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COMMITTEE ON COMPETITION LAW AND POLICY

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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN
THE UNITED STATES**

(October 1, 1997 through September 30, 1998)

This document is submitted by the American Delegation to the Committee on Competition Law and Policy FOR CONSIDERATION at its forthcoming meeting on 6-7 May 1999.

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Summary of Highlights

During FY98, the Department of Justice and Federal Trade Commission received a record 4,278 Hart-Scott-Rodino filings – an increase of 28 percent from the year before. The Division initiated 228 merger investigations and challenged 15 mergers; 36 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announced challenge. The Commission initiated 352 merger investigations and investigated 46 transactions with a second request for information. The Commission challenged 33 transactions, leading to 23 consent orders, one administrative complaint, six abandoned transactions and three preliminary injunction proceedings authorized.

In the largest merger ever challenged by the federal government, the Division sued to block Lockheed Martin's proposed \$11.6 billion acquisition of Northrop Grumman, a deal which would have combined two major suppliers of U.S. military technology. In response to the challenge, Lockheed Martin abandoned the transaction. Following the largest divestiture in merger control history, the Division allowed WorldCom Inc.'s \$44 billion purchase of MCI Communications Corporation to proceed after the sale of MCI's Internet business, internetMCI. The Department of Justice and the European Union's DG-IV conducted independent investigations of the proposed transaction with extensive cooperation, pursuant to the 1991 U.S.-EC Antitrust Cooperation Agreement.

A notable merger case was the Commission's successful litigation in *Cardinal Health, Inc.*, and *McKesson Corporation* which prevented the proposed mergers of the nation's four largest pharmaceutical wholesalers into two companies. The FTC argued successfully in court that the two mergers would substantially reduce competition for drug wholesaling services – a market that is important to virtually every U.S. consumer. In *Tenet Healthcare*, the agency also obtained a preliminary injunction against the merger of the only two commercial acute care hospitals in one county in Missouri, showing that the antitrust laws can be applied to prevent consumer injury in local hospital markets. The case is currently on appeal. The Commission also put additional teeth in its merger program by obtaining in *Columbia/HCA Healthcare* a \$2.5 million civil penalty to settle charges that the firm violated a 1995 order by failing to divest specified hospitals in a timely manner.

The FTC's Bureau of Competition brought a total of 50 enforcement actions – 43 percent more than in the previous year. Enforcement activity rose as a result of the record number of mergers along with increased enforcement in the health care and high-tech industries. In the non-merger area, the FTC brought 13 enforcement actions challenging a wide variety of alleged anticompetitive conduct, of which 11 were resolved by consent agreements. Of the settled cases, the *Fair Allocation System, Inc.* matter is important in that it applied established law against boycotts in the new commercial context of Internet sales in this case involving the sale of automobiles. The settlement in *Stone Container* resolved the Commission's allegation of an industry-wide invitation to join a coordinated price increase. The Commission issued a complaint against Intel Corp., the world's largest manufacturer of microprocessors, charging that the company used its monopoly power to cement its dominance over the microprocessor market when it denied three of its customers continuing access to advance technical information and product samples necessary to develop computer systems based on Intel microprocessors. On March 17, 1999, the Commission approved a settlement of its complaint, which is the subject of public comment. The proposed consent order would prohibit Intel from withholding or threatening to withhold advance technical information, or otherwise making product supply decisions, as a means of compelling intellectual property licenses, while protecting Intel's rights to withhold its information or microprocessors for legitimate business reasons. The Commission's *Summit/VISX* case focuses on misuse of intellectual property related to laser eye surgery; all of the allegations of the complaint were settled with the exception of one on patent fraud which is being litigated. In the federal courts, the Ninth Circuit Court of Appeals affirmed the Commission's decision that ordered the California Dental Association to refrain from

enforcing ethical guidelines that had the effect of prohibiting truthful, nondeceptive advertising by dentists. This decision will be reviewed by the United States Supreme Court during its current term.

The Antitrust Division opened 315 investigations and filed 85 antitrust cases, both criminal and civil, in federal court. The Division filed 62 criminal cases, bringing indictments against six individuals and one corporation. Record criminal fines amounting to \$241.6 million were levied against 18 corporate defendants. In an ongoing investigation into a wide-ranging international conspiracy to fix prices and allocate market shares in the graphite electrodes industry, DOJ filed criminal charges against two major producers of graphite electrodes. One of the cases, filed against UCAR International, Inc., resulted in a guilty plea and a criminal fine of \$110 million, the largest single fine in antitrust history. Also in FY98, the Division's investigation into price-fixing and sales allocation conspiracies in the worldwide lysine market resulted in the conviction of three former top executives of the Archer Daniels Midland Company (ADM). In civil enforcement, the Division opened 315 investigations, both merger and non-merger and filed six civil non merger complaints, including a complaint filed in May against Microsoft Corporation for allegedly engaging in anticompetitive and exclusionary practices to maintain its monopoly in personal computer operating systems and to extend that monopoly to Internet browsing software.

On June 4, 1998 representatives of the Commission, the Department, and the European Communities signed an agreement elaborating on the positive comity provisions of the 1991 U.S.-EC antitrust enforcement cooperation agreement. The new agreement clarifies the circumstances under which the parties will refer cases of anticompetitive activities to each other under the doctrine of positive comity and sets forth the circumstances under which one party will normally defer to the other to investigate alleged anticompetitive practices occurring in the other's territory. The agreement spells out the obligations that the competition authorities undertake in handling these cases, while preserving the right of each authority to act independently.

As a result of the Division's increasing focus on international issues, Attorney General Janet Reno and Assistant Attorney General for Antitrust Joel Klein created the International Competition Policy Advisory Committee to provide a medium term policy vision on international competition matters. The Advisory Committee expects to complete its work in late 1999.

Public documents, including more detailed descriptions or full texts of many of the matters referred to in this report, are available at <http://www.ftc.gov> and <http://www.usdoj.gov/atr>.

**REPORT TO THE OECD ON UNITED STATES ANTITRUST AND COMPETITION
DEVELOPMENTS FOR THE PERIOD OCTOBER 1, 1997 THROUGH SEPTEMBER 30, 1998**

Introduction

1. This report describes federal antitrust developments in the United States for the period October 1, 1997 through September 30, 1998. It summarizes the activities of both the Antitrust Division (“Division”) of the U.S. Department of Justice (“Department” or “DOJ”) and the Bureaus of Competition and Economics of the Federal Trade Commission (“Commission” or “FTC”).

I. Changes in law and policies

A. *Changes in Antitrust Rules, Policies, or Guidelines*

2. On March 11, 1998, the DOJ, the FTC and the National Association of Attorneys General released a protocol under which federal and state antitrust enforcers will cooperate on merger investigations. The protocol lists the specific steps for maintaining the confidential status of the information shared, details the procedures under which the DOJ and FTC will provide State Attorneys General with certain types of sensitive information, sets out guidelines for conducting joint investigations (emphasizing the importance of the agencies’ close collaboration with respect to the settlement process), and addresses how the agencies should coordinate the release of information to the news media.

3. The Commission announced changes in the two thresholds that define when it is unlawful for an individual to serve as an officer or director of two or more competing corporations. Under the new thresholds that are effective January 20, 1998, Section 8 of the Clayton Act, which prohibits interlocking directorates, would apply if each of the two companies has capital, surplus, and undivided profits in excess of \$14.73 million and the competitive sales of each corporation exceed \$1.473 million. A 1990 amendment to Section 8 requires the FTC to adjust the thresholds that trigger the prohibition based on the change in the Gross National Product.

4. Premerger Notification Rule 802.70 was amended by the FTC with the concurrence of the Assistant Attorney General for Antitrust. This rule exempts from premerger reporting requirements acquisitions of assets or voting securities required to be divested by an order of the Commission or of any federal court in an action brought by the Commission or the Department of Justice. As amended, the rule also exempts divestitures pursuant to consent agreements that have been accepted for public comment, or have been filed with a court and are subject to public comment, but are not yet final orders. The amendment became effective June 25, 1998.

B. *Proposals to Change Antitrust Laws, Related Legislation or Policies*

5. The International Competition Policy Advisory Committee was formed in late 1997 by Attorney General Janet Reno and Assistant Attorney General for Antitrust Joel I. Klein for the purpose of providing a medium term policy vision on international competition matters to the U.S. Department of Justice. The Advisory Committee’s work focuses on matters falling under three core topic headings: multijurisdictional merger review; the interface between trade policy and competition policy; and international agency

cooperation in antitrust enforcement, including enforcement of laws prohibiting cartels. Members of the Advisory Committee are drawn from the U.S. business, industrial relations, academic, economic and legal communities. The Advisory Committee is co-chaired by Dr. Paula Stern, President of The Stern Group and former Chairwoman of the U.S. International Trade Commission, and James F. Rill, Senior Partner at Collier, Shannon, Rill & Scott and former Assistant Attorney General for Antitrust. Serving as Executive Director of the Advisory Committee is Professor Merit E. Janow of Columbia University's School of International and Public Affairs and former Deputy Assistant U.S. Trade Representative for Japan and China. To date, the Advisory Committee has held three full Committee meetings and three days of public hearings at which 48 expert participants testified, including senior competition officials from ten jurisdictions. Notice of all meetings and hearings is published in the Federal Register and on the Committee's Web Page (<http://www.usdoj.gov/atr/icpac/icpac.htm>). The Advisory Committee expects to complete its work in late 1999.

6. On October 29, 1997, FTC Chairman Pitofsky testified before the Senate Judiciary Subcommittee on Antitrust on the antitrust exemption contained in the proposed tobacco settlement between the tobacco industry and 40 state Attorneys General. In his testimony based on an FTC staff report, Pitofsky examined the reasons proffered for the proposed immunity provision and concluded that a broad antitrust exemption is not justified because it would enhance the ability of the cigarette companies to coordinate price increases, resulting in even greater price increases and excess profits. Rather a narrowly focused exemption, permitting tobacco firms to collaborate with respect to certain conduct that would curtail advertising to underage smokers, might be appropriate to advance the stated goals of the settlement.

7. On February 26, 1998, Assistant Attorney General Joel Klein, in testimony before the Antitrust, Business Rights and Competition Subcommittee of the Committee on the Judiciary of the U.S. Senate, proposed increasing the statutory maximum criminal fine allowable under the Sherman Act from \$10 million to \$100 million. Emphasizing the importance of substantial fines in deterring antitrust violations, AAG Klein told the Subcommittee that the current \$10 million ceiling limits the effectiveness of fines against large corporations, who increasingly regard the \$10 million fine as a mere business expense. Although 18 U.S.C. §3571(d) allows the Division to seek fines in excess of \$10 million according to the "twice-the-gain or twice-the-loss" alternative sentencing provision, proving actual gain to the conspirators or loss to the victims from an antitrust offense is extremely difficult; as a result, this provision has been utilized in only eight cases. Raising the Sherman Act ceiling would help rectify this problem and ensure that corporations that commit antitrust offenses involving hundreds of millions or billions of dollars in U.S. commerce are punished just as severely, in relative terms, as local firms that commit antitrust offenses involving far lesser sums.

8. Chairman Pitofsky testified on July 29, 1998 before the House Committee on the Judiciary opposing H.R. 4277, the "Quality Health Care Coalition Act 1998," which would create an exemption from the antitrust laws to enable health care professionals to negotiate collectively with health plans over fees and other terms of dealing. He testified that the bill would potentially harm consumers and raise health care costs. In addition, Pitofsky testified that the proposed immunity is unnecessary to protect legitimate collaboration among competing health care providers, would immunize anticompetitive activities that could diminish the effective functioning of health care markets, and would likely encourage those in other industries to seek similar special interest exemptions.

C. International Antitrust Cooperation Developments

9. On June 4, 1998, representatives of the Commission, the Department, and the European Communities signed an agreement clarifying the circumstances under which they will refer cases of anticompetitive activities to each other under the doctrine of positive comity. Positive comity" refers to the

situation where one party asks the other party to investigate and take appropriate measures under its own antitrust laws to address anticompetitive conduct in the latter's territory which is harming the requesting party. The new agreement elaborates on the positive comity provisions of the 1991 U.S.-EC antitrust enforcement cooperation agreement. Among other things, it identifies the circumstances under which one party will normally defer to the other and spells out the obligations that the competition authorities undertake in handling these cases, while preserving the right of each authority to act independently.

II. Enforcement of antitrust laws and policies

Actions against anticompetitive practices

A. *Department of Justice and FTC Statistics*

1) DOJ Staffing and Enforcement Statistics

10. At the end of FY98, the Division employed 848 individuals: 351 attorneys, 55 economists, 8 law clerks, 187 paralegals, and 247 other professional staff. For FY98, the Division was allocated \$93,495,000. For a further breakdown of the Division's competition mission, please refer to the appendix.

11. During FY98, the Antitrust Division opened 315 investigations and filed 85 antitrust cases, both civil and criminal, in federal court. The Division was a party to 12 U.S. antitrust cases decided by the federal Courts of Appeals and filed *amicus curiae* briefs in three Court of Appeals cases and four Supreme Court cases.

12. During FY98, the Division filed 62 criminal cases and indicted one corporation and 6 individuals. Eighteen corporate defendants and 20 individuals were assessed fines totaling \$244 million and 5 defendants were sentenced to a total of 1,301 days of incarceration. Another 10 individual defendants were sentenced to spend a total of 1,530 days in some form of alternative confinement.

13. During FY98, 4,728 proposed mergers and acquisitions were reported for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), which represents an increase of more than 25 percent over the previous year. A wide variety of industries were involved including defense, telecommunications, cinema, radio stations and public utilities. The Division investigated 228 mergers and challenged 15; 36 transactions were restructured or abandoned prior to the filing of a complaint as a result of an announced challenge. The Division also screened a total of 1,923 bank mergers. The Division opened 295 civil investigations, both merger and non-merger, and issued 1,488 civil investigative demands (a form of compulsory process). The Division filed 6 non-merger civil complaints. Also during FY98, the Division responded to 19 requests for review of written business proposals.

2) FTC Staffing and Enforcement Statistics

14. At the end of FY98, the FTC's Bureau of Competition had 247 employees: 156 attorneys, 39 other professionals, 23 honors paralegals and 29 clerical staff. The FTC also employs about 40 economists who participate in its antitrust enforcement activities. In FY98, \$30,255,600 was allocated to the Commission's competition mission. For more complete statistics on the Commission's competition mission, please refer to the appendix.

15. During FY98, the Commission brought a total of 51 enforcement actions -- 46 percent more than the previous year. In the merger area, 4,728 proposed mergers and acquisitions were reported for review under the notification and filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act"), an increase of 28 percent over fiscal year 1997 and a 200 percent increase over fiscal year 1991.

16. Based on its review of premerger notification filings, the Commission staff investigated 46 transactions with second requests for information. The Commission challenged 33 transactions, leading to 23 consent orders, one administrative complaint, six abandoned transactions and three preliminary injunction proceedings authorized, including the Commission's successful litigation in Cardinal Health, Inc., and McKesson Corp. (wholesale drugs) and in Tenet Healthcare Corp (hospitals)(see descriptions below). A final decision and order were issued in 14 of the matters settled by consent agreement during the fiscal year, and a consent agreement in one of these cases became final after September 30, 1998. Final decisions are pending in five cases; one of the transactions subsequently was abandoned.

17. In the non-merger area, the Commission brought 13 enforcement actions challenging a variety of anticompetitive conduct. Of these actions, 11 were resolved by consent agreements, the remaining two are scheduled for trial in the current fiscal year. Eight of the 11 consent agreements were issued as final decisions and orders by the end of FY98.

18. The Commission filed one civil penalty enforcement action under Section 7A of the Clayton Act for violations of the premerger notification requirements. In addition, the Commission filed three civil penalty actions for violations of final orders in merger cases. The total civil penalties assessed in these cases were \$4.5 million, including \$500,000 for violations of the HSR Act.

19. Staff of the Bureau of Competition provided guidance to industry through three advisory opinion letters on whether specific health care arrangements might violate antitrust laws.

B. *Antitrust Cases in the Courts*

1) United States Supreme Court

20. In *State Oil Co. v. Khan*, 118 S. Ct. 275 (1997), the Supreme Court overruled *Albrecht v. Herald Co.*, 390 U.S. 145 (1968), and held that a vertical agreement to fix maximum resale prices is not a *per se* antitrust violation. It concluded that the effect on competition of maximum resale price agreements should be evaluated under the rule of reason. Vertical agreements to fix minimum resale prices remain illegal *per se* under existing case law.

2) Court of Appeals Cases

a. Significant DOJ Cases Decided in FY98

21. There were eleven dispositions by the Courts of Appeals in Antitrust Division cases in FY98, and eight of these resulted in published opinions. Two of the published opinions reviewed criminal convictions; two others involved access by third-parties to evidence in a criminal antitrust case; and another involved interpretation of the Tunney Act (a statute that prescribes procedures to be followed prior to entry of consent judgments in government antitrust cases). The three remaining cases, which involved mergers and acquisitions, and enforcement of a consent decree, are described below.

22. In *Community Publishers, Inc. v. DR Partners*, 139 F.3d 1180 (8th Cir. 1998), antitrust actions brought by the United States and private parties under Section 7 of the Clayton Act challenged purchase of a local daily newspaper by a competitor. The district court ordered rescission of the sale, and the court of appeals affirmed, ruling, *inter alia*, that the district court had properly defined the geographic and product markets, and had properly determined that a combined market share in excess of 84 percent raised a presumption of a Section 7 violation.

23. In *United States v. Microsoft Corp.*, 147 F.3d 935 (D.C. Cir. 1998), the district court, on the basis of the consent decree in the Division's 1994 case against Microsoft, entered a preliminary injunction that prohibited Microsoft from requiring that computer manufacturers who license Microsoft's operating system software must license Microsoft's internet browser as well. The court of appeals reversed, finding that the district court erred procedurally in entering a preliminary injunction without notice to Microsoft, and also erred in its construction of the consent decree.

24. In *United States v. Engelhard Corp.*, 126 F.3d 1302 (11th Cir. 1997), the district court denied a permanent injunction to bar the sale of assets involving a clay used in industrial products, on the ground that the government had failed to prove the product market that it had alleged. The court of appeals affirmed, holding that the district court's finding on product market was not clearly erroneous. The court of appeals noted that the government failed adequately to ascertain the size of the product market, and did not consider the possibility that pre-formulation competition (that is, before the relevant product has been selected as an ingredient) could restrain prices of the relevant product.

25. In *United States v. Tucor International, Inc.*, N.D. Cal. No. CR-92-0425, a group of motor carriers in the Philippines was indicted for conspiring to fix the rates for carrying household goods being shipped by the U.S. Department of Defense for military personnel. The District Court held that the agreement was exempted from the U.S. antitrust laws by a clause in the Shipping Act of 1984 which provides that "[t]he antitrust laws to not apply to ... any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation in a United States import or export trade." It also construed the indictment to reach only shipments that were subject to "through transportation." The government is appealing the decision because another part of the Shipping Act provides that the Act applies only to agreements of ocean common carriers and marine terminal operators; there are no such parties to the agreement at issue. It also argues that some of the shipments were not "through transportation." The defendants have not questioned the antitrust laws' application to the alleged conspiracy in the absence of the Shipping Act.

b. Significant FTC Cases Decided in FY98

26. *California Dental Ass'n v. FTC*, 128 F.3d 720 (9th Cir. 1997), was an appeal from the Commission's decision that ordered the California Dental Association ("CDA") to refrain from enforcement of ethical guidelines that had the effect of prohibiting truthful, nondeceptive advertising by dentists. The United States Court of Appeals for the Ninth Circuit affirmed the Commission's order, holding that the Commission had properly exercised jurisdiction over the activities of the nonprofit trade association because the association provided substantial pecuniary benefits to its members, and that the Commission had properly found CDA's price and non-price advertising restraints unlawful under a "quick look" rule of reason analysis. This decision will be reviewed by the United States Supreme Court.

3) Private Cases Having International Implications

27. In *Galavan Supplements, Ltd. v. Archer Daniels Midland Co.*, No. C 97-3269 FMS, 1997 WL 732498 (N.D. Cal. Nov. 19, 1997), plaintiff was an Irish company seeking to represent “a class of all persons and entities outside of the United States who purchased citric acid directly from any of the defendants through their foreign facilities.” The complaint alleged that the defendants engaged in a worldwide conspiracy to fix the price of citric acid. In response to defendants’ motion to dismiss, the district court judge ruled that the court had jurisdiction over the defendants’ conduct outside the U.S. because of the effect of that conduct on U.S. domestic commerce: the complaint described “a major international cartel whose overseas activities had a ‘spillover’ effect on the United States price and production of citric acid.” The judge dismissed the case, however, on standing grounds, holding that the plaintiffs’ injury was “not covered by the antitrust laws because plaintiff was ‘neither a competitor nor a consumer’ in the U.S. domestic market.” The judge held that for standing purposes, the “relevant market” must be the U.S. market, and the appropriate plaintiffs to bring suit against defendants would have been consumers injured in the U.S.

28. In *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 1998-1 Trade Cas. (CCH) ¶72,094 (D.C. N.J. Feb. 5, 1998), plaintiff was a producer of bulk ibuprofen in India that exited the U.S. market after preliminary administrative determinations in favor of dumping and countervailing duty (“AD/CVD”) petitions filed by defendant. The defendant shortly thereafter withdrew its AD/CVD petitions stating that plaintiff’s withdrawal from the market gave it all the relief it sought. Plaintiff then sued on antitrust and other grounds, alleging that defendant could not have prevailed in its AD/CVD petitions because it would not have been able to demonstrate material injury and alleging that defendant included intentional misrepresentations in its petitions and responses to administrative questionnaires. The judge granted summary judgment for defendant, noting that under the Noerr-Pennington doctrine, a defendant invoking administrative and judicial processes has broad antitrust immunity irrespective of anticompetitive intent. The exception for “sham” transactions was not applicable because defendant had an objective basis for its AD/CVD allegations, and even if defendant had misrepresented its financial documents, the findings of the International Trade Commission on material injury relied equally on factors unrelated to defendant’s financial status, such as domestic consumption and market share.

29. In *Caribbean Broadcast System Ltd. v. Cable and Wireless plc*, 148 F.3d 1080 (D.C. Cir. 1998), the plaintiff owner of a radio station in the Eastern Caribbean sued a competing radio station and Cable & Wireless, a worldwide telecommunications company, that had a joint venture to develop Caribbean-wide broadcasting. The complaint included various Sherman Act allegations of monopolization, and was dismissed by the trial court on jurisdictional grounds (*see* U.S. Annual report for Fiscal Year 1996, ¶ 30). The Court of Appeals reversed the dismissal, holding that the complaint adequately described a relevant market (English-language radio broadcast advertising in the Eastern Caribbean) and intentional anticompetitive conduct of defendants (misrepresentation to U.S. advertisers that defendants could reach entire Caribbean and therefore that advertisers did not need to advertise on plaintiff’s station; making of sham technical objections to plaintiff’s license application for purpose of maintaining their monopoly). The Court held that the allegations of direct injury to U.S. advertisers in the form of higher prices, and the indirect injury to customers caused by foreclosing plaintiff’s entry into the market, were adequate to support jurisdiction under the Sherman Act.

30. In *Betterware plc v. Tupperware Corp.*, 1998 Trade Cas. (CCH) ¶ 72,158 (S.D.N.Y. April 22 1998), an English corporation, the “largest direct sale supplier of housewares in the UK,” sued “the largest direct seller of plastic food storage and serving containers in the U.S. and around the world,” alleging monopolization, attempted monopolization and intentional interference with prospective contractual relations. Betterware alleged that Tupperware “prevented it from entering the United States market by engaging Betterware in sham legal [trademark infringement] proceedings which drained resources it would

otherwise have used to enter the U.S. market.” The judge denied Tupperware’s motion to dismiss for failure to assert antitrust injury to the U.S. market, holding that “the allegedly sham legal actions abroad had a foreseeable effect on U.S. commerce” by reducing product choice and competition in the U.S. market.

31. In *Capital Currency Exchange, N.V. v. National Westminster Bank plc*, 155 F.3d 603 (2d Cir. 1998), the plaintiff, a financial company organized under the laws of the Netherlands Antilles with affiliates in New York and the UK, sued two English banks alleging various contract and tort claims, and Sherman Act claims that defendants had conspired to deny it necessary banking services and thereby had attempted to monopolize the international currency-transfer market. The Court of Appeals upheld the district court judge’s dismissal of the case on grounds of *forum non conveniens* (see U.S. Annual report for Fiscal Year 1997, ¶ 32). The Court agreed with the district court judge that the English courts were an adequate alternative forum, even if the substantive law to be applied was not identical to the Sherman Act, as the English courts were bound to enforce Articles 85 and 86 of the Treaty of Rome, which are “roughly analogous to Sections 1 and 2 of the Sherman Act, and create a private right of action to challenge anti-competitive, monopolistic actions.” On the adequacy of the remedy available in the English courts, the Court held that “although English courts have not *yet* awarded damages in an antitrust case, it appears that English courts have the power to do so,” and “the unavailability of treble damages does not render a forum inadequate.” The Court also agreed that although public interests favored neither forum, the private interests strongly favored litigation in England, as most of the witnesses and the documentary evidence were located there.

32. In *Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd.*, 982 F.Supp 1138 (E.D.Va. 1997), two U.S. purchasers of extruded rubber thread sued foreign manufacturers in Malaysia, Indonesia, and Thailand, alleging an international conspiracy to fix prices in the U.S. and world markets. The judge denied a series of motions to dismiss, including one which argued that plaintiffs could not have suffered an antitrust injury because during the period of the alleged conspiracy, the Malaysian producers were subject to antidumping duties ranging from 1.88 to 50 percent above each producer’s current U.S. price. In essence, defendants argued that the Malaysian producers’ prices could not at the same time be too high under the antitrust laws and too low under the antidumping laws. In denying the motion the judge noted that “‘Below a fair value’ does not mean ‘below competitive prices in the U.S. market.’ Each description relies on a separate benchmark, one measuring a fair value abroad and one a competitive price in the United States; and each benchmark is established for a different purpose, one to calculate an antidumping duty, and one to gauge the level of competition in the domestic market. In short, there is no conflict between the antidumping laws and the antitrust laws.” Moreover, under the antidumping laws the defendants did not have to set a uniform price, and since the fair value and antidumping duties were set individually for each producer, there was no reason that all of the Malaysian defendants’ prices should have been the same; finally this argument would not excuse the fixing of prices with Thai and Indonesian producers.

33. In *Millicom International Cellular, S.A. v. Republic of Costa Rica*, 995 F.Supp. 14 (D.D.C. 1998), plaintiffs included a Luxembourg telecommunications company and its Costa Rican subsidiary that had obtained a license in 1987 to provide cellular service in Costa Rica. Plaintiffs began cellular service in 1989, having obtained financing with assistance from the Costa Rican government. According to the complaint, in 1991 the government through its agency responsible for public land-line based telephone services announced it was developing its own cellular system, and proceeded to “drive plaintiffs out” of the market by means of anticompetitive actions including suits challenging the 1987 license and labor strikes which derailed legislative efforts to resolve the license issue. Plaintiffs sued the Costa Rican government and its telecommunications agency asserting Sherman Act and other claims. The judge dismissed the complaint under the Foreign Sovereign Immunities Act of 1976, which “presumes a foreign state is immune from suit in United States courts except as provided in one of the statutory exceptions.” The judge rejected the argument concerning the “commercial activity” exception because “interconnectivity

arrangements” with the U.S. market did not rise to the level of “commercial activity carried on” or “an act performed in” the U.S., and the alleged conduct had no “direct effect” in the U.S., within the meaning of the statute. The “expropriation” exception was also inapplicable because plaintiffs had not first attempted, as required by the statute, to seek damages in the Costa Rican courts.

34. In *International Technologies Consultants, Inc. v. Pilkington plc*, 137 F.3d 1382 (9th Cir. 1998), plaintiff, an engineering and consulting firm, had sought antitrust and other remedies against Pilkington and Guardian, alleging that they “had made a secret agreement to prevent new entrants” into the business of designing and operating float glass factories. The parties had settled earlier litigation involving plaintiff’s efforts to build plants in Pennsylvania and Indonesia, and the trial judge had entered judgment for defendants on the pleadings, on the grounds that the previous consent decree barred future claims. The Court of Appeals reversed part of this judgment, holding that the consent decree did not bar litigation over new allegations concerning defendants’ efforts subsequent to the consent decree to sabotage the Indonesia project, and allegations concerning a float glass project in France which also arose after the settlement. Plaintiff alleged that Pilkington and its licensees had a worldwide monopoly on float glass technology, based on expired patents and fraudulent claims of patent and trade secret infringement.

C. *Statistics on Private and Government Cases Filed*

35. According to the annual report of the Director of the Administrative Office of the U.S. Courts, 605 new civil and criminal antitrust actions, both governmental and private, were filed in the federal district courts in FY98.

D. *Significant DOJ and FTC Enforcement Actions*

1) DOJ Criminal Enforcement

36. In FY98, there were two major developments in the Division’s ongoing investigations into the food and feed additives investigations:

- Convictions in ADM Lysine Trial: On September 17, 1998, a jury in Chicago found three former top executives of the Archer Daniels Midland Company (“ADM”), Michael D. Andreas, Terrance S. Wilson and Mark E. Whitacre, guilty of conspiring to fix prices and allocate sales in the global lysine industry. Lysine, a \$600 million a year industry, is an amino acid used by farmers as a feed additive to ensure the proper growth of poultry and swine. In October 1996, ADM pleaded guilty and agreed to pay criminal fines of \$70 million for its role in the international lysine conspiracy and \$30 million for its role in the citric acid conspiracy. [See FY97 Annual Report, ¶¶ 25-26]
- Cerestar: On June 23, 1998, Cerestar Bioproducts BV, a Dutch subsidiary of the French agricultural company Eridania Beghin-Say SA, agreed to plead guilty and pay a fine of \$400,000 for participating in an international conspiracy to fix prices and allocate market shares in the sale of citric acid worldwide. Cerestar’s Managing Director, an Italian citizen, also pleaded guilty and agreed to pay a criminal fine of \$40,000 for his role in the international citric acid conspiracy. Citric acid, a \$1.2 billion a year global industry, is a flavor additive and preservative used in soft drinks, processed food, detergents, pharmaceuticals, and cosmetic products. The Division’s ongoing investigation into price-fixing and sales allocation in the worldwide food and feed additives industry has thus far yielded more than \$200 million in criminal fines. [See FY97 Annual Report, ¶¶ 27-28]

37. The Division filed the first criminal charges in its ongoing investigation into the international graphite electrodes industry on February 23, 1998. Showa Denko Carbon, Inc. (SDC), a U.S. subsidiary of the Japanese firm Showa Financing KK, was charged with participating in a wide-ranging international conspiracy to fix prices and allocate market shares worldwide for graphite electrodes, entered a guilty plea, and was sentenced to pay a \$32.5 million fine. On April 7, 1998, UCAR International, Inc., the largest producer of graphite electrodes in the U.S., pleaded guilty to taking part in the international cartel and agreed to pay a \$110 million criminal fine, the largest single fine in antitrust history. Graphite electrodes are a component of steel mills used to generate the intense heat necessary to melt and refine steel. Annual sales in the U.S. graphite electrodes industry total approximately \$500 million.

38. On December 17, 1997, a French company, Roquette Frères, and its Commercial Director, a French citizen, agreed to plead guilty and pay a \$2.5 million fine for participating in an international conspiracy to fix prices and allocate markets for sodium gluconate, an industrial cleaner used for bottle washing, food process equipment and utensil cleaning, and paint removal. Worldwide sales of sodium gluconate approach \$50 million each year. On February 25, 1998, a Japanese corporation, Fujisawa Pharmaceutical Co., Ltd., and its Associate Executive Director, a Japanese citizen, also agreed to plead guilty and pay a fine of \$20 million for their roles in the conspiracy. On September 24, 1997, the Division brought similar charges against three Dutch pharmaceutical companies, Avebe BA, Akzo Nobel Chemicals BV, and Glucona BV. Two executives from Akzo Nobel and Glucona, both of whom are Dutch citizens, were also charged with participating in the sodium gluconate conspiracy. The companies pleaded guilty and agreed to pay a combined \$10 million criminal fine. This investigation has resulted in five cases and more than \$32.5 million in fines. [See FY97 Annual Report, ¶ 29]

39. Three firms pleaded guilty to participating in separate international conspiracies in the marine construction and marine transportation industries. On December 22, 1997, HeereMac, a Dutch company, Dockwise N.V., a Belgian firm, and Dockwise USA, its U.S. subsidiary, agreed to pay a total of \$65 million in criminal fines. Two former Dockwise executives and one HeereMac official, all of whom are Dutch nationals, also pleaded guilty to participating in the conspiracies. In one case, HeereMac, v.o.f. and its Commercial Director were charged with participating in an international conspiracy to rig bids for heavy-lift marine construction services. In a separate case, the other two companies, Dockwise N.V. and Dockwise U.S.A. Inc., and two former officials, were charged with an international conspiracy to rig bids for semi-submersible heavy-lift transport services. Heavy-lift derrick barge and related marine construction services are used primarily in building offshore oil and gas production platforms. Semi-submersible heavy-lift transport services are used in moving extremely large cargo, such as drilling rigs and other ships. Each of the defendants also agreed to cooperate in the Division's ongoing investigations into anticompetitive practices in the marine construction and marine transportation industries.

40. The Division brought the first criminal charges in its ongoing international investigation into the food preservatives industry. On September 30, 1998, Eastman Chemical Company agreed to plead guilty and pay an \$11 million criminal fine for participating in an international price-fixing conspiracy involving the sale of sorbates, chemical preservatives used primarily as mold inhibitors in high-moisture and high-sugar foods such as cheese and other dairy products, baked goods, and other processed foods. Annually, worldwide sales of sorbates reach approximately \$200 million.

2) DOJ Non-Merger Civil Enforcement

41. On December 18, 1997, the Division announced that International Business Machines Corporation ("IBM") would modify a 1996 marketing agreement that established it as the exclusive distributor for Storage Technology Corporation's mainframe disk storage products. Prior to the marketing arrangement, IBM and StorageTek had been two of only four major global competitors in the multi-billion

dollar market for mainframe disk storage subsystems, which provide storage and high-speed access to data. The agreement effectively eliminated StorageTek as an independent competitor. Before the 1996 agreement, competition between the two companies had greatly benefited mainframe disk storage purchasers. Price declines in the industry eased, however, after StorageTek and IBM stopped competing against each other. The settlement, which was approved by a U.S. District Court on April 9, 1998, prohibits both companies from maintaining contract provisions that penalize StorageTek for marketing mainframe disk storage subsystems to customers other than IBM.

42. Resolving a complaint filed in June 1997, on February 20, 1998 the Division filed a settlement with Rochester Gas & Electric Company ("RG&E") that invalidates its anticompetitive agreement with the University of Rochester. RG&E offered exceptionally low electricity rates and threatened to withhold research grants to discourage the University from proceeding with construction of a high efficiency electric generating plant, which would have produced inexpensive, surplus electric power that could have, in turn, competed with RG&E. The settlement, which entered into effect on June 17, 1998, allows the University to build its generating plant and prohibits RG&E from negotiating similar arrangements with other potential competitors.

43. On May 16, 1998, the Division filed a complaint against Microsoft Corporation for allegedly engaging in anticompetitive and exclusionary practices to maintain its monopoly in personal computer operating systems and to extend that monopoly to Internet browsing software. The Division alleged that Microsoft feared competitive browsers would facilitate competition in the PC operating systems market by freeing consumers from dependence on a particular operating system when selecting applications programs. The Division also filed a motion seeking preliminary injunction. The Court consolidated a parallel action of 19 state attorneys general with the federal action as well as consolidated trial on the merits with the preliminary injunction hearing. Trial, commencing on October 19, 1998, is currently underway. Procedures established by the court to expedite the trial limited each side to twelve witnesses with direct testimonies submitted in writing. Only cross-examination and redirect are presented live in the courtroom. The Division contends that Microsoft, with its monopoly power in the operating system, has not only unnecessarily tied its browser to the operating system, but has used its power to prohibit companies such as Apple and Intel from promoting competing technologies. The Division also contends that Microsoft attempted to persuade Netscape Communications to divide the browser market.

44. On July 14, 1998, the Division announced a settlement in its 1996 lawsuit against General Electric Co. ("GE"), the world's largest manufacturer of medical imaging equipment and a leading provider of service for all types and brands of medical equipment. According to the agreement, which is awaiting the approval of a U.S. District Court, GE will void restrictive provisions in existing software licenses that prevent hospitals from competing with the company to service medical equipment. Prior to 1996, GE required any hospital seeking a software license to agree not to service medical equipment of any kind--whether GE's or that of another manufacturer-- at any other health care facility, thereby restraining competition in this \$3 billion per year industry. As part of the settlement, GE also agreed not to prohibit hospitals from providing service on medical equipment as a condition of receiving software licenses in the future.

45. On July 16, 1998, the Division and the City of Stilwell, Oklahoma settled an April 1996 lawsuit alleging that the city used its water and sewer monopolies to suppress competition in the electricity market. According to Stilwell's "all-or-none" utility policy, consumers could not purchase electricity from other providers without losing access to city water and sewage service. The settlement, which entered into effect on November 5, 1998, eliminates this policy and allows consumers to purchase electricity from other companies.

46. The Division filed a lawsuit against the Federation of Physicians and Dentists for allegedly organizing an illegal boycott of Blue Cross & Blue Shield of Delaware in an effort to maintain higher fees paid to its member orthopedists. According to the complaint filed on August 12, 1998, which is still pending in U.S. District Court, nearly all of the orthopedic surgeons in Delaware agreed to designate the Federation's executive director as their agent to negotiate the fee levels they would accept from Blue Cross. When Blue Cross declined to deal with the designated agent, the Federation allegedly facilitated its members' termination of their contract with Blue Cross. The Division is currently investigating the Federation's activities in other states.

47. On September 23, 1998, the Division filed a lawsuit against Medical Mutual of Ohio, Ohio's largest health insurer, for allegedly reducing competition among hospitals in the Cleveland area. A proposed consent decree that would resolve the Division's antitrust concerns is awaiting U.S. District Court approval. The complaint states that Medical Mutual's Most Favorable Rate ("MFR") provision required hospitals to charge other health plans 15 to 30 percent more for identical services or face significant penalties. Medical Mutual aggressively enforced its MFR clause through frequent audits resulting in millions of dollars in penalties over the years. This practice discouraged hospitals from participating in more innovative health plans and diminished the choice of health services available to businesses and consumers. In the past, the Division has successfully challenged other MFR provisions both in the health care industry and elsewhere.

3) Modification or Termination of DOJ Consent Decrees

48. On April 27, 1998, the DOJ agreed to proposed changes to a 1979 consent decree concerning the Coffee, Sugar & Cocoa Exchange. The changes decrease the effect of time differences and other burdens in order to facilitate participation in the daily quotation process by members of the sugar industry around the world, allowing the widest possible perspective of prices to be used in determining the daily spot price of sugar on world markets. These modifications do not, however, affect the decree's protections against collusion. The Division's 1977 civil case charged that the Exchange's spot price quotations for raw cane sugar were set by interested parties on a subjective basis. The original consent decree ended this anticompetitive practice and required the Exchange to determine prices on the basis of objective information.

4) FTC Non-merger Enforcement Actions

a. Commission Administrative Decisions

49. The Commission issued an administrative complaint against Summit Technology, Inc. and VISX, Inc., the only two manufacturers of lasers used in photo refractive keratectomy ("PRK") to treat vision disorders that have received marketing approval from the Food and Drug Administration. The complaint charged that the companies pooled most of their existing and certain future patents related to PRK into a partnership and used it to fix a per-procedure licensing fee and to split the proceeds according to a pre-determined formula. They also agreed that neither would license its technology without approval from the other. The effect was to eliminate competition in pricing and licensing. The complaint also charges that VISX obtained one of its key patents through fraud and inequitable conduct, specifically by withholding "prior art" information. The proposed consent would settle all the allegations of the complaint against Summit and those against VISX except one on patent fraud which is now in litigation before an Administrative Law Judge. *Summit Technology, Inc.* Docket No. 9286, 5 Trade Reg. Rep. (CCH) ¶ 24,490.

50. The FTC issued an administrative complaint against Intel Corp., the world's largest manufacturer of microprocessors, charging that the company used its monopoly power to cement its dominance over the microprocessor market. The FTC alleged that Intel illegally used its market power when it denied three of its customers, Digital Equipment Corp., Integraph Corp., and Compaq Computer Corp., continuing access to technical information necessary to develop computer systems based on Intel microprocessors, and took other steps to punish them for refusing to license key patents on Intel's terms. As a result of these practices, Intel allegedly impeded innovation and stifled competition. The case is currently before an Administrative Law Judge. *Intel Corp.*, Docket No. 9288, 5 Trade Reg. Rep. (CCH) ¶ 24,440.

51. The Commission accepted consent agreements settling charges that The Associated Ocel Co. Ltd., and Ethyl Corp., the world's two largest manufacturers of lead antiknock gasoline additives, agreed that between late 1993 and early 1994 Ethyl would stop manufacturing lead antiknock compounds and, in return, Ocel would supply Ethyl with a limited volume of lead antiknock compounds. The supply agreement allegedly tied the maximum amount of product Ethyl would receive to a percentage of Ocel's total capacity and tied Ethyl's costs to Ocel's retail price, thereby preventing Ethyl from increasing output to defeat any price increase by Ocel. The agreement also required disclosure between the firms of prices to customers. The consent orders eliminate the supply cap and provisions tying Ethyl's purchase price to Ocel's retail price and prohibited the price disclosure requirement. *Ethyl Corp.*, Docket No. C-3814, 5 Trade Reg. Rep. (CCH) ¶ 24,409, *The Associated Ocel Co. Ltd. and Great Lakes Chemical Corp.*, Docket No. C-3815, 5 Trade Reg. Rep. (CCH) ¶ 24,409.

52. Stone Container Corp. settled charges that, following a failed attempt in 1993 to achieve a price increase for liner board, it surveyed its competitors by telephone concerning their inventory and subsequently contacted competitors' senior officers to purchase inventory and inform them of its plan to take extraordinary downtime. The complaint alleged that these moves constituted an industry-wide invitation by Stone Container to join a coordinated price increase. The consent agreement prohibited Stone Container from requesting, suggesting or entering into any price fixing agreements with its competitors or other joint pricing action with respect to third-party sales of liner board. *Stone Container Corp.*, Docket No. C-3806, 5 Trade Reg. Rep. (CCH) ¶ 24,390.

53. The two largest marketers of electronic surveillance systems used in retail stores to prevent shoplifting, Sensormatic Electronics Corp. and Checkpoint Systems, settled charges that they agreed as part of a 1993 settlement of private litigation over alleged deceptive comparative advertisements to restrict truthful, non-deceptive comparative advertising. Such advertising could provide important information to consumers, including about harm their products may cause. The consent agreements declare that provision of the 1993 settlement null and void and bars any agreement to limit or restrain truthful comparative advertising or promotional and sales activities. *Sensormatic Electronics Corp./Checkpoint Systems*, Docket Nos. C-3795 and C-3796, 5 Trade Reg. Rep. (CCH) ¶ 24,372.

54. A group of 25 automobile dealerships settled FTC charges that they collectively threatened to boycott Chrysler if Chrysler did not agree to change its vehicle allocation system to restrict the number of vehicles available to competing dealers who offered low prices through marketing on the Internet. The dealers agreed to an order prohibiting any such boycotts in the future. *Fair Allocation System, Inc.*, Docket No. 3832, 5 Trade Reg. Rep. (CCH) ¶ 24,479.

55. In *The College of Physician-Surgeons of Puerto Rico*, the Commission obtained a consent to settle charges that physicians had collectively demanded price-related changes under Puerto Rico's government-managed care plan for the poor. The complaint had charged the defendants with attempting to coerce the government into recognizing the College as the exclusive bargaining agent for all physicians of Puerto Rico, and with calling a strike of all physicians on the island for all non-emergency patient care. The FTC action not only prohibits any future doctor strikes, but also required the College to provide

restitution to the Commonwealth. *The College of Physician-Surgeons of Puerto Rico*, File No. 971-0011, 5 Trade Reg. Rep. (CCH) ¶ 24,335

56. Other proposed or final consent orders include: *Urological Stone Surgeons and Parkside Kidney Stone Centers*, Docket No. C-3791, 5 Trade Reg. Rep. (CCH) ¶ 24,367 (price fixing); *M. D. Physicians of Southwest Louisiana*, Docket No. C-3824, 5 Trade Reg. Rep. (CCH) ¶ 24,445 (price fixing); *Dentists of Juana Diaz, Cuoma*, File No. 981-0154, 5 Trade Reg. Rep. (CCH) ¶ 24,500 (price fixing, boycott); *Institutional Pharmacy Network*, Docket No. C-3822, 5 Trade Reg. Rep. (CCH) ¶ 24,433 (price fixing); *Fastline Publications, Inc.*, Docket No. C-3819, 5 Trade Reg. Rep. (CCH) ¶ 24,426 (price advertising restrictions); *South Lake Tahoe Lodging Ass'n*, Docket No. 3830, 5 Trade Reg. Rep. (CCH) ¶ 24,466 (advertising restrictions).

b. Federal District Court Decisions

57. In *Columbia/HCA Healthcare*, the Commission obtained a \$2.5 million civil penalty to settle charges that the firm violated a 1995 order to divest hospitals in Utah and Florida in a timely manner. The complaint also alleged the firm failed to honor a hold separate agreement. This was the second largest penalty ever obtained for a failure to divest within specified time periods. *FTC v. Columbia/HCA Healthcare Corp.*, Civ. No. 98-1889 (D.D.C August 6, 1998), 5 Trade Reg. Rep. (CCH) ¶ 24,473.

58. Rite Aid Corp. agreed to pay \$900,000 in civil penalties for failing to divest three drug stores as required by a 1994 FTC order. The complaint alleged that Rite Aid did virtually nothing to comply with an order to divest the stores, thereby denying consumers the competitive benefits of the 1994 consent order. *FTC v. Rite Aid Corp.*, Civ. No. 98-0484 (D.D.C. Feb. 27, 1998), 5 Trade Reg. Rep. (CCH) ¶ 24,391.

59. CVS Corp. agreed to pay a \$600,000 civil penalty to settle Commission charges that the company violated a 1997 consent order and asset maintenance agreement by failing to observe its obligations to keep assets viable and competitive. The FTC complaint alleged that consumers were denied the full benefits of competition, including automated access to complete, up-to-date, accurate prescription dispensing records, because CVS removed the computerized pharmacy record-keeping systems from 113 Revco pharmacies prior to divesting them to Eckerd as required by the consent order and asset maintenance agreement. *FTC v. CVS Corp.*, Civ. No. 98-0775 (D.D.C March 26, 1998), 5 Trade Reg. Rep. (CCH) ¶ 24,412.

E. Business Reviews Conducted by the Department of Justice

60. In FY97, the Division received 16 requests for Business Review Letters and issued 19 letters pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. §50.6. Twelve requests were granted and five were withdrawn; eighteen requests for Business Review Letters are still pending. The text of the Business Review Letters issued during FY98 can be found at 6 Trade Reg. Rep (CCH) ¶ 44,098; some of them are described hereafter.

61. The Division announced on September 15, 1998 that it would not challenge the proposed merger between two independent physician groups in Pennsylvania. According to the DOJ's business review letter, the combination of the Heritage Alliance, a primary care physicians group, and Lackawanna Physicians Organization, a multi-specialty organization, would not likely cause substantial adverse competitive effects in the markets for primary care services or pediatrics. The merger would allow the two groups to form a risk-bearing, non-exclusive network to contract with managed care plans and other third party payers to provide physician services more efficiently.

62. On November 3, 1997, the Division issued a business review letter stating that it would not challenge the proposed joint venture between First Priority Health, a health maintenance organization ("HMO") and subsidiary of Blue Cross of Northeastern Pennsylvania, and NEPPO Ltd., a limited partnership of 166 specialists and primary physicians. According to the proposal, the two groups would join to form First Priority Health System, a risk-bearing service delivery organization that will provide and manage medical services for HMO enrollees in Scranton, Pennsylvania and surrounding counties. The Division concluded that although the newly formed organization would create a competitive challenge to other area managed care plans, it would not prevent them from competing to serve consumers in the area.

63. On August 14, 1998, the Division approved the National Association of Manufacturers' ("NAM") proposal to allow its members and their computer services suppliers to discuss and exchange information on the Year 2000 computer problem. In a business review letter, the Division stated that the arrangement would not pose competitive risks as long as it is limited to information about the existence of and remedies for Year 2000 computer conversion problems. NAM is the nation's oldest and largest broad-based industrial trade association, with nearly 14,000 member companies and subsidiaries, including 10,000 small manufacturers. More than 158,000 additional businesses are affiliated with the NAM through its Associations Council and National Industrial Council. On July 1, 1998, the Division issued a business review letter approving a similar arrangement proposed by the Securities Industry Association ("SIA"). The Division concluded that the proposal would not directly lessen competition in the procurement of computer services and would not involve the disclosure of pricing or customer information that would pose competitive risks. SIA represents nearly 800 securities firms. Both business review letters concluded that the information exchanges may even have procompetitive effects by reducing costs and speeding up resolution of Year 2000 issues.

64. In FY98, the Division issued two business review letters concerning electricity joint purchasing arrangements. On September 4, 1998, the Division approved a proposal by the Textile Energy Association to allow textile manufacturers to purchase energy through a joint purchasing agent. On November 20, 1997, the Division announced that it would not challenge a similar proposal by the California Large Electric Power Purchasing Association allowing cement and steel manufacturers to purchase electric power through a joint purchasing agent. The establishment of such joint purchasing agents is designed to enable the members to reduce transaction and information costs associated with purchasing power in deregulated electricity markets. As proposed, both associations would choose independent purchasing agents and negotiate model contracts with those agents that will benefit all members. The programs include several operational safeguards designed to lessen potential anticompetitive effects. Furthermore, members will remain free to purchase energy individually and will continue to conduct all other aspects of their businesses independently of one another.

65. On January 30, 1998, the Division issued a business review letter approving a proposal by two electric power generating joint ventures to offer their output on the basis of price rather than regulatory cost. The joint ventures, owned by utilities located in Pennsylvania, New Jersey, Delaware and Maryland, were created in the 1960s to finance, construct, and operate four coal-fired electric power generating units in western Pennsylvania. The owners are all members of the Pennsylvania-New Jersey-Maryland Interconnection Association ("PJM"), a regional economic dispatch center. PJM's dispatchers select, on an hourly basis, the cheapest source of energy available from any Pool participant to serve the next increment of demand for electricity. Pool interchange is now priced on the basis of hourly "market clearing" prices, which is the reported variable cost of the most expensive resource that the Independent System Operator calls on in an hour to satisfy demand. According to the business review letter, the proposal would allow the joint ventures to bid based on the price they are willing to accept rather than their regulatory costs. To prevent collusion among the joint ventures' owners, the arrangement includes information flow limitations designed to avoid anticompetitive information exchanges.

66. On February 3, 1998, the Division issued a business review letter approving the proposed creation of the Interactive Travel Services Association. Ten on-line travel service providers, American Express, Biztravel.com Inc., Internet Travel Network, Microsoft Inc., Preview Travel Inc., America Online Inc., Excite Inc., Pegasus Systems Inc., Sun Microsystems, and The Trip.com Inc., proposed forming the Association to identify industry problems, promote consumer protection, educate consumers and suppliers, present industry views to governmental bodies, serve as an information clearinghouse, and conduct market research. To avoid antitrust problems, the Association will retain experienced antitrust counsel and will develop written guidelines as part of an antitrust compliance program.

III. Enforcement of antitrust laws and policies: mergers and concentrations

A. Department of Justice and FTC Merger Statistics

1) DOJ Review of Mergers

67. The Division initiated 226 merger investigations, 170 HSR and 56 non-HSR. Of the 170 HSR investigations, 102 involved second requests and/or civil investigative demands ("CIDs"). Of the 56 non-HSR merger investigations, 20 involved the issuance of CIDs.

2) FTC Review of Mergers

68. Based on its review of premerger notification reports, the FTC investigated 46 transactions with second requests for information.

3) Enforcement of Premerger Notification Rules

69. The Commission and the Department actively have enforced the filing requirements of the Hart-Scott-Rodino ("HSR") Act by bringing cases in federal court to obtain civil penalties. In FY98, the Commission brought one civil penalty action against Loewen Group, Inc. and Loewen Group International, Inc. for failing to pre-notify its acquisition of voting securities of Prime Succession Inc. in August 1996, which resulted in Loewen's holdings in Prime exceeding the 15 percent filing threshold. Loewen agreed to pay civil penalties of \$500,000 to settle the charges. *Loewen Group*, Civ. No. 98-0815 (D.D.C. 1998), 5 Trade Reg. Rep. (CCH) ¶ 24,410.

B. Significant Merger Cases

1) DOJ Merger Challenges or Cases

70. Halliburton-Dresser: Following concurrent investigations conducted by the Division and the European Union's Directorate-General IV, Halliburton Company agreed to divest its worldwide logging-while-drilling ("LWD") services business, as well as its interest in a drilling fluids firm, to alleviate antitrust concerns and gain clearance for its merger with Dresser Industries. The proposed consent decree, which was filed on September 29, 1998, is awaiting final approval from a U.S. District Court. LWD services, which provide offshore drilling companies with information concerning the quantity of oil and natural gas at drilling sites and the ease with which they can be extracted, earn annual global revenues of \$500 million. Without the divestiture, the merger would have combined two of only four

companies worldwide that provide the full range of LWD tools and services, likely resulting in higher prices and a slower rate of innovation. Prior to the filing of the consent decree, Halliburton agreed to sell its 36 percent interest in M-I Drilling. As originally structured, the transaction would have combined the world's two largest drilling fluids competitors, M-I Drilling and Dresser's Baroid Division, in this \$3 billion a year industry. Drilling fluids, which are a combination of chemical compounds and minerals, are the second largest cost -- after rental of the rig -- of drilling for oil and natural gas.

71. Lockheed Martin/Northrop Grumman: In the largest merger ever challenged by the federal government, the Division sued Lockheed Martin on March 23, 1998 to block its proposed \$11.6 billion acquisition of Northrop Grumman. Both companies are major suppliers of technology to the U.S. military and are the only producers of advanced airborne early warning radar systems, electro-optical missile warning systems, and directed infrared countermeasures. The Departments of Justice and Defense cooperated in the investigation leading to the lawsuit. In response to the challenge, on July 16, 1998, Lockheed Martin announced its decision to abandon the transaction.

72. WorldCom/MCI: On July 15, 1998, the Division announced that WorldCom Inc.'s \$44 billion purchase of MCI Communications Corporation would be allowed to proceed after the divestiture of MCI's Internet business, internetMCI. In what was the largest divestiture in merger control history, MCI agreed to sell internetMCI to Cable & Wireless plc, a British firm, for \$1.75 billion. The Department of Justice and the European Union's DG-IV conducted independent investigations of the proposed transaction with extensive cooperation, including exchanges of views on market analysis, coordination of information gathering, and joint meetings and negotiations with the parties. Pursuant to the 1991 U.S.-EC Antitrust Cooperation Agreement, the EU formally requested the Antitrust Division's assistance in evaluating and implementing the proposed divestiture. In September, the Federal Communications Commission approved the transaction, which was subsequently finalized.

73. Aerolineas Argentina: On July 8, 1998, the Division approved American Airlines' acquisition of stock in the parent of Aerolineas Argentina, the principal Argentine air carrier, after American agreed to restructure the transaction to alleviate antitrust concerns. Under the terms of the restructured deal, American will control about 8.5 percent of Aerolineas Argentina's stock, but will not be represented on the Aerolineas Argentina board of directors or participate in any of its competitive decisions. Other than American and Aerolineas Argentina, only United Airlines services the U.S.-Argentina market. Entry and expansion in this market are limited by a restrictive bilateral aviation treaty between the two countries. The Division reserved its right to oppose any American/Aerolineas Argentina code-sharing agreement that they might submit to the Department of Transportation in the future.

74. Alcoa/Alumax; Reynolds Metal: On June 15, 1998, the Division announced that the Aluminum Company of America ("Alcoa") would be permitted to complete its \$3.8 billion purchase of Alumax Inc. following a consent decree in which Alcoa agreed to sell its aluminum cast plate operations. Together Alcoa and Alumax control 90 percent of the worldwide market for cast plate, which is used in precision aircraft and automotive parts, as well as in machinery that makes frozen food packaging. A U.S. District Court has approved the consent decree and the divestiture has been made. In December 1997, Alcoa abandoned its proposed purchase of Reynolds Metal Company's Alabama aluminum rolling mill after the Division filed suit to block the transaction. The sale of Reynolds aluminum rolling assets was likely to increase the price of aluminum can stock used primarily for beverage containers. U.S. sales of aluminum can stock total approximately \$4.5 billion a year.

75. Primestar/DBS: Seeking to block Primestar Inc. from acquiring the direct broadcast satellite ("DBS") assets of MCI and News Corporation Limited, the Division filed suit on May 12, 1998, alleging that the transaction would allow the five major cable companies who own Primestar to limit access to DBS and thereby maintain their monopoly. DBS, which is considered a viable threat to the cable monopoly,

uses high power satellites to transmit video directly to subscribers' homes. Only three orbital slots, including the one jointly owned by MCI and News Corp., are capable of high-power broadcasting to the entire continental U.S. As a result of the Division's lawsuit, on October 14, 1998, Primestar announced its decision to abandon the proposed acquisition.

76. Haynes/Inco: On March 3, 1998, the Division announced its intention to challenge Haynes Holdings, Inc.'s acquisition of Inco Alloys International, prompting Haynes and its British majority owner, Blackstone Capital Partners, to abandon the transaction. Inco Alloys, the alloys division of the Canadian firm Inco Limited, is the world's largest manufacturer of nickel-based products; Haynes is the number two producer in the U.S. High performance nickel-based alloys are used in high temperature and highly corrosive environments, such as aerospace and chemical processing.

77. GE/Gas Turbines: On December 30, 1997, the Division cleared General Electric's ("GE") \$600 million purchase of Stewart & Stevenson Services, Inc.'s Gas Turbine Division following an agreement that GE would license additional facilities to perform maintenance and overhaul services on GE marine and industrial engines. Stewart & Stevenson was GE's largest competitor in the worldwide market for maintenance and overhaul services and the only North American company licensed to repair GE-manufactured engines. Under the terms of the agreement, GE granted a five-year license to TransCanada Turbines, a joint venture between TransCanada Pipelines, based in Calgary, Canada, and the Wood Group, headquartered in Scotland, to provide maintenance services for certain GE-manufactured engines.

78. Raytheon/Hughes: On October 16, 1997, the Division announced a settlement negotiated with Raytheon Company that alleviates antitrust concerns and would thus permit the \$5.1 billion acquisition of Hughes Aircraft, a subsidiary of General Motors Corporation, to proceed. As part of the consent decree, which was entered on January 27, 1998, Raytheon agreed to sell two of its defense electronics businesses, the largest divestiture in the defense industry since the end of the Cold War. The agreement also established a firewall between independent Raytheon and Hughes research teams on a new antitank missile system then under development. According to the terms of the decree, the Raytheon and Hughes teams will not be permitted to exchange information or cooperate in any way until the bidding has ended, thereby ensuring a competitive bidding process.

79. Waste Management Mergers

- On July 16, 1998, the Division announced that USA Waste Services Inc. would proceed with its \$13.5 billion merger of Waste Management, Inc. after agreeing to divest waste collection and disposal operations in 13 states, including 21 metropolitan markets, following a settlement reached with the Department of Justice and 13 state attorneys general. The consent decree, which is awaiting final approval from a U.S. District Court, allows USA Waste Services, the third largest hauling and disposal company in the U.S., with sales of \$2.6 billion in 1997, to take over Waste Management, whose 1997 sales totaled \$9.2 billion.
- On May 6, 1998, the Division permitted USA Waste Services' \$125 million merger with TransAmerican Waste Inc. to proceed after the parties agreed to divest waste hauling and landfill assets in Texas in response to antitrust concerns. USA Waste originally sold the assets in question to TransAmerican in 1996 as part of a consent decree negotiated in conjunction with USA Waste's acquisition of Sanifill, Inc. The current settlement, which was entered on August 25, 1998, modifies the earlier consent decree and prohibits USA Waste from reacquiring the assets.

80. Loews Theatres: On April 16, 1998, the Division announced that the merger of Loews Theatres, a subsidiary of Sony Corporation, and Cineplex Odeon Corporation, a Canadian company, would be allowed

to proceed following the divestiture of 25 movie theaters in Manhattan and Chicago. As originally structured, the combination of Loews and Cineplex Odeon, the two largest cinema chains in Manhattan and Chicago, would have given the new entity a 67 percent and 77 percent revenue share, respectively, of the markets in question. The consent decree was entered by a U.S. District Court on November 16, 1998.

81. Pacific Enterprises/Enova: In the first challenge of a merger between an electric and a gas pipeline utility, the Division announced on March 9, 1998 that the \$6 billion combination of Enova Corporation and Pacific Enterprises would proceed after the divestiture of important assets to alleviate antitrust concerns. Enova is the parent company of the third largest electricity provider in California, with annual revenues of \$1.6 billion. Pacific is a natural gas utility that operates in California. California is currently restructuring its electricity industry to allow greater competition and consumer choice. According to the proposed consent decree, which awaits final approval from a U.S. District Court, Enova will sell its two largest low-cost electricity plants in order to eliminate the incentive to raise prices charged to utility customers in California.

82. Radio mergers: In FY98 the Division filed three merger lawsuits against radio companies, each resulting in a consent decree requiring the restructuring of the transaction. In *U.S. v. Chancellor Media Co., Inc. et al.*, CV-97-6497 (E.D.N.Y.) the Division announced on March 31, 1998, that Chancellor Media Corporation had agreed to abandon its plan to acquire four radio stations owned by SFX Broadcasting, Inc. in Long Island, NY, and entered into a consent decree ending the local marketing agreement (“LMA”) under which Chancellor was operating the stations. DOJ had sued to block the proposed acquisition in November, in its first contested court challenge to a merger in the radio industry since the passage of the Telecommunications Act of 1996. In *U.S. v. Hicks, Muse, Tate & Furst, Inc. and Capstar Broadcasting Partners, Inc. and SFX Broadcasting, Inc.*, CV-98-2422 (E.D.N.Y. 1998), the Division filed a complaint and consent decree allowing Capstar to go forward with its \$2.1 billion acquisition of SFX so long as it divested eleven radio stations. In addition, the Division filed a complaint and consent decree in *U.S. v. CBS Corporation and American Radio Systems*, 1998-1 Trade Cas. (CCH) ¶ 72,207 (D.D.C.), permitting CBS to go forward with its \$1.6 billion acquisition of American Radio Systems, so long as it divested seven radio stations. The Division also obtained five “fix-it-first” agreements and the abandonment of two mergers in other radio merger investigations.

83. In a year of considerable consolidation within the banking industry, including mergers among the largest banks in the United States, the Division reached agreements for divestiture or other conditions in 16 transactions. FY98 began with the merger of NationsBank with Barnett Bank in Florida. In this transaction, the Antitrust Division, in conjunction with the Florida Attorney General’s office, negotiated a divestiture of 124 branch offices in Florida markets with deposits totaling about \$4.1 billion. Shortly after this divestiture agreement was the acquisition by First Union of CoreStates, located primarily in Pennsylvania and New Jersey. After an extensive investigation, the parties agreed to divest 32 CoreStates offices, mainly in Philadelphia and the Lehigh Valley, with deposits totaling about \$1.1 billion.

84. One of the largest transactions in banking history was the merger of equals, NationsBank and Bank of America. Although the merger of these banks resulted in the formation of the largest bank in the country, there was relatively little competitive overlap. Competitive concerns were raised in New Mexico and were resolved when the parties agreed to divest 17 New Mexico branches with deposits totaling about \$492 million. In addition to divesting the loans and deposits, the parties agreed to divest to the buyer Bank America’s New Mexico Commercial Banking Group, Business Banking Group, Cash Management Group, and certain back office operations.

85. During the spring of 1998, Banc One announced plans to acquire First Chicago NBD. To consummate this transaction, Banc One/First Chicago NBD agreed to divest 39 branches in 10 Indiana

counties with total deposits of about \$1.5 billion. Again, the parties agreed to divest middle market businesses including certain middle-market commercial loans with associated deposits.

86. In addition to the mergers and divestitures mentioned above, there were four other smaller transactions which resulted in divestitures in Virginia, New Hampshire, Indiana, and Louisiana. In three other transactions, the Division accepted the parties' initial divestiture offer. Additionally, there were five transactions in which other conditions were imposed to address competitive concerns.

2) FTC Merger Challenges or Cases

a. Preliminary Injunctions Authorized

87. The Commission filed for a preliminary injunction in March 1998 alleging that the acquisition by Cardinal Health, Inc. ("Cardinal") of Bergen Brunswig Corp. ("Bergen") would lessen competition substantially in the wholesale distribution of prescription drugs. Cardinal was the nation's third largest wholesale distributor of prescription drugs, over-the-counter pharmaceutical products and health and beauty aids. Bergen was the country's largest supplier of pharmaceuticals to the managed care market and the second largest wholesale distributor of pharmaceuticals. The court granted the Commission's motion blocking the proposed acquisition on July 31, 1998. Subsequently, the parties abandoned the transaction. *FTC v. Cardinal Health, Inc., and Bergen Brunswig Corp.*, 12 F. Supp. 2d 34 (D.D.C. 1998)

88. Consolidated with the aforementioned case, the Commission filed for a preliminary injunction in March 1998 alleging that the acquisition by McKesson Corp. of AmeriSource Health Corp. ("AmeriSource") would lessen competition substantially in the wholesale distribution of prescription drugs. McKesson was the largest full-service wholesale distributor of prescription drugs in the United States and Canada. AmeriSource was the fourth largest wholesale distributor of pharmaceutical products and related health care services in the country. The court granted the Commission's motion blocking the proposed acquisition on July 31, 1998. Subsequently, the parties abandoned the transaction. *McKesson Corp., and AmeriSource Health Corp.*, 12 F. Supp. 2d. 34 (D.D.C. 1998).

89. The Commission, joined by the State of Missouri, filed for a preliminary injunction in April 1998 alleging that the acquisition by Tenet Healthcare Corp. ("Tenet") of Poplar Bluff Physicians Group, Inc., d/b/a/ Doctors Regional Medical Center ("DRMC") would lessen competition substantially in the provision of general acute care inpatient hospital services in Butler County, Missouri, and seven surrounding counties. DRMC and Tenet's Lucy Lee Hospital were the two principal general hospitals in the relevant area. On July 30, 1998, the court granted the Commission's and Missouri's motions blocking the transaction pending the outcome of an administrative trial. The Commission issued an administrative complaint in August, 1998 that is pending. *Tenet Healthcare Corp.*, 1998-2 Trade Cas. (CCH) ¶ 72,227.

b. Commission Administrative Decisions

90. The Commission issued an administrative complaint in *Monier Lifetile LLC, Boral Ltd., and Lafarge S.A.*, alleging that the formation of Monier Lifetile LLC, a joint venture limited liability corporation between Boral Ltd. and a subsidiary of Lafarge S.A., would lessen competition substantially in the market for standard-weight concrete roofing tile in the Southwestern United States (consisting of California, Arizona and Nevada) and Florida. According to the complaint, the parties were the two largest producers of concrete roofing tile in the United States prior to formation of the joint venture. The administrative proceeding is pending. Docket No. 9290, 5 Trade Reg. Rep. (CCH) ¶ 24,506.

91. In *The Dow Chemical Company*, the complaint alleged that the proposed acquisition by Dow Chemical Co. ("Dow") of Sentrachem Ltd would lessen competition substantially in the research, development, manufacture and sale in the U.S. of chelants, which are used in diverse applications to neutralize and inactivate metal ions. According to the complaint, Dow and Sentrachem's subsidiary, Hampshire Chemical Corp. ("Hampshire"), are the two leading of only three producers of chelants, with a combined market share of over 70 percent. Under the order, the parties were required to divest Hampshire's chelant business to Akzo Nobel N.V., a Dutch chemical company that is a leading European producer of chelants. The order also provided for the expansion of Hampshire's Lima, Ohio, facility by setting certain "milestones" that must be met to accomplish the construction of additional capacity. Docket No. C-3785, 5 Trade Reg. Rep. (CCH) ¶ 24,354.

92. In *Guinness plc, Grand Metropolitan plc, and Diageo plc*, the FTC complaint alleged that the proposed merger of Guinness plc and Grand Metropolitan plc ("Grand Met") would lessen competition substantially in the production of premium Scotch and premium gin in the United States. According to the complaint, the combined entity, known as Diageo plc, would control approximately 92 percent and 73 percent of all U.S. premium Scotch and premium gin sales, respectively. The order required divestiture of Guinness' assets used in the manufacture of "Dewar's" Scotch whisky, as well as the assets used by Grand Met in the production of "Bombay" gin to Bacardi & Company, International. FTC staff coordinated its investigation with those of the EC and Canadian competition authorities, resulting in parallel divestitures. Docket No. C-3801, 5 Trade Reg. Rep.(CCH) ¶ 24,441.

93. In *CUC International Inc., and HFS Inc.*, the complaint alleged that the proposed merger of CUC International and HFS would substantially lessen competition in the worldwide sale of timeshare exchange services to timeshare developers and owners. According to the complaint, the parties operated competing worldwide, full-service networks enabling timeshare owners to trade time periods for the use of their vacation properties. Under the order, CUC International and HFS were required to divest CUC's Interval International Inc., to a company controlled by Willis Stein & Partners, L.P., a venture capital firm, or to divest HFS' Resort Condominiums International, Inc., to a Commission-approved purchaser. Docket No. C-3805, 5 Trade Reg. Rep. (CCH) ¶ 24,360.

94. In *TRW Inc.*, the FTC alleged that TRW's proposed acquisition of BDM International Inc. ("BDM") would lessen competition substantially in (1) the research, development, manufacture and sale of a ballistic missile defense system ("BMD system") for the U. S. Department of Defense ("DoD"), and (2) the provision of systems engineering and technical assistance services ("SETA Services") to the U.S. Ballistic Missile Defense Organization ("BMDO") of DoD. TRW was a member of one of only two teams vying to supply a BMD system to DoD and BDM was the only provider of SETA services. According to the complaint, the proposed acquisition would position TRW as both a competitor for the BMD system and the contractor responsible for assessing the proposals submitted by the two teams. The order required TRW to divest BDM's SETA Services contract with the BMDO and all of BDM's assets associated with the performance of the contract. Docket No. C-3790, 5 Trade Reg. Rep. (CCH) ¶ 24,365.

95. In *Cablevision Systems Corp.*, the FTC complaint alleged that the proposed acquisition by Cablevision Systems ("CVS") of certain cable television systems owned by Tele-Communications, Inc. ("TCI") would lessen competition substantially in the distribution of multichannel video programming by cable television providers in the Boroughs of Paramus and Hillsdale, in New Jersey. According to the complaint, the parties were the only two cable television providers in the relevant geographic areas. Under the order, CVS was required to divest TCI's Paramus and Hillsdale cable systems to US Cable of Paramus-Hillsdale, LLC. Docket No. C-3804, 5 Trade Reg. Rep. (CCH) ¶ 24,370.

96. In *PacifiCorp, The Energy Group PLC, Peabody Holding Company, Inc., and Peabody Western Coal Co.*, the complaint alleged that the acquisition by PacifiCorp of The Energy Group PLC ("TEG")

would lessen competition substantially in the mining, production and sale of coal and in wholesale electricity sales in the Western United States. TEG's Peabody Western Coal Co. ("Peabody") was the only viable source of coal to Navajo and Mohave, two large coal-fired power plants in Arizona and Nevada. PacifiCorp provided retail electric service in seven Western states, and competed with Navajo and Mohave. According to the complaint, substantial electricity generation assets of a merged PacifiCorp/Peabody would allow it to increase its rivals' fuel costs. The proposed order required the divestiture of TEG's coal mines. Subsequently, the parties abandoned the transaction and the Commission closed the investigation. File No. 971-0091, 5 Trade Reg. Rep. (CCH) ¶ 24,454.

97. In *Federal-Mogul Corp. and T&N plc*, the FTC alleged that the proposed acquisition by Federal-Mogul of T&N would lessen competition substantially in the worldwide markets for the development, manufacture and sale to original equipment manufacturers of (1) fluid film or "plain" thinwall bearings; (2) thinwall bearings for use in automobile and light truck engines; (3) thinwall bearings for use in heavy truck engines and heavy equipment engines; and in the worldwide market for the manufacture and sale of light duty engine bearings and heavy duty engine bearings that are sold to the automotive and truck aftermarket. According to the complaint, the parties are the largest competitors in the relevant markets. The order required Federal-Mogul to divest the thinwall bearing business of T&N, as well as certain assets related to dry bearings or polymer bearings that are produced at the same facilities. In addition, the order prohibits Federal-Mogul from entering into any technology exchange or production arrangement with Daido Metal Co. Ltd., a joint venture partner of T&N. File No. 981-0011, 5 Trade Reg. Rep. (CCH) ¶ 24,400.

98. In *Roche Holding Ltd*, the FTC complaint alleged that the proposed acquisition by Roche Holding ("Roche") of Corange Limited ("Corange") would lessen competition substantially in the United States market for the research, development, manufacture and sale of cardiac thrombolytic agents and DAT reagents used in workplace testing. According to the complaint, Roche and Corange were the leading suppliers of cardiac thrombolytic agents, which are used to treat heart attacks by dissolving blood clots in the blood vessels of the heart; and two of only four suppliers of DAT reagents used in workplace testing, which detect the presence of illegal drugs. The order required Roche to divest Corange's United States and Canadian cardiac thrombolytic agent businesses to Centocor, Inc., and Corange's worldwide workplace DAT reagents business to a Commission-approved purchaser, Microgenics Corp. Docket No. C-3809, 5 Trade Reg. Rep. (CCH) ¶ 24,393.

99. In *Degussa Aktiengesellschaft, and Degussa Corp.*, the FTC alleged that the proposed acquisition by Degussa Aktiengesellschaft ("Degussa") of certain assets of E.I. du Pont de Nemours & Co. ("DuPont") would lessen competition substantially in the manufacture of hydrogen peroxide in North America. According to the complaint, the transaction would rest control over approximately 81 per cent of production capacity with the three largest manufacturers. The order limited Degussa's acquisition to DuPont's production facility in Gibbons, Alberta. Docket No. C-3813, 5 Trade Reg. Rep. (CCH) ¶ 24,406.

100. In *Digital Equipment Corp.*, the complaint alleged that the proposed acquisition by Intel Corp. ("Intel") of certain assets of Digital Equipment Corp. ("Digital") would lessen competition substantially in the worldwide (1) manufacture and sale of high-performance, general-purpose microprocessors capable of running the Windows NT operating system; (2) the manufacture and sale of all general-purpose microprocessors; and (3) the design and development of high-performance, general-purpose microprocessors. According to the complaint, Intel's "Pentium" and Digital's "Alpha" microprocessors are the two closest substitutes, and the parties are two of a very few competitors developing next-generation, high-performance microprocessors. Under the order, Digital was required to license Alpha technology to Advanced Micro Devices, Inc., a developer and producer of high performance microprocessors, and to Samsung Electronics Co., Ltd., a developer and producer of semiconductors, or to two other Commission-approved companies. The order also required Digital to begin the process of

certifying International Business Machines, Inc., as an alternative production source for Alpha products. Docket No. C-3818, 5 Trade Reg. Rep.(CCH) ¶ 24,421.

101. In *Merck & Co., Inc., and Merck-Medco Managed Care, L.L.C.*, the FTC alleged that the acquisition by Merck of Medco Containment Services, Inc. ("Medco"), would lessen competition substantially in the markets for the provision of pharmacy benefit management ("PBM") services, and the manufacture of HMG-CoA reductase inhibitors and angiotension converting enzyme inhibitors in the United States. Merck was engaged in the production of "Mevacor" and "Zocor" which are used for the treatment of high cholesterol, and "Prinivil" and "Vasotec" which are used for the treatment of hypertension, high blood pressure and heart disease. Medco provided PBM services to insurance companies and third-party payors that include the maintenance of a drug formulary, and claims processing, drug utilization review and pharmacy network administration. According to the complaint, Medco negotiated with pharmaceutical manufacturers, including Merck, concerning placement on the formulary, as well as rebates, discounts and product prices. The order requires, Merck, through Medco, to maintain an open formulary and to appoint an independent committee of healthcare professionals to determine the inclusion of drugs on the formulary. In addition, Merck is required to ensure that Medco accepts all discounts, rebates or other concessions offered by any pharmaceutical manufacturer. The order also prohibits Merck and Medco from exchanging non-public information. File No. 951-0097, 5 Trade Reg. Rep. (CCH) ¶ 24,493.

102. In *Medtronic, Inc.*, the complaint alleged that Medtronic's proposed acquisition of Physio-Control International Corp. would lessen competition substantially in the research, development, manufacture and sale of automated external defibrillators in the United States. According to the complaint, Medtronic, through its ownership interest in SurVivaLink Corp., was a direct competitor of Physio-Control, and SurVivaLink and Physio-Control were two of only three significant suppliers of the relevant product. Under the order, Medtronic was required to delegate its voting rights to be voted in a manner proportional to the votes of all other shareholders. The order prohibited Medtronic from exercising any right to name a member to SurVivaLink's Board of Directors, participating in any business decisions of the company or proposing any corporate action. In addition, the order prohibited Medtronic from receiving non-public, competitively sensitive information relating to SurVivaLink; it also must return any documents that contain any trade secrets, commercial information or financial information. Further, the order prevents Medtronic from increasing its ownership interest in SurVivaLink without Commission approval. File No. 981-0329, 5 Trade Reg. Rep.(CCH) ¶ 24,509.

103. Other consent orders, final or proposed, include the following: *S.C. Johnson & Son, Inc.*, Docket No. C-3802, 5 Trade Reg. Rep. (CCH) ¶ 24,374 (soil and stain remover products, and glass cleaner products); *Landamerica Financial Group, Inc.*, Docket No. C-3808, 5 Trade Reg. Rep. (CCH) ¶ 24,392 (title plant services); *The Williams Companies, Inc.*, Docket No. C-3817, 5 Trade Reg. Rep. (CCH) ¶ 24,405 (oil and gas transportation, terminaling); *Global Industrial Technologies, Inc.*, Docket No. C-3825, 5 Trade Reg. Rep. (CCH) ¶ 24,229 (glass-furnace silica refractories); *Gerald W. Schwartz, Onex Corp., SC International Services, Inc. and Sky Chefs, Inc.*, Docket No. C-3828, 5 Trade Reg. Rep. (CCH) ¶ 24,460 (in-flight catering services to airlines); *Nortek, Inc.*, Docket No. C-3831, 5 Trade Reg. Rep.(CCH) ¶ 24,471 (hard-wired residential intercoms); *Albertson's, Inc., Locomotive Acquisition Corp., Buttery Food and Drug Store Co., and FS Equity Partners II, L.P.*, File No. 981-0134, 5 Trade Reg. Rep. (CCH) ¶ 24,505 (food and grocery supermarkets); *Shell Oil Co. and Tejas Energy, LLC*, File No. 981-0166, 5 Trade Reg. Rep. (CCH) ¶ 24,510 (natural gas gathering services); *Commonwealth Land Title Insurance Co.*, File No. 981-0127, 5 Trade Reg. Rep. (CCH) ¶ 24,492 (title plant services); *Shell Oil Co. and Texaco Inc.*, Docket No. C-3803, 5 Trade Reg. Rep. (CCH) ¶ 24,362 (conventional gasoline, kerosene jet fuel, undiluted heavy crude oil, refined light petroleum products, CARB gasoline, and diesel fuel); *Exxon Corp.*, Docket No. C-3833, 5 Trade Reg. Rep. (CCH) ¶ 24,489 (motor oil additive).

IV. Regulatory and trade policy matters

A. Regulatory Policies

1) DOJ Activities: Federal and State Regulatory Matters

104. *Formal Designation by the Securities and Exchange Commission of Securities Credit Rating Organizations:* On December 30, 1997, the Securities and Exchange Commission ("SEC") requested public comment on proposed amendments to its rule (Rule 15c3-1) relating to Nationally Recognized Securities Ratings Organizations ("NRSROs"). NRSROs provide public credit ratings to the investing public on various forms of securities in a standard, comparable format (e.g., AAA). The SEC proposed to require a formal application process and established criteria for designation of NRSRO status. On March 6, 1998, the Department submitted comments generally in support of the SEC proposal to institute a formal application process, but expressed two specific concerns about the criteria. First, the Department observed that the current structure of the market for NRSRO services is highly concentrated and dominated by two firms. The proposed criterion that the applicant be recognized as an issuer of credible and reliable ratings by the predominant users of securities ratings in the United States would likely to create a substantial barrier to *de novo* entry into the NRSRO services market. The Department suggested that the SEC consider either a less stringent recognition requirement or granting provisional NRSRO status to a *de novo* entrant for the first 12 or 18 months of its existence. Second, while ratings are generally solicited by the issuer, one or more rating companies have issued ratings that were unsolicited. While unsolicited ratings can be useful in providing information to the market, such ratings may be inconsistent with at least two of the criteria proposed by the SEC: use of systematic rating procedures designed to ensure credible and accurate ratings and access to senior level management of the issuers. The Department recommended that NRSROs, new or existing, be required to disclose whether their ratings are solicited or unsolicited at the time the ratings are issued.

105. *Peter Pan Bus Lines, Inc. --Pooling --Greyhound Lines, Inc. S.T.B. No. MC-F-20908:* On October 3, 1997 the Division filed Comments with the Surface Transportation Board ("STB") opposing the application of Peter Pan Bus Lines, Inc. ("Peter Pan") and Greyhound Lines, Inc. ("Greyhound") to pool their operations between New York, NY and Washington, DC. The Division's comments argued that there is a substantial likelihood that the proposed pooling agreement will unduly restrain competition. Peter Pan and Greyhound are the only bus lines that provide scheduled transportation between New York City and Washington, DC. If the pooling agreement is approved, bus service between those cities will be provided by what is in effect one company. The Division's comments noted that there is no evidence that service from other common carrier modes of transportation -- trains and airplanes -- nor rented or privately owned automobiles, will provide effective competition to the provision of scheduled bus service by the pooled companies on this route. As a result, the pooled companies will likely raise bus fares above competitive levels. On April 21, 1998, the Surface Transportation Board issued an order approving the Peter Pan - Greyhound pooling application subject to the condition that applicants file periodic reports on the fares they charge for service between the points in their pooling agreement.

106. *Railroad Acquisition -- Conrail:* On February 23, 1998, the Division filed a brief with the STB, urging the Board to impose conditions on the proposed acquisition of Conrail by CSX Corporation and Norfolk Southern Railway Company in order to maintain competition in markets with well over \$82 million in traffic. In its brief, the Division argued that the proposed transaction would give CSX a monopoly in at least two, and perhaps three markets involving the delivery of coal to electric utility plants. The Division urged the Board to impose conditions to preserve competitive rail service to these plants, owned by Indianapolis Power and Light Company (AIPL), Potomac Electric Power Company (APEPCO),

and PSI Energy, Inc. (APSI). The Board, in its final decision, imposed the conditions recommended by the Division with respect to IPL and PSI.

107. *FCC*: In three proceedings involving applications to provide in-region interLATA services in the States of South Carolina and Louisiana, the Department of Justice recommended that the Federal Communications Commission ("FCC") deny the applications by Bell South, a Regional Bell Operating Company, because the company had not completed the steps necessary to open local telephone markets in the relevant areas to competition. The FCC subsequently denied the applications.

108. *FCC*: In October, 1997 the Division provided its views on several proposed changes to the FCC's competitive bidding procedures. The FCC sells regional "spectrums" for a variety of mobile communication services, such as personal cellular phones, through a series of auctions. In a letter from Joel I. Klein to FCC Chairman Reed Hundt, the Division endorsed rule changes to protect the integrity and competitiveness of the auction process. Specifically, the Division recommended that the FCC try to address directly the problem of too few bidders for some auctions by redesigning the auction or applying stricter scrutiny to the applications for joint bidding. Where these approaches are not feasible, the Division endorsed the FCC's proposal of adopting minimum opening bids, which would reduce the risk of collusion but could also cause delay in sales of a spectrum if the price is set above fair market value. The Division also recommended that the FCC limit the number of bid withdrawals and end the use of trailing digits on bids. These changes would make it more difficult for bidders to signal each other not to compete for certain markets, thus minimizing the risk of tacit collusion by bidders. Finally, the Division recommended that if the FCC decides to allow discussions of mergers or other intercarrier arrangements during an auction, it nonetheless should not permit two firms currently bidding against each other in a market to negotiate a resale or roaming agreement for that market -- in those circumstances, the roaming agreement (which gives access to another firm's market) could be used to compensate one firm for no longer bidding against the other, limiting the competition for that market.

109. *American Airlines/TACA Group Code-Share Application*: On January 28, 1998 the Division filed Comments with the Department of Transportation ("DOT"), responding to the DOT Show Cause Order tentatively approving the proposed American Airlines/TACA Group joint applications to engage in code-share services. The Division urged DOT to give little weight in its public interest analysis to the parties' proffered efficiencies and resulting claims of expanded networks and seamless service in the U.S. - Central American market. Code-sharing is a practice conducted in the airline industry where airlines are allowed to sell their own tickets for routes operated by code-share partner. DOT has approved code-sharing agreements in the past when they play a pro-competitive role and serve the public interest by enabling an airline to extend the reach of its route network by code-sharing with an airline that operates a route network in another geographic region -- *i.e.*, an end-to-end network combination. However, the proposed American/TACA Code-Sharing Agreement is largely horizontal, rather than end-to-end and thus provides literally no efficiency benefits. American and a TACA carrier operate overlapping nonstop flights on virtually all routes between Miami, the principal Latin American hub in the United States, and the Central American gateway cities -- including flights between Miami and Belize City (Belize), Guatemala City (Guatemala), Managua (Nicaragua), Panama City (Panama), San Jose (Costa Rica), San Salvador (El Salvador), Tegucigalpa and San Pedro (Honduras). Furthermore, in the overlapping nonstop Miami-Central American city pairs, American and TACA have a combined market share ranging from a low of 88 percent to a high of 100 percent. While DOT has attempted to minimize the threat to competition on the overlapping routes by imposing several conditions to its approval, the Division explained that DOT cannot eliminate the risks to competition and that this agreement does not offer any significant pro-competitive efficiencies.

110. *Post Office Rules to Promote Competition among Postal Meter Manufacturers*: in March 1998, the Division provided comments to the U.S. Postal Service ("USPS") supporting a proposed rule that

would allow the USPS to provide information to postal meter customers, including information about its meter program and the identity of authorized meter manufacturers. The Division stated that the rule would promote competition among meter manufacturers by helping ensure that consumers had accurate and timely information about their choices. The USPS adopted the rule in October 1998.

111. *Proposed American Airlines/British Airways Alliance*: on May 21, 1998, the Division filed comments with the Department of Transportation (“DOT”) on the American Airlines/British Airways application for antitrust immunity for their proposed alliance. The Division argued that the alliance would significantly reduce competition in numerous U.S.-UK city pairs, and that the efficiencies created by the transaction would not outweigh the competitive harm. The alliance would eliminate nonstop competition on AA/BA overlap routes, and would also reduce competition for passengers who currently benefit from one-stop and connecting competition between AA and BA. The Division concluded that DOT should only approve the alliance as in the public interest if two conditions are met. First, the transaction should be restructured to eliminate the competitive harms in specific markets to the greatest extent possible. This would require slot divestitures to allow new entry on competitive routes and “carve outs” to limit immunity on hub-hub routes where entry is unlikely. Second, DOT must ensure that access to London Heathrow Airport is sufficient to permit the level of US-London service that would be expected in an open market. This would require an open skies agreement with the UK coupled with access to sufficient slots to permit increased service.

112. In FY98, the Division reviewed four applications for new Export Trade Certificates submitted under the Export Trading Company Act and its implementing regulations and concurred in the Department of Commerce’s issuance of three new certificates. The goods covered by the certificates included milled rice, environmental consulting services, medical supplies, and fresh California pears.

2) *FTC Activities: Federal and State Regulatory Matters*

113. The goal of the Commission's advocacy activities is to prevent or reduce harm to consumers and competition by informing appropriate governmental and self-regulatory bodies about the potential effects, both positive and negative, of proposed legislation, rules or industry guides or codes. The following are examples of these activities in FY 1998. The complete comments are available on the FTC home page (<http://www.ftc.gov>).

114. New England Power Pool Comment. Staff filed a comment urging the Federal Energy Regulatory Commission (“FERC”) to consider structural, rather than purely behavioral, remedies for market power that might be identified in FERC’s review of the New England Power Pool’s application for market-based electric power generation rates. The comment noted the difficulty of detecting and documenting the exercise of market power in time-sensitive electricity markets and observed that solely behavioral remedies leave in place any existing incentive to exercise market power.

115. Internet Domain Names. This staff comment, filed with the National Telecommunications and Information Administration, discussed proposals for introducing competition into the Internet domain name system. The comment addressed the possibility that, with competition, customers who had invested in familiarizing the public with the names of their web sites could be “locked-in” by the switching costs that may ensue from changing registries. The comment also assessed the competitive consequences of self-regulating various technical functions through a not-for-profit corporation controlled by a diverse group of Internet stakeholders.

116. Satellite Television Rebroadcast of Local Television Signals. Staff submitted a comment to the Copyright Office that addressed copyright issues affecting competition in multichannel video programming

distribution markets. The comment concluded that: i) extending satellite carrier compulsory licenses to permit Direct Broadcast Satellite (“DBS”) operators to retransmit local broadcast signals into their home markets could benefit consumers by enabling an allocation of resources more closely in accord with the relative costs of different video distribution methods and by making DBS a closer substitute for franchised cable service; and ii) applying "must-carry" rules to DBS may not enhance consumer welfare in light of the absence of market power by DBS operators and the disproportionate burden that such rules might impose on DBS operators, but that "retransmission consent" rules appropriately could be applied to DBS.

117. Louisiana Stranded Cost Comment. This staff comment, submitted to the Louisiana Public Service Commission (“LPSC”), highlighted a possible unintended adverse consequence of stranded cost recovery. Specifically, full recovery of stranded costs may deter entry into electricity generation by permitting vertically integrated utilities to establish lower energy charges (the actual charge for the unbundled electricity component). The comment provided three alternative remedies to guard against this unintended consequence.

118. Michigan Comment on Market Power. Staff submitted a comment to the Michigan Public Service Commission (“MPSC”), that discussed the MPSC staff’s Market Power Study which focused on potential generation market power problems as Michigan moves toward retail competition in the electric industry. The Market Power Study suggested seven remedies to address such market power. The comment provided positive input on each of these remedies and recommended that the MPSC perform a detailed market power assessment and consider structural remedies (including divestiture of generation assets) if the detailed assessment reveals substantial market power in generation capacity.

119. Nevada Affiliate Transactions Comment. Staff filed this comment with the Public Utilities Commission of Nevada (“PUCN”) on proposed rules governing transactions between electric utilities and their unregulated affiliates. The comment discussed the fundamental trade-offs between preventing discriminatory behavior by the parent utility and preserving economies of vertical integration with its affiliate, how behavioral rules fit into this trade-off and how the PUCN’s proposal to prohibit affiliates from using the logo of the regulated utility entails the least risk of anticompetitive effects and cross-subsidization by the regulated utility. It suggested that the PUCN add a requirement that a regulated utility’s purchases from unregulated affiliates be limited to contracts won through an objective bidding process in which a third party evaluates the bids.

120. FERC Revised Merger Filing Requirements. Staff provided comments on the techniques FERC uses to analyze mergers in the electric industry. It recommended that FERC consider expanding its merger analysis beyond its strong emphasis on market share information where such an expansion would be appropriate. The comment described the range of additional information beyond initial market share statistics that the antitrust authorities often seek in its merger reviews and suggested that FERC may be able to use computer simulation models to consider alternative scenarios about future technical, economic, and regulatory conditions in the electricity industry to determine whether the proposed merger is in the public interest.

121. FCC Advanced Services Comment. This staff comment addressed the proposal of the Federal Communication Commission (“FCC”) to encourage local exchange companies (“LECs”) to offer advanced telecommunications services. It discussed the benefit and cost trade-off between using separate affiliates and concluded that the FCC should not adopt weak separation rules that may encourage efficiencies between a LEC and its affiliate but also may thwart the development of a competitive advanced services market. It suggested that the FCC consider two additional behavioral requirements between the LEC and its affiliate: i) restricting the advanced services affiliate’s use of its parent LEC’s logo; and ii) conditioning certain joint marketing activities between the LEC and its affiliate to ensure a competitive market for advanced services.

122. Virginia Real Estate Commission Comment on Real Estate Licensing Requirements. This staff comment to the Virginia Real Estate Board's (Board) discussed how proposed changes to the real estate broker and salesperson licensing requirements may have an adverse impact on competition and consumer welfare. Specifically, the Board changed the definition of the term "actively engaged" which, as used in the proposed rules, would prevent individuals who have worked part-time from becoming brokers and salespersons in certain instances. The comment concluded that the proposed change in the definition of "actively engaged" in the real estate business is likely to hinder competition and harm consumers.

B. *DOJ Trade Policy Activities*

123. The Division is extensively involved in interagency discussions and decision-making with respect to the formulation and implementation of U.S. international trade policy. The Division participates in interagency trade policy discussions chaired by the Office of the U.S. Trade Representative and is a participant in the trade policy activities of the National Economic Council ("NEC"), a cabinet-level advisory group. The Department provides antitrust and other legal advice to U.S. trade negotiators. Both DOJ and FTC participate in bilateral and multilateral discussions and work projects to improve cooperation in the enforcement of competition laws.

124. The Division and FTC participate in a number of negotiations and working groups related to regional trade agreements. The Division chairs the U.S. delegation to a working group on trade and competition under the North American Free Trade Agreement, and participates with the Office of the U.S. Trade Representative, the Federal Trade Commission, and State and Commerce Departments in competition policy groups associated with the Free Trade Area of the Americas and Asia-Pacific Economic Cooperation. The antitrust agencies also play an important role in the working group established in 1997 by the World Trade Organization to study issues relating to the interaction between trade and competition policy.

125. The Division represents the Department on the Committee on Foreign Investment in the United States ("CFIUS"), an interagency group chaired by Treasury that advises the President on enforcement of the Exon-Florio provision, a 1988 statute that permits the President to block or suspend foreign acquisitions of U.S. assets that "threaten to impair the national security."

126. The Department and the FTC have an extensive program to provide technical assistance in antitrust development to countries with emerging market economies. In addition to advancing the adoption of competition policies that incorporate sound economic principles and effective enforcement mechanisms, these programs create long-term cooperative relationships with policy and enforcement officials in the countries involved.

127. The Division co-chairs (with the Office of the U.S. Trade Representative) the Deregulation and Competition Policy portion of the U.S.-Japanese Framework discussions. In these discussions, the United States has urged the Japanese government to strengthen its enforcement of Japan's antimonopoly law, to make its administrative procedures fair and open, and to accelerate an effective program of deregulation to open markets to competition.

V. News studies related to antitrust policy

A. *Antitrust Division Economic Analysis Group Discussion Papers*

128. The Economic Analysis Group issued no discussion papers during FY98. Copies of reports from previous years may be obtained by contacting Janet Ficco at 600 E Street, N.W., Suite 10000, Washington, D.C. 20530 or at (202) 307-3779. Other Division public materials may be obtained through the Antitrust Documents Group of the Division's Office of Operations. Requests should be directed to Ms. Janie Ingalls, Room 221, Liberty Place Building, 325 7th Street, N.W., Washington, D.C. 20530. Ms. Ingalls may be reached at (202) 514-2481.

B. *FTC Economic Reports and Economic Working Papers*

129. The following may be obtained from the Associate Director for Consumer Protection and Research, Federal Trade Commission, Bureau of Economics, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

1) *Economic Reports*

None on antitrust policy.

2) *Working Papers*

1. Are Retailing Mergers Anticompetitive? An Event Analysis (WP #216), John David Simpson and Daniel Hosken (Jan. 1998).
2. Identifying the Firm-Specific Pass-Through Rate (WP #217), Orley Ashenfelter, David Ashmore, Jonathan Baker, and Signe-Mary McKernan (January 1998).
3. Physician Networks, Integration and Efficiency (WP #218), Seth Sacher and Louis Silva (April 1998).
4. Price Movements Over the Business Cycle in U.S. Manufacturing Industries (WP #219), Bart J. Wilson and Stanley S. Reynolds (June 1998).
5. The Competitive Effects of Mergers between Asymmetric Firms (WP #220), Charles J. Thomas (August 1998).

Appendice

Federal Trade Commission:
Fiscal Year 1998 FTE and Budgeted Amount by Program/Bureau

	FTE	AMOUNT
Total Direct Mission	336.8	\$30 255.6
Bureau of Competition	232.8	21 197.5
Bureau of Economics	61.2	5 469.1
Regional Offices	42.8	3 589.0
Premerger Notification	31.5	\$2 587.6
Bureau of Competition	29.3	2 408.8
Bureau of Economics	0.1	8.9
Regional Offices	2.1	169.9
Merger & Joint Venture Enforcement	199.9	\$18 105.5
Bureau of Competition	133.8	12 395.9
Bureau of Economics	39.3	3 512.0
Regional Offices	26.8	2 197.6
Merger & Joint Venture Compliance	10.4	\$947.0
Bureau of Competition	9.5	861.2
Bureau of Economics	0.6	53.6
Regional Offices	0.3	32.2
Nonmerger Enforcement	69.7	\$6 122.5
Bureau of Competition	50.1	4 468.3
Bureau of Economics	6.5	581.0
Regional Offices	13.1	1 073.2
Nonmerger Compliance	4.9	\$410.5
Bureau of Competition	3.3	271.0
Bureau of Economics	1.2	107.2
Regional Offices	0.4	32.3
Antitrust Policy Analysis	8.9	\$795.1
Bureau of Competition	-----	-----
Bureau of Economics	8.9	795.1
Regional Offices	-----	-----
Other Direct Mission Resources	11.5	\$1 287.4
Bureau of Competition	6.8	792.3
Bureau of Economics	4.6	411.3
Regional Offices	0.1	83.8

Department of Justice
 Fiscal Year 1998 FTE and Budgeted Amount by Enforcement Activity

	FTE	AMOUNT
Merger Enforcement	251	\$31 444 ,000
Civil Non-Merger Enforcement	188	\$23 583 000
Criminal Enforcement	188	\$23 583 000
Competition Advocacy	26	\$3 920 000
TOTAL	653	\$82 530 000

Note: "FTE" stands for "full-time equivalent," which indicates one work year equivalent to 2,080 hours of work, which could mean, for instance, one employee on a full-time schedule of 40 hours per week for 52 weeks, or two part-time employees working 20 hours per week for the same time period.