (December 16, 2004)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** to The Honorable Paul Kujawski, Member of the Massachusetts House of Representatives, concerning the adoption of HB 180, a bill that would enable nonlawyers to compete with lawyers to perform certain real estate closing services. (October 12, 2004)

***Comments of Staff of the Federal Trade Commission*** to California Assembly Member Greg Aghazian concerning a bill (AB 1960) that requires pharmacy benefit managers to disclose certain information to purchasers of their services. (September 10, 2004)

***Brief Amicus Curiae*** Cleveland Bar Association v. CompManagement, Inc. (Case No.: UPL 02-04) Matter on appeal from a decision rendered by Ohio's UPL Board finding that CompManagement, an actuarial firm, had engaged in the unauthorized practice of law through its representation of employers in workers' compensation matters before the Ohio Industrial Commission. (August 5, 2004)

***Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice*** Andrx Pharmaceuticals, Inc. v. Kroger Company, et al. (U.S. Court of Appeals for the Sixth Circuit) Private antitrust matter concerning an interim settlement of a pharmaceutical patent infringement case, in which the alleged infringer agreed not to market its product while the infringement litigation was pending. (July 16, 2004)

***Comments of the Federal Trade Commission*** to the Federal Energy Regulatory Commission concerning revisions to the conditions under which FERC will permit electric utilities to sell wholesale power at market rather than regulated rates. (July 16, 2004)

***Comments of the Federal Trade Commission*** to the Federal Energy Regulatory Commission concerning FERC's policies governing electric utility procurement of wholesale electric supply from affiliated generators and through acquisition of affiliated, unregulated generation assets. (July 14, 2004)

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Michigan House Representative Gene DeRosset on Michigan's proposed bill 4757, "Petroleum Marketing Stabilization Act". (June 18, 2004)

***Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice*** in Jackson Tennessee Hospital Co., No. 04-5387 (6th Cir.) Brief contends that the district court improperly concluded that Tennessee Hospital Co. and other defendants were exempt from antitrust enforcement under the state action doctrine. (June 4, 2004)

***Joint Brief Amicus Curiae Federal Trade Commission and the Department of Justice*** in *McMahon v. Advanced Title Services Company of West Virginia*. The brief argues that allowing nonlawyers to compete with lawyers in the provision of real estate settlement services, including title searching, title reports, closings, and document deliveries, would benefit West Virginia consumers in a variety of ways. (May 25, 2004)

***Comments of the Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Rhode Island Attorney General Patrick C. Lynch and Deputy Senate Majority Leader Juan M. Pichardo on seven state bills that contain “freedom of choice” and “any willing provider” provisions for pharmaceutical sales. (April 12, 2004)

***Comments of the Staff of the Federal Trade Commission*** Bureaus of Competition, Consumer Protection and Economics and the Office of Policy Planning provide comments on Maryland House Bill 795 which would permit corporate ownership of funeral homes. (April 6, 2004)

***Comments of the Staff of the Federal Trade Commission*** Bureaus of Competition, Economics, Consumer Protection, the Northeast Regional Office and the Office of Policy Planning provided comments on three bills that would allow out-of-state vendors to ship wine directly to New York consumers if the vendors comply with certain regulatory requirements. (March 30, 2004)

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Kansas State Senator Les Donovan regarding Bill No. 2330 which would bar the “below-cost” sale of motor fuel. (March 16, 2004)

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Comments to the Speaker Pro Tempore of the Alabama State House of Representatives Concerning the Alabama Motor fuels Marketing Act. (January 29, 2004)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** on a draft of the proposed amendment to the Indiana Supreme Court Admissions & Discipline Rule regarding Unauthorized Practice of Law to the Indiana State Bar Association. (October 10, 2003)

***Comments of the Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Analysis of Wisconsin’s Unfair Sales Act: Letter to Wisconsin State Representative Shirley Krug. (October 1, 2003)

***Comments to the Federal Energy Regulatory Commission*** regarding proposed revisions to market-based tariffs and authorization. (August 28, 2003)

***Letter sent to New York Attorney Eliot Spitzer***. Comments of the Office of Policy and Planning and the Bureau of Competition stated that there is a significant risk that the Motor Fuel Marketing Practices Act could harm consumers by reducing competition in the sale of motor fuels. (July 24, 2003)

***Application for Approval of Asset transfer Agreements with Affiliated Company, Ameren Union Electric Company.*** Comments to the Illinois Commerce Commission regarding the transfer of generation assets from an unregulated affiliated to its regulated parent utility. (June 18, 2003)

***Proposed Amendments to the North Carolina Motor Fuel Marketing Act.*** Comments of the Federal Trade Commission's Bureau of Competition, Bureau of Economics, and the Office of Planning. Letter to Senator Daniel G. Clodfelter, Chairman of the Judiciary I Committee, stating that the proposed amendments to the state's Motor Fuel Marketing Act are not only unnecessary, but have significant potential to harm consumers by causing them to pay more at the pump. (May 21, 2003)

***Standards for Determining Whether Natural Gas Prices are Constrained by Market Forces.*** Comments to the Georgia Public Service Commission regarding proposed standards to determine whether market forces constrain retail prices for natural gas. (April 24, 2003)

***The Potential Effect of Tenet Healthcare Corporation's Proposed Purchase of Slidell Memorial Hospital.*** Letter from Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Louisiana Attorney General, The Honorable Richard P. Ieyoub, opposing the proposed acquisition by Tenet Health Care Systems of the Slidell Memorial Hospital. According to the letter, the proposed acquisition would eliminate competition and probably give Tenet the opportunity to increase prices unilaterally following the acquisition. (April 1, 2003)

***Real Estate Closing Activities.*** The Commission and the Department of Justice Joint letter to the Rhode Island House of Representatives on Proposed Bills H.5936 and H.5639: Proposed Restrictions on Competition from Non-Attorneys. The agencies expressed concerns that the bills would eliminate competition between non-lawyers and lawyers in the closing of real estate deals in Rhode Island by requiring a lawyer to close almost all real estate closings. (April 1, 2003)

***Competition and the Effects of Price Controls in Hawaii's Gasoline Market*** (January 28, 2003)

***Competition and the Effects of Price Controls in Hawaii's Gasoline Market*** (January 28, 2003)

***In the Matter of Application for FDA Approval to Market a New Drug; Patent Listing Requirements; Comments of the FTC Before the HHS and FDA*** (December 23, 2002)

***FTC/DOJ Comments on the American Bar Association's Proposed Model Definition of the Practice of Law*** (December 20, 2002)

***Ohio House Bill 325 - Physician Collective Bargaining*** (October 16, 2002)

## **Workshops/Hearings/Conferences**

### **Single-Firm Conduct**

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. March 7, 2007: Monopoly Power.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. February 9, 2007: Business Testimony.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. January 26, 2007: Business/Academic Testimony.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. January 10, 2007: Business Testimony.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. December 1, 2006: Misleading and Deceptive Conduct.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. November 17, 2006: Loyalty Discounts.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. November 7, 2006: Exclusive Dealing.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. October 27, 2006: Tying.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. October 20, 2006: Tying, Exclusive Dealing, and Loyalty Discounts.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. September 18, 2006: Empirical Perspectives.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. September 6, 2006: International Issues.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. July 10, 2006: Refusals to Deal.

**Hearings on Single-Firm Conduct** sponsored by the Commission and the Department of Justice. June 20, 2006: Predatory Pricing.



## Healthcare

### **Roundtable on The Economics of the Pharmaceutical Industry (October 20, 2006)**

This Roundtable brought together academic economists, government economists and industry professionals to discuss a number of important topics including the economic impact of direct-to-consumer advertising, spillovers and mergers in pharmaceutical R&D, and the economic incentives for new drug development.

### **Conference on Healthcare Information & Competition (April 16, 2004)**

This quasi-academic conference, organized by Stanford health economist Dan Kessler, brought together academics and health policy makers for one day to examine the production of and use of health care market information by consumers and employers. It examined some effects of competition in promoting or retarding information use. Aspects of health care quality were also addressed. Seven papers were presented, and participation included government health care experts and employers.

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. September 24 - 26; and 30; October 1, 2003, Washington, DC.

- Physician Product and Market Definition
- Physician Information Sharing
- Physician IPAs - Patterns and Patterns of Integration - Messenger Model
- Physician Unionization; Group Purchasing Organizations
- International Perspectives on Health Care and Competition Law and Policy
- Medicare and Medicaid
- Remedies: Civil/Criminal

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. June 25 - 26, 2003, Washington, DC.

- Mandated Benefits
- Pharmaceutical: Formulary Issues
- Prospective Guidance

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. May 27; 29; and 30 and June 10 - 12, 2003, Washington, DC.

- Quality and Consumer Information - Hospitals
- Physicians
- Market Entry
- Long Term Care/Assisted Living Facilities
- Noerr-Pennington/State Action
- Financing Design/Consumer Information Issues

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. April 21 - 23; May 7 - 8, 2003, Washington, DC.

- Health Insurance Monopoly - Market Definition. Competitive Effects
- Health Insurance Monopoly - Entry and Efficiencies
- Health Insurance Monopsony - Market Definition - Competitive Effects

- Health Insurance/Providers: Countervailing Market Power - Most Favored Nation Clauses
- Physician Hospital Organizations
- Qualify and Consumer Information - Overview

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. March 26 - 28, 2003, Washington, DC.

- Round table discussion on hospital-related issues and an examination of product and geographic markets for hospitals
- Issues in litigating hospital mergers

**Hearings on Healthcare and Competition Law and Policy** sponsored by the Commission and the Department of Justice. February 26 - 28, 2003, Washington, DC. Examined the state of the healthcare market place and the role of competition, antitrust, and consumer protection in satisfying citizens' preferences for high-quality, cost-effective healthcare.

**Healthcare Impact of Competition Law & Policy on the Cost, Quality and Availability of Healthcare and the Incentives for Innovation in the Field. September 9 - 10, 2002 Workshop, Washington, DC.**

### **Intellectual Property and Patent Law**

**Ideals into Action: Implementing Reform of the Patent System** (April 15 - 16, 2004) The Commission, the National Academy of Sciences, and the Berkeley Center for Law and Technology sponsored a conference to address patent reform and how it might be implemented.

**Town Meetings on Patent System Reform** Three meetings in San Jose, California, February 18, 2005; Chicago, Illinois on March 4, 2005; and Boston, Massachusetts on March 18, 2005 to bring together government officials, business representatives, lawyers and other members of the patent community to discuss significant recommendations for patent reform made by the Commission, the National Academies' Board on Science, Technology and Economic Policy, and the American Intellectual Property Law Association.

#### **Intellectual Property Law and Policy - Roundtable Discussion (October 25, 2002)**

- Competition, Economic, and Business Perspectives on Patent Quality and Institutional Issues: Competitive Concerns, Prior Art, Post-Grant Review, and Litigation
  - Competition, Economic, and Business Perspectives on Substantive Patent Law Issues: Non-Obviousness and Other Patentability Criteria
    - Antitrust Law and Patent Landscapes
    - Standard Setting Organizations: Evaluating the Anticompetitive Risks of Negotiating Intellectual Property Terms and Conditions Before a Standard is Set
    - Relationships Between Competitors and Incentives to Compete: Cross Licensing of Patent Portfolios, Grantbacks, Reach-Through royalties, and Non-Assertion Clauses
- [www.ftc.gov/opp/intellect/index](http://www.ftc.gov/opp/intellect/index)

## **Antitrust and Intellectual Property Law and Policy**

- Patent Pool and Cross-Licensing: When Do They Promote or Harm Competition? (April 17, 2002)
- Standard-Setting Practices: Competition, Innovation and Consumer Welfare to Deal? (April 18, 2002)
- The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal? (May 1, 2002)
- Patent Settlements: Efficiencies and Competitive Concerns (May 2, 2002)
- Antitrust Analysis of Licensing Practices (May 14, 2002)
- An International Comparative Law Perspective on the Relationship Between Competition and Intellectual Property, Parts I and II (May 22 - 23, 2002)

## **Other**

### **Broadband Connectivity Competition Policy (February 13-14, 2007)**

the Federal Trade Commission held a public workshop on “Broadband Connectivity Competition Policy” bringing together experts from business, government, and the technology sector, consumer advocates, and academics to explore competition and consumer protection issues relating to broadband Internet access, including so-called “network neutrality.”

### **Roundtable on the Economics of Internet Auctions (October 27, 2005)**

The Bureau of Economics held a Roundtable on The Economics of Internet Auctions bringing together academic economists, government economists and industry professionals to discuss competition, network effects, fraud, lemons problems, inference, and demand estimation.

### **Competition Policy and the Real Estate Industry (October 25, 2005)**

The Federal Trade Commission and the Department of Justice’s (DOJ) Antitrust Division hosted a joint workshop covering new and innovative brokerage business models, multiple listing services, and the implications of state-imposed minimum-service requirements.

### **Oil Industry Merger Effects (January 14, 2005)**

The public conference discussed two recent studies that focused on the price effects of mergers and concentration in the United States petroleum industry.

### **90th Anniversary Symposium (September 22 - 23, 2004)**

The Federal Trade Commission honored the agency’s 90th anniversary and featured over 50 participants, current Commissioners and other agency officials, as well as prominent academics and practitioners, many of whom are Federal Trade Commission alumnae.

### **Anticompetitive Efforts to Restrict Competition on the Internet (October 8 - 10, 2002)**

The public workshop explored possible anticompetitive efforts to restrict competition on the Internet.

## IV. International Activities

In February of 2007, Chairman Majoras created the FTC's Office of International Affairs to coordinate more effectively the full range of the FTC's international activities. The move brings international antitrust, consumer protection, and technical assistance programs under one office.

Cooperation with antitrust agencies abroad is a key component of the FTC's competition enforcement agenda, resulting in closer collaboration on cross-border actions, and convergence toward internationally consistent consumer welfare-based competition policies. The FTC routinely coordinates with colleagues in foreign antitrust agencies on the analysis and resolution of cases of mutual concern. This results in more efficient and effective review of multijurisdictional mergers and suspected anticompetitive conduct. Recent examples of international coordination in merger enforcement include:

- **Boston Scientific/Guidant.** Boston Scientific's proposed \$27 billion bid to take over Guidant raised concerns in several medical device markets, particularly stents and other devices used to treat vascular diseases. The FTC coordinated its review with the European Commission (EC), the Canadian Competition Bureau, and the Japan Fair Trade Commission. The FTC's review resulted in a consent order requiring the divestiture of Guidant's vascular business to an FTC-approved buyer. Canada closed its investigation because remedies obtained by the FTC and the EC adequately resolved competition concerns in Canada.
- **Linde/BOC Group.** Linde AG's proposed \$14.4 billion acquisition of The BOC Group plc raised competitive concerns in numerous local markets for atmospheric gases and in the world market for bulk refined helium (in which a combined Linde/BOC would have become the largest supplier worldwide). FTC staff worked with EC and Australian competition agency staff to address these concerns, and cooperated on the remedial phase of the case to maintain competition in the worldwide helium market.

Through the OIA, the FTC continues to foster its bilateral ties through consultations in Washington, D.C. and in foreign capitals, as well as through continued formal and informal case coordination. The OIA maintains regular contacts with the competition agencies of our major trading partners such as Canada, Mexico, the European Union (EU) and its members, Japan, Korea, and Australia. Cooperation with other important jurisdictions such as Brazil, the Russian Federation, and countries in Central and Eastern Europe continues to grow as well.

The FTC also continues to work closely with the two largest countries in the world, China and India, as they seek to develop and implement effective competition laws. The FTC also builds on its strong bilateral relationships to promote policy convergence through formal and informal working arrangements with other agencies, many of which seek the FTC's views on new policy initiatives. Multilateral competition fora provide significant opportunities for antitrust agencies to promote mutual understanding and further international cooperation. The FTC participates actively in several such fora, including the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), the United

Nations Conference on Trade and Development (UNCTAD), and the Asia-Pacific Economic Cooperation (APEC).

## V. Competition Speeches

**“Vertical Restraints: Federal and State Enforcement of Vertical Issues”** (March 8, 2007) Pamela Jones Harbour, Commissioner. ALI-ABA Course of Study, Product Distribution and Marketing in Coral Gables, FL.

**“A New Direction for Antitrust at the Supreme Court?”** (March 1, 2007) Thomas Rosch, Commissioner. Minnesota State Bar Antitrust Section Meeting in Minneapolis, MN.

**“Navigating Between Dystopian Worlds on Network Neutrality, With Misery and Wretchedness on Each Side, Can We Find A Third Way?”** (February 13, 2007) Jon Leibowitz, Commissioner. FTC Broadband Connectivity Competition Policy Workshop, Washington D.C.

**Keynote Address** (February 13, 2007) Deborah Platt Majoras, Chairman. FTC Workshop on Broadband Connectivity Competition Policy, Washington, D.C.

**“Update of Recent Enforcement Activities and Priorities”** (February 2, 2007) Jeffrey Schmidt, Director, Bureau of Competition. 46th Annual Advanced Antitrust Seminar: Distribution & Marketing. Practising Law Institute, New York, NY.

**“Three Recent Competition Issues at the FTC”** (January 5, 2007) Michael A. Salinger, Director, Bureau of Economics. Industrial Organization Society Session at the American Social Science Association Meetings, Chicago, IL.

**“Monopsony and The Meaning of 'Consumer Welfare,' A Closer Look at Weyerhaeuser”** (December 7, 2006) Thomas Rosch, Commissioner. 2006 Milton Handler Annual Antitrust Review, New York, NY.

**“Merger Policy: Are the Courts and Prosecutors in Sync?”** (November 16, 2006) Jeffrey Schmidt, Director, Bureau of Competition. ABA Fall Forum, Washington, D.C.

**“Competition Choke Points?”** (November 9, 2006) Thomas Rosch, Commissioner. 2006 Global Forum, Paris, France.

**“Remedies”** (October 29, 2006) Jeffrey Schmidt, Director, Bureau of Competition. Esapience Conference in Como, Italy.

**“Adoption of Trade Regulations in China, Scope and Effect: An American's View”** (October 20, 2006) Pamela Jones Harbour, Commissioner. New York State Bar Association International Law and Practice Section Fall 2006 Meeting, Shanghai, China,

**“How Settlements Make Strange Bedfellows: Or How the Federal Trade Commission has Managed to Unite the Entire Pharmaceutical Industry (but only in Opposition to the FTC’s Position on Exclusion Payment Settlements)”** (September 29, 2006) Jon Leibowitz, Commissioner. Generic Pharmaceutical Association's Annual Policy Conference, Washington, D.C.

**“The Legacy of Matsushita: Has this Thing Called Economics Gotten Way Out of Hand?”** (September 29, 2006) Michael A. Salinger, Director, Bureau of Economics. Matsushita at 20, Loyola University School of Law, Institute for Consumer Antitrust Studies, Chicago, IL.

**“A Primer on the Application of Antitrust Law to the Professions in the United States”** (September 29, 2006) William Blumenthal, General Counsel. Annual Fall Conference on Competition Law of the Canadian Bar Association, Ottawa/Gatineau Canada.

**“Lessons from the Masters”** (September 28, 2006) Deborah Platt Majoras, Chairman. ABA Antitrust Section Masters Program, Kiawah Island, SC.

**“The Federal Trade Commission in the Online World: Promoting Competition and Protecting Consumers”** (August 21, 2006) Deborah Platt Majoras, Chairman. The Progress & Freedom Foundation’s Aspen Summit, Aspen CO.

**“Looking for the Keys Under the Lamppost: Insights from Economics into Standards for Unilateral Conduct”** (July 24, 2006) Michael A. Salinger, Director, Bureau of Economics. ABA Section of Antitrust Law, Economics and Section 2 Committees Brown Bag, Washington, D.C.

**“Perspectives on Three Recent Votes: The Closing of the Adelphia Communications Investigation, the Issuance of the Valassis Complaint & the Weyerhaeuser Amicus Brief”** (July 6, 2006) Thomas Rosch, Commissioner. National Economic Research Associates, 2006 Antitrust & Trade Regulation Seminar, Santa Fe, NM.

**“Antitrust Modernization Commission Remarks”** (June 8, 2006) Thomas Rosch, Commissioner. ABA Antitrust Modernization Commission Conference, Georgetown University Law Center, Washington, D.C.

**“A Government Perspective on IP and Antitrust Law”** (June 21, 2006) Deborah Platt Majoras, Chairman. The IP Grab: the Struggle Between Intellectual Property Rights and Antitrust, American Antitrust Institute, Washington, D.C.

**“The Consumer Reigns: Using Section 2 to Ensure a “Competitive Kingdom”**” (June 20, 2006) Deborah Platt Majoras, Chairman. Federal Trade Commission, Washington, D.C.,

**“The Relationship between Competition Agencies and Other Units of Government”** (May 19, 2006) William Blumenthal, General Counsel. International Seminar on Review of Anti-Monopoly Law organized by the Ministry of Commerce, Asian Development Bank, and Organisation for Economic Cooperation and Development, in Hangzhou, China.

**“Reflections on the DG Competition Discussion Paper on the Application of Article 82 to Exclusionary Abuses”** (May 11, 2006) Thomas Rosch, Commissioner. 13th Annual International Competition Law Forum, St. Gallen University, St. Gallen, Switzerland.

**“Exclusion Payments to Settle Pharmaceutical Patent Cases: They’re B-a-a-a-ck! (The Role of the Commission, Congress, and the Courts)”** (April 24, 2006) Jon Leibowitz, Commissioner. Second Annual In-House Counsel’s Forum on Pharmaceutical Antitrust Philadelphia, PA.

**“Promoting a Culture of Competition”** (April 10, 2006) Deborah Platt Majoras, Chairman. Chinese Academy of Social Sciences, Beijing, China.

**“Distinguishing Unilateral Conduct From Aggressive Competition”** (April 3, 2006) Deborah Platt Majoras, Chairman. Tokyo American Center, Tokyo, Japan.

**“Assessing Whether What We Know is So”** (March 31, 2006) Michael A. Salinger, Director, Bureau of Economics Salinger. ABA, 54th Antitrust Law Spring Meeting, Washington D.C.

**“Breakfast with the Bureau Directors”** (March 31, 2006) Jeffrey Schmidt, Director, Bureau of Competition. 2006 American Bar Association 54th Antitrust Law Spring Meeting, Washington D.C.

**Statement** (March 21, 2006) Deborah Platt Majoras, Chairman. Antitrust Modernization Commission, Washington D.C.

**“Moneyball and Price Gouging”** (February 27, 2006) Michael A. Salinger, Director, Bureau of Economics. Boston Bar Association, Antitrust Committee, Boston, MA.

**“Economic Competition”** (February 1, 2006) Deborah Platt Majoras, Chairman. Mexican Judicial Training Seminar Mexico City, Mexico.

**“Ranking Exclusionary Conduct”** (November 15, 2005) Susan Creighton, Director, Bureau of Competition. Remarks delivered at the ABA Section of Antitrust Law Fall Forum, Washington, D.C.

**“The Rhetoric of Gun-Jumping”** (November 10, 2005) William Blumenthal, General Counsel. Remarks delivered before the Annual Antitrust Seminar of the Greater New York Chapter of the Association of Corporate Counsel, in New York.

**“Competition in the Information Society Uncorked and Unplugged”** (November 8, 2005) Jon Leibowitz, Commissioner. Remarks before the 2005 Global Forum Palais D’Egmont Brussels, Belgium,

**“The Status of Convergence on Transatlantic Merger Policy”** (October 27, 2005) William Blumenthal, General Counsel. Written version of opening remarks delivered before a panel on

"Cross-Atlantic Perspectives on Antitrust Enforcement" at the Fall Meeting of the International Law Section of the American Bar Association, in Brussels.

**"Following the Yellow Brick Road to a More Competitive Landscape"** (October 25, 2005) Jon Leibowitz, Commissioner. Remarks before the FTC/DOJ Workshop on Competition Policy in the Real Estate Industry.

**"Developments in Competition Law in the European Union and the United States: Harmony and Conflict"** (October 21, 2005) Pamela Jones Harbour, Commissioner. Remarks at the New York State Bar Association International Law and Practice Section Fall Meeting 2005, Program 19, London, England.

**"Health Care" An Interview with Commissioner Thomas B. Leary** (October 2005) Thomas B. Leary, Commissioner. This is an interview with Commissioner Leary conducted by the ABA Antitrust Section Health Care Committee Newsletter, published in the ABA's Antitrust Health Care Chronicle, Vol. 19, No. 3.

**"Recognizing the Procompetitive Potential of Royalty Discussions in Standard Setting"** (September 23, 2005) Deborah Platt Majoras, Chairman. Stanford University, Stanford, California.

**"Municipal Broadband: Should Cities Have a Voice?"** (September 22, 2005) Jon Leibowitz, Commissioner. National Association of Telecommunications Officers and Advisors (NATOA), 25th Annual Conference - Washington, D.C.

**"State Intervention: A State of Displaced Competition"** (September 20, 2005) Deborah Platt Majoras, Chairman. George Mason University Law School: George Mason Law Review Antitrust Symposium.

**"Is It Live Or Is It Memorex? Models of Vertical Mergers and Antitrust Enforcement"** (September 8, 2005) Michael A. Salinger, Director, Bureau of Economics. Association of Competition Economics (ACE) Seminar on Non-Horizontal Mergers, Competition Commission, London, UK, September 7, 2005, and Fondation Universitaire, Brussels, Belgium.

**Remarks to the 2005 ABA Annual Meeting** (August 6, 2005) Deborah Platt Majoras, Chairman. Chicago, Illinois,

**"Challenges in Identifying Anticompetitive Dominant Firm Behavior"** (July 7, 2005) Michael A. Salinger, Director, Bureau of Economics. Speech before the National Economic Research Associates (NERA) 2005 Antitrust and Trade Regulation Seminar, Santa Fe, New Mexico.

**"The Bipartisan Legacy"** (June 21, 2005) Thomas B. Leary, Commissioner. Written version of a speech delivered at the American Antitrust Institute's Sixth Annual Conference at the National Press Club in Washington, D.C. on. The remarks are to be published in an edition of the Tulane University Law Journal.



**“Competition Policy, Patent Law, and Innovation: Welcoming Remarks for the Patent Reform Conference”** (June 9, 2005) Deborah Platt Majoras, Chairman. Washington, D.C.

**“Vertical Restraints: What Does the Evidence Imply for Policy”** (May 12, 2005) Luke M. Froeb, Director, Bureau of Economics. Presentation before the AEI-Brookings Joint Center , Washington, D.C.

**“Health Care and the FTC: The Agency as Prosecutor and Policy Wonk”** (May 12, 2005) Jon Leibowitz, Commissioner. Antitrust in HealthCare Conference, American Bar Association/American Health Lawyers Association, Washington, D.C.

**“Recent Developments in the Merger Review Process in the United States and the International Competition Network”** (April 20, 2005) William Blumenthal, General Counsel. Written version of remarks delivered before the International Bar Association and Japanese Federation of Bar Associations, Conference on International Competition Enforcement, in Tokyo.

**Keynote Address** (April 19, 2005) Deborah Platt Majoras, Chairman. OECD Workshop on Dispute Resolution and Consumer Redress.

**“Post Merger Product Repositioning”** (April 9, 2005) Luke M. Froeb, Director, Bureau of Economics. Speech before the Third Annual Meeting of the International Industrial Organization Conference, at The Georgia Institute of Technology Hotel and Conference Center, Atlanta, GA.

**“U.S. Antitrust Practice - How does it affect European business?”** (April 7, 2005) Deborah Platt Majoras, Chairman. Speech before the Studienvereinigung Kartellrecht, Brussels, Belgium.

**“The Good, the Bad and the Ugly: Trade Associations and Antitrust”** (March 30, 2005) Jon Leibowitz, Commissioner. American Bar Association, Antitrust Spring Meeting, Washington, D.C.

**“The Cost of Filling Up: Did the FTC Approve Too Many Energy Mergers?”** (March 31, 2005) Luke M. Froeb, Director, Bureau of Economics and John H. Seesel, Associate General Counsel for Energy, Federal Trade Commission. Remarks before The Fuel and Energy Committee Section of Antitrust Law, American Bar Association, Washington, D.C.

**“A “Check-Up” of Selected Health Care Activity at the Federal Trade Commission”** (March 30, 2005) Pamela Jones Harbour, Commissioner. ABA Antitrust Section Spring Meeting “The Agencies’ 2004 Report on Improving Health Care: Comments on the Report and Its Aftermath”.

**“State of the FTC”** (March 28, 2005) Deborah Platt Majoras, Chairman, Washington, DC.

**“Vertical Restraints: Federal and State Enforcement of Vertical Issues”** (March 17 - 19, 2005) Pamela Jones Harbour, Commissioner. ALI-ABA Course of Study, Product Distribution and Marketing, New Orleans, LA.

**“Category Management” An Interview with FTC Commissioner Thomas B. Leary** (Spring 2005) Thomas B. Leary, Commissioner. This is an interview with Commissioner Leary conducted by the ABA Section of Antitrust Law, Sherman Act Section 2 Committee, published in the Sherman Act Section 2 Committee's newsletter, Vol. III No. 2.

**“New Trends in Antitrust Oversight of Mergers”** (March 3, 2005) Susan Creighton, Director, Bureau of Competition. Panelist on Antitrust Issues in Today's Economy. New York, New York.

**“The Federal Trade Commission: Fostering a Competitive Health Care Environment That Benefits Patients”** (February 28, 2005), Deborah Platt Majoras, Chairman. World Congress Leadership Summit, New York, New York.

**Steering Committee of the Antitrust and Consumer Law Section of the D.C. Bar** (February 23, 2005) Deborah Platt Majoras, Chairman. Keynote Speaker, Washington, DC.

**“Current Topics in Antitrust, Economics and Competition Policy”** (February 8, 2005) Deborah Platt Majoras, Chairman and Susan Creighton, Director, Bureau of Competition. Keynote Speakers, Charles River Associates Program, Washington, DC.

**Cheap Exclusion** (February 8, 2005) Susan Creighton, Bureau of Competition Director. Remarks Before the Charles River Associates 9th Annual Conference on Current Topics in Antitrust Economics and Competition Policy, Washington, D.C.

**“The Use of Economics in Merger Analysis”** (January 27, 2005) Luke M. Froeb, Director, Bureau of Economics. The IBC Conference: The Use of Economics in Competition Law, Brussels, Belgium.

**“Promoting International Convergence: Spring Training for Antitrust Professionals”** (January 25, 2005) Deborah Platt Majoras, Chairman. Final Keynote at ABA International Forum, Miami, Florida.

**“Recent Actions at the Federal Trade Commission”** (January 18, 2005) Deborah Platt Majoras, Chairman. The Dallas Bar Association's Antitrust and Trade Regulation Section, Dallas, Texas.

**“Estimating the Price Effects of Mergers and Concentration in the Petroleum Industry: An Evaluation of Recent Learning”** (January 14, 2005) Deborah Platt Majoras, Chairman. Opening Remarks, Federal Trade Commission.

**“Quantitative Methods in Merger Control”** (December 3, 2004) Luke Froeb, Director, Bureau of Economics. King's College, London, England.

**“Looking Forward: Merger and Other Policy Initiatives at the FTC”** (November 18, 2004) Deborah Platt Majoras, Chairman. ABA Antitrust Section Fall Forum, Washington, DC.

**“From Theory to Praxis: Quantitative Methods in Merger Control”** (October 30, 2004) Luke M. Froeb, Director, Bureau of Economics. Summit at Como: A Discussion of Competition Policy, Law and Economics, Como, Italy.

**“The Art and Science of Cost-Effective Counseling”** (October 2, 2004) Thomas B. Leary, Commissioner. ABA Antitrust Section 2004 Antitrust Masters Course, Atlanta, Georgia.

**“Presenting Your Case to the FTC and DOJ - The Keys to Success”** (October 1, 2004) Pamela Jones Harbour, Commissioner. ABA Antitrust Section 2004 Antitrust Masters Course, Atlanta, Georgia.

**ABA Antitrust Section 2004 Antitrust Masters Course** (September 30, 2004) Deborah Platt Majoras, Chairman. Atlanta, Georgia.

**“Antitrust Policy and Intellectual Property”** (September 27, 2004) Thomas B. Leary, Commissioner. Andrews’ Publications Intellectual Property 2004 Litigation Conference. Chicago, Illinois.

**“Competition Law and Consumer Protection Law: Two Wings of the Same House”** (September 22, 2004) Thomas B. Leary, Commissioner. Written version of a speech delivered at the FTC 90th Anniversary Symposium.

**The Economic Roots of Antitrust - An Outline by Thomas B. Leary, Commissioner.** Speech given by Alden Abbott, Assistant Director, Office of Policy and Coordination, Federal Trade Commission. Japan.

**The Economic Roots of Antitrust - An Outline by Thomas B. Leary, Commissioner.** (July 31, 2004) Outline prepared for a presentation at the International Seminar on Antitrust Law and Economic Development, Chinese Academy of Social Sciences Institute of Law. Beijing, China.

**Prepared Remarks** (May 17, 2004) Thomas B. Leary, Commissioner. The American Antitrust Institute’s Roundtable Discussion on Antitrust and Category Captains, Washington, DC.

**Report from the Bureau of Competition** (April 2, 2004) Barry Nigro, Deputy Director, Bureau of Competition. 52nd Annual ABA Antitrust Section Spring Meeting.

**“Unilateral Merger Effects & Economic Models”** (March 3, 2004) Luke M. Froeb, Director, Bureau of Economics. The 2004 Antitrust Conference: Antitrust Issues in Today’s Economy, New York, New York.

**“Diagnosing Physician-Hospital Organizations”** (January 22, 2004) Susan A. Creighton, Director, Bureau of Competition. American Health Lawyers Association, Program on Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions, Washington, DC.

**“A Regulator’s Perspective on Protecting Consumers and Competitive Marketplaces: Developments at the FTC”** (November 7, 2003) Orson Swindle, Commissioner. American Bar Association, Section of Administrative Law and Regulatory Practice, 2003 Administrative Law Conference, Washington, DC.

**“The Role of Expert Economic Testimony in Antitrust Litigation”** (November 2003) Luke M. Loeb, Director, Bureau of Economics. Committee on Antitrust and Trade Regulation of the Association of the Bar of the City of New York.

**“A Federal-State Partnership on Competition Policy: State Attorneys General as Advocates”** (October 1, 2003), National Association of Attorneys General, 2003, Antitrust Seminar, Washington, DC.

**“Antitrust in Healthcare: A Keynote Address”** (May 15, 2003) Thomas B. Leary, Commissioner. Written version of May 15, 2003 speech given at forum on Antitrust and Healthcare, Health Lawyers Association and the ABA Sections on Antitrust Law and Health, Washington, DC.

**“Advertising and Unfair Competition: FTC Enforcement”** (March 21, 2003) Thomas B. Leary, Commissioner. 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

**“Vertical issues: The Federal View”** (March 20, 2003) Thomas B. Leary, Commissioner. 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

**“Discussion of Generic Drug Study”** (January 29, 2003) Michael S. Wroblewski, Assistant General Counsel for Policy Studies, Office of General Counsel. Generic Pharmaceutical Association Annual Meeting, Rio Grande, Puerto Rico.

**Institute of Public Utilities’ 34th Annual Regulatory Policy Conference** (December 10, 2002) Thomas B. Leary, Commissioner. Keynote Speaker, Tampa, Florida.

**“Antitrust Implications Under Hatch-Waxman”** (December 6, 2002) Thomas B. Leary, Commissioner. Food and Drug Law Institute Hatch-Waxman Update Conference, Washington, DC.

**“Competition”** (October 30, 2002) Thomas B. Leary, Commissioner. International Chamber of Commerce, Department of Policy and Business Practices, ICC Commission, New York, New York.

**American Bar Associations Antitrust Masters Course** (October 25, 2002) Thomas B. Leary, Commissioner. Remarks, Sea Island, Georgia.

**“Current Developments in EC & US Antitrust Law”** (October 10, 2002) Thomas B. Leary, Commissioner. European Law Research Center at Harvard Law School, Cambridge, Massachusetts.

**Anticompetitive Efforts to Restrict Competition on the Internet Workshop** (October 8, 2002) Timothy J. Muris, Chairman, Opening Remarks. Comments by Thomas B. Leary, Commissioner. October 10, 2002 Session, Opening Remarks by Sheila F. Anthony, Commissioner; and Concluding Remarks by Ted Cruz, Director, Office of Policy Planning, Washington, DC.

## **VI. Statistics**

### **A. Fiscal Year 2007 (October 1, 2006 though March 31, 2007)**

#### **Part II Consent Agreements Accepted for Comment - 16**

##### ***Mergers and Joint Ventures – 9***

The Boeing Company / Lockheed Martin Corp  
Thermo Electron/Fisher Scientific  
Barr Pharmaceuticals/Actavis Group/PLIVA  
Watson Pharmaceuticals, Inc/Andrx  
Service Corp. International / Alderwoods  
Johnson & Johnson/Pfizer  
General Dynamics OTS (Aerospace), inc. / SNC Technologies Inc.  
Hospira, Inc./Mayne Pharma Limited  
Kinder Morgan inc.

##### ***Nonmergers - 7***

IRES MLS for Northern Colorado  
Monmouth County Association of Realtors  
Realtors Association of Northeast Wisconsin, Inc.  
Williamsburg Area Association of Realtors, Inc.  
Northern New England Real Estate Network, Inc.  
Advocate Health Partners  
Missouri Board of Embalmers and Funeral Directors

#### **Administrative Complaints Issued - 3**

##### ***Nonmergers - 2***

MiRealSource, Inc.  
RealComp II Ltd.

##### ***Mergers and Joint Ventures – 1***

Equitable Resources, Inc.

##### ***Merger Transactions Abandoned - 1***

#### **Total Merger and Nonmerger Enforcement - 20**

## **B. Fiscal Year 2006**

### **Part II Consent Agreements Accepted for Comment - 14**

#### ***Mergers and Joint Ventures – 9***

DaVita Inc./Gambro Healthcare, Inc.

Johnson & Johnson/Guidant Corporation

Teva Pharmaceutical Industries Ltd / Ivax Corporation

Allegran / Inamed Corporation

Fresenius AG/Renal Care Group

Boston Scientific Corp / Guidant Corp

Hologic, Inc./Fischer Imaging

Linde/BOC

EPCO/TEPPCO

#### ***Nonmergers - 5***

Health Care Alliance of Laredo, L.C.

Valassis Communications, Inc.

Austin Board of Realtors

Puerto Rico Association of Endodontists, Corp.

New Century Health Quality Alliance, Inc.

### **Permanent Injunctions Authorized - 1**

Warner Chilcott/Barr Laboratories

### ***Merger Transactions Abandoned - 7***

### **Total Merger and Nonmerger Enforcement - 22**

## **C. Fiscal Year 2005**

### **Part II Consent Agreements Accepted for Comment - 13**

#### ***Mergers and Joint Ventures - 9***

Cemex S.A. de C.V./RMC Group, PLC  
Cytex Industries Inc./UCB S.A.  
Genzyme Corporation/ILEX Oncology, Inc.  
Occidental Chemical Corporation/Vulcan Materials Company  
Chevron Texaco Corporation/Unocal Corporation  
Valero L.P./Kaneb Services LLC  
Novartis AG/Eon Labs, Inc.  
Penn National Gaming, Inc./Argosy Gaming Company  
The Procter & Gamble Company/The Gillette Company

#### ***Nonmergers - 4***

Preferred Health Services  
New Millennium Orthopedics LLC  
San Juan IPA  
Partners Health Network, Inc.

#### **Preliminary Injunctions Authorized - 1**

U.S. Restaurant Properties, Inc./Aloha Petroleum Corp

#### **Civil Penalty Actions Filed - 2**

Scott R. Sacane  
Blockbuster, Inc./Hollywood Entertainment Corporation

#### ***Merger Transactions Abandoned - 4***

#### **Total Merger and Nonmerger Enforcement**

(Includes 2 civil penalty actions) - 20



## **D. Fiscal Year 2004**

### **Part III Administrative Complaints - 2**

#### ***Mergers and Joint Ventures - 1***

Evanston Northwestern Healthcare Corporation/Highland Park Hospital  
Arch Coal, Inc./Triton Coal Company (Note: Preliminary Injunction Authorized During Fiscal Year - case counted under Preliminary Injunctions Authorized)

#### ***Nonmergers - 1***

Piedmont Health Alliance, Inc.

### **Part II Consent Agreements Accepted for Comment**

#### ***Mergers and Joint Ventures - 10***

GenCorp Inc./Atlantic Research Corporation  
General Electric Company/Agfa-Gevaert N.V.  
L' Air Liquide SA/Messer Griesheim GmbH  
Itron, Inc./Schlumberger Electric, Inc.  
Sanofi-Synthélabo/Aventis, S.A.  
Cephalon, Inc./Cima Labs, Inc.  
General Electric Company/InVision Technologies, Inc.  
Buckeye Partners, L.P./Shell Oil Company  
Midstream Partners, L.P./Shell Oil Company  
Enterprise Products Partners L.P./GulfTerra Energy Partners L.P.

#### ***Nonmergers - 7***

New Hampshire Motor Transport Association  
Memorial Hermann Health Network Providers  
Tenet Healthcare Corporation  
Southeastern New Mexico Physicians IPA  
Clark County, Washington Attorneys  
Virginia Board of Funeral Directors and Embalmers  
White Sands Health Care System, LLC

## **D. Fiscal Year 2004**

(continued)

### **Civil Penalty Actions Filed - 2**

RHI AG

William H. Gates III

### **Preliminary Injunctions Authorized - 1**

Arch Coal, Inc./Triton Coal Company

### **Permanent Injunctions Authorized - 1**

Alpharma, Inc. and Perrigo Company

### ***Merger Transactions Abandoned - 3***

### **Total Merger and Nonmerger Enforcement**

(Includes 2 civil penalty actions) - 26

## **E. Fiscal Year 2003**

### **Part III Administrative Complaints**

#### ***Mergers and Joint Ventures - 1***

Aspen Technology, Inc./Hyprotech, Ltd.

#### ***Nonmergers - 7***

Alabama Trucking Association, Inc.  
California Pacific Medical Group dba Brown and Toland Medical Group  
Kentucky Household Goods Carriers Association, Inc.  
Movers Conference of Mississippi, Inc.  
North Texas Specialty Physicians  
South Carolina State Board of Dentistry  
Union Oil Company of California

### **Part II Consent Agreements Accepted for Comment**

#### ***Mergers and Joint Ventures - 7***

Baxter International Inc./Wyeth Corporation  
Dainippon Inc. and Chemicals, Inc./Bayer Corporation  
DSM N.V./Roche Holding AG  
Pfizer Inc./Pharmacia Corporation  
Quest Diagnostics Inc./Unilab Corporation  
Southern Union Company/Panhandle Pipeline from CMS Energy Corporation  
Wal-Mart Stores, Inc./Supermercados Amigo, Inc.

#### ***Nonmergers - 16***

Anesthesia Service Medical Group, Inc.  
Bristol-Myers Squibb Company (BuSpar)  
Bristol-Myers Squibb Company (Platinol)  
Bristol-Myers Squibb Company (Taxol)  
Carlsbad Physician Association  
Indiana Household Movers and Warehousemen, Inc.  
Institute of Store Planners  
Iowa Movers and Warehousemen's Association  
Maine Health Alliance, The  
Minnesota Transport Services Association  
National Academy of Arbitrators  
Physician Network Consulting, et al.  
South Georgia Health Partners, L.L.C.  
SPA Health Organization dba Southwest Physician Associates

## **Fiscal Year 2003**

(continued)

### **Part II Consent Agreements Accepted for Comment (Continued)**

Surgical Specialists of Yakima

Washington University Physicians Network

### **Civil Penalty Actions Filed**

None

### **Preliminary Injunctions Authorized**

#### ***Mergers and Joint Ventures - 3***

Kroger Company (Raley's Supermarkets)

Nestle Holdings, Inc./Dreyer's Grand Ice Cream

Vlasic Pickle Company (Claussen Pickle Company)

#### ***Merger Transactions Abandoned - 10***

### **Total Merger and Nonmerger Enforcement - 44**

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