Federal Trade Commission

UPDATE FROM THE FTC

Remarks of

Mary L. Azcuenaga
Commissioner

Federal Trade Commission

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The views expressed are those of the Commissioner and do not necessarily reflect those of the Federal Trade Commission or any other commissioner.

Good morning. It is a pleasure to be here to discuss with you the latest from the Federal Trade Commission. Although we are close to Disney's land of make-believe, where the line between truth and fiction is intentionally blurred, I will deliver my standard reality check: My remarks today are my own and do not necessarily reflect the views of the Commission or any other commissioner.

SUNSET

Earlier this month, the Commission made a significant policy decision. On September 1, 1994, the Commission announced that it had adopted presumptions that all future core competition order provisions should terminate automatically after twenty years and that all future supplemental competition order provisions should terminate automatically after no more than ten years.[1] This new "sunset" policy applies prospectively only and addresses only antitrust orders, not orders concerning consumer protection. The new policy is a significant step in the right direction, but, in my view, it does not go far enough. I would apply a sunset policy to all the Commission's administrative orders, both antitrust and consumer protection, and new and existing orders. I would apply the sunset policy absolutely and across the board. The Commission has solicited public comment on this policy, and I encourage any of you who may be interested to provide your views before the close of the comment period on November 4, 1994.

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[1] Federal Trade Commission Policy Statement Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders, 59 Fed. Reg. 45,286 (Sept. 1, 1994)(policy statement effective July 22, 1994).

LEGISLATIVE ACTIVITY

On the legislative front, this has been a significant year for the Commission. Perhaps the biggest news of the year for the Commission is that on August 26, 1994, President Clinton signed into law the Federal Trade Commission Act Amendments of 1994, the Commission's first authorization legislation since expiration of the previous law at the end of fiscal year 1982. The new law not only evidences congressional confidence in the Commission and its programs, but it also provides the agency with some useful technical authority that we had requested and supported for many years.

Before briefly describing these technical additions to the FTC's enforcement arsenal, let me say a few words about the main issue that held up the Commission's authorization for the last decade. This issue, of course, is the Commission's unfairness jurisdiction under Section 5 of the FTC Act.

You may recall that when the 1980 FTC Improvements Act expired in September 1983, some believed that no further authorization should be enacted unless it contained a prohibition on using unfairness theory as a basis for a trade regulation rule governing advertising practices. This position reflected the firestorm of disapproval that had met the Commission's efforts in the late 1970's to promulgate a rule based on its unfairness authority regulating advertising on television programs for children -- the ill-fated "Kid-Vid" rulemaking proceeding.

The Commission had closed the Kid-Vid proceeding some years before, issued its policy statement on unfairness in 1980[2] and, in 1984, issued an opinion in International Harvester[3] incorporating the Unfairness Statement. Nevertheless, feelings continued to run high throughout the 1980's and even into the 1990's based on an assumption that the Commission, if authorized without the limiting provisions just mentioned, would use its unfairness authority for "social engineering" under an unduly broad interpretation of the agency's unfairness authority. Congress split on the issue, and the resulting stalemate lasted for more than ten years.

During that period, Congress, perhaps recognizing that it could not reach agreement on the proposed limitation or on authorizing the agency without it, permitted passage of annual continuing resolutions that, in effect, renewed the old authorization through the appropriation process. Under House rules, appropriations are not in order for consideration in the absence of existing authorizing legislation, but the continuing resolutions were not challenged on point of order and were permitted to substitute for full-blown authorization bills, thereby allowing the House to pass the requisite appropriations. The Senate rules posed no such parliamentary obstacles, and so

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[2] Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, letter from the FTC to Senators Ford and Danforth, Dec. 17, 1980 ("Unfairness Statement"), reprinted in [1969-83 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 50,421 (1981).

[3] International Harvester Co., 104 F.T.C. 949, 1061 (1984).

the arrangement allowed the Commission to continue, more or less, with business as usual. At last, this year, a compromise was reached on the unfairness issue.

The resulting legislation defines the agency's unfairness authority, adopting language largely drawn from the Commission's 1980 Unfairness Statement[4] and prohibits the Commission from commencing a trade regulation rulemaking proceeding without first making a determination that particular "unfair or deceptive acts or practices are prevalent" based either on existing cease and desist orders or on other evidence "indicat[ing] a widespread pattern of unfair or deceptive acts or practices."[5] As part of the compromise, Congress deleted the restriction appearing in the Senate bill barring use of unfairness theory as the basis for a trade regulation rule on advertising, and including, instead, language limiting the scope of the public policy aspect of unfairness, which the advertising industry had opposed as too susceptible to overreaching.

The Commission's criteria, now the statutory criteria, for finding unfairness are that an act or practice causes substantial

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[4] The three-part definition in the statute follows the statement of criteria in the Commission's Unfairness Statement. The Senate Report states, "This section is intended to codify, as a statutory limitation on unfair acts or practices, the principles of the FTC's December 17, 1980, policy statement on unfairness, reaffirmed by a letter from the FTC dated March 5, 1982." S. Rep. No. 130, 103d Cong., 1st Sess. 12 (1993). But see H. Rep. No. 617, 103d Cong. 2d Sess. --- (1994), --- Cong. Rec. H 6006, 6009 (daily ed. July 21, 1994)(adding limiting language on public policy aspect of unfairness).

[5] Pub. L. No. 103-312 §§ 5 & 9 (1994).

consumer injury that is not outweighed by benefits to the consumer or to competition and that is not reasonably avoidable by consumers. The statute recognizes that inherent in the concept of unfairness is a component of public policy. But, although the law states that "[i]n determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence," it cautions that "[s]uch public policy considerations may not serve as a primary basis for such a determination." Id. at § 9.

The approach adopted by Congress and signed into law accords with my view of how the Commission has implemented its unfairness authority over at least the last fourteen years.[6] Indeed, as the Commission's 1980 Unfairness Statement explained, public policy "is used most frequently by the Commission as a means of providing additional evidence on the degree of consumer injury caused by specific practices."[7]

I consistently have opposed basing a decision that an act is unfair on a gut feeling that the act is "wrong" in some vague moral sense. Now, as the statute makes clear, it will not be

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[6] See Credit Practices Rule, Statement of Basis and Purpose, 49 F.R. 7740, 7743 (Mar. 1, 1984); see also Orkin Exterminating Co., 108 F.T.C. 263, 360-68(1986), aff'd, 849 F.2d 1354 (11th Cir. 1988), cert. denied, 488 U.S. 1041 (1989); cf. FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244-45 n.5 (1972)(citing with apparent approval earlier Commission interpretation of its unfairness authority).

[7] See, e.g., Credit Practices Rule, Statement of Basis and Purpose, 49 Fed. Reg. 7740, 7743 (Mar. 1, 1984).

legally appropriate to substitute such a gut feeling for a finding based on empirical data that an act meets the standard set forth in the new law -- namely, that consumers have suffered financial or other kinds of injury that they could not reasonably have avoided, and that any benefits from the conduct causing the injury were insufficient to outweigh the harm demonstrated.

Some may still believe that the FTC's authorization should have contained the language from the 1980 law expressly limiting the use of unfairness authority to regulate advertising by trade regulation rule. My own view is that because the statute defines unfairness as it has, additional limitations on the agency's use of this authority are neither necessary nor desirable. I understand the concerns on the other side and the fear that the Commission may interpret its unfairness authority too broadly in regulating advertising to children and advertising of products that legally may be sold, but which ignite controversy because they are considered physically or morally harmful. The definition of unfairness that now has been made into law does not invite abuse yet still gives the Commission authority to protect consumers in a meaningful way.

To wrap up the subject of the FTC's authorization, let me mention a few of the technical additions that the new statute added to the FTC Act: Section 6 of the new law amends the FTC Act to provide that Commission orders will become effective sixty days after the order is served, regardless of any petition for review, unless the Commission or the appropriate court stays its

effect. Before the new law, Commission orders did not become effective until all appeals were completed. Divestiture orders, however, will continue to be stayed pending completion of judicial review. This change will enable the Commission to correct problems much more quickly.

Section 7 gives the Commission, like the Antitrust Division of the Department of Justice, authority to use civil investigative demands in antitrust investigations, and it authorizes the Commission to compel production of tangible things in addition to documentary material and testimony. These changes will make it easier for the Commission to build an evidentiary record on which to make its prosecutorial decisions, particularly in those cases in which the subject of the investigation involves products such as rare coins, art work or other tangible objects such as apparel, building insulation and the like.

Section 10 provides the Commission with expanded venue, enabling it to sue all defendants in a single judicial district even if venue otherwise would not be proper, provided that the court decides that such expanded venue is in the interests of justice. Section 10 also permits the Commission to serve its compulsory process nationwide.

The statute also directs the Commission to conduct several studies. Among these, under Section 13, is a requirement that, within six months, the Commission "review its statutory responsibilities to identify those matters within its jurisdiction where Federal enforcement is particularly necessary

or desirable and those areas that might more effectively be enforced at the State or local level." The law also directs the Commission, among other things, to consult with state attorneys general, representatives of consumers and industry, and other interested parties. This requirement may be a holdover from an earlier day when the Commission's relations with the states were less than optimal. The Commission has made great strides in the past few years in cooperating and coordinating its law enforcement efforts with state enforcement agencies. The review ordered by Congress will afford us an opportunity to see if there are areas in which we can further extend our cooperation, and I invite your comments to the Federal Register notice that the Commission will publish shortly seeking input to this project.

Another important development on the legislative front this year for the Commission, occurred when the Congress passed and the President signed the Telemarketing and Consumer Fraud and Abuse Prevention Act, which gives the Commission and state law enforcement agencies stronger means of fighting these particularly pernicious forms of unlawful conduct. In addition, the recently signed crime bill includes a provision underscoring the Commission's authority to ensure that products marketed as "Made in the U.S.A." are truthfully and nondeceptively labeled. For the first time in about thirty years, the Commission has taken enforcement action in "Made in U.S.A." cases. The Commission just announced a consent agreement and a complaint in the Hyde and New Balance matters. Also, reforms to the Fair

Credit Reporting Act as well as provisions relating to advertisement of consumer leases are expected to be enacted before Congress adjourns next month.

Last, but not least, responding to the increasing globalization of commercial activities, Congress currently is considering legislation known as the International Antitrust Enforcement Assistance Act. This bill, sponsored by Senator Metzenbaum, Congressman Brooks, numerous co-sponsors and the Administration, would enable the United States Government, through the Antitrust Division and the Commission, to assist foreign governments seeking to enforce their competition laws in return for similar assistance from other countries. The Commission supports the version of the bill agreed to by the Department of Justice last week. I know this is a bill in which NAM has been interested, and I have read the constructive testimony that Rick Rogers presented on NAM's behalf to the Senate Committee on Antitrust.

CONSUMER PROTECTION

Let me turn now to some highlights from the Commission's year in the area of consumer protection, focusing on matters that involve advertising claims for consumer products.

A. Enforcement Activities

Although the Commission has taken numerous enforcement actions in consumer protection matters this year, perhaps its most publicized consumer protection investigation has been the now closed inquiry into whether R.J. Reynolds' Joe Camel

advertising campaign was unfair under Section 5. Many people expressed interest and concern about the investigation. After months of painstaking examination of all available scientific evidence and consumer research, the Commission voted to close the investigation. Chairman Steiger and then-Commissioner Yao dissented. As the Commission stated in a brief explanation of its action issued in response to the separate statements of the dissenters:

> Although it may seem intuitive to some that the Joe Camel advertising campaign would lead more children to smoke or lead children to smoke more, the evidence to support that intuition is not there.
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> If intuition and concern for children's health were a sufficient basis under the law for bringing a case, we have no doubt that a unanimous Commission would have taken that action long ago. The dispositive issue here, however, is whether the record showed a link between the Joe Camel advertising campaign and increased smoking among children, not whether smoking has an effect on children or whether the health of children is important.[8]

It would be a serious mistake to assume that the Commission will not be rigorous in policing deceptive cigarette advertising in the future. Because of the potential for consumer harm, I am certain that cigarette advertising will continue to receive close scrutiny.

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[8] R.J. Reynolds Company, File 932 3162, closed June 6, 1994, Chairman Steiger and Commissioner Yao dissenting (Press Release June 7, 1994).

In other areas, after the Commission issued its Green Guides in July 1992,[9] we have continued to be engaged in vigorous enforcement of Section 5 in the area of environmental marketing claims. The Commission has issued a total of twenty-five consent orders, of which eight were issued since last October.[10] Many of these consents involved allegations of deceptive environmental claims that occurred before the issuance of the Green Guides, but a few have concerned claims that occurred later. Generally, the level of apparent law violations involving deceptive environmental claims appears not to have increased and may even have declined since the issuance of the Guides. From the

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[9] 16 C.F.R. Part 260 (1994).

[10] The Vons Companies, Inc., C-3302 (FTC press release Aug. 27, 1990); Zipatone, Inc., C-3336 (FTC press release July 9, 1991); First Brands, Corp., C-3358 (FTC press release Jan. 3, 1992); American Enviro Products, Inc., C-3376 (FTC press release Mar. 18, 1992; Tech Spray, Inc., C-3377 (FTC press release Mar. 25, 1992; RMED International, C-3382 (FTC press release May 14, 1992); Mobil Oil Corp., C-3415 (FTC press release Feb. 1, 1993); BPI Environmental, Inc., File No. 902 3225 (consent order accepted Mar. 30, 1993, subject to final approval); PerfectData Corp., C-3452 (FTC press release Aug. 2, 1993); Demert & Dougherty, Inc., C-3456 (FTC press release Aug. 17, 1993); Nationwide Industries, C-3457 (FTC press release Aug. 26, 1993); Texwipe Co., C-3466 (FTC press release Oct. 8, 1993); G.C. Thorsen, Inc., C-3467 (FTC press release Oct. 8, 1993); White Castle Systems, Inc., C-3477 (FTC press release Jan. 13, 1994); Redmond Products, Inc., C-3479 (FTC press release Feb. 10, 1994); Mr. Coffee, Inc., C-3486 (FTC press release Mar. 25, 1994); Archer Daniels Midland Co., C-3492 (FTC press release Apr. 12, 1994); Orkin Exterminating Co., C-3495 (FTC press release May 19, 1994); America's Favorite Chicken Co., C-3504 (FTC press release July 5, 1994); Oak Hill Industries, Corp., C-3507 (FTC press release July 19, 1994); LePage's, Inc., C-3506 (July 19, 1994); AJM Packaging Corp., C-3508 (FTC press release July 20, 1994); Keyes Fibre Co., C-3512 (FTC press release Aug. 2, 1994); Amoco Foam Products Co., C-3514, (FTC press release Aug. 9, 1994); North American Plastics Corp., C-3526 (FTC press release Sept. 7, 1994).

feedback we have received, I believe the green guides have been useful to the advertising community in learning how to apply the Commission's deception standard in this area. Voluntary compliance is keeping the level of Commission enforcement activity relatively constant.

As provided in the Guides,[11] the Commission plans next year to conduct a formal review of their effectiveness. Although they appear to be working well, we will seek to identify any problem areas. We will welcome industry comments in the review process as well as the views of state enforcement agencies, consumer groups and other interested persons.

Another area of intense Commission activity during the past twelve months has been that of credit practices. One important action in that area was a joint settlement agreement negotiated by the Commission and the Department of Justice with a subsidiary of the third largest banking institution in New England.[12] The settlement resolved allegations that the company violated the Equal Credit Opportunity Act by denying home mortgage loans on the basis of race and national origin and required the company to pay approximately $1 million in consumer redress. This case achieved an important result both in terms of dollars for individual consumers and in terms of the message it sends to

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[11] 16 C.F.R. § 260.4 (1994).

[12] United States v. Shawmut Mortgage Co., No. 3:93 CV-2453 (D. Conn. Dec. 12, 1993) (FTC press release Dec. 13, 1993).

mortgage lenders in general that discriminatory credit practices will not be tolerated and, if found, will likely be expensive.

The Commission has continued its active program against fraudulent telemarketing, which not only cheats consumers but poisons the market for honest members of the industry. This program continues to rely heavily on cooperation with state attorneys general and other federal law enforcement agencies such as the United States Postal Service and the FBI. This cooperative effort has begun to expand to law enforcement agencies in other countries, Canada in particular. Both federal and state officials are making increasing use of the Telemarketing Fraud Databank operated by the Commission and the National Association of Attorneys General. As I mentioned earlier, the new telemarketing legislation will enhance the combined federal and state ability to address this nationwide and increasingly international problem.

All told, during fiscal year 1994, the Commission obtained 14 permanent injunctions in actions filed in federal district court. Twenty-six such cases filed during the period remain pending. The Commission approved 61 consent agreements during the period, including both administrative and judicial actions, obtaining relief that included over $57.6 million in consumer redress and $3.1 million in disgorgement. One of these consents settled allegations that General Nutrition, Inc., an advertiser of nutrition supplements and other products, had failed to substantiate disease-treatment, weight-loss, muscle-building and

endurance claims for over 40 products in violation of not just one, but two, earlier Commission orders.[13] The company agreed, among other things, to pay a civil penalty of $2.4 million, a penalty that should be sufficiently high to continue sending the message that violation of the agency's orders will not be tolerated.

Another highlight of our activities this year is the issuance of 21 new publications and 29 revised publications by the Commission's Office of Consumer and Business Education. We are increasing our outreach to the Spanish-speaking community by making available Spanish translations of a number of these publications. The Commission is not a large enough agency to stop all violations of the law. We use our educational program to help deter violations from occurring and to help consumers help themselves.

B. Food Advertising Enforcement Policy Statement

Heading the list of significant Commission actions in consumer protection during this fiscal year that are not strictly classified as enforcement was the issuance in May of the Commission's Enforcement Policy Statement on Food Advertising ("Food Policy Statement").[14] This Statement describes how the Commission plans to conduct its food advertising program in light

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[13] United States v. General Nutrition, Inc., No. 94-0686 (W.D. Pa. 1994).

[14] Federal Trade Commission Enforcement Policy Statement on Food Advertising, 59 Fed. Reg. 28,388 (June 1, 1994)(policy statement effective May 13, 1994).

of the enactment of the Nutrition Labeling and Education Act ("NLEA") governing labeling on food and nutrition products. Its issuance was the culmination of months of careful analysis by the Commission aided by the Bureaus of Consumer Protection and Economics and assisted, as well, by state officials, members of industry, consumer groups and the public.

In issuing the Food Policy Statement, the Commission stressed several points: First, although the law governing food labeling, the NLEA, does not apply directly to advertising of food products, much of what is provided by the statute and by the FDA's implementing regulations with respect to labeling is equally applicable to the Commission's efforts to prevent and eliminate deceptive advertising. Second, the differences between the FDA's treatment of labeling and the Commission's approach to advertising, although real, are less notable than their similarities. In those relatively few areas in which differences in approach seem warranted by the differences in legal mandate or by the different market roles played by labels and advertisements, the Commission recognizes the need for continuing close cooperation with the FDA to ensure that the policies of the FTC and the FDA with regard to these two closely related marketing functions remain consistent.

The Food Policy Statement was issued in May 1994, and the Commission has continued to investigate claims that appear inconsistent with Section 5. For example, there are some 25 investigations currently in progress on food advertising claims

most of which involve advertisements containing claims that if found on labels, could be addressed by the FDA under the NLEA as well as by the Commission under Section 5. We have yet to encounter issues that present real problems of inconsistency with the FDA regulations.

What I found remarkable about the Food Policy Statement was the intensity of public interest in what seemed to me only another of many instances in which jurisdictions and requirements of one or more federal agencies overlap. The FTC and the FDA have cooperated effectively over several decades, and I have always expected that this cooperation would continue.

I believe that, like the Green Guides, the Commission's Food Policy Statement should prove useful to the business community. Manufacturers appear to be examining their advertising campaigns in light of the FDA labeling requirements and the overall proscription of deception in the FTC Act to determine how to continue to inform consumers of the beneficial aspects of their products without relying on false or misleading claims that distort consumer choice and discourage innovation in product development.

COMPETITION

Let me turn now to the antitrust side of our activities for the year, which has been busy as well with respect to both mergers and conduct violations. Let me start with a recap of Commission activity.

A. Mergers

In the past year, the Commission has authorized four preliminary injunction suits. In two of the cases, one involving leased railroad boxcars[15] and the other a merger-to-monopoly of two hospitals in Colorado,[16] the parties abandoned their transactions after the Commission voted to challenge them. The two remaining preliminary injunction suits involved hospital mergers.[17] Also in the past year, the Commission accepted negotiated orders in a number of merger cases.

Merger cases always are fascinating, but the main observation I would offer today is that these cases are based on standard Clayton Act principles. The cases involved retail pharmacies;[18] expendable launch vehicles for intermediate weight

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[15] General Electric Co., File 931 0110 (FTC press release Sept. 29, 1993), Commissioner Starek recused.

[16] Parkview Episcopal Medical Center, File 931 0125 (FTC press release Jan. 31, 1994).

[17] The FTC's request for a preliminary injunction was denied in FTC v. Hospital Bd. of Directors of Lee County, No. 94-137-CIV-FTM-25D (M.D. Fla. May 16, 1994), injunction pending appeal granted, No. 94-2642 (11th Cir. May 18, 1994). Commissioners Azcuenaga and Owen dissented from the decision to seek a preliminary injunction (FTC press release, April 26, 1994). The Commission issued its administrative complaint challenging the acquisition in May. Lee Memorial Hospital, File 941 0057, Commissioners Azcuenaga and Owen dissenting (FTC press release May 11, 1994). A consent settlement requiring divestiture was reached before a complaint was filed in HealthTrust, Inc., File 941 0021, Commissioner Yao dissenting and Commissioner Owen not participating (FTC press release March 22 & July 11, 1994).

[18] TCH Corp., File 941 0024, Commissioner Owen dissenting (FTC press release Feb. 24, 1994); Revco D.S., Inc., File 941 0075, Commissioner Owen recused (FTC press release July 15, 1994); Rite Aid Corp., File 941 0081, Commissioner Yao not participating (FTC press release Sept. 2, 1994).

satellites;[19] computer software systems;[20] coal export terminal services;[21] money wire transfer services;[22] hospitals[23] and outpatient surgical centers;[24] a merger-to-monopoly in dicyclomine, a pharmaceutical product used to treat irritable bowel syndrome;[25] a pharmaceutical product used to perform drug abuse testing;[26] and several different manufacturing markets, including horizontal carousel storage and retrieval systems used in warehouses,[27] acrylic plastic sheet,[28] coating resins used in

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[19] Martin Marietta Corp., Docket C-3500 (June 22, 1994), Commissioner Owen dissenting.

[20] Adobe Systems, Inc., File 941 0059, Commissioner Owen dissenting (FTC press release July 27, 1994).

[21] Consol, Inc., Docket C-3460 (Sept. 27, 1993).

[22] First Data Corp., File 931 0090 (FTC press release Aug. 18, 1994).

[23] Columbia Healthcare Corp., Docket 9256 (May 5, 1994), Commissioner Azcuenaga concurring; Columbia Hospital Corp., File 941 0005, Commissioner Azcuenaga concurring in part and dissenting in part and Commissioner Owen dissenting (FTC press release June 22, 1994).

[24] Columbia/HCA Healthcare Corp., File 941 0108 (FTC press release Sept. 15, 1994).

[25] Dow Chemical Co., File 941 0019, Commissioners Owen and Yao concurring and Commissioner Azcuenaga dissenting (FTC press release June 22, 1994).

[26] Roche Holding, Ltd., File 941 0085, Commissioner Yao not participating (FTC press release Aug. 30, 1994).

[27] Alvey Holdings, Inc., Docket C-3488 (March 30, 1994).

[28] Imperial Chemical Industries PLC, Docket C-3473 (Nov. 29, 1993, Commissioner Owen dissenting.

paints,[29] shoe polish[30] and industrial fuses.[31] One case involved the acquisition of a producer of dehydrated onions, and the order was a little unusual in that it required divestiture of seed sufficient to produce 100 million pounds of onions.[32] The seeds were not the ordinary seeds sold in garden shops or through seed catalogues but are specially developed over a period of years to produce low-water onions suitable for dehydration. This gives you a picture of the enormous variety of markets that the Commission has considered in the short period of a year.

In addition to the settlements reached without resort to a lawsuit, some Section 7 cases were settled during the course of adjudication, and some court opinions were issued during the past year. Opinions in Section 7 cases are rare, because most of the transactions that the Commission challenges are settled or abandoned before trial. We thought that we might see an opinion from the court of appeals in Occidental Petroleum Corporation, but the appeal was settled earlier this year when Occidental offered a divestiture substantially similar to what the

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[29] Valspar Corporation, Docket C-3478 (Jan. 25, 1994), Commissioner Owen dissenting.

[30] Sarah Lee Corp., File 921 0023 (FTC press release June 30, 1994).

[31] Cooper Industries, Inc., Docket C-3469 (Oct. 26, 1993), Commissioner Azcuenaga dissenting.

[32] McCormick & Co., Inc., Docket C-3468 (Oct. 25, 1993).

Commission had ordered in 1992 after adjudication on the merits.[33] Occidental will divest plants that produce suspension polyvinyl chloride homopolymer and copolymer and dispersion PVC. Textron,[34] the aerospace and commercial blind rivets case, also was settled earlier this year, after oral argument but before the Commission issued its opinion.

Earlier this year, the Supreme Court denied the petition for certiorari filed by the Olin Corporation in a Section 7 case in which the Commission had issued a divestiture order that was affirmed by the Court of Appeals for the Ninth Circuit.[35] The Commission also recently issued its decision and order in Coca-Cola,[36] resolving allegations arising from the proposed acquisition of Dr. Pepper. The order requires Coca-cola, for ten years, to obtain FTC approval before acquiring a manufacturer, seller or licensor of a branded soft drink concentrate or syrup.

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[33] Occidental Petroleum Corp., Docket 9205, reprinted in 5 Trade Reg. Rep. (CCH) ¶ 23,370 (Dec. 22, 1992) (Commissioner Owen concurring in part and dissenting in part, Commissioners Starek & Yao not participating), stipulated settlement and final order, No. 93-4122 (2d Cir. Jan. 12, 1994), modified final order (FTC Feb. 3, 1994), Commissioner Owen dissenting.

[34] Textron Inc., Docket 9226 (May 6, 1994), Commissioner Azcuenaga dissenting.

[35] Olin Corp. v. FTC, 113 F.T.C. 400 (1990), aff'd, 986 F.2d 1295 (9th Cir. 1993), cert. denied, No. 93-716 (U.S. Feb. 22, 1994).

[36] The Coca-Cola Co., Docket 9207 (June 28, 1994), Commissioners Azcuenaga and Starek recused.

A petition for review has recently been filed in the Court of Appeals for the District of Columbia Circuit.[37]

B. Conduct Cases

Let me turn now from mergers to conduct cases under Section 5 of the FTC Act. The Commission has issued a number of traditional antitrust orders this year. Concerted action by trade associations to restrict truthful advertising was alleged in cases involving an association of automobile dealers in Arizona,[38] a national association of condominium managers,[39] and a national association of manufacturers of body armor, commonly known as bulletproof vests.[40] Unlawful restrictions on truthful advertising also were alleged in the complaint issued last summer against the California Dental Association.[41]

Price fixing was alleged in cases involving interpreters who provide simultaneous translation services at business and government conferences;[42] a group of chiropractors in

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[37] Coca-Cola Enterprises, No. 94-1595 (filed Aug. 26, 1994); The Coca-Cola Co., No. 94-1596 (filed Aug. 26, 1994).

[38] Arizona Automobile Dealers Ass'n, Docket C-3497 (May 31, 1994).

[39] Community Ass'n Institute, Docket C-3498 (June 6, 1994).

[40] Personal Protective Armor Ass'n, Docket C-3481 (March 17, 1994), Commissioner Starek concurring.

[41] California Dental Ass'n, Docket 9259 (July 13, 1993) (FTC press release July 13, 1993).

[42] American Soc. of Interpreters & The American Ass'n of Language Specialists, File 911 0022 (FTC press release Jan. 31, 1994).

Bloomington, Illinois,[43] who allegedly voted to set prices for their services; a group of trauma center surgeons in Broward County, Florida;[44] the medical staff at a Phoenix, Arizona, hospital;[45] and resale price maintenance for Keds shoes.[46] In addition, two trade associations of retail pharmacies are prohibited by order from boycotting a prescription drug insurance program to raise reimbursement rates.[47]

The Commission also continues to monitor for order violations. Earlier this year, the respondents under a 1988 order requiring divestiture of twelve supermarkets in New Mexico and Texas agreed to pay $400,000 in civil penalties.[48] The Commission's complaint alleged that the respondents failed properly to maintain stores pending divestiture, failed properly to divest stores, and acquired additional stores without the Commission's prior approval as required under the order.

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[43] McLean County Chiropractic Ass'n, Docket C-3491 (April 7, 1994), Commissioner Starek concurring.

[44] Trauma Associates of North Broward, Inc., File 921 0101 (FTC press release July 28, 1994).

[45] Phoenix Good Samaritan Medical Center, File 901 0032, Commissioner Starek dissenting (FTC press release Sept. 7, 1994).

[46] The Keds Corporation, Docket C-3490 (April 1, 1994).

[47] The Maryland Pharmacists Ass'n & Baltimore Metropolitan Pharmaceutical Ass'n, Docket 9262 (March 1, 1994).

[48] FTC v. Rebus Development Corp., Civ. No 94 0041 (D.D.C., filed Jan. 11, 1994).

C. International Activities

The world of commerce, as we all know, is increasingly global, and this globalization, in turn, has sparked increased involvement by the Commission and the Antitrust Division in world-wide antitrust and consumer protection liaison with our counterparts in other countries. Just last week, for example, Chairman Steiger and I attended a conference in Ottawa to explore telemarketing issues affecting consumers both here and in Canada and to develop ways to coordinate our enforcement efforts. This was the first conference of this type, but it was an inevitable outgrowth of the increasing amount of cross border telemarketing fraud. I do not have time to describe all the Commission's international activities. Suffice it to say that the list is long and growing.

D. Miscellaneous

Turning to a miscellaneous item of interest, I know that, among other things, NAM is interested in the pending proposal to modify the Premerger Notification Form and has filed a comment with the Commission and the Department of Justice. I look forward to considering your views along with the others we receive.

From what I have said today, some of you may have the impression, because the Commission seems to have fingers in numerous pies, that it is a large and omnipresent agency. Not so. Over the years, the Commission has participated fully in

Administration efforts over the years to trim down the size of government. It now stands at an authorized strength of about 950 employees, a figure that has declined some 50% from what it was in 1980, and its budget totals about $100 million. I think that we have provided a fair return for the taxpayers' dollars. I hope others agree. Now, I would be happy to try and answer any questions you may have.