

countries where it is possible to apply a standard rate." (CX-2-Z-43-44.) Articles 9, 10 and 11, concerning simultaneous, consecutive, and whispered interpretation, specify that members shall charge the standard rate. (CX-2-Z-43-44.) Article 8 of the 1991 Standards provides for a "basic rate," which equals two-thirds of the standard rate. (CX-2-Z-43.) Its purpose is to calculate the charge for non-working days, such as travel and briefing days. (F. 130-32, 134.)

91. The "standard" and "base" rates originate from AIIC's defining large and small teams of interpreters for simultaneous interpretation. (F. 170-74.) The standard rate was the "small team rate" and the base rate was the "large team rate." (F. 174.) The small team got a higher rate because each interpreter worked harder. (CX-300-Z-106/3-16 (Motton); Lateiner, Tr. 913-16; Weber, Tr. 1134/7-19; CX-304-T/12-U/5 (Motton).) AIIC members in the United States did not distinguish rates for teams. (Weber, Tr. 1134.)

92. Since its founding in 1953, AIIC published rates of remuneration for its members. (CXT-2468, p.1; CX-3-D, K to M; CX-4-I to K; CX-5-F, I to K; CXT-6, pp. 3, 507; CX-7-E, H, J; CX-8-F, H, J; CX-9-F, I to K.) It required members to comply with local fees when they exceed AIIC minimums. (CX-50; CX-9-M; CX-2-Z-48.)

93. From 1970 to 1975, AIIC rate lists included the term "minimum." (CX-50; CX-58.) From 1976 until 1980, the rate lists carried the title, "AIIC Minimum Rates." (CX-60-65.) From 1983 to 1991, it sent out the rates under the title "Market Survey." (CX-71-84.)

94. Rates labeled "Market Survey" are not the product of a survey. (CX-300-Z-90 (Motton); CX-77; CX-306-Z-111-114 (Weide).) A memo sent to the Regions by then AIIC Treasurer Patricia Longley explains that these "surveys" actually are local minimum daily rates. (CX-2446-C; F. 519.)

95. AIIC rates were published in the Bulletin, which AIIC regularly mailed from Geneva to its U.S. members. (Stip. 19; CX-301-Z-42 (Bishopp); Weber, Tr. 1263-64; CX-305-Z-49-50 (Sy); Luccarelli, Tr. 1749; CX-257-E.)

96. AIIC's published rates included a "standard" and "base" rate for each region of AIIC (CX-71 to CX-83), or earlier, a "small team" and "large team" rate. (CX-57-68.) For the United States, however, they included a single rate (CX-55-65), because the U.S. Region did not use the small team. (F. 171.)

97. After the Federal Trade Commission investigation of the conference interpretation industry began, AIIC ceased publishing rates. (F. 93, 538.) AIIC's Extraordinary Assembly in 1992 in Brussels decided to remove "monetary conditions" from its Basic Texts. (F. 509.) At its General Assembly meeting in 1994, it adopted new versions of its Code and Standards, modifying references to rates. (CX-970-A; CX-1-Z-37-46.)

98. Originally, the AIIC Assembly discussed and voted on rates. According to former member Wilhelm Weber, "Typically, council would make proposal concerning rates. And then there would be a discussion in the assembly, and the assembly would either accept the proposal or reject it." (Weber, Tr. 1135.)

99. Until 1973, AIIC published a single rate for all interpreters worldwide (CX-203-C), except in certain countries, including the United States, where mandatory minimum rates were higher. (Weber, Tr. 1142.) In May 1973, AIIC began "readjustments and alignments to rates," (CX-201-E) setting rates in the currencies of individual countries. (CX-220-L; Weber, Tr. 1142-46.)

100. Members of the U.S. Region voted on the rates to charge in the U.S. and sent them to AIIC in Geneva to be published by AIIC as the rates for the United States. (Lateiner, Tr. 918-20; CX-405-C; CX-432-B; CX-1136.) The U.S. Region also supplied AIIC with the rates created by TAALS. (F. 307-08.)

101. The TAALS rates were created by vote at TAALS General Assembly meetings. (F. 307.) U.S. Region members were also members of TAALS and voted on rates. (F. 370-73; CX-432-E.)

102. U.S. Region members understood AIIC's rates to be mandatory minimums. (CX-1238 (Langley); CX-303-Z-86 (Moggio-Ortiz); Hamann-Orci, Tr. 38; Lateiner, Tr. 955.) The phrase "minimum daily rates" left to the judgment of individual interpreters to ask for higher rates, but not to work for less than the minimum rate. (Weber, Tr. 1140; F. 519.)

103. The three U.S. Region members who testified about undercutting charges lodged against them each defended themselves on the basis that they did not in fact undercut. (Hamann-Orci, Tr. 53; Lateiner, Tr. 903; CX-1273-C.) AIIC members testified that they never charged below the AIIC rate. (Luccarelli, Tr. 1757-58; Lateiner, Tr. 977; CX-303-Z-90 (Moggio-Ortiz); Hamann-Orci, Tr. 38.)

104. From 1988 to 1991, intermediaries generally paid the TAALS/AIIC rate or more. (F. 328-34.)

105. After 1973, regions proposed their own rates to the AIIC Council (CX-224-Z-7 to Z-8) and the Council approved them. (CX-267-H; CX-301-Z-41 to Z-42 (Bishopp).) AIIC became concerned about regional differences in rates, "lest divergent currency and rates developments weaken or destroy [the] universal system on which AIIC hinges." (CX-207-C.) The NAS tried to reduce these differences. (CX-223-L to M.)

106. U.S. Region members feared that if they charged less than AIIC minimum for the United States, they would be branded as undercutters, losing important referrals from other members. (CX-301-Z-152.9 to Z-152.10 (Bishopp); Hamann-Orci, Tr. 38.) Interpreters expressed concern to intermediaries about being known to other interpreters as price undercutters. (Jones, Tr. 690.) They feared other interpreters may not give them references for future work. (Jones, Tr. 690; Citrano, Tr. 514.) Interpreters explained they could not work for Metropolitan because of its lower pay because "in this business, you have to work with a partner and if you can't get a partner, you're kind of dead in the business." (Citrano, Tr. 516.)

107. The term "undercutting" refers to not respecting the AIIC rules (Swetye, Tr. 2820-21); working under inferior conditions, such as improper manning strength, working alone all day, or working without the proper equipment (Swetye, Tr. 2820-21; Hamann-Orci, Tr. 53); and working for lower rates than suggested by AIIC. (CX-305-Z-173 to Z-174 (Sy); CX-301-Z-152.9 (Bishopp); Hamann-Orci, Tr. 53.)

108. The Secretary-General of AIIC felt that "members know very well that they must not undercut" AIIC's rates. (CX-1238.) On November 10, 1983, Wilhelm Weber wrote to the Secretary-General of AIIC that he was concerned about a clause on the back of the AIIC standard contract, which the Los Angeles Olympics Organizing Committee interpreted to mean that interpreters could be negotiated downwards from the going rate. (CX-1236; Weber, Tr. 1206.) The Secretary-General of AIIC replied on December 15, 1983. She wrote, "I don't see how anyone could honestly use it for undercutting purposes. Members all know [w]hat the local rate is, and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the 'cartel' pricefixing laws in some countries, but members know very well that they must not undercut." (CX-1238; Weber, Tr. 1207-09.)

109. AIIC's publication of a "suggeted minimum" rate raised prices by defining the price below which AIIC members would not

compete. (Wu, Tr. 2085.) With AIIC's rules that all members of an interpretation team be paid the same rate, AIIC's rules affected prices paid to non-members as well as members of AIIC. (Wu, Tr. 2086.)

B. Per Diem

110. According to Article 13(a) of the 1991 Standards of Practice, "For the whole of the period spent away from the place of her or his professional address the interpreter shall receive a subsistence allowance, calculated per night of absence. As a general rule, this allowance shall be paid on the first day of the conference and in the currency of the country where it is being held." (CX-2-Z-46.) Members were required to charge for subsistence when they worked away from their professional address. (CX-300-Z-71 to Z-72 (Motton); CX-301-Z-67 (Bishopp).)

111. Previous versions of the AIIC Code and Annexes required members to charge clients per diem for lodging and subsistence. (CX-3-N; CX-4-L to N; CX-5-K to L; CXT-6-E-M, p.4; CX-7-F, J; CX-8-G; CX-9-F to G.)

112. AIIC prepares per diem sheets which are mailed to members in the United States. (CX-259-V; CX-300-Z-74/9 to Z-75/5 (Motton); CX-268-B, E, M; CX-102 to CX-130 (lists of per diem rates).)

113. AIIC Council approved per diem rates. (CX-130; CX-301-Z-152.41 to Z-152.42 (Bishopp); CX-268-E; CX-300-Z-72/3 to Z-74/22 (Motton).)

114. At meetings in 1980 and 1981, the Non-Agreement Sector discussed how to calculate the per diem amount for travel of less than a full day that did not require an overnight stay. (CX-223-N; CX-228-F to H.) Secretary-General D. Hespel and past President W. Keiser noted that a full subsistence allowance "is owed per night spent away from the professional domicile" and a one-half subsistence allowance (per diem) is owed per day if all travel can be completed between 8:00 a.m. and 8:00 p.m. and the interpreter does not cross a border. (CXT-229-B; CX-230-C.)

115. AIIC published per diem for the United States of America, one for New York, one for Washington and one for "elsewhere," which "shall be due for each night spent away from the interpreter's professional domicile." (CX-247-Z-2, Z-5; CX-124-E; CX-125-E.)

116. The U.S. Region adopted a formula whereby the organizer pays the interpreter's hotel room, including tax and service, and the

interpreter would then charge the organizer a fixed percentage of the hotel rate (40% in 1991) for meals. (CX-301-Z-65, Z-150 to Z-152.1 (Bishopp); CX-432-F; CX-343-C; CX-439-F.)

117. According to Berlitz, "there has always been a standard per diem that interpreters charged." (Clark, Tr. 614; Neubacher, Tr. 771.)

118. The chairman of a NAS meeting cited the "disastrous effect" of "bargaining" away the per diem, and the need for "clear, easily applicable, unambiguous rules" to avoid this. (CX-223-L.) AIIC's Council worried that interpreters working for two clients holding consecutive conferences might try to split expenses as a "sales argument" which would constitute "unfair competition." (CX-222-Q.) In such cases, the interpreter must charge both clients a full per diem. (CX-222-Q.) According to a report given at its January 1987 NAS meeting, the fact that in Canada no per diem "can be set," as a result of the action against AIIC under the Anti-Combines Act, "leads to true competition between members." (CX-245-H.)

119. AIIC's agreement on travel expense and per diem prevents competition on the total price for an interpretation assignment. (Wu, Tr. 2093-94.) These rules make the detection of cheating more likely, by requiring these reimbursements and payments to be stated separately on contracts for interpretation. (Wu, Tr. 2093-94.)

C. Indivisible Daily Rates

120. AIIC's rules require that members charge for a full day regardless of the amount of time they actually work. The 1991 AIIC Standards provide that "remuneration shall be on an indivisible daily basis." (CX-2-Z-42.) AIIC's Code and Annexes dating back to 1972 include the same requirement. (CX-3-I; CX-4-H; CX-5-H; CX-6-G; CXT-6-E to M, p.3; CX-7-E; CX-8-F; CX-9-F.)

121. AIIC is opposed to hourly rates for interpretation. (CX-304-Z-113 (Motton); CX-301-Z-32 to Z-33 (Bishopp).) AIIC's rules mean that "you charge per day no matter how long you work." (CX-303-Z-109 (Moggio-Ortiz); CX-886-D; Saxon-Forti, Tr. 2696; CX-305-Z-89, Z-97, Z-110 (Sy).)

122. Where they received an AIIC waiver, interpreters who worked alone for 40 minutes in the U.S. were required to charge the full daily rate. (CX-301-Z-152.1 (Bishopp); CX-432-G.)

123. The June 1993 Bulletin recommended that interpreters negotiate indivisible rates for "conferences of short duration,"

explaining that "one cannot take other assignments in the course of a free half-day." (CXT-276-E-G, p.2.)

124. According to one U.S. Region member, charging twice for the same day is unethical, and interpreters will only take one assignment at the daily rate. (CX-2579-A.) If members accept two contracts on the same day, it must be "after having ascertained that no other member is available . . . provided . . . appropriate fees are paid." (CX-481-I.)

125. According to a U.S. Region member, a TAALS proposal to accept 80% of the daily fee for short meetings was unacceptable because it violated AIIC's rule and "would undermine the hard won gains of TAALS and AIIC and open the door to abuse by the greedy." (CX-886-D.) The NAS voted to ask the Council not to permit regions to charge 80% of the daily rate or remuneration for sessions not exceeding two and one-half hours. (CX-245-I, F.)

126. U.S. Region interpreters charge indivisible daily fees. (Swetye, Tr. 2830-31; CX-306-Z-129 (Weide); CX-300-Z-143 (Motton); Weber, Tr. 1264.) For example, Idette Swetye sent a contract (CX-2601) to the Konrad Adenauer Foundation in which she was to be paid a full day's pay for interpreting one luncheon speech lasting forty minutes. (Swetye, Tr. 2826-28.) AIIC members charge for a full day regardless of the number of hours even if it's a half day. (Weber, Tr. 1264; CX-300-Z-143 (Motton) ("We don't have hourly rates"); (CX-306-Z-129 (Weide).)

127. Intermediaries understood the "AIIC rate" or "industry rate" to mean a daily rate for services regardless of the actual time required. (Neubacher, Tr. 763, 765-66; Citrano, Tr. 552-53; Clark, Tr. 617.)

128. Berlitz always pays conference interpreters on a daily basis. (Clark, Tr. 624.) Although it rarely happens, Brahler pays interpreters a daily rate even for a short meeting of two to three hours. (Davis, Tr. 860.) Half of Brahler's interpreters are not members of AIIC or TAALS. *Id.*

129. AIIC's rule requiring that fees be paid on an indivisible daily basis standardizes the unit of output to which the agreed daily rate applies. (Wu, Tr. 2107.) It also helps AIIC detect cheating by making rates more comparable. (Wu, Tr. 2107.)

D. Fees for Non-Working Days

130. AIIC rules require interpreters to be paid for days traveling, preparing for a conference, or resting. Article 12(a) of the 1991 Standards of Professional Practice states: "When an interpreter is recruited to work in a place other than that of her or his professional address she or he shall receive a remuneration for each day required for travel and rest as well as for Sundays, public holidays and non-working days in the course of a conference or between conferences. This remuneration shall be at least equal to the base rate." (CX-2-Z-46.)

131. AIIC's rules required that "every contract signed with a member of the Association for a conference ... must include payment of travel. . . ." (CX-2-Z-48.) AIIC specified unrestricted tickets and, for journeys of more than nine hours, the interpreter was "entitled to" rest days, which "equated to non-working days and remunerated at the same rate." (CX-4-L.) In lieu of rest days, the interpreter could accept first class airfare. (CX-2-Z-47.)

132. Article 12(b) of the 1991 Standards requires payment for non-working days when an interpreter is working at his or her home base. It states: "When an interpreter is recruited to work in the place of her or his professional address she or he shall receive a remuneration for each non-working day in the course of the conference (up to a maximum of two). This remuneration shall be at least equal to the base rate." (CX-2-Z-46.)

133. Article 14 of the 1991 Standards provides that "Contracts for the recruitment of members of the Association shall make provision for the payment of a fee for each journey made between the place of the interpreter's professional address and the conference venue." (CX-2-Z-47.) This fee is to be paid in addition to expenses for travel and per diem. (CX-2-Z-47, Z-48.)

134. Article 14 of the 1991 Standards further requires payment of fees for rest days after travel, unless flying first class. (CX-2-Z-47.) The rule specifies that the interpreter receives one paid rest day if the journey time is 9-16 hours, two paid rest days for a journey of 16-21 hours, and three paid days for a journey of more than 21 hours. If the interpreter could finish the trip after normal working hours on the eve of the conference or after the conference, the interpreter receives only one-half of the base rate as a travel fee. (CX-2-Z-47.)

135. Article 7(g) of the 1991 Code provides that members "shall request a paid briefing session whenever appropriate." (CX-2-Z-39.)

The 1991 Recruiting Guidelines provide that the "coordinating interpreter shall ensure . . . that, if necessary, a briefing session be held." (CX-2-Z-51.)

136. The 1994 Standards perpetuate the rule that members must charge for non-working days. Article 8 provides: "The remuneration for non-working days occurring during a conference as well as travel days, days permitted for adaptation following a long journey and briefing days that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45.)

137. The 1994 Standards quantify rest days. Article 10 provides: "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey. This means that journeys lasting a long time or involving a major shift in time zone call for the scheduling of rest days (generally one rest day for journeys of between nine and sixteen hours, and two rest days for journeys of 16-21 hours and three for journey[s] in excess of 21 hours.)" (CX-1-Z-45.)

138. The 1994 Code continues the briefing days requirement, stating that members "shall request a briefing session whenever appropriate." (CX-1-Z-39.)

139. AIIC provides for fees for non-working days in the standard form contract used by its members. (CX-2060-A; CX-226-B; Weber, Tr. 1221.) The Recruiting Guidelines state that AIIC's model contract "should normally be used" and any other contract used "must at least embody the standard conditions specified by the Council," without limiting clauses. (CX-1-Z-49.)

140. AIIC had a provision calling for payment of non-working days in 1972. (CX-9-F,K,G,L; CXT-6-E to M, pp.4-5, 7-8.) Over the years, the fees due for non-working days (including briefing, travel and rest days as well as for the intermediate days of a conference) increased as a percentage of the daily rate. (CX-217-D; CX-2-Z-46.)

141. At its July 1979 meeting in Geneva, the Council agreed that an interpreter working for two employers, one after another, in the same city away from his or her professional address, could allocate the travel fees between the two employers if it was done retroactively, and not as an inducement to obtain the contract, providing all intervening days were paid in accordance with the provisions of Art. 16c of the Code. (CX-222-Q.)

142. At the February 1980 Private Sector (NAS) meeting, the chairman "asked for an indicative vote as to whether half the small

fee is always due for travel taking place the day before or after normal working hours on the last day of a conference. A large majority of those present felt that this was so at the moment. . . . The meeting then decided: When the journey takes place the day before or after a conference at times which makes [sic] it impossible to accept work on these days a large majority felt that the amount paid should be higher than half the small fee - there was no agreement on the actual level of this higher amount." (CX-223-O.)

143. The September 1986 AIIC Bulletin advised, "Divergent interpretations of Annex I, par. 4 of the [AIIC Professional] Code result in evident undercutting among AIIC members. It must always be stipulated that . . . the basic rate applies to non-working days except for special terms negotiated with agreement organizations." (CXT-243-D to F, p.1.)

144. These rules specifying payment for non-working days help AIIC members to detect cheating on the fee agreement, by requiring separate payment for these days. Requiring separate payments allows AIIC members to determine whether their fellow AIIC members adhere to the minimum fee rule. (Wu, Tr. 2089.)

145. In 1981 the Executive Secretary reported to AIIC members a complaint against another member for not following the non-working days rule. After investigation, AIIC found the complaint to be "now without foundation as the member concerned succeeded in amending the contracts." (CX-2438.)

146. In the 1984 Los Angeles Olympic Games, the Olympic Committee negotiated to reduce costs by not paying interpreters for non-working days. (Weber, Tr. 1222/4-14.) AIIC-member Wilhelm Weber, who organized interpretation teams at the Olympics, told the Committee that it was "part of our code of professional conduct and that it was also current practice in the profession." The Committee agreed to pay for non-working days. (Weber, Tr. 1223/10-13.) The LAOOC eventually conformed to AIIC rules on non-working days. (Weber, Tr. 1262.)

147. Members of the U.S. Region adhered to the AIIC agreement to charge for non-working days. (Luccarelli, Tr. 1605; CX-302-Z-8 (Luccarelli).) According to a New York intermediary, interpreters insist on being paid a half day's travel, on top of a full day's interpretation fee, even when they work and travel on the same day. (Citrano, Tr. 552-53.) One AIIC member refused to work without two full paid travel days. (Citrano, Tr. 512, 514.) AIIC or TAALS members who accepted conditions and remuneration less favorable

than the rules provide did so only after extracting the intermediary's promise not to reveal their actions to any other AIIC or TAALS member. (Citrano, Tr. 516-18.)

148. Mr. Misson, a member of the U.S. Region, wrote to a client on May 26, 1990, seeking an amendment to his contract. He explained that he had mistakenly quoted the previous year's rate but would honor his quote and would waive the per diem. However, Mr. Misson insisted that he had to charge extra for the day spent traveling because he could be accused of undercutting by his colleagues in AIIC, which is more important to him than the money involved and asked the client to keep the discussion confidential. (CX-2456-A.) The client accepted the new terms. (CX-2456-B.)

149. AIIC's rules specifying payment for non-working, rest, travel and briefing days prevent competition on the total price for an interpretation assignment. (Wu, Tr. 2088-91; CX-223-L.)

E. Same Team Same Rate

150. AIIC requires that all interpreters on a team receive the same rate. Article 6(c) of the 1991 AIIC Standards provides that members shall accept assignments only if all the freelance interpreters of that team are contracted to receive the same amount of remuneration. (CX-2-Z-42; CX-301-Z-33, Z-35 (Bishopp); CX-305-Z-101 (Sy); Weber Tr. 1224-25.) Previous versions of AIIC's Code and its Annexes dating from 1972 contain similar rules. (CX-3-I, Art. 6(c); CX-4-H, Art. 6(d); CX-5-F, Art. 13(c); CXT-6-E-M, Art. 13(d); CX-7-E, Art. 12(d); CX-8-F, Art. 11(d); CX-9-F, Art. 11(d).) AIIC's Recruiting Guidelines require that if a coordinator is a member of the interpreting team, her or his fee as an interpreter shall be the same as the other interpreters on the team. (CX-1-Z-49.)

151. AIIC's rule that members of the same team receive the same pay did not apply when interpreters were recruited for an "exotic" language. (CX-2-Z-42, Art. 6(c); CX-301-Z-33, Z-35 to Z-36 (Bishopp); CX-300-Z-82 (Motton).) This exception applies to languages like Russian, Japanese, or German for which "there is difficulty finding interpreters." (CX-301-Z-33, Z-35 to Z-36 (Bishopp); CX-300-Z-82 (Motton).)

152. AIIC's "same team same rate" rule, according to AIIC's past-president, Mr. Thiery, means that conference interpreters are paid "the

same daily remuneration at the start of one's career as a colleague with twenty years' experience." (CX-203-C.)

153. Except for interpreters working in exotic languages, the experience of members of the U.S. Region has been that interpreters on the same team are normally paid the same rate. (Swetye, Tr. 2819-20; CX-303-Z-110 (Moggio-Ortiz); Hamann-Orci, Tr. 40; Saxon-Forti, Tr. 2681.)

154. AIIC avoids competition from new interpreters through use of its "same team same rate" rule. (CX-220-M.) In 1980, the AIIC Schools Committee declared, "The idea of a beginner's rate in the Nonagreeent Sector is out of the question." (CX-224-W.)

155. AIIC's rules which specify that members must charge at least the AIIC rate, and that all members of an interpretation team be paid the same rate, also affect prices paid to non-members and intermediaries pay AIIC rates to non-members. (Wu, Tr. 2085-86; Jones, Tr. 694; Neubacher, Tr. 763-64.)

156. The rule also discourages AIIC members from working with undercutters. One interpreter explained that, "Even if I were recruited to work with undercutters, I couldn't accept according to AIIC rules because I would be paid more than they would." (CX-231-Q.)

157. AIIC's rule requiring all members of an interpretation team to be paid the same rate reinforces the assurance that members are adhering to the rates and rules generally. (Wu, Tr. 2101.) It also helps AIIC members detect cheating by making prices more easily observed and compared. (Wu, Tr. 2103.) It helps AIIC members deter entry by novices gaining experience by working for lower rates. (Wu, Tr. 2104-05.)

F. Team Size and Hours of Work

1. History

158. AIIC rules specify the number of hours that members will work in a single day. Article 4 of AIIC's 1991 and 1994 Standards, entitled "Definition of the interpreter's working day," provides, "The normal duration of an interpreter's working day shall not exceed two sessions of between two-and-a-half and three hours." (CX-2-Z-42; CX-1-Z-45.) The six hour length of day rule applies to simultaneous, consecutive, or whispered interpretation. (CX-1-Z-45; CX-2-Z-42.)

159. AIIC has rules on the number of interpreters to be hired per job per number of languages used at a conference. (Article 5 of the

1991 Standards; CX-2-Z-42.) Article 8 requires that members charge the standard rate (F. 90), and sets the team size. (CX-2-Z-42; F. 160-62.)

160. Article 11 of the 1991 Standards provides for teams of simultaneous interpreters: "As a general rule, a team is composed of at least two interpreters per language and per booth." (CX-2-Z-44.) Article 11 also contains a table "that must be respected" that specifies the number of target and source languages used in the conference room, the number of booths, and the number of interpreters "at the standard rate." (CX-2-Z-44 to Z-45.) For a one-language conference, the table specifies that if the interpretation is into one other language there be two interpreters at the standard rate, and if the interpretation is into two other languages there be four interpreters at the standard rate. (CX-2-Z-45.) For a two-into-two language conference, the table calls for three interpreters. A three-into-three-language conference requires five interpreters. (CX-2-Z-45.)

161. Article 9 of the 1991 Standards provides for consecutive interpreters with two languages being interpreted into two, the minimum number of interpreters required is two at the standard rate. If the number of languages used is three, the minimum number of interpreters is three at the standard rate. (CX-2-Z-43.)

162. Article 10(a) of the 1991 Standards provides that for whispered interpretation a conference of one or two languages there be two interpreters "remunerated at least at the standard rate." (CX-2-Z-43.)

163. The 1994 Standards retain the identical team size requirement as the 1991 Standards. (CX-2-Z-43.) However, in Article 6 of the 1994 Standards references to the standard rate are removed, and makes no mention of having one interpreter for whispered interpretation in certain circumstances. (CX-1-Z-42.)

164. Versions of the AIIC Code or its Annexes, back to 1972, specified the number of interpreters for a conference. (CX 3-K to M; CX 4-I to K; CX 5-F, J to K; CX 6-E, J to K; CX 7-C, H to J; CX 8-D, H to J; CX 9-D.)

165. Article 6(a) of the 1991 Standards provides that "remuneration shall be on an indivisible daily basis." (F. 120.)

166. Many AIIC interpreters charge for overtime when working beyond six hours. (Neubacher, Tr. 767/19 to 770/5, 781/17-24, 804/18 to 805/4; Jones, Tr. 750/5-8; Weber, Tr. 1189/25 to 1190/7; Davis, Tr. 860/22 to 862/8; Clark, Tr. 636/2-8; Citrano, Tr. 539/20-

24, 542/11 to 544/11, 544/25-546/20; Luccarelli, Tr. 1662/3 to 23; CX-2330 to CX-2336; Saxon-Forti, Tr. 2697-99; CX-2596-B; Wu, Tr. 2238/8-2239/7; F. 343.)

167. The AIIC standard form contract defines the length of the day as six hours, and members have used it to charge for overtime. (CX-306-Z-9/13 to Z-10/2, Z-55/6 to Z-56/3, Z-61/13 to 22, Z-63/8 to Z-64/7, Z-65/19 to Z-66/24, Z-71/13 to Z-72/23 (Weide); CX-2347-B; CX-2348-B.)

168. AIIC's rules allow members to work beyond the hours specified by AIIC as long as they are paid for overtime. (CXT-6, p.6; CX-221-Z-9 to Z-10; CX-2064-C.)

169. Articles 9, 10 and 11 of the 1991 Standards list the number of interpreters to be used for particular numbers of language combinations "at the standard rate." (CX-2-Z-43 to Z-44.)

170. In the 1970's, AIIC maintained two team size tables for simultaneous interpretation that set forth the number of interpreters to be hired for a conference. There was the "small team" (or in French "petite équipe,") and the "large team" (or in French "grande équipe). (CX-9-I, J; CX-6; Lateiner, Tr. 912/19 to 914/23; Weber, Tr. 1132/20 to 1133/21.) For simultaneous interpretation going from two languages into two languages, AIIC's tables called for higher remuneration per interpreter for a conference using two interpreters, and lower remuneration when using three or four interpreters. (CX-9-I, J; CX-6-J, K, CXT-6-E to M, pp. 6-7; Lateiner, Tr. 912/19 to 914/23; Weber, Tr. 1134.) A higher rate applied to the small team size table, ostensibly, because the workload was greater when an interpreter was working in a small team. (Lateiner, Tr. at 913/5 to 916/3; Weber, Tr. 1134/7-19; CX-300-Z-106/3-16 (Motton).) The small team rate was 160% of the large team rate. (CX-9-J; CX-2461-A (1990).) Prior to 1981, AIIC required interpreters working alone in consecutive to charge twice the large team rate (200%). (CX-6-J; CXT-6-E-M, p.6.)

171. The U.S. Region decided not to adopt the small team in the United States. (CX-211-C; CX-405-C; CX-407-F to G.) At the U.S. Region's November 1975 meeting, the U.S. Region voted unanimously to "remind AIIC in general that it never had the petite equipe and is determined to expose all outside interpreters who accept the practice in our Region." (CX-405-C.) Its warning was published in the AIIC Bulletin. (CX-210-E.) AIIC published rate sheets entitled "Local Conditions in the U.S.A." that set forth a single rate of remuneration when working in the U.S. rather the small team rates

and large team rates as published for other regions. These sheets contained the U.S. Region's team size rules. (CX-50; CX-56.)

172. The varying systems of team configuration and remuneration for small and large teams became too complicated. AIIC found that the system resulted in "grey areas" where there was competition among interpreters. (CX-220-V, Z-29 to Z-32, CXT-220-Z-29 to Z-32 at 1.) Competition in the application of the two team size tables in the private sector led to undercutting. (CX-206-B-2; CXT-206-B-2.)

173. The single team size table was meant to simplify the teams and remuneration and increase interpreter incomes and rates. (CXT-220-Z-30, p.2; CX-225-B.) The AIIC Council wanted to standardize the system of teams and remuneration to get rid of competition regarding team size. (CXT-206-B-2 at 1; CXT-220-Z-29 to 32 at 2; CXT-224-Z-4.)

174. The 1981 General Assembly voted to retain the "two-tiered" system, but dispensed with the terms "small team" and "large team," publishing new team size tables designating the number of interpreters needed at either the "standard rate" or the "base rate." (CX-224-K; CX-226-U to V.) The standard team size table increased the number of interpreters needed in the former small team table for two-into-two languages conferences from two to three interpreters and from four to five interpreters for a three-into-three language conference using simultaneous interpretation. The new team size table provided, however, that one less interpreter would be needed for two language and three language conferences that were of short duration. (CX-2-Z-46; CX-224-K; CX-5-J to K.) Thereafter, AIIC's "market surveys" set forth a "standard rate" and a "base rate" corresponding to the team size tables in AIIC's professional standards. (CX-71 to CX-74; CX-76 to CX-83; CX-5-I; CXT-6-E to M, p.6.)

175. In 1991 the General Assembly adopted a single team size table for simultaneous interpretation. Most regions had already abolished the old "small team" by then. (CX-260-Z-88.) The 1991 Basic Texts retained the earlier "standard" team size table setting forth the minimum number of interpreters needed at the standard rate. These texts, however, eliminated the table with larger team sizes charged at the base rate. (CX-2-Z-45; CX-260-Z-88, Z-94; CX-256-Z-28, Z-32.)

176. AIIC team size rules prohibit interpreters from working alone, and interpreters working in the same booth take turns at the

microphone. (Moser-Mercer, Tr. 3450/4 to 23; CX-302-Z-86/2 to 87/19 (Luccarelli).) Team size rules provide for interpreter relief, so during a working day interpreters spend no more than three hours interpreting. (Moser-Mercer, Tr. 3450/4 to 23; Luccarelli, Tr. 1617/15 to 18/19; CX-302-Z-86/2 to 87/19 (Luccarelli).)

177. The team size and length of day rules affect workload. The number of interpreters in a bilingual meeting in the United States depends upon the length of the meeting. (Swetye, Tr. 2776/4-14.) For two-language conferences, three interpreters are required for a full-day meeting and two interpreters for a meeting lasting half a day or no more than four hours. Six interpreters are required for a three language conference. (CX-439-B, D to F; CX-301-Z-152.46 to Z-152.48 (Bishopp); Weber, Tr. 1132/20 to 1133/21.)

2. Compliance

178. Interpreters have refused to work for intermediaries under working conditions that exceed AIIC's team size and length of day rules. (Neubacher, Tr. 778/21 to 779/7; Jones, Tr. 694/13 to 695/15, 696/13 to 697/9, 700/11-16; Davis, Tr. 839/19 to 840/1, 869/22 to 870/2; Clark, Tr. 601/5-24, 614/22 to 615/20.) During the 1984 Olympics, a team leader and AIIC member pulled the interpreters from a meeting that continued for more than six hours, because that is what the AIIC rule says. (Weber, Tr. 1253/13-1255/15.) AIIC members have charged overtime for work in excess of six hours. (F. 166-68, 343.)

179. AIIC members adhere to AIIC's team size table. (Luccarelli, Tr. 1669/17-19; Hamann-Orci, Tr. 44/9-23; CX-306-Z-55/6 to Z-56/3, Z-65/19 to Z-66/24, Z-71/13 to Z-72/23 (Weide); CX-2347-B; CX-2348.)

180. In 1988, the U.S. Region asked the AIIC Council for a waiver to allow an interpreter to work alone for up to 40 minutes, which the Council granted. (CX-432-G; CX-435-A; CX-301-Z-152/24 (Bishopp); Luccarelli, Tr. 1788/5 to 1789/10; CX-300-Z-34/15 to Z-35/2 (Motton).)

181. TAALS wrote to Wilhelm Weber questioning his proposed hours of work and team size for the 1984 Olympic Games as a possible violation of the TAALS/AIIC codes. (CX-1248-A.) AIIC also wrote a letter warning him to conform to AIIC's code. (CX-1253, CXT-1693-A-C; Weber, Tr. 1223/14 to 1224/20, 1226/2 to 1228/17.) An AIIC member objected to a contract offered by Mr. Weber to

provide interpretation services at the Olympics with seven hour days. (CX-1300-A; Weber, Tr. 1252/22 to 1253/11.)

182. In 1985, AIIC reprimanded U.S. Region member Marc Moyens in the AIIC Bulletin for "pushing the limit of" the Code, "concerning the composition of teams that lie behind the team strength tables." (CXT-239-I.) The Canadian Region complained to AIIC and TAALS that a member of the U.S. Region, Jeannine Lateiner, organized a conference in Canada using a petite equipe team size when Canada did not use a petite equipe. (CX-1066-D; CX-1086; CX-1090; CX-1100; Lateiner, Tr. 901/8-904/11, 909/13-910/8, 946/2-947/17.)

183. The U.S. Region decided at its November 23, 1991, meeting to send the table of manning strength to all members of the region. (CX-439-B.)

3. Effects

184. To the extent that interpreters use it to limit the length of their working day, AIIC's "normal working day" rule reduces output. (Wu, Tr. 2125; Silberman, Tr. 3122.)

185. The AIIC rule defining the length of the normal working day fixes price, specifying the time period for which the daily rate is to be paid, after which overtime is charged. (Wu, Tr. 2123-25.) An agreement not to work more than six hours a day without being paid overtime could reduce competition. (Silberman, Tr. 3122.)

186. AIIC's "normal working day" rule helps AIIC detect cheating on the price agreements by standardizing the working day, an observable aspect of output. (Wu, Tr. 2123.)

187. AIIC's team size rules restrict interpreters from competing bi-directionally (French to English and English to French). (Wu, Tr. 2126-27.)

188. AIIC's team size rules reduce output, specifying the work that an interpreter will perform. By raising price, the rule reduces output. (Wu, Tr. 2128-29.) AIIC's team size rules fix price, specifying the amount of output for which the rate is to be paid. Interpreters have worked on smaller teams for additional compensation. (Wu, Tr. 2127-28.)

189. AIIC's team size rules help AIIC detect cheating, specifying the number of interpreters required. Deviation would be observable. (Wu, Tr. 2127.)

190. AIIC's team size and length of day rules increase consumer costs. (Jones, Tr. 702/8 to 703/12; Clark, Tr. 627/22 to 632/3.) The U.S. State Department's costs of interpretation would increase with a six-hour rule because it would have to hire additional interpreters. (Obst, Tr. 300/20 to 301/4.)

4. Health and Quality

191. The 1994 General Assembly inserted a justification for its length of day rules by alluding to "the principles of quality and health." (CX-1-Z-42 to Z-45.) References to "quality and health," were added to the team size and hours of work provisions after the FTC investigation began. (F. 537-39; CX-1-Z-42 to Z-44.)

192. Respondents have no studies addressing performance falling during the work day (Moser-Mercer, Tr. 3431/11-15), or for interpreters working outside the team strength tables. (Moser-Mercer, Tr. 3431/16-20.) No scientific studies support respondents' health and quality claims with respect to conference interpretation. (Parasuraman, Tr. 3804/12-20, 3702/6-23, 3625/23 to 3630/1.)

193. The United Nations uses a six-hour rule based upon its negotiated agreement with AIIC. (CX-2069-I; Moser-Mercer, Tr. 3539.)

194. As support for the health and quality justifications for the team size and length of day rules, AIIC referred to a memorandum from the United Nations in the 1950's. (CX-305-Z-88/2 to Z-89/8, Z-142/12-14 (Sy); CX-306-Z-94/7-11 (Weide); Saxon-Forti, Tr. 2705/19 to 2706/2; CX-300-Z-48/10-52/2 (Motton).) The 1957 U.N. Medical Officer's memorandum recommends that issues of workload be handled on an individual basis:

The question of fatigue due to the length of time on duty in the booths does not lend itself to such general solutions. Some of the interpreters have not found the existing hours of work excessive; others find 1 ½ hours at a time all they can manage efficiently and would even require every third day off. The question of workload therefore is one which should be dealt with administratively on an individual basis, bearing in mind such considerations as the volume of work in particular booths etc. (RX-668 at 2 ¶ 7; Parasuraman, Tr. 3711/21-3713/4; Moser-Mercer, Tr. 3551/20-3552/7.)

195. AIIC's agreements with the International Trade Secretariats, Interpol, and Coordonnees provide that the work day should not exceed seven hours (two sessions of 3 to 3 ½ hours). (CX-2066-B; CX-245-L (International Trade Secretariats); CX-2067 (Interpol);

CX-2068 (Coordonnees); Luccarelli, Tr. 1841/22 to 1843/3 (European Union, Coordonnees, and Interpol).) Interpol provides longer coffee breaks. (Weber, Tr. 1843.)

196. AIIC's agreement with the European Commission provides that the interpreter may work up to three sessions a day for three and one-half hours for each session except for sessions beginning after 3:30 p.m., which cannot exceed three hours. Thus, the work shall not exceed ten hours as set forth in the European Commission's regulations for staff and independent interpreters. (CX-2632-B, CXT-2632-B to G, p.1 (European Union); Luccarelli, Tr. 1841/22 to 1842/6 (European Union); Obst, Tr. 300/8-17.)

197. Quality and health do not suffer under AIIC's agreements in the Agreement Sector. The length of day rules and team size tables in these AIIC agreements assure health and quality. (Moser-Mercer, Tr. 3540-3541.)

198. The U.S. State Department expects its conference interpreters to work as long as needed for the conference and does not follow the six-hour rule. (Obst, Tr. 293/3 to 294/4, 295/9-25, 300/8-19.)

199. The number needed and the time they are able to work varies with the interpreters' language skills, experience, and stamina. (Moser-Mercer, Tr. 3479/13-19, 3538/15-23; CX-306-Z-89 (Weide); CX-305-Z-87/4-17 (Sy); CX-300-Z-47/10-24 (Motton); Clark, Tr. 666/5-13.)

200. The number of interpreters needed for a multilingual conference varies depending upon: (a) difficulty of the material, (Weber, Tr. 1151/14 to 1152/9; Obst, Tr. 298/12 to 300/7; Van Reigersberg, Tr. 404/17 to 405/7; Jones, Tr. 697/10 to 698/23; Davis, Tr. 862/10 to 867/19; CX-302-Z-86/2 to 90/18 (Luccarelli); (b) duration of the conference day (Weber, Tr. 1151/14 to 1152/9, 1188/24 to 1189/24; Van Reigersberg, Tr. 435/10 to 436/16); and (c) amount of time each target language is spoken on the conference floor. (Van Reigersberg, Tr. 406/12 to 407/10; Jones, Tr. 697/10 to 698/23, 700/3-10, 748/16 to 749/13; Davis, Tr. 862/10 to 867/19; Clark, Tr. 595/19 to 96/9; Luccarelli, Tr. 1600/8 to 1601/20; 1617/15 to 1618/19.)

201. Intermediaries sometimes ask AIIC members to work beyond AIIC's team size table and length of day rules and believe the quality would remain acceptable. (Davis, Tr. 862; CX-254-C (right

column); CX-248-H to I; Weber, Tr. 1188-89; CX-306-Z-4/4 to Z-7/15, Z-8/7 to Z-12/16 (Weide).)

202. In the United States, in 1994 freelance interpreters worked an average of 102 days. (CX-285-F to G.) U.S. interpreters working 160 days per year are in the top quarter in volume of work. (Luccarelli, Tr. 1607-09.)

203. Comparing occupations is accepted scientific methodology for opinions about AIIC's team strength and length of day rules. (Parasuraman, Tr. 3626/19 to 28/21, 3641/16 to 45/22; Moser-Mercer, Tr. 3508/3 to 10/17.)

204. Worker performance may vary with the cognitive demands on the worker. (Parasuraman, Tr. 3797/18 to 98/5.) Cognitive means mental processes of human behavior such as language, reading, memory, and decision making. (Parasuraman, Tr. 3602-25.)

205. Conference interpreting requires cognitive skills of verbal memory, speaking, and reasoning. (Moser-Mercer, Tr. 3417/7 to 19, 3486/25 to 89/13; Parasuraman, Tr. 3647/1 to 48/4, 3655/15 to 83/10.) Interpreters perform cognitive tasks when performing conference interpretation. (Moser-Mercer, Tr. 3486/25 to 88/4; Parasuraman, Tr. 3799/2 to 13.) However, interpreters usually work in half hour shifts and then are relieved by their boothmate. (CX-301-Z-13-14 (Bishopp); CX-300-Z-48 (Motton).) A six-hour day means that interpreters are on the microphone three hours a day. Interpreters may work even less because they are not interpreting when their target language is being spoken on the floor. (Luccarelli, Tr. 1617/15 to 18/19.)

206. Air traffic control and piloting involve high cognitive demand. (Moser-Mercer, Tr. 3509/10 to 09/17; Parasuraman, Tr. 3626/19 to 28/21, 3630/2 to 31/7, 3635/9 to 36/3.) Air traffic controllers engage in cognitively demanding tasks. (Parasuraman, Tr. 3632/22 to 34/11; CX-2636.) Likewise, a pilot engages in cognitively demanding tasks. (Parasuraman, Tr. 3637/3 to 19.)

207. Dr. Parasuraman, complaint counsel's expert, compared the cognitive demands of conference interpreting (both simultaneous and consecutive), air traffic controllers, and pilots regarding whether AIIC's team size tables and length of day rules are reasonably necessary for quality and health of the interpreter. (Parasuraman, Tr. 3625/12 to 22, 3626/19 to 28/21, 3629/7 to 30/11, 3702/24 to 04/2.) He used scientific methodology to compare performance of occupations. (Parasuraman, Tr. 3627/12 to 28/21, 3639/17 to 41/23, 3648/5 to 49/14, 3703/10 to 04/2; CX-2639.) The task analysis

compared the cognitive demand imposed by 17 job characteristics in each occupation. (Parasuraman, Tr. 3648/5 to 21, 3649/10 to 53/19; CX-2639; CX-2635.)

208. Dr. Parasuraman found that the cognitive demand on conference interpreters for consecutive or simultaneous interpretation is not as high as the cognitive demand on air traffic controllers and pilots. (Parasuraman, Tr. 3626/19 to 28/21, 3639/17 to 40/4, 3649/10 to 14, 3655/3 to 14, 3683/11 to 84/3, 3655/15 to 83/10; CX-2639.)

209. Studies of the performance and health of air traffic controllers and pilots show that they do not decline for the first eight to ten hours of work. (Parasuraman, Tr. 3626-28; CX-2635.) Dr. Parasuraman believed that interpreters' performance would not decline for an eight to ten hour work day. He concluded that respondents' six-hour work rule is not reasonably necessary to maintain quality. (Parasuraman, Tr. 3622/13 to 22, 3692/7 to 15, 3692/25 to 93/11, 3693/23 to 24, 3694/19 to 95/9, 3700/20 to 01/4.) Studies of air traffic controllers' health show no link between adverse health effects and the occupation. (Parasuraman, Tr. 3713/6 to 14/15, 3704/20 to 05/20; CX-2635-B.) Dr. Parasuraman believed that there is no link between the occupation of conference interpreter and adverse health effects. He concluded that the six-hour work rule is not reasonably necessary to protect interpreters' health. (Parasuraman, Tr. 3628/22 to 29/6, 3704/20 to 05/20, 3714/16 to 15/7.)

210. AIIC commissioned a study of stress among interpreters. The 1981 Cooper and Cooper study arose after AIIC adopted its six-hour rule in 1979 (F. 158), but never examined the issue of the length of the work day or the performance of interpreters. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.) It did not include any physiological examination, but used a questionnaire sent to AIIC members. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.) The study concluded that interpreters' occupational stress was about the same as experienced by business executives. (RX-147-48; Parasuraman, Tr. 3705/21 to 3709/7; Moser-Mercer, Tr. 3557/18 to 61/11.)

211. Some AIIC members recognize that the team strength tables and length of day rules are exceptionally protective when conference interpreting is compared to other occupations. (CX-247-Y; CX-248-Z-7.) One commented that:

No profession that I know of has a 21-hour working week. And no matter how great the mental stress, nervous tension, etc. of our job, there are plenty of other professions where working conditions are just as trying, physically and mentally, where strains, stresses and responsibilities are considerably greater and far more sustained, remuneration no better and hours far longer than ours. To claim that our profession is unique on any of those counts is ridiculous. (CX-215-D; CX-248-Z-7; CX-247-Y.)

G. Professional Address Rule

1. History

212. AIIC rules require that members declare a single professional address, keep such address for at least six months, and provide three months' notice before any change. (CX-300-Z-39 to 41, Z-71 to Z-72 (Motton); Bowen, Tr. 1008, 1012; CX-301-Z-22 to Z-23 (Bishopp); CX-2-Z-40; CX-1-Z-40.)

213. The professional address rule has been in effect since AIIC was founded. (CX-2434.)

214. Article 1(a) of the 1991 Standards of Professional Practice states that the declared professional address "shall be the only place on which contracts shall be based." (CX-2-Z-40.)

215. Under AIIC rules, professional address determines when members must charge for travel and rest days. Article 12(a) states, "When an interpreter is recruited to work in a place other than that of her or his professional address she or he shall receive a remuneration for each day required for travel and rest. . . . This remuneration shall be at least equal to the base rate." (CX-2-Z-40, Z-46.)

216. Under AIIC rules, professional address determines when members must charge per diem or subsistence allowances and train fare or airfare. (CX-2-Z-46; F. 110.) Article 14 requires contracts to include fees "for each journey made between the place of the interpreter's professional address and the conference venue," and sets out the calculation of such fees. (CX-2-Z-47; F. 130.) Article 15(a) states that every contract signed with a member "away from the place of her or his professional address must include payment of travel." (CX-2-Z-48; F. 237.)

217. "Professional address" refers to the location from which an AIIC member is to base travel charges. (CX-268-C; CX-495-P.) For work outside the professional domicile, the interpreter will charge for travel and per diem. (Bowen, Tr. 1008; CX-301-Z-19 to Z-20, Z-21 (Bishopp); Hamann-Orci, Tr. 45.)

218. Each member's professional address is in the AIIC Directory. (CX-2-Z-40; Weber, Tr. 1210-1211; CX-600.)

219. Members are allowed one professional address at a time. (CX-301-Z-19 to Z-20, Z-21(Bishopp); CX-300-Z-38 (Motton); CX-2-Z-40.) Some interpreters have alternating domiciles -- six months in one city and six months in another. (Hamann-Orci, Tr. 46; Bowen, Tr. 1010.)

220. Interpreters' professional addresses are not always where they reside. (CX-302-Z-140 (Luccarelli); Bowen, Tr. 1009; CX-495-P.)

221. Interpreters may declare their professional address away from their home so they get more work "because it would mean that they wouldn't charge for travel." (CX-302-Z-140 (Luccarelli).) However, when interpreters work near their home they charge the client for travel based on their professional domicile, not their residence. (CX-302-Z-140 to Z-141, Z-438 (Luccarelli); CX-2-Z-40; CX-301-Z-20 (Bishopp).)

222. Under the professional address rule, an interpreter with a professional domicile in Brussels, would charge any client in the United States for a round trip ticket between Brussels and the U.S. (Hamann-Orci, Tr. 45.) A member vacationing in Europe, with a professional address in Washington, D.C., could accept a conference interpreting job in Europe by charging for travel from the United States. (CX-301-Z-21 to Z-22 (Bishopp).)

223. Because of this professional domicile rule, Dr. Margareta Bowen, an AIIC member, traveled round-trip between Washington and New York to work a conference in New York but charged the client for roundtrip travel between Vienna and New York because Vienna was her professional domicile. (Bowen, Tr. 1011-12.)

224. The professional address rule protects local interpreters from outsiders who might travel at their own expense in order to work, replacing a local person. (CX-300-Z-42 to 43 (Motton); Weber, Tr. 1213.)

225. An AIIC member, C. Gibeault-Becq., was offered a job in Washington on November 15, 1991. Her professional address would change to Washington on December 20. The U.S. Region Representative suggested that she contact AIIC in Geneva, or "telephone all other colleagues with your language combination in the Washington area, to verify that they were all indeed working on that date." (CX-1471.)

226. Members of the U.S. Region of AIIC testified that it is unethical and unfair to local colleagues for interpreters not to charge for travel when working away from their own professional address. (CX-300-Z-39 (Motton); Hamann-Orci, Tr. 32.)

2. Enforcement

227. Members follow the professional address rule, unless they obtain a waiver. (CX-300-Z-38 (Motton); CX-284-L; Bowen, Tr. 1029-30.) In July 1984, the AIIC Council adopted a policy for granting waivers of the professional address rule and reaffirmed its determination to enforce the rule. (CX-237-H; CXT-237-H.) The AIIC Council issued reprimands for changing professional domicile without providing three-months' advance notice. (CX-237-I; CXT-237-I.)

228. AIIC's Recruiting Guidelines require AIIC members who are recruiting interpreters to apply AIIC rules to non-members. (F. 32.) AIIC construed the professional domicile rule to prohibit Mr. Weber from recruiting an Austrian interpreter, whose parents lived in Los Angeles, to work at the Olympics -- even though the interpreter was planning to travel to Los Angeles at his own expense and avoid lodging costs by staying with his parents. (Weber, Tr. 1211-12)

229. U.S. Region member Wilhelm Weber was accused of violating AIIC's rule on professional domicile. (Weber, Tr. 1264.) In 1983, he transferred his professional domicile for six months from Monterey to Geneva to obtain work. Weber stayed in Geneva for about six weeks and went back to Monterey. (Weber, Tr. 1265.) Weber accepted an interpreting job at a conference in San Francisco, although his professional address was still in Geneva. In July 1984, the AIIC Council threatened to issue sanctions against Mr. Weber for violation of the professional address rule. (CXT-237-H.)

230. The AIIC General Assembly in 1985 voted on whether to expel U.S. Region member Marc Moyens (CX-304-Z-128 (Motton)), for violating the professional address rule, for working for two employers in Europe without charging each for transatlantic travel. (CXT-239-I.) His expulsion was rejected but a Committee of Inquiry recommended that the Council reprimand Mr. Moyens. (CXT-239-I.) He resigned from AIIC. (CX-304-Z-128 (Motton).)

231. On November 30, 1991, the U.S. Region Representative wrote to one member who "without officially notifying AIIC of his change of address" had been working in the New York area although

he had a Washington, D.C. professional address. The U.S. Region Representative declared, "this is against our rules." (CX-1470-A; CX-608-Z-221.)

232. The 1994 AIIC Standards retain the professional address rule but not as the basis for calculating travel and subsistence charges. (CX-1-Z-40.)

233. The proposed amendments to the AIIC Basic Texts, "eliminated the monetary conditions while taking care to preserve the great principles which the association holds to, such as professional address. . . ." (CXT-279-K to O, p.4.) In January 1984, the NAS reaffirmed "its moral commitment to the concept and the application of the principle of professional address." (CX-1568-A; Luccarelli, Tr. 1770.)

234. The Council granted a waiver to one member, in January 1995, "allowing her to work four months per year for the Canadian Government while retaining her professional address in Norway." (CX-284-L.)

3. Economic Effect

235. The professional address rule reduces output by protecting local interpreters from competition. (Wu, Tr. 2199-2100.) It discourages out of town interpreters from working at a conference without being paid for travel, and from taking work from local interpreters. (Wu, Tr. 2100-01)

236. The professional address rule also deters cheating by helping members to detect undercutting by out-of-town interpreters in violation of the AIIC rules on fees. (Wu, Tr. 2100.)

H. Travel Arrangements

237. AIIC set rules for travel arrangements. Article 15(a) of the 1991 Standards provides "Every contract signed with a member of the Association for a conference, or a number of immediately consecutive conferences, away from the place of her or his professional address must include payment for travel" by the shortest possible round trip. (CX-2-Z-48.) It further specifies that travel by air shall be first class, business class, or club class and that tickets are not to be restricted to a particular carrier. (CX-2-Z-48.) The rule also requires that for successive conferences away from the interpreter's professional address, unless there is a separate payment for return travel from each

conference, the interpreter shall receive a fee and a subsistence allowance for every day between conferences. (CX-2-Z-48.)

238. In the 1994 Standards, AIIC has replaced the former provisions with the statement in Article 10, "Travel conditions should be such that they do not impair either the interpreter's health or the quality of her/his work following a journey," and Article 9 provides, "Except where the parties agree otherwise, members of the Association shall be reimbursed their travel expenses." (CX-1-Z-45.) AIIC's standard form contract continues to provide for first class travel on journeys of long duration. (CX-2059-B.)

239. AIIC's rule concerning travel arrangements was binding in the U.S. The 1991 paper, "Working conditions for interpreters in U.S.A.," the purpose of which was to ensure the uniform application in the U.S. of the AIIC rules, states, in ¶ 6, that "In addition to professional fees, each interpreter shall be entitled to: return economy air fare for trips under 8 hrs. Restricted tickets are not acceptable. For trips longer than 8 hrs. Interpreters are entitled to business class or first class tickets. When train service is more convenient, first class tickets." (CX-439-D to E.)

240. AIIC's travel rules help its members maintain their agreement by deterring cheating. (Wu, Tr. 2093-94.)

I. Cancellation Fees

241. AIIC requires that members be paid even if the event for which they are hired is canceled. Article 2(c) of the 1991 Standards provides: "Any contract for the recruitment of a member of the Association must specify that in the event of the organizer canceling all or part thereof, whatever the reason for and the date of cancellation, the interpreter shall be entitled to the payment of all fees contracted therein (working and non-working days, briefing days as well as days allowed for rest and travel) in addition to the reimbursement of any expenditure already incurred." (CX-2-Z-41.) Article 2(d) of the 1991 Standards further states that the interpreter cannot be forced to accept an alternative job to mitigate the organizers' liability. (CX-2-Z-41.)

242. When Wilhelm Weber began to organize interpretation services for the 1984 Los Angeles Olympics, he did not offer the standard AIIC cancellation clause to interpreters. (Weber, Tr. 1235-36, 1244-45.) When news of this reached AIIC, AIIC warned Mr. Weber about his breach of the rules. (CX-1693-A to C; CXT-1693-A

to C; Weber, Tr. 1243-48, 1255-56.) As a result of the pressure by AIIC, an "acceptable" cancellation clause was included in the Olympics contracts and Mr. Weber received a reprimand from AIIC for his actions. (Weber, Tr. 1257; F. 356.)

243. Other AIIC interpreters have relied on AIIC's standards to obtain cancellation clauses in contracts. Ursula Weide wrote a June 28, 1992, letter relying on the AIIC standard contract cancellation clause in requesting a fee from a person who had tried to put together a team of interpreters for an arbitration, but who postponed the engagement. (CX-2571-A to B.)

J. Recording

244. AIIC requires that fees should be charged for recordings of the interpretation at conferences. Article 2(b) of both the 1991 and 1994 Standards provides: "Any contract for the employment of a member of the Association must stipulate that the interpretation is intended solely for immediate audition in the conference room. No one, including conference participants, shall make any tape recording without the prior consent of the interpreters involved, who may request appropriate remuneration for it, depending on the purpose for which it is made and in accordance with the provisions of international copyright agreements." (CX-2-Z-41; CX-1-Z-40.) AIIC's rule on recordings is binding in the United States. (Weber, Tr. 1251.)

245. Interpreters' practice of charging for recordings goes back to the 1979 Code. (CX-6, CXT-6-E to M, p.1.) The April 5, 1989, AIIC Bulletin reported that members at the NAS meeting held in Dublin in January voted that recordings not for resale should be charged at 25% of the daily rate, and recordings for resale, at 100% the daily rate. (CX-253-D; CXT-251-W at pp.2-3.)

246. AIIC's rule on recordings helps the AIIC agreement by discouraging potential undercutting on the minimum daily fee by waiving a charge for recordings. (Wu, Tr. 2119.)

K. Charity

247. AIIC limits free charitable work by its members. Article 7 of the 1991 Basic Texts, Standards of Professional Practice, titled "Non-Remunerated Work," states: "Members of the Association may provide their services free of charge, especially for conferences of a

charitable or humanitarian nature, provided they pay their own travel expenses and subsistence (subject to the granting of a waiver by the Council beforehand). All the other conditions laid down in the Code of Professional Ethics and in these Standards of Professional Practice must be observed." (CX-2-Z-42; CX-1-Z-41; CX-9-F; CXT-6-E to M, p. 4; Weber, Tr. 1232.)

248. The 1983 AIIC General Assembly in Berlin passed a resolution that student interpreters should work only at conditions of remuneration that are in conformity with the professional code of conduct. (Weber, Tr. 1231; CX-234-J to K.) The resolution further provided that the students should work free of charge only if they pay for their own travel costs and per diem. (Weber, Tr. 1231-32.)

249. The student interpreters at the 1984 Olympics did not comply with the Code, because the LAOOC paid the student interpreters' airfare from Monterey, CA to Los Angeles, CA. (Weber, Tr. 1232-33.) As a result, the Council determined that a letter of warning should be sent. (Weber, Tr. 1271-72.) U.S. Region Representative Jean Neuprez then wrote to Wilhelm Weber, who was responsible for coordinating the Olympics' interpretation services, on June 16, 1984, warning that his actions "go against a number of principles and rules of our profession." (CXT-1320-A to C, p.1.)

250. AIIC's restrictions on pro bono work deter entry by novice interpreters working without charge. Absent the rule, student or novice interpreters could seek to work without charge in order to gain experience and make contacts in the profession. (Wu, Tr. 2109.)

L. Commissions

251. AIIC prohibits its members from giving or receiving commissions. Paragraph c)4 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards the Profession," provides that "Members of the Association shall not accept or give commissions or any other rewards in connection with team recruitment or the provision of equipment." (CX-1-Z-49; CX-2-Z-52; CX-301-Z-100 (Bishopp); Luccarelli, Tr. 1690-1691.) Article 6(d) of the 1991 Standards states that: "Remuneration shall be net of any commission." (CX-2-Z-42.)

252. AIIC's rule against commissions prohibits granting secret discounts. The ban on commissions is based on a practice in Europe of an organizing interpreter charging a commission "under the table" as a condition of hiring an interpreter. (Luccarelli, Tr. 1691.)

253. The March 1981 AIIC Bulletin reports a meeting involving AIIC members where the practice of intermediaries taking a commission was "heartily condemned" and states, "There is no reason why an intermediary, AIIC member or otherwise, should not request a fee from the organizers for expenses incurred in recruiting a team, but this must be charged to the organizer and clearly shown as distinct from the interpreters fees and never deducted from the interpreters fees." (CX-227-J.)

254. AIIC's ban on commissions deters entry by preventing new interpreters from gaining experience by paying commissions to intermediaries. (Wu, Tr. 1251.)

M. Package Deals

255. Paragraph b)7 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards Colleagues," provides that "Members of the Association acting as coordinators shall not make 'package deals' grouping interpretation services with other cost items of the conference and shall in particular avoid lump-sum arrangements concealing the real fees and expenses due individual interpreters." (CX-1-Z-49.) Similarly, paragraph c)1 states, in part, "The provision of professional interpretation services is always kept clearly separate from the supply of any other facilities or services for the conference, such as equipment." (CX-1-Z-49.) Paragraph b)5 of the AIIC Guidelines for Recruiting Interpreters, provides, "Interpreter's fees shall be paid directly to each individual interpreter by the conference organizer." (CX-1-Z-49.)

256. AIIC opposed package deals, and required direct contracts between the interpreter and the conference sponsor. (CX-301-Z-100 (Bishopp); Luccarelli Tr. 1692) A provisional paper on AIIC working conditions for interpreters in the United States, prepared for and discussed at meetings of the U.S. Region in 1990 and 1991, stated, "All contracts shall be concluded directly between the conference and the interpreter; the conference shall make payment directly to the interpreter." (CX-439-B, D-E; CX-435-A.)

257. AIIC feared that "[n]on-interpreter intermediaries (such as multinational language schools) and commercial intermediaries (providers of temporary labour, translation bureaux) are eating into our markets. They all facilitate the gradual mushrooming of a 'grey market'." (CX-237-B.)

258. The Council issued an emergency suspension against a member for failing to provide a direct contract to the interpreters on a team that she was organizing to perform conference interpretation work. (CXT-240-G.) At its July 1985 meeting, the Council decided to lift her suspension as soon as she "submitted to the AIIC her written promise to respect henceforth all commitments incumbent upon her as member of the Association." (CXT-240-G.)

259. An AIIC founding member and past president, Christopher Thiery (Weber, Tr. 1137), wrote in the Bulletin in 1978 that the danger of "losing our freedom to establish our own rates" would come from losing direct contact with the people who used interpretation services. "We must never forget that when the chips are down an intermediary may well have to cut costs to stay in business. And if we happen to be one of the 'costs,' then that's just too bad for us." (CX-219-U; CX-616-Z-53.) He wrote earlier, "The danger lies for us in the presence of the intermediary, whose interests can never be identical to ours. . . . Once we accept impresarios and professional conference organizers and conference halls as our employers, we lose control over the situation and end up by being paid what they decide is good for us. Hence, the gradual introduction of the direct contract and direct payment principle. . . ." (CX-203-C.)

260. Clients prefer contracting through intermediaries because intermediaries can more readily be held financially liable if the conference is unsuccessful and provide quicker response time to requests for services than individual interpreters. (CX-227-J; CX-1633-B.)

261. AIIC's ban on package deals helps AIIC detect cheating on the AIIC price agreements by requiring that prices for interpreters be separately stated, and therefore permitting those prices to be monitored. (Wu, Tr. 2153.) AIIC sought "to avoid letting happen to conference interpreters what had happened to other 'interpretive' professions (actors, musicians, etc.): to fall into the hands of commercial impresarios with all that would entail: paying commissions, varying rates of remuneration with the creation of 'divas.' Hence direct contract rules with equal remuneration for all the members of a given team." (CXT-233-J & M.)

N. Exclusivity

262. Paragraph c)3 of the AIIC Guidelines for Recruiting Interpreters, under "Duties Towards the Profession," provides, "The

conference interpreter makes it clear that he or she does not 'provide' interpreters, but that she or he recommends them and negotiates contracts on their behalf. She or he avoids creating the impression that certain interpreters are available only through him or her or that she or he controls teams of fixed composition." (CX-1-Z-49; CX-256-Z-45; CX-214-N; CX-5-Q.)

263. In the United States, recruiting interpreters do not exclusively represent interpreters and no AIIC member has established a commercial interpretation firm with interpreters as employees. (Luccarelli, Tr. 1693-94; CX-301-Z-105 (Bishopp); CX-428-A.)

264. AIIC's prohibition of exclusivity helps the AIIC agreement by preventing the formation of firms of interpreters. (Wu, Tr. 2147.) Reduction in product heterogeneity makes it easier for members to agree. (Wu, Tr. 2147.) AIIC's prohibition of exclusivity also reduces output by preventing the formation of interpreter firms, which might be an efficient means of providing interpretation services. (Wu, Tr. 2149.) It also deters entry by new interpreters benefitting from the reputation of a firm and letting them enter the market, gain experience and develop a reputation. (Wu, Tr. 2148.)

O. Trade Names

265. Paragraph c)1 the AIIC Guidelines for Recruiting Interpreters provides, "The coordinating interpreters's conduct must always be in keeping with the dignity of the profession. She or he acts under her or his own name and does not seek anonymity behind the name of a firm or organization, although co-operative services may be offered by a group of interpreters who carry on business under a group name." (CX-1-Z-49.)

266. Cooperative services as referred to in this rule, means that a group of interpreters set themselves up as an office. There are no such "cooperatives" of interpreters in the United States. (CX-301-Z-104 (Bishopp).)

267. The 1983 Code of Ethics provided that members had a duty towards the profession not to seek anonymity behind the name of a firm or organization. (CX-5-Q.)

268. AIIC's prohibition of trade names helps reduce competition among AIIC members by reducing the ability of members to differentiate themselves in the minds of consumers. The restriction

therefore reduces product heterogeneity, which makes it easier for members to reach and maintain price agreements. (Wu, Tr. 2146.) It deters entry by new entrants trying to make themselves known. (Wu, Tr. 2147-48.)

P. Portable Equipment

269. A "bidule," is a miniature portable interpretation system small enough to be carried in a briefcase. (Davis, Tr. 846-47; CX-302-Z-80 (Luccarelli); Hamann-Orci, Tr. 47.) Portable booths are versions of permanent booths. (Luccarelli, Tr. 1699-1700.)

270. AIIC restricts members' use of portable equipment. AIIC's Code of Ethics prohibits members from simultaneous interpretation without a sound booth except when the quality of the interpretation work is not impaired. (CX-1-Z-38; CX-301-Z-133 to Z-134 (Bishopp).)

271. In January 1991 the AIIC Council adopted standards governing members' use of portable electronic simultaneous interpretation equipment. (CX-266-Z-14; CX-2-Z-38; CX-301-Z-15, Z-133 (Bishopp).) Those standards permit use of portable equipment for visits to factories, hospitals or remote field visits. (CX-266-Z-14.) The standards limit the use of portable equipment to short meetings (two hours) with 12 or fewer participants. (CX-266-Z-14; CX-267-F; CX-301-Z-133 (Bishopp).) The standards mandate at least two interpreters when portable equipment is used. (CX-266-Z-14; CX-267-F.)

272. The Council standards must be met before members may accept an interpretation assignment with portable equipment. (CX-266-Z-14; CX-300-Z-70 to Z-71 (Motton).)

273. Portable equipment costs less. (CX-270-G.) The rent of portable equipment is less than the cost for standard booths. (CX-302-Z-282 to Z-283, Z-804 (Luccarelli); Clark, Tr. 634; Obst, Tr. 303.) No technician is required. (Hamann-Orci, Tr. 47; Obst, Tr. 307/5; Neubacher, Tr. 778; Clark, Tr. 632.)

274. The NAS agreed that use of the "bidule" "must be strongly discouraged." (CX-259-U.) In January 1992 in Washington, D.C., the NAS exhorted members to dissuade the use of portable equipment. (CX-270-G.)

275. AIIC's rules against portable equipment reduce output by limiting the use of interpretation technology. (Wu, Tr. 2139.) The rules force adherence to AIIC's team strength tables for simultaneous

interpreting. (F. 175, 188-90.) The rules reduce output by specifying the number of interpreters required, limiting the amount of work an individual interpreter will perform, raising the price of the interpretation services, and aiding in the detection of cheating. (Wu, Tr. 2123, 2127-29, 2139.) Specifying the time an interpreter may work (two hours), AIIC's rules against portable equipment reduce output. (Wu, Tr. 2139, 2125; Silberman, Tr. 3122.)

Q. Other Services

276. The AIIC model contract states: "The functions of the interpreter shall exclude the written translation of texts; they shall therefore be confined to the interpretation of spoken proceedings and shall not cover any event not specifically provided for in the contract." (CX-2347-B, ¶ 2; CX-2060-D, ¶ 2.)

277. The rule against performing other duties does not discourage interpreters from translating on weekends or on breaks when they are not interpreting. (CX-301-Z-26 (Bishopp).) Members occasionally depart from this rule without punishment from AIIC. (Luccarelli, Tr. 1672.)

278. Harry Obst, the Chief Interpreter of the State Department, and a highly credible witness, sometimes asks an interpreter to translate a written document when a translator is unavailable, "and they usually do." (Obst, Tr. 301-02.)

279. The intermediary, Metropolitan Interpreters and Translators, sometimes asks interpreters to interpret when clients are checking in, or at the gift shop. While no interpreter has directly refused, some have disappeared "when asked to perform such services." (Citrano, Tr. 523-24.) AIIC and TAALS members are a little more likely to avoid such extra services. (Citrano, Tr. 524.)

R. Moonlighting

280. AIIC's "Guidelines for Recruiting Interpreters" requires AIIC members to hire: "freelance interpreters rather than permanents having regular jobs." (CX-1-Z-48; CX-2-Z-51; CX-6-O.)

281. AIIC's "Staff Interpreters' Charter" provides that staff interpreters should act as interpreters outside their organization "only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (CX-1-Z-53; CX-2-Z-54.)

282. "Moonlighting" refers to an interpreter who already has permanent employment seeking temporary employment elsewhere. (CX-305-Z-99 (Sy); CX-304-Z-84 to Z-85 (Motton).)

283. AIIC members understood the provisions of AIIC's rules regarding moonlighting to mean that permanents should not perform freelance work unless no freelance interpreter is available. (CX-301-Z-106 to Z-107 (Bishopp); CX-300-Z-121 to Z-122 (Motton); Lateiner, Tr. 907/4-5.) At the U.S. Region meeting in 1988, AIIC members were warned: "[O]ur permanent colleagues are reminded that if they are offered a contract outside their organization they should check first whether there are any free-lance interpreters available with the required language combination. They have a permanent, steady job and freelancers don't. Therefore they should show some 'restrain' [sic] in the private market." (CX-432-M.)

284. The majority of AIIC's members are freelancers. In 1981 only 17% of AIIC members were Staff interpreters. (CX-230-N; Stip. 57, 58, 60). At its November 1975, and 1976 meetings, the U.S. Region agreed that staff interpreters should not work in the private sector unless all freelancers were already engaged. (CX-405-C; CX-407-F.)

285. In 1980, Jeannine Lateiner was investigated for hiring permanent interpreters instead of local freelance interpreters. (Lateiner, Tr. 905; CX-1138-A to B.) The next year, AIIC's Council stated that: "The Council meeting of July 1981 had condemned the practice of moonlighting and had called for restraint from retired staff interpreters, wishing to do freelance work despite their pensions." (CX-230-M.) In 1984, the AIIC Council suspended three members (CX-236-C), following a case of moonlighting which attracted a lot of attention in Switzerland. (CX-1256-B.) In 1986, after press articles and the Council action, moonlighting practically disappeared in Geneva. (CX-241-B to C.)

286. The NAS has asked permanents to show restraint in accepting work in the Non-Agreement Sector (CX-240-I), discussing what it called "the problem" of moonlighting and retired permanents working on the private market (CX-1538-G).

287. The purpose of the anti-moonlighting rule is to protect the interests of freelance interpreters. (CX-300-Z-114 to Z-115 (Motton); Motton CX-300-Z-121 (Motton); CX-301-Z-95 to Z-97 (Bishopp).)

288. The AIIC Bureau invited members to file official complaints concerning any violations of the moonlighting rule, including written proofs or copies of contracts. (CX-301-Z-152/5-6 (Bishopp).)

289. Interpreters honor the anti-moonlighting rules, and attempt not to compete with AIIC's freelance members who are not employed. (Hamann-Orci, Tr. 14-15; Van Reigersberg, Tr. 363-64.)

290. AIIC's rules against moonlighting reduce output by restricting the output of staff interpreters. (Wu, Tr. 2136.) They deter entry into the private sector by preventing staff interpreters from entering the private sector without giving up their staff positions. (Wu, Tr. 2136.)

291. There are no justifications for the moonlighting rule. (F. 191-211.) The moonlighting rule is over broad, since it prohibits staff interpreters from working freelance on days when they are not working for their organizations.

S. Double-Dipping

292. Article 3 of the AIIC Code provides that "members of the Association shall not accept more than one assignment for the same period of time." (CX-1-Z-37; CX-2-Z-37; CX-3-B, Art. 4(c); CX-4-C, Art. 3(b).) AIIC referred to this as "double-dipping." (CX-432-G.)

293. AIIC's president explained that interpreters cannot accept two contracts for the same time. (CX-305-Z-94 (Sy).) The rule means that only overlapping assignments are prohibited, which does not prevent members from accepting more than one assignment in a day. (*Id.*; Luccarelli, Tr. 1673-74.)

294. Part of the reason for the rule against double-dipping was to avoid over booking by an interpreter who accepts more than one assignment for a day, which could be deceptive and leave a team short handed. (Luccarelli, Tr. 1675-76.)

295. AIIC allowed departures from the rule against double-dipping so long as there was no other member available and "appropriate fees" are paid. (CX-237-K.) AIIC has not enforced the rule. (Luccarelli, Tr. 1673-76.)

296. In 1988, the U.S. Region discussed double-dipping where an interpreter is engaged in a conference and accepts work at a short meeting during that employment. "It is said that the practice is widespread in Washington, and there is the anecdote of interpreters working with a taxi waiting to take them back to their other meeting." (CX-432-G.)

T. Advertising

297. AIIC prohibits comparative advertising. The AIIC Code excludes "commercial forms of one-upmanship." (CX-1-Z-49; CX-2-Z-52.)

298. Members understand "commercial forms of one-upmanship" to be about comparative claims. This provision means that interpreters cannot disparage their colleagues in order to get work. (CX-2-Z-52; CX-301-Z-103 (Bishopp); Luccarelli, Tr. 1682-1683.)

299. The 1994 Code of Ethics provides that AIIC members "shall refrain from any act which might bring the profession into disrepute." (CX-1-Z-38; CX-2-Z-38.)

300. The 1972 AIIC Code of Ethics stated, "Members shall refrain from any activities likely to bring discredit on the profession, including all forms of personal publicity." (CX-9-C.) This barred "activities such as canvassing or commercial forms of one-upmanship or advertising." (CX-5-Q; CX-260-Z-109; CX-232-F.) Prior to 1991, AIIC prohibited members from publicizing individually that they are conference interpreters. (CX-301-Z-12 to Z-13 (Bishopp).)

301. In 1994, AIIC acted against Carol Gold, an AIIC member in Canada, for making comparative pricing claims. Ms. Gold wrote a letter to a client that stated that "Using accredited conference interpreters [meaning: "AIIC members" (CX-305-Z-332/24-25 (Sy))] would be much more expensive and would involve bringing in two interpreters from Montreal, plus one local." (CXT-501-W.) The AIIC Council concluded that Ms. Gold's conduct "constitutes a flagrant violation of paragraph (b) of Article 4 of the Code of Professional Ethics." (CXT-501-V to W; CX-305-Z-336/1-4 (Sy).) Ms. Gold sent documents concerning this matter to the Canadian Bureau of Competition; the AIIC Council issued a warning to Ms. Gold. (CX-305-Z-336 (Sy); CXT-501-W at p.2.)

302. Also in 1994, thirty-six members of AIIC filed a complaint against a member named T. Cordon Vilas. (CXT-502-Z-53 to Z-54; CX-305-Z-337 (Sy).) Ms. Vilas had written a letter to an international organization offering to reduce the cost of language services through her own full-time employment. (CXT-502-Z-53-54; RX-815.) The AIIC Council suspended Ms. Vilas for two years, until the next Assembly. (CX-502-Z-36; RX-815; CX-305-Z-338 (Sy).)

303. AIIC's prohibition on comparative advertising reduces product heterogeneity, which makes it easier for the members to

agree. (Wu, Tr. 2144/20-22.) It deters entry by making it more difficult for entrants to make themselves known. (Wu, Tr. 2145/1-8.)

IV. TAALS

A. TAALS' Rules

304. TAALS' rules are binding on its members. (Saxon-Forti, Tr. 2689; CX-2240-A; CX-995-C; CX-993-D.) Applicants for TAALS membership follow the association's rules for the 200 day period "in the booth" prior to becoming members. (CX-997-Q; Hamann-Orci, Tr. 20.) In signing the TAALS application form, candidates undertake to abide by the TAALS rules. (CX-986-A.) TAALS members voted on rules at TAALS Assembly meetings. (Lateiner, Tr. 923-24, 929; CX-895-B; CX-962-I.)

305. TAALS enforces its rules. (CX-1742.) Members who infringe the Code are subject to expulsion or other penalties. (CX-997-I; Hamann-Orci, Tr. 51, 53-54.)

306. In 1989, Janine Hamann-Orci was investigated by TAALS for quoting low rates and manning strength at odds with TAALS guidelines. (Hamann-Orci, Tr. 52; CX-2552; CX-2553.) The interpreter who filed the complaint was a member of AIIC, as were three members of the TAALS disciplinary committee that investigated Ms. Hamann-Orci. (Hamann-Orci, Tr. 93-94; CX-2554.) The Committee to Ensure Respect for the Code exonerated Ms. Hamann-Orci. (CX-2557-A to B; CX-913-F.)

B. AIIC and TAALS Rates

307. TAALS voted on the rates at its General Assembly meetings. (Hamann-Orci, Tr. 31; CX-301-Z-56 to Z-58 (Bishopp).) Charging less than the association rate was undercutting for which violators would be expelled. (Hamann-Orci, Tr. 53-54.)

308. AIIC used the TAALS rate as its published rate for the United States. (CX-301-Z-45/10-20, 49/15 (Bishopp); CX-304-Z-80, Z-207, Z-221 (Motton); CX-83; CX-925-A; CX-409-A.) AIIC obtained the TAALS rate either from the U.S. Region Representative to the Council or by writing directly to the president of TAALS. (CX-301-Z-45 to Z-46 (Bishopp).)

309. Prior to 1991, intermediaries understood the "industry rate" to be the rate recommended by TAALS and AIIC. (Davis, Tr. 843;

Clark, Tr. 610-11; Jones, Tr. 688-89, 694; Neubacher, Tr. 763.) In the late 1980's, to determine the rate for private sector freelance conference interpretation, intermediaries contacted a member of TAALS or AIIC. TAALS and AIIC interpreters charged the same. (Clark, Tr. 668; Jones, Tr. 688-89; Citrano, Tr. 555.)

310. Members of AIIC and TAALS frequently have the same rates today. (Jones, Tr. 690-93; Citrano, Tr. 573.)

C. Same Rules

311. Before the Federal Trade Commission Consent Order against TAALS (The American Association of Language Specialists ("TAALS"), C-3524 (Aug. 31, 1994) (consent order)), AIIC and TAALS had the same rules. (Saxon-Forti, Tr. 2677; CX-301-Z-140 (Bishopp); Lateiner, Tr. 922.) The TAALS standard contract form states that it conforms with the standard practices of AIIC. (CX-2114-A to B; Hamann-Orci, Tr. 23.)

312. AIIC and TAALS had similar rules concerning per diem (F. 110; CX-997-J, Art. 13a, K, Art. 3); charges for non-working days (F. 130-35; CX-997-K, Art. 4, J Art. 11(a)); cancellation clauses (F. 241; CX-997-K, Art. 1); and recordings (F. 244; CX-997-L, ¶ C.6). Each association specified minimum travel arrangements (F. 237; CX-997-K, Art. 4); and prohibited members from being paid for travel and subsistence when working for free (F. 247; CX-997-J, Art. 12). AIIC and TAALS required all interpreters on the same team be paid the same rate (F. 150-51; CX-997-J, Art. 10d; Hamann-Orci, Tr. 40) and on an indivisible daily basis (F. 120; CX-997-J, Art. 10b; Saxon-Forti, Tr. 2696); and both required that fees be payable without the deduction of any commission. (F. 251; CX-997-J, Art. 11b.) AIIC and TAALS had rules on the number of booths and interpreters required (F. 160-62; CX-997-L, ¶ B.3); and defined a working day as two sessions of three hours each. (F. 158-59; CX-997-L, ¶ B.4.) TAALS and AIIC had restrictions on the use of portable equipment (CX-988-B; CX-301-Z-134 (Bishopp); F. 269-72); on the performance of non-interpretation services at conferences (CX-997-J, Art. 7); and on advertising (F. 297; CX-997-I, Art. 4b). Both required that members declare a single professional address and base travel charges on that address. (F. 212, 215; CX-997-J, Arts. 8, 13.)

313. AIIC and TAALS required members to refuse work under conditions not in accord with their rules. (F. 48; CX-997-I, Art. 6.) TAALS told its members that they should use the AIIC rate when

engaged in conference interpretation outside the United States. (Saxon-Forti, Tr. 2695.)

D. Coordination

314. TAALS and AIIC coordinated their activities. "[T]here is a systematic exchange of information between TAALS and AIIC." (CX-409-A; CX-218-J; CX-266-Z-6.)

315. In 1984 the TAALS Council appointed an official liaison from TAALS to AIIC with a term of eight years. (CX-1728-B.) Information discussed by either AIIC or TAALS is shared by the two organizations. (CX-300-Z-32 (Motton); Lateiner, Tr. 917; Luccarelli, Tr. 1766-68, 1802; CX-302-Z-402 to Z-405 (Luccarelli); CX-898-D to E.)

316. AIIC and TAALS worked together in enforcing their overlapping rules. (Lateiner, Tr. 904-05; CX-1066-A; CX-1090; CX-1138-A to B.) TAALS and AIIC coordinated enforcement against Wilhelm Weber for the 1984 Olympic Games. (F. 355, 359; CXT-237-H-I, p.1; CX-239-B.) In 1984, TAALS suspended Wilhelm Weber for working without charging for travel outside of his listed professional domicile. (CXT-1731-B.)

V. EFFECTS

A. Anticompetitive Effects

1. Price Study

317. Ninety-six AIIC freelance members reside in the United States. (Stip. 60.) Dr. Lawrence Wu, complaint counsel's economic expert, examined the daily rates charged by AIIC members domiciled in New York and Washington for private sector ("freelance") conference interpretation. (CX-3003-04.) Sixty-two members were subpoenaed; 51 returned the subpoena; and 42 produced private market contracts in response to the subpoena (the "Wu Data Set"). (Wu, Tr. 1995; CX-3005.)

318. The freelance prices charged by AIIC members indicate that AIIC members agreed to charge the AIIC "suggested minimum" rate or more during 1988 through 1991. (Wu, Tr. 2020-22, 2051-52.)

- a. The "suggested minimum" rate was the most frequently charged price in each of the four years. (Wu, Tr. 2002-04.)
- b. "Cheating" on the suggested minimum rate was only in 10% of transactions over this four-year period. (Wu, Tr. 2007.)
- c. Ninety percent of prices charged by the AIIC members were at or above the "suggested minimum." (Wu, Tr. 1996.)

Prices by these AIIC members for private market freelance interpretation services were affected by the agreement to charge the "suggested minimum" or more as a day's rate for conference interpretation. (Wu, Tr. 2020/7-22.)

319. In the four years from 1988 through 1991, 90% of the transactions in the Wu Data Set were at or above the AIIC suggested minimum rate for that year. (Wu, Tr. 1996; CX-3004.) In the same four years, 70% of the transactions were at or within \$50 above the AIIC suggested minimum rate (Wu, Tr. 1996; CX-3004), and 41% of the transactions were exactly at the AIIC suggested minimum rate. (Wu, Tr. 1996; CX-3004.)

320. In each of the four years from 1988 through 1991, the most frequently charged price of the transactions was the AIIC suggested minimum rate for that year, to the dollar. (Wu, Tr. 1996, 2004; CX-3004.) In 1988 through 1991, the percentage of transactions at the AIIC suggested minimum rate were 28, 39, 52 and 39%, respectively. (Wu, Tr. 2003, 2007; CX-3004.)

321. Ten percent of the 1988-1991 contracts (39 out of 384) were at prices below the AIIC suggested minimum. (Wu, Tr. 2007; CX-3005.)

322. Of those 39 contracts entered into by 18 interpreters (Wu Tr. 2008), eight were for conferences in January, and may have been entered into prior to the publication of that year's AIIC or TAALS rate. (Wu, Tr. 2008-09, 2262-63; Silberman, Tr. 3335; RX-189, 157-0031, 157-0053-54, (contract for Jan. 3-6, 1991); RX-194, 161-0057; RX-191, 126-0011 (contract dated Dec. 29, 1988).)

323. Seven of the contracts charging below the minimum rate were entered into by AIIC member Raquel Felsenstein, including contracts for short interpretation assignments at Eastern High School in the District of Columbia. (Wu, Tr. 2009-10, 2221-22, 2258.) However, this member adhered to AIIC and TAALS rates and rules including proper team size when organizing teams of interpreters for conferences. (CX-2577-D; CX-2578-C; Wu, Tr. 2010-11, 2014-15.)

324. Interpreters differ in their reputation, training, experience, specialization and language combinations. (F. 199.) Conferences differ in subject matter, schedules, languages, and use of languages. (Wu, Tr. 2023-25; F. 200.) In a competitive market, prices would reflect that variety. However, the prices observed by Dr. Wu do not reflect variety, but are around the AIIC suggested minimum price. (Wu, Tr. 2025-26, 2028-29.)

325. These AIIC members were adhering to AIIC's rules as well as to AIIC's published rates. (Wu, Tr. 2017-20, 2054.)

326. The distribution of transaction prices is consistent with an agreement to charge the AIIC suggested minimum rate. The AIIC rate was charged 41% of the time; there was adherence to the suggested minimum rate 90% of the time; and there was no significant cheating on the minimum (less than 10%). (Wu, Tr. 1996.)

327. That AIIC members charged the agreed rates over four years indicates that AIIC had market power in U.S. conference interpretation in the years 1988 through 1991. (Wu, Tr. 2052-53, 2055.) The anticompetitive effects in the United States show that AIIC has market power, since market power is the ability to raise price or restrict output. (Wu, Tr. 1994-95, 2020-22, 2051-57.)

2. Industry Witnesses

a. Rates

328. Intermediaries learned from interpreters that TAALS and AIIC raised the minimum rates. Berlitz determined what to pay interpreters in Western European languages by contacting TAALS and AIIC interpreters. (Clark, Tr. 610-11.)

329. Intermediaries understand that TAALS and AIIC members charged the same rates. In the late 1980's, Susan Clark of Berlitz understood that the rate Berlitz was quoted was applicable to all AIIC and TAALS members. (Clark, Tr. 612-13.)

330. Even before 1987, Berlitz knew that the TAALS/AIIC rate changed every year. (Clark, Tr. 586, 611.) There were yearly increases in the TAALS/AIIC rates. (Clark, Tr. 611-12; CX-3002.)

331. Prior to 1991, interpreters' rates went up by the same amount, typically \$25, at the same time of year. (Jones, Tr. 690-93; Davis, Tr. 845; Clark, Tr. 612; Neubacher, Tr. 764.) This pattern exists through the present. (Jones, Tr. 690-93.)

332. From 1988 through 1991, intermediaries generally paid the AIIC/TAALS rate or more, rather than attempt to negotiate lower prices with conference interpreters, whether they belonged to those organizations or not. (Clark, Tr. 613; Neubacher, Tr. 763; Jones, Tr. 688-89/10-12, 694.)

333. Joseph Citrano of Metropolitan Interpreters and Translators recruited conference interpreters and found that AIIC and TAALS interpreters did not negotiate rates, and only occasionally negotiated travel time. (Citrano, Tr. 504-06.) Members of AIIC and TAALS pointed out to Mr. Citrano that his offer "didn't conform to the rules that were in the book." (Citrano, Tr. 502-03.) In the past five or six years, interpreters referred to the rate as the TAALS rate and the AIIC rate. (Citrano, Tr. 555.)

334. Since 1991, the change in interpreter rates has been more erratic than it was before 1991, but interpreter rates have continued to climb. (Davis, Tr. 845; Weber, Tr. 1185-87.)

b. Rules

335. Interpreters viewed the industry rules "like a bible. This was how the business was conducted." (Citrano, Tr. 507.) Interpreters declined offers of employment, stating as their reason for declining the offers that those offers did not conform to industry standards. (Citrano, Tr. 508-09.)

336. Per Diem: In Susan Clark's experience at Berlitz there has always been a standard rate that conference interpreters charge for per diem. (Clark, Tr. 614.) In Berlitz's experience, the standard rate that all conference interpreters charged for per diem was \$60, now it is \$70. (Clark, Tr. 614.)

337. Travel: Interpreters insist on being paid a half day's travel, on top of a full day's interpretation fee, when they work and travel on the same day. (Citrano, Tr. 552-53.)

338. Indivisible Day: Berlitz always pays conference interpreters on a daily basis. (Clark, Tr. 624.) Brahler pays interpreters the daily rate regardless of how short the day is, and has paid a full day's rate to interpreters it hires for two to three hours. (Davis, Tr. 859-60.) "[I]t was generally understood that any portion of any full day was considered a full day's rate; in other words, the services were not prorated." (Neubacher Tr., 765-66.) The demands by interpreters conformed with AIIC's rules on indivisible day. (F. 120-29.)

339. Same Team, Same Rate: CACI pays the same rate at a conference to the most experienced and least experienced interpreters. (Jones, Tr. 688.) Neubacher paid the AIIC rate to AIIC and TAALS interpreters and to other interpreters who worked at conferences with AIIC and TAALS interpreters. (Neubacher, Tr. 763, 765.) LSI also pays the same rate to all conference interpreters in European languages. (Weber, Tr. 1184.) The demands by interpreters conformed with AIIC's rules on same team, same rate. (F. 150-57.)

340. Recording: Interpreters usually demand a fee if they are asked to provide a recording of the conference interpretation. (Jones, Tr. 705-06.) The demands by interpreters conformed with AIIC's rules on payment for recordings. (F. 244-46.)

341. Team Size: Intermediaries sometimes deviate from industry staffing requirements. In those circumstances, they pay interpreters extra compensation. (Citrano, Tr. 539; Neubacher, Tr. 767-69; Lateiner, Tr. 916.) The demands by interpreters conform with AIIC's rules on team size. (F. 169-77.)

342. Although interpreters can work alone for short presentations, CACI has found that in these situations interpreters usually ask for more money and may request that the acceptance be kept private. (Jones, Tr. 701, 745-46.) Berlitz occasionally negotiated a deviation from the strict industry staffing requirements, and in those circumstances, paid the interpreters extra compensation. (Neubacher, Tr. 767-69.)

343. Hours: Interpreters may insist on receiving overtime payments if the workday exceeds a normal workday. Berlitz pays interpreters more money when they work in excess of six hours in a single day. (Clark, Tr. 636.) Linx paid interpreters about 20% more than the standard rate when interpreters worked more than six hours in a day. (Neubacher, Tr. 804-05.) Metropolitan finds that interpreters seek overtime for anything over a seven hour workday, and it pays them an extra \$100 to \$200 each. (Citrano, Tr. 543, 545.) Brahler has paid interpreters overtime on occasions that would be an hour or hour and a half over the schedule. (Davis, Tr. 861.)

3. Anticompetitive Effects

a. 1984 Olympics

344. In 1984, the Olympic Games were organized privately, and the Los Angeles Olympic Organizing Committee ("LAOOC") was

extremely cost-conscious. (CX-1243-A; CX-1278-A; Weber, Tr. 1200-01.) LAOOC decided to save the expense of professional interpreters at the main Press Center by using unpaid, volunteer college students and professors. (CX-1336-D.) Wilhelm Weber, then a member of TAALS and AIIC, proposed that LAOOC use unpaid interpretation students from the Monterey Institute, where he was Dean, to replace volunteer college students and teachers who were going to be used to provide interpretation solely at the Press Center. (Weber, Tr. 1200-01.) Ten of the graduate students would act as interpreters and 40 would be translators. Professional interpreters would be used elsewhere. (CX-1268-B.) Weber wanted assurance that no professional interpreters be used at the Press Center because he "wanted to avoid the impression that by offering student interpreters [he] would be taking work away from professional interpreters." (Weber, Tr. 1202.) The LAOOC retained Weber as the Chief Interpreter, responsible for all professional interpreters and 45 student interns who worked at the games. (Weber, Tr. 1199-1201.)

345. The LAOOC initially sought to pay conference interpreters at rates below the then "going rate." Mr. Weber reported that LAOOC wanted to engage in "collective bargaining about fees." (CX-1236.) However, Mr. Weber explained to LAOOC that conference interpreters would not work for less than the "going rate" and it agreed to fees at the going rate. (Weber, Tr. 1203-05.) AIIC's Secretary-General wrote to Weber confirming that "any bargaining with the client can only be upwards and not downwards" from the local rate. (CX-1238; F. 517.) Although the LAOOC did not want to pay interpreters for non-working days, Mr. Weber told the LAOOC that such payments were "part of our code of professional conduct and that it was also current practice in the profession," and the LAOOC agreed to pay for them. (Weber, Tr. 1222/9-14, 1223/7-13.)

346. AIIC's president wrote to LAOOC from Geneva, warning against hiring non-AIIC interpreters at less than the going rate. (CX-1278-B.)

347. At its November 1983 meeting, the U.S. Region asked its representative on the AIIC Council, Jean Neuprez, to contact Mr. Weber about "potentially serious" charges. (CX-1240.) On November 21, 1983, Mr. Neuprez wrote Mr. Weber, asking him to clarify the situation. (CX-1240.)

348. At its meeting in early January 1984, the AIIC Council adopted a resolution, published in the Bulletin, disapproving Mr. Weber's use of unpaid interns. (CX-236-G; CX-1253-A; CXT-1693;

Weber, Tr. 1230; CX-5-B.) The Council directed the U.S. Region to send to Weber a letter of warning. (CX-236-G; Weber, Tr. 1230.)

349. Following the Council meeting, the U.S. Region Representative to the AIIC Council, Jean Neuprez, sent Mr. Weber a second letter warning him not to violate any AIIC rule in connection with the Olympics. (CX-1253-B; CXT-1693.)

350. Mr. Weber understood the letter from Mr. Neuprez to the U.S. Region to be a warning, a sanction, "one of the . . . possible [AIIC] actions, the others being suspension or expulsion." (Weber, Tr. 1228.) Mr. Weber believed he had to respond to correct the rumors to protect his own reputation, and to prevent interpreters who agreed to work at the Olympics from being accused of violating AIIC's rules. (Weber, Tr. 1234/1-12.)

351. Some U.S. Region members wrote to Weber refusing his offers to work at the Olympics because of the contractual conditions, and out of fear that students would be integrated with professionals. (CX-1246-A; CX-1286-A; CX-1695-A; CX-1722.)

352. On March 1, 1984, Patricia Longley, the Secretary General of AIIC, wrote a letter to Mr. Weber about the contract for interpreters at the Olympics, stating "There seem to be . . . several deviations from the AIIC standard contract." (CX-1283-A.) She complained about the cancellation clause, provisions concerning rest days, non-working days, and per diem, and the clause on recording of interpretation because it carried no written guarantee that it is for internal use only, such as the preparation of minutes. (CX-1283-A.)

353. AIIC's president and secretary general also urged LAOOC to avoid "pitfalls," and to accept AIIC's contractual conditions. (CX-1278; CX-1280.) On February 29, 1984, AIIC's president warned the LAOOC that it should not bring interpreters from other regions or non-AIIC interpreters willing to work at lower rates. (CX-1278-B.) On March 1, 1984, the secretary general, spelled out in detail AIIC's rules regarding cancellation fees, fees for rest days and non-working days, and per diem. (CX-1280-B-C.) She informed the LAOOC that officials of AIIC had asked Mr. Weber to "reopen discussions with you on the points raised in our letter and have asked M. Jean Neuprez to coordinate reactions on the part of the professional conference interpreters in North America." (CX-1280-C; Weber, Tr. 1243.)

354. Albert Daly, the president of AIIC, also wrote a letter to Mr. Weber, dated June 5, 1984, saying: "We shall hold you personally responsible as recruiting interpreter if for reasons of the non-

appearance of the USSR at the games, any of the contracts offered by LAOOC are not honored and interpreters fees paid in full, provided they do not find work elsewhere." (Weber, Tr. 1255-56; CX-1316.) Weber understood this letter to mean that Daley would ask him to pay for any canceled interpreter contracts - which totaled approximately \$700,000 - "out of his own pocket." (Weber, Tr. 1256-57.)

355. TAALS was also concerned about the Olympic games, and AIIC and TAALS shared information on enforcement and their efforts to change the terms of the contracts. (CX-1248; CX-1266-B; CX-1310; CX-1696; CX-1708; CX-1714-A; CX-1733; CX-1735.) Lisa Valiyova, an AIIC and TAALS member and chairman of TAALS' "fact-finding committee," and liaison to AIIC, wrote to Mr. Weber (CX-1248; CX-1728-B), questioning how he would bring the contracts "into line with the TAALS/AIIC Codes" regarding same team, same rate; hours; and team size. Valiyova kept AIIC informed about the progress of her "Fact-Finding" investigation. (CX-1310.)

356. The LAOOC acceded to AIIC's rules in its hiring of interpreters for the Olympics, and conformed their contracts to AIIC's rules. (Weber, Tr. 1257-58, 1262.) These contracts comported with AIIC's rules on when and for what use interpreters could be recorded. (Weber, Tr. 1250/20-21, 1252/4-8, 1262/20.) AIIC was also successful at forcing the LAOOC to include the full-payment cancellation clause required by AIIC's rules, rather than the partial payment clause initially negotiated by Mr. Weber with the LAOOC. (Weber, Tr. 1235/25 to 36/7, 1262/22.)

357. AIIC took credit for the changes. In a letter to Mr. Weber dated June 16, 1984, AIIC's U.S. Region Representative stated: "Thanks, especially to AIIC's pressure (you yourself acknowledged it and were pleased), the proposed conditions were improved, and recently an acceptable cancellation clause materialized." (CX-1320-B, CXT-1320 at p.2; Weber, Tr. 1257/16 to 58/10.) That "acceptable cancellation clause" was the standard, full-payment AIIC clause. (Weber, Tr. 1235/25 to 36/7.)

358. As a result of the negotiations with Mr. Weber and AIIC, LAOOC had higher costs of simultaneous interpretation than anticipated. LAOOC reported to the president of AIIC in Geneva that: "These costs resulted in some Federations not holding Congresses here, and others substantially reducing their original interpretation requirements." (CX-1293.)

359. A November 26, 1984 letter from AIIC's president to Mr. Weber issued several warnings. (CX-1741.) Although, "the contracts

finally issued were almost in conformity with normal standards, . . . because of inadequacies in the original offers, several colleagues refused work which should normally have been theirs, and this is unacceptable under Article 5 a) of the Code." (CX-1741-A.) AIIC's president also observed that several AIIC candidates worked at the Olympics while paying their own travel expenses, "does not promise them an easy acceptance into the Association," and he noted that a very close watch would be kept on Mr. Weber with regard to his handling of the 1988 Seoul games. (CX-1741-A-B.)

360. In January 1985, the AIIC Council passed a resolution, which it published in the Bulletin, commending "those members who rejected contracts offered for the Los Angeles Olympic Games when such contracts included provisions that were not in keeping with AIIC practice." (CX-239-B.) The resolution further "Congratulates the members of the United States Region for their efforts which resulted in obtaining contracts more in conformity with normal working conditions." (CX-239-B.)

b. Other anticompetitive effects

361. In a history of AIIC, Mr. Thiery, past president and founding member of AIIC, wrote,

In 1957 . . . AIIC decided for the first time that the daily remuneration should go up. . . . [A]nd the intergovernmental organizations refused even to acknowledge letters. When AIIC's united front forced the decision upon them (members simply refusing contracts at earlier rates), we suddenly came to be considered as very reasonable people who entirely deserved a long due increase in pay. In fact, that was the first test of AIIC's strength. And when, in 1963-1964, AIIC decided to increase the daily rate from \$30 to \$40, large as the rise was it went through much more smoothly. (CX-203-C.)

Those "intergovernmental organizations" included the United Nations and its New York headquarters. (Weber, Tr. 1137-38.)

362. In 1974, Mr. Thiery wrote that "AIIC minimum rates are recognized the world over." (CX-204-B.) AIIC interpreters at the United Nations in New York walked out in protest "against what were regarded as unreasonable working hours, and it is understood that satisfactory solutions have now been agreed by the authorities." (CX-204-F.)

363. AIIC and its members understand that the price fixing rules applied in the United States. (Weber, Tr. 1140/18-22 (mandatory

minimums), 1223/11-13 (non-working days, travel), 1225/9-13 ("same team same rate"), 1247/18-22 (paid rest days), 1252/9-16 (per diem), 1266 (travel); (Bishopp) CX-301-Z-33/1-13 (indivisible daily rate), Z-35/12-16 ("same team same rate"), Z-58/14 to Z-59/5 (minimums), Z-67/19-24 (per diem), Z-87 to Z-89 (non-working days, rest days), Z-91/1 to Z-92/7 (travel days); Bowen, Tr. 1011-12 (phantom travel charges); Hamann-Orci, Tr. 38/1-5 (mandatory minimums), 39/25 to 40/16 (same team same rate); Lateiner, Tr. 955/10-14 (minimum rates); Lucarrelli, Tr. 1762-64 (travel fees); (Moggio-Ortiz) CX-303-Z-86/11-14 (mandatory minimum), Z-113/5-13 (non-working days); (Motton) CX-300-Z-80/5-7 (indivisible daily rate); Saxon-Forti, Tr. 2696/10-18 (indivisible daily rate); Swetye, Tr. 2819/14-16 (same team same rate).

364. In 1975, "the U.S. Region has finally managed to bring PAHO [Pan American Health Organization] into line." As Marc Moyens reported to the AIIC Council and to U.S. Region members, "PAHO's Chief of Personnel sent a letter to our Council member [Moyens] assuring him that the PAHO's fee would now be '154.15 gross' in the USA. It is the first time such an assurance has been given by PAHO." (CX-405-A-B.)

365. In 1976, AIIC members refused to work for the Organization of American States in Santiago de Chile at \$83, insisting on the AIIC world-wide minimum rate of \$105. U.S. Council member Marc Moyens negotiated fees with OAS, which "resulted in a deal under which AIIC members agreed for the last time to work for \$83 provided that: 1) OAS rate would be raised to \$105 right after the Conference; 2) this fee would apply all over the American continent; 3) this fee would be \$105 net in the U.S. region, in conformity with U.N. practice. The AIIC minimum was thus established and it was agreed that OAS would hold periodic meetings with M. Moyens to review the rates and settle any pending questions such as contracts and working conditions." (CX-407-C.)

B. Market Share

1. Relevant Markets

366. The relevant product markets in this case include conference interpretation of language pairs (English to Spanish, Spanish to English, French to English, etc.). (Wu, Tr. 2057, 2063; Silberman, Tr.

2985.) The relevant geographic market is the United States. (Wu, Tr. 2193-94.)

367. Conference interpretation is a narrower product market than all interpretation. Persons unable to provide simultaneous interpretation generally would not be hired as conference interpreters in the private sector. (Weber, Tr. 1172/4-5; Jones, Tr. 681; Clark, Tr. 591.)

2. Market Share Calculation

a. Numerator

368. AIIC's U.S. members are distributed among the following languages: 129 French, 95 Spanish, 22 German, 16 Italian, 23 Portuguese. (RX-503.) These figures include all interpreters rated A, B or C in any of those languages. An "A" rating represents native fluency, a "B" represents perfect command, and a "C" language is one that the interpreter can understand, but does not typically work into. (CX-600-O.) Including all such interpreters is necessary in order to be consistent with the data from other sources, since some other sources do not distinguish interpreters by A, B or C ratings. (RX-220 (Berlitz); RX-258; RX-342 (CACI); RX-335 (Lateiner); RX-334 (LSI); RX-288 (Metropolitan).)

369. In addition to AIIC members, the numerator of a market share calculation should include TAALS members. TAALS members adhered to the same rates and rules as did AIIC members. (F. 407-23.) TAALS members in the United States worked primarily between English and the French, Spanish, German, Italian, and Portuguese. (CX-995; CX-997; CX-998.)

370. TAALS and AIIC have overlapping memberships. (Luccarelli, Tr. 1568; Lateiner, Tr. 917, 922; CX-301-Z-134, Z-148 (Bishopp).) AIIC and TAALS have the same membership requirements. (CX-1-B; CX-986-A, C.)

371. In 1995, in the United States, TAALS had 97 members and AIIC had 144 members. (CX-3006; CX-998; CX-600; CX-601.) The overlap of 52 members represents 54% of TAALS' members in 1995 that were also members of AIIC. (Wu, Tr. 1991-92.)

372. In 1991, in the United States, TAALS had 108 members and AIIC had 126 members. (CX-3006; CX-995; CX-608; CX-609.) The overlap of 54 members represents 50% of TAALS' members in 1991 that were also members of AIIC. (Wu, Tr. 1991-92.)

373. Thus, the number and percentage of TAALS members that were also AIIC members stayed roughly the same from 1991 to 1995. Over many years, many U.S. Region members were also TAALS Council Members. (CX-913-F; CX-914-C; CX-919-B; CX-302-J (Luccarelli).)

374. Adding interpreters who are members of TAALS but not AIIC (RX-503), yields numerators of interpreters who were members of AIIC or TAALS at January 1, 1995: 159 French, 129 Spanish, 30 German, 20 Italian, 31 Portuguese.

375. In addition to AIIC and TAALS members, the numerator of a market share calculation should include candidates for admission to both TAALS and AIIC. Such candidates adhere to the rules of the associations. (F. 44-47, 304.) The number of such candidates is not in the record.

b. Denominator

376. Respondents' estimates of the total number of conference interpreters, by language, are set forth in RX-502. Respondents' expert offered three estimates. (RX-502; Silberman, Tr. 3008-11.) Respondents' expert made these estimates by counting the names that appeared on lists of interpreters obtained from the State Department, AIIC, TAALS, ASI, and the intermediaries who testified at trial. (RX-500; Silberman, Tr. 2992-93.) Some of those private intermediaries' lists are not limited to conference interpreters. (Clark, Tr. 667 (Berlitz); Jones, Tr. 683-684 (CACI).)

377. Respondents' expert did not make any adjustment to his estimates to account for the fact that the lists he used included individuals other than conference interpreters. (RX-502 n.*; Silberman, Tr. 3010-11, 3223-24, 3237-38.)

378. The difference between respondents' largest estimate (no. 1) and their other estimates is that estimate no. 1 includes all State Department seminar interpreters, whether or not those interpreters appear on the list of any intermediary. (RX-500; Silberman, Tr. 3237/18-22.) State Department seminar interpreters should not be included as current participants in the market for conference interpretation.³ The difference between respondents' intermediate estimate (no. 2) and smallest estimate (no. 3) is that estimate no. 2

³ Intermediaries do not regard seminar interpreters as substitutes for conference interpreters and have not used seminar interpreters rather than AIIC members or other conference interpreters. (Neubacher, Tr. 770; Weber, Tr. 1174.) The State Department, likewise, does not use seminar interpreters for conferences except "in a real emergency when no conference interpreter is available." (Obst, Tr. 285.)

includes 238 interpreters whose names appear in Berlitz's files but not on the lists of any other intermediary. (RX-500; Silberman, Tr. 3244/12-24.) The interpreters whose names appear in Berlitz's files but not in any other intermediary's files should not be included in the denominator. The difference between respondents' estimate no. 2 and estimate no. 3 is that estimate no. 2 includes 238 interpreters whose names appear in Berlitz's files but not on the lists of any other intermediaries. These intermediaries should not be counted in the denominator.⁴

379. Using respondents' smallest estimate, no. 3, as the denominator and an adjusted numerator consisting of all TAALS and AIIC members (less overlaps) yields "market shares" of the two associations combined based on headcounts, as follows: 44% of the estimated number of French conference interpreters (159 of 364); 34% of the estimated number of Spanish conference interpreters (129 of 374); 28% of the estimated number of German conference interpreters (30 of 107); 29% of the estimated number of Italian conference interpreters (20 of 68); and 24% of the estimated number of Portuguese conference interpreters are AIIC or TAALS members (31 of 131).

380. Knowledgeable intermediaries placed the number of conference interpreters between 300 and 500, making AIIC's (and TAALS') membership between 35 and 60% of all U.S. conference interpreters. (Wu, Tr. 2198-99; Clark, Tr. 597-98 ("a few hundred"); Weber, Tr. 1197 (500); Davis, Tr. 857 (500 plus various categories "off the top of my head"); Wu, Tr. 2214-15 (Berlitz Production Manager Lisa Broadwell estimated 300); Hamann-Orci, Tr. 56 (300).)

381. Alternatives to AIIC and TAALS interpreters are limited. (Citrano, Tr. 526-27.) In 1987 AIIC reported that "in North America, in particular in New York (United Nations). . . , local freelance interpreters are often difficult to obtain." (CX-248-Z-3.) Berlitz's business would suffer a "very negative" impact if it did not use AIIC or TAALS interpreters. (Clark, Tr. 638.) Brahler would find it difficult to staff a conference if it could not use AIIC or TAALS members. (Davis, Tr. 866.) In 1979, AIIC's president stated that "our association . . . includes, perhaps, nine tenths of the capable members of this profession world wide. . . ." (CX-221-K.)

⁴ The Berlitz list used was not limited to conference interpreters (Clark, Tr. 667/4-6), is not currently used by the Berlitz employee who recruits interpreters (Silberman, Tr. 3239/2-6), and includes interpreters who do not perform simultaneous interpretation. (Silberman, Tr. 3247/9-18.)

382. The State Department is the second largest public employer of interpreters in the United States, after the United Nations (Obst, Tr. 330-31), yet it is frequently difficult for the State Department to find conference interpreters in the romance languages (French, Spanish, Italian, and Portuguese) in the United States. (Van Reigersberg, Tr. 407-08.)

383. AIIC and TAALS members constitute most of the qualified conference interpreters in the United States. (CX-2576-A, CX 2573 (Weide); CX-2600 (Swetye); CX-2459-E to F (Weber); Hamann-Orci, Tr. 44; CXT-221-A to Z-20, p.3.)

3. Ease of Entry

a. Historic entry

384. AIIC has maintained rates for the United States since at least 1973 (Weber, Tr. 1143; CX-201-F), and AIIC's agreements continue to achieve adherence to the "suggested minimum" rate. (F. 317-27.) New entry into the conference interpretation profession has not been sufficient to defeat the agreements.

385. Entry into the conference interpretation profession has been slow in the United States over the last several years. Wilhelm Weber, who for 14 years was Dean of the Interpretation Department at the Monterey Institute of International Studies (Weber, Tr. 1122), wrote in 1990 that several factors in the United States "have led to a very low turnover in the profession, thereby inverting the age pyramid in favor of older interpreters and seriously endangering the future of the profession in this country." (CX-2459-D.)

386. Interpretation schools in the United States produce very few graduates. During Mr. Weber's tenure at Monterey, that school produced "normally not more than four or five [conference interpretation graduates] a year." (Weber, Tr. 1195-96.) Georgetown's program in interpretation graduated 10 students in the past four years, 1992 through 1995. (Bowen, Tr. 997-98.) Georgetown and Monterey "are the two main places" that teach conference interpretation in the United States. (Luccarelli, Tr. 1652/12-13.)

b. Entry barriers

387. Private sector intermediaries will not hire as conference interpreters persons who have not had formal training or substantial

experience in conference interpretation. Berlitz hires conference interpreters who are members of TAALS or AIIC, or have similar experience. (Clark, Tr. 592.) CACI requires formal education in simultaneous interpretation and at least two years of experience. (Jones, Tr. 684.) Language Services International and Metropolitan hire as conference interpreters only people trained in simultaneous conference interpretation. (Weber, Tr. 1161/11-19; 1163/9-23; 1178/13-24; Citrano, Tr. 531-32.)

388. In addition to an undergraduate degree, conference interpreters have training in conference interpretation. AIIC members who testified had extensive training: Margareta Bowen, Vienna and Georgetown (Bowen, Tr. 989-90); Janine Hamann-Orci, two certificates at Georgetown (Hamann-Orci, Tr. 11); Jeannine Lateiner, five years at Geneva (Lateiner, Tr. 897-98); Luigi Luccarelli, two years at Monterey (Luccarelli, Tr. 1552-54); Evelyn Moggio-Ortiz, three diplomas from Geneva (CX-303-J); Peter Motton, London (CX-300-I); Anna Saxon-Forti (Saxon-Forti, Tr. 2654); Idette Swetye (Swetye, Tr. 3842); Ursula Weide, four semesters at Heidelberg and four semesters at Georgetown (CX-306-F); Wilhelm Weber studied interpretation and translation for four years at the University of Geneva. (Weber, Tr. 1118.)

389. A conference interpreter without specialized training cannot do simultaneous interpretation. (Davis, Tr. 853.)

390. The ideal candidate for training in conference interpretation should have lived extensively in the countries of each of his languages, and has a university degree in something other than languages or interpretation "such as economics, medicine, the law and so on." (Weber, Tr. 1166/7-9.)

VI. JURISDICTION

A. Personam Jurisdiction Over AIIC

391. U.S. Region members hear reports of AIIC's committees, groups, and sectors at U.S. Region meetings, and discuss AIIC-related issues, including upcoming AIIC meetings (CX-436-E; CX-417-B); the AIIC "rates" (CX-432-E) and working conditions (CX-435-A); the AIIC logo (CX-434-B); the future of AIIC (CX-438-A; CX-439-B); the procedure for proposing amendments to AIIC's Basic Texts (CX-1406-B); sponsorship of Russian-speaking interpreters for AIIC membership (CX-436-E; CX-439-B); and the possibility of

adding intermediate level classifications of interpreters' language abilities (CX-436-F; CX-415-B).

392. AIIC asked the U.S. Region to send an observer to the Monterey Institute in California on behalf of the AIIC Schools Committee, and the U.S. Region did so. (CX-432-D; Stip. 50.)

393. The U.S. Region used the funds in its U.S. bank account (CX-300-K; CX-300-M (Motton); CX-432-B) to reimburse, fully or partly, Region members who travel to perform tasks for AIIC and for other AIIC business (CX-438-A), including Council (CX-432-C), NAS (CX-432-D to E), Permanents Committee (CX-432-D to E), and AIIC-wide meetings (Stip. 50; CX-405-B).

394. The Assembly elects a member who resides in the United States to be the U.S. Region representative to the AIIC Council. (Luccarelli, Tr. 1628; CX-304-Z-53 (Motton).) This person typically opens and presides over meetings of the U.S. Region. (Stip. 46.)

395. The Treasurer of the U.S. Region resides in the United States. (Stip. 45.) This person collects AIIC dues from U.S. members and transfers the funds to AIIC in Geneva, reminds members of their obligation to pay dues (Stip. 45), and has warned that failure to do so would result in deletion of their name from the annual directory. (CX-407-B; CX-300-G, K, L (Motton); CX-401-A.)

396. The President of AIIC and other foreign-based AIIC officials travel to the United States on AIIC business. (CX-305-I, L, Z-282 to Z-283 (Sy); CX-245-J; CX-500-A to B.)

397. AIIC members with professional addresses in the United States participate directly or by proxy, in meetings of AIIC's U.S. Region, which are held once or twice a year. (CX-410; CX-441; CX-443; CX-450.)

398. Members of the U.S. Region actively participate in AIIC decisions by attending, or by giving their proxies to U.S. Region members who will attend an AIIC General Assembly. (CX-423-B, CX-436-E, CX-407-E; CX-300-Z-98 to Z-104 (Motton).) The U.S. Region has paid for expenses of U.S. Region members to participate in AIIC meetings. (Stip. 50.)

399. AIIC members domiciled in the United States serve on AIIC committees. (Stip. 27; CX-300-J (Motton).)

400. Members of the U.S. Region spent three years preparing for the AIIC General Assembly held in New York in 1979. (CX-407-F; CX-409-C to D; CX-410; CX-411-B; Stip. 28.)

401. A resident of New York, N.Y., served as AIIC vice-president, and a resident of Washington, D.C., served on the AIIC

staff interpreters and budget committees. (CX-245-J; CX-300-O to Q; CX-616-Y; CX-606-Z-248.)

402. AIIC collects dues from U.S. members annually and wires 10% of the total annual dues of the U.S. Region's members back directly to the U.S. Region's bank account as a refund. (Stip. 49; CX-300-K to N, Z-157 (Motton); CX-304-Z-53 (Motton).)

403. U.S. Region members used to pay AIIC dues to the U.S. Region, which retained a portion of those dues to cover U.S. expenses and forwarded a portion to AIIC headquarters. (CX-407-A to B) More recently, U.S. Region members mail a check to the U.S. Region Treasurer who converts the dues into Swiss Francs and wires them to AIIC headquarters in Geneva. (CX-300-K to L; CX-434-C.)

404. AIIC sends funds to U.S. members to reimburse them for attending meetings on its behalf. (CX-432-C-D.)

405. The U.S. Region received special "outlying regions contribution" funds from AIIC. The U.S. Region has to account to the AIIC central organization for those funds. (CX-300-M to N, Z-24; CX-1510-A.)

406. AIIC holds meetings of its international membership within the United States. The General Assembly met in New York in 1979. (Stip. 28-30; CX-245-J; CX-255-F.)

407. AIIC held educational events in the United States. (CX-245-J; Stip. 51, 73; CX-300-Z-51 to Z-52; CX-434-D; CX-436-D.)

408. AIIC regularly sent Bulletins to the United States that report on the general business of AIIC, discuss AIIC's rules and announce the dates of future meetings. (Stip. 17-19; CX-302-Z-123 to Z-124 (Luccarelli); CX-303-Z-57 (Moggio-Ortiz); CX-306-Z-30 to Z-31 (Weide); CX-214-E to F; CX-259; CX-268; CX 270.)

409. AIIC regularly sent surveys and questionnaires to members in the United States. (Stip. 20-23; CX-239-B; CX-1643-E; CX-432-A; CX-434-A, C; CX-436-C.)

410. AIIC mails membership directories listing members' names, addresses and language combinations to U.S. consumers to help its members market their services. (Stip. 59, 61-62; CX-268-Z-7; CX-301-Y to Z-1 (Bishopp).)

411. AIIC provided the U.S. Region with an information packet on conference interpretation and interpreter terms and conditions, to which the region could add local information such as fees and per diem. (CX-432-F; CX-434-B; CX-303-Z-69 to Z-70 (Moggio-Ortiz).)

412. AIIC prepared form contracts for members, including U.S. members, to use when negotiating agreements with conference sponsors. (Stip. 66; CX-2059-A to E; CX-2060-A to H; CX-2-Z-41, 1991 Standards of Professional Practice, Article 2(a).)

413. AIIC negotiates "Agreements" with large intergovernmental and other international organizations that hold meetings and employ interpreters in the United States, governing the pay and working conditions of such interpreters. (Stip. 74-75; Moser-Mercer, Tr. 3540/1 to 41/5; Luccarelli, Tr. 1591/9-21, 1643/5 to 44/14; CX-305-Z-345/14 to Z-347/24 (Sy); CX-2598; CX-2597.)

414. AIIC offered insurance to U.S.-based members and published information in its Bulletin about insurance programs offered by unaffiliated third-parties. (Stip. 70; CX-301-Z-152.8 (Bishopp).)

415. AIIC sent membership cards in credit card format to U.S. members, entitling them to special discounts AIIC has negotiated for its members at hotels in the United States. (CX-268-Z-7; CX-432-I to J; CX-439-B.)

416. AIIC provided its U.S. interpreters with a computerized list of convention centers and other potential customers, seminars on public relations techniques and model Yellow Pages advertisements. (CX-268-Z-7 to Z-8.)

417. AIIC maintained a "solidarity fund" that lends money to members, including U.S. members. (CX-301-Z-152.8 to Z-152.9 (Bishopp).)

418. AIIC purposefully availed itself of the benefits of U.S. laws. AIIC's 1991 Standards of Professional Practice, Article 2(a), states, "As far as possible, members shall use a standard form of contract as approved by the Association." (CX-2-Z-41.) The AIIC standard form contract referred to by Article 2(a) calls for the application of U.S. law to interpretation of contracts negotiated by U.S. members. (CX-2059-B; CX-2060-D.) Further, AIIC members lobbied the United States Congress to protest the Postal Union's failure to hire U.S.-based interpreters. (CX-1404.)

*B. Minimum Contacts With The United States Arising
From Conduct Challenged In The Complaint*

419. AIIC published rates of remuneration for the United States. (F. 93-96.)

420. AIIC prepared schedules of per diem charges (to cover expenses while on work-related travel), with entries unique to the United States. (F. 113, 115.)

421. AIIC tailored its work rules for application in the United States. (F. 96 (rates); F. 113 (per diem); F. 125 (indivisible day waiver); F. 171 (team size).)

422. AIIC produced documents called "Local Conditions in the U.S.A.," which included interpretation team size, contracting methods, and paid briefing days for scientific and technical conferences. (Stip. 22; CX-50; CX-56.)

423. At the request of its U.S. members, AIIC waived the U.S. applicability of provisions concerning interpreters working alone and authorized interpreters within the United States to perform simultaneous interpretation alone for up to 40 minutes. (CX-1384-A; CX-268-F; CX-301-Z-152.43 (Bishopp); CX-300-Z-33 to Z-36 (Motton); CX-432-G to H.)

424. The U.S. Region discussed and sent to Geneva a document called "AIIC Working Conditions for Interpreters in USA (Provisional Paper)." (CX-439-A, D; CX-1408-A.) This document was intended ensure the uniform application of the AIIC Code and its Annexes in the United States. (CX-439-A, D to F; CX-1408-A, C to E.)

425. In 1991, the AIIC Council gave 3500 Swiss Francs to the U.S. Region for FAX machines to be used in New York, Washington, D.C. and the West Coast. (CX-439-A.)

426. AIIC surveys its members, including those in the U.S., annually on market conditions. (Stip. 21, 23; CX-268-J; CX-1643-E; CX-434-A, C; CX-432-A.) The U.S. Region provided AIIC with information on the U.S. market for interpretation. (CX-210-F-G; CX-211-B-C; CX-218-G-H; CX-270-E; CX-435-A; CX-1346.)

427. AIIC reports on market conditions in the U.S. (CX-302-Z-164, Z-384 (Luccarelli); CX-245-H; CX-259-S; CX-305-Z-216 to Z-217 (Sy).)

428. AIIC investigated complaints against U.S. Region members for violations of its rules. (Wilhelm Weber, F. 181, 229, 242, 249, 344-60); Marc Moyens, F. 182, 230; Jeannine Lateiner, F. 182, 285, 316.)

429. AIIC cautioned U.S. Region members against moonlighting and double-dipping (CX-432-G to H) and solicited complaints from the U.S. Region against U.S. members who have moonlighted in

violation of AIIC rules and asked for the moonlighters' names and copies of contracts. (CX-432-M.)

430. The U.S. Region conspired with AIIC. (F. 75-89.)

431. The U.S. Region representative to the AIIC Council advised members on how to comply with the rules and issued warnings. (CX-1471; CX-1470-A.)

432. U.S. members of AIIC serve on the bodies responsible for creating and enforcing AIIC's rules. (CX-300-O to Q (Motton); CX-2490-A to G; CX-1-G-H and CX-2-G to H (1991 & 1994 AIIC Statutes Article 24 (6).)

433. AIIC advised one U.S. conference organizer who had inquired about whether interpreters' conduct had violated the AIIC Code of Ethics to contact the U.S. Region representative to the AIIC Council if she wanted to pursue the matter. (CX-1393; CX-1396.)

434. An AIIC Council member criticized some contracts in the United States that violated AIIC rules. (CX-405-B.)

435. AIIC has cooperated with TAALS with respect to conduct in the United States challenged in the complaint. (F. 307-16, 355.)

436. The AIIC General Assembly met in New York in 1979 and voted to adopt provisions challenged in the complaint, including rules prescribing equal remuneration for all members of an interpretation team and limiting the length of the working day. (CX-6-A to M, CXT-6-E to M; CX-219-P to R; CXT-221-A-Z-20, pp. 18-19; CX-221-D.)

437. AIIC's Non-Agreement Sector met in Key Biscayne, Florida in 1987, and decided to ask AIIC to be more restrictive in granting waivers of the AIIC rules challenged in the complaint. (CX-245-I.) At that meeting, the Non-Agreement Sector also agreed on manning strengths, fees for radio and television interpretation, and on an extra fee of 20% or 100% when interpretation is recorded. (CX-245-F to H.) In addition, members were informed that the daily rate in the United States was \$320, with per diem based on the price of a single room in a good hotel, plus 50%. (CX-245-H.)

438. AIIC's Non-Agreement Sector met in Washington, D.C. in 1992. Members discussed AIIC provisions on team strength, portable equipment, and recorded interpretation. (CX-270-F to G.)

439. AIIC sends mail to U.S. members from Geneva about AIIC meetings, waivers, changes to the provisions, and disciplinary actions against members violating AIIC work rules. (Stip. 17-19; CX-268-F, K; CX-266-E; CX-300-Z-23 to Z-24 (Motton).) AIIC mailed to the

United States copies of its rate schedules including rates unique to the United States. (CX-306-Z-31, Z-189 (Weide).)

440. AIIC mailed draft proposals of its Codes of Ethics and Standards of Practice to the United States for review and comment before General Assembly meetings. (CX-1406-B; CX-266-Z-5; CX-260-A to B.)

C. Personal Jurisdiction Over U.S. Region

441. The U.S. Region is subject to personal jurisdiction in the United States. (Order re Complaint Counsel's Motion for Partial Summary Decision, Nov. 29, 1995, at p.3.)

D. The U.S. Region As A Separate Entity Under Section 4

442. AIIC has 22 regions including the U.S. Region. (Stip. 31-32, 35; CX-1-G, I-K.)

443. The membership of the U.S. Region consists of AIIC members having their professional address in the United States. (Stip. 33, 36.)

444. AIIC's "General Document on Regions" and Articles 34 to 36 of the AIIC Statutes serve as the charter for the creation, recognition, representation, and governance of the U.S. Region and all regions. (Stip. 31; CX-1-K, Z-8-12.)

445. The U.S. Region has its own Rules of Procedure. (Stip. 38.) The rules govern its members' participation in the U.S. Region activities, identify the U.S. Region's officers, set down meeting schedules, and provide for budgetary disciplines. (Stip. 38, 43, 44, 46; CX-2124-A; CX-417-F; CX-304-Z-65 (Motton); CX-2449.)

446. The U.S. Region holds meetings, once or twice a year, at which nearly half of U.S. AIIC members are present or represented. At these meetings, the U.S. Region holds elections, reviews the U.S. Region's financial status, and conducts U.S. Region business. (Stip. 39, 40; CX-410-441; CX-443-450.) The U.S. Region mails to all members minutes of its meetings that are approved at the following meeting. (Stip. 47; CX-410 to CX-441; CX-443 to CX-450.)

447. The U.S. Region elects a treasurer and a regional secretary, and nominates a candidate for regional representative to serve on the AIIC Council. (Stip. 43, CX-1-K, Z-8 to Z-12; CX-429; CX-302-Z-348 to Z-349 (Luccarelli); Luccarelli, Tr. 1628.) The U.S. Region's treasurer, regional secretary, and regional representative serving on

the AIIC Council operate together under the term "the Bureau." (Stip. 44; CX-2124-A; CX-429; CX-435-B; CX-304-Z-53 to Z-53 (Motton).)

448. When voting at AIIC Council meetings, Luigi Luccarelli, the current U.S. Region representative, votes according to his understanding of the views of the members of the U.S. Region. (CX-302-Z-350/2-20 (Luccarelli).)]

449. The U.S. Region maintains its own funds in bank accounts in the United States (CX-432-B; CX-443-A; CX-300-M/2-M/6), makes decisions regarding disbursements (CX-450-C; CX-436-D; Stip. 50), and receives and collects AIIC membership dues. (Stip. 49; CX-407-A to B; CX-300-K/10-M/6 (Motton).)

450. With AIIC's regional structure and according to its purposes, each region represents the profession of conference interpreters in its region and safeguards their interests. (CX-1-A; CX-2-A; CX-274-D.)

451. The U.S. Region represents conference interpreters in the United States and safeguards the interests of U.S. Region members. The U.S. Region: (a) recommended to the AIIC Council daily rates or agreed to daily rates applicable in the United States (Lateiner, Tr. 916-920; Weber, Tr. 1147; CX-201-F; CX-222-P; F. 90-103); (b) adopted recommendations relating to proposed revisions to AIIC's code and professional standards that reflected the interests of the U.S. Region (CX-435-B); (c) negotiated with the Organization of American States regarding daily rates for interpreters (CX-407-C); (d) adopted per diem rate formulas applicable in the U.S. Region (CX-301-Z-65 to Z-66 (Bishopp); CX-432-F; CX-434-C); (e) issued a warning letter to a U.S. member, Wilhelm Weber, about possible violation of AIIC's rules in connection with interpretation at the 1984 Olympics in the United States (Weber, Tr. 1226-28; CX-1253-A to C; CXT-1253-A to C); (f) cautioned U.S. members about accepting jobs at the 1984 Olympics in the United States that do not conform to AIIC's rules (CX-1253-B; CXT-1253-B); and (g) encouraged U.S. Region members to work in the United States in accord with the AIIC working conditions applicable in the United States. (CX-439-B; CX-301-Z-152.47 to Z-152.48 (Bishopp).)

452. The U.S. Region adopted team size tables and length of day rules for the United States that are different than AIIC's universal team size tables and length of day rules (CX-2254; CX-407-F; CX-409-A; CX-439-B, D-F; CX-50; CX-56; CX-301-Z-152.47 to Z-152.48 (Bishopp).) It has sought a waiver of the AIIC rules to allow

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Initial Decision

interpreters to work alone for 40 minutes in the United States. (CX-301-Z-152.14 to Z-152.15 (Bishopp); CX-432-G; CX-435-A.)

E. Members' Profit

453. Respondents' members are profit seekers. AIIC's members engage in the profession of conference interpretation. (Stip. 8; CX-1-B, Art. 6.)

454. One of AIIC's goals is to represent the profession of conference interpreter and to safeguard the interests of its members. (CX-2490-D, ¶ 10; CX-1458-A; CX-1-A; CX-2-A; CX-245-D.)

455. AIIC defends the interests of its members "in case of controversy surrounding the application of agreed standards." (CX-1458-A.)

456. AIIC's president stated that the association exists to serve the interests of its members. (CX-305-Z-184 to Z-185 (Sy).)

457. AIIC adopted rules requiring its members to charge AIIC-published rates. (F. 90-157 (mandatory rates, per diem, non-working days, "same team same rate"); F. 237-54 (travel arrangements, cancellation, recording, charity).)

458. AIIC rules are designed to improve the terms and conditions under which members work. (F. 158-211 (team size and hours); F. 212-36 (professional address); F. 255-303 (package deals, exclusivity, trade names, portable equipment, non-interpretation services, moonlighting, double-dipping, advertising).)

459. AIIC holds meetings of its entire membership, as well as meetings of committees and regions, at which issues affecting interpreters' livelihoods are discussed. (CX-271-B; CX-259-Q.)

460. AIIC aims is to improve members' remuneration. (CX-208-I; CX-273-G; CX-231-O.) AIIC's president stated in 1957: "AIIC decided for the first time that the daily remuneration should go up." (CX-203-C.) The AIIC Council reminded members in 1973 that "it is the Council's duty, as part of its responsibility for protecting members' interests, to maintain interpreters' remuneration by effecting readjustments and alignments to rates." (CX-201-E; CX-224-Y.)

461. AIIC's Basic Texts refer to terms of employment that relate to members' remuneration. (CX-2-Z-40 to Z-49; F. 90-157 (daily rate and rate); F. 150-57 (same team).)

462. AIIC mailed schedules of rates for conference interpretation. (F. 93-96.)

463. AIIC aims to improve the working conditions for all interpreters. (Stip. 63; CX-245-C.)

464. Respondents assist freelance members to secure interpretation jobs. (F. 465-75.)

465. AIIC rules encourage the hiring of its members. AIIC Guidelines for Recruiting Interpreters require that "members of the Association and applicants for membership shall be approached before non-members." (CX-219-M to N; CX-2-Z-51; CX-1-Z-48.)

466. AIIC membership helps interpreters obtain work. (CX-304-Z-83, Z-110 to Z-111 (Motton); CX-301-Z-152.3 (Bishopp); CX-280-E.)

467. AIIC produces an annual directory, with the name, address and language combination of each member. (Stip. 59; CX-600-A, Z-12, Z-90 to Z-92; CX-606.) Conference interpreters and intermediaries use AIIC's directory to recruit interpreters. (Clark, Tr. 593; Weber, Tr. 1159; Hamann-Orci, Tr. 91.) AIIC sends its directory to purchasers of interpretation services. (CX-268-E; RX-22, 405; CX-304-Z-109/16 (Motton).)

468. The AIIC directory facilitates searching for interpreters with a specific languages or in a particular location. (Stip. 62.) AIIC intends its membership directory to be used by employers. (CX-274-B; CX-1458-A.) Interpreters join AIIC to get their names in the AIIC directory used by chief interpreters and conference organizers. (CX-271-M; Swetye, Tr. 2795; CX-306-X/2 (Weide); Hamann-Orci, Tr. 21; CX-304-L, Z-109/24 to Z-110/11 (Motton).)

469. AIIC provides members with Availability Cards used to inform potential employers of their available dates. (Stip. 64; CX-274-D; CX-2092-A-B.)

470. AIIC's treasurer wrote to members: "[D]on't forget that AIIC has been working for several years in order to improve physical and technical conditions of work . . . to improve our remuneration and that, in particular, the mention of your name and quality in the Yearbook is often most helpful in the pursuit of your professional career." (CX-201-B.)

471. AIIC refers business to members. (CX-427-A; CX-2050-B; CX-1583-A.)

472. AIIC posts employment opportunities in the AIIC Bulletin. (CX-253-E; CX-254-F; CX-276-W, CX-2497-K.)

473. AIIC promotes AIIC members to prospective customers. (Luccarelli, Tr. 1625; CX-274-B to C; CX-259-T; CX-257-O.) AIIC

uses the Public Relations Committee "to get more work for our members." (CX-1593-A; CX-280-F; CX-2490-E, ¶ 11.)

474. AIIC advised potential buyers of interpretation services to "entrust the recruiting of a team of interpreters to those AIIC members who are ready to perform this essential service." (CX-215-B; CX-2093; CX-2103-A to J.)

475. AIIC published a magazine, *Communicate*, to promote interpretation to purchasers. (CX-2095-A to D; CX-279-I.)

476. AIIC provides members with form contracts (containing AIIC's working conditions) for agreements with clients. (Stip. 66; CX-2059-A to F; CX-2060-A to H.)

477. AIIC provides members with other materials to educate purchasers on interpretation services and the staffing of conferences. (CX-1458-A, L to M; CX-2088-A to F; CX-2089.)

478. AIIC rates interpretation equipment and facilities in a Directory of Conference facilities. (CX-259-N to O; CX-2073; CX-2074; CX-2070-A to Z-65; CX-2071-A to N; CX-2112.)

479. AIIC publishes a quarterly AIIC Bulletin to members. (Stip. 67; CX-259; CX-268; CX-270; CX-274.)

480. AIIC's Statistics Committee surveys AIIC members, including those in the United States. (Stip. 20.) These surveys provide members with accurate figures on employment, language trends, and venues of meetings. (CX-268-J; CX-269-G; CX-1643-E.)

481. AIIC surveys users of interpretation services. (Stip. 68; CX-259-I; CX-280-I to M.)

482. AIIC provides members with information concerning the calculation of Value Added Taxes with respect to interpretation services. (CX-280-E; CX-71 to CX-84; CX-1643-E.)

483. AIIC negotiates discounted prices on members' purchases. (CX-268-Z-7; CX-259-G.) AIIC membership cards entitle their holders to discounts at hotels and on airfares. (CX-268-Z-7; CX-1458-F; CX-2058-A to W.) Members of AIIC previously received discounts on the purchase of publications, such as dictionaries. (Stip. 69.) AIIC provides members with applications for credit cards. (CX-1658-E.)

484. AIIC provides its members insurance plans for health, loss of earnings, and retirement. (CX-259-E; CX-306-Z-135/6 (Weide); CX-301-Z-152.8/17 (Bishopp).) For the Non-Agreement Sector, AIIC negotiates agreements with insurance plans for accident, sickness and loss of earnings benefits to which members can then subscribe

directly. (CX-1643-C; CX-261-W; CX-1458-M; CX-304-Z-126, Z-331 (Motton).) AIIC also makes available travel insurance. (CX-1658-F; CX-1458-M; CX-304-Z-126, Z-331 (Motton).)

485. AIIC members manage two retirement plans for members. (Stip. 71, 72; CX-2077-D to E; CX-1458-M; CX-1643-C; CX-2076-A.)

486. AIIC maintains a "Solidarity Fund" to assist members through grants and loans in emergency distress situations, such as workplace accidents. (CX-226-Z-5; CX-301-Z-152.8/22 to Z-158.9/4 (Bishopp); CX-254-H; CX-2085-B.)

487. AIIC contacted European governments to obtain exemption from the Value Added Tax for interpretation services. (CX-280-D-E; CX-268-J.)

488. AIIC contacted a U.S. Senator to increase employment for U.S. interpreters in a meeting of the United Postal Union. (CX-1404-A-E.)

489. AIIC safeguards the interests of its members by training and research. (CX-301-Z-1/22-24 (Bishopp).) AIIC organized lectures and seminars to improve the quality of interpretation. (Stip. 73.)

490. AIIC has seminars to assist members with commercial aspects of interpretation (RX-27, 461; CX-277-Z-5); on sales and negotiating techniques (CX-1578-A; CX-253-B; CXT-279-Z-2 to Z-5); and on "Winning Work Competitively" (CXT-279-Z-2 to Z-5; CX-1578-A; CX-1579-A.) AIIC instructed members in "Sales Arguments" for interpreters negotiating with clients. (CX-302-Z-314 to Z-315 (Luccarelli); CX-1480-B.)

491. AIIC organizes seminars and lectures on the practice of interpretation. (CX-252-D; CX-269-I; CX-277-Z-25; CX-301-Z-1.1/12 (Bishopp).)

492. AIIC negotiates "Agreements" with large international organizations. (Stip. 74.) These Agreements govern the pay rates and working conditions applicable to all freelance interpreters working for those employers. (Stip. 75; CX-2490-E, ¶ 12; CX-1538-A.) AIIC's negotiated agreements for all freelance interpreters, whether or not members of AIIC. (CX-305-Z-186 (Sy); Stip. 76.) There are five Agreements, which AIIC refers to as the "Agreement Sectors": (1) members of the United Nations Common System ("United Nations"); (2) the European Union; (3) Coordonnees; (4) Interpol; and (5) various international trade secretariats. (Stip. 77.)

493. AIIC negotiates an agreement on remuneration and working conditions for freelance interpreters working for the United Nations

Common System (including the United Nations, the World Health Organization etc.). (Stip. 78; CX-1643-B.)

494. AIIC negotiates an agreement, which is in effect throughout the world, with labor unions, known as international trade secretariats, that governs rates of pay and working conditions for all freelance interpreters (not just AIIC members). (Stip. 79; CX-277-W.)

495. AIIC negotiates an agreement with Interpol governing the wages and working conditions of freelance interpreters working for it. (CX-1458-M; Stip. 75, 78.)

496. AIIC negotiates an agreement with the European Union, which includes the European Commission, the European Parliament, and European Court of Justice, for an agreement to provide interpretation services. (CX-1458-M; CX-1643-C.)

497. AIIC negotiates an agreement governing the wages and working conditions of freelance interpreters working for Coordonnees, which consists of European Space Agency; the Council of Europe; the Organization for Economic Co-operation & Development; the North Atlantic Treaty Organization; and the Union de l'Europe Occidentale. (Stip. 81; CX-1643-C.)

VII. LABOR EXEMPTION

498. The State Department's list of freelance interpreters, which includes many AIIC members, is a "roster of independent contractors." (CX-242-H.)

499. Interpreters hold a copyright interest in any recording of their interpretation because they are independent contractors. (CX-244-F; CX-224-Z-8-9; CXT-273-O-P; CX-2121; CX-2059-B.)

500. AIIC's standard contract limits the control of the conference organizer over the work practices of interpreters because interpreters operate as independent contractors. (CX-2059-B.)

501. AIIC's agreements specify terms for freelance interpreters with various organizations, but not for staff interpreters who are employed by those organizations. (CX-302-Z-121/18 to Z-122/1 (Luccarelli).)

502. There exists an interpreters' union in the United States that is separate from AIIC and TAALS. *See* Motion for Leave to File Amicus Brief on Behalf of the Translators and Interpreters Guild Affiliated with the Newspaper Guild, AFL-CIO, CLC, Oct. 17, 1995.

503. Freelance interpreters determine whether to work at a particular conference on a case by case basis. (Luccarelli, Tr. 1614-15, 1620-21; Swetye, Tr. 2775/2-14, 2793/10-19; Silberman, Tr. 3354/11-14, 3355/20-22.)

504. The AIIC committee that explored various options for restructuring the organization acknowledged that a trade union's members must be employees. (CX-268-W-X.) This was part of the reason AIIC rejected unionization. (*Id.*) Some governmental and intergovernmental organizations employ staff interpreters. (Luccarelli, Tr. 1693/24 to 1695/8.) No AIIC member has established a commercial interpretation firm with interpreters as employees. (Luccarelli, Tr. 1693-94; CX-301-Z-105 (Bishopp); CX-428-A.)

505. In 1992 respondents rejected the option of becoming a union. (CX-270-K, n.**; *cf.* CX-268-W-X.)

506. Since 1964, AIIC has negotiated collective bargaining agreements with institutional employers (EEC, UN, NATO). (CX-218K-L; CX-203-C; CX-225-B-C; CX-284-D; CX-286-Z-32.)

507. In 1978, AIIC's president felt that non-agreement (freelance) members were independent and not employees (CX-219-S), since employers could not instruct them how to do their work. (CX-219-U.)

508. Agreement sector AIIC members want AIIC to act as a union. (CX-284-C.)

VIII. NEED FOR AN ORDER

A. Likelihood of Continuing Violations

509. In August 1992 at the Extraordinary Assembly in Brussels, members of AIIC removed monetary conditions from the AIIC Basic Texts. (CX-273-G.) The resolution states:

DEEPLY ATTACHED to the principles of universality and solidarity upon which AIIC, since its inception, has based its action in organizing the profession, for the benefit of both the interpreters and the users of interpretation,
FULLY AWARE of the gradual implementation of anti-trust legislation in the various parts of the world,
DECIDES on the following principles:

1. To remove all mention of monetary conditions (*e.g.* rates, subsistence and travel allowances, payment of non-working days) from our basic texts. . . ."

(CX-273-G.) The resolution provided that AIIC may negotiate agreements governing the working conditions of conference

interpreters, including remuneration and manning strengths, with employers in non-governmental organizations. (CX-273-H.)

510. The day before the Extraordinary Assembly, the NAS held a meeting -- that was planned to have "neither minutes nor recording of the proceeding" -- to explain how, in light of the antitrust laws, it is possible to "operate in another way." (CX-271-C, F; CX-273-U.)

511. According to one of the members of the AIIC Council (CX-616-C), AIIC "deregulated" its monetary conditions at the Extraordinary Assembly and "trusted" its members to "keep the faith." (CX-285-S.)

512. The AIIC Council reminded members that they could still assert their "rights" despite removal of express mandatory conditions. (CXT-2479, p.1.) The U.S. Region Council member advised U.S. Region members in January, 1994, "We should not forget . . . that deregulation does not mean we have lost our rights as individual professionals. Those are still the same, and we have to defend them individually." (CX-1566.) Another Council member wrote, in June 1993, "competition must be exercised in conformity with the code of professional ethics" and working conditions. He also stated that interpreters have the "right" to the same working conditions in the future:

rights should be respected in the future as they were in the past: the interpreter working away from his "professional address" has the RIGHT to a per diem and to complete reimbursement of his travel expenses; the interpreter has a RIGHT to payment of "nonworking days"; the interpreter has a RIGHT to compensation for a "loss of earnings"; the interpreter has the RIGHT to fees that are a fair reflection of the difficulty and importance of his work. (CXT-2479, pp. 1-2.)

B. History of Attempts to Evade the Antitrust Laws

513. In November 1975, the U.S. Region meeting, "unanimously decided to set up a committee to study the [antitrust] question in liaison with TAALS." (CX-405-C.) AIIC's Executive Secretary wrote TAALS and requested information on antitrust legislation in the United States. (CX-210-E, D.)

514. AIIC knew it was illegal to agree on rates in the United States. (CX-305-Z-27, Z-35, Z-206 to Z-207 (Sy); Weber, Tr. 1208-09; CX-300-Z-88 to Z-89 (Motton).)

515. In 1979, the AIIC Council became aware of an antitrust suit against AIIC's Canadian region. (CX-222-N; CX-223-V.) AIIC

ceased publishing rates for Canada because of the litigation. (CX-301-Z-59 to Z-60 (Bishopp).)

516. AIIC stopped publishing rates for the U.S. between 1981 and 1987 because of the antitrust laws. (CX-305-Z-36 (Sy); CX-72, CX-73, CX-75.) Nevertheless, its price agreements continued. (CX-1226) According to the report of the December 5, 1981, meeting of the U.S. Region, there was a "gentleman's agreement" to maintain the price conspiracy:

As members of Council know, there is a "gentleman's agreement" not to ask for less than US Dollars 250 per day. Because of the advice given by the anti-trust lawyers consulted; it is preferable not to appear with a fixed figure on the rate sheet. There is a trend now to ask for 275. (CX-1226-A.)

517. In 1983, AIIC's Secretary General explained that despite the price-fixing laws, members know what they are supposed to charge:

Members all know that [sic: what] the local rate is and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the "cartel" price-fixing laws in some countries, but members know very well that they must not undercut. (CX-1238.)

518. In 1986, the U.S. Region Treasurer (CX-616-Z-4) reported to AIIC that "The minimum rate on the non-governmental sector is unchanged and is not to be published on account of U.S. Government regulations." (CX-1346.)

519. About 1983, AIIC began publishing its minimum rates under the label of "market survey." (CX-71; CX-2446-C.) In 1987, Patricia Longley, then AIIC Treasurer (CX-616-Y), stated that in these "market surveys": "The figures represent the currently applied daily rates of remuneration, in other words the minima for a given local market." (CX-2466-C.) U.S. Region members understood that the "standard" figures on the market survey were the "standard" rates referred to in Article 8 of AIIC's 1991 Standards of Professional Practice (which specify what "the rate of daily remuneration shall be"). (CX-303-Z-62 (Moggio-Ortiz); CX-2-Z-43; CX-76.)

520. Before its 1991 Assembly, AIIC was "strongly advised" for antitrust reasons to adopt amendments that would have removed the "monetary" references from the basic texts. (CX-262-Z-42; CXT-262-Z-45 to Z-47, p.3.)

521. At the 1991 Assembly, Malick Sy, now AIIC President, insisted that the monetary conditions could not be removed by simple majority. (CX-305-Z-244 to Z-245 (Sy); CX-301-Z-129 to Z-131

(Bishopp); CX-266-S.) The Assembly did not achieve the two-thirds majority "necessary to remove all mention of fee scales on the private market" from the Basic Texts. (CX-441-B; CX-270-K.)

522. In 1994, Malick Sy was elected president of AIIC on a platform of solidarity. According to Mr. Sy, AIIC is "like pillars of universality, rigorous professionalism, the solidarity between the members serving as cement, the binding material between the two pillars." (CXT-279-T-U.)

C. Changes to the Basic Texts

523. AIIC's new rules, the 1994 Professional Standards, "carefully" addressed "financial matters." (CX-1-Z-40 to Z-46; CX-1556-A.) An interpreter "may ask for the inclusion of" AIIC's form-contract cancellation clause (CX-1-Z-41, Art. 3); professional address (still changeable only once in six months and with three months notice) "shall be used, *inter alia*, as a basis for setting up Regions" (CX-1-Z-40, Art. 1); journeys (depending on their length) "call for the scheduling of [one to three] rest days" (CX-1-Z-45, Art. 10); members "shall" receive subsistence allowance and travel expenses unless "the parties agree otherwise" (CX-1-Z-45, Art. 9, 11); members "shall request a briefing day whenever appropriate," and non-working days "that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45, Art. 8, Z-39.)

524. Reporting on the results of the 1992 Assembly the U.S. Region Representative did not indicate that freelance interpreters should change their practices as a result of any of AIIC's changes to its Basic Texts (CX-448-B; CX-303-Z-100, Z-99 (Moggio-Ortiz).)

525. The committee that drafted the 1994 rules, "eliminated the monetary conditions while taking care to preserve the great principles which the association holds to, such as the professional address. . . ." (CXT-279-K, p.4.)

526. While drafting the 1994 Professional Standards, AIIC prepared a "Vademecum" (CXT-2484-A-C, pp. 2-3) defined as a "pocket compendium of basic AIIC rules and recommendations" (CX-206-D) and "for internal use." (CX-277-Z-4; CX-245-C.) The purpose of the Vademecum is to "speak more openly on financial or related questions" ("since this document is not a basic text and has only an informative character") and "specify in maximum detail all the circumstances that are appended to each article of the Standards

as an annex, as well as all the 'rules' that should not be forgotten in the case of an assignment." (CXT-2484-A-C, pp. 2-3.) The Vademecum indicates that interpreters should include in their cost estimates the following factors: indivisible daily rate, commission, travel expenses, subsistence allowances, remuneration for days of travel, remuneration for rest days, remuneration for nonworking days, remuneration for days of briefing, recording ("copyrights"), cancellation, and non-interpretation duties. (CXT-2609-A to C, pp. 3-5.)

527. After the FTC investigation began (F. 538), AIIC introduced "health and quality" into the preambles to its rules. The preamble to the Standards of Professional Practice, Version 1991, reads in part, AIIC "herewith adopts the following Standards of Professional Practice applying to the work of its members." (CX-2-Z-40.) The 1994 Version adds, "whose purpose is to ensure an optimum quality of work performed with due consideration being given to the physical and mental constraints inherent in the exercise of the profession." (CX-1-Z-40.)

528. AIIC's 1994 Professional Standards are virtually identical to the 1991 texts with restraints on staffing strength (CX-1-Z-42 to Z-44, CX-2-Z-43 to Z-46), hours (CX-1-Z-45; CX-2-Z-42), double-dipping (CX-1-Z-37, Art. 3(c); CX-2-Z-37), recording (CX-1-Z-40, Art. 2(b); CX-2-Z-41) and performing non-interpretation services (CX-1-Z-39, Art. 7(h); CX-2-Z-39). The "Guidelines for Recruiting Interpreters" remains appended to the Standards, with the same rules on advertising, commissions, exclusivity, package deals, and trade names that it contained prior to the vote to remove monetary conditions. (CX-1-Z-49; RX-2.) In July 1994, the AIIC Council "confirm[ed] the binding character of the Professional Standards [Normes professionnelles]." (CXT-501-T, p. 2; CXT-249-C-D.)

529. According to AIIC's president, AIIC's monetary conditions can no longer be published "openly." (CX-1580.)

530. AIIC's standard form contract provides a template for members to continue to adhere to AIIC's price fixing rules. (CX-2060-A to B.) The contract has blanks for filling in daily remuneration, remuneration for travel days, rest time, recording, per diem for period away from the professional domicile, and first class travel. (CX-2060-A.) The "General Conditions of Work" on the contract (CX-2060-B) enumerate AIIC's rules about package deals (§ 1), non-interpretation duties (§ 2), working hours/overtime (§ 3), recording fees (§ 4), travel arrangements (§ 7), and cancellation (§ 9).

(CX-2060-B.) The quadruplicate format, which provides a copy for the consulting interpreter, interpreter, recruiter, and conference sponsor, allows any of these parties to verify compliance with rules on same team same pay and package deals. (CX-2060.)

531. AIIC's March 1994 Bulletin contained a recommendation for interpreters to specify to clients that "interpreters' fees are unchanging." (CXT-279-Z-2 to Z-5, p.2.) This and other recommendations came in reports of "sales techniques" sessions that the NAS set up in August 1992 to learn to operate in light of the antitrust laws. (F. 510; CX-273-U; CXT-276-E to G, p.2.)

532. Rates remain stable among interpreters. (Weber, Tr. 1186; Clark, Tr. 614.)

533. The pricing of AIIC members in the United States in 1992-1995, during which AIIC did not publish suggested minimum prices, was similar to 1988-1991. (Wu, Tr. 2205-06; CX-3004; Silberman, Tr. 3068; CX-3004-A.)

D. Agreement Sector

534. AIIC continues to negotiate "agreements" with intergovernmental and international organizations, which govern the pay rates and working conditions for all freelance interpreters working for those employers. (F. 492-97; Stip. 75; Bowen, Tr. 1031.) AIIC publishes in its Bulletin the rates negotiated under its Agreement Sector agreements, including rates for the United States. (Luccarelli, Tr. 1840; CX-305-Z-347 (Sy).) Meetings pursuant to these agreements have taken place in the United States. (Luccarelli, Tr. 1600; CX-2597; CX-2598.)

535. By entering into an agreement with labor unions, referred to as the International Trade Secretariats (ITS), AIIC decided prices to charge private sector users. (Stip. 79-80.) ITS used such terms for conferences it organized in the United States. (CX-2597-98.) The March 1995 AIIC Bulletin, published 795 Swiss Francs as the daily rate applicable in the United States when interpreters are working for the unions. (CX-284-U; CX-2066-A.)

536. Members use the agreements for remuneration and working conditions in the rest of the private sector. (CX-226-C; CX-231-C; CXT-2484, pp. 2-3.) AIIC used the UN per diem levels as a floor in the private sector. (CX-226-C; CX-231-C.)

E. Underground Practices

537. AIIC's suspension of publishing rates in the United States during the 1980's created an irregular rate. (F. 524; CX-1348-B; CXT-244-H.) In 1986, the U.S. Region "decided to request the inclusion of a 'suggested minimum rate' on the annual 'market survey sheet,' as the lack of a figure for the US Region caused a number of problems (imported teams, use of the 'elsewhere rate', etc.)." The Council agreed, and the rate was scheduled to be published on the next market survey as the suggested minimum rate for the United States. (CX-1348-B.)

F. Changes to AIIC's Basic Texts Made In Response to Antitrust Investigation

538. AIIC knew of FTC investigations of interpreters in June 1991, when two U.S. Region members (also members of TAALS) responded to a Commission document request of TAALS concerning horizontal restraints. (Saxon-Forti; Valiyova; CX-608-Z-77; CX-935-B.) AIIC discussed the TAALS investigation at its January 1992 Non-Agreement Sector meeting in Washington, D.C. (CX-270-F) which agreed to organize a debate and find a lawyer. (CX-1480-A.) FTC Staff took testimony from U.S. Region member (and past TAALS President) Anna Saxon-Forti regarding AIIC (Saxon-Forti, Tr. 2687), contacted three U.S. Region members prior to May 1992 (CX-441-A), and took their testimony. (CX-301-B (Bishopp); CX-300-A (Motton); Swetye, Tr. 2804.)

539. The FTC investigation of AIIC led to AIIC's 1992 decision to remove monetary conditions from its Basic Texts. (CXT-1534.)

540. The AIIC Assembly voted in 1992 and in 1994 not to approach "DG-IV" (the European Union's antitrust enforcement department) for antitrust "exemption" and recognition of the right to establish working conditions for AIIC members. (CX-302-Z-362 to Z-363 (Luccarelli); CXT-280-P-Q, pp. 1-4; CX-273-H.) AIIC recognized that notifying the DG-IV implies "the impossibility of AIIC negotiating collective (bargaining) agreements with intergovernmental employers." (CXT-280-P-Q, p.4.)

541. Despite antitrust concerns raised in Germany, Canada, and the European Union, AIIC did not change its basic texts until the FTC investigation began. (F. 523, 528-39; CX-84; CX-301-Z-59-60 (Bishopp).)

542. AIIC is dedicated to fighting to improve interpreter pay. (CXT-268-T-V.) Rates are one of AIIC's "most precious professional attainments." (CXT-268-T-V, p.3.)

LEGAL DISCUSSION

The profession of interpreting -- orally converting one language into another -- has long served to ease diplomacy, international trade and cultural exchange.⁵ Consecutive interpreting grew from the League of Nations in the 1920's and simultaneous interpreting was first used in the Nuremberg Trials after the Second World War. In 1952, interpreters -- both civil servants and freelance -- decided to found a professional association "to regulate the profession, to impose standards and ensure their application." (CX-245-C.) This is the history of AIIC.

SUMMARY

For more than forty years, AIIC has regulated the livelihood of its members. AIIC specified the length of the working day and the number of interpreters to be hired at a conference. AIIC members agreed on minimum daily rates to be charged in the United States. AIIC required that all interpreters at a conference be paid the same daily rate.

AIIC rules protected its local freelance members from competition from other AIIC members, and prevented intermediaries from forming firms of interpreter employees. AIIC prohibited advertising by members of "commercial forms of one-upmanship." Its Basic Texts specified minimum fees AIIC members should charge, and for what amount of work. AIIC members adhered to those rules and AIIC and the U.S. Region took action on the rules in the United States.

AIIC required payment for travel expenses, per diem, rest days and non-working days depending on whether the interpreter was away from a "professional address." AIIC defined a "normal working day" of six hours. Each effective restraint was part of a scheme to raise prices.

AIIC's restraints had anticompetitive effects. The conspiracy accomplished its purpose: fixing and raising the fees paid to AIIC

⁵ "And they knew not that Joseph understood them; for he spoke unto them by an interpreter." Genesis, Ch. 42 v.23.

members. As a result, AIIC interpreters earned more and worked less. The evidence obviates extensive inquiry into market power, market definition or market share. *California Dental Ass'n*, FTC Docket No. 9259 (1995) ("CDA"), slip op. at 28 n.19; *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 461 (1986) ("IFD"); *National Collegiate Athletic Ass'n v. Board of Regents*, 468 U.S. 85, 109-10 (1984) ("NCAA").

Endeavoring to improve interpreters' working conditions and income, respondents exist for the profit of their members. Their actions to improve the economic welfare of the interpreters resemble closely union activity which might be exempt from antitrust scrutiny. AIIC has determined, however, that it is a professional association -- not a union -- and respondents waived the defense by failing to raise it in pleadings or during the presentation of evidence.

A finding of violation shows that the Commission has jurisdiction over AIIC for acts performed in, or with effects in, the United States. And the Commission may proceed against the U.S. Region, an unincorporated association, as part of a AIIC.

Respondents continue to maintain rules on fees and working conditions that deprive consumers of the benefits of competition and violate the antitrust laws. AIIC tried to conceal price-fixing agreements in "gentlemen's agreements" and "market surveys," "unpublished" rates and a little book called a "Vademecum." Despite the removal of some offending rules from their Basic Texts after the commencement of the investigation that led to this case, respondents and their members continue to fix prices, allocate markets and violate the antitrust laws.

FACTS

AIIC's records show its intent to raise prices by eliminating competition between AIIC's members and to prevent intermediaries from coming between interpreters and clients. These documents are persuasive evidence of AIIC's beliefs as to the effects of its rules and practices.

1. Rates and Terms

Since the 1950's, AIIC members have forced employers to meet AIIC's rates and terms of employment. (F. 92.) As founding member and past president, Christopher Thiery (Weber, Tr. 1137) stated on AIIC's 20th anniversary in 1973 (F. 361):

It was in 1957 that AIIC decided for the first time that the daily remuneration should go up. The base rate had been \$25 since the end of the war, and it was decided to increase it to \$30. It had to be a unilateral decision: for the private market there was no "interlocuteur valable" (nor is there now) and the intergovernmental organizations refused even to acknowledge letters. . . . When AIIC's united front forced the decision upon them (members simply refusing contracts at earlier rates), we suddenly came to be considered as very reasonable people who entirely deserved a long due increase in pay. In fact, that was the first test of AIIC's strength. And when, in 1963-64, AIIC decided to increase the daily rate from \$30 to \$40, large as the rise was it went through much more smoothly.

In 1976, the U.S. Region demanded and got its rates from the Organization for American States. AIIC and TAALS boycotted OAS until AIIC's U.S. Region council member struck a deal that would pay the AIIC minimum rate. (F. 365.) The AIIC rate increased every year; businesses like Berlitz and Brahler called a TAALS or AIIC member to find out the price for the year. (F. 328.)

AIIC's rates became the price for interpreters to charge worldwide -- except in the United States, where the mandatory minimum rate was higher. (F. 99.) The U.S. Region agreed to AIIC's rates for the United States by vote. (F. 100, 307.) In 1977, the U.S. Region adopted the rate voted on at TAALS' General Assemblies. (F. 307-08.) AIIC became concerned about regional differences in rates. The Non-Agreement Sector (freelance) came into existence to try to reduce these differences. (F. 105.) Competition began to arise from differing team strength tables resulting in competing bids. (F. 172.) AIIC adopted a uniform team strength table, increasing the minimum number of interpreters for a job. (F. 172-75.)

AIIC's price-fixing prevailed in the United States. Members of AIIC's U.S. Region feared that if they were branded as undercutters by not charging the U.S. rate they would lose the referrals from other members on which they depend. (F. 105.)

In November 1975, after *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), AIIC "set up a committee to study the question in liaison with TAALS." (F. 513.) In 1983, they changed their rate sheets to documents called "Market Surveys." (F. 519.) A 1987 AIIC memorandum makes clear that the "Market Surveys" are in fact the mandatory minimum rates. (F. 519.) The U.S. Region adopted a "gentlemen's agreement" not to charge less than a particular rate. (F. 516.) In 1983, AIIC's secretary general wrote to Wilhelm Weber,

who was recruiting interpreters for the 1984 Olympic Games in Los Angeles:

Members all know that [sic: what] the local rate is and any bargaining with the client can only be upwards and not downwards. It was inserted in this way because of the "cartel" price-fixing laws in some countries, but members know very well that they must not undercut.

(F. 517.) In 1986, when the U.S. Region treasurer reported to AIIC on rates in the U.S. Region, she wrote, "the minimum rate in the non-governmental sector is unchanged and is not to be published on account of US Government regulations." (F. 518.)

In 1986 the U.S. Region decided it too should publish rates in the "market survey," and included what it called a "suggested minimum" (F. 537), again sending the TAALS rates to Geneva for publication. (F. 308.)⁶ AIIC continued to publish rates for the U.S. Region, provided to AIIC by the U.S. Region, which used the rates voted on by TAALS, until AIIC ceased publishing its "Market Survey" in 1992. (F. 308; CX-17-84.)

2. Recruiting Guidelines

AIIC felt that intermediaries (organizers of interpreters for conferences) would erode interpreters' fees in the private market. According to Christopher Thiery, "once we accept impresarios and professional conference organizers and conference halls as employers, we lose control over the situation and end up by being paid what they decide is good for us. Hence the gradual introduction of the 'direct contract' and 'direct payment' principal" (F. 259.) Mr. Thiery later observed, "We must never forget that when the chips are down an intermediary may well have to cut costs to stay in business. And if we happen to be one of the 'costs,' then that's just too bad for us." (F. 259.)

In 1963, AIIC's 10th Assembly resolved that contracts should be between interpreters and conference organizers. "Step by step, this provision was later included in the Code" and in 1979 into the "Guidelines for Recruiting Interpreters." (CX-206-C.)⁷

⁶ Those rates had been voted on at TAALS meetings (F. 307); about half of the TAALS members were also members of AIIC (CX-3006).

⁷ Five restraints are in the Recruiting Guideline: AIIC's bans on package deals and lump-sum payments, commissions, exclusive agency arrangements, trade names, and comparative advertising. (CX-1-Z-49.)

The Recruiting Guidelines were adopted by AIIC Assembly in 1983 (F. 34), and sent to AIIC members as a binding annex to the 1991 Basic Texts. (F. 32-33.) The same document is also included in the 1994 Basic Texts. (CX-1-Z-47 to Z-50; RX-2 at 61-62, 65-66.) The Recruiting Guidelines have never been repealed. (F. 33.)

3. Abandonment

AIIC has never abandoned its price fixing. (F. 331, 333-34, 532-33.) It stopped publishing rates, removed some rules from its "Basic Texts," and rewrote other rules to avoid antitrust scrutiny. (F. 523, 528.) In 1991, AIIC rejected a proposal to remove its "monetary conditions." (F. 520-21.) AIIC's 1992 resolution reaffirms AIIC's commitment to collective action. (F. 509.) Council members exhorted "skeptics" and U.S. colleagues that the "rights" incorporated into the "monetary conditions" should be "respected in the future as they were in the past." (F. 512.) AIIC made certain that its "old" rules continue to be communicated to its members. (F. 523-33.)

AIIC's 1994 rules did not remove AIIC's monetary conditions; they rewrote them. (F. 523, 528.) Under AIIC's new rules, an interpreter "may ask for the inclusion of" AIIC's form-contract cancellation clause, which contains the same terms as the "removed" AIIC rule on cancellation fees (CX-1-Z-41); depending on length, journeys may "call for the scheduling of [one to three] rest days"; members "shall" receive subsistence and travel expenses unless "the parties agree otherwise"; members "shall request a briefing day whenever appropriate"; and non-working days "that may be compared to normal working days shall be negotiated by the parties." (CX-1-Z-45, Z-39.) The rewritten "professional address" rule still allows an interpreter to change her domicile only once every six months and then with three months notice. (F. 233.) At its meeting during the 1994 Assembly, NAS "reaffirm[ed] its moral commitment to the concept and application of the principle of professional address." (F. 233.)

In 1994 AIIC introduced "health and quality" language into its team size, working day and non-interpretation duties rules, leaving the substance of the rules unchanged. (CX-279, 527.) In July 1994, the AIIC Council "confirm[ed] the binding character of the Professional Standards." (F. 528.) AIIC's president stated in 1994 that monetary conditions "can no longer be published openly." (F. 529.)

AIIC prepared a "Vademecum," a "pocket compendium of basic AIIC rules and recommendations" for "internal use." (F. 526.) The purpose of the Vademecum is to "speak more openly on financial or related questions." (F. 526.)

AIIC's Vademecum suggests that interpreters should include in their cost estimates the fee elements they included under the old rules: remuneration, indivisible daily rate, commission, travel expenses, subsistence allowances, recording ("copyrights"), cancellation, non-interpretation duties and remuneration for days of travel, rest days, non-working days, and days of briefing, and explains how to calculate those charges. (F. 526.)

AIIC still maintains its standard form contract, which provides a template for members to continue to adhere to AIIC's price fixing rules. (F. 476.) The contract still has blanks for filling in daily remuneration for travel days, rest time, recording, per diem allowances for the period away from the professional domicile, and first class travel. The standard contract's "General Conditions of Work" spell out AIIC's rules about package deals, non-interpretation duties, working hours, recording fees, travel arrangements, and cancellation. (F. 530.)

AIIC's Bulletin continues to explain AIIC's price restraints. Two months after the new rules were adopted, the Bulletin recommended that interpreters tell clients that "interpreters' fees are unchanging." (F. 531.) The June 1993 Bulletin recommended that interpreters negotiate indivisible rates for "conferences of short duration" by saying that "one cannot take other assignments in the course of a free half-day"; negotiate travel day charges by "explaining that the interpreter is at the client's disposal during the travel days"; and "promote our profession without noisy publicity" in light of some countries' prohibitions on comparative advertising. (F. 531.) These recommendations came in reports of a "sales techniques" session that NAS instituted when it met in August 1992 to learn to operate in light of the antitrust laws. (F. 531.)

"Going rates" still exist and remain stable among interpreters. (F. 331, 333-34.) Prices in the years 1992-1995, when AIIC did not publish suggested minimum prices, closely resemble those in 1988-1991. (F. 320.) Published rates rose \$25 per year. (F. 533.)

AIIC continues to negotiate collectively with large international organizations, which govern the pay rates and working conditions for all interpreters working for those employers. (F. 492-97.) AIIC publishes the rates negotiated under its Agreement Sector agreements,

including rates for the United States. (F. 534.) AIIC has collectively entered into an agreement with international federations of labor unions. (F. 494, 535.) That agreement has governed fees and terms for conferences in the United States. (F. 535.) In March 1995, AIIC published a daily rate for the United States for interpreters working for those unions. (F. 535.)

I. AGREEMENT

At the heart of any conspiracy is an unlawful agreement. *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946). The evidence shows agreement by AIIC, the U.S. Region, and the interpreters to enforce its restrictive rules.

A. Conspiracy

An organization controlled by competitors is the agent of the group, and its conduct is a conspiracy of its members.⁸ Respondents' members are competing conference interpreters (F. 453-54), and respondents' conduct in restricting competition constitutes a conspiracy of its members. A code of ethics, alone, "implies agreement among the members of [the] organization to adhere to the norms of conduct set forth in the code." CDA, Slip op. at 10, citing *AMA*, 94 FTC at 998 n.33. Here, AIIC's members voted on the Association's Basic Texts and agreed to abide by "the rules and regulations of the Association" as a condition of membership. (F. 43, 48-52, 63-67.)

1. Vote

The restraints were created by majority vote at AIIC General Assembly meetings attended by U.S. members. (F. 29-30, 37-38.) AIIC's rules are in the "Basic Texts," which include the Code of Professional Ethics and the Standards of Professional Practice. (F. 25.) Attached to the Basic Texts are binding annexes: AIIC's Guidelines for Recruiting Interpreters, Staff Interpreters' Charter, and

⁸ *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 (1988); *National Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978) ("Professional Engineers"); *American Medical Association*, 94 FTC 701, 997-98 (1979) ("AMA"), *aff'd* by an equally divided Court, 455 U.S. 676 (1982); *Goldfarb*, 421 U.S. at 781-82.

Videoteleconferencing rules. (F. 28.) AIIC members and candidates sign commitments that they will follow the rules adopted by AIIC.⁹

The 1994 Code of Professional Ethics states that members are bound to respect the Code in their work as conference interpreters.¹⁰

(F. 51.) Members are bound by the rules and follow them, recruiting other interpreters to follow AIIC rules. (F. 52, 58.)

AIIC enforces its work rules with penalties for breach, including warning, reprimand, suspension, and expulsion. (F. 62.) Members charged with violating the rules have been investigated and penalized, or have resigned. (F. 66, 68, 229-30, 301, 316.) The AIIC Council grants "waivers," to suspend a particular rule to a specific individual. (F. 56-57.)

2. Enforcement and Understanding

AIIC and its members understood that all of the price-fixing rules applied in the United States. (F. 26, 52, 362.) From 1972 until 1982, and again from 1988 through 1991, AIIC published rates specifically applicable in the United States. (F. 93, 516-21.) AIIC stated that "members all know what the local rate is and any bargaining with clients can only be upwards and not downwards." (F. 108.) Respondents successfully pressured the 1984 Los Angeles Olympics to meet AIIC rates and terms in the United States. (F. 108, 344-60.)¹¹

Wilhelm Weber was threatened because of the terms on which he recruited interpreters to work at the 1984 Olympics (F. 359), and for working without charging phantom travel charges. (F. 228-29.) Jeannine Lateiner was investigated for hiring permanent interpreters rather than local freelancers. (F. 285.) AIIC attempted to expel U.S. Region member Marc Moyens for violating the professional address rule and failing to charge for travel expenses, in connection with work in Europe, and reprimanded him when the expulsion vote failed to obtain a two-thirds majority. (F. 230.)

⁹ Applicants for membership in AIIC follow AIIC's rules for 200 working days prior to application. (F. 44-47.) Members can object to applicants' membership for not following AIIC's rules. (F. 46, 359.) Applicants must sign a pledge that they will continue to abide by the AIIC Code of Ethics and Standards. (F. 44.)

¹⁰ "Members of the Association shall neither accept nor, a fortiori, offer for themselves or for other conference interpreters recruited through them, be they members of this Association or not, any working conditions contrary to those laid down in this Code or in the Professional Standards." (CX-1-Z-39.)

¹¹ Enforcement is not an element of conspiracy. *United States v. National Ass'n of Real Estate Bds.*, 339 U.S. 485, 488 (1950).

AIIC also used rumor and blacklisting to secure members' adherence to the rules. Interpreters feared being labeled as undercutters. (F. 72, 106.) When interpreters deviated from the AIIC rules, they kept their agreement secret, for fear of retaliation by other interpreters. (F. 73, 106, 148.) Conference interpreters rely on their colleagues for referrals. Interpreters fear being blacklisted by colleagues because much of their referral work comes from other interpreters. (F. 71-72, 106.) In 1989, AIIC's U.S. Region and AIIC warned their members about three intermediaries who did not follow AIIC rules, hinting that some regions have actually decided to refuse work from these agencies. (F. 88.) The U.S. Region also "remind[ed] AIIC in general that it never had the petite equipe. . . . It is determined to expose all outside interpreters who accept this practice in our region." (CX-405-C.) AIIC leaders warned U.S. members against moonlighting. (F. 283.)

In 1987, AIIC's then-president stated, in a speech about work rules that if AIIC no longer had a "universally valid Code of working conditions," clients would benefit by playing interpreters against each other "in a poker game of undercutting." (CX-245-D.) Interpreters cite the rules in negotiating with clients. (F. 54-55, 59.)

AIIC's members, including AIIC's U.S. members, agreed to join AIIC and be bound by its rules. They met to discuss prices and price-related agreements, and voted on those prices and agreements and set minimum daily rates. (F. 98, 100, 516-19.)¹² They adhered to the prices published by AIIC 90% of the time. (F. 319.) Such simultaneous price moves indicate conspiracy. (*United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 182 (3d Cir. 1970) ("American Standard"), *cert. denied*, 401 U.S. 948 (1971).)

B. U.S. Region's Participation

AIIC is a professional association comprised of regions. (F. 444-45.) The U.S. Region nominated officers to serve as members of AIIC's governing Council. (F. 447.) The AIIC Council recommends amendments to AIIC's Basic Texts for ratification by vote of the entire membership at its triennial General Assemblies. (F. 39.) The Council issues interpretations of respondent's rules, and institutes

¹² The meetings and votes on rates took place at TAALS meetings (F. 307) and AIIC meetings (F. 98, 100.) Intermediaries observed that in the 1980's, the "going" rate represented the TAALS/AIIC rate, charged by all interpreters, regardless of the affiliation. (F. 328-34.)

disciplinary proceedings against interpreters who violate respondent's Basic Texts or any other rule. (F. 39, 61-62.)

AIIC members in the United States adhere to the rules. (F. 58-59, 85-89.) The U.S. Region delegates vote at the AIIC General Assemblies and Councils that created the AIIC fees, standards and codes of ethics. (F. 80.) It has also reminded U.S. members of their obligations to follow the AIIC rules. (F. 82.) The U.S. Region's members adopted a "gentlemen's agreement" providing that members should not charge below a stated price. (F. 77, 516.) The U.S. Region threatened to "expose all outside interpreters" who did not follow its staffing strength rules. (F. 171.) The U.S. Region enforces AIIC's rules. (F. 83.)

The U.S. Region participated in the anticompetitive conduct in this case.

II. ANTITRUST LAW AND AGREEMENTS AMONG COMPETITORS

Antitrust law prohibits agreements among competitors that "unreasonably" restrain trade, "either from the nature of the contract or act or where the surrounding circumstances were such as to justify the conclusion" that they are unreasonable. *Standard Oil Co. v. United States*, 221 U.S. 1, 58 (1911). AIIC's restraints are unreasonable restraints of trade by their nature.

A. Per Se Violations

The *per se* rule against price fixing condemns agreements among competitors intended to affect prices, and "the machinery employed by a combination for price-fixing is immaterial." *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940). The restraints in this action were adopted as part of AIIC's price fix, and have the tendency to support that price fix.

CDA rejected a reading of Mass. Board that price fixing *per se* violations of the antitrust laws can be defended by efficiencies. Slip op. at 38 n.26. CDA makes clear that *per se* unlawful conduct may not be defended on the basis that it is reasonable, efficient, procompetitive or harmless. Slip op. at 15-16.

Price fixing, output fixing and market allocations can be categorically condemned:

In sum, price-fixing cartels are condemned *per se* because the conduct is tempting to businessmen but very dangerous to society. The conceivable social

benefits are few in principle, small in magnitude, speculative in occurrence, and always premised on the existence of price-fixing power which is likely to be exercised adversely to the public.

7 P. Areeda, *Antitrust Law* ¶ 1509, at 412-13 (1986); *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 434 n.16 (1990) ("SCTLA").

1. Combined Effect

Respondents prevented competition on conference interpreting by agreements that required: minimum daily rates; all interpreters at a conference paid the same; an "indivisible day" to prevent lower remuneration for shorter meetings; standard team sizes and length of day rules to equalize the work performed for the daily rate; same pay for travel, rest, briefing, non-working days (to equalize payments to interpreters); uniform per diem allowances and travel expenses, rather than actual cost; and uniform cancellation and recording fees. Respondents' "professional address" rule, with prescribed fees, fixed prices and divided markets, as did AIIC's rules on pro bono services and moonlighting. Respondents' rules extended AIIC's rules to all interpreters working with an AIIC member, and respondents coordinated its agreement with TAALS.

In order to understand the combined effect from all practices used by respondents to aid a price fix:

plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. "[T]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *United States v. Patten*, 226 U.S. 525, 544. "[I]n a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it."

American Tobacco Co. v. United States, 147 F.2d 93, 106 (6th Cir. [1944]); *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962); *Fort Howard Paper Co. v. FTC*, 156 F.2d 899, 905 (7th Cir.), *cert. denied*, 329 U.S. 795 (1946). Acts in aid of the price fix include agreements to specify product quantity or quality, *National Macaroni Manufacturers Ass'n v. FTC*, 345 F.2d 421, 426 (7th Cir. 1965); reporting to detect cheaters, *American Column & Lumber Co. v. United States*, 257 U.S. 377, 399, 410

(1921); and boycotts aimed at obtaining a higher price. *SCTLA*, 493 U.S. at 422-23.

2. Monetary Rules

a. Fees

The core of this case is the agreement between AIIC's members not to charge less than a daily rate. This falls squarely within the *per se* rule against price-fixing. *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 648 (1980) (*per curiam*).

(1) Minimum rates

AIIC required its members working in the U.S. private sector to charge the daily rate. (F. 90, 92-93.) From 1972 until 1981, and again from 1988 until 1992, respondents set rates for the United States. (F. 92.) Since the AIIC Code requires AIIC members to "respect local conditions" (CX-409-A), the U.S. Region decided in 1977 that AIIC's rates would be identical to TAALS' rates (F. 100) -- as they were whenever AIIC published rates from then until 1992. (F. 93.)

AIIC began calling its rate sheet a "Market Survey." In 1982, to escape antitrust scrutiny, the U.S. Region members adopted a "gentlemen's agreement" to adhere to rates not published by AIIC. (F. 516.) Since 1992, when AIIC ceased publishing rates, there continues to be a "going rate," and U.S. Region members continue to adhere to a rate that rose \$25 a year in 1992, 1993 and 1994. (F. 533.)

AIIC's agreements with "Agreement Sector" consumers also include rates and other terms. (F. 492-97.) These include the International Trade Secretariats. (F. 494.) These agreements are illegal *per se*. *NCAA*, 468 U.S. at 106-107, 113.¹³

(2) Same team, same rate

Until 1992, AIIC's rules provided that "any member of the Association asked to work in a team of interpreters shall only accept the assignment if all the freelance members of that team are contracted to receive the same rate of remuneration." (F. 150.) U.S.

¹³ Complaint counsel do not contend that the Commission's jurisdiction extends to enforcement of the antitrust laws against agreements to which the United Nations or other intergovernmental organizations are parties. (Proposed Findings at p.44, n.31.)

Region members observed this rule. (F. 153.) Intermediaries understood the AIIC rate to mean that everyone is charged that rate. (F. 329, 339.) They paid interpreters -- whether AIIC members or not -- AIIC's rate.¹⁴

The "same rate" rule prohibits an individual interpreter from competing on price for a place on a team. AIIC requires more than one interpreter for any simultaneous interpretation assignment in the United States exceeding 40 minutes (F. 86, 180, 423), and an individual interpreter cannot offer a lower fee than the fee acceptable to the rest of the team. The rule also prevents individual interpreters from charging more than their team-mates. (F. 156.) This rule removes the incentives an interpreter might have to strengthen skills and compete on quality. (F. 152, 154, 157.) It impedes entry, making novices as expensive as seasoned interpreters. (F. 154, 157, 250.) By comparison, the United Nations pays beginners less than experienced interpreters, providing an opportunity to gain experience. (CX-220-M.)

AIIC's same team, same rate rule is illegal *per se*. *Sugar Institute v. United States*, 297 U.S. 553, 601-02 (1936) It constitutes an agreement to provide the same rewards to all practitioners "regardless of their skill, their experience, their training." *Arizona v. Maricopa County Medical Society*, 457 U.S. 332, 348 (1982) ("Maricopa").

(3) Non-working days

Since 1972, AIIC's rules have specified when interpreters would be paid for travel time (F. 133), briefing days (F. 135), rest days after travel (F. 134), and weekends or other days off during a conference. (F. 132, 136.) Different interpretations of these rules resulted in competition among AIIC members. (F. 143.) At a 1980 NAS meeting, the chairman called for a rule to "avoid the disastrous effect of this sort of bargaining." (CX 223-L.)

In 1981, a complaint against a member concerning non-working days was found to be "without foundation because the member concerned succeeded in amending the contracts." (F. 145.) Another AIIC member, Alain Misson, asked a client to amend his contract. Mr. Misson had inadvertently failed to charge an extra day's fee for

¹⁴ If one AIIC member is on a team with non-AIIC members all team members must be paid the same. (F. 150-51, 155, 339.)

time spent traveling, and he did not want to undercut his AIIC colleagues; the client agreed. (F. 148.)

In 1984, the Los Angeles Olympic Organizing Committee ("LAOOC") sought to reduce the costs for interpreters at the Olympic Games by not paying interpreters fees for non-working days. (F. 146, 344.) AIIC secretary general Patricia Longley wrote to Mr. Weber instructing him that contracts did not conform to AIIC's rules on rest and travel days. (F. 352.)¹⁵ Mr. Weber told the LAOOC that it was "part of our code of professional conduct and that it was also current practice in the profession," and the Committee agreed to pay for non-working days. (F. 146, 345, 356-58.)

Intermediary Joseph Citrano testified that interpreters insist on being paid a half day's travel in each direction, on top of their full day's interpretation fee, when they work and travel on the same day. (Citrano, Tr. 552-53.) Interpreters viewed the rules "like a bible. That was how the business was conducted." (F. 147, 335.)

AIIC's rules requiring payment for non-working days are horizontal agreements to fix prices. *Catalano*, 446 U.S. at 647-48.

(4) Per diem

AIIC required that interpreters charge their clients a per diem for the period away from the interpreter's professional domicile. (F. 110-16, 536.) The rule prevents discounting: AIIC was concerned that interpreters working for two clients holding consecutive conferences might try to split expenses as a "sales argument," which would "constitute unfair competition"; AIIC's freelance interpreters wanted to avoid the "disastrous effect" of "bargaining" away the per diem. (F. 118.)

Fixing any element of price, including per diem, is *per se* illegal price-fixing. *Catalano*, 446 U.S. at 648.

(5) Travel

AIIC's rules required that "every contract signed with a member of the Association for a conference . . . must include payment for travel. . . ." (F. 287.) AIIC specified first class air travel and unrestricted tickets. In lieu of first class airfare, the interpreter was "entitled to" rest days, "equated to non-working days and

¹⁵ TAALS and AIIC coordinated their efforts to pressure Mr. Weber and the LAOOC. (F. 349, 351, 355.)

remunerated at the same rate." (CX-2-Z-47.) "For travel by air . . . business or club class, or, in its absence economy/tourist, may be accepted for journeys of less than nine hours." (CX-2-Z-48.)

By agreeing on travel expense, AIIC and its members have fixed prices in violation of the antitrust laws. *Catalano*, 446 U.S. at 645.

(6) Cancellation

AIIC's rules require "that once a commitment has been made to an interpreter . . . full payment is due in the case of a cancellation." (Weber, Tr. 1235.) A cancellation clause is in the standard AIIC contract. (CX-1-Z-41.) AIIC members consider an oral offer and acceptance to be a basis for collecting cancellation fees. (F. 243.)

The negotiations for the 1984 Olympics demonstrate the use of AIIC's cancellation clause. (F. 242.) When Mr. Weber first began organizing interpretation teams for the Olympics, "negotiations were still going on with the Eastern Bloc countries about a possible boycott . . . this is why [the LAOOC] did not want to commit to a 100% cancellation clause this early." (Weber, Tr. 1235.) Mr. Weber and LAOOC agreed on a staggered cancellation clause as a compromise. (F. 356.) Albert Daly, AIIC's president, wrote to Weber to say that he would hold Weber "personally responsible" for all the fees due AIIC interpreters if any contracts were canceled. (F. 354.) Mr. Weber ultimately did persuade the LAOOC to conform its contracts to AIIC's rules, including the cancellation clause, and was congratulated for that by Jean Neuprez, AIIC's U.S. Region council member. (F. 356-57.)

AIIC's agreement to use a standard cancellation clause is price-fixing, illegal *per se*. The clause prevents competition on cancellation fees among interpreters who might be willing to take greater risks of cancellation. (Wu, Tr. 2114-16.) Like the credit terms in *Catalano*, AIIC's rule on cancellations is an agreement to place on the purchaser a cost (or risk) of the transaction.

(7) Recording

AIIC and its members have agreed to charge fees for recordings: 100% of the daily fee, per interpreter per day, if the recording is to be sold; 25% of the daily fee if the recording is for internal, non-commercial purposes. (CXT-261-S.) AIIC reaffirmed the mandatory nature of the fee in March 1994, almost two years after AIIC

purportedly abandoned fixing prices. An amendment proposed by the Canadian Region, aimed at replacing the rule's "must" with "should," was rejected at the 1994 Assembly. (CXT-279-K-O.)

This rule is an agreement to charge for recording, and constitutes *per se* illegal price fixing. *Catalano*, 446 U.S. at 647-48.

(8) Ban on commissions

AIIC's Guidelines for Recruiting Interpreters prohibit members from accepting or paying commissions. (F. 251.) The rule prevents jobs from going to interpreters willing to pay the most commissions. (F. 252.) A 1981 meeting between AIIC members and representatives of the conference industry concluded that an intermediary's organizing fee must be charged to the conference sponsors, and must be "clearly shown as distinct from the interpreters fees and never deducted from the interpreters fees." (F. 253.) In March 1994, AIIC advised members to explain to hotel employees and technicians who usually receive commissions "that AIIC members do not do it because they would be obligated to raise their price" -- rather than absorb the commissions -- "and everyone would lose." (CXT-279-Z-2 to Z-5, p.2.)

AIIC's ban on the payment of commissions is an agreement to refrain from giving discounts from the fixed minimum rate, *per se* illegal. *Catalano*, 446 U.S. at 649.

(9) Restrictions on pro bono work

AIIC's rules required interpreters donating their services to pay their own travel and subsistence expenses. (F. 247-48.) Student interpreters worked at the 1984 Olympics without fee. They violated the AIIC rule because "the LAOOC paid the student interpreters' air fare from Monterey to Los Angeles." (Weber, Tr. 1232-33.) AIIC officers warned Mr. Weber about these student interpreters. (CX-236-G.) Jean Neuprez, then AIIC's U.S. Region Council Member, also wrote to Mr. Weber; warning that his actions "would go against a number of principles and rules of our profession." (F. 249.)

This rule prevents AIIC members from discounting their services by accepting "gifts" in lieu of payment (at the mandatory minimum rate), and from discounting their services unless they also pay their expenses. By prohibiting discounts and free services, the rule is a *per se* violation of the antitrust laws. *Catalano*, 446 U.S. at 647-48.

The rule also deters entry by discouraging new interpreters from working away from their professional address without charge. (F. 250.) Like the professional address rule, the pro bono rule divides markets and protects local interpreters, and is a *per se* violation of the antitrust laws. *Palmer v. BRG*, 498 U.S. 46, 49-50 (1990).

b. Unit of output -- a day's work for a day's fee

AIIC rules specify the unit of output for the daily rate, preventing AIIC members from competing by working harder, longer, in smaller teams. These output restrictions are unlawful *per se*. *NCAA*, 468 U.S. at 100. Output fixing is price fixing: "This constriction of supply is the essence of 'price-fixing,' whether it be accomplished by agreeing upon a price, which will decrease the quantity demanded, or by agreeing upon an output, which will increase the price offered. . . . The horizontal arrangement among these competitors was unquestionably a 'naked restraint' on price and output." *SCTLA*, 493 U.S. at 423.

(1) Indivisible day

AIIC's rules provided that "remuneration shall be on an indivisible daily basis." (F. 120.) This rule requires an interpreter to charge a full daily rate regardless of the time worked. (F. 120-22.) The rule and the "normal working day," and team size rules fix the unit of output for which the minimum daily rate is to be paid.

This indivisible day rule has been followed in the United States. (F. 338.) Intermediaries understood that the AIIC rate was a rate for a day's services, regardless of the actual time required. (F. 127.) In 1987, the U.S. Region voted not to seek a waiver that would have allowed interpreters to charge 80% of a day's rate for a short meeting. (F. 125.) The rule is *per se* price fixing. *Catalano*, 446 U.S. at 645.

(2) Hours and team size

AIIC's rules detail team size, setting the minimum number of interpreters in simultaneous, consecutive, and whispered interpretation for conferences using specified numbers of languages. (F. 159-64, 171-75.) AIIC also defines the interpreter's "normal working day" and shorter maximum working days when teams are smaller, the interpreter is using portable electronic equipment, or for

video conferencing. (F. 158, 271, 36.) These rules define the unit of output for which an interpreter charges a daily fee.

When AIIC adopted the current team size tables in 1991, the tables set the number of interpreters at AIIC's "standard rate." (F. 159-62, 165, 169, 175.) When working alone, for example, the interpreter was instructed to impose a surcharge. (F. 170.) According to AIIC's current team size table, a two-language conference requires three interpreters, and a three-language conference requires five interpreters. For conferences in four languages or more, AIIC's rule requires two interpreters per conference language. (F. 160, 163, 177.)

AIIC's rules define a "normal working day" of not more than two sessions a day of 2 1/2 to 3 hours. (F. 158, 165.) "Shorter meetings" -- defined by the U.S. Region to be no more than four hours (F. 174, 177) -- may need one fewer interpreter than required for the two or three-language conference. (F. 160, 174.) AIIC allows interpreters in the United States to work alone for up to 40 minutes. (F. 86, 177.) Thus, for a bilingual meeting in the United States, AIIC specifies that one interpreter may work alone for up to 40 minutes, two interpreters may work the same meeting for up to four hours, and three interpreters can work up to six hours. (F. 86, 122, 177.) Interpreters using portable equipment are instructed not to work more than two hours and those involved in video conferencing not more than three hours. (F. 36, 271.) Under AIIC's rules, the interpreter tends to work less than half time, since interpreters take turns and since the floor language typically is not interpreted by that language's booth. At a six-hour bilingual meeting staffed with three interpreters, each interpreter will work two hours. (F. 176.) When a "short" bilingual meeting (up to four hours in the United States) is staffed with two interpreters, each is working on the microphone for two hours. (F. 176-77.) In conferences in four languages, each interpreter spends no more than three hours a day at the microphone. (F. 176.)

From 1972 until 1991, AIIC maintained two rates of remuneration for two team size tables. The rate paid to each member of the smaller team was higher than the rate paid to each member of the larger team, since the small team's workload is divided among fewer interpreters. The small team rate was 160% of the large team rate. (F. 170.) Under these complex team size tables and rates consumers received offers for different numbers of interpreters (and different costs). (F. 172.) In the 1970's, the U.S. Region voted to ban small teams in the United States. (F. 171.) AIIC's Council proposed in 1974 to adopt a single universal team size/rate, to eliminate competition and market

deterioration. (F. 173.) The 1979 General Assembly was unable to reach a consensus to increase the staffing on the two-into-two language conference (CXT-20, p.19), but standardized the length of the work day by adopting the current six-hour rule. (F. 158.) In 1981, AIIC adopted a new rate and team size table. (F. 174.) The new table increased the minimum number of interpreters for a bilingual meeting from two to three, and for a three-language conference from four to five interpreters. However, the "standard rate" was set to equal the former "small team" rate -- rather than the lower, large team rate. Under the new AIIC team size table for a bilingual meeting, consumers had to pay for a third interpreter at the "standard" rate when it formerly had paid for only two interpreters. Most of the regions had abolished the old small team size by 1991. (F. 175.) AIIC dropped the larger base rate team over the objections of the U.S. and Canadian Regions, who continued to require six interpreters for a three language conference, one more interpreter than the standard team size table required. (CX-250-E-F.)

The history of team size and hours shows that AIIC revised its rules to eliminate competition and to increase interpreters' incomes. Until 1994 the team size tables specified the daily rate charged for each interpreter on the team. The work rules set the threshold for collecting overtime. Interpreters can work longer hours and on smaller teams than prescribed by AIIC, charging more. (F. 166-68, 170.) AIIC members relied upon the team size tables and length of day rules to charge additional fees when they worked longer hours or on smaller teams. (F. 165-68.)

AIIC members lodged complaints involving alleged violations of the team size and length of day rules against Jeannine Lateiner, Wilhelm Weber, Marc Moyens and Janine Hamann-Orci. (F. 181-82, 306.) These complaints were published among AIIC members and other interpreters, and could have a chilling effect on anyone considering violating AIIC's team size and length of day rules. (F. 181-82, 306.)

AIIC's team size and hours rules are *per se* violations of the antitrust laws. They are agreements to charge additional fees when work exceeds specified amounts. *Catalano*, 446 U.S. at 647-49. They are agreements intended to affect price. *Socony-Vacuum*, 310 U.S. at 223. And they are agreements fixing units of output. *SCTLA*, 493 U.S. at 423.

(3) Other services ban

Since 1972, AIIC Codes have stated that "members of the Association . . . shall not perform any other duties except that of conference interpreter at conferences for which they have been taken on as interpreters." (CX-1-Z-39.) There is slight evidence that members follow this rule. (F. 277; Luccarelli, Tr. 1672; CX-301-Z-26.) Perhaps not surprisingly, interpreters use it to avoid mundane, after-hours tasks. Joseph Citrano testified that AIIC members are a little more rigid about not making themselves available for extra services, such as helping a delegate check into the hotel or attending a cocktail party. (Citrano, Tr. 523-24; F. 279.) The State Department's Harry Obst, however, testified that "in the diplomatic environment situations arise when unexpectedly a text has to be drafted and translated on the spot for passing to the media or . . . another government wants to see it in their language. And if no translators are present we would expect those of our conference interpreters who also can handle written translations well to help with that chore and they usually do." (Obst, Tr. 301; F. 278.)

The allegation concerning a conspiracy to prevent interpreters from providing other services should therefore be dismissed.

(4) Double-dipping

AIIC's Code provides that "members of the Association shall not accept more than one assignment for the same period of time." (F. 292.) At least part of the intent behind this rule was to avoid overbooking, leading to client deception and leaving a team shorthanded. (F. 294.) The evidence shows that the rule against double-dipping is generally ignored. (F. 295-96.) The allegation that respondents have conspired to prevent double-dipping should therefore be dismissed.

c. Market allocation

(1) Professional address

AIIC rules require that members declare a single professional address, keep that address for at least six months, and provide three months advance notice before changing their professional address. (F. 212.) The professional address determines fees for travel, per

diem subsistence, and transportation (F. 217) -- whether or not that travel is taken or those expenses incurred:

--Margareta Bowen charged the New York Stock Exchange for travel from Vienna, Austria to New York and back, even though she only traveled from Washington to New York and back. (F. 223.)

--Wilhelm Weber was accused of violating the professional address rule for failing to charge for travel between Geneva, Switzerland and San Francisco, even though he only traveled from Monterey, California to San Francisco. (F. 229.)

--U.S. Region member Marc Moyens worked for two different employers in Europe without charging each for transatlantic travel from Washington. Mr. Moyens was reprimanded, and resigned from AIIC. (F. 230.)

The professional address rule divides markets. (F. 224.) Thus:

--Claudia Bishopp, then U.S. Region Council member, told one member that he was violating AIIC's rules by working in New York without "officially notify[ing] AIIC" of his change of address. The member was working in New York "for about a year" without charging each client for travel from his professional address in Washington. (F. 231.)

--Ms. Bishopp advised another member, who wanted to work for the World Bank after she had moved to Washington from Paris but before her professional address "officially change[d]," that she should either seek permission from AIIC or, "failing this, . . . telephone all other colleagues with your language combination in the Washington area, to verify that they were all indeed working on that date." (CX-1471.)

This agreement to divide markets is *per se* unlawful under the Sherman Act. *Palmer v. BRG*, 498 U.S. at 49-50. AIIC's rules regarding travel, per diem and payment for travel days, restrain interpreters from competing by absorbing travel costs or foregoing payment for travel days, or -- as in the case of Mr. Moyens -- splitting travel costs between clients. Charging "phantom freight" to coordinate prices is an unfair method of competition. *FTC v. Cement Institute*, 333 U.S. 683, 722 (1948).

(2) Moonlighting

AIIC's "Staff Interpreters' Charter" provides that "staff interpreters should . . . act as interpreters outside their organization only with the latter's consent, in compliance with local working conditions, and without harming the interests of the free-lance members of AIIC." (F. 281.) The rule requires AIIC members, when recruiting interpreters, to "bear in mind the following priorities: . . . freelance interpreters

rather than permanents having regular jobs as such." (F. 280.) The moonlighting rule protects the interests of freelance interpreters. (F. 287.)

AIIC's rules regarding moonlighting mean that permanent staff interpreters should not perform freelance work unless no freelance interpreter is available. (F. 281.) AIIC enforced the rule, suspending three members in Switzerland in 1984. (F. 285.)¹⁶ AIIC members in fact adhered to the anti-moonlighting rules, and attempted not to compete with AIIC's freelance members who were unemployed. (F. 289.)

AIIC's moonlighting rules constitute an agreement between staff interpreters and freelancers that staff interpreters will not compete with freelancers. This agreement by staff interpreters not to compete in the freelance market, like the professional address rule, is a *per se* violation of the antitrust laws.

d. Price advertising

Article 4(b) of the Code of Ethics provides that AIIC members "shall refrain from any act which might bring the profession into disrepute." (CX-1-Z-38.) Although Article 5 permits members to "publicize the fact that they are conference interpreters and members of the Association,"¹⁷ that article "exclude[s] activities such as commercial forms of one-upmanship." (F. 297.) The article prohibits AIIC members from advertising that their services are less expensive than those of other AIIC members. (F. 301-02.)

In 1994, an AIIC committee of inquiry concluded that a Canadian member of AIIC committed a "flagrant violation" of the Code by writing to a potential client that it would be less expensive to hire non-AIIC members for which the interpreter received a warning. (F. 301.) That same year, AIIC suspended another member for writing to an international organization and offering to work for a salary -- according to AIIC's president, an act that might bring the profession into disrepute. (F. 301.)

AIIC's Code of Ethics prohibits comparative price claims. Restrictions on price advertising are "naked attempt[s] to eliminate price competition and must be judged unlawful *per se*." CDA, slip op. at 19.

¹⁶ AIIC protects freelance members by discouraging international associations from hiring their own retired staff members on a freelance basis. (CS-230-M.)

¹⁷ Until 1991, AIIC prohibited any advertising by members. (F. 300.)

B. Rule of Reason

While most of the challenged restraints are *per se* violations, some, with a less obvious effect on competition, should be judged under the rule of reason. The issue here is whether the challenged restraint promotes or suppresses competition. *Professional Engineers*, 435 U.S. at 691. Its effect on other objectives (safety, quality, prevention of ruinous competition) is irrelevant.¹⁸

1. Competitive Effects

a. Portable equipment

Since 1972, AIIC prohibited the use of portable equipment ("bidule"),¹⁹ except "visits to factories, hospitals and similar establishments or remote field visits." (F. 270-71.) The rule limits the use of portable equipment to short meetings of no more than two hours, with no more than twelve participants. (F. 271.) In 1990, AIIC's NAS agreed that "while the 'bidule' serves a purpose in exceptional circumstances, its use must be strongly discouraged." (CX-259-U.) Portable equipment is much less expensive than using a booth, partly because no technician is required. (F. 273.)

Limiting the use of portable equipment is a direct restraint on output. (F. 275.) The limitations forbid the use of the technology from potential users of portable equipment with more than twelve conference delegates. (F. 271.) AIIC's rules restricting the use of portable equipment constitute anticompetitive restrictions on the "package of services offered to customers." *IFD*, 476 U.S. at 459. "Absent some countervailing procompetitive virtue . . . such an agreement limiting consumer choice by impeding the 'ordinary give and take of the market place' . . . cannot be sustained under the Rule of Reason." *Id.*

¹⁸ *Professional Engineers*, 435 U.S. at 695; *NCAA*, 468 U.S. at 116-17; *IFD*, 476 U.S. at 462-63; contra, *United States v. Brown University*, 5 F.3d 658, 672 (3d Cir. 1993) (Economic impact on consumers less predictable when professional association adopts restraints motivated by ethical or public service norms; not applicable, however, where the parties have strong economic self-interest, 5 F.3d at 667.)

¹⁹ The bidule is a non-booth, conference interpretation system consisting of headsets for the conference delegates and microphones for the interpreters. (F. 269.)

b. Ban on firms

AIIC imposed restraints that prevent integration of interpreters into commercial firms. Three of those restraints are challenged here: AIIC's prohibitions of exclusivity arrangement, trade names and package deals.

The Guidelines for Recruiting Interpreters, including the rules on exclusivity, trade names and package deals, were designed to prevent intermediaries from "establish[ing] themselves in the field." (CX-206-C; F. 257.) Those Guidelines prohibit exclusive relationships between interpreters and intermediaries. (CX-1-Z-49; F. 262.) The Guidelines also prohibit members from selling interpretation services as part of a package deal. (F. 255.)

AIIC's prohibitions of trade names, exclusivity and package deals prevent interpreters and intermediaries from integrating into commercial firms. (F. 264.) Those prohibitions are motivated by a fear that competition among intermediaries will reduce AIIC's control of the market, and thereby reduce interpreter revenues. (F. 259.) The formation of firms could improve interpreters' abilities to differentiate themselves in the minds of consumers. (F. 264.) These restrictions on commercial practice reduce product heterogeneity, which makes it easier for members to reach and maintain pricing agreements. (F. 264.) By keeping interpreters from adopting what may be more economically efficient business formats the restraints have an adverse effect on competition. *AMA*, 94 FTC at 1018.

Respondents did not proffer any efficiency justification for these practices; therefore, these AIIC restraints on trade names, exclusivity and package deals violate Section 5.

c. Advertising ban

The AIIC rules prohibit AIIC members from claiming that they are better interpreters than other AIIC members. Members believed that this provision means that interpreters cannot disparage their colleagues in order to get work. (F. 298.)

Prohibitions against non-price advertising can be unlawful under the rule of reason. *CDA*, slip op. at 38-39. Analysis can be "simple and short." *Id.* at 25. The Commission "evaluates comparative advertising in the same manner as it evaluates all . . . industry codes and interpretations that impose a higher standard of substantiation for

comparative claims than for unilateral claims. . . ."²⁰ AIIC's bans on comparative quality (and other) advertising are not limited to prohibiting false or misleading advertising. AIIC's rules prohibit truthful quality claims -- even those claims that could be substantiated. The breadth of AIIC's rule, the likely anticompetitive effects of the advertising restraints, and the absence of any proffered justification demonstrate that this advertising restraint violates Section 5.

2. Efficiency Justification

Not all conceivable justifications for agreements among competitors are "efficiencies." *Professional Engineers*, 435 U.S. at 695. Public safety, interpreter health, or quality of interpretation, are not efficiencies. *SCTLA*, 493 U.S. at 423-24; *IFD*, 476 U.S. at 463. The argument that shorter hours make better car salesmen was held implausible in *Detroit Automobile Dealers*, 111 FTC 417, 498 n.22 (1989), *aff'd in part and remanded*, 955 F.2d 457 (6th Cir. 1990), *cert. denied*, 506 U.S. 973 (1992). Moreover, the proffered justification must be tailored to the restraint. CDA, slip op. at 33.

a. Workload

Respondents argue that their rules limiting interpreters' workloads (hours, team size, double-dipping and moonlighting) promote interpreters' health and the quality of their interpretation.

(1) History

The rule-of-reason analysis directs us to look at the "history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained." *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918). Historical examination may help us predict the restraint's consequences.

Respondents' expert Dr. Moser-Mercer, noted a 1957 memorandum of the UN Medical Health Officer and claimed that the six-hour work rule arose from practice at the United Nations. However, that memorandum recommends against any uniform

²⁰ CDA, slip op. at 35.

workload rules for interpreters, and urges instead that workload be handled on an individual basis. (RX-668 at 2.)

At the 1994 AIIC General Assembly, members resisted "deregulation" of team size tables and length of day rules even after AIIC's president acknowledged that the working conditions may involve antitrust problems. (F. 511-12.) The members feared loss of "our most precious professional attainments," including minimum team strengths. In 1994, AIIC rewrote its rules to survive antitrust scrutiny, and adopted the self-serving preambles on which it now relies. (F. 191.)

(2) Quality and health

The U.S. State Department has not found a decline in quality when interpreters are working more than six hours and expects interpreters to work as long as needed at the conference. (F. 198.) The European Commission of the European Union -- the world's largest user of conference interpretation services (Moser-Mercer, Tr. 3540/12-15) -- allows interpreters to work up to ten hours a day. (F. 196.) Other international organizations require interpreters to work more than AIIC's "normal working day." (F. 195.) Dr. Moser-Mercer testified that the length of day rules and team size tables in all of these AIIC agreements assure health and quality. (Moser-Mercer, Tr. 3540-41.) If the heavier workload rules found in AIIC's agreements with these international organizations do not jeopardize quality or impair health,²¹ respondents' lighter workload rules for the non-agreement sector cannot be reasonably necessary to maintain quality and protect interpreter health.

(3) Science

There are no studies showing that performance falls during a working day or when interpreters work outside the team strength tables. (F. 192.) No studies show a link between adverse health affects and working longer than six hours a day as a conference interpreter. (F. 192.) AIIC's members were not aware of any studies supporting their health and quality claims other than the UN Medical Officers' 1957 memorandum. (F. 194.) As noted at a 1995 AIIC Budget Committee meeting, the health evidence supporting AIIC's

²¹ European members (constituting most AIIC members) work more than 60% of the time in the Agreement Sector; members in the United States and Canada work in the Agreement Sector 45% of the time. (CX-285-G.)

claims in the FTC proceeding is "flimsy, to say the least." (CX-1658-G.)

Interpreters should be able to work longer hours and in small teams, so long as the interpreter has an opportunity for occasional breaks. Dr. Parasuraman found that air traffic controllers and commercial pilots performed more demanding tasks than conference interpreters, and can perform those tasks for eight to ten hours without a decline in performance or injury to their health.²² (F. 207-08.) Based upon those studies, Dr. Parasuraman concluded that interpreters should be able to work at least eight to ten hour a days without risk of substantial declines in quality or risk to their health. (F. 209.)

(4) Connection

Respondents have failed to demonstrate a connection between workload and quality or health. Even if such a connection were shown, AIIC's workload rules are broader than needed to advance that purpose. There is a wide range of interpreters and markets that affect interpreter performance and health. One rule cannot fit all. (F. 199-200.) AIIC's team size table and length of day rules are not set for the "fittest" but for the great majority of interpreters. (Moser-Mercer, Tr. 3538-39.) The restraints restrict a more able interpreter from exploiting competitive advantage.

(5) Cognizability

"Quality" is not recognized as a valid efficiency under the antitrust laws. *Professional Engineers*, 435 U.S. at 695-96; *NCAA*, 468 U.S. at 116-17.

b. Portable equipment rules

Respondents argue that their portable equipment rules prevent a decrease in quality and a risk of detriment to the health and welfare of interpreters from the use of inferior equipment.

AIIC allows portable equipment to be used on visits to factories, hospitals and similar establishments or remote field visits, but not in

²² Reputable scientific studies, published in peer reviewed journals, have shown that air traffic controllers and commercial pilots can work eight to ten hour shifts per day, without performance decline or ill health. (F. 253.)

a conference room. (F. 271.) If quality decreases as the ambient noise increases, the rule should forbid all use of portable equipment. Portable equipment is reliable for the State Department, the White House, the World Bank, the International Monetary Fund and cost-conscious conference organizers. (Hamann-Orci, Tr. 48-49; Davis, Tr. 848; Obst, Tr. 303-04.)

Consumers are willing to tolerate lower quality, in exchange for lower prices. (Clark, Tr. 634-35.) Claims that the market will seek a lower level of quality are not cognizable efficiencies. *IFD*, 476 U.S. at 463-64. The rules do not take into account variables that affect whether portable equipment is practical for a job, or differences in ambient noise, or interpreters' abilities or hearing, and therefore are not reasonably tailored to their goals. *NCAA*, 468 U.S. at 119.

3. Effects and Market Power

a. Anticompetitive effects

Proof that conspirators achieved their purposes proves market power. For example, market power can be proven by a group of sellers raising prices over competitive levels for a significant period of time. (Silberman, Tr. 3172/19-23.) Here, AIIC's members followed AIIC's rules, and intermediaries had to obtain conference interpretation on AIIC's terms. Intermediaries learned of the TAALS/AIIC rates from TAALS or AIIC members (F. 328), understood that all AIIC and TAALS members charged that rate (F. 329), observed that the rates went up at the beginning of every year (F. 330-31), and almost invariably paid the TAALS/AIIC rate rather than attempt to negotiate lower rates. (F. 332, 334.) Intermediaries found that AIIC and TAALS members -- and other interpreters -- would not accept offers that did not conform to AIIC rules. (F. 335.) AIIC's rules on per diem, travel, the indivisible day, the same rate for all team members, and fees for recording, were all followed by interpreters and accepted by clients. (F. 336-40.) Some AIIC members were willing to work in smaller teams, or longer days -- for more money. (F. 341-43.)

In 1975, AIIC's U.S. Region caused the Pan American Health Organization to raise its rates. (F. 364.) In 1976, AIIC members boycotted the Organization of American States, causing a 25% increase in OAS's rates (from \$83 to \$105 per day). (F. 365.) In 1984, AIIC and TAALS pressured the Los Angeles Olympic Organizing

Committee to meet AIIC's rates (F. 356), cancellation clauses (F. 356-57), non-working days, same team-same rate, and recordings. (F. 356.) AIIC achieved this by sending a "warning" ("mise en garde") to the Olympics' chief interpreter, Mr. Weber, and published that warning to all AIIC members (F. 348); coordinating its efforts with TAALS (F. 355) and writing threatening letters to Mr. Weber and to the LAOOC. (F. 353-54.) As AIIC's then-U.S. Region Council member observed to AIIC's then-Secretary General, "I think that the pressure AIIC put to bear is getting results." (CX-1266-B; F. 357.) The results were that LAOOC had higher costs. (F. 358.)

AIIC and TAALS members demanded and received the rates and rules specified in their agreements, more than 90% of the time during 1988 through 1991. (F. 319.) In each of those four years, the most frequently charged price was the AIIC "suggested minimum" rate. (F. 318-20.) AIIC's members usually charged at least the "suggested minimum" rate. AIIC's rules affected these prices. AIIC could not have affected these prices without having market power. AIIC had market power. "[P]roof of actual detrimental effects, such as a reduction in output, can obviate the need for an inquiry into market power, which is but a 'surrogate for actual anticompetitive effects.'" *IFD*, 476 U.S. at 460-61.

b. Market share

The relevant product markets in this case are conference interpretation language pairs in the United States. (F. 366.) Market shares for AIIC and TAALS members in these markets range from 24% to 60%. (F. 379-80.)²³ Taking a "quick look," because AIIC was able to secure its members' adherence to the rules these market shares support the finding that consumers' ability to look elsewhere is limited. (F. 381.) These facts establish anticompetitive effects of respondents' conduct. CDA, slip. op. at 29.

c. Entry barriers

Entry into conference interpreting is slow and difficult. Conference interpreters need extensive training in the techniques of

²³ Only 17% of the professional engineers in the United States were members of the National Society of Professional Engineers (55,000 of 325,000). *Professional Engineers*, 389 F. Supp. 1193, 1202 (D.D.C. 1974.)

simultaneous and consecutive interpretation and in the subjects of international conferences, such as medicine, economics, law and politics. (F. 387-88, 390.) The AIIC members who testified had formal training in interpretation, often for four years or more. (F. 388.) Intermediaries will not hire untrained conference interpreters. (F. 387.) Interpretation schools in the United States produce very few graduates (F. 386), and more interpreters have been leaving the profession than entering it. (F. 385.) AIIC has been able to maintain its practices without new entry eroding its market power.

III. JURISDICTION

A. Nonprofit

Respondents each argue that it is not a "corporation" organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act.²⁴

AIIC and the U.S. Region are each associations that exist for the profit of their members. (F. 453-97.) AIIC's purpose is "to define and represent the profession . . . [and] to safeguard the interests of its members." (F. 454.) This statement of purpose alone is sufficient to invoke jurisdiction over respondents. *FTC v. National Commission on Egg Nutrition*, 517 F.2d 485, 487 (7th Cir. 1975), cert. denied, 426 U.S. 919 (1976). In addition:

- AIIC mailed schedules of rates for interpreters to charge in the United States. (Stip. 22-3; F. 93-96.)²⁵ AIIC exists for the profit of its members; whether or not those rates were mandatory in the United States, mailing the rate sheets and market surveys is for the profit of its members.²⁶
- AIIC's minimum rate was the standard. (F. 320.)

²⁴ Section 5 of the FTC Act directs the Commission to prevent unfair methods of competition by "persons, partnerships, or corporations." 15 U.S.C. 45(a)(2). Section 4 of the Act provides in relevant part that a "corporation" is, among other things, "any association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members." 15 U.S.C. 44 and 45(a)(2). The legislative history of the FTC Act suggests that the "profit of its members" language was included to confer Commission jurisdiction over trade associations. *Community Blood Bank of Kansas City Area, Inc. v. FTC*, 405 F.2d 1011, 1017-18 (8th Cir. 1969.)

²⁵ Even if these rates sheets were merely "market surveys," distributed to advise members of prevailing rates that they might expect to be paid, their dissemination was for the pecuniary benefit of AIIC's members, to assist them in deciding what fees to demand. The "market surveys" were in fact the minimum mandatory rate sheets. (F. 519.)

²⁶ *Egg Nutrition*, 517 F.2d at 487-88; *Community Blood Bank of Kansas City v. FTC*, 405 F.2d at 1017.

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Initial Decision

- AIIC members, and other interpreters, are paid on an indivisible daily basis in the United States. (F. 338.)
- All members of interpretation teams, except for Japanese and some other Asian interpreters, typically were paid the same rate. (F. 339, 150-53.)
- AIIC mandates payment for non-working days, travel, rest and briefing days, and payment of fees on cancellation. (F. 147-48, 243.) AIIC officers insisted that AIIC's non-working days and cancellation rules be adhered to in recruiting interpreters for the 1984 Los Angeles Olympics. (F. 356-57.)
- AIIC disseminates its membership lists to prospective employers to get employment for its members. (F. 467-68, 470.)
- AIIC refers members for employment to people organizing conferences. (F. 471, 473.) The AIIC Directory "provides valuable information to users or potential users of interpretation services." (Stips. 61-62.)
- AIIC holds meetings and seminars discussing employment issues and sales techniques, and sponsors lectures discussing the practice of interpretation. (Stip. 73.)
- AIIC "educates the public." (CX-2490-D-E; Luccarelli Decl. at 10; Weber, Tr. 1153.)
- AIIC represents interpreters in negotiations over wages, hours, and working conditions with governments and private organizations. (F. 493-97.)
- AIIC offers pension and insurance plans to its members, and maintains a "solidarity fund" for its members. (Stip. 81; F. 484-86.)

The Commission has jurisdiction over a nonprofit trade or professional association when its "activities engender a pecuniary benefit to its members if that activity is a substantial part of the total activities of the organization, rather than merely incidental to some non-commercial activity." *AMA*, 94 FTC at 983; accord *CDA*, slip op. at 5; *Michigan State Medical Soc'y*, 101 FTC 191, 284 (1983). AIIC was established to protect the pecuniary interests of its members. (F. 454-56.) Thus, it comes within Section 4 of the Act. *FTC v. National Commission on Egg Nutrition*, 517 F.2d at 487. Respondents engage in activities to improve members' incomes and working conditions. (F. 457-61.) That has always been AIIC's purpose, and AIIC's first actions were directed to raising interpreters'

pay. (CX-203-C.) AIIC's members are themselves profit seekers. AIIC's members are all professional conference interpreters who provide their interpretation services for pay. (F. 453.) AIIC promotes members' economic interests, including members' remuneration and work conditions. (F. 453-97.) Respondents fall within FTC jurisdiction as "corporations" within the meaning of the statute. CDA, slip op. at 6-7.

B. Personal Jurisdiction Over AIIC

The Commission has jurisdiction to investigate and regulate activities of foreign corporations that affect U.S. commerce. *FTC v. Compagnie de Saint-Gobain-Point-a-Mousson*, 636 F.2d 1300, 1322 (D.C. Cir. 1980). The FTC may exercise jurisdiction subject to the interstate commerce limitation and the limits imposed by due process. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). If the defendant is not present within the forum, due process requires that it have "minimum contacts" with the United States. *Id.* at 316. Minimum contacts are found, in antitrust cases, when the defendant's activity, directed toward the United States, has effects in the United States. AIIC has sufficient contacts with the United States for the Commission to exercise specific jurisdiction.²⁷ (F. 419-40.)

AIIC's conduct was intended to affect the prices charged by AIIC members for conference interpretation, and the terms under which they worked in the United States. (F. 412-13, 419-40.) AIIC has members in the United States (Stip. 27); AIIC adopted its workload and other rules (Stip. 9, 83-87), and AIIC expects those workload rules to be followed in the United States. (Silberman, Tr. 3132-33.) AIIC adopted rules specifically for the United States (F. 451-52), including price schedules for interpreters' daily fees and per diem (F. 419-21). AIIC's promulgating a schedule of fees, in United States dollars, for interpreters to charge when working in the United States, is sufficient conduct, purposefully directed toward the United States, to support jurisdiction over claims arising from that conduct. *Burger King v. Rudzewicz*, 471 U.S. 462, 479-80 (1985). AIIC adopted rules specifically to be adopted in the United States, including rules on

²⁷ "When the cause of action sued on does not arise from the defendant's contacts with the forum state, general jurisdiction must be predicated on contacts sufficiently continuous and systematic to justify haling the defendant into court. Special [specific] jurisdiction is asserted when the defendant's forum contacts are sporadic, but the cause of action arises out of those contacts." 4 C. Wright & A. Miller, *Federal Practice & Procedure*, Section 1067 at 295-96 (1987); cf. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415-16 (1984).

staffing that were more stringent than the European rules (F. 171, 421-22), and a waiver permitting interpreters to work alone for 40 minutes. (F. 423.) AIIC conducted surveys and studies of the U.S. market (F. 426-27), mailed documents into the United States to promote its anticompetitive agreements (F. 439-40), and held meetings to promote its restrictions in the United States. (F. 436-38.) AIIC has a director working in the United States (the United States Region representative to AIIC, who as such is a member of the AIIC Council, Stip. 27, 43, 44, 46), who explains AIIC's rules to members in this country. (F. 431-34.)

As a result of these contacts with the United States arising out of AIIC's conduct, the Commission has specific personal jurisdiction over AIIC. *Consolidated Gold Fields, P.L.C. v. Anglo American Corp.*, 698 F. Supp. 487, 494-96 (S.D.N.Y. 1988), *aff'd in part and rev'd and remanded in part on other grounds sub nom. Consolidated Gold Fields, P.L.C. v. Minorco, SA*, 871 F.2d 252 (2d Cir.), *cert. dismissed*, 492 U.S. 939 (1989); *Pillar Corp. v. Enercon Indus. Corp.*, 1989-1 Trade Cas. ¶ 68,597 (E.D. Wis. 1989).

Respondents are not charged with untargeted negligence. Rather, their actions were expressly aimed at the United States, and give rise to jurisdiction. *Calder v. Jones*, 465 U.S. 783, 789-90 (1984).²⁸ AIIC has "purposefully avail[ed] itself of the privilege of conducting activities within the [United States]," and is therefore subject to its jurisdiction. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).²⁹

C. Personal Jurisdiction Over the U.S. Region

Section 5 of the FTC Act broadly provides that the Commission can bring actions and issue orders against "corporations." Section 4 defines "corporation" to include "associations, incorporated or

²⁸ *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995); *Haisten v. Grass Valley Medical Reimbursement Fund*, 784 F.2d 1392, 1399 (9th Cir. 1986).

²⁹ Respondents rely on *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113 (1987), as holding that "a defendant's mere awareness that its products will enter the forum is insufficient as a matter of law to support personal jurisdiction." (Respondent Br. at 118.) That was the position of Justice O'Connor and three other Justices, 480 U.S. 112, in a portion of the opinion that five Justices (Brennan, White, Marshall, Balckmun, Stevens, JJ.) rejected. 480 U.S. at 116-20 (Brennan, J., concurring in part); 480 U.S. at 121 (Stevens, J., concurring in part).

Cases in which courts did not find general personal jurisdiction (as different from specific jurisdiction) over defendants with few contacts with the forum include: *Donatelli v. National Hockey League*, 893 F.2d 459, 470-71 (1st Cir. 1990); *Health Care Equalization Committee v. Iowa Medical Soc'y*, 851 F.2d 1020, 1030 (8th Cir. 1988). *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110, 1119 (6th Cir. 1994) involved an application of association rules in Europe to events taking place in Europe.

unincorporated." The Commission has proceeded against unincorporated associations.³⁰ The Supreme Court has defined "associations" to include: "a body of persons united without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise." *Hecht v. Malley*, 265 U.S. 144, 157 (1924). The issue, therefore, is whether the U.S. Region is "a body of persons united without a charter," with "methods and forms used by incorporated bodies" for "the prosecution of some common enterprise."

AIIC's Basic Texts and AIIC Statutes expressly provide for the creation, recognition, representation, and governance of AIIC regions. (F. 5, 444.) The U.S. Region has adopted its own rules of procedure, including rules for its members' participation in the U.S. Region activities, establishing the U.S. Region's officers, setting down meeting schedules, and providing for budgetary disciplines. (F. 445-46.) The U.S. Region elects its officers and holds regular meetings where official minutes are taken. (F. 446-47.) The U.S. Region manages its own budget and has control over its own expenses. (F. 446-49.)

Members of the U.S. Region are united together to "prosecute a common enterprise." The U.S. Region was created by U.S. AIIC members to represent conference interpreters in the United States and to safeguard the interests of U.S. members. (F. 450-51.) The U.S. Region has advanced these goals that unite its members when it has recommended rates of remuneration, set per diem formulas, and issued team size tables for the United States. (F. 448, 451-54.) The Region prosecutes a common enterprise by negotiating rates with the OAS, urging members to respect AIIC working conditions in the United States, and enforcing the AIIC code against alleged violators in the United States. (F. 451.)

The evidence shows a series of acts committed by the U.S. Region, as a group, including: a "gentlemen's agreement" on rates (F. 77); decisions to take rate-making activities underground (F. 77, 79); efforts to increase team sizes in the United States and "expose" interpreters who violated the U.S. Region's team size and rate rules (F. 171); intercession by AIIC's U.S. Region council member in AIIC's efforts to conform rates and conditions at the 1984 Olympics to AIIC's rules (F. 83, 242, 146); efforts by another U.S. Region council member to have AIIC members conform to the professional

³⁰ *SCTLA*, 107 FTC 510, 516-17, 564-65 (1986), rev'd on other grounds, 856 F.2d 226 (D.C. Cir. 1988), rev'd, 493 U.S. 411 (1990); *IFD*, 101 FTC at 74, 159.

domicile rule (F. 231); and the U.S. Region's agreement to cause AIIC to resume publishing "suggested minimum" rates for the United States. (F. 78.)

The United States Region holds meetings twice a year, which are attended by nearly half of the Region's AIIC members. (F. 446.) The United States Region has an elected treasurer, a regional secretary, and a regional representative serving on the AIIC Council. (F. 447-48.) The AIIC Basic Texts include a "General Document on Regions" and Articles 34-36 of the AIIC Statutes, which provide for the creation, recognition, representation, and governance of AIIC regions. (F. 444.) Pursuant to these documents, the United States Region has its own rules of procedure (Stip. 38), which govern its members' participation in the U.S. Region activities, identify the U.S. Region's officers, set down meeting schedules, and provide for budgetary disciplines. (Stip. 38, 43-44, 46; F. 445.) The U.S. Region maintains its own funds in a bank account in the United States, over which it has independent authority, and it collects and receives AIIC membership dues. (Stip. 49-50; F. 449.)

The Commission may, therefore, proceed against the U.S. Region as an unincorporated association. *Hecht v. Malley*, 265 U.S. at 157. The Commission also has jurisdiction to join U.S. Region as part of AIIC. *AMA*, 94 FTC at 1032.

D. Labor Exemptions

Respondents' "labor exemption" defense is rejected. It was not timely asserted.³¹ Further, respondents have not shown that AIIC is a union or that its members are employees. They bear the burden of establishing their right to the exemption. Rule 3.43(a), 16 CFR 3.43(a).

The statutory labor exemption is available for unilateral union conduct. *United States v. Hutcheson*, 312 U.S. 219, 232 (1941). But respondents do not claim that AIIC is a labor union. Respondents do not qualify as a "labor organization" under the National Labor Relations Act's definition, since respondents are not employees.³²

³¹ Respondents' answer did not contain "a concise statement of facts constituting [this] ground of defense," Rule 3.12(b)(1)(i), 16 CFR 3.12(b)(1)(i).

³² The Act defines "labor organization" as "any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 29 U.S.C. 152(5)(1973).

AIIC negotiates collective bargaining agreements for AIIC members employed by intergovernmental organizations. (F. 506.) But AIIC decided not to be a union. (F. 505.) AIIC's agreements specify terms and working conditions for freelance interpreters. (F. 501.) AIIC freelance interpreters are independent contractors. (F. 504.) Freelance interpreters are thus not employees entitled to the protection of the exemption. "A party seeking refuge in the statutory exemption must be a *bona fide* labor organization, and not an independent contractor or entrepreneur." *H.A. Artists & Associates v. Actors' Equity Ass'n*, 451 U.S. 704, 717 n.20 (1981).³³

Respondents are ineligible for the nonstatutory labor exemption. That exemption is available only for union-employer agreements. *Connell Construction Co. v. Plumbers & Steamfitters Local No. 100*, 421 U.S. 616, 623-25 (1975); *HBO*, 531 F. Supp. at 604 ("the nonstatutory exemption . . . protects the terms of collective bargaining agreements").

IV. RELIEF

A. Fashioning a Remedy

The Commission has wide discretion in its choice of a remedy deemed adequate to cope with unlawful practices. *Jacob Siegel v. FTC*, 327 U.S. 608, 611-13 (1946). In fashioning a remedy, it is appropriate to go "beyond a simple proscription against the precise conduct previously pursued." *Professional Engineers*, 435 U.S. at 698.

The substantive provisions of the order are based on orders issued by the Commission against TAALS and the American Society of Interpreters ("ASI"). The American Association of Language Specialists, C-3524 (Aug. 31, 1994) (consent order); American Society of Interpreters, C-3525 (Aug. 31, 1994) (consent order).

³³ In *Home Box Office, Inc. v. Directors Guild of America*, the court described the defendant Directors Guild of America as a "collective bargaining representative." 531 F. Supp. 578, 581 (S.D.N.Y. 1982), *aff'd mem.*, 708 F.2d 95 (2d Cir. 1983 ("HBO")). The HBO court noted, 531 F. Supp. at 589:

not all combinations of unions with entrepreneurs or independent contractors fall outside the statutory exemption. . . . Even though a challenged combination includes independent contractors or entrepreneurs, it may come within the statutory exemption if the non-employee parties to the combination are in job or wage competition with the employee parties, or in some other economic interrelationship that substantially affects the legitimate interests of the employees.

Here the non-agreement sector AIIC members and the agreement sector AIIC members do not compete by specific AIIC rule. (F. 280.)

B. Abandonment

Respondents contend no order should issue against their "removed" "monetary conditions." Their argument is rejected. Respondents have a history of knowingly concealing antitrust violations; respondents have not in fact abandoned their price fixing; and the minimal actions respondents took were only taken after they knew they were under investigation.

AIIC violated the antitrust laws for years before they claim to have removed the "monetary conditions" from their Basic Texts. (F. 513-21.) In 1991, despite advice from lawyers, AIIC again voted to codify its many anticompetitive rules. (F. 520-21.) Respondents do not acknowledge wrongdoing for any period. The likelihood of recidivism is great. *Coleman v. Cannon Oil Co.*, 849 F. Supp. 1458, 1471-72 (M.D. Ala. 1993).

AIIC modified its Basic Texts by changing mandates to advice, trusting members to continue to adhere to the rules. (F. 523, 527-28.) The 1992 resolution "removing" the "monetary conditions," stated that AIIC remained "DEEPLY ATTACHED to the principles of universality and solidarity upon which AIIC, since its inception, has based its actions in organizing the profession. . . ." (F. 509.) AIIC never told its members to stop agreeing on prices or terms. (F. 509-10, 524.) AIIC exhorted members to defend their individual "rights" to charge for per diem, non-working days, travel days, and "fees that are a fair reflection of the difficulty and importance of his work." (F. 512.) In March 1994, AIIC recommended that interpreters tell their clients, "interpreters' fees are unchanging." (F. 531.)³⁴

AIIC's continues to ensure understanding about all of its rules:

- AIIC maintains team size and hours rules (F. 175, 184-86);
- AIIC still provides to its members its standard form contract, which shows interpreters how they can adhere to AIIC's monetary conditions. (F. 530.)
- In "removing" monetary conditions AIIC issued a vademecum to enumerate AIIC's price fixing rules, explaining what an interpreter's cost estimate "should" include. (F. 526.)

³⁴ An agreement to adhere to previously announced prices is *per se* price fixing. *Sugar Institute*, 297 U.S. 553, 601-02 (1936).

- AIIC continues to collectively agree on rates and other terms to be applied in its Agreement Sector which include organizations in the U.S. private sector. (F. 534-36.)
- Members use AIIC's Agreement Sector terms to model their behavior in the remainder of the private sector. (F. 536.)

The AIIC or "going rate" is still in force. (F. 532-33.) The pricing practices of AIIC members in the United States continue. (F. 533.) AIIC's efforts do not constitute an abandonment of this unlawful conspiracy.³⁵ The antitrust laws look to substance, not to form, *United States v. Line Material Co.*, 333 U.S. 287, 357 (1948), and cannot be satisfied by cosmetic changes to "basic texts."

Changes to AIIC's Basic Texts came after antitrust inquiries in Germany, Canada, and the United States. (F. 541.)³⁶ AIIC failed to remove the "monetary conditions" at its January 1991 assembly. (F. 520-22.) In August 1992, when AIIC did vote to remove monetary conditions, it had known for over a year that Commission staff was investigating TAALS, and had subpoenaed and taken testimony from AIIC members in this country. (F. 538.) Abandonment depends on the *bona fides* of the intent to comply with the law in the future, the effectiveness of the discontinuance, and the character of the past violations. *Mass. Bd.*, 110 FTC 549, 616 (1988), citing *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *Borg-Warner Corp. v. FTC*, 746 F.2d 108, 110 (2d Cir. 1984).

AIIC argues that, as an international organization, it is outside of the Commission's jurisdiction. Although aware for nearly two decades before this investigation began that its rules were illegal in the United States AIIC did not change any of its rules until after it became aware of the FTC investigation. A claim of abandonment is rarely sustainable as a defense when discontinuance occurred "only after the Commission's hand was on the respondent's shoulder." *Zale Corp.*, 78 FTC 1195, 1240 (1971); *Fedders Corp. v. FTC*, 529 F.2d 1398, 1403 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976). Without a Commission order there will be nothing to prevent AIIC from continuing in its old ways of publicly regulating competition as to the price, output and marketing of interpretation services within the United States.

³⁵ AIIC members continue to adhere to AIIC's travel, recordings, cancellation, indivisible day, same team-same rate, team size and hours rules. (F. 509-12, 523-33.)

³⁶ AIIC continued its price-fixing in Canada as well as the United States. (F. 301, 541.)

CONCLUSION

Respondents have violated Section 5 of the Federal Trade Commission Act, and an appropriate order must issue.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over respondents International Association of Conference Interpreters, a/k/a Association Internationale des Interpretes de Conference ("AIIC") and United States Region of the International Association of Conference Interpreters ("U.S. Region").

2. Each respondent is a corporation, within the meaning of Section 4 of the Federal Trade Commission Act (the "Act"), 15 U.S.C. 44, as amended. Respondent AIIC is an incorporated association organized for the profit of its members. Respondent U.S. Region is an unincorporated association organized for the profit of its members.

3. Each respondent is properly joined.

4. Respondents engaged in agreements, combinations, and unfair methods of competition by rules and practices fixing the prices for conference interpretation in the United States, reducing output and competition among themselves and with other conference interpreters, by *per se* unlawfully agreeing:

(a) To charge minimum rates; the same rate for all members of a team of interpreters at a conference; fees for travel, briefing, rest and non-working days; per diem allowances; travel expenses; fees for recordings; cancelled contracts; not to pay or receive commissions; and not to work without compensation but with travel and subsistence expenses paid.

(b) To refuse to sell conference interpretation services except on an indivisible daily basis; and to specify the number of interpreters required and the maximum number of hours worked for a daily fee.

(c) To allocate markets and protect local freelance interpreters from competition from other members of AIIC and other interpreters, by requiring members to declare a professional address and to base charges for travel, per diem allowances, and non-working days (including travel and rest days) from the professional address; and by

preventing staff interpreters from competing with freelance interpreters.

(d) Not to advertise or promote conference interpretation services by comparing the price or cost of members' services.

5. Further, respondents engaged in agreements, combinations and unfair methods of competition by rules and practices fixing prices for conference interpretation in the United States, reducing output and eliminating competition among themselves and with other conference interpreters, by agreeing to deter the formation of firms of interpreters (by rules prohibiting exclusive agency relationships, trade names, and package deals of interpretation services); and by agreeing not to use portable equipment nor to advertise conference interpretation services.

6. None of the agreements in the foregoing paragraph is supported by cognizable or demonstrated efficiency or other procompetitive justifications; under a rule of reason analysis, each agreement is an unreasonable restraint of trade.

7. The practices challenged in the complaint have had anticompetitive effects in the United States, and demonstrate the exercise of substantial market power in the United States in markets for conference interpretation.

8. Each effective agreement identified herein is part of an scheme to fix prices, and all are therefore unlawful *per se*.

9. Respondents have engaged in unfair methods of competition, in violation of Section 5 of the Act, 15 U.S.C. 45.

10. This order is necessary and appropriate to remedy the violation of law.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "AIIC" means the International Association of Conference Interpreters (also known as Association Internationale Des Interpretes De Conférence), officers, members, agents, employees, successors, and assigns; "U.S. Region of AIIC" means the United States Region of the International Association of Conference Interpreters (also known as Association Internationale Des Interpretes De Conférence),

officers, members, agents, employees, successors, and assigns; "respondent" or "respondents" means either AIIC or the U.S. Region of AIIC.

B. "*Fees*" means any cash or non-cash charges, rates, prices, benefits or other compensation received or intended to be received for the rendering of services, including but not limited to, salaries, wages, transportation, lodging, meals, allowances (including subsistence and travel allowances), reimbursements for expenses, cancellation fees, recording fees, compensation for time not worked, compensation for travel time, compensation for preparation or study time, and payments in kind.

C. "*Cancellation fee*" means any fee intended to compensate for the termination, cancellation or revocation of an understanding, contract, agreement, offer, pledge, assurance, opportunity, or expectation of a job.

D. "*Interpretation*" means the act of expressing, in oral form, ideas in a language different from the language used in an original spoken statement.

E. "*Translation*" means the act of expressing, in written form, ideas in a language different from the language used in an original writing.

F. "*Other language service*" means any service that has as an element the conversion of any form of expression from one language into another or any service incident to or related to interpretation and translation, including briefing or conference preparation, equipment rental, conference organizing, teleconferencing, précis writing, supervision or coordination of interpreters, reviewing or revising translations, or providing recordings of interpretations.

G. "*Interpreter*" means one who practices interpretation.

H. "*Translator*" means one who practices translation.

I. "*Language specialist*" means one who practices interpretation, translation, or any other language service.

J. "*Person*" means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

K. "*Exclusive employment arrangement*" means an employment arrangement in which interpreters or other language specialists are available for hire only through a particular individual or firm or in which interpretation teams of fixed composition are controlled by a particular individual or firm.

II.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from:

A. Creating, formulating, compiling, distributing, publishing, recommending, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees applicable in the United States for interpretation, translation, or any other language service, including but not limited to fee reports, fee guidelines, suggested fees, proposed fees, fee sheets, standard fees, or recommended fees;

B. Entering into, adhering to, participating in, or maintaining any contract, agreement, understanding, plan, program, combination, or conspiracy to construct, fix, stabilize, standardize, raise, maintain, or otherwise interfere with or restrict fees applicable in the United States for interpretation, translation, or other language services;

C. Suggesting, urging, encouraging, recommending, or attempting to persuade in any way interpreters or other language specialists to charge, pay, offer, or adhere to, for transactions within the United States, any existing or proposed fee, or otherwise to charge or refrain from charging any particular fee;

D. Continuing a meeting of interpreters or other language specialists after 1) any person makes a statement, addressed to or audible to the body of the meeting, concerning the fees, applicable in the United States, charged or proposed to be charged for interpretation, translation, or any other language service and failing to dismiss such person from the meeting, or 2) two persons make such statements;

E. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any form of price competition in the United States, including but not limited to offering to do work for less remuneration than a specific competitor, undercutting a competitor's actual fee, offering to work for less than a customer's announced fee, advertising discounted rates, or accepting any particular lodging or travel arrangements;

F. Discouraging, restricting, or prohibiting interpreters or other language specialists from accepting hourly fees, half-day fees, weekly fees, or fees calculated or payable on other than a full-day basis for services performed within the United States;

G. Discouraging, restricting, or prohibiting interpreters from performing interpretation, translation, or other language services within the United States free of charge or at a discount, or from paying their own travel, lodging, meals, or other expenses; and

H. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against any forms of advertising within the United States, including but not limited to comparative advertising by interpreters or other language specialists.

Provided that, nothing contained in this paragraph II shall prohibit respondents from:

- * Compiling or distributing accurate aggregate historical market information concerning past fees actually charged in transactions completed no earlier than three (3) years after the date this order becomes final, provided that such information is compiled and presented in an unbiased and nondeceptive manner that maintains the anonymity of the parties to the transactions;

- * Collecting or publishing accurate and otherwise publicly available fees paid by governmental and intergovernmental agencies, if such publication states the qualifications and requirements to be eligible to receive such fees;

- * Continuing a meeting following statements concerning historical, governmental, or intergovernmental fees that are made in order to undertake the activities permitted in paragraphs II.A and II.B of this order; or

- * Formulating, adopting, disseminating to its organizational subdivisions and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

It is further ordered, That respondents, directly or indirectly, or through any person, corporation, or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, cease and desist from entering into, adhering to, participating in, promoting, assisting, enforcing or maintaining any agreement, understanding, plan, program,

combination, or conspiracy to limit, restrict, or mandate, within the United States:

A. The length of time that interpreters or other language specialists work in a given period, or for which they are paid for preparation or study;

B. The number of interpreters or other language specialists used for a given job or type of job;

C. The reimbursement of or payment to interpreters or other language specialists for travel expenses or time spent traveling, or the use of any terms, conditions, limitations or restrictions that would prevent consumers from receiving any advantages based on interpreters' or other language specialists' actual travel arrangements or geographic location;

D. The number or duration of residences, domiciles or professional addresses of members;

E. Any discounts, costs, or other advantages or disadvantages to consumers based on actual travel arrangements or geographic location;

F. The equipment used in performing interpretation, translation, or other language services;

G. The number or types of services offered or performed by interpreters, or other language specialists within a given period of time;

H. Exclusive employment arrangements or the use of trade names by interpreters or other language specialists;

I. The recruitment of interpreters, or other language specialists on the basis of whether or not they are permanently employed;

J. The payment or receipt of commissions; or

K. Package deals, lump sum payments, or any arrangements whereby payment or charges for more than one good or service are included in a single sum.

IV.

It is further ordered, That respondents shall, within thirty (30) days after the date this order becomes final, amend the Basic Texts and all sub-parts and appendices to conform to the requirements of paragraphs II and III of this order and amend the rules and bylaws to require each member, region, sector, chapter, or other organizational

subdivision, to observe the provisions of paragraphs II and III of this order.

V.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute to each member, affiliate, region, sector, chapter, organizational subdivision, or other entity associated directly or indirectly with respondent, copies of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, (4) and any document that respondent revises pursuant to this order; and

B. Distribute to all new officers, directors, and members of respondent, and any newly created affiliates, regions, sectors, chapters, or other organizational subdivisions of respondent, within thirty (30) days of their admission, election, appointment, or creation, a copy of: (1) this order, (2) the accompanying complaint, (3) Appendix A to this order, and (4) any document that respondent revises pursuant to this order.

VI.

It is further ordered, That each respondent shall:

A. Within sixty (60) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary of the date this order becomes final, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order, and any instances in which respondent has taken any action within the scope of the proviso in paragraph II of this order;

B. For a period of ten (10) years after the date this order becomes final, collect, maintain and provide upon request to the Federal Trade Commission: records adequate to describe in detail any action taken in connection with the activities covered in this order; all minutes, records, reports or tape recordings of meetings of the Council, General Assembly, and all committees, subcommittees, working groups, or any other organizational subdivisions of respondent; and all mailings of respondent to membership;

C. For a period of ten (10) years after the date this order becomes final, provide copies to the Federal Trade Commission, within thirty (30) days of its adoption, of the text of any amendment to the Basic Texts or Appendices thereto, and any new rule, regulation or guideline of respondent applicable in the United States;

D. For a period of ten (10) years after the date this order becomes final, permit any duly authorized representative of the Commission: (1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, minutes, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order, and (2) Upon five (5) days notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent; and

E. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution or reorganization of itself or of any proposed change resulting in the emergence of a successor corporation or association, or any other change in the corporation or association that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That the U.S. Region of AIIC shall cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any organization of interpreters or other language specialists within thirty (30) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has engaged, after the date this order becomes final, in any act or practice that if engaged in by respondent would be prohibited by paragraphs II or III of this order; unless prior to the expiration of such thirty (30) day period said organization informs respondent by verified written statement of an officer of the organization that the organization has ceased and will not resume such act or practice, and respondent has no grounds to believe otherwise.

VIII.

It is further ordered, That this order shall terminate twenty (20) years from the date this order becomes final.

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Initial Decision

APPENDIX A

[DATE]

ANNOUNCEMENT

The Federal Trade Commission, an agency of the government of the United States of America, has determined that certain rules and practices of the International Association of Conference Interpreters ("AIIC") violate the antitrust laws of the United States.

Members are advised that agreements between competitors on rates and fees violate the antitrust laws of the United States, and may violate the laws of other countries. Other agreements between competitors on matters other than rates and fees may also violate the antitrust laws of the United States. Individuals who enter into such agreements may be subject to criminal penalties and fines under the laws of the United States of America. 15 U.S.C. 1, 18 U.S.C. 3571. Individuals who enter into such agreements may also be subject to civil liabilities to persons injured in their business or property as a result of violations of the antitrust laws. 15 U.S.C. 15.

AIIC and its United States Region are now subject to an order issued by the United States Federal Trade Commission. The order prohibits AIIC, including its members, regions, or organizational subdivisions, from engaging in various practices that would lessen competition in the United States. Copies of this order are attached to this Announcement.