

**OPENING MARKETS AND PROTECTING
COMPETITION FOR AMERICA'S
BUSINESSES AND CONSUMERS:**

**Goals and Achievements
of the Antitrust Division
U.S. Department of Justice**

Fiscal Year 1993 through March 1996



March 27, 1996

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FOREWORD

This Report, specially prepared for the 1996 Spring Meeting of the Section of Antitrust Law, summarizes the Antitrust Division's enforcement actions in recent years.

It is a record that reaffirms the continued importance to America's well-being of intelligent, vigorous antitrust enforcement. By meeting the unique challenges facing antitrust enforcers today -- a dynamic economy, increasing globalization, accelerating technological change, and a record-breaking merger wave -- the Antitrust Division ensures that open competition on the merits remains the fundamental organizing principle of our economy.

For over a century, the United States has committed itself to protecting fair competition in open markets. The Sherman Act and the other federal antitrust laws have helped create the environment of economic opportunity that has transformed America in this century. Competition has stimulated innovation, promoted prosperity and contributed to the international success of the U.S. economy and U.S. business. And the historical record of antitrust enforcement verifies its contribution to America's economic vitality and preeminence in the world.

One example -- often noted but worthy of repetition -- is the dismantling of AT&T's monopoly over telecommunications and communications equipment. The Antitrust Division vigorously pursued the monopolization case against AT&T through both Republican and Democratic Administrations. William Baxter, who headed the Division at the beginning of the Reagan Administration, negotiated the landmark 1982 settlement that resulted in the entry of the Modification of Final Judgment, or MFJ, ending AT&T's monopoly.

For over a decade, this decree and its implementation have spurred unparalleled innovation, investment, and competition in the telecommunications industry. Other equipment manufacturers have had an opportunity to sell their wares on the basis of quality, cost and efficiency to the divested local operating companies, AT&T's emerging long distance rivals, and users of telecommunications services. A number of new types of equipment providing new services became available. More importantly, a consortium of small independent telephone companies, followed by MCI and Sprint, laid down the fiber-optic cable of the Information Superhighway. As a result, the United States has four fiber-optic networks, while Europe and Japan are still struggling to catch up.

Competition has benefited businesses and customers in the form of lower prices and greater choices. Since the MFJ, long distance prices for residential customers, as measured by the revenue per minute of the three largest long distance providers, have dropped by more than half in real terms. Minutes of use have increased dramatically. As a result of this competitive environment, made possible by the Antitrust Division's and the District Court's enforcement efforts over a twenty-year period, Americans have available to them such wonders as on-line services, video conferencing and the promise of the Internet in every home and classroom; and American telecommunications companies lead the world in technology, revenues and exports. All can be traced directly to the benefits of competition unleashed by the MFJ and antitrust enforcement.

As America enters the 21st Century, antitrust enforcement is needed more than ever to preserve an environment of vigorous

competition and economic opportunity. In addition to a continuing merger wave, special competition concerns are present in rapidly changing industries, like health care, or in industries that are in transition from regulated monopoly to market-based competition, like telecommunications. For example, the Telecommunications Act of 1996 is expected to increase the number of proposed mergers and alliances. Another concern is the presence of international price-fixing cartels that are using increasingly sophisticated techniques and technology to coordinate their activities. Moreover, in a global economy, where nearly 25 percent of the United States' GDP is accounted for by export and import revenue, antitrust enforcement plays an increasing role in protecting American businesses from restraints of trade in foreign markets.

The Division has met these and other challenges by concentrating its resources on matters of national and international importance, by seeking practical solutions with private parties, and by devoting considerable efforts to its criminal enforcement program.

The Division has met these challenges as well by leveraging its resources through cooperation with other Federal enforcement agencies, State Attorneys General, and foreign antitrust agencies on an unprecedented scale. Since mid-1994, the Division has undertaken 37 joint investigations with State Attorneys General, resulting in fourteen matters that had either joint or coordinated resolutions with the States. These efforts pool limited resources to greater effect and prevent inconsistent antitrust enforcement actions, benefitting both businesses and antitrust enforcers alike.

Over fifty years ago, Thurman Arnold wrote that "[t]he Sherman Act belongs to both political parties." And so it does. Antitrust enforcement

is and must be fundamentally nonpartisan because American businesses need to plan based on the knowledge that antitrust enforcement will remain consistent and predictable, whatever the outcome of a particular election. And American consumers need to know that their government is protecting their interests with consistent antitrust enforcement. We remain committed to these ends and thus continue the proud antitrust tradition of the Justice Department.

I am grateful for the support of President Clinton and Attorney General Reno and the sustained bipartisan support of Congress. And finally, I express my gratitude and appreciation for the hard work and unstinting professionalism of the Division's employees. The credit for the Division's accomplishments described below goes to each and every employee of the Division.

Anne K. Bingaman
Assistant Attorney General
Antitrust Division

March 27, 1996

PART I :

MEETING THE CHALLENGE OF A GLOBAL ECONOMY

With the growing importance of international business to the U.S. economy, the Antitrust Division cannot limit its enforcement efforts to American firms or to conduct within the United States. In the U.S. economy, almost 25 percent of which is accounted for by foreign import or export commerce, restraints imposed by foreign firms can harm American consumers and the American economy just as surely as those imposed by domestic firms.

The Antitrust Division long has had a clear mandate from the United States Congress to prosecute international price-fixing cartels that harm U.S. consumers and to protect American exporters from anticompetitive restraints imposed by foreign firms in foreign markets. To fulfill its statutory responsibilities, the Division in recent years has substantially expanded its investigations and cases with significant international conduct. By seeking and obtaining passage of the *International Antitrust Enforcement Assistance Act of 1994*, the Division also has improved its ability to prosecute international antitrust cases successfully involving foreign defendants and conspiracies conducted in other countries but that have direct, foreseeable and substantial effects on U.S. commerce.

In enforcing the antitrust laws, the Division is committed to the principle of non-discrimination -- either between foreign and domestic transactions or actors, or among foreign countries. In addition, the Division is committed to principles of international comity.

Prosecuting International Price Fixing

A top priority for the Antitrust Division is the detection and prosecution of international price-fixing cartels that harm our consumers. These cartels harm American businesses and customers, and as international cartels use increasingly sophisticated techniques and technology to coordinate their activities, a strong and sustained enforcement posture is necessary. Today, the Antitrust Division devotes a substantial portion of its resources to fighting international cartels that violate U.S. antitrust laws. Indeed, one-quarter of the Division's current 80-plus grand juries are investigating international cartel activity.

The *thermal fax paper* and *plastic dinnerware* cases are two prominent examples of the Division's successes in prosecuting international cartels. After a two-year investigation, coordinated with Canadian antitrust officials pursuant to the U.S.-Canada Mutual Legal Assistance Treaty, the Division and its Canadian counterpart in July 1994 brought criminal charges under their respective laws against an international cartel that had fixed prices in the \$120 million a year thermal fax paper market. The Division's criminal information charged *Mitsubishi Corporation*, a Japanese corporation, two U.S. subsidiaries of Japanese firms and an executive of one of the firms with conspiring to charge higher prices to thermal fax paper customers in North America

-- primarily small businesses and home fax machine owners. The defendants pled guilty and agreed to pay a total of \$6.4 million in fines. The charge against **Mitsubishi Corporation** was the first U.S. criminal antitrust prosecution of a major Japanese corporation.

Additional criminal charges were brought in the **thermal fax paper** investigation in 1995. The Antitrust Division in May 1995 charged **Elof Hansson Paper & Board Inc.**, a wholly-owned subsidiary of Elof Hansson AB of Sweden, and in September 1995 charged two additional Japanese companies, **Mitsubishi Paper Mills Ltd.** and **New Oji Paper Co. Ltd.**, with conspiring to fix prices. All of the defendants pled guilty and paid fines totaling more than \$3.5 million.

Recently, in December 1995, a grand jury indicted **Appleton Papers Inc.** of Appleton, Wisconsin and one of its executives; **Jufo Paper Co. Ltd.** of Tokyo, Japan (now known as **Nippon Paper Industries Co. Ltd.**); and an executive of Mitsubishi Paper Mills Ltd., for conspiring to fix the prices of thermal fax paper. One of these indictments concerned conduct by foreign defendants aimed at U.S. consumers. A trial date has not yet been scheduled for these defendants.

The **plastic dinnerware** case is another international investigation that depended on crucial assistance from Canadian authorities and culminated in charges against three corporations and seven executives for conspiring to drive up the prices of plastic dinnerware products, a \$100 million market. Two of the corporate defendants, **Comet Products Inc.** and **Plastics, Inc.**, pled guilty and paid fines totaling \$8.36 million. And in March 1995, the president of one of the companies involved in the conspiracy received one of the stiffest penalties ever imposed on an

individual defendant for a one-count Sherman Act antitrust violation -- a sentence of 21 months in prison and a fine of \$90,000. Earlier, each of the other six individual defendants received prison terms of between four and fifteen months; they also received personal fines totaling more than \$200,000. Two of these individual defendants were Canadian nationals who were sentenced to jail in U.S. prisons.

The Division also succeeded in breaking up an international conspiracy that fixed the prices of **bronze and copper flake**. In December 1995, two German industrialists and one domestic firm, **Obron Corporation**, pled guilty to charges levied against them in an indictment handed down by a federal grand jury in Cleveland, Ohio. The indictment charged that the defendants had agreed on price increases for bronze and copper flake beginning in 1986, and continuing until at least November 1988. The two German individuals, Obron and three other defendants in two other prosecutions have been fined a total of almost \$2 million. Another individual, who holds dual citizenship in Canada and the United Kingdom, has entered into a plea agreement with the Division and will be sentenced shortly. Another individual, who resides in the United Kingdom, remains a fugitive.

The Division broke up another international price-fixing cartel involving **pesticides** when seven companies and four individuals were indicted in October 1993 for fixing minimum prices for the sale of aluminum phosphide in the U.S. The chemical is used to protect flour, grain, tobacco, nuts and processed foods from insects. The cartel, made up of **U.S., German, Indian and Brazilian corporations**, conspired to raise prices in the United States through various meetings and telephone conversations. Four defendants -- including Detia-Degeesch (a German corporation), Pestcon Systems (an American corporation), a German citizen, and

an American citizen -- pled guilty. A Brazilian corporation, Casa Bernardo, pled nolo contendere.

The *General Electric/DeBeers* case illustrated some of the problems with international discovery in criminal price-fixing cases. That case, which was brought by the Division in February 1994, involved a major and highly concentrated industry in synthetic diamonds, and presented evidence that the Antitrust Division believed demonstrated a criminal price-fixing conspiracy among the major foreign and U.S. producers. It was a difficult case because much of the documentary evidence and many of the witnesses were located abroad, out of the reach of United States subpoenas. The trial began in October 1994, but charges were dismissed in December 1994 when the District Court ruled that the government had not proved its case. The Court specifically noted that much of the evidence was beyond U.S. borders, out of reach of the Court or the government.

The GE/DeBeers case demonstrates the determination of the Justice Department to prosecute very difficult cartel cases -- where the Division believes that, under the Principles of Federal Prosecution, it has a better than even chance of obtaining and sustaining a conviction. And the Division remains committed to bringing complex, international cases to protect United States consumers and businesses from being victimized by foreign price-fixing cartels.

Moreover, the Division's ability to obtain international discovery to aid in prosecuting price-fixing cartels will be greatly enhanced as a result of the bipartisan passage of discovery legislation -- the *International Antitrust Enforcement Assistance Act of 1994 (IAEAA)*. The legislation will provide the Division with additional tools to facilitate international cooperation, including assistance

in criminal investigations. The IAEAA and the benefits arising from increased cooperation with international antitrust enforcement agencies are discussed in greater detail below in *Part VII, Cooperation with Other Law Enforcement Agencies*.

Opening Markets for American Companies Abroad

In today's global economy, U.S. firms compete abroad and foreign firms devote considerable efforts to United States markets. To prosper, U.S. firms need access to foreign markets, and one of the aims of U.S. antitrust laws is to protect American exporters from anticompetitive restraints by foreign firms in foreign markets. The Antitrust Division has fostered international competition through its enforcement actions and through its cooperative efforts with foreign antitrust agencies.

A 1992 policy change announced by then-Assistant Attorney General James Rill in the Bush Administration indicated that the Justice Department would challenge foreign business conduct that harms U.S. export trade. The Division in May 1994 brought the first case implementing that changed policy, charging *Pilkington (PLC)*, a British firm, and its U.S. subsidiary, with monopolizing the flat glass market. The Complaint alleged that Pilkington, which dominates the \$15 billion-a-year international flat glass industry, foreclosed U.S. firms from foreign markets. The Complaint stated that Pilkington entered into unreasonably restrictive licensing arrangements with its most likely competitors, and over the course of almost three decades used these arrangements and threats of litigation to prevent American firms from competing to design, build and operate flat glass plants in other countries. By the time the Division filed its Complaint,

Pilkington's patents had long since expired and its significant technology was in the public domain. A Consent Decree accepted by Pilkington to settle the case bars it from restraining American and foreign firms who desire to sell their technology outside the United States. As a result, American firms will be able to compete for the 50 new glass plants expected to be built around the world by the year 2000, resulting in an estimated increase in U.S. export revenues of as much as \$1.25 billion during that period. The Pilkington case is an example of how antitrust enforcement can open new markets for American businesses exporting services abroad.

Two multi-billion dollar international joint ventures, *BT/MCI* and *Sprint/FT/DT*, illustrate that the Division's merger enforcement program also has opened markets for American companies, especially in the telecommunications industry.

British Telecommunications/MCI. In June 1994, the Division challenged a transaction in which ***British Telecommunications (BT)*** and ***MCI*** proposed to form a joint venture to provide international telecommunications services, and BT sought to acquire a 20 percent equity interest in MCI for \$4.3 billion. The Division worked closely with U.K. authorities in assessing the competitive effects of the proposed transaction. The Division concluded that the transaction threatened competition in the market for telecommunications between the U.S. and the U.K. and in the emerging market for global telecommunications services generally, through potential abuse of BT's control of access to the U.K. To address these dangers, a Consent Decree was entered that requires public disclosure of the rates, terms and conditions under which MCI and the joint venture gain access to BT's network, thereby protecting rival U.S. carriers from discrimination by BT. The Consent Decree also

bars BT from providing MCI or the joint venture with proprietary information about their American competitors. The Consent Decree reflects the Division's policy of protecting American consumers and businesses from exploitation by foreign firms with monopoly power, while at the same time cooperating with foreign agencies whose concerns are similar to ours.

Sprint/FT/DT. The Division filed a Complaint and proposed Consent Decree in July 1995 to restructure the proposed alliance of ***Sprint/France Telecom/Deutsche Telekom*** (involving a \$4 billion purchase of Sprint stock and a joint venture to provide global telecommunications services, such as the transmission of data, voice and other enhanced services). In part, because FT and DT are state-owned monopolies, the Division concluded that the transaction posed a threat to competition because of the incentive it created for the joint venturers to discriminate against competitors in terms and conditions of access to FT's and DT's monopoly network and services. The Consent Decree provides that Sprint and the joint venture cannot own, control or provide certain services until competitors have the opportunity to provide similar services in France and Germany. Likewise, they are prohibited from obtaining anticompetitive advantages from their affiliation with FT and DT. In addition, they cannot gain proprietary information or pricing data about their US competitors that FT or DT may have gained through their supplier relationship to Sprint's and the joint venture's competitors. Moreover, the French and German public telephone networks and public data networks may not limit access to those networks in such a way as to exclude competitors of Sprint and the joint venture.

The ***Sprint/FT/DT*** transaction is another example of how international cooperation fosters consistent enforcement results,

benefitting the parties. The Division worked closely on this matter with the Directorate General-IV of the Commission of the European Union, EU's competition agency. It also had discussions with the Federal Cartel Office (the German competition authority) and the Directorate of Competition, Consumer Affairs and Repression of Frauds (the French competition authority).

The Division's cooperative efforts with other enforcement agencies have been important in creating additional competitive opportunities for American companies. For example, the Division's cooperation with the European Union helped ensure that the *European Telecommunications Standards Institute (ETSI)*, a nonprofit association responsible for developing European telecommunications standards, did not adopt policies that might have imposed unreasonable terms on firms, including American companies, seeking to sell technology rights in Europe. ETSI eventually adopted an interim policy that does not include the objectionable provisions.

Pursuant to a waiver of confidentiality from *Microsoft*, the Division also coordinated its investigation with the competition authorities of the *European Union* and negotiated the first-ever parallel Consent Decree (with the United States) and undertaking (with the European Union) with Microsoft. This historic first joint prosecution with the European Union has led to several other major civil non-merger investigations conducted with foreign antitrust authorities pursuant to waivers or partial waivers from the parties or complainants. Cooperation with foreign antitrust authorities also protects businesses from inconsistent enforcement actions. These efforts are

described in more detail in *Part VII, Cooperation with Other Law Enforcement Agencies*.

International antitrust enforcement will continue to be a major priority for the Division. And to assist the business community, the Division, along with the Federal Trade Commission, issued new and focused guidelines on international operations. These guidelines are discussed in *Part VIII, Responding to the Needs of the Business Community for Clarity and Certainty in Antitrust Enforcement*.

PART II:

CRIMINAL ENFORCEMENT: RECORD FINES AND SIGNIFICANT JAIL SENTENCES

Criminal enforcement against the most serious antitrust offenses has been, and remains, the Division's core mission. That is because price fixing, market allocation, and bid rigging steal from, and commit fraud on, American businesses and consumers -- by artificially raising prices, lowering the quality of goods and services, and reducing choices.

The serious consequences of criminally violating the antitrust laws reflect the serious nature of the offense. Maximum punishments for such crimes can bring fines of up to \$10 million for corporations and \$350,000 for individuals, as well as prison sentences up to three years. Alternatively, as with other federal felonies, courts have the power of imposing fines in an amount equal to twice the harm suffered by the crime's victims or twice the gain enjoyed by the perpetrators.

Congress has vested in the Division the sole federal responsibility to institute criminal prosecution against antitrust violations. That responsibility has been emphasized and maintained, resulting in record criminal fines, tough jail sentences, and significant international and national cases. Moreover, the Division continues to employ innovative law enforcement strategies -- including new leniency policies for those who provide us with enforcement information, increased cooperation and coordination with other law enforcement agencies, and a new initiative for generating quality criminal cases -- all designed to get more out of every ounce of energy the Division puts into the task of enforcing the Sherman Act.

Currently, the Division's criminal enforcement program remains vigorous. The

Division has pending over 130 criminal investigations, with over 100 attorneys and appropriate support staff devoted to its criminal work. Significantly, approximately 50 percent of the Division's current grand jury investigations are focused on international or national cartel activity. This focus on larger matters, involving bigger and more complex conspiracies and more overall dollars of commerce, is a better use of the Division's resources and reflects the Division's response to the growing size and complexity of an increasingly global economy.

Record Criminal Fines

The larger fines the Division recently has obtained in its criminal cases reflects in part its focus on more significant cases. In 1992, the average corporate fine imposed was slightly under \$500,000. Average fines imposed on corporations have risen 140 percent since then, to over \$1.2 million during FY 1995, with fines in the millions of dollars commonplace.

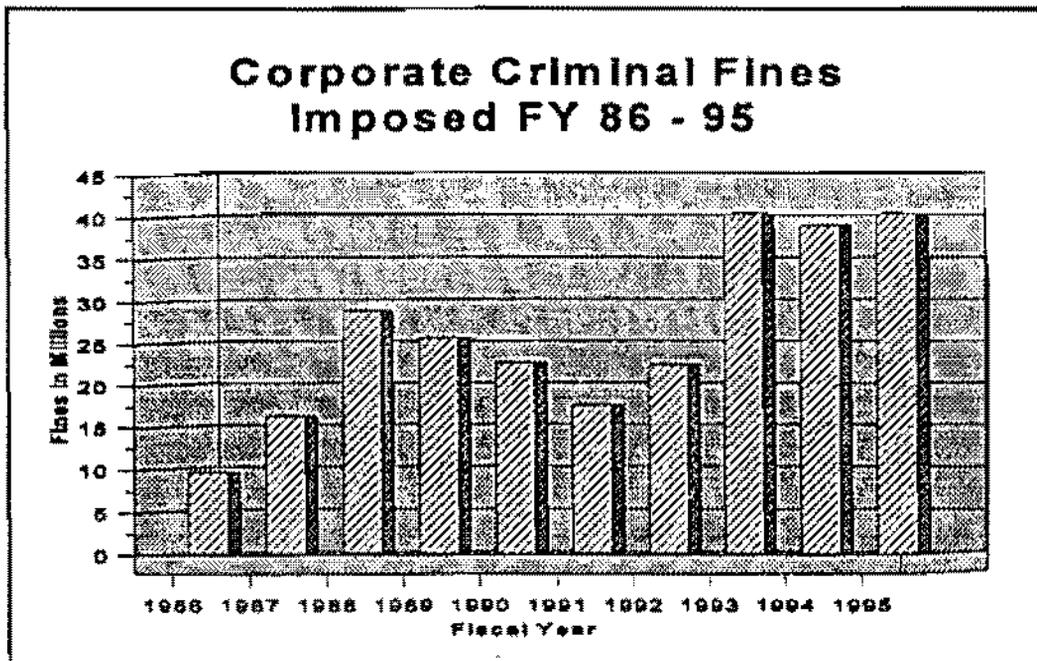
In FY 1994, the Division filed 57 criminal cases and obtained criminal fines in the amount of \$40.2 million. Record fines were obtained in FY 1995 when the Division filed 60 criminal cases, and corporations and individuals paid a total of ***\$41.5 million in criminal fines, including the highest total ever in criminal corporate fines.***

The Antitrust Division obtained the highest criminal antitrust fines in history in its still ongoing investigation of the ***commercial explosives industry***, which alone has

generated over \$27,000,000 in criminal fines. In September 1995, *Dyno Nobel*, a wholly-owned subsidiary of a Norwegian chemical company and the world's largest manufacturer of commercial explosives, agreed to plead guilty to two counts of conspiring to fix the prices of commercial explosives and pay the biggest fine ever imposed in a criminal antitrust matter -- **\$15 million**. *Mine Equipment & Mill Supply Inc.*, a 50 percent joint venture by Dyno, also pled guilty as a co-conspirator, and agreed to pay a \$1.9 million fine. This was preceded by a case filed in August 1995 against *ICI Explosives USA, Inc.*, another explosives company, which pled guilty to conspiring to fix prices and was sentenced to pay a **\$10 million** dollar fine (the first time that the statutory maximum had been levied and, at that time,

the largest fine ever). Most recently, on March 6, 1996, *ETI Explosives Technologies International* agreed to plead guilty and pay a \$950,000 fine.

Other noteworthy large criminal fines have been obtained from the Division's *tax paper* investigation (total fines in the amount of approximately \$10 million) and the *plastic dinnerware* investigation (total fines of over \$9 million). Against specific companies, large fines that have been levied in the past three years include: \$6 million fine against *Premdor Corporation* for conspiring to fix prices of residential doors and \$4.5 million against *Miles, Inc.* for conspiring to fix prices of steel wool scouring pads.



Significant Jail Sentences

Those who engage in price fixing or bid rigging or who obstruct the Antitrust Division's investigations into such activities go to jail for these offenses. Jail sentences are among the strongest deterrents against criminal activity, and the Antitrust Division does not hesitate to seek significant jail sentences against individual defendants. Since the beginning of FY 1993, the Division obtained 11,826 jail days -- an average jail sentence of nine months for the individuals involved:

Examples of the significant jail sentences obtained by the Division include: in February and March of 1995, all seven individual defendants in a major criminal case involving price fixing in the plastic dinnerware industry were sentenced to jail. The two ringleaders of the conspiracy received stiff prison sentences of 21 months and 15 months incarceration and were fined \$90,000 and \$75,000, respectively. In November 1994, a defendant in a case involving school milk supplies was sentenced to serve 30 months in jail following conviction after a trial on charges of bid rigging. In January 1995, a defendant was sentenced to 14 months incarceration after pleading guilty to obstructing justice by falsifying an affidavit submitted to a federal grand jury. The Division will continue to seek significant jail sentences to punish and deter price fixing.

Innovations In Criminal Enforcement

One of the great challenges in antitrust enforcement is to uncover secret antitrust violations. Major efforts have been undertaken to detect and prosecute criminal antitrust violations. Foremost among the Division's priorities is increased cooperation with other

antitrust authorities, exemplified by the Division's thermal fax paper and plastic dinnerware investigations. In addition, the Division has implemented two key proactive strategies to generate additional leads to illegal conduct.

New Leniency Policies. First, to increase the return on available resources, the Division in August 1993 announced an expansion of its *leniency program* for corporate participants in antitrust conspiracies who come forward with information about criminal antitrust violations. Under the new policy, a corporation can avoid criminal prosecution by confessing its role in the illegal activities, fully cooperating with the Division and meeting other specific conditions, even when the corporation begins cooperating after an investigation has begun. Unlike the prior policy, the timing of the corporation's cooperation is not dispositive of the availability of leniency.

The new policy has been a resounding success. Under the former policy, only one corporation per year applied for leniency. Under the new policy, the Division has received applications for corporate leniency at a rate closer to one a month -- a dramatic increase. This high level of applications is continuing. The result has been a leveraging of the Division's resources -- to enable more prosecutions, as well as the successful prosecution of numerous cases that might have escaped prosecution.

The success of the expanded leniency program is illustrated by the Division's case against *Miles Inc.*, maker of SOS steel wool pads. Miles and its primary competitor, Dial, which makes Brillo pads, discussed prices and discount levels at meetings and in telephone conversations. Dial came forward with information about the discussions and obtained

amnesty from the Division. Miles, on the other hand, pled guilty to a felony for conspiring to fix prices and was fined \$4.5 million.

Generating Quality Criminal Cases Initiative. This new Initiative is designed to develop leads to significant national and international criminal antitrust cases by obtaining more referrals of possible antitrust crimes from other investigative and prosecutorial agencies, such as U.S. Attorneys' Offices, the Fraud Section of the Criminal Division, the Federal Bureau of Investigation and the Inspector Generals' Offices of federal agencies. These organizations, in the course of investigations in their particular areas of responsibility, often obtain evidence of conduct that amounts to criminal antitrust violations.

Pursuant to this Initiative, the Division's field chiefs have established a liaison procedure with the U.S. Attorneys and FBI offices to refer leads or information concerning possible antitrust violations to the Antitrust Division. In addition, the Division's field offices have conducted numerous training sessions for U.S. Attorneys and FBI offices. These efforts already are beginning to pay dividends in generating leads. For example, the Division's enhanced referral mechanism with the Criminal Division's Fraud Section has generated new leads, one of which provided the basis for the initiation of a grand jury investigation.

Finally, as part of the Generating Quality Criminal Cases Initiative, the Division has devoted additional resources to detect and develop quality cases. The Division has assigned paralegals from the Division's corps of Honors Program paralegals in Washington to criminal investigations in the field. The Generating Quality Criminal Cases Initiative and the dedication of new resources to the Division's criminal enforcement program reflect the centrality of criminal enforcement to the

Division's mission of protecting consumers and the economy from anticompetitive behavior.

Significant Criminal Cases

More and more, in its unique role as the world's preeminent criminal antitrust law enforcement agency, the Antitrust Division has concentrated its resources on international and nationwide conspiracies – cases that involve larger amounts of commerce and more complex conspiracies. Nearly 25 percent of the Division's grand juries are focused on international price-fixing cartels and another 25 percent are focused on national price-fixing conspiracies. The remainder involve significant regional price-fixing conspiracies. Some of the important criminal cases brought since 1993 – involving the **explosives** investigation and the international price-fixing conspiracies in **thermal fax paper**, **plastic dinnerware**, and **pesticides** – were discussed in detail earlier. Other significant criminal cases include:

Carpets. In June 1995, the Division charged **Sunrise Carpet Industries Inc.** of Chatsworth, Georgia and its chief executive officer with conspiring with others to fix, raise, and maintain the prices of carpet sold throughout the United States. The defendants pled guilty. The executive, the first defendant to be sentenced, received one year in jail. This case resulted from the Division's nationwide investigation into alleged price fixing in the \$9 billion-a-year carpet industry. The investigation is continuing.

Residential Doors. The Division in June 1994 charged **Premdor Corp.**, one of the two leading manufacturers of flush doors, with conspiring with others to fix the price of doors sold for installation in residences. The sales of such doors, sold to door distributors,

wholesalers, home improvement centers and residential construction companies, amount to \$600 million annually. Premdor agreed to pay a \$6 million fine. Subsequently, additional price-fixing cases have been brought (a total of four to date) against manufacturers of flush doors. The investigation is continuing.

Steel Wool Scouring Pads. As mentioned earlier, the Division in November 1993 charged *Miles, Inc.*, the manufacturer of SOS, the nation's best selling steel wool scouring pads (a \$100 million-a-year market), with conspiracy to fix prices with its only major competitor in the United States -- Dial Corp., the manufacturer of Brillo. Miles pled guilty and paid a fine of \$4.5 million.

Bakeries. Criminal price fixing charges were filed in September 1995 against the largest and oldest family-owned bakery in the country -- *Mrs. Baird's Bakeries Inc.* -- and its former president for conspiring for more than 15 years to raise and maintain the prices of bread and bread products sold in much of Texas. They were also charged with being involved in a price-fixing conspiracy and a bid-rigging conspiracy for contracts to supply bread and bread products to governmental entities located in west Texas. The case went to trial, and on February 14, 1996, Mrs. Baird's Bakeries Inc. was convicted of one of the two counts, and the former president was acquitted.

Milk and Dairy Products Cases. As of March 1996, the Division had filed 132 criminal cases against 79 corporations and 84 individuals in the milk and dairy products industry. To date, 66 corporations and 59 individuals have been convicted, and fines imposed total approximately \$60 million. Twenty-nine individuals have been sentenced to serve a total of 5,776 days in jail, or an average of

approximately 7 months. Civil damages assessed total approximately \$8 million. In FY 94 and FY 95, the Division filed 25 criminal cases against 19 corporations and 17 individuals in the milk and dairy products industry. Grand juries continue to investigate the milk industry. This sustained effort has broken up conspiracies that were illegally raising the price of milk supplied to children in public school districts across the country, including federally subsidized school lunch programs, as well as the price of dairy products supplied to the United States military.

Ferrosilicon Products. In September 1995, the Division charged *Elkem Metals Company*, a subsidiary of Elkem A/S of Norway, with participating in a nationwide conspiracy between late 1989 and mid-1991 to fix prices of commodity ferrosilicon products sold in the United States. The defendant pled guilty and was fined \$1 million.

Painted Aluminum. In September 1995, a Pennsylvania aluminum company, *Alliance Metals Inc.*, and its chief executive pled guilty to conspiring with other sellers and distributors of painted aluminum products to fix, raise, and maintain prices of painted aluminum products they sold throughout the United States. The Division obtained \$1.15 million in fines. These charges were the first charges to come out of a nationwide investigation into price fixing in the painted aluminum industry.

Steel Drums. On December 15, 1994, the Division charged a former executive of the Russell-Stanley Corporation, a manufacturer of steel drums, for conspiring to fix prices on steel drums used for packaging chemicals and petroleum products. The defendant was convicted at trial, and is currently awaiting sentencing. This indictment resulted from the Division's investigation in the metal container industry -- an investigation that has resulted in

criminal cases against 13 companies and 16 individuals and over \$10 million in fines over a three-year period.

Aluminum Parts. In June 1995, the Division charged three California companies and two executives with conspiring to fix the price of aluminum parts that are used as structural support in airplanes. The companies involved in the conspiracy – **TD Materials, Inc., Pioneer Aluminum Inc., and Tiernay Metals** – accounted for approximately 75 percent of the worldwide sales of these parts. The Division obtained guilty pleas from the defendants.

Other criminal cases prosecuted by the Division since and including Fiscal Year 1993 are listed in the Division's criminal case database contained in Appendix B to this Report.

PART III:

TELECOMMUNICATIONS

For over twenty years, a major share of the Antitrust Division's resources have been devoted to promoting competition in the telecommunications industry. In part, this resulted from the most important and successful antitrust enforcement action in the Division's long history -- over the course of three Administrations, Republican and Democratic alike -- the challenge to AT&T's monopoly over telephone service and communications equipment. The successful culmination of this challenge occurred during the Reagan Administration, when then-Assistant Attorney General William Baxter negotiated the *Modification of Final Judgment* ("MFJ"), the Consent Decree that settled *U.S. v. Western Electric*.

The breakup of AT&T sparked a phenomenal burst of price competition and innovation as previously stymied competitors assaulted AT&T's dominance in equipment and long-distance telecommunications markets. The result has been lower prices, increased choices, and improved services for U.S. consumers. For example, the price to consumers of long distance telephone service fell by almost 10 percent per year from 1983 to 1989. Competition also hastened the deployment of fiber optic technology, which has laid the backbone of the "information superhighway" and made possible many of the exciting telecommunications advances of the past decade -- including on-line services and widespread access to the Internet.

Aggressive but intelligent antitrust enforcement of the MFJ and consideration of waiver requests by the Division throughout the

1980s and into the 1990s has promoted and protected competition in a rapidly changing high-technology industry. And as a consequence of that competitive environment, the U.S. telecommunications industry leap-frogged Japan and Europe, allowing American businesses to lead the world in telecommunications technology.

Promoting Legislative Reform in Telecommunications

Since the Fall of 1993, the Division actively has promoted competition-based legislative reform in this vital sector of the economy, believing that well-crafted comprehensive legislation could promote competition in telecommunications beyond the focus of the MFJ. The Division played a leading role -- working closely with the rest of the Administration and with members of Congress in both parties -- to secure passage in February 1996 of the *Telecommunications Act of 1996*. The new law will increase telecommunications competition and reduce government regulation in such currently monopolized markets as local telephone service and cable television. Moreover, the new law gives the Division a special and significant role in the Federal Communications Commission's proceedings on Bell Company applications to provide in-region long distance services; the Commission is to consult with the Attorney General concerning such applications and "accord substantial weight to the Attorney General's evaluation." And the new law preserves full applicability of the antitrust laws to this industry.

Increased Competition Through MFJ Waivers

During the history of the MFJ, the Division promoted telecommunications reform and competition by supporting appropriate waiver requests by the Bell Companies to engage in new businesses for which there was no substantial possibility of impeding competition. The most significant was the Division's April 1995 filing with the District Court of a motion that would have allowed **Ameritech**, a Bell Operating Company, to offer long distance service on a trial basis in the Chicago and Grand Rapids, Michigan areas. Had it been approved, the order would have conditioned this relief on a finding by the Division that actual competition for local exchange services existed within the trial territories. Other Bell waiver requests sought permission to offer long distance service in other limited situations outside of their operating regions and in conjunction with the provision of wireless and information services.

Since 1984, the Bell Companies filed more than 375 waiver requests under the MFJ. More than 300 of these requests were granted; only seven were denied. (The remainder were rendered unnecessary, withdrawn for business reasons or pending at the time that telecommunications reform legislation was enacted.) In 1995, the Division completed the review of 40 waivers, the largest number in any year except for 1988.

In the first years of the MFJ, a large proportion of the waiver requests sought authority to enter non-telecommunications businesses, in which the competitive risks of Bell Companies' participation were relatively insignificant. In 1987, the Court granted a blanket waiver for all non-telecommunications businesses. Since then, the waiver requests

involved the "core" restrictions of the MFJ (manufacturing of telecommunications equipment and interexchange services) where the competitive risks were much more substantial, and the issues correspondingly more complex. For example, in 1995, the Division analyzed and ultimately supported a generic waiver by the Bell Companies to provide long distance services in connection with information services as well as US West's request to provide long distance services to customers receiving local exchange services from its out-of-region cable systems.

The **Telecommunications Act of 1996** now supersedes the MFJ, including the motion concerning Ameritech and other pending waiver requests. On February 28, 1996, the Division filed a motion to terminate the MFJ.

Cooperation with the States

The Division has worked closely with State regulatory agencies, including the **National Association of Regulatory Utility Commissioners (NARUC)**, which have played and will continue to play an important role in telecommunications markets. This close working relationship resulted, in part, from the Division's enforcement of the MFJ. For example, when the Division worked with **Ameritech** to obtain a waiver from the MFJ so they could offer long distance service, the Division greatly benefited from its consultations with the State Commissions in Ameritech's region. The Division has also worked closely with the **National Association of Attorneys General (NAAG)** and has participated with NAAG in conferences on telecommunications issues. This expanding relationship with the States remains critical to the Division under the new telecommunications law.

Telecommunications Mergers

With the passage of the *Telecommunications Act of 1996*, the Division expects to see an increase in the number of proposed mergers and alliances in the telecommunications industry. The Division will be up to the challenge -- its *Telecommunications Task Force*, organized at the end of FY 1994, includes lawyers with extensive telecommunications merger experience. In addition, the Division has assigned its recently expanded *Merger Task Force* the job of backing up the Telecommunications Task Force. Since 1993, the Division has investigated numerous major telecommunications mergers and alliances. In several large transactions, the Division worked with the parties to remove risks to competition in affected markets by restricting or eliminating anticompetitive portions of the transaction in question, while allowing procompetitive or competitively-neutral portions of the deal to go forward.

In two significant international matters -- the *British Telecommunications/MCI* and the *Sprint/FT/DT* transactions, the Division worked to guarantee opportunities for American telecommunications companies in foreign markets as well as lower prices and better service for U.S. consumers. These cases are described above in *Part I, Meeting the Challenge of a Global Economy*.

Two other significant merger enforcement actions involved cellular communications -- the *AT&T/McCaw* transaction -- and specialized radio service, the *Nextel/Motorola* transaction.

Cellular Communications. In July 1994, the Division challenged the proposed acquisition by *AT&T* of *McCaw Cellular*, the nation's largest cellular telephone carrier, because this vertical merger could have raised

prices and harmed innovation in cellular telephone services and cellular equipment markets. These competitive concerns were addressed in a Consent Decree that provided that long-distance rivals of *AT&T* would have access to *McCaw* systems equal to *AT&T*'s access; that cellular rivals of *McCaw* that use *AT&T* equipment would continue to have access to necessary products and be free of interference from *AT&T* should they wish to change equipment suppliers; and that *AT&T* and *McCaw* would not misuse confidential information obtained from *AT&T* equipment customers or *McCaw* equipment suppliers. The Consent Decree allowed the parties to seek the potential benefits of integration in cellular services but prevented abuse of their economic power in the cellular services, cellular long distance, and telecommunications equipment markets. The *AT&T/McCaw* Consent Decree, like the *MFJ*, was superseded by the *Telecommunications Act of 1996*. On February 28, 1996, the Division filed a notice of dismissal, and the *AT&T/McCaw* Consent Decree has been dismissed.

It is worth noting that before passage of the new telecommunications law, *AT&T* in September 1995 announced its voluntary restructuring. The restructuring will result in less vertical integration within *AT&T* by separating *AT&T*'s manufacturing and communications services.

Nextel/Motorola. In October 1994, the Division filed a Complaint and a proposed settlement to alleviate the anticompetitive aspects of *Nextel Communications'* purchase of the assets of *Motorola's* specialized radio service. Without the settlement, the acquisition would have eliminated competition in fifteen major metropolitan cities in the United States and would have caused higher prices and poorer services for consumers. Under the settlement, *Nextel* and *Motorola* have to

relinquish control of certain SMR channels they own or manage. The Consent Decree does not affect Nextel's strategy to create a wireless telephone service that may compete with cellular telephone service, and the Decree will allow Nextel to proceed with its plans to introduce new digital wireless telephone technology.

In addition to telecommunications markets, the Division undertook major enforcement actions in broadcast media markets, most prominently, in the *Disney/ABC* merger. The Division also negotiated a Consent Decree for the *Liberty Media/TCI* merger.

Disney/ABC. In January 1996, the Division concluded that The Walt Disney Company's \$19 billion purchase of Capital Cities/ABC Inc. would not raise antitrust concerns, after Disney decided to sell its Los Angeles television station and to operate both the Disney and ABC Los Angeles stations as separate, competitive stations pending the sale of the Disney station. The announced sale of Disney's television station resolves any antitrust concern that might have developed from Disney's acquisition of a second Los Angeles station. In order to ensure that the sale of Disney's station takes place, Disney agreed to a contingent Consent Decree that would require the appointment of a trustee to handle the sale, if Disney fails to effect the sale of the station, fails to comply with the hold-separate requirements, or seeks authority from the FCC to own both stations permanently. This case also illustrates the excellent working relationship between the Division and the FCC, which worked closely to ensure that all relevant facts were uncovered and all concerns were addressed.

Cable Television. The Division challenged the acquisition of *Liberty Media Corporation*, an owner of popular cable

programming and cable distribution systems, by *Tele-Communications, Inc. (TCI)*, the largest owner of cable distribution systems in the nation, because the vertical acquisition threatened competition in both the cable programming and video multichannel distribution markets. The merger might have made it more difficult for other multichannel video services to obtain programming and for independent programmers to obtain distribution of their products. To eliminate these risks, a Consent Decree was entered that prohibits the parties from discriminating against competing programmers in providing access to their cable systems (which serve 25 percent of the nation's cable subscribers), and from discriminating against competing cable distributors in licensing their video programming. Although the terms of the Consent Decree are similar to the provisions of the Cable Act, the entry of a decree subject to the continuing jurisdiction of the Federal District Court greatly simplifies any enforcement required during the ten year life of the Consent Decree, and adds the penalties inherent in any decree violation action to other provisions of law.

Civil Non-Merger Enforcement

The Division's civil non-merger enforcement actions also promote competition in telecommunications. Recently, the Division filed a case against several Texas television stations regarding the stations' sales of retransmission rights.

Texas Television Stations. The Division in February 1996 charged three Corpus Christi, Texas television stations with violating Section 1 of the Sherman Act by unlawfully agreeing to a joint negotiating strategy which raised prices they could obtain from local cable television operators for the rights to retransmit

their broadcast programs. The Complaint alleged that the broadcasters promised each other they would not formally sign with and release their signals to a cable operator until the other two local broadcasters had also come to terms with that cable firm. The broadcasters also promised each other that none would accept any deal that gave it a competitive edge over the other two broadcasters. The Division's proposed Consent Decree would bar the broadcasters from entering into any joint agreement relating to future sales of retransmission rights and prohibit each broadcaster from discussing its cable transactions with any other defendant. This action currently is pending in the District Court.

PART IV:

PROMOTING INNOVATION

Prosperity in the high-technology economy of the 21st Century will depend on innovation. Innovation, whether in the form of improved product quality and variety or production efficiency that allows lower prices, is a powerful engine for enhanced consumer welfare. Thus, the Division has emphasized the role of antitrust enforcement in encouraging innovation. Division activities in recent years included new guidelines for business regarding the interaction between the antitrust laws and the intellectual property laws and a number of important enforcement actions involving intellectual property, all with the purpose of encouraging innovation by supporting competition.

Many of the Division's enforcement efforts promote innovation by attacking restraints that would otherwise block innovators from the market. Some of those efforts already have been discussed, such as the case against *Pilkington* (discussed above in *Part I*) and the restructuring of such telecommunications mergers as *AT&T/McCaw* (discussed above in *Part III*), *BT/MCI* and *TCI/Liberty* (discussed above in *Part I*). Among the Division's most significant enforcement actions that kept markets open to innovation were its Consent Decrees with *Microsoft* on personal computer operating systems, and with *S.C. Johnson* and *Bayer* concerning household insecticides.

Civil Non-Merger Enforcement to Promote Innovation

Personal Computer Operating Systems. The Division in July 1994 charged *Microsoft*, the world's largest computer

software company, with violating the antimonopoly provisions of Section 2 of the Sherman Act. Microsoft licensed its MS-DOS and Windows technology on a "per processor" basis that required personal computer manufacturers to pay a fee to Microsoft for each computer shipped, even if the computer did not contain Microsoft's software. Microsoft's dominant position in the market induced many personal computer manufacturers to accept these per processor contracts, which penalized the manufacturers if they dealt with Microsoft's competitors. The Division's Complaint further alleged that Microsoft's licensing contracts bound computer manufacturers for an unreasonably long period of time. Microsoft also imposed overly restrictive nondisclosure agreements on software companies that participated in trial testing of new software, thereby impeding the ability of those firms to work with Microsoft's operating system rivals. As a result of these practices, the ability of rival operating systems to compete was impaired, innovation was slowed and consumer choice was limited.

Microsoft agreed to accept a Consent Decree that enjoins these and other restrictive practices, and the Decree was filed along with the Division's Complaint. The settlement was reached in close cooperation with the competition enforcement authorities of the *European Union*, which had been investigating Microsoft's conduct since mid-1993, and marked an historic first coordinated effort of these two enforcement bodies in initiating and settling an antitrust case.

On February 14, 1995, the U.S. District Court for the District of Columbia refused to enter the

proposed Consent Decree. The United States and Microsoft appealed. On June 16, 1995, the *U.S. Court of Appeals for the District of Columbia* ordered that the Consent Decree be entered. The Appeals Court held that the *Tunney Act*, which authorizes federal courts to review consent decrees in antitrust cases, does not allow judges "to reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made." In essence, the Court concluded, "The Tunney Act cannot be interpreted as an authorization for a district judge to assume the role of Attorney General." The decision clarifies an important area of law, both for the Division and for private parties who enter into consent decrees with the Division.

The Division also took steps to preserve competition and promote innovation in software markets when it successfully challenged *Microsoft's* proposed \$2 billion acquisition of *Intuit* in April 1995. The Division's challenge caused Microsoft to abandon the transaction. The case is described below in the section, Preserving Innovation Through Merger Enforcement.

Household Insecticides. The Division challenged what it alleged to be an anticompetitive licensing arrangement between *S.C. Johnson*, the dominant manufacturer of household insecticides in the United States, and *Bayer*, a large German chemical manufacturer. Johnson accounts for 45 to 60 percent of total market sales, while none of its major competitors has more than 12 percent. In the mid-1980s, a U.S. subsidiary of Bayer developed a new line of household insecticides, that would have contained a potent new active ingredient developed and patented by Bayer. The Division believed that the new product could have presented a serious competitive

challenge to Johnson's dominance of the American household insecticide market. Bayer's subsidiary substantially completed its arrangements to compete with Johnson. Bayer cancelled the project, however, deciding instead to license to Johnson its product research, packaging design and the product's active ingredient. Bayer did not license any other firms selling in the U.S. Johnson also acquired a right of first refusal to any other active ingredient that Bayer later developed. Bayer's agreement to license Johnson rather than enter the U.S. household insecticide market enabled Johnson to maintain its dominance of a highly concentrated market.

The Division negotiated a Consent Decree that will enhance competition in the household insecticide market by ensuring that Johnson's competitors will have access to Bayer's active ingredient on terms and conditions that are at least as favorable as those accorded to Johnson. The proposed relief, among other things, also ensures that the Department will receive prior notice of any exclusive or co-exclusive license agreement between Johnson and any active ingredient manufacturer other than Bayer. The Division thus will have an opportunity to challenge any such agreement that it believes may harm competition.

Preserving Innovation Through Merger Enforcement

The Division's enforcement activities in the merger area also demonstrate antitrust enforcement's important role in spurring innovation. Since 1993, the Division has challenged several mergers based on their threat to innovation, in addition to concerns about monopoly effects and pricing. These enforcement actions have helped preserve innovative diversity and competition, thereby

enhancing consumer welfare. One of the most significant of these cases was the Division's challenge of *Microsoft's* proposed acquisition of *Intuit*.

Microsoft/Intuit. In April 1995, the Antitrust Division filed suit to challenge *Microsoft's* planned \$2 billion acquisition of *Intuit, Inc.*, the dominant producer of personal finance/checkbook software. At the time of the suit, Intuit and Microsoft accounted for more than 90 percent of the personal finance software sales in the United States. The Division alleged that allowing Microsoft to buy a dominant position in such a highly concentrated market would have resulted in higher prices and lessened innovation. In addition, the Division alleged that Microsoft's control of the personal finance software market would have given it a cornerstone asset that could be used with its existing dominant position in operating systems for personal computers to seize control of markets of the future, including PC-based home banking. The Division rejected Microsoft's proposed "fix" in which some, but not all, of its Money personal finance software assets would have been transferred to Novell Inc., since the Division believed that Novell would not be as effective a competitor with Money as was Microsoft. The U.S. District Court for Northern California set an expedited trial date for June 26, 1995. Nevertheless, Microsoft announced on May 20, 1995 that it would abandon its proposed acquisition of Intuit.

Tax Preparation Software. In June 1993, the Division sued to block the acquisition of *Meca Software, Inc.* by *Chipsoft, Inc.* The acquisition would have combined the two leading consumer tax preparation softwares, with about 75 percent of the market and could have caused consumers to pay higher prices for such software. The acquisition subsequently was abandoned by the parties.

Heavy Duty Transmissions. General Motors abandoned its attempt to sell its *Allison Transmission Division* to its major truck and bus automatic transmission rival, *ZF Friedrichshafen*, a German company with U.S. operations, after the Division filed suit in November 1993 to block the acquisition. The Division challenged the proposed merger on the ground that it would significantly increase concentration in two heavy duty transmission markets in the United States. The Division also alleged that the merger would substantially reduce technological innovation for certain truck and bus transmissions on a global basis by combining two of the three firms capable of such innovation. The case thus illustrates the Division's increasing focus on preserving competition in innovation as a means of advancing American economic success and long-term consumer welfare.

Waterjets. The Division in April 1994 challenged the merger of the nation's two dominant waterjet pump manufacturers, which together control 90 percent of the market for waterjet pumps. Waterjets are used in a wide variety of industrial cutting and cleaning applications. The Division alleged that the merger would allow the new entity to dominate the waterjet business and would likely result in higher prices, poorer service and less innovative products for American waterjet customers. After the parties received and reviewed the Division's evidence on the merger's competitive effects, they abandoned the transaction.

Intellectual Property Guidelines

To clarify the application of antitrust laws to intellectual property licensing and to assist the business community, the Division and the FTC in April 1995 issued the *Antitrust Guidelines*

for the Licensing of Intellectual Property.

They explain the generally complementary relationship between the antitrust laws and the laws that protect intellectual property and the circumstances in which an attempt to exploit intellectual property rights can raise antitrust concerns. The Guidelines replace those provisions and examples in the 1988 International Guidelines that related to intellectual property licensing.

The Guidelines recognize that antitrust policy and intellectual property protection share the common goal of fostering innovation as a means of advancing consumer welfare and that antitrust analysis is sufficiently flexible to accommodate the special characteristics of intellectual property. They acknowledge that the licensing of intellectual property is generally procompetitive and that ownership of intellectual property does not by itself constitute the possession of market power. To provide greater certainty where antitrust risks are small, the Guidelines announce a "safety zone" within which the Division generally will not challenge most licensing arrangements if the parties collectively account for no more than 20 percent of each relevant market.

PART V:

MERGER ENFORCEMENT

Along with criminal prosecution of conduct such as price fixing and bid rigging, the Division protects American consumers through civil enforcement of the antitrust laws. The civil enforcement program falls into two broad categories. Merger enforcement involves the review of and, if necessary, challenge to proposed transactions that threaten to lessen competition by concentrating economic power. Non-merger enforcement -- discussed below in *Part VI* -- seeks to protect competition by attacking anticompetitive restraints of trade and monopolistic conduct. Significant contributions to the American economy as a result of several of the Division's merger and civil non-merger enforcement activities have already been discussed above in *Part III, Telecommunications*, and in *Part IV, Promoting Innovation*.

Record-breaking Merger Wave

Section 7 of the Clayton Act (15 U.S.C. § 18) prohibits mergers that may substantially lessen competition. The law aims to stop mergers that could facilitate collusion or the unilateral exercise of market power. And today, in the midst of a record-breaking merger wave, this statutory mandate presents the Division with unprecedented challenges. Over the past three years, merger activity has increased sharply. In calendar year 1995 alone, there were a record 8,956 mergers worth a total of \$457.88 billion. In FY 1995, companies formally notified the Division of some 2,816 proposed transactions -- a staggering increase over FY 1993 which involved 1,846 proposed transactions.

Increasingly, the Division has been called upon to assess the competitive effects of large

transactions in very complex, high-technology industries, often involving international markets. Some of these transactions have been among the largest in history, both in terms of the acquisition price and the commerce potentially affected. Moreover, today's mergers have been described by observers as *strategic* mergers -- in which one company buys another in the same or in a related industry. These strategic mergers may promote significant efficiencies that should be taken into account in enforcement decisions, but they also require close scrutiny to ensure that the parties do not foreclose entry to other competitors and lessen competition.

The Division has worked hard to take adequate account of international competition and efficiencies in its merger analysis, and in the relief it seeks in the small minority of transactions it decides to challenge. And, over time, merger analysis has become more sophisticated, and more reliant on transaction- and market-specific data and economic analysis. All of these factors have increased the Division's workload tremendously.

To maximize its effectiveness in undertaking such assessments, the merger enforcement program has been strengthened. The hiring of additional attorneys with substantial merger and litigation experience, the increased specialization of the litigating sections, the increased focus on training, and the involvement of Division management at the earliest stages of investigation have greatly enhanced the Division's merger enforcement program.

The Division plays a vital role in ensuring that mergers do not increase prices, or reduce

product quality, service or innovation, to the detriment of consumers. At the same time, the Division recognizes that the vast majority of mergers are competitively neutral, or even beneficial, for competition and consumers. As demonstrated in the cases brought by the Division, the Division is committed to maintaining this balance, both in its decisions concerning merger challenges, and in fashioning appropriate relief.

The Division also is committed to avoiding unnecessary costs and delays in the merger review process. In March 1995, the Division and the FTC announced eight major improvements to the Hart-Scott-Rodino premerger notification program, including measures to speed the determination of which agency should review a given transaction and the joint development of a model "second request" designed to increase consistency between the two agencies and reduce compliance burdens. In addition, as illustrated in numerous recent cases, the Division is cooperating to a greater extent with State Attorneys General (who often have concurrent enforcement interests), which also has the effect of reducing the burden and delay associated with merger reviews and promotes consistency in results.

The Division's merger enforcement program has been active -- the Division has challenged 60 transactions since the beginning of FY 1993. Of those transactions, 27 were formally challenged by the Division in court, four of which were litigated, and 20 of which were restructured to alleviate the threat of competition. This high number of restructured transactions reflects the Division's practice, wherever possible, to resolve its competition concerns by agreeing with the parties on restructuring. An additional 33 transactions -- which did not involve court proceedings -- were abandoned or restructured by the parties as a result of the Division's investigation.

Challenged Mergers

Litigated Cases. Merger cases that proceed to litigation are relatively rare. Yet the Antitrust Division, in the space of a little more than a year, litigated three such cases -- all of which involved extensive trial preparation and innovative trial techniques.

Arkansas Newspapers. In June 1995, after an eight day trial, the U.S. District Court in Fayetteville, Arkansas, issued an 85-page opinion granting a permanent injunction against the merger of two local newspapers serving the Fayetteville area, the *Northwest Arkansas Times* and the *Morning News of Northwest Arkansas*. Community Publishers, Inc. v. Donrey Corp., 892 F.Supp. 1146 (W.D. Ark. 1995). The Division challenged the merger, because each paper was the other's primary competitor in the sale of local daily newspapers and in the sale of local newspaper advertising. The Division alleged that combining these two papers under common ownership and control would lead to lower quality and higher prices for newspaper readers and advertisers. The defendants have appealed the District Court's decision to the Eighth U.S. Circuit Court of Appeals.

Iowa Hospitals. In 1994, the Division challenged the merger of the only two hospitals in Dubuque, Iowa -- *Mercy Health Center* and *The Finley Hospital*. The Division alleged that the combination of the hospitals would result in a monopoly over inpatient hospital services in the area. The Division challenged the merger after its investigation revealed that a substantial number of patients would not travel 70-100 miles away to other large hospitals for basic services like routine surgery, baby deliveries, and pneumonia treatment. The evidence also showed that both Mercy and Finley were financially sound, and that Finley had been

credited by health care consulting firms with being one of the 25 most efficient hospitals with fewer than 250 beds in the United States. A bench trial took place from September 26, 1994 to October 6, 1994. On October 27, 1995, the District Court issued its opinion and judgment refusing to enjoin the merger. *U.S. v. Mercy Health Service*, 902 F.Supp. 968 (D. Iowa, 1995). While the Court ruled in the Division's favor on most issues (product market, lack of efficiencies, the effect of non-profit organizations), the Court disagreed with the Division's definition of the relevant geographic market and found that distant hospitals offered a realistic competitive alternative for patients with primary and secondary health care needs. The Division has appealed the District Court's ruling on the geographic market to the Eighth U.S. Circuit Court of Appeals.

Clay Merger. In June 1995, the Division sued to block *Engelhard Corporation's* proposed acquisition of the gel clay mining and processing units of the *Floridin Company* -- Engelhard's largest competitor in the business. *U.S. v. Engelhard Corporation*, Civ. Case No. 6:95-CV-45 (Mid.D. Ga., June 12, 1995). The Division's Complaint alleged that Engelhard's proposed acquisition of Floridin's clay processing plant and reserves would make it the largest company in the industry, controlling approximately 83 percent of the gel clay business. The Division alleged that the acquisition would lead to higher prices for gel clay and reduce product innovation. The Division also rejected Engelhard's attempted "fix" -- a distribution contract with ITC, Inc., currently an exporter of Floridin's clay products -- as inadequate. The Division concluded that this arrangement failed to provide ITC, Inc. with assets, clay reserves, and processing facilities it would need to be an effective, independent competitor, and gave ITC limited control over its own costs, thereby making

vigorous competition unlikely. Moreover, Engelhard would have combined all operations in one facility, making it easier for the companies to work together rather than compete separately, and the "fix" was a mere promise which could be changed at any time. The trial ended in August 1995, and the parties are awaiting the District Court's decision.

Pens. In March 1993, the Division challenged the acquisition by *Gillette Company* of *Parker Pen Holdings, Ltd.* A preliminary injunction hearing was conducted on the papers with oral argument only, and the District Court did not conduct a full trial on the merits. The District Court in May 1993 denied the Division's motion for a preliminary injunction. *U.S. v. Gillette Co.*, Civ. Case No. 93-0573 (D.D.C. Mar. 22, 1993).

Restructured Mergers

Increased work in the merger area also comes from the Antitrust Division's fundamental belief that working out sensible solutions to competitive problems is better for the business community and the American economy than halting a proposed transaction altogether. Such solutions to competitive problems often require substantially more effort than merely identifying the problems in the first place. The Division's success in resolving competitive concerns without challenging entire transactions has been a mainstay of its merger record in recent years. Many of the Division's significant enforcement actions successfully restructuring transactions already have been discussed, such as the transactions in *British Telecom/MCI*, *Sprint/FT/DT*, *Nextel/Motorola*, and *AT&T/McCaw*.

Several other merger transactions were allowed to proceed after the Antitrust Division

obtained consent decrees requiring the parties to spin off assets or take other steps to alleviate the anticompetitive aspects of the transactions. Consent decrees of this kind were obtained to preserve competition in a wide range of industries such as banking, paper products, computers, bread, and trash hauling.

Tissue Paper Products. In December 1995, the Antitrust Division and the State of Texas filed a joint Complaint and proposed settlement that modified the proposed acquisition of *Scott Paper* by *Kimberly-Clark*, a \$8.9 billion merger between the two largest consumer paper products companies. In the course of its investigation, the Division found that following the proposed acquisition, Kimberly-Clark would have over 55 percent of the facial tissue market (a \$1.3 billion market in 1994), and 56 percent of the baby wipes market (\$500 million in 1994), and that the merger would result in increased prices for consumers of these products. The Consent Decree requires the divestiture of certain facial tissue and baby wipes brands and production assets, including Scott's Delaware baby wipes plant as well as up two of four tissue mills owned by the companies.

Mainframe Computer Software. In July 1995, the Division filed a Complaint and proposed settlement to alleviate the anticompetitive aspects of the \$1.7 billion *Computer Associates/Legent* transaction in "mission critical" IBM mainframe computer systems management software markets, in which Computer Associates and Legent were the largest and second-largest vendors. The Complaint alleged product markets for five systems management software products: security software, tape and disk management software, job-scheduling software and automated operations software. In three of those markets -- tape and disk management software, and security software -- the

acquisition would have given Computer Associates a monopoly. The proposed settlement is designed to ensure that customers of these products have an alternative to Computer Associates. Under the proposed settlement, a new, viable competitor would be established for the five systems management software products, subject to DOJ approval. If suitable licensees cannot be found, the settlement would permit the Court to order Computer Associates to dispose of additional assets.

Bank Divestitures. The Antitrust Division undertook a number of precedent-setting joint investigations with State Attorneys General, resulting in significant divestitures of bank branches and deposits in some of the largest bank mergers on record. The Division also cooperated closely with the Federal Reserve Board and the Comptroller of the Currency to effect virtual "one-stop shopping" for parties and ensure consistent enforcement results. These included:

- **Fleet Financial Group/Shawmut.** The Antitrust Division -- in a joint investigation with the State Attorneys General of Connecticut and Massachusetts -- approved in October 1995 a \$3.7 billion merger involving *Fleet Financial Group* and *Shawmut National Corp.* on the condition that Fleet sell 64 bank branches comprising a total of approximately \$3 billion in deposits. This was the second largest antitrust divestiture in the history of the banking industry.
- **Wells Fargo/First Interstate Bancorp.** In a joint investigation with the State Attorney General of California, the Antitrust Division required the divestiture of 61 branches and \$2.54 billion in deposits in connection with

Wells Fargo's acquisition of **First Interstate Bancorp**. This was the third largest antitrust divestiture in the history of the banking industry.

- **U.S. Bancorp/West One.** In a joint investigation with the Attorney General of Washington, the Antitrust Division required the divestiture of 27 branches and \$614 million in deposits in connection with **U.S. Bancorp's** acquisition of **West One**.
- **KeyCorp/Casco National Bank.** After a joint investigation with the State of Maine, the Division approved the acquisition of **Casco Northern Bank** by **KeyCorp**, a bank holding company that owns the largest bank in Maine, provided that KeyCorp divest eleven branches with over \$250 million in deposits.

Bread Merger. In July 1995, the Division filed a Complaint and proposed settlement that substantially modified the proposed \$450 million acquisition of **Continental Baking Company** (maker of Wonder Bread) by **Interstate Bakeries Corporation** (maker of Sunbeam, Butternut and Weber's). The Complaint alleged that the merger would reduce competition for white pan bread in five local markets -- Los Angeles, San Diego, Chicago, Milwaukee and Central Illinois. In each of those markets, Interstate and Continental were either the two largest or two of the three largest sellers of white pan bread, with a combined market share ranging from 33 percent to 64 percent. Under the proposed settlement, Interstate has agreed to sell either the Wonder bread brand or one of Interstate's premium white pan bread brands in each of the geographic areas. It will also sell any other assets, such as bread plants and route systems,

that may be needed to maintain the divested brand's level of sales in the marketplace.

Florida Hospital Merger. In its first case filed jointly with a State Attorney General, the Division in May 1994 joined the Florida Attorney General in challenging the proposed merger of two central Florida hospitals. The combination would have accounted for nearly 60 percent of general acute care hospital services in North Pinellas County, a market in excess of \$300 million. The Complaint alleged that the merger would create a dominant provider of general acute care hospital services, thereby reducing options for managed care plans that have been instrumental in containing hospital costs. The Division negotiated an innovative Consent Decree that allowed the hospitals to combine sufficiently to achieve significant efficiencies while remaining separate to compete for managed care contracts. The parties are allowed to combine certain administrative functions and the performance of certain high technology medical services, but they must market the latter independently. Most acute care hospital services will continue to be provided by the two parties independently. The Consent Decree advances consumers' interests both by preserving rivalry and by facilitating cost reduction.

Waste Hauling and Disposal Services. On December 1, 1994, the Division joined the Attorney General of Maryland and the Attorney General of Florida in filing a joint Complaint against **Browning-Ferris Industries** in connection with Browning-Ferris' hostile takeover of **Attwoods**. The Complaint alleged that the acquisition of Attwoods would lessen competition in small containerized waste hauling service, or so-called "dumpster" service, in certain areas of Maryland, Florida, Pennsylvania, and Delaware. A proposed Consent Decree was filed requiring the

divestiture of Attwoods' small container assets in certain markets where both Attwoods and Browning-Ferris competed. Moreover, in the Baltimore, Maryland area and in Polk and Broward Counties in Florida, the Consent Decree stipulates that Browning-Ferris must offer commercial customers new contracts that contain terms less restrictive than those it currently uses. These less restrictive contracts should enable new entrants to build profitable routes in these markets.

On October 20, 1995, the Division joined the Attorney General of Florida in filing a joint Complaint against the merger of *Reuter Recycling of Florida* and *Waste Management of Florida*. The investigation revealed that the combination would have lessened competition in the market for municipal waste disposal services in Dade and Broward Counties, Florida by removing one of the three competitors from the market. A Consent Decree was negotiated permitting the deal to go forward on the condition that the merged entity will keep a waste transfer station open to the third competitor, Chamber Waste Systems of Florida, Inc., on terms that are equivalent to those that existed prior to the merger.

Other transactions challenged or abandoned since and including Fiscal Year 1993 are set forth in Appendix A to this Report.

PART VI:

PROTECTING CONSUMERS THROUGH CIVIL NON-MERGER ENFORCEMENT

The Division initiates civil proceedings against arrangements that unreasonably restrain the competitive process and against unilateral conduct that monopolizes or threatens to monopolize markets.

One of the Division's priorities is to bring civil non-merger enforcement actions in order to combat anticompetitive conduct that does not rise to the level of criminal violation, but that unreasonably raises prices for consumers or otherwise harms the competitive process. In 1993, the Division created a Civil Task Force dedicated to cases of national and international importance in order to enhance its civil enforcement effectiveness. The Division also established a New Cases Unit with the responsibility of reviewing and assessing potential cases. As a result, the Division filed 10 such cases in FY 1994 and 15 cases in FY 1995, involving a wide range of industries.

Enforcement to Protect Innovation.

Some of the Division's important civil enforcement efforts have already been discussed in other parts of this report, such as the suit against *Pilkington* to protect the ability of American glass companies to compete abroad; the suit against *Microsoft* to protect competition and innovation in the market for personal computer operating systems; the suit against *S.C. Johnson* and *Bayer* to protect competition in the market for household insecticides; and the Division's actions in the *European Telecommunications Standards Institute* matter to prevent unreasonable terms from being imposed on American companies in

European markets. Other important civil cases brought by the Division include the following:

Airline Fares. In December 1992, the Division alleged that eight major airlines and the *Airline Tariff Publishing Co.*, a computerized fare information system owned by the airlines, had conspired to raise consumers' prices from April 1988 to December 1992. Two airlines accepted a Consent Decree when the Complaint was filed. In March 1994, after extensive pretrial litigation, the remaining seven defendants accepted a Consent Decree that prohibits collaboration among competitors that has hurt consumers. An increase in fares of five percent due to the pervasive collaboration among the major airlines -- \$8 on an average ticket -- would have cost consumers well over \$1 billion in higher ticket prices. The prosecution of this significant case over the course of two Administrations illustrates the fundamentally non-partisan nature of effective antitrust enforcement.

ATM Networks and Processing. The Division in April 1994 charged *Electronic Payment Services* (EPS), the operator of the largest regional automated teller machine (ATM) network in the nation, with exclusionary practices that raised the price of ATM processing for banks in Pennsylvania, New Jersey, Delaware, West Virginia, New Hampshire and Ohio. The Complaint alleged that EPS monopolized the market for ATM processing in its service area by requiring all members of its ATM network to purchase their data processing services from it. The use of

this vertical restrictive practice -- tying -- prevented the member banks of the ATM network from using alternative suppliers of data processing services. The tying arrangement not only restrained competition in the processing market, it made it more difficult for the banks to connect with competing ATM networks, thus entrenching EPS's dominant position in the market. The settlement in this case provides more choices for depositors and lower costs for depository institutions, particularly small banks, savings institutions and credit unions. The Consent Decree requires EPS to permit participating banks to use independent processors and prohibits it from discriminating in pricing to its members based on the processor selected. Already, banking publications have credited the Consent Decree with increased competition in data processing and ATM networks in the states affected by EPS's former practices.

Department of Defense Procurement.

The Division challenged as an unreasonable restraint on competition a "teaming arrangement" between *Alliant Techsystems* and *Aerojet-General* to supply the Department of Defense with *cluster bombs*. The two defendants are the only two U.S. suppliers of cluster bombs, and their agreement not to compete on the DOD contract raised the price of the bombs substantially. The Division negotiated a resolution that recoups \$12 million for taxpayers on DOD's 1992 procurement -- about a ten percent savings.

U.S. Treasury Securities. In order to preserve the integrity of the financial markets that finance the nation's debt, the Division, in concert with the Securities and Exchange Commission, brought a civil action against *Steinhardt Management Co.* and the *Caxton Corporation*, two leading investment fund managers, charging that they had conspired to

limit the supply of, or to squeeze, 2-year Treasury notes issued in April 1991. By forcing investors to pay artificially inflated prices to buy or borrow the affected notes, the defendants' actions threatened the integrity of the government securities markets. A Consent Decree was obtained that enjoined the defendants from conspiring to inflate the price of Treasury securities in the future, and Steinhardt and Caxton paid a total of \$76 million for their actions. Of that amount, **\$25 million** was forfeited to the United States under the antitrust laws, \$16 million was paid to the SEC as a penalty for violation of the securities laws, and \$35 million was paid into a court fund that will be administered for the benefit of victims.

Natural Gas. In January 1995, the Division filed a Complaint and proposed Consent Decree to prohibit *El Paso Natural Gas* -- a major gas pipeline owner and gatherer in the San Juan Basin (ranging from New Mexico to Colorado) -- from tying the sale of meters and meter installation services to the use of the company's gas gathering system. The Division alleged that El Paso was requiring producers to purchase El Paso's meter installation service as a condition for connecting natural gas wells to the El Paso system. The settlement ends this tying arrangement and allows producers to seek alternative contractors, which could lower the cost of natural gas production and save millions of dollars.

Greyhound. In September 1995, the Division sued to enjoin *Greyhound*, the nation's largest bus company, from continuing to enforce its "25-mile" rule, which blocked smaller companies that use gates at Greyhound terminals from selling tickets anywhere else within a 25-mile radius. This even prevented the sale of tickets by phone if the selling office was located within 25 miles of the Greyhound

terminal. This practice made it difficult for smaller bus companies to develop additional routes and deprived passengers of additional service. Under a Consent Decree agreed to by Greyhound, the 25-mile rule has been dropped.

Shipping. In September 1995, the Division filed a lawsuit and a proposed Consent Decree to challenge an agreement between the **Lykes Bros. Steamship Co., Inc.**, a major carrier of wine and spirits, and the **Universal Shippers Association**, the largest association of importers of wine and spirits. The agreement between Lykes and Universal Shippers required Lykes to charge other importers at least five percent more in shipping costs than it charged Universal. This agreement made it more difficult for smaller domestic competitors to transport products from Europe to the United States at lower prices. The lawsuit alleged that the contract provision, called an "automatic rate differential," gave Universal an unreasonable advantage over its competitors. The Consent Decree prohibits Lykes from agreeing to or enforcing an automatic rate differential clause in any contract. It also requires Lykes to nullify any automatic rate differential clause in any existing contract, and it requires Lykes to maintain an antitrust compliance program.

Tanning Products. As part of its policy of challenging resale price maintenance agreements, a practice that has been adjudged illegal by the Supreme Court, the Division negotiated a Consent Decree that prohibits **California SunCare** from fixing and maintaining the price at which its distributors resell its indoor tanning products. This action against the country's largest manufacturer of indoor tanning products was completed in less than three months from initial complaint to conclusion. The Consent Decree imposed

appropriate remedial sanctions designed to preserve the pricing independence of the defendant's distributors.

Toys. This resale price maintenance case involved a Division decree and a state decree in which the State of Pennsylvania obtained monetary damages. The Division in January 1995 obtained a Consent Decree that prohibited **Playmobil**, one of the nation's largest specialty toy companies, from attempting to coerce its dealers to adhere to any specified level of resale prices. The evidence showed that Playmobil acted in response to complaints from some retailers that wanted Playmobil to stop rival retailers from discounting. This case was referred to the Division by the Pennsylvania Attorney General's office, which worked closely with the Division during the course of the investigation.

Waste Hauling. In February 1996, the Division sued the world's two largest solid waste hauling and disposal companies -- **Waste Management Inc.** ("WMI") and **Browning-Ferris Industries Inc.** ("BFI") -- under Section 2 of the Sherman Act, alleging that certain contracting practices used by WMI and BFI blocked smaller trash haulers from entering markets in which these companies have large market shares. The case against WMI challenged its use of long-term, exclusive contracts in the Savannah, Georgia and Central Louisiana markets. The case against BFI challenged its use of similar contracts in the Dubuque, Iowa and Memphis, Tennessee markets. In both cases, the defendants agreed to stop their practices under proposed Consent Decrees filed simultaneously with the Complaints.

Both WMI and BFI used the following contract provisions to maintain their high market shares and raise entry barriers:

- (i) the exclusive right to collect and dispose of all of a customer's waste;
- (ii) a three-year initial term;
- (iii) the automatic renewal of the contract for additional three-year terms unless the customer cancels by certified mail, return receipt requested, at least 60 days from the end of any term or renewal term; and
- (iv) a liquidated damages provision requiring customers to pay six times its prior monthly charge (or its prior monthly charge times the remaining number of months of the contract, if the remaining term is less than six months) to cancel the contract at any other time.

The Division also challenged WMI's use of a "right to compete" clause requiring customers to inform WMI of any competing offers and allowing WMI an opportunity to make a counter-offer before accepting any competing offers.

Under the terms of the proposed settlements, both WMI and BFI will be prohibited from using contracts with these kinds of provisions in the future, or from enforcing these provisions in existing contracts. Of particular importance, the liquidated damages amount is significantly reduced, and customers may make their renewal decision close to the expiration of the contract. In addition, both the initial and renewal terms are reduced.

Trade Associations

Trade associations of competitors can and do serve many useful, procompetitive purposes, but they also face significant temptations to act improperly as joint bargaining agents for their

members to coerce suppliers or customers. The Division has taken several significant enforcement actions regarding trade associations recently.

American Bar Association. In June 1995, the Division filed a civil lawsuit and proposed Consent Decree to resolve charges that the **ABA** process for accrediting law schools had been distorted to serve the interests of faculty at the expense of consumers. The ABA was charged with fixing faculty salaries at inflated rates and effectively boycotting state-accredited law schools and their students. Under the Consent Decree, the ABA would be prohibited from enforcing base salary and benefit requirements among ABA-accredited schools. The ABA would also have to allow ABA-accredited schools to accept students from non-accredited schools and provide transfer credits. Finally, the ABA would no longer be able to refuse to accredit a school simply based on its for-profit status. The Decree would also open up the accreditation process so that it is no longer secret or controlled by the law school faculty. The proposed Decree is being reviewed by the District Court.

National Automobile Dealers Association. In September 1995, the Division filed a Complaint and proposed Consent Decree to end anticompetitive practices by the **National Automobile Dealers Association** (NADA), which represents 80 percent of all U.S. franchised car dealers. NADA was engaged in a pattern of anticompetitive activities such as (1) attempts to persuade car dealers to boycott or reduce purchases from auto manufacturers offering consumer rebates as well as (2) asking member dealers to reduce inventories so that manufacturers would be pressured to reduce discounted sales to high-volume fleet buyers, and (3) attempting to persuade member dealers to stop advertising retail prices based on the dealer's wholesale cost, which NADA believed

led to lower retail prices. The Consent Decree prohibits these practices and forbids NADA from terminating the membership of a dealer for reasons relating to the dealer's prices or advertising policies.

Association of Retail Travel Agents.

Another significant trade association case, which the Division filed in October 1994, involved the *Association of Retail Travel Agents'* boycott of travel providers such as airlines and car rental companies that did not follow the Association's prescribed commission levels and other policies. The Association entered into a Consent Decree that prohibited it from engaging in such activities and required it to conduct periodic reviews of antitrust requirements with its officers and directors.

Protecting Competition In Health Care

Health care spending now accounts for about one-seventh of America's Gross Domestic Product. There is a growing consensus that competition can do for this large and important industry what it has done for the economy as a whole: provide American consumers with the best quality service at the lowest prices. The Division accordingly has devoted substantial resources to promoting and protecting competition in health care. To organize itself to do this effectively, one section of the Division now is dedicated to health care, the *Health Care Task Force*, formerly the Professions and Intellectual Property Section (PIP).

The Division is committed to finding innovative solutions to competitive issues. A good example is the settlement of a challenge to the merger of two Florida Hospitals (discussed in *Part V*), which allowed the hospitals to combine sufficiently to achieve

significant efficiencies while remaining separate to compete for managed care contracts. In addition, as part of the Division's commitment to providing forward-looking guidance to the business community (discussed in *Part VIII*), the Division, along with the FTC, issued *Statements of Antitrust Enforcement Policy in the Health Care Area*. The Division has also issued 37 health care-related business review letters (advising parties on proposals) since the beginning of FY 1993. Of these 37 letters, 34 were given favorable assessments by the Division.

The Division's civil non-merger program has had an important role in preserving competition in the health care industry. The Division promoted the development of competitive managed care plans with successful and innovative settlements in the *Danbury, Connecticut*, *St. Joseph, Missouri*, and *Classic Care* cases.

Danbury. In September 1995, the Division joined the Attorney General of Connecticut in filing a joint Complaint against *Danbury Hospital* and a group of nearly all the hospital doctors. The Complaint alleged that Danbury Hospital, the only acute care hospital in its area, had conspired with a majority of the doctors on its staff to delay and impede the development of managed health care plans in the Danbury area. The Complaint also charged that the hospital had hindered competition among local physicians by working with doctors to limit the size and scope of its medical staff. The hospital was charged with illegally abusing its monopoly position over inpatient services to maintain its profits and to gain undue power in markets for outpatient services. A Consent Decree was entered that ends the anticompetitive practices while still allowing doctors and hospitals to work together in ways that will reduce costs to consumers.

St. Joseph. Similar to the Danbury case, this case involved a Division Consent Decree which was obtained in September 1995 with the help of the State of Missouri. The Division's Complaint charged that St. Joseph Physicians, Inc., a group comprising 85 percent of the doctors in Buchanan County, Missouri, was formed in 1986 to thwart the development of managed care in the area. In order to strengthen its efforts, St. Joseph Physicians then merged in 1990 with Heartland Health System, Inc., the only local hospital, to form *Health Choice of Northwest Missouri*. Since the formation of Health Choice, several managed care plans have attempted to enter the local market but were unsuccessful. As in *Danbury*, the proposed Consent Decree will prevent the defendants from limiting competition and permit managed care plans, including provider-controlled plans, to compete.

Classic Care. In December 1994, the Division filed a Consent Decree that prevents *Classic Care Network* (a hospital network), and its eight member hospitals from coordinating their contract negotiations with HMOs and other third party payers in a manner designed to thwart the efforts of payers to obtain discounts off inpatient hospital rates. According to the Division's Complaint, Classic Care acted as the hospitals' exclusive bargaining agent by ensuring that all HMO agreements were approved by the other members of the network, by deterring discounting on inpatient services, and by prohibiting per diem pricing in HMO contracts, and by adopting one payer's most favored nation clause for the reimbursement of outpatient services. The Consent Decree prevents the Classic Care hospitals from engaging in any further efforts to prevent hospital discounts or using Classic Care as a joint sales agent.

In addition, *Vision Care* and *Delta Dental of Arizona and Oregon* agreed to settlements that will promote competition among optometrical plans and dental plans by ending practices that prevented discounting. A similar case was filed in February 1996 against *Delta Dental of Rhode Island*.

Vision Care. In December 1994, the Division filed a proposed Consent Decree that prevents *Vision Service Plan* – the nation's largest vision care insurance plan operating in 46 states and the District of Columbia – from use of a "most favored nation" clause that caused participating optometrists to be unwilling to cut their prices or offer discounts to competing lower-priced vision care insurance plans. The most favored nation clause created a strong disincentive to optometrists' discounting of fees and impaired entry and competition from competing vision care insurance plans. As a result of the most favored nation clause, vision care insurance plans that had previously contracted with doctors at discounts between 20 and 40 percent were no longer able to obtain discounts at that level. The proposed Consent Decree eliminates the most favored nation clause and prevents Vision Service Plan from engaging in other actions that would limit future discounting by its participating doctors.

Arizona Dental Care. In a joint action with the State of Arizona, the Division challenged the *Arizona Delta Dental Plan's* use of a "most favored nation" clause in contracts with Arizona dentists. The "most favored nation" provision discouraged dentists from offering other dental plans more favorable fee arrangements than they offered to Delta. The Consent Decree obtained by the Division prohibits Delta's use of the "most favored nation" clause and enjoins other practices by

Delta that could discourage Delta-affiliated dentists from offering different fee arrangements to competing dental plans. As a result of this litigation, Arizona consumers will have more dental care alternatives, including discount plans and managed care options, and will receive the benefits of cost savings achieved by those plans.

Oregon Dental Service ("ODS"). In April 1995, the Division filed a civil case against ODS to stop its use of most favored nation clauses in its contracts with dentists and to prevent its dissemination of information about maximum allowable fees for dental procedures. More than 90 percent of the licensed dentists in Oregon contract with ODS, and payments from ODS represent significant portions of these dentists' income. The most favored nation clause caused significant numbers of dentists to refuse to discount their fees and prevented other dental insurance plans from attracting sufficient dentists to compete with ODS. Also, when a provider dentist submitted a fee schedule to ODS with fees below the ODS maximum allowable amount, ODS informed the dentist of the maximum fee amounts so the dentist could raise fees to that level. This had the effect of stabilizing fees at the maximum level. The Consent Decree enjoins ODS from using or enforcing a most favored nation clause or similar provision in its contracts with dentists and from disclosing the maximum allowable or acceptable fees for any dental procedure.

Rhode Island Delta Dental. In February 1996, the Division brought its fourth challenge of a most favored nation clause provision in a suit against **Rhode Island Delta Dental**. The Complaint alleged that Delta Dental reduced discounting and price competition for dental services under agreements with dentists that had the effect of

preventing dentists from cutting fees below those offered in the Delta Plan. This case is particularly significant because it is being litigated in the jurisdiction where the **Ocean State** case was decided. In **Ocean State**, the First Circuit Court of Appeals, in 1989, found that Blue Cross and Blue Shield of Rhode Island's use of a most favored nation clause, under the particular circumstances in that case, did not violate the antitrust laws. The Division filed the **Rhode Island Delta Dental** case because some most favored nation clauses, such as the one challenged in this case, have substantial anticompetitive effects.

The Division's civil non-merger enforcement activities play an important role in promoting a free market -- one in which the opportunity for new businesses and technologies to emerge and compete on the merits is not thwarted by unreasonable restraints of trade.

Other civil non-merger enforcement actions since and including Fiscal Year 1993 are set forth in Appendix A to this Report.

PART VII:

COOPERATION WITH OTHER LAW ENFORCEMENT AGENCIES

Cooperation with Foreign Antitrust Officials

With increasing frequency, effective enforcement of U.S. antitrust laws requires cooperation with foreign antitrust enforcement officials. For this reason, the Division has fostered close relations with various foreign enforcement agencies, particularly those of the *European Union, Canada* and *Japan*.

Cooperation and coordination with foreign law enforcement agencies have been, and are now being, successfully utilized to prosecute international cartels. The joint criminal investigations with the Canadians -- made possible by the *U.S.-Canada Mutual Legal Assistance Treaty* ("MLAT") -- in the *thermal fax paper* and *plastic dinnerware* cases mentioned above in *Part I* are examples of how cross-border cooperation can work. In the plastic dinnerware case, for example, fifty Canadian Mounties and U.S. FBI agents simultaneously executed search warrants at target offices in Montreal, Boston, Los Angeles, and Minneapolis. As a result of the important evidence seized, three corporations and seven executives, including both Americans and Canadians, have pled guilty.

The thermal fax paper and plastic dinnerware cases vividly demonstrate the benefits and the need, especially in criminal cases, of obtaining a broad range of assistance from foreign law enforcement agencies, including taking of statements from witnesses, obtaining documents and other physical evidence in a form that would be admissible at

trial, and executing searches and seizures. Since the U.S.-Canada MLAT is the only MLAT to date that the Division has utilized, the Division is now in the process of negotiating additional tools to facilitate international cooperation for criminal antitrust cases. This was made possible by much-needed discovery legislation that became law in November 1994.

To enable the Division and the FTC to cope with the enforcement challenges inherent in economic globalization, the Division initiated and supported the *International Antitrust Enforcement Assistance Act of 1994*, which was introduced with strong bipartisan support in both houses of Congress on July 19, 1994. Former Assistant Attorney General James Rill testified twice in favor of the legislation. Congress over-whelmingly passed the Act in October, and it was signed into law by the President on November 2, 1994.

The new law authorizes the Department of Justice and the FTC to negotiate reciprocal assistance agreements with foreign antitrust enforcement authorities, provided those authorities accord law enforcement information the same degree of confidentiality accorded it in this country. Once the necessary bilateral agreements are reached, U.S. investigators will be able to obtain information in foreign countries under appropriate circumstances for important civil and criminal price-fixing investigations. The legislation provides U.S. antitrust enforcement agencies with authority similar to that possessed by the Justice Department's Tax Division and the Securities and Exchange Commission under various mutual legal assistance treaties and memoranda

of understanding. This legislation enhances the ability of U.S. and foreign antitrust enforcement authorities to stamp out international price-fixing cartels that raise prices to consumers. The Division is currently in discussions to implement this law.

In the meantime, the Division obtains cooperation through specific antitrust cooperation agreements. The United States has entered into these type of agreements with *Australia, Canada, Germany, and the European Union*. These agreements, while binding international obligations, do not override any provision of domestic law, including laws relating to confidentiality. While it is not always possible to use these agreements to facilitate assistance in the Division's investigations, the Division has been successful at times in using the assistance obtained through several of these agreements, as well as the use of traditional discovery tools such as letters rogatory, to prosecute foreign firms and individuals.

Recently, in August 1995, Attorney General Janet Reno signed a new antitrust cooperation agreement between the United States and *Canada* which will allow the two countries to enhance the coordination of antitrust law enforcement investigations. The new agreement contains provisions for notification about enforcement activities, enforcement cooperation and coordination, conflict avoidance and consultations, application to certain consumer protection laws, and confidentiality and use limitations. The agreement does not change existing law, and is not a comprehensive antitrust mutual legal assistance agreement of the kind permitted by the *International Antitrust Enforcement Assistance Act of 1994*.

Another important function of international cooperation among antitrust agencies is to

protect businesses from inconsistent enforcement actions. For example, the settlement with *Microsoft* on its contracting practices in personal computer operating systems was reached in an efficient manner, employing substantially the same remedies in both the U.S. and Europe, due to the close cooperation with the competition authorities of the *European Union*. The Division currently is investigating a number of major intellectual property and other civil cases jointly with the EU under express waivers from the parties, which allows the sharing of confidential information. As in *Microsoft*, this will help to ensure that the parties are not placed under inconsistent legal obligations in conducting global business. Increasingly, more parties to mergers and other transactions that span international borders are granting confidentiality waivers to allow the Division and foreign antitrust enforcement agencies to share information and expedite merger reviews.

Moreover, international cooperation also helps open up foreign markets for American businesses. As mentioned earlier in *Part I*, the Consent Decrees obtained by the Division in connection with the *British Telecommunications/MCI* and the *Sprint/France Telecom/Deutsche Telekom* transactions are credited with creating more opportunities for American telecommunications companies in overseas markets. In addition, the Division's cooperation with the *European Union* helped ensure that the *European Telecommunications Standards Institute (ETSI)* would not adopt policies that would have imposed unreasonable terms on firms, including American companies, seeking to sell technology rights in Europe.

Bilateral discussions with foreign antitrust agencies is another important tool to promote competition. For example, the Antitrust

Division has taken an active role to encourage the Japanese Government to deregulate its markets and to end anticompetitive discrimination against American exporters. As part of these efforts, the Division drafted comments on behalf of the United States Government before the *Japanese Fair Trade Commission* regarding competition in public procurement in that country and the activities of Japanese trade associations. The comments encouraged the Japan Fair Trade Commission to discourage bid rigging in the public procurement process and to take steps to ensure that trade associations in Japan not be allowed to engage in anticompetitive practices that may impede the ability of foreign firms to do business in Japan.

Finally, more and more countries are recognizing the importance of antitrust laws to their economies. Because of the Division's expertise, the Division has continued to provide technical assistance to Latin American countries and to Central European countries. It also had substantive discussions with visitors from Russia.

Unprecedented Level of Cooperation with State Attorneys General

The Antitrust Division has continued and increased the efforts begun in the Bush Administration to cooperate with State Attorneys General. One aspect of these efforts was the appointment in June 1994 of a Senior Counsel to the Assistant Attorney General with direct responsibility for liaison with state enforcement officials.

The results have exceeded the Antitrust Division's expectations by far -- since June 1994, the Division has undertaken 37 joint investigations with State Attorneys General.

These efforts resulted in 14 matters that had either joint or coordinated resolutions. This combination of resources has increased understanding between the Division and the States, and has provided greater consistency in antitrust enforcement, thereby reducing compliance costs for businesses.

The joint and coordinated matters conducted to date, many of which have been mentioned in other parts of this Report, include:

- *Scott Paper/Kimberly-Clark* (joint complaint with Texas),
- *Fleet Financial Group/Shawmut* (joint investigation with Connecticut and Massachusetts),
- *Wells Fargo/First Interstate Bancorp.* (joint investigation with California),
- *U.S. Bancorp/West One* (joint investigation with Washington),
- *KeyCorp/Casco National Bank* (joint investigation with Maine),
- *Morton Plant/Mease* (joint complaint with Florida),
- *Browning-Ferris Industries/Attwoods* (joint complaint with Maryland and Florida),
- *Danbury Hospital* (joint complaint with Connecticut),
- *Reuter Recycling/Waste Management* (joint complaint with Florida),
- *Delta Dental* (joint complaint with Arizona);
- *Playmobil* (joint investigation with Pennsylvania),
- *Core States/Meridian Bancorp.* (consultations with Pennsylvania),
- *Utah Hospitals* (coordinated investigation with Utah), and
- *St. Joseph, Missouri* (coordinated investigation with Missouri).

Cooperation with Other Federal Agencies

In an era where taxpayers expect the government to accomplish better results with greater efficiency, the Antitrust Division has expanded its cooperation and coordination with other federal agencies in recent years. Consequently, the Division often develops policies, investigates and brings enforcement actions in tandem with other federal agencies -- pooling resources and promoting consistency in enforcement actions, benefitting businesses and the agencies. This permits competitive concerns to be addressed in a simultaneous and coordinated fashion. Close working relationships also ensure that the Antitrust Division is able to carry out its special responsibilities granted by Congress in certain industries, such as the airline, banking, busing, railroad, telecommunications, and trucking industries.

Many of the Division's enforcement actions mentioned in this Report benefitted from close cooperation and coordination with other agencies. For example, the Division's and the *U.S. Securities and Exchange Commission's* (SEC) coordinated action (mentioned above in *Part VI*) against the Steinhart Management Company and Caxton Corporation to settle antitrust and securities charges connected with the auction of *Treasury securities* resulted in a \$25 million antitrust fine. The Division has continued its close working relationship with the SEC.

In the recent resolution of the *Disney/ABC* merger (mentioned above in *Part V*), the Division worked closely with the *Federal Communications Commission* (FCC). Cooperative efforts with the FCC also are underway as a result of the *Telecommunications Act of 1996*.

In evaluating some of the largest bank mergers on record, the Division worked closely with the *Federal Reserve Board* and the *Comptroller of the Currency* to ensure consistent enforcement results. As mentioned above in *Part V*, these efforts resulted in the second and third largest divestiture of bank branches in the history of the banking industry (in the *Fleet Financial Group/Shawmut* and *Wells Fargo/First Interstate Bancorp.* mergers).

Other significant working relationships involve the *Department of Transportation* (DOT) and the *Department of Agriculture* (USDA). The Division works closely with DOT on matters of competitive importance affecting domestic and international aviation. For example, the Division reviews all code-sharing proposals between foreign and domestic carriers, and advises DOT of any competitive concerns that are presented. The Division also consults with DOT regarding international route transfers and computer reservation systems.

The Division and the *USDA's Grains, Inspection, Packers, and Stockyards Administration* (GIPSA) have established a cooperative working relationship to share information with respect to both agencies' investigations. The Division is currently consulting with GIPSA concerning federal cattle procurement practices.

In addition to traditional enforcement, the Division pursues its goal of promoting and protecting the competitive process by appearing before federal regulatory agencies to advocate in favor of more competition and less regulation. Past Division efforts influenced regulatory decisions to allow greater competition in the telephone, airline, trucking and securities industries, to name but a few, with savings to consumers of billions of dollars

over the years. The Division has continued these efforts by filing comments before the Federal Energy Regulatory Commission; the Interstate Commerce Commission; and the Federal Maritime Commission.

Division representatives also serve on a number of interagency task forces that establish economic policy, such as the Administration's working group on Telecommunications, and the National Economic Council's task forces on intellectual property and U.S.-Japan trade issues. It also participated in interagency groups working on issues related to health care, the aeronautics industry, the U.S.-U.K. aviation treaty, and oil and gas lease pricing. In a particularly important interagency effort, the Division participated with the FTC and the Department of Defense on the Defense Science Board Task Force on Defense Mergers, which analyzed the effect of the antitrust laws on consolidation of the defense industry. As a result of the Task Force, the Division has strengthened its coordination with DOD concerning mergers in the defense industry on an ongoing basis.

PART VIII:

RESPONDING TO THE NEEDS OF THE BUSINESS COMMUNITY FOR CLARITY AND CERTAINTY IN ANTITRUST ENFORCEMENT

American businesses benefit from sound antitrust enforcement. Antitrust enforcement ensures that price-fixing cartels, anticompetitive mergers, and restraints of trade do not harm businesses. American businesses also benefit from antitrust enforcement that follows established legal and economic principles – principles that are clearly articulated and consistently applied in a nonpartisan manner.

Accordingly, the Division has undertaken substantial efforts – through guidelines, policy statements, expedited responses to requests for business reviews, speeches before business groups, and Congressional testimony – to provide guidance to the business community that is as detailed and clear as possible.

Providing Guidance to the Business Community

The Division recognizes that important components of effective antitrust enforcement are transparency and predictability. The vast majority of businesses seek to compete fairly and legally within the boundaries of the law. To assist businesses in organizing their activities consistently with the antitrust laws, the Division and the FTC in the past two years issued three separate sets of new joint guidelines:

Guidelines for Licensing of Intellectual Property (April 1995)

These guidelines, which are discussed in *Part IV, Promoting Innovation*, are an

important part of the Division's emphasis in promoting innovation. They clarify the application of antitrust laws to intellectual property licensing and explain the generally complementary relationship between the antitrust laws and the laws that protect intellectual property.

Guidelines for International Operations (April 1995)

These new Guidelines, which replace those issued by the Division in 1988, articulate the agencies' resolve to protect both American consumers and American exporters from anticompetitive restraints where such restraints have direct, substantial and foreseeable effects on U.S. commerce. The Guidelines also emphasize the importance of international cooperation.

Statements of Policy in the Health Care Area (September 1993 and September 1994)

These Policy Statements represent an unprecedented effort to provide detailed guidance as businesses and their counsel adjust to the rapidly changing health care market. The Policy Statements provide antitrust guidance with respect to subject areas that play an important role in the health care system. Several of these subject areas include mergers among hospitals; hospital joint ventures

involving high-technology or other expensive health care equipment; provider participation in exchanges of price and cost information; joint purchasing arrangements among health care providers; and physician network joint ventures.

The two agencies also committed to providing expedited 90-day business reviews for the health care industry. Since the beginning of FY 1993, the Division has provided guidance in response to 37 inquiries involving the health care industry, 34 of them favorably.

Business Reviews

The Antitrust Division's Business Review Procedure is another important tool for providing guidance on a forward-looking basis to the business community. Parties may seek the Antitrust Division's current enforcement intentions with respect to specific prospective conduct by requesting a statement of those intentions under the Business Review Procedure, 28 C.F.R. § 50.6. The Division provides expedited responses to requests related to joint ventures and information exchanges. The Division also provides procedures to enable parties to obtain expedited business reviews for conduct described in the Health Care Policy Statements.

Since the beginning of FY 1993, the Division has issued **75 business review letters, including 37 related to the health care area.** This high number reflects the Division's determination to respond promptly when asked for its views as to the legality of particular prospective conduct. These business reviews covered a wide variety of practices, ranging from credit information exchanges among long distance telephone carriers and among firms in

the leasing industry to the establishment of voluntary programming standards by broadcasters to reduce program violence on television. The Antitrust Division publishes a digest of business review letters, and copies may be obtained by writing the Legal Procedures Unit of the Antitrust Division, Department of Justice, Suite 215 Liberty Place, 325 7th Street, N.W., Washington, D.C. 20004 (telephone: 202-514-2481).

Other Guidelines

1992 Horizontal Merger Guidelines

In 1992, the Division and the FTC jointly published Horizontal Merger Guidelines, which outline the analysis the agencies will use in assessing the legality of horizontal mergers. These Guidelines provide valuable guidance to the business community in merger and acquisition planning and have reduced the need for litigation arising from uncertainty about the scope of the antitrust laws.

Vertical Restraints Guidelines (repealed)

By contrast, the Vertical Restraints Guidelines issued by the Division in 1985 in some respects were inconsistent with case law and therefore were not relied on by knowledgeable antitrust counsel or, increasingly, by the Division itself. To ensure that the Division's Guidelines fairly state existing law and can be relied on by counsel and the business community, the Division rescinded the Vertical Restraints Guidelines in August 1993.

The Division will remain active in providing the business community information concerning

its antitrust enforcement policies. It will continue to do its best to issue business review letters as quickly as possible.

CONCLUSION

In a 1992 study, McKinsey & Co. credited vigorous antitrust enforcement in the United States for the most vibrant, open and competitive services sector in the world. Service Sector Productivity, McKinsey Global Institute (October, 1992). The Division history is a proud one, and the people of the Division today are as devoted to preserving an open, free and competitive economy for the benefit of American businesses and consumers as our predecessors. The cases brought and policies adopted in the last several years exemplify the benefits that active, vigorous and intelligent antitrust enforcement can bring. The Division is committed to continuing to carry out the trust that the Congress and the American people have placed in it.

APPENDIX C

Published Speeches by Subject Matter by Antitrust Division Officials

Oct. 1, 1992 - March 27, 1996

(available on the Internet <<http://www.usdoj.gov>> or by request in print version)

GENERAL ANTITRUST ENFORCEMENT

- ▶ Charles A. James:
"An Agenda For The Antitrust Division"
26th New England Antitrust Conference, Cambridge, MA
(November 6, 1992)

- ▶ J. Mark Gidley:
"Emerging Issues In Horizontal Agreements: The Role of Facilitating Practices"
Practising Law Institute, Washington, DC (November 13, 1992)

- ▶ J. Mark Gidley:
"Regulatory and Litigation Developments at the Antitrust Division"
U.S. Chamber of Commerce Antitrust Council Meeting, Washington, DC
(December 3, 1992)

- ▶ Constance K. Robinson:
"Antitrust Issues in Today's Economy: Current Developments in Antitrust Responsibilities of Management"
Conference Board, New York, NY (March 4, 1993)

- ▶ John W. Clark:
"60 Minutes with the Acting Assistant Attorney General"
American Bar Associations' 41st Annual Antitrust Spring Meeting,
Washington, DC (April 2, 1993)

- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Economic and Commercial Law,
Committee on the Judiciary, U.S. House of Representatives, Concerning
Legislation to Amend the Antitrust Exemption Provided by the McCarran-Ferguson Act (July 29, 1993)

- ▶ Anne K. Bingaman:
"Antitrust Enforcement, Some Initial Thoughts and Actions"
American Bar Association Antitrust Section, New York City
(August 10, 1993)
- ▶ Constance K. Robinson:
"Communications Among Competitors -- When Does the Department of
Justice Challenge?"
American Bar Association Antitrust Section, New York City
(October 14-15, 1993)
- ▶ Anne K. Bingaman:
"Change and Continuity in Antitrust Enforcement"
Fordham Corporate Law Institute, New York City (October 21, 1993)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Economic and Commercial Law,
Committee on the Judiciary, U.S. House of Representatives, Concerning the
Antitrust Reform Act (January 26, 1994)
- ▶ Richard J. Gilbert:
Statement before the Subcommittee on Patents, Copyrights and
Trademarks, Committee on the Judiciary, U.S. Senate, Concerning the
Patent Term and Publication Reform Act of 1994 (March 9, 1994)
- ▶ Willard K. Tom:
"Vertical Price Restraints"
American Bar Association, Washington, DC (April 7, 1994)
- ▶ Anne K. Bingaman:
"Report from the Antitrust Division, Spring 1994"
American Bar Association, Washington, DC (April 8, 1994)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Appropriations of the Departments
of Commerce, Justice, and State, The Judiciary, and Related Agencies, U.S.
House of Representatives (April 19, 1994)
- ▶ Robert E. Litan:
"The Relative Decline of Banking: Should we care?"
Federal Reserve Bank of Chicago, Chicago, IL (May 12, 1994)
- ▶ Gary R. Spratling:
"Will Teaming be a Problem?"
American Bar Association, New Orleans, LA (August 7, 1994)

- ▶ Willard K. Tom:
 "Current Antitrust Enforcement Activities Concerning Distribution and Marketing"
Ohio State Bar Association and the Ohio CLE Institute, Cincinnati, OH
 (October 28, 1994)

- ▶ Rebecca P. Dick:
 "Antitrust Enforcement and Vertical Restraints"
American Bar Association Antitrust Section and the Corporate Bar Association of Westchester and Fairfield, New York City
 (November 4, 1994)

- ▶ David S. Turetsky:
 "McCarran-Ferguson Reform"
National Conference of Insurance Legislators, New York City
 (November 12, 1994)

- ▶ Anne K. Bingaman:
 "Antitrust policy for the 21st Century"
American Bar Association Antitrust Section, Washington, DC
 (November 17, 1994)

- ▶ Anne K. Bingaman:
 "Antitrust Enforcement and American Prosperity"
New York Bar Association Antitrust Section, New York City
 (January 26, 1995)

- ▶ Steven C. Sunshine:
 Statement before the Subcommittee on Railroads, Committee on Transportation and Infrastructure, U.S. House of Representatives,
 Concerning Competitive Review of Railroad Mergers After ICC Sunset
 (January 26, 1995)

- ▶ Steven C. Sunshine:
 "Vertical Merger Enforcement Policy"
American Bar Association Antitrust Section, Washington, DC
 (April 5, 1995)

- ▶ Diane P. Wood:
 "Competition and the Single Firm: Monopolization and Abuse of Dominant Positions"
Pacific Economic Cooperation Council, Taipei, Taiwan (April 19, 1995)

- ▶ Anne K. Bingaman:
 "Injecting Competition into Regulated Industries and Utilities"
American Bar Association Public Utility, Communications and Transportation Law Section, Washington, DC (April 20, 1995)
- ▶ J. Robert Kramer:
 "Contractual Joint Ventures: The Enforcement View"
American Bar Association, Washington, DC (August 7, 1995)
- ▶ David S. Turetsky:
 Statement before the Committee on Commerce, Science, and Transportation, U.S. Senate, Huron, SD: (August 31, 1995)
- ▶ Anne K. Bingaman:
 "Antitrust and Banking"
Conference of the Currency's Conference on Antitrust and Banking, Washington, DC (November 16, 1995)
- ▶ David S. Turetsky:
 "Antitrust Enforcement in the Electric Industry"
Edison Electric Institute Chief Executive Conference, Scottsdale, AZ (January 11, 1996)
- ▶ Anne K. Bingaman:
 "Consolidation and Code Sharing: Antitrust Enforcement in the Airline Industry"
American Bar Association, Washington, DC (January 25, 1996)

INTERNATIONAL

- ▶ John W. Clark:
 "The Mexican Federal Competition Law: Some Observations from the United States' Historical Experience"
Seminar on the New Mexican Federal Economic Competition Act Sponsored by the Instituto Tecnológico Autónomo De México, Mexico City (March 4, 1993)
- ▶ Charles S. Stark:
 "International Antitrust: Looking Ahead"
American Bar Association Antitrust and International Sections, New York City (August 9, 1993)

- ▶ Diane P. Wood:
 "The Evolution of Overall U.S. Policy Governing International Trade -- and how NAFTA Fits Into that Scheme"
Texas State Bar Association, Houston, TX (March 11, 1994)

- ▶ Anne K. Bingaman:
 "U.S. Antitrust Policies in World Trade"
World Trade Center Chicago Seminar on GATT After Uruguay, Chicago, IL (May 16, 1994)

- ▶ Anne K. Bingaman:
 Statement before the Committee on the Judiciary, U.S. Senate, Concerning the International Antitrust Enforcement Assistance Act of 1994
 (August 4, 1994)

- ▶ Anne K. Bingaman:
 Statement before the Subcommittee on Economic and Commercial Law, Committee on the Judiciary, U.S. House of Representatives, Concerning the International Antitrust Enforcement Assistance Act of 1994 (August 8, 1994)

- ▶ Anne K. Bingaman:
 "International Antitrust: A Report from the Department of Justice"
Fordham Corporate Law Institute, New York City (October 27, 1994)

- ▶ Diane P. Wood:
 "The Internationalization of Antitrust Law: Options for the Future"
DePaul Law Review Symposium (February 3, 1995)

- ▶ Charles P. Stark:
 "International Aspects of Antitrust Enforcement: A U.S. Perspective"
European and Competition Law, London (February 13-14, 1995)

- ▶ Anne K. Bingaman:
 "The Role of Antitrust in International Trade"
The Japan Society, New York City (March 3, 1995)

- ▶ Diane P. Wood:
 "Effective Enforcement of Antitrust Law for International Transactions"
Business Development Associates, Inc., Washington, DC (March 15, 1995)

- ▶ Diane P. Wood:
 "Antitrust: A Remedy for Trade Barriers?"
Asian Law Program, Washington, D.C. (March 24, 1995)

- ▶ Diane P. Wood:
"The 1995 Antitrust Enforcement Guidelines for International Operations:
An Introduction"
ABA Antitrust Section (April 5, 1995)
- ▶ Charles S. Stark:
"Enhancing Market Access through Trade and Antitrust Law"
**Section of International Law and Practice of the American Bar
Association**, Chicago, IL (August 8, 1995)
- ▶ Joel I. Klein:
"International Antitrust: A Justice Department Perspective"
Fordham Corporate Law Institute, New York City (October 26, 1995)

CRIMINAL

- ▶ Anne K. Bingaman, Gary R. Spratling:
"Criminal Antitrust Enforcement"
American Bar Association Section of Antitrust Law, Dallas, TX
(February 23, 1995)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Appropriations, Committee on the
Departments of Commerce, Justice, and State, the Judiciary, and Related
Agencies, U.S. House of Representatives (March 24, 1995)
- ▶ Gary R. Spratling:
"Corporate Crime in America: Strengthening the 'Good Citizen' Corporation"
U.S. Sentencing Commission, Washington, DC (September 8, 1995)
- ▶ Anne K. Bingaman:
"The Clinton Administration: Trends in Criminal Antitrust Enforcement"
Corporate Counsel Institute, San Francisco, CA (November 30, 1995)

TELECOMMUNICATIONS

- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Antitrust, Monopolies, and Business
Rights, Committee on the Judiciary, U.S. Senate, Concerning Mergers and
Vertical Integration in the Telecommunications Industry (October 27, 1993)

- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Telecommunications and Finance,
Committee on Energy and Commerce, U.S. House of Representatives,
concerning National Communications Competition and Information
Infrastructure Act (January 27, 1994)
- ▶ Steven C. Sunshine:
"Antitrust Policy toward Telecommunications Alliances"
American Enterprise Institute for Public Policy Research,
Washington, DC (July 7, 1994)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Antitrust, Monopolies, and Business
Rights, Committee on the Judiciary, U.S. Senate, Concerning the
Telecommunications Act of 1994 (September 20, 1994)
- ▶ Anne K. Bingaman:
"Competition Policy and Telecommunications Revolution"
Networked Economy Conference USA, Washington, DC
(September 26, 1994)
- ▶ Robert E. Litan:
"Antitrust Enforcement and the Telecommunications Revolution: Friends, Not
Enemies"
The National Academy of Engineering,
Washington, DC (October 6, 1994)
- ▶ Anne K. Bingaman:
"Promoting Competition in Telecommunications"
National Press Club, Washington, DC (February 28, 1995)
- ▶ Anne K. Bingaman:
Statement before the Committee on Commerce, U.S. Senate, Concerning
Telecommunications Reform Legislation (March 2, 1995)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Antitrust, Business Rights, and
Competition, Committee on the Judiciary, U.S. Senate, Concerning the
Telecommunications Competition and Deregulation Act of 1995
(May 3, 1995)
- ▶ Anne K. Bingaman:
Statement before the Committee on the Judiciary, U.S. House of
Representatives, Concerning Telecommunications: The Role of the
Department of Justice (May 9, 1995)

- ▶ Anne K. Bingaman:
Statement before the Subcommittee of Telecommunications and Finance,
Committee on Commerce, U.S. House of Representatives,
Concerning H.R. 1555, Communications Act of 1995 (May 11, 1995)
- ▶ Willard K. Tom:
Statement before the Technology and Energy Committee of the Michigan
State Senate and the Public Utilities Committee of the Michigan House of
Representatives, Concerning the Proposed Trial of InterLATA Services by
Ameritech (June 26, 1995)
- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Oversight and Investigations, U.S.
House of Representatives, Concerning Competition in the Cellular
Telephone Service Industry (October 12, 1995)

INNOVATION AND TECHNOLOGY

- ▶ Richard J. Gilbert:
"Antitrust Policy in High Technology Markets"
Association of American Law Schools, Orlando, FL (January 7, 1994)
- ▶ Anne K. Bingaman:
"Antitrust and Innovation in a High Technology Society"
60th Anniversary of the founding of the Antitrust Division
Washington, DC (January 10, 1994)
- ▶ Anne K. Bingaman:
"Intellectual Property and Antitrust in the Clinton Administration"
Intellectual Property Conference hosted by Price Waterhouse,
Phoenix, AZ (February 25, 1994)
- ▶ Robert E. Litan:
"The Relative Decline of Banking: Should we care?"
Federal Reserve Bank of Chicago, Chicago, IL (May 12, 1994)
- ▶ Anne K. Bingaman:
"The Role of Antitrust in Intellectual Property"
Federal Circuit Judicial Conference, Washington, DC (June 16, 1994)
- ▶ Diane P. Wood:
"Antitrust and Intellectual Property"
National Economic Research Associates, Inc.'s, Santa Fe, NM
(July 7, 1994)

- ▶ Anne K. Bingaman:
"Innovation and Antitrust"
The Commonwealth Club of California, San Francisco, CA (July 29, 1994)
- ▶ Anne K. Bingaman:
"Antitrust, Innovation and Intellectual Property"
Stanford Law School, Stanford, CA (October 7, 1994)
- ▶ Willard K. Tom:
"Antitrust and Intellectual Property"
Canadian Intellectual Property Law Institute, Ottawa, Canada
(October 13, 1994)
- ▶ Richard J. Gilbert:
"Intellectual Property and the Antitrust Laws: Protecting Innovators and
Innovation"
Licensing Executives Society,
Phoenix, AZ (February 17, 1995)
- ▶ Diane P. Wood:
"Cooperation Among Competition Authorities in the Global Market"
International Company Lawyers' Conference, London
(February 24, 1995)
- ▶ Richard J. Gilbert:
"The 1995 Antitrust Guidelines for the Licensing on Intellectual Property"
American Bar Association Section of Antitrust Law, Washington, DC
(April 6, 1995)
- ▶ Carl Shapiro:
"Antitrust in Network Industries"
American Law Institute and American Bar Association,
San Francisco, CA (January 25, 1996)

MERGER

- ▶ Barry C. Harris:
"Analyzing Competitive Effects Under The 1992 Horizontal Merger
Guidelines: The Role Of Factors Other Than Concentration"
Practising Law Institute, Washington, DC (November 12, 1992)
- ▶ Margaret E. Guerin-Calvert:
"Bank Merger Analysis and the 1992 Merger Guidelines: The View from the
Justice Department" **American Bar Association Spring
Antitrust Meeting**, Washington, DC (April 1, 1993)

- ▶ Steven C. Sunshine:
"Initiatives in Merger and Joint Venture Analysis"
Thirty-Third Antitrust Conference, New York City (March 3, 1994)
- ▶ Robert E. Litan:
"Antitrust Assessment of Bank Mergers"
American Bar Association Antitrust Section (April 6, 1994)
- ▶ Steven C. Sunshine:
"Charting the Merger Crosscurrents in a Changing Economy"
**28th Annual New England Antitrust Conference, Boston, MA
(October 15, 1994)**
- ▶ Steven C. Sunshine:
"Rigor and Realism in Merger Analysis"
**Business Development Association, Inc., Washington, DC
(March 14, 1995)**
- ▶ Lawrence R. Fullerton:
"Challenges of the Current Merger Wave"
**Business Development Associates, Washington, DC
(September 29, 1995)**
- ▶ Carl Shapiro:
"Mergers with Differentiated Products"
**American Bar Association, International Bar Association,
Washington, DC (November 9, 1995)**

CIVIL NON-MERGER

TRADE ASSOCIATIONS:

- ▶ Willard K. Tom:
"Antitrust and Trade Associations"
**Bar Association of the District of Columbia, Antitrust Law Committee,
Washington, DC (February 22, 1995)**
- ▶ Anne K. Bingaman:
"Recent Enforcement Actions by the Antitrust Division Against Trade
Associations"
**Bar Association of the District of Columbia,
Antitrust Law Committee, Washington, DC (February 28, 1996)**

HEALTH CARE:

- ▶ Robert E. Bloch:
Remarks before the **National Health Lawyers Association**,
Washington, DC (February 19, 1993)

- ▶ Anne K. Bingaman:
"The Health Care Guidelines and Associations--How Associations can Work
with the Department of Justice"
District of Columbia Bar Association, Washington, DC
(February 16, 1994)

- ▶ Gail Kursh:
"Federal Antitrust Enforcement and Health Care Reform: A Report from the
Department of Justice"
National Health Lawyers Association, Washington, DC
(February 17, 1994)

- ▶ Anne K. Bingaman:
"Antitrust Health Care Issues in the Clinton Administration"
National Council of Community Hospitals, Washington, DC
(March 18, 1994)

- ▶ Anne K. Bingaman:
Statement before the Committee on Finance, U.S. Senate, Concerning
Competition and Antitrust Issue in Health Care Reform (May 12, 1994)

- ▶ Anne K. Bingaman:
Statement before the Subcommittee on Economic and Commercial Law,
U.S. House of Representatives, Concerning Competition and Antitrust
Issues in Health Care Reform (June 15, 1994)

- ▶ Anne K. Bingaman:
"The Importance of Antitrust in Health Care"
**A Live, Interdisciplinary Symposium: Antitrust Policy
and Health Care Reform**, Salt Lake City, UT (October 5, 1994)

- ▶ Steven C. Sunshine:
"Market-Based Reform of Health Care Delivery: Where Does Antitrust Fit
In?"
Brookings Health Affairs Conference (January 23, 1995)

- ▶ Gail Kursh:
"Recent Activities of the Antitrust Division in the Health Care Field"
American Bar Association, Washington, DC (April 5, 1995)

- ▶ Gail Kursh:
"Update on Antitrust Division Health Care Enforcement Activities: March 1995--February 1996"
National Health Lawyers Association, Washington, DC
(February 22, 1996)

COOPERATION WITH OTHER LAW ENFORCEMENT AGENCIES

- ▶ Anne K. Bingaman:
"Cooperative Antitrust Enforcement"
American Bar Association Antitrust Section, Washington, DC
(April 7, 1995)
- ▶ Anne K. Bingaman:
"Antitrust Division Cooperation with State Attorneys General"
National Association of Attorneys General, Baltimore, MD
(October 11, 1995)

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