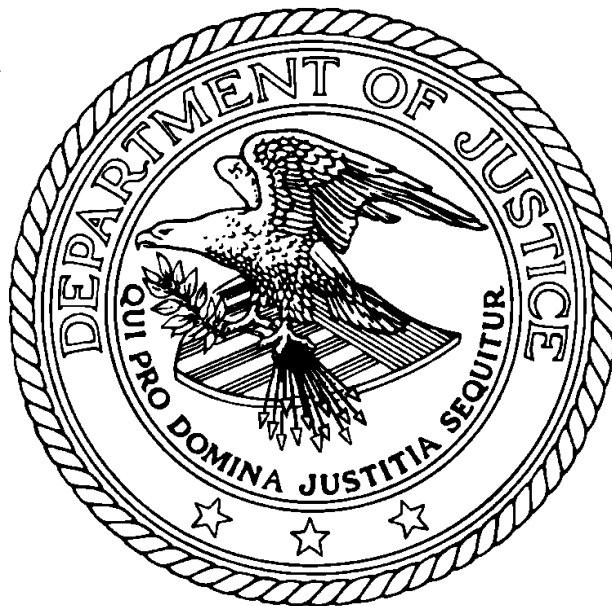


**U.S. Department of Justice  
Antitrust Division**

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



April 7, 1995

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## FOREWORD

The primary goal of the Antitrust Division of the Department of Justice has been to open markets and ensure that they are competitive, for the benefit of American businesses and consumers. To advance this goal, we have challenged barriers to American companies' ability to compete in foreign markets, and broke up criminal conspiracies here and abroad that were increasing American consumers' prices for such goods as residential doors, plastic dinnerware, steel wool scouring pads and thermal fax paper. We have obtained civil consent decrees that will contribute to lower prices and improved quality for such products and services as airline fares, ATM networks, household insecticides and dental care. We have also worked with businesses to restructure mergers in order to protect competition in markets ranging from international telecommunications to health care. Many of these accomplishments were made possible by an unprecedented level of cooperation and coordination with foreign antitrust enforcement agencies and with State Attorneys General.

The Division is also committed to ensuring that its essential efforts to preserve competition for the benefit of businesses and consumers do not impose unnecessary costs on American businesses and consumers. As recently as two weeks ago the Division announced a major initiative significantly improving the HSR premerger review process by eliminating unnecessary delays and burdens on businesses.

In addition to these efforts, the Division has provided more guidance to the business community in a shorter time than ever before, much of it jointly with the Federal Trade Commission. This guidance -- in the form of new and subsequently revised and expanded joint statements of policy regarding the health care industry, revised joint guidelines on intellectual property, revised joint guidelines on international operations and an accelerated individual business review process -- lowers the costs to business of complying with the law by reducing uncertainty about the parameters of legal behavior. It saves money for both business and the government by helping companies to structure and organize their operations in accordance with the law, thus avoiding the need for expensive litigation.

These achievements were accomplished by a dedicated group of only 686 employees. In fact, the Division had about 30 percent fewer attorneys at the end of fiscal year 1994 than it had in 1980. This is roughly the same number as during the Nixon Administration in 1972, even though the economy and the

Division's mission have exploded in size and complexity in the intervening two decades. Such challenges as increasingly sophisticated international price-fixing conspiracies and rapidly changing technologies place ever more stress on the Division's precious resources.

The activities described in this summary underscore the importance of antitrust enforcement to America's economic health and vitality. The greatness of this country stems from our commitment to freedom and opportunity -- and the historic goal of the antitrust laws is to protect economic freedom and opportunity by promoting competition in the marketplace. Competition in a free market benefits American consumers through lower prices, better quality and greater choice. Competition provides businesses the opportunity to compete on price and quality, in an open market and on a level playing field, unhampered by anticompetitive restraints. Competition also tests and hardens American companies at home, better to succeed abroad. For over six decades, the mission of the Antitrust Division has been to promote and protect the competitive process -- and the American economy -- through the enforcement of the antitrust laws.

The immediate benefits of antitrust enforcement for American businesses and consumers are often spectacular -- as much as \$1.25 billion, for example, added to U.S. export revenues over the next six years as a result of a case that will free American glass companies to compete in foreign markets; hundreds of millions or billions of dollars in lower prices to consumers for airline fares; and millions of dollars in savings on weapons procurement for the Department of Defense and American taxpayers. Benefits such as these are even more impressive when one considers that the Division is effectively self-funded. Total fines and fees paid as a result of Division enforcement activities brought more money into the Treasury last year than the \$71.2 million spent on Division operations.

Finally, the credit for the Division's success in promoting America's economic vitality goes to the employees of the Division, whose unstinting efforts deserve the gratitude of each and every American. Their tremendous talents and dedication to the public interest provided the accomplishments described below.

Anne K. Bingaman  
Assistant Attorney General  
Antitrust Division  
April 7, 1995

## **PART I : MEETING THE CHALLENGE OF A GLOBAL ECONOMY**

With the increasing importance of international trade to the U.S. economy, the Division cannot limit its enforcement efforts to American firms or to conduct within the United States. Restraints imposed by foreign firms can harm American consumers and the American economy just as surely as those imposed by domestic firms. Our antitrust laws also serve to protect American exporters from anticompetitive restraints imposed by foreign firms in foreign markets. As a consequence, the Division has substantially expanded its investigations and cases with significant international aspects, under the direction of the Division's first Deputy Assistant Attorney General for International Affairs.

### **Prosecuting International Price Fixing**

Thermal Fax Paper. After a two year investigation coordinated with Canadian antitrust officials, 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 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. Thermal fax paper is used primarily by small businesses and home fax machine owners. The defendants pleaded guilty and agreed to pay \$6.4 million in fines.

The Division and Canadian officials are continuing the joint investigation into the fax paper industry under the U.S.-Canada Mutual Legal Assistance Treaty. This case was the Division's first criminal prosecution of a major Japanese corporation headquartered in Tokyo as well as the first to be coordinated with Canadian authorities, and illustrates the type of international antitrust cooperation that will occur more frequently in the future.

**Plastic Dinnerware.** Another investigation that depended upon crucial assistance from Canadian authorities culminated with charges against three corporations and seven executives for conspiring to drive up the prices of plastic dinnerware products, a \$100 million market. Canadian authorities assisted by searching the Canadian offices of one of the defendants pursuant to the Mutual Legal Assistance Treaty. To date, two of the corporate defendants have been fined \$8.36 million. Additional fines and possible jail sentences are expected.

**Pesticides.** 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 international 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. Five defendants pleaded guilty.

**Industrial Diamonds.** In February 1994, the Division obtained an indictment of General Electric, DeBeers Centenary and two individuals charging them with conspiring to raise list prices in the \$500 million a year industrial diamond industry. The two corporate defendants account for 80 percent of the industrial diamond market and allegedly fixed prices by secretly exchanging information about intended price hikes. The price increases went into effect worldwide in February and March of 1992. DeBeers and the two individuals remained overseas and beyond the reach of the U.S. courts. Trial of General Electric began in October 1994, but charges were dismissed after the presentation of the Government's case. The Division remains committed to aggressive criminal antitrust enforcement against international price-fixing cartels that raise prices to consumers and businesses in the United States.

## **Cooperation with Foreign Antitrust Enforcement Officials**

With increasing frequency, effective enforcement of U.S. antitrust laws requires cooperation with foreign antitrust enforcement officials. For this reason, the Division fostered close relations with various foreign enforcement agencies, particularly those of the European Union, Canada and Japan. For example, the Division's cooperation with the EU in the Microsoft investigation (discussed in Part V) was unprecedented in nature and very helpful in achieving a speedy tentative settlement of the case. Similarly, the assistance of Canadian officials was indispensable in breaking up the thermal fax paper and plastic dinnerware conspiracies described above. Effective coordination conserves enforcement resources by avoiding unnecessary duplication of efforts. It also benefits businesses by protecting them from inconsistent enforcement actions.

## **International Enforcement Assistance Legislation**

The Division has experienced difficulty in the past in obtaining information located abroad that is relevant to possible violations of U.S. antitrust law, particularly price-fixing cartels. In some cases, foreign antitrust enforcement officials have faced similar difficulties obtaining information located in the United States that is relevant to possible violations of their own antitrust laws prohibiting price fixing. 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 overwhelmingly 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 Criminal 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.

## **Protecting American Exporters from Restraints of Trade Abroad**

Glass Manufacturing Technology. In a major case designed to remove anticompetitive restraints imposed on American exports, the Division in May 1994 charged Pilkington, 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. Flat glass is used for windows and architectural panels by the construction industry and for windshields and windows by the automobile industry.

The Complaint alleged that Pilkington entered into unreasonably restrictive licensing arrangements with its most likely competitors, then 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 technology was in the public domain. A Consent Decree accepted by Pilkington to settle the case

will bar 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 over the next six years, resulting in an estimated increase in U.S. export revenues of as much as \$1.25 billion during that period. This enforcement action builds on the Bush Administration's 1992 announcement that it would challenge such conduct and illustrates the Division's determination to address anticompetitive conduct that prevents American firms from competing for business on fair terms in international markets.

**Ensuring Fair Competition in Foreign Telecommunications Markets.** The Consent Decree obtained by the Division in connection with the acquisition by British Telecommunications of an equity interest in MCI and the creation of a joint venture by the two companies (described in detail in Part IV) is credited with creating more opportunities for American telecommunications companies in overseas markets.

**European Telecommunications Standards.** The European Telecommunications Standards Institute (ETSI), a nonprofit association responsible for developing European telecommunications standards, had proposed the adoption of policies that might have imposed unreasonable terms on firms, including American companies, seeking to sell technology rights in Europe. The Division initiated an investigation to determine whether the proposed policy would raise U.S. antitrust concerns, including whether it would significantly reduce incentives to innovate in the United States. A number of other entities -- including, very importantly, DG-IV, the European Commission's Competition Directorate General -- raised serious questions about the ETSI proposal. ETSI eventually rescinded the proposal and adopted an interim policy that does not include the objectionable provisions.

**Comments Filed With the Japanese Fair Trade Commission.** As part of its effort to protect American exporters against anticompetitive discrimination by foreign governments and firms, the Division drafted comments on behalf of the United States Government for filing in a Japanese Fair Trade Commission (JFTC) proceeding that examined competition in public procurement in that

country. The Division urged the JFTC to emphasize that the Japanese government will not tolerate bid rigging or other anticompetitive practices in the public procurement process and that practices that have the effect of unfairly excluding American and other non-Japanese firms from the Japanese public procurement market will be subjected to significant sanctions.

Japanese Framework Talks. The Division, through Deputy Assistant Attorney General Diane Wood, co-chairs the Deregulation and Competition Policy portion of the U.S.-Japanese Framework discussions. In these discussions, the United States has urged the Japanese government to strengthen its enforcement of that country's antimonopoly law, to make its administrative procedures fair and open and to accelerate an effective program of deregulation to open markets to competition.

## **Updated Guidance for Businesses Operating Internationally**

In April 1995, the Division and the FTC issued Antitrust Enforcement Guidelines for International Operations to replace those issued by the Division in 1988. The new Guidelines 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. As more countries have adopted national antitrust laws, cooperation between national antitrust enforcement agencies has increased, and the Guidelines emphasize the importance of such international cooperation. The Guidelines also recognize that comity-based doctrines such as sovereign compulsion may counsel against antitrust enforcement in some circumstances (outlined in the Guidelines) or indicate that U.S. agencies should work with foreign agencies. The Division hopes and believes that the growing international recognition of the beneficial effects of competition on the merits protected by vigorous antitrust enforcement will reduce potential conflicts in the future.

**PART II:  
PROSECUTING CRIMINAL VIOLATIONS  
OF THE ANTITRUST LAWS**

The Congress has vested in the Division the sole responsibility to criminally prosecute hard-core federal antitrust violations -- those practices found by the courts to be per se harmful to competition and consumers, such as horizontal price fixing, bid rigging and territorial and customer allocations. In 1990, Congress reaffirmed the serious nature of these offenses by increasing the maximum punishment for conviction. These violations, which are felonies, are now punishable by prison sentences of up to three years and fines of up to \$350,000 for individuals and up to \$10 million for corporations. Alternatively, courts may impose a fine of up to twice the gain accrued or loss imposed on the victims, whichever is greater.

Criminal prosecution of these per se violations always has been one of the core functions of antitrust enforcement. The Division has maintained that tradition, while increasing the resources devoted to international matters and civil enforcement. As a result, total civil and criminal recoveries in FY 94 -- more than \$44 million -- were the highest ever. For the ten years from 1985 to 1994, the Division's civil and criminal recoveries exceeded \$277 million.

[INSERT CHART  
"ANTITRUST DIVISION TOTAL RECOVERIES 1980-1994"]

## **Important Criminal Cases**

During FY 94 alone, the Division obtained 101 criminal convictions (including convictions for mail and wire fraud and false statements uncovered in antitrust investigations) and criminal fines in the amount of \$40.2 million. During the fiscal year, the Division filed 57 criminal cases against 55 companies and 50 individuals; some 99 grand juries were open as of the end of FY 94. Some of the important criminal cases involving international price-fixing conspiracies in thermal fax paper, plastic dinnerware, pesticides and industrial diamonds, were discussed above in Part I. Others include:

**Steel Wool Scouring Pads.** The Division charged Miles, Inc., the manufacturer of SOS, the nation's best selling steel wool scouring pads, with conspiracy to fix prices with its only major competitor in the United States -- Dial Corp., the manufacturer of Brillo. Miles pleaded guilty and paid a fine of \$4.5 million. The investigation was triggered by information provided by Dial, which took advantage of the Division's expanded Corporate Leniency Program. The Leniency Program is designed to encourage participants to come forward with information about illegal conspiracies. Dial's cooperation enabled the Division to obtain a just and swift resolution of what otherwise might have been a long and expensive investigation and prosecution. The Division's action should benefit consumers in this \$100 million a year market.

**Milk and Dairy Products Cases.** As of March 14, 1995, the Division had filed 126 criminal cases against 73 corporations and 80 individuals in the milk and dairy products industry. To date, 63 corporations and 59 individuals have been convicted, and fines imposed total approximately \$59 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.

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. In FY 94, the Division filed 18 criminal cases

against 14 corporations and 11 individuals in the milk and dairy products industry. Sixteen grand juries in 12 states continue investigations in this industry.

**Residential Doors.** The Division 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 five to date) against manufacturers of flush doors.

### **New Leniency Policies**

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 was immediately successful. In the first year, an average of one corporation per month came forward with information on criminal conspiracies, compared to an average of one per year under the previous policy. The policy thus allowed the Division to extend the reach of its criminal enforcement activities with relatively little increased expenditure of resources. The increased availability of leniency for conspirators who break ranks also will serve to deter conspiracies in the first place by spreading suspicion among potential conspirators. The Division expanded the leniency program further in August 1994 when it announced an Individual Leniency Program. The new program offers individual conspirators the opportunity to avoid prosecution under specified circumstances by coming forward with information about the conspiracy.

## **PART III: PROTECTING COMPETITION IN HEALTH CARE**

Health care spending now accounts for about one-seventh of America's Gross Domestic Product, and the health care industry employs over 9 million people. Although many health care markets have not been characterized by a high degree of economic competition, 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.

### **Expanded Guidance for the Health Care Industry**

The Division recognized that many industry participants were uncertain about the antitrust implications of adapting their businesses to the changing economics of health care. To lessen this uncertainty, the Division and the FTC jointly issued Statements of Antitrust Enforcement Policy in the Health Care Area in September 1993, and revised and expanded these Statements in 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. As revised, the 106-page Policy Statements provide antitrust guidance with respect to nine separate areas that play an important role in the emerging health care system:

- mergers among hospitals;
- hospital joint ventures involving high-technology or other expensive health care equipment;
- hospital joint ventures involving specialized clinical or other expensive health care services;

- providers' collective provision of non-fee-related information to purchasers of health care services;
- providers' collective provision of fee-related information to purchasers of health care services;
- provider participation in exchanges of price and cost information;
- joint purchasing arrangements among health care providers;
- physician network joint ventures; and
- multiprovider networks.

The two agencies also committed to providing expedited 90-day business reviews for the health care industry. To date, the Division provided such expedited guidance in response to 20 inquiries involving the health care industry.

### **Significant Enforcement Actions**

Florida Hospital Merger. In its first case filed jointly with a State Attorney General, the Division joined the Florida Attorney General in challenging in May 1994 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 preserves competition between the two hospitals for most services, while allowing them to act jointly where such action will not harm competition. 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. This groundbreaking settlement thus preserves competition between the hospitals without sacrificing the potential efficiencies of consolidation. The Consent Decree advances consumers' interests both by preserving rivalry and by facilitating cost reduction.

**Arizona Dental Care.** In a joint action with the State of Arizona, the Division challenged the Delta Dental Plan's use of a "most favored nation" clause in contracts with Arizona dentists. Delta is the dominant dental plan in Arizona and has affiliation contracts with approximately 85 percent of the state's dentists. The "most favored nation" provision discouraged dentists from offering other dental plans more favorable fee arrangements than they offered to Delta. The case has nationwide implications, because such contract provisions are widely used in the health care industry.

Before Delta began strictly enforcing this contractual provision, many Arizona dentists gave smaller plans substantial discounts off the fee schedule offered to Delta. Because of the large number of dentists affiliated with Delta and the large number of patients covered by Delta, Arizona dentists could afford neither to defy Delta on this issue nor to offer the same discounts to Delta. Consequently, Delta's enforcement of this provision caused many Arizona dentists to stop offering discounts to competing dental plans, thereby thwarting other plans from attracting enough dentists to compete effectively with Delta.

The Consent Decree 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.

**Vision Care.** A "most favored nation" clause was also the subject of a Division challenge relating to the contracting practices of Vision Service Plan, with annual revenues in excess of \$500 million. After Vision Service Plan began insisting on most favored nations clauses in its contracts with optometrists, rival vision care insurance

plans were no longer able to obtain the 20 to 40 percent discounts previously offered to them by the optometrists. A Consent Decree was obtained that would eliminate the most favored nations clause and prevent Vision Services Plan from engaging in other actions that would limit future discounting by its participating doctors.

Long Island, N.Y. Hospitals. As part of its efforts to keep health care markets open to cost containment efforts, the Division charged that eight Long Island hospitals that established a joint negotiating entity had unlawfully resisted the cost cutting efforts of health maintenance organizations ("HMOs") and managed care plans. The Compliant charged that the joint venture sought to discourage discounting on inpatient hospital services and sought to coordinate the eight hospitals' responses in a variety of price negotiations, thereby depriving HMOs and managed care plans of the benefits of competition between the hospitals. The Consent Decree obtained prohibits the hospitals from engaging in a variety of activities that could have the effect of depriving third-party payers of the benefits of competition for hospital services.

Nurses' Wages. As part of its efforts to combat anticompetitive exchanges of price and wage information, the Division charged eight Utah hospitals and two related associations with violations of Section 1 of the Sherman Act. The government alleged that the defendants exchanged information about current and prospective wage rates for registered nurses, thus short-circuiting competition for nurses' services. The Division negotiated a Consent Decree that prohibits the defendants from fixing the wages paid to nurses and exchanging information about current or future wages. Simultaneously, the Utah Attorney General entered a Consent Decree with the University of Utah, which had not been named as a defendant in the Division's suit. That Decree contains the same relief with respect to the University's involvement in nurse compensation agreements, as well as injunctions against allocating hospital services with competing facilities and requiring pediatricians to negotiate contracts with managed health care plans exclusively through the University. The Division's decision to defer to the State of Utah's desire to pursue a settlement with the University under the Utah antitrust laws was part of its effort to encourage state authorities to pursue appropriate cases under state laws.

## **Competition Advocacy Before State Agencies**

In September 1993, the Division recommended in a letter to the Pennsylvania Insurance Commissioner that she disapprove a plan by Blue Cross of Western Pennsylvania (BCWP) to use a "most favored nation" clause in its contracts with hospitals. The clause was similar to the one at issue in the Arizona dental care case discussed above and would have entitled BCWP to the lowest price that a hospital has negotiated with any private payer. "Most favored nation" clauses can sometimes reduce costs. But their use by a dominant insurer such as BCWP -- which accounted for almost two-thirds of private insureds in western Pennsylvania compared to less than 8 percent for its nearest rival -- actually discourages hospitals from giving discounts to smaller companies. The result is likely to be increased costs for hospital services and for health plans.

The Pennsylvania Commissioner subsequently issued a decision restricting BCWP's use of the challenged clause. In New York, the New York Insurance Commission cited the Division's letter in rejecting a Blue Cross proposal to use a "most favored nation" provision in that state. Purchasers of health care plans in both Pennsylvania and New York -- that is, consumers and businesses -- likely will benefit from having more alternatives and the opportunity to share in cost savings generated by competition among those plans.

## **Health Care Task Force**

At the end of FY 94, the Division reorganized the Professions and Intellectual Property Section into the Health Care Task Force. The new Task Force includes lawyers with extensive health care experience and will specialize in health care issues. The Task Force's specialization ensures that antitrust policy and enforcement in this complex, highly important sector of the economy will be sophisticated and effective.

### **Part IV:**

## **Promoting Competition in Telecommunications**

U.S. v. Western Electric. The most important and successful antitrust enforcement action in the Division's long history was the challenge -- over the course of three administrations, Republican and Democratic alike -- to AT&T's monopoly over long distance telecommunications and communications equipment. The breakup of AT&T during the Reagan Administration sparked a phenomenal burst of creativity and innovation as previously stymied competitors assaulted AT&T's dominance in telecommunications markets.

The result has been lower prices and more and better services. 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 made possible many of the exciting telecommunications advances of the past decade. Throughout the 1980s and into the 1990s, the Division has enforced actively the terms of the Final Judgment settling the case against AT&T, to promote and protect competition to the greatest degree possible.

Competition resulting from the break-up of AT&T -- brought about by aggressive but intelligent antitrust enforcement -- spurred technological innovation in telecommunications that was extraordinary by any measure. And as a consequence of that competitive environment, American businesses lead the world in telecommunications technology.

## **Telecommunications Reform**

The Division continues actively to promote competition-based reform in this vital sector of the economy. The Division intends to work closely with the rest of the Administration and with members of Congress in both parties to secure passage of legislation that would increase telecommunications competition and reduce government regulation in such currently monopolized markets as local telephone and cable television.

## **Telecommunications Mergers**

Rapid technological change in the telecommunications industry has been accompanied by a succession of corporate mergers. The Division has the responsibility of reviewing these mergers to make sure that they do not lessen competition in affected markets. In several large transactions, the Division worked with the parties to remove risks to competition without scuttling the entire deal.

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 chilled innovation in cellular telephone services. These competitive concerns were addressed in a Consent Decree under which

- long-distance rivals of AT&T will have access to McCaw systems equal to AT&T's access;
- cellular rivals of McCaw that use AT&T equipment will continue to have access to necessary products and will be free of interference from AT&T should they wish to change equipment suppliers; and
- AT&T and McCaw will not misuse confidential information obtained from AT&T equipment customers or McCaw equipment suppliers.

The Consent Decree allows the parties to seek the potential benefits of integration in cellular services but prevents abuse of their economic power in the cellular services, cellular long distance and telecommunications equipment markets.

International Telecommunications Services. 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. BT is the fourth largest telecommunications provider in the world and the dominant provider in the United Kingdom. MCI is the world's fifth largest provider of telecommunications services and carries about 20 percent of the telecommunications traffic between the U.S. and the U.K. The Division worked closely with U.K. authorities in assessing the

competitive effects of the proposed transaction. The Division concluded that it threatened, through potential abuse of BT's control of access to the U.K., competition in the market for telecommunications between the U.S. and the U.K. and in the emerging market for global telecommunications services generally.

To eliminate these dangers, the Consent Decree accepted by the parties 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 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.

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 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.

The Division also brought suit against Primestar Partners L.P., a direct broadcast satellite ("DBS") joint venture composed of some of the nation's largest cable companies, some of which also were leading suppliers of video programming. The

Complaint alleged that the joint venture was formed for the purpose, and that it had the effect, of blocking other firms from entering the DBS business, a business that could offer significant competition to cable television. A Consent Decree was obtained that prevented the defendants from enforcing any provisions of the joint venture agreement that would have denied or affected the terms of programming availability to DBS providers. The defendants also were prohibited from engaging in various other conduct that could increase the difficulty for DBS providers of obtaining programming.

### **Telecommunications Task Force**

At the end of FY 94, the Division reorganized the Communications and Finance Section into a Computers and Finance Section and a Telecommunications Task Force. The new Task Force includes lawyers with extensive telecommunications experience and will specialize in telecommunications issues. The Task Force's specialization ensures that antitrust policy and enforcement in this complex, high technology sector will be sophisticated and effective.

**PART V:  
ENCOURAGING INNOVATION  
BY SUPPORTING COMPETITION**

Prosperity in the high-technology economy of the 21st Century will depend on innovation. The Division has emphasized the role of antitrust enforcement in encouraging innovation. Division activities 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.

**Updated Guidance for  
Intellectual Property Owners**

In April 1995, the Division and the FTC issued 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.

**Enforcement to Promote  
Innovation**

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 in Part I) and the restructuring of such telecommunications mergers as AT&T/McCaw, BT/MCI and TCI/Liberty (discussed in Part IV). Other enforcement efforts that sought to keep markets open to innovation included:

**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 to the contracts for an unreasonably long period of time. 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 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.

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 tentative settlement was reached in close cooperation with the competition enforcement authorities of the European Commission, which had been investigating Microsoft's conduct since mid-1993, and marked the first coordinated effort of the two enforcement bodies in initiating and settling an antitrust case. Litigation concerning the Consent Decree currently is pending before the D.C. Circuit.

**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. 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.

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.

## **PART VI: 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.

### **Guidance in Health Care, Intellectual Property, and International Operations**

To assist businesses in organizing their activities consistently with the antitrust laws, the Division and the FTC in the past year issued three separate sets of new joint guidelines --

- Statements of Policy in the Health Care Area,
- Guidelines for Licensing of Intellectual Property

and

- Guidelines for International Operations.

Each of these is discussed in greater detail in other parts of this report. Businesses also may seek a statement of the Division's current enforcement intentions relating to specific prospective activities under the Division's Business Review Procedures. In addition, Division officials give speeches and participate in panel discussions at consumer, business and academic conferences around the country in an effort to provide antitrust guidance to interested persons.

## **Horizontal Merger Guidelines**

In 1992, the Division and the FTC jointly published Horizontal Merger Guidelines that 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. To ensure that the Division's Guidelines fairly state existing law and can be relied upon by counsel and the business community, the Division rescinded the Vertical Restraints Guidelines in August 1993.

## **Business Reviews**

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 Division's 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 93, the Division has issued an unprecedented 50 Business Review letters, including 20 in the health care area since the adoption of the expedited health care business review program on September 15, 1993. 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 Division provided substantially more guidance to the business community under the business review procedure during FY 94 than in recent years, as indicated in the following chart.

[INSERT CHART  
"ANTITRUST DIVISION BUSINESS REVIEWS"]

**PART VII:  
PROTECTING CONSUMERS  
THROUGH CIVIL 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. Nonmerger enforcement seeks to protect competition by attacking anticompetitive restraints of trade and monopolistic conduct.

**Merger Enforcement**

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. Increasingly, the Division has been called upon to assess the competitive effects of large transactions in very complex, high-technology industries, often involving multinational corporations. The Division has been reorganized to maximize its effectiveness in undertaking such assessments. The hiring of additional attorneys with substantial merger and litigation experience, the increased specialization of the litigating sections and the involvement of Division management at the earliest stages of investigation have greatly enhanced and streamlined the Division's merger enforcement program.

Merger activity in the economy was up sharply in FY 94. Companies notified the Division of some 2,300 proposed transactions, an increase of about 25 percent over FY 93. Of those 2,300 transactions, the Division challenged 22 that it concluded could lessen competition if allowed to proceed as proposed. Wherever possible, the Division seeks to resolve its competition concerns by agreeing with the parties on restructuring, rather than forcing abandonment of the deal. As a consequence, 19 of those challenged transactions went forward after the parties agreed to steps that alleviated the threat to competition. Two were abandoned by the parties after the

Division's challenge, and one was tried to a federal district judge, who has yet to render his decision.

## Streamlining the HSR Premerger Review Process

Effective merger enforcement provides tremendous benefits to the economy, to American businesses and to American consumers by keeping markets free and open to competition. The Hart-Scott-Rodino premerger notification program is essential to effective merger enforcement. The Division is committed, however, to ensuring that its premerger review efforts do not impose unnecessary costs and delay on the parties to a proposed transaction.

In March 1995, the Division and the FTC announced eight major improvements in their merger review procedures:

- The Agencies will determine which agency will review proposed mergers within nine business days from the date of filing and are implementing procedures to ensure that deadline is met.
- The Agencies issued a joint, annotated model "second request" that increases consistency between the Agencies and reduces compliance burdens on businesses.
- The Agencies established a procedure for preclearance coordination by the Agencies and mechanisms to reduce undue burdens on private parties during that time period.
- The Agencies adopted a formal internal appeals process for second requests designed to reduce unnecessary burdens and ensure consistency.
- The Agencies expanded their programs for expedited, less costly review of mergers by inviting parties to proposed transactions to assist in identifying

issues and providing data and analysis that could enable the agencies to terminate their investigations early in the process where warranted.

- The Agencies are pursuing a joint project with the Antitrust Section of the American Bar Association to study second request practice issues.
- The Agencies are developing proposals for expanded categories of transactions that would be exempt from HSR's notification requirements.
- The Agencies are increasing their efforts to work together through joint training, cross staffing and other cooperative acts to harmonize merger review efforts and promote consistency.

These innovations will speed the merger review process, likely reduce the number of second requests and reduce the burden associated with them, and harmonize procedures between the two agencies, all to the benefit of parties to merger transactions and the agencies themselves.

### Significant Merger Enforcement Action

Many of the Division's significant recent merger enforcement actions already have been discussed, such as the Division's success in restructuring the British Telecom/MCI transaction, which preserved competition in international telecommunications for American consumers and is credited with assisting in creating overseas opportunities for American competitors (discussed in Part IV); the Division's success in restructuring the AT&T/McCaw transaction to protect competition in cellular communications (discussed in Part IV); the Division's analysis of a merger's effect on innovation in heavy duty transmissions in challenging the General Motors/ZF transaction (discussed in Part V); and the innovative settlement of a challenge to the merger of two Florida hospitals, which allowed the hospitals to combine sufficiently to achieve significant efficiencies while remaining separate to

compete for managed care contracts (discussed in Part III). Other significant merger enforcement actions include:

**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.

**Oil Field Services.** The Division challenged the proposed \$900 million merger of two of the nation's largest oil field service companies, Baroid Corporation and Dresser Industries, in December 1993. The complaint alleged that the merger would harm competition in two markets in the United States -- the production and sale of drilling fluids and the manufacture and sale of diamond drill bits. The parties accepted a Consent Decree that allows the transaction to proceed but protects competition by requiring divestiture of one complete drilling fluid business, Baroid's domestic diamond drill bit business and licenses related to Baroid's worldwide diamond drill bit business.

**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.

**Iowa Hospitals.** The Division challenged the merger of two hospitals in Dubuque, Iowa, in June 1994. The Division alleged that the combination of the hospitals -- the largest within 70 miles of Dubuque -- would have a monopoly over inpatient hospital services in the area. The trial before a federal district judge concluded in December 1994, and a decision has yet to be rendered.

Molybdenite Mining and Processing. The Division concluded that the proposed acquisition by Cyprus Minerals Company of all the voting securities of Amax, Inc., posed serious antitrust concerns in molybdenite mining and processing. Molybdenite is a metal that is used mainly to prepare strong, heat-resistant alloys suitable for specialty applications in the aerospace and defense industries. Both companies mine and process the mineral. To address the competition problems identified by the Division, the parties agreed in November 1993 to sell a molybdenite mine and a processing facility to a competing mining company.

Circuit Breakers and Switches. The Division concluded that the proposed acquisition by the Eaton Corporation of a competitor's circuit breaker and switch business threatened competition in the manufacture and sale of residential and industrial circuit breakers, safety switches and load centers. Those products are used to assure the safe distribution of electricity in homes, buildings and industrial plants. Eaton satisfied the Division's concerns by agreeing to sell some of the assets to a company that has the capability of becoming a substantial competitor in the manufacture and sale of power distribution equipment.

## **Nonmerger Enforcement**

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

The Division traditionally maintained an active civil nonmerger enforcement program. During the 1980s, however, such enforcement declined as the Division used its ever diminishing resources to focus almost exclusively on criminal price-fixing cases and on merger enforcement. One of the Division's current priorities is to obtain greater results from civil nonmerger enforcement 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.

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. The Unit hands off promising leads to the Civil Task Force or to other appropriate litigating sections for further investigation. Complementing this more formal case development process have been the initiative and enthusiasm of attorneys in all the sections and field offices. As a result of these changes and efforts, the Division issued compulsory process in 54 new civil nonmerger investigations in FY 94, an increase over FY 93. This increase in investigations paralleled an increase in the number of civil nonmerger cases filed.

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 (discussed in Part I), the suit against Microsoft to protect competition and innovation in the market for personal computer operating systems (discussed in Part V); and the suit against S.C. Johnson and Bayer to protect competition in the market for household insecticides (also discussed in Part V). Among other important cases resolved by the Division in the past year are the following:

**Airline Fares.** During the previous Administration, 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 December 1992. 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 that effective antitrust enforcement is fundamentally nonpartisan in nature.

**ATM Networks and Processing.** Based on another investigation opened in the prior Administration, 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 retarded the development of a competitive 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 will provide more choices for depositors and lower costs for depository institutions, particularly small banks, savings institutions and credit unions. The Consent Decree requires EPS to open its ATM network to independent processors and prohibits it from discriminating in pricing to its members based on the processor selected.

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. The case stemmed from coordinated efforts by the Departments of Defense and Justice. The Departments have worked to formalize their cooperation on competition policy in the defense industry based on the recommendations of the Defense Services Board Task Force on Defense Mergers, an interagency working group in which the Division participated and which is discussed in Part VIII.

Private Standard Making. The Division has increased its vigilance in the area of private standard setting. While such activities can be beneficial to business and consumers, by facilitating the marketing of products, they can be used by market incumbents to delay the introduction of competitive innovative products. For example, the Division learned that manufacturers of a product had arranged to utilize

the American Society for Testing and Materials ("ASTM") standard setting process to blunt the competitive threat to traditional products posed by an innovative product. A proposed amendment to the existing product standard would have had the effect of suspending sales of the innovative product, a suspension that might have lasted several years under ASTM's normal procedures. When the Division's investigation indicated that there was neither a health nor performance justification for delaying the sale of the new product, it prepared to file a civil injunction action. At that point, the ASTM and its members dropped their efforts to change the product standard in a manner that would have had the effect of precluding sales of the new product.

As discussed in Part I, the Division's investigation of the competitive effects of proposed standards of the European Telecommunication Standards Institute also may have played a significant role in causing that body to abandon proposed standards policy that would have had an anticompetitive effect.

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 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.

Colleges. During the prior Administration, the Division charged that the Ivy League universities and MIT had conspired to fix the prices that financial aid applicants paid to attend those schools. The government alleged that the defendants met regularly to avoid competing against each other in the amount of financial aid -- that is, tuition discounts -- offered to applicants. The Ivy League schools entered into

a Consent Decree that prohibited such agreements. MIT chose to litigate the matter. After a trial in 1992, the district court ruled that MIT had violated the antitrust laws. The Court of Appeals for the Third Circuit subsequently remanded the case for further analysis.

In December 1993, the Division and MIT settled the case when MIT agreed to abide by certain standards of conduct in the future. Those standards allow MIT to agree on general principles for determining financial aid with other colleges that adhere to a need-blind admissions policy and that award students financial aid to meet their full needs. Under the standards, colleges may not agree on the amount or composition of aid offered to individual applicants, on tuition rates or on faculty salaries. In October 1994, Congress enacted legislation that allows colleges following need-blind admissions policies only a more limited form of cooperation on financial aid matters than were set forth in the MIT standards of conduct.

**Vertical Price Restraints.** As part of its policy of challenging resale price maintenance agreements that have 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.

In another resale price maintenance case, the Division obtained a Consent Decree that prohibited Playmobile USA, Inc., one of the nation's largest speciality toy companies, from attempting to coerce its dealers to adhere to any specified level of resale prices. 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.

## **Cooperation with State Attorneys General**

The Division has continued and increased the efforts begun in the Bush Administration to coordinate with State Attorneys General in the enforcement of state and federal antitrust laws. One aspect of these efforts was the appointment of a Senior Counsel to the Assistant Attorney General with direct responsibility for liaison with state enforcement authorities. In addition to increased communication and understanding between the Division and the states, these efforts produced tangible results in the form of joint and coordinated prosecutions and reduced compliance costs for business. As discussed in Part III: Protecting Competition in Health Care, the Division joined the Arizona Attorney General in challenging exclusionary practices by that state's largest dental insurance plan and joined the Florida Attorney General in challenging a hospital merger that would have increased health care costs in that state.

Similarly, the Division coordinated its challenge to price information exchanges by Utah hospitals with the Utah Attorney General. Increased state-federal cooperation has the dual benefits of avoiding unnecessary duplication of enforcement efforts and harmonizing the application of the state and federal antitrust laws, thus creating greater certainty for businesses and their counsel and lowering compliance costs. The Division currently has a number of on-going joint investigations with State Attorneys General.

**PART VIII:  
REDUCING GOVERNMENT REGULATION  
THROUGH COMPETITION ADVOCACY**

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. Division representatives also serve on a number of interagency task forces that establish economic policy.

**Participation in  
Regulatory Proceedings**

Over the years, Congress has sought to advance economic and social goals through government regulation and in the process has delegated to regulatory agencies broad discretion in reaching those goals. The Division participates actively in these agencies' regulatory proceedings in order to promote competition. 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 in:

- Federal Energy Regulatory Commission proceedings involving electric power transmission pricing and oil pipeline rulemaking;
- Interstate Commerce Commission proceedings on the ratemaking authority of motor carrier rate bureaus;
- Federal Maritime Commission proceedings that focused on the criteria to be used by the Commission in determining whether shipping conference agreements unreasonably raised price or decreased service; and

- Department of Agriculture proceedings relating to the economic effects of marketing orders for citrus fruit, tart cherries and milk.

## **Participation in Administration Policy Formulation**

Because of its experience with the competitive process in particular and with broader economic issues in general, the Division often is asked to participate as a member of Administration task forces that formulate economic policy. The Division recently has participated in interagency groups working on issues related to telecommunications reform, intellectual property, 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 Services Board Task Force on Defense Mergers, which analyzed the effect of the antitrust laws on consolidation of the defense industry.

Although some observers had called for special defense industry exceptions to the antitrust laws, the Task Force concluded that it was important to preserve competition wherever feasible in defense production industries and that the antitrust laws were sufficiently flexible to take into account the changing economics of those industries. Consequently, the Task Force's report did not endorse antitrust exemptions for defense industry mergers. Instead, it focused on ways that the Department of Defense could communicate its industry expertise to the antitrust enforcement agencies with respect to specific defense industry mergers. The Division supports the recommendations of the report and has strengthened its coordination with DOD as suggested by the Task Force.

## **PART IX: MAKING THE MOST OF THE DIVISION'S RESOURCES**

The Division's mission of protecting and promoting competition grows ever more challenging as the economy increases in size and complexity. The rapidly increasing globalization of the economy likewise presents substantial enforcement challenges and requires the Division to devote considerable resources to developing relationships with foreign enforcement agencies. In addition to traditional enforcement, the Division actively participates in proceedings before federal agencies, seeking to reduce government regulation and increase market competition wherever feasible. It also contributes to interagency task forces charged with developing Administration policy in important economic areas such as telecommunications, health care and defense industry consolidation.

The Division's staffing lagged even as challenges mounted during the 1980s. In 1980, the Division employed 456 attorneys. By 1989, that number had fallen to 229, despite substantial growth in the economy. The decline in personnel was reversed to some extent during the Bush Administration. At the beginning of this Administration, however, the Division remained seriously understaffed. A bipartisan majority in Congress joined the Clinton Administration in recognizing the critical importance to America's economic health of vigorous antitrust enforcement and provided funding in FY 94 for more attorneys, economists and paralegals. The Division had expanded to 323 attorneys by the end of FY 94, roughly the same as during the Nixon Administration in the early 1970s and still about 30 percent below the number in 1980, in spite of a greatly increased workload.

The Division realizes that additional funding, though necessary for effective antitrust enforcement, is not alone sufficient to attain that goal. American taxpayers rightfully expect the government constantly to strive to operate more efficiently. To that end, the Division committed itself to stretching its resources further in order to enforce the antitrust laws more efficiently and instituted a number of reforms:

- Increased proficiency through specialization. To increase the legal staff's proficiency, the litigating sections and field offices became more specialized.

Instead of each unit handling a mix of criminal, merger and civil nonmerger cases, each unit now concentrates on one type of case, thereby increasing expertise in the skills and analysis pertinent to that type of litigation. The responsibilities of the Deputy Assistant Attorneys General and the Office of Operations also were realigned to take advantage of specialization.

- Streamlined decisionmaking. To reduce the time spent on internal review of litigating section proposals and to prevent miscommunication of policy between the litigators and the front office, front office personnel now participate with the litigating sections in making important decisions almost from the outset of investigations. The Division's professional staff thus spends less time writing memos explaining cases and more time resolving them. More rapid resolution of investigations saves money for both the government and private parties.
- Case-oriented training. To improve the Division's litigation skills and the quality of its enforcement decisions, moot courts and other forms of litigation training are integrated with case development, often to help in deciding whether to bring a case. This case-oriented approach means that the same resources promote both training and enforcement goals, in effect multiplying the value of each dollar spent.
- Reliance on paralegals. To enable its attorneys and economists to devote a greater percentage of their time to tasks that require their professional training, the Division for the first time hired paralegals in large number. During the past fiscal year, the Division added 60 paralegals through an Honors Program that recruits top graduates of the nation's finest colleges and universities.

Even as the Division assesses the results of these changes, it constantly searches for further innovations to get better results for each dollar spent and to improve its ability to accomplish its vital mission.

**ANTITRUST DIVISION STAFFING  
COMPARED TO GROSS NATIONAL PRODUCT**

<b>YEAR</b>	<b>ACTUAL NUMBER OF ATTORNEYS</b>	<b>ACTUAL TOTAL STAFFING (EOY)</b>	<b>REAL U.S. GNP (IN BILLION DOLLARS) a/</b>	<b>REAL U.S. GNP PER ATTORNEY (IN BILLIONS)</b>
1970	291	553	\$2,893.5	\$9.9/1
1975	343	672	\$3,247.6	\$9.4/1
1980	456	982	\$3,823.4	\$8.4/1
1981	447	934	\$3,884.4	\$8.7/1
1982	349	803	\$3,796.1	\$10.9/1
1983	298	697	\$3,939.6	\$13.2/1
1984	296	667	\$4,174.5	\$14.1/1
1985	287	638	\$4,295.0	\$15.0/1
1986	274	611	\$4,413.5	\$16.1/1
1987	235	534	\$4,544.6	\$19.3/1
1988	233	540	\$4,726.3	\$20.3/1
1989	229	509	\$4,840.7	\$21.1/1
1990	255	541	\$4,894.4	\$19.2/1
1991	294	602	\$4,860.2	\$16.5/1
1992	295	607	\$4,985.7	\$16.9/1
1993	297	594	\$5,140.3	\$17.3/1
1994	323	686	\$5,310.5	\$16.4/1

a/ Adjusted for inflation with 1987 as base.

## CONCLUSION

This summary highlights the recent work of the Antitrust Division in protecting the competitive process through enforcement of the antitrust laws. The direct beneficiaries of these efforts are American consumers and businesses. As proud as the Division is of these recent efforts, its most fundamental goal is to contribute to the economic future of America by promoting a free market for the next Century, one in which the opportunity for new businesses and technologies to emerge and compete on the merits is not thwarted by unreasonable restraints on trade.

To accomplish this goal, the Division has made five promises to its customers -- the American people and the American business community. These promises, which are discussed in more detail in a pamphlet available from the Division entitled "Customer Service in the Antitrust Division," are:

- First and foremost, the Division will continue aggressively to enforce the antitrust laws to protect consumers, businesses and the American economy from the pernicious effects of anticompetitive behavior, here and abroad.
- The Division will remain active in providing the people and the business community information concerning its antitrust enforcement policies.
- The Division will do its best to reduce the time it takes to provide statements of enforcement intentions with respect to proposed conduct under our business review procedure.
- The Division will promptly address the concerns of persons who believe that they might have been victims of an antitrust violation.
- The Division will make readily available copies of public Division documents such as speeches, guidelines, policy statements, information pamphlets, filed criminal indictments and civil complaints, press

releases and business review letters and digests (publicly available documents are available over the Internet: [gopher@justice.usdoj.gov](mailto:gopher@justice.usdoj.gov)).

Economic challenges abound as the 21st Century dawns. With our continuing commitment to economic liberty and opportunity -- protected by vigorous enforcement of the antitrust laws -- America and Americans not only will survive those challenges, we will prosper.

## **APPENDIX**

### Department of Justice Guidelines and Other Publications

Available upon request through the Legal Procedure Office of the Antitrust Division, (202) 514-2481.

- Horizontal Merger Guidelines (with FTC) (April 2, 1992)
- Corporate Leniency Policy (August 10, 1993)
- Digest of Business Reviews, 1993 Update (May 4, 1994)
- Individual Leniency Policy (August 10, 1994)
- Statements of Antitrust Health Care Enforcement Policy Statement (with FTC) (September 27, 1994)
- Customer Service in the Antitrust Division (September 1994)
- Hart-Scott-Rodino Premerger Program Improvements (with FTC) (March 23, 1995)
- Business Review Letters responding to requests for a statement of the Division's enforcement intentions with respect to specific proposed conduct.
- Antitrust Enforcement Guidelines for International Operations (with FTC) (April 1995)
- Antitrust Guidelines for the Licensing of Intellectual Property (with FTC) (April 6, 1995)

**SELECTED SPEECHES BY ANTITRUST DIVISION  
OFFICIALS  
(FISCAL YEAR 1994)**

[ ✓ denotes those speeches that have been published and are available upon request through the Legal Procedure Office of the Antitrust Division, (202) 514-2481.]

**ANNE K. BINGAMAN, ASSISTANT ATTORNEY GENERAL**

**SPEECHES**

- ✓ "Change and Continuity in Antitrust Enforcement"  
**Fordham Corporate Law Institute**, New York City (October 21, 1993)
- "Antitrust Law Developments"  
**Washington Metropolitan Corporate Council**, Washington, D.C.  
(October 28, 1993)
- "New Policies and Priorities in Antitrust Enforcement"  
**Business Development Association Conference**, Washington, D.C.  
(December 2, 1993)
- ✓ "Antitrust and Innovation in a High Technology Society"  
**Celebration of the 60th Anniversary of the Founding of the Antitrust  
Division**, Washington, D.C. (January 10, 1994)
- "Antitrust Law Developments"  
**Washington International Business Council**, Washington, D.C.  
(January 19, 1994)
- ✓ "The Health Care Guidelines and Associations -- How Associations Can Work  
with the Department of Justice"  
**District of Columbia Bar Association**, Washington, D.C. (February 16, 1994)
- "Antitrust in the Health Care Field"  
**National Health Lawyers Association**, Washington, D.C. (February 17, 1994)
- "Antitrust Law Developments"  
**Colorado Women's Bar Association**, Denver, CO (February 24, 1994)
- ✓ "Intellectual Property and Antitrust in the Clinton Administration"

## **Intellectual Property Conference hosted by Price Waterhouse**

Phoenix, AZ (February 25, 1994)

- "Evolution and Resolution in U.S. and Foreign Competition Policy and Trade"  
**Conference Board**, New York City (March 3, 1994)
- ✓ "The Role of Antitrust in International Trade"  
**Japan Society**, New York City (March 3, 1994)
- "Cable & Telecommunications Deregulation and the Relationship Between Intellectual Property Rights and Antitrust"  
**Computers and Communications Industry Association**,  
Washington, D.C. (March 8, 1994)
- "Emerging U.S. - Mexico Trade Issues After NAFTA"  
**Houston Bar Association**, Houston, TX (March 11, 1994)
- ✓ "Antitrust Health Care Issues in the Clinton Administration"  
**National Council of Community Hospitals**, Washington, D.C.  
(March 18, 1994)
- "Health Care Reform and Antitrust: The Effects of Competition on Consumer Welfare"  
**ABA Section of Antitrust Law**, Washington, D.C. (April 7, 1994)
- ✓ "Report from the Antitrust Division, Spring 1994"  
**American Bar Association Antitrust Spring Meeting**,  
Washington, D.C. (April 8, 1994)
- "Antitrust in the Clinton Administration"  
**Manufacturers Alliance for Productivity and Innovation and the  
Manufacturers Alliance Law Council**, Washington, D.C. (May 3, 1994)
- "Antitrust Review and Enforcement Policies in the Clinton Administration:  
New Priorities"  
**Automotive Presidents' Council**, Washington, D.C. (May 4, 1994)
- ✓ "U.S. Antitrust Policies in World Trade"  
**World Trade Center-Chicago's Seminar on GATT After Uruguay**  
Chicago, IL (May 16, 1994)
- ✓ "The Role of Antitrust in Intellectual Property"  
**Federal Circuit Judicial Conference**, Washington, D.C. (June 16, 1994)

- ✓ "Innovation and Antitrust"  
**Commonwealth Club of California**, San Francisco, CA (July 29, 1994)
- "Antitrust Enforcement in Defense Mergers"  
**ABA Section of Public Contract Law**, Washington, D.C. (August 9, 1994)
- "Antitrust Law Developments"  
**SRI Washington International Corporate Circle**, Washington, D.C.  
(September 23, 1994)
- ✓ "Competition Policy and the Telecommunications Revolution"  
**Networked Economy Conference USA**, Washington, D.C.  
(September 26, 1994)

#### TESTIMONY BEFORE THE CONGRESS

- ✓ Statement before the Subcommittee on Antitrust, Monopolies and Business Rights, Committee on the Judiciary, United States Senate, Concerning Mergers and Vertical Integration in the Telecommunications Industry (October 27, 1993)
- ✓ 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)
- ✓ Statement before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, Concerning The National Communications Competition and Information Infrastructure Act and the Antitrust Reform Act (January 27, 1994)
- ✓ Statement before the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies (April 19, 1994)
- ✓ Statement submitted to the Committee on Finance, United States Senate, Concerning Competition and Antitrust Issues in Health Care Reform (May 12, 1994)
- ✓ Statement submitted to the Subcommittee on Economic and Commercial Law, United States House of Representatives on

Competition and Antitrust Issues in Health Care Reform (June 15, 1994)

- ✓ Statement before the Committee on the Judiciary, U.S. Senate, Concerning The International Antitrust Enforcement Assistance Act of 1994 (August 4, 1994)
- ✓ Statement before the Subcommittee on the Judiciary, U.S. House of Representatives, Concerning The International Antitrust Enforcement Act of 1994 (August 8, 1994)
- ✓ Statement before the Subcommittee on Antitrust, Monopolies, and Business Rights, Senate Judiciary Committee, United States Senate, Concerning The Communications Act of 1994 (September 20, 1994)

#### **RICHARD GILBERT, DEPUTY ASSISTANT ATTORNEY GENERAL**

- "An Equilibrium Theory of Rationing"  
**Federal Trade Commission**, Washington, D.C. (November 17, 1993)
- ✓ "Antitrust Policy in High Technology Markets"  
**Association of American Law Schools**, Orlando, FL (January 7, 1994)
- "Mergers in High Technology Industries"  
**Antitrust Practice Group**, San Francisco, CA (February 4, 1994)
- "Current Economics and Antitrust"  
**ITT Corporation**, Washington, D.C. (February 9, 1994)
- "Intellectual Property Licensing Issues: A View from the Antitrust Division"  
**Practising Law Institute**, New York City (March 1, 1994)
- "Distribution Issues Relating to Intellectual Property: A View From the Antitrust Division"  
**Conference Board**, New York City (March 3, 1994)
- ✓ Statement submitted to the Subcommittee on Patents, Copyrights and Trademarks, Committee on the Judiciary, United States Senate, Concerning The Patent Term Publication Reform Act of 1994 (March 9, 1994)

- "Intellectual Property"  
**Law & Technology Seminar Workshop**, Berkeley, CA (March 16, 1994)
- "Intellectual Property Licensing Issues: A View From the Antitrust Division"  
**San Francisco Patent and Trademark Law Association**, San Francisco (March 19, 1994)
- "Antitrust Issues in Patent Infringement Litigation: The Antitrust Counterattack"  
**ABA Section of Antitrust Law -- 42nd Annual Spring Meeting**  
Washington, D.C. (April 7, 1994)
- "Intellectual Property Licensing Issues: A View from the Antitrust Division"  
**Practising Law Institute**, San Francisco, CA (April 8, 1994)
- "Intellectual Property Task Force"  
**American Intellectual Property Law Association**, Cleveland, OH (April 22, 1994)
- "Antitrust and Regional Transmission Groups"  
**Program on Workable Energy Regulation**, Oakland, CA (May 19, 1994)
- "The Use of Innovation Markets in Merger Analysis"  
**Georgetown University Law Center's Conference on Post-Chicago Economics: New Theories--New Cases**, Washington, D.C. (May 26, 1994)
- "Antitrust Policy in High Technology Markets: A View from the Antitrust Division"  
**D.C. Bar Trade Regulation and Intellectual Property Committees**, Washington, D.C. (June 15, 1994)
- "Intellectual Property Licensing Issues: A View from the Antitrust Division"  
**D.C. Bar Association's Patent, Trademark and Copyright Section Annual Luncheon**, Washington, D.C. (June 21, 1994)
- "The Clinton Administration's Views on the Application of the Antitrust Laws to Intellectual Property, Technology Exploitation, and Innovation"  
**Practising Law Institute**, San Francisco, CA (June 24, 1994)
- "The Clinton Administration's Views on the Application of the Antitrust Laws to Intellectual Property, Technology Exploitation and Innovation"  
**Practising Law Institute**, San Francisco, CA (July 15, 1994)

- "Mergers, Joint Ventures, Strategic Alliances" **ABA Section of Antitrust Law: Antitrust Issues Confronting High-Technology Companies in a Converging Industries Information Age** New Orleans, LA (August 8, 1994)
- "Recent Antitrust Division Guidelines for Intellectual Property"  
**ABA Section of Antitrust Law: Emerging Issues in Intellectual Property**  
New Orleans, LA (August 9, 1994)
- "Intellectual Property 1994 Guidelines"  
**ABA Section of Antitrust Law: Intellectual Property and Competition Policy**, Amelia Island, FL (August 11, 1994)
- "The Antitrust Division Guidelines for Intellectual Property"  
**Licensing Executives Society Annual Meeting**, Crystal City, VA  
(September 12, 1994)
- "The Antitrust Division Guidelines for Intellectual Property"  
**Federal Bar Association**, Washington, D.C. (September 13, 1994)

**ROBERT LITAN, DEPUTY ASSISTANT ATTORNEY GENERAL**

- "Directions in Antitrust Policy"  
**Brookings Institution and the Department of Justice**, Washington, D.C.  
(November 15, 1993)
- "Antitrust Law Developments"  
**NY State Bar Association**, New York City (January 27, 1994)

- "Economic Regulation and Congressional Reform"  
**Hoover Institution**, Stanford, CA (February 14, 1994)
- "Multimedia and the Antitrust Laws"  
**Practising Law Institute**, New York City (March 3, 1994)
- ✓ "Antitrust Assessment of Bank Mergers"  
**ABA Section of Antitrust Law**, Washington, D.C. (April 6, 1994)
- "Antitrust and Global Risk Management"  
**Vanderbilt University**, Nashville, TN (April 8, 1994)
- "Multimedia and the Antitrust Laws"  
**Practising Law Institute**, San Francisco, CA (April 11, 1994)
- "Electronic Funds Transfer Services and Antitrust"  
**Shared Networks Executives Association**, Phoenix, AZ (April 13, 1994)
- "The Information Superhighway and the Antitrust Laws"  
**Information Technology Symposium**, Washington, D.C. (April 28, 1994)
- "Antitrust and Bank Mergers"  
**Bankers Roundtable**, Washington, D.C. (May 5, 1994)
- "The Antitrust Laws and Bank Mergers"  
**Prentice Hall's Law/Business Banking Expansion Institute** (May 9, 1994)
- "Antitrust in the Clinton Administration"  
**Antitrust Council of the U.S. Chamber of Commerce**, Washington, D.C. (May 11, 1994)
- "Antitrust Perspectives on Bank Mergers"  
**29th Annual Banking Law Institute**, Washington, D.C. (May 12, 1994)
- ✓ "The Relative Decline of Banking: Should We Care?"  
**Federal Reserve Bank of Chicago Bank Structure Conference**, Chicago, IL (May 12, 1994)
- "MIT Decision--Antitrust and Nonprofit Educational Institutions"  
**New York University**, New York City (May 31, 1994)
- "Mergers and Antitrust Issues"  
**Brookings Institution**, Washington, D.C. (June 2, 1994)

- "Defense Mergers and Antitrust"  
**ABA Air and Space Law Section**, Washington, D.C. (June 3, 1994)
- "Competition and Strategic Alliances in Telecommunications"  
**American Enterprise Institute**, Washington, D.C. (July 7, 1994)
- "Insurance and Antitrust"  
**Fordham Law School Institute on Law and Financial Services**,  
New York City (September 13, 1994)

**STEVEN SUNSHINE, DEPUTY ASSISTANT ATTORNEY GENERAL**

- "Antitrust Law Developments"  
**Business Development Associates**, Washington, D.C.  
(December 2, 1993)
- ✓ "Initiatives in Merger and Joint Venture Analysis"  
**Conference Board**, New York City (March 3, 1994)
- "Joint Ventures"  
**Tulane Corporate Law Institute**, New Orleans, LA (March 10, 1994)
- "Merger Policy"  
**Tulane Corporate Law Institute**, New Orleans, LA (March 10, 1994)
- "Developments in Merger Analysis at the FTC and DOJ"  
**ABA Section of Antitrust Law's 42nd Annual Spring Meeting**  
Washington, D.C. (April 6, 1994)
- "The Scope of Permissible Coordination Between Merging Entities Prior to  
Consummation"  
**ABA Section of Antitrust Law's 42nd Annual Spring Meeting**  
Washington, D.C. (April 7, 1994)
- "The Use of Innovation Markets in Merger Analysis"  
**Georgetown University Law Center's Conference on Post-Chicago  
Economics: New Theories-New Cases?**, Washington, D.C. (May 26, 1994)

- "Mergers and Acquisitions"  
**Institute on Acquisitions and Takeovers**, New York City (June 6, 1994)
- ✓ "Antitrust Policy Toward Telecommunications Alliances"  
**American Enterprise Institute**, Washington, D.C. (July 7, 1994)
- "Innovation Markets"  
**ABA's Section of Antitrust Law Summer Meeting**, New Orleans, LA August 9, 1994)
- "Antitrust Developments"  
**Practising Law Institute**, New York City (September 13, 1994)

**DIANE WOOD, DEPUTY ASSISTANT ATTORNEY GENERAL**

- ✓ "Antitrust and Competition Policy: Developments in the U.S. and Europe"  
**European-American Chamber of Commerce**, Washington, D.C. (October 8, 1993)
- "Hartford Insurance Decision"  
**International Bar Association**, New Orleans, LA (October 12, 1993)
- "International Competition and the International Trade Agenda"  
**International Law Institute**, Washington, D.C. (November 9, 1993)
- "Antitrust and Economic Regulation"  
**Association of American Law Schools**, Orlando, FL (January 7, 1994)
- "A View from the Federal Government"  
**Pacific Institute's Conference on Reforming Japan in Trade and Corporate Governance**, Washington, D.C. (January 26, 1994)
- "Antitrust Division's International Activities: An Overview"  
**Conference Board**, New York City (March 3, 1994)
- ✓ "The Evolution of Overall U.S. Policy Governing International Trade--And How NAFTA Fits Into That Scheme"  
**Texas State Bar**, Houston, TX (March 11, 1994)

- "International Antitrust and the European Market"  
**University of Chicago**, Chicago, IL (April 5, 1994)
- "International Antitrust Enforcement Under the Clinton Administration"  
**American Society of International Law**, Washington, D.C. (April 6, 1994)
- "Multinational Mergers and Joint Ventures"  
**ABA Section of Antitrust Law -- 42nd Annual Spring Meeting**,  
Washington, D.C. (April 7, 1994)
- "The Year in International Law"  
**American Journal of International Law**, Washington, D.C.  
(April 8, 1994)
- "International Antitrust Policy: View From the Administration"  
**American Bar Association**, Washington, D.C. (April 28, 1994)
- "U.S. Antitrust Policy in the Global Economy"  
**Automotive Original Equipment Manufacturing, Inc.**  
(May 12, 1994)
- "The Internationalization of Antitrust Law: Options for the Future"  
**World Trade Center**, Chicago, IL (May 16, 1994)
- "International Antitrust Policy and Enforcement in the Global Information  
Industry"  
**AT&T Law Conference**, Newark, NJ (June 7, 1994)
- "The International Antitrust Enforcement Agenda at the U.S. Department of  
Justice"  
**ABA/IBA International Symposium on Competition Law and Trade Policy**  
Brussels (June 22, 1994)
- ✓ "Antitrust and Intellectual Property"  
**National Economic Research Associates, Inc.'s Fiftieth Annual Antitrust  
and Trade Regulation Seminar**, Santa Fe, NM (July 7, 1994)
- "Developments in U.S. Enforcement"  
**ABA's Section of Antitrust Law**, New Orleans, LA (August 10, 1994)

- "International Enforcement Legislation"  
**Washington International Business Council**, Washington, D.C.  
(September 8, 1994)

### **CONSTANCE ROBINSON, DIRECTOR OF OPERATIONS**

- ✓ "Communications Among Competitors--When Does the Department of Justice Challenge?"  
**ABA Section of Antitrust Law**, New York City (October 14, 1993)
- "Developments in Criminal Antitrust Enforcement"  
**Cleveland Bar Association**, Cleveland, OH (October 22, 1993)
- "Corporate Amnesty"  
**American Bar Association**, Washington, D.C. (April 6, 1994)

### **ROBERT POTTER, COUNSELOR TO THE AAG**

- "The DOJ and FTC Statements of Antitrust Enforcement Policy in the Health Care Area"  
**International Business Communications Program on Healthcare Mergers, Acquisitions, and Joint Ventures**, Washington, D.C. (February 28, 1994)
- "Health Care Competition, Legislation, and DOJ Enforcement Actions"  
**Practising Law Institute**, New York City (July 20, 1994)

### **WILLARD K. TOM, COUNSELOR TO THE AAG**

- "Vertical Price Fixing"  
**International Mass Retail Association Research Committee**, Washington, D.C. (September 29, 1993)
- "Issues before the Justice Department"  
**U.S. Chamber of Commerce**, Washington, D.C. (October 6, 1993)
- "Government Enforcement with Respect to Distribution, Marketing and Joint Ventures"  
**Practising Law Institute**, New York City, (January 14, 1994)

- "The Antitrust Division Looks at Membership Restrictions"  
**DC Bar Association's 30th Annual Symposium on Trade Association Law and Practice**, Washington, D.C. (February 16, 1994)
- "Antitrust Enforcement With Respect to Vertical Restraints"  
**New Jersey Bar Association Antitrust Committee Meeting**, New Brunswick, NJ (March 21, 1994)
- "Partnering Among Suppliers, Distributors, & Customers"  
**Steel Service Center Institute**, Washington, D.C. (March 22, 1994)
- ✓ "Vertical Price Restraints"  
**ABA Section of Antitrust Law**, Washington, D.C. (April 6, 1994)
- "Competition Policy Issues Presented by the Administration's National Information Infrastructure Agenda"  
**ABA Antitrust Section's Computer, Communications, and Intellectual Property Committees Meeting**, Washington, D.C. (April 7, 1994)
- "Intellectual Property and Antitrust"  
**Colorado Association of Corporate Counsel Conference**, Denver, CO (May 12, 1994)
- "The Role of Antitrust Law in the Development of the Information Superhighway"  
**Brookings Institution**, Washington, D.C. (June 2, 1994)
- "Current Enforcement Issues at the Antitrust Division"  
**Practising Law Institute**, New York City (June 3, 1994)
- "Antitrust and Intellectual Property"  
**Georgia State Bar**, Atlanta, GA (September 22, 1994)

**DAVID TURETSKY, SENIOR COUNSEL TO THE AAG**

- "Antitrust and Telecommunications"  
**George Washington University Law School**, Washington, D.C. (March 6, 1994)

- "Telecommunications Legislation and Antitrust"  
**National Association of Attorneys General Antitrust Committee,**  
Washington, D.C. (March 22, 1994)
- "Competition in Telecommunications: Legislation"  
**1994 American Carriers Telecommunications Association (ACTA)**  
**Conference,** Colorado Springs, CO (April 18, 1994)
- "Antitrust Developments"  
**New York City Bar Association,** New York City (June 14, 1994)
- "Competition and the Information Superhighway"  
**Michigan Telecommunications and Technology Law Review Conference,**  
Ann Arbor, MI (September 30, 1994)
- "McCarran-Ferguson Reform"  
**National Conference of Insurance Legislators,** New York City (November  
12, 1994)
- "Should Telecommunications Consumers Put Their Trust in Anti-Trust?"  
**National Association of State Utility Consumer Advocates Conference**  
Reno, NV (November 16, 1994)
- "Traveling the Information Superhighway: Antitrust and Competition Policy"  
**Seton Hall Law Review Symposium,** Newark, NJ (November 17, 1994)

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**You may contact the Antitrust Division regarding any subject:**

By writing:

Antitrust Division  
U.S. Department of Justice  
10th & Constitution Ave., NW  
Washington, D.C. 20530

By Internet E-Mail:

**[antitrust@justice.usdoj.gov](mailto:antitrust@justice.usdoj.gov)**

By calling:

(202) 514-2401

By faxing to:

(202) 616-2645

You may access public documents by using the Internet:

[gopher@justice.usdoj.gov](mailto:gopher@justice.usdoj.gov)