MARKET POWER, THE FEDERAL TRADE COMMISSION, AND INFLATION

HEARING

BEFORE THE

JOINT ECONOMIC COMMITTEE

CONGRESS OF THE UNITED STATES

NINETY-THIRD CONGRESS

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CONGRESS OF THE UNITED STATES,
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 5302, Dirksen Senate Office Building, Hon. William Proxmire (vice chairman of the committee) presiding.

Present: Senators Proxmire and Javits.

Also present: Loughlin F. McHugh, senior economist; Richard F. Kaufman, general counsel; Larry Yuspeh, professional staff member; Michael J. Runde, administrative assistant; George D. Krumbhaar, Jr., minority counsel; and Walter B. Laessig, minority counsel.

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. The committee will come to order. This hearing is part of the Joint Economic Committee's ongoing study of inflation pursuant to Senate Concurrent Resolution 93.

The problem of economic concentration, administered prices, and other abuses of market power are generally considered to be serious under any circumstances, and are believed by many to be a major factor in the present inflation. A number of experts, including at least one of today's witnesses, have concluded that we suffer from administered price inflation to a large extent rather than the types described by orthodox economic theory. My own estimate is that two-thirds of the inflation in wholesale prices in the past year is the result of enormous, and I think unjustified, price increases in five concentrated industries—steel, nonferrous metals, chemicals, fuel, including oil, and food processing and distribution.

So far we have received testimony from the Chief of the Antitrust Division of the Justice Department, the head of three of the largest steel corporations, and also several experts on industrial structure. We had hoped to hear this morning, in addition to our other witnesses, from Attorney General William B. Saxbe. It will be recalled that the Attorney General has been making a series of speeches around the country urging stiffer penalities for violation of the antitrust laws, and saying that price fixers are white collar criminals and are no better than burglars and thieves, and should be subjected to prison sentences.

Unfortunately, such a policy, long overdue in my opinion, has not yet been put into effect. Mr. Saxbe, moreover, has declined to testify

in these hearings. His office informed my staff that it would not be proper for him to appear before this committee.

Despite the brave rhetoric of a few individuals like the Attorney General, the economic policy is receiving serious consideration by the administration, by Congress. And most of the economists break it down into two categories. One is described as the oldtime religion of tight money, high budgets, and high unemployment. The other involves price-freeze system of controls of one sort or another.

We tried the freeze controls route a few years ago, and it was an abysmal failure, in part because of poor administration.

We have tried the oldtime religion many times in our history, and we are embarked on it now. It too, appears to be failing, and one cannot be optimistic about it at the present time.

A real antitrust, decentralizaion, procompetition economic policy has never been seriously pursued, and is not now being pursued as far as I can tell. There has been a lot of lip service to the goal of competitive free enterprise, and there has been little performance as far as policymakers and higher Government officials are concerned.

Our focus this morning is on the Federal Trade Commission. The Federal Trade Commission was created in 1914 as an independent agency to help enforce the antitrust policy, which for the previous 24 years since enactment of the Sherman Act has not been satisfactorily enforced. The Federal Trade Commission Act declares "That unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared to be unlawful." And the Commission was given broad powers of enforcement.

We still await enforcement of that policy 60 years later. It is hard not to conclude that the experiment has failed. Part of the blame must be shared by Congress, apart from the familiar political pressures that sometimes make it difficult for an agency to do what it is supposed to do. Congress has over the years passed a number of statutes assigning responsibility to the FTC that differ from and are not all consistent with the original mission. It is now a consumer protection agency as well as an antitrust agency, and must deal with pricing, deceptive practices, the Consumer Safety Act, the Wool Act, the Fur Act, and numerous other statutory provisions. Its critics claim that the FTC has spread itself too thin, and has expanded its complaint file at the expense of its other functions. From the evidence I have seen I think it has been stated that the FTC does have a split personality. It has become a jack-of-all-trades commission, master of none.

We, therefore, look forward to this morning's testimony from two Federal Trade Commissioners, including the Chairman of the FTC, and our other experts. Lewis A. Engman has been Chairman of the Federal Trade Commission since February 20 last year. And previously he had been President Nixon's Secretary for Consumer Affairs. And before that he practiced law in Grand Rapids, Mich.

Mayo J. Thompson became a member of the FTC in July 1973, after having been a practicing lawyer in Houston, Tex., up to that time.

Gardiner Means is a distinguished and world renowned economist, author of a number of powerful books and articles, including "The Modern Corporations Pricing Power and the Public Interest," which was a study of the steel industry. And he is a pioneer in the theory of administration prices.

Because Mr. Means' statement is rather broad conceptually, I would like Chairman Engman to indulge us so that we can hear from Mr. Means first, and then we can go on to the Chairman and Commissioner Thompson.

Mr. Means, you may proceed.

And incidentally, all three of you gentlemen are most accommodating in making your statements available to us. And we are grateful for that. If you wish to abbreviate your statements we would be happy to print them in full in the record so that we can have as much time for questioning as possible.

STATEMENT OF GARDINER C. MEANS, ECONOMIST

Mr. MEANS. I will make a very limited summary of my statement. I am concerned with the control of the current administrative inflation.

Mr. Chairman and members of the Joint Economic Committee, I very much appreciate this opportunity to express my views on the relation between economic concentration and the present sorry state of our economy.

It is because President Ford's program to control inflation fails to take account of the market power of concentrated industry that it seems certain to produce more stagnation without halting inflation.

In your interim report you have already recognized that the present inflation is not a general demand inflation with too much money chasing too few goods. And it is not a cost-push inflation coming from the side of labor.

What we have is stagflation compounded primarily of the effects of the oil cartel and administrative inflation coming from the side of management in the more concentrated industries. Neither of these can be controlled by contracting the general demand for goods and services. We need expansion of demand and resistance to arbitrary price increases.

Consider first the anatomy of inflation during the last year. I would like to have you turn to the chart in the written testimony. In that chart I show at the left the "Earmarks of Sagnation." We have a 23-percent increase in unemployment from September 1973 to September 1974. We have a 25-percent rise in idle manufacturing capacity. And we have a rise in the Wholesale Price Index of 20 percent.

All of these in combination are signs of this new type of inflation.

At the right I have divided practically all of the Wholesale Price Index into three categories, and show the rise in the price of fuel and chemical prices a 57-percent rise.

The second column, the dark column, represents the rise in the index of concentration dominated industries, excluding fuel and chemicals. And that index went up 27 percent.

And the third column represents the rise in the index of prices of competition dominated industries—form industries, textiles, shoes, and similar industries. This competitive index went up less than 5 percent.

The width of the columns show the weight of the respective groups of industries in the BLS Wholesale Index.

Clearly, from this chart, the inflation of the last year has been the rise in fuel and chemical prices and the rise in the concentrated indus-

tries, as our chairman has pointed out. In this period the main rise in competitive prices is in foods. The wholesale price of farm products has gone down 9 percent in the year. And the other competitive industries, apart from food, have changed relatively little.

Thus the problem of dealing with the current inflation is primarily one of dealing with the effects of the oil cartel, and with the administrative inflation in the more concentrated industries. I will consider the oil problem only to point out that it cannot be dealt with by a tight money policy. A contraction of general demand sufficient to reduce the demand for fuel significantly would idle resources which could otherwise be used. It would be cutting the face to spite the nose.

Nor is it possible for a tight money policy to control administrative inflation resulting from the action of management in the concentrated industries. Simultaneous administrative inflation and stagnation present this new problem which lies entirely outside the scope of traditional theory. The old religion can cope with the old devil of demand inflation. But we have a new devil of administrative inflation and when we apply the old religion of tight money to inflation, the inflation gets worse.

The source of the administrative inflation is clear. It arises from the fact that in the more concentrated industries the market forces of supply and demand do not determine prices, but only provide a range within which management has a fairly wide discretion to administer prices, setting a higher or lower price as it sees fit.

Once one accepts the idea that todays administrative inflation does not arise from the side of labor, there are two theories prevalent with respect to it. One is that the large price increases and increases in profits during the last year in the more concentrated industries are justified by increased costs and the decline in the value of the dollars. I will call this the "justified profits" theory.

The other is that to a significant degree the price rises represent abuses of market power. I will call this the "abuse of market power" theory.

The first theory justifies price increases on three grounds. First, it holds that profit margins in September 1973 were uneconomically low. You saw this claim in the steel hearings.

Second, the big increase in the cost of purchased product and services, including labor, during the last 12 months is cited with particular emphasis on labor, fuel, and imported raw materials.

And finally, the decline in the value of the dollar needs to be taken into account, not only with respect to the value of inventories and the depreciation of fixed assets. but also to provide capital with a cost-of-living adjustment comparable to that for labor.

Proponents of this theory hold that when these three economic considerations are taken into account. it will be found that in most cases the big price increases are justified.

The abuse of market power theory recognizes that the cost increases and the decline in the real value of the dollar justify some price increases, but holds that to a substantial extent the price increases exceed those which can be justified by economic conditions, and to this extent represent an abuse of market power. Certainly, a corporation that raises its price simply to "beat the gun" on inflation or to outplay an expected imposition of price controls is using its market power in an

inflationary fashion not justified by changes in either demand or cost.

Tight money and insufficient demand cannot control the current administration inflation regardless of which of these two views you take. This means that the whole policy of trying to control inflation by limiting demand rests on a faulty analysis, and should be dropped.

An antistagnation program in place of the tight money policy, the main antistagnation program should consist of two parts, one, to eliminate stagnation, and the other to control administrative inflation. Measures should be taken to expand aggregate demand at a fairly rapid rate until optimum employment is reached. At the same time measures should be taken to resist the abuse of market power on the part of highly concentrated industries. The aim should be to obtain the optimum within a year with a minimum of inflation. I believe this could be accomplished.

To bring about a general expansion of demand, the instruction to the public to curtail its expenditures should be withdrawn except for specific products, such as fuel. Monetary expansion rather than a budget deficit should be the main Government action to increase the demand.

Would such an expansion in demand stimulate further inflation? If not carried beyond the optimum it would not generate a general demand inflation through an excess in demand. Bottlenecks would arise, but management is paid for overcoming bottlenecks. The rise in fuel prices may well have reached its peak. This summer's partial crop failure has raised farm prices which have been declining from the high of 1973. But they are still below a year ago. Food prices have risen, lifting the combined farm and food index. But better crop yields next year could meet the higher demand from a greater aggregate demand, so that farm and food prices might not differ greatly from their present level as we related the economy to full employment.

Foreign inflation has contributed to some extent to our domestic inflation but I think that, apart from oil, the effect of foreign inflation has been greatly exaggerated. In particular, while the prices of imported raw materials, such as lead, zinc, and copper, have gone up markedly this rise has been slackening, as is suggested by the decline of 11 percent in the last 6 months in the sensitive index for industrial raw materials.

If it were not for the likelihood of administrative inflation, there is a good possibility that optimum employment could be achieved without serious inflation.

This makes crucial the question whether the recent big price increases in the concentrated industries have in fact been fully justified, or represent to a substantial degree an abuse of market power.

At the outset one can be skeptical of the claim that a year ago profits of manufacturing industries were too low. For corporate manufacturing as a whole, profits in the second quarter of 1973 were 65 percent above the levels of the second quarter of 1971, just before price controls were instituted. Yet in 1971 profits were close to record levels. Undoubtedly there were some industries to which profits were too low in September 1973, but this could not have been general.

The rise in operating cost per unit of output since September 1973 does justify substantial price increases. The 10-percent rise in the

average hourly compensation to employees in manufacturing, the 63-percent increase in fuel prices, the 15-percent increase in the index of sensitive industrial raw materials, and the 6-percent increase in indirect taxes all point to a substantial increase in operating costs during the 12 months.

However, the 10-percent increase in compensation to labor, which represents a very large proportion of operating cost, cannot explain very much of the 27-percent price rise.

It is doubtful if total operating costs per unit of output increased in the period by more than 15 percent. Perhaps that figure is low, but that is where I come out. Yet, if prices had increased in exactly the same proportion as operating cost, this would have provided something like a 15-percent increase in the gross profit margin per unit to cover the justifiable increases in inventory valuation, depreciation, and profit, due to the rise in prices and the fall in the value of the dollar.

Just how large the increase in gross profit margins has been could only be determined by a case-by-case analysis. But the overall figures suggest that it must have been large.

The question of how much of the increase in gross profit margin has been justified is a highly complex problem. It turns to an important extent on accounting concepts and theories of responsibility and fairness. I go into this in my written testimony, and conclude that to a considerable extent the widening of gross profit margins has been much greater than is justified by increased costs and the change in the value of the dollar.

To control administrative inflation, the first step is to clarify what constitutes justified use and what constitutes abuse of market power. This calls for price and wage guidelines which are much more sophisticated than those used in phase II.

The second step is to bring a limited number of corporations in the more concentrated industries under the influence of a Price Guidance Board. All nonregulated corporations with assets over 1 billion could be designated by legislation as affected with a public interest, and made subject to guidance by such a board. The Board could also be given power with respect to corporations with assets of $100 million or more when it finds that such guidance is essential to the control of administrative inflation. If the few hundred big corporations which carry on half of all manufacturing could be prevented from abusing their market power, this could bring such administrative inflation to a substantial halt.

At a minimum, the corporations designated for guidance should be required to report and justify price increases on their major products, giving the Board an opportunity to apply persuasion and publicity to resist what it found to be excessive increases. In the Kennedy administration that particular action was much more effective than most people realize.

As a third step, the Board should call on the BLS to create an "index of administrative inflation," starting with the items in the Wholesale Index in which half the market or more is supplied by four companies and eliminating those that are inappropriate to such an index.

With such an index available, the Guidance Board could be given the power to exercise direct controls in situations in which there was rapid administrative inflation. Thus, if the index went up at an annual rate

of, say, 2 percent in two successive quarters, the Board might have the power to require prereporting. If the index went up at a 4-percent rate, the Board might have the power to roll back or cancel planned price increases.

With such a guidance program in operation and regarded as fair and likely to be successful, labor could be expected to adhere to the guidelines. Not only does labor have a much greater interest in preventing administrative inflation, but management tends to enforce wage guidelines through its resistance in collective bargaining.

While such a guidance program could not be expected to prevent all administrative inflation, it could be expected to bring it under substantial control.

With such a program, it would be possible to expand aggregate demand to the extent necessary to support optimum employment without generating either demand inflation or administrative inflation.

Twenty-eight years ago the Congress passed the Employment Act of 1946, committing the Government to the maintenance of high employment. Today this needs to be complemented by an act to limit administrative inflation. Economic concentration has brought to the big corporations the power to raise prices arbitrarily. Reasonable price stability is too vital to be left to the pricing discretion of concentrated industry. Government must assume a positive responsibility to prevent the abuse of market power.

[The prepared statement of Mr. Means follows, together with a paper entitled "How To Control Inflation Without Stagnation":]

PREPARED STATEMENT OF GARDINER C. MEANS

Control of the Current Administrative Inflation

Mr. Chairman and Members of the Joint Economic Committee, I very much appreciate this opportunity to express my views on the relation between economic concentration and the present sorry state of our economy.

It is because President Ford's program to control inflation fails to take account of the market power of concentrated industry that it seems certain to produce more planned stagnation without halting inflation. Basically his program rests on a belief that the present inflation can be controlled by tight money and a contraction in aggregate demand. But the present inflation is not a *general demand* inflation. We do not have too much money chasing too few goods. This was generally agreed on at the President's Summit Conference on Inflation.

What we do have is "stagflation" compounded primarily of the effects of the oil cartel and administrative inflation. Neither of these can be controlled by contracting the *general* demand for goods and services. We need quite a different policy.

THE ANATOMY OF THE CURRENT INFLATION

Let us first examine the inflation of the last twelve months. The basic essentials are shown in the attached chart. The first panel shows the earmarks of stagflation: the 23 percent increase in unemployment, the 25 percent increase in idle manufacturing capacity and the 20 percent rise in the wholesale price index. These data alone are sufficient to show that we are not experiencing general demand inflation.

The second panel shows the character of the year's inflation. It distinguishes between: 1) fuel and chemicals, 2) the more concentrated industries excluding fuel and chemicals, and 3) the industrial groups such as farm products and textiles whose prices are dominated by competition. The height of the columns represents the price rise during the year while the width shows the relative weight in the wholesale price index. Thus the area for each represents its relative contribution to the rise in the wholesale price index.

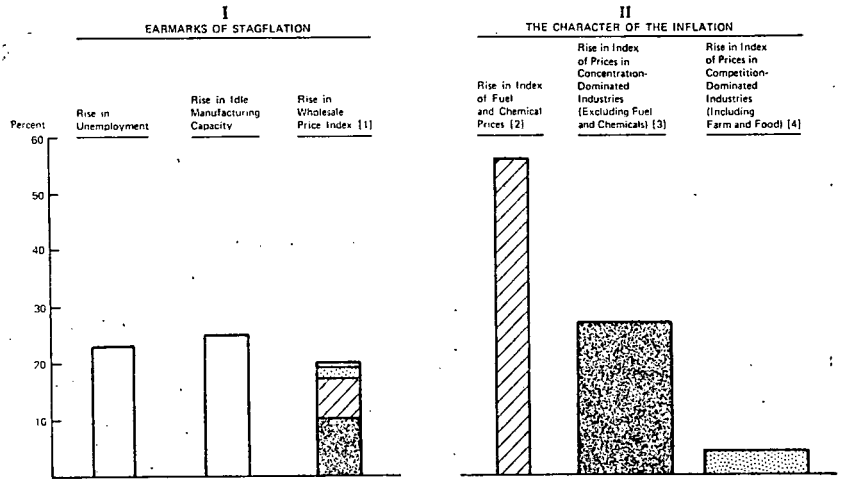
As is well known, the price of fuel at wholesale increased by two thirds in the last year and the index for chemicals by nearly one half, largely as a result of the rise in the price of feedstocks derived from oil and coal. The two together rose 57 percent and account directly for more than a third of the 20 percent rise in the wholesale price index.

Most of the remaining rise in the wholesale index is acounted for by the 27 percent price rise in the more concentrated industries. This rise accounts for more than half the total rise in the wholesale index.

The more competitive price index rose less than 5 percent and would not have risen at all except for the 13 percent rise in the index for food prices. The farm price index was nearly 9 percent lower in September this year than in September 1973. This lack of any substantial rise in the index for the more competitive industries is further evidence that the inflation of the last year was not demand inflation. These are the prices which would be most sensitive to an excess in general demand.

The problem of dealing with the current inflation is thus primarily one of dealing with the effects of the oil cartel and with the administrative inflation arising in the more concentrated industries. Can a tight money policy be effective with either of these?

THE ANATOMY OF THE CURRENT STAGFLATION
September 1973 to September 1974



[1] Total index includes BLS groups, "Miscellaneous" and "Furniture and Household Durables" which cannot be attributed as primarily concentrated or primarily competitive and account for 5 percent of the increase in the wholesale price index.
[2] Weighted Average of Wholesale Indexes for Fuel, etc. and Chemicals, etc.
[3] Weighted Average of Wholesale Indexes for Metals, Machinery, Non-metallic Minerals, Rubber, Paper and Transportation Equipment.
[4] Weighted Average of Wholesale Indexes for Farm, Food, Leather, Lumber, Textiles and their products.
Source: BLS and FRB.

TIGHT MONEY AND OIL

It is immediately obvious that tight money is not an effective instrument for dealing with the oil situation. High interest rates would tend to inhibit an expansion of domestic production that would increase the supply of fuels. A contraction of *general* demand sufficient to reduce the demand for fuel significantly would idle resources which could otherwise be used. It would be cutting the face to spite the nose.

TIGHT MONEY AND ADMINISTRATIVE INFLATION

Whether a tight money policy can control administrative inflation is a more complex problem. Simultaneous administrative inflation and stagnation present a new problem which lies entirely outside the scope of traditional theory. According to the latter, it is possible to have rising prices from such specific restrictions of supply as crop failures or an oil cartel. It is also possible to have a general inflation from a general excess in demand. But traditional theory cannot explain

both recession and rising prices at the same time. New theory is therefore called for.

The source of administrative inflation is clear. It arises from the fact that, in the more concentrated industries, the market forces of supply and demand do not *determine* prices but only provide a range within which management has a fairly wide discretion to administer prices, setting a higher or lower price as it sees fit. Likewise, market forces do not *determine* wage rates but only provide a range of possible rates, with collective bargaining usually setting administered wage rates.

In theory, administrative inflation could originate either from the side of labor or from the side of management. Labor could push up wage rates faster than economic conditions warrant, thus increasing costs and producing what has come to be called "cost-push" inflation. Or management could widen profit margins more than is justified by economic conditions. This could properly be called "profit-push" inflation. Or the two could operate simultaneously.

THEORIES TO EXPLAIN THE CURRENT ADMINISTRATIVE INFLATION

In the present situation, three different theories have been advanced to explain the actual administrative inflation.

The "Trade-off" Theory

According to one of the new theories, there is a trade-off between inflation and stagnation requiring that a choice be made between high employment and inflation at one extreme, high unemployment and price stability at the other extreme or some intermediate combination of stagnation and inflation.

The reasoning behind this theory is simple. It assumes that the new type of inflation comes from the side of labor and that, by increasing unemployment, the resulting pool of idle workers will prevent labor from pressing for inflationary wage increases.

But obviously this theory does not apply to the current inflation. With the rising unemployment of the last five months, inflation in the concentrated industries has accelerated, not slackened. Wage rates have clearly lagged behind the price rise and real compensation to labor per hour has been declining. The 10 percent rise in the average hourly wage rate for manufacturing during the year cannot explain a 27 percent rise in prices. It was generally accepted at the Summit Conference that the current inflation was not initiated by excessive wage increases. And the whole idea that there is such a thing as a trade-off remains unproven and is losing support.

The "Justified Profits" Theory

A second theory realistically accepts the evidence that the increase in prices in the concentrated industries in the last year has been greater than that required by the increase in labor costs and justifies the greater increase on three grounds. First, it is held that profit margins in September 1973 were uneconomically low, primarily because of the previous price controls. Second, the big increase in the cost of purchased products and services during the last 12 months is cited with particular emphasis on fuel and imported raw materials. And finally, the effect of the decline in the value of the dollar needs to be taken into account not only with respect to the value of inventories and the depreciation of fixed assets but also to provide capital with a cost-of-living adjustment comparable to that for labor. Proponents of this theory hold that when these three economic considerations are taken into account along with the rise in labor costs, it will be found that in most cases the big price increases in the concentrated industries are justified.

But even if the price increases were justified, tight money would not control inflation from this source. If the price setter in a concentrated industry thought that a given increase in price was required by a combination of increased costs and the decline in the real value of the dollar and that such an increase could be sustained, would the fact of stagnation inhibit such an increase? And would a further contraction of demand prevent the price setter from raising the price? A reduction of sales would increase costs per unit by requiring that overhead be spread over a smaller number of units and thus increase the likelihood of a price increase. And except where the producer was already operating at capacity, an increase in sales would not only reduce total costs per unit but would increase profits both by providing a larger profit margin and by the larger volume of sales and so reduce the likelihood of a price increase. Even if this theory of justified

price increases were valid, there is no reason to expect that tight money would be an effective policy to control such inflation.

The "Abuse of Market Power" Theory

A third theory also accepts the evidence that these big price increases in the last year originate from the management side in the more concentrated industries but holds that a substantial part of the increase arises from an abuse of market power. This theory recognizes that cost increases and the decline in the real value of the dollar justify some price increases but holds that, to a substantial extent, the price increases exceed those which can be justified by economic conditions and to this extent represent an abuse of market power. Certainly a corporation that raises its price *simply* to "beat the gun" on inflation or to out-play an expected imposition of price controls is using its market power in an inflationary fashion not justified by either demands or costs. Also, the judgment of management that a price increase is justified can leave much room for uncertainty. Excessive price increases could be a substantial and unjustified source of inflation.

If the price increases in the concentrated industries do arise in substantial part from an abuse of market power, could a tight money policy be expected to prevent such abuse? If management *believes* that an increase is justified even though it would in fact be unjustified, the reasoning for justified increases given above would also apply and tight money would not inhibit such management action. And if the management planned to raise a price without an economic justification, it is difficult to see how stagnation and a contraction in demand would stand in its way.

Conclusion: Tight Money and Recession No Remedy

One must conclude that administrative inflation arising from the side of management cannot be controlled by tight money regardless of whether it involves justified price increases or is in part an abuse of market power. There is thus no reason to prolong or increase the stagnation in the vain hope that it will prevent administrative inflation. And since the other main sources of the current inflation cannot be controlled by limiting aggregate demand, the whole policy of trying to control the current inflation by limiting demand rests on a faulty analysis and should be dropped.

AN ANTI-STAGNATION PROGRAM

In place of the tight money policy, the main anti-stagflation program should consist of two parts, one to eliminate stagnation and the other to control administrative inflation. Measures should be taken to expand aggregate demand at a fairly rapid rate until optimum employment is reached. At the same time measures should be taken to resist the abuse of maket power on the part of the highly concentrated industries. The aim should be to achieve the optimum within a year with a minimum of further inflation. Unemployment should be brought below 4 percent, the utilization of manufacturing should rise to around 88 percent of capacity and inflation should be brought below a 2 percent a year rate, all by the second or third quarter of 1975.

Measures to Expand Aggregate Demand

To bring about general expansion of demand the instruction to the public to curtail its expenditures should be withdrawn except for specific commodities such as fuel and monetary expansion rather than a budget deficit should be the main government action.

The emphasis on monetary expansion is made necessary by high interest rates. A budget deficit can stimulate demand but it also produces a drain on the capital market. A balanced budget would eliminate this drain. Also greater monetary expansion would increase the supply of loanable funds. Both would help to bring down interest rates and facilitate the financing of badly needed capital and housing expansion.

The Effect of Increased Demand

Would such an expansion in demand stimulate further inflation? If not carried beyond the optimum it would not generate a *general* demand inflation through an excess in demand. Bottlenecks would arise but management is paid for overcoming bottlenecks.

The rise in fuel prices may have reached its peak. The BLS fuel index actually declined in September over August but this could be a temporary halt. More im-

portant, the measures for limiting demand and expediting domestic supply must be the answer to rising fuel prices and as these come into play, this source of further inflation can be brought under control.

This summer's partial crop failure has raised farm prices which had been declining from the high of 1973 but they are still below a year ago. Food prices have risen, presumably reflecting the earlier rise in farm prices, lifting the combined index. If stagnation continued and next year's crop yields were normal throughout the world we could expect next fall's prices to be lower than those of this fall except possibly for meat prices which tend to show a delayed reaction to crop failures. On the other hand, a program to expand aggregate demand could, in itself, be expected to produce some reflation as the sensitive market prices reflected the higher demand. This alone would mean higher farm prices. However, an increased supply from normal crop yields and the increased demand from the expansion of aggregate demand could partially offset each other and leave farm prices relatively unchanged from the present level.

Foreign inflation has contributed to some extent to our domestic inflation through the rise in the prices of imported raw materials such as lead, zinc and copper. However, this may be slackening as is suggested by the decline of 11 percent in the last six months in the sensitive index for industrial raw materials.

THE BIG PROBLEM—ADMINISTRATIVE INFLATION

Whether the economy continues to stagnate or is brought to operate at its optimum, we can expect more administrative inflation unless positive measures are taken to control it. Because the compensation per hour for workers has lagged substantially behind the increase in living costs, further wage increases would be justified and can be expected. To the extent that the big price increases in the concentrated industries have been a product of the abuse of market power, there would be room for absorption of increased labor costs without further price increases. However, we can expect that management will attempt to maintain its widened profit margins by passing on the increased labor costs, probably with something to boot.

This makes crucial the question whether the recent big price increases in the concentrated industries have in fact been fully justified or represent to a substantial degree an abuse of market power.

Were Profits Too Low in September 1973?

At the outset one can be skeptical of the claim that a year ago profits of manufacturing industries were too low. For corporate manufacturing as a whole, profits in the second quater of 1973 were 65 percent above the level of the second quarter of 1971, just before price controls were instituted. Yet in 1971 profits were at close to record levels. The price rise covered in the present analysis was intentionally made to cover only the last year. It thus started eight months after Phase II had been dropped and the controls over the prices of manufactured products had become largely inoperative. By September 1973, industrial prices had risen 6 percent and profits had risen substantially over the level in the last quarter of Phase II. Undoubtedly there were some industries in which profits were too low in September 1973 but this could not have been general.

How Much Were Operating Costs Up?

The rise in operating costs per unit of output since September 1973 did justify substantial price increases. The 10 percent rise in the average hourly compensation to employees in manufacturing; the 63 percent increase in fuel prices; the 15 percent increase in the index of sensitive industrial raw materials; and the 6 percent increase in indirect taxes all point to a substantial increase in operating costs during the 12 months. How much of the 27 percent price increase could this justify?

Since labor represents such a large proportion of operating cost for industry, taken as a whole, it is doubtful if total operating costs per unit of output increased in the period by more than 15 percent. Yet if prices had increased in exactly the same proportion as operating costs this would have provided something like a 15 percent increase in the gross profit margin per unit to cover the justifiable increases in inventory valuation, depreciation and profit due to the rise in prices and fall in the value of the dollar. If operating costs increased 15 percent and prices increased 27 percent, the extra 12 percent would all go to raise the gross profit margin, multiplying the percentage increase in that margin by many times. Just how large the increase in gross margins has been could only be

determined by a case by case analysis. But the over-all figures suggest that it must have been very large.

Are the Increases in Gross Profit Margin Justified?

The question of how much of the increase in gross profit margin has been justified is a highly complex problem. It turns to an important extent on accounting concepts and theories of responsibility and fairness. Inventory profits have to be taken into account. These depend in part on the extent to which corporations use "lifo" or "fifo" accounting and the present Commerce Department estimates of this inventory adjustment are under heavy attack. Adjustment in depreciation charges is justified by the decline in the value of the dollar but a lot depends on whether the aim of depreciation is to *recover* as much real capital as was invested or to *replace* the old plant, however obsolete. Profits per unit of output should also rise to provide capital with a cost-of-living adjustment. And the question arises whether management with market power in the concentrated industries has any public responsibility in the use of that power.

STEPS TOWARD THE CONTROL OF ADMINISTRATIVE INFLATION

It is clear that most of the inflation in the past year, apart from that due to oil, has occurred in the concentrated industries. It is also clear that the concentrated industries have a considerable market power which could be abused. It is also clear that traditional theory gives no adequate guidance to management in such industries as to what constitutes justified price increases and what constitutes abuse of market power. And finally it is clear that, without some degree of Government intervention, serious administrative inflation is likely to continue.

Guidelines Essential

The first step, if administrative inflation is to be controlled, is to clarify what constitutes justified use and what constitutes abuse of market power. This calls for guidelines which are more sophisticated than those used in Phase II. So far as operating costs are concerned, there should be little difficulty in reaching appropriate guidelines. It is in the area of inventory valuations, depreciation and profit that real difficulty arises. To leave the decision to management is to leave it to an interested party. An appropriate agency to develop appropriate guidelines for both price and wage changes would be one composed of leaders drawn from management, labor and consumer organizations and chaired by a public representative with no attachment to any of the three interests. This agency might be independent of the agency having responsibility for price intervention.

It is likely that many responsible firms would voluntarily abide by the guidelines if these were regarded as fair.

Surveillance of the Largest Corporations

The second step is to bring a limited number of corporations in the more concentrated industries under the influence of a Price Guidance Board. All non-regulated corporations with assets over $1 billion could be designated by legislation as affected with a public interest and made subject to guidance by such a Board. The Board could also be given power with respect to corporations with assets of $100 million or more when it finds that such guidance is essential to the control of administrative inflation. If the few hundred big corporations which carry on half of all manufacturing production could be prevented from abusing their market power, this could bring such administrative inflation to a substantial halt.

At a minimum, the corporations designated for guidance should be required to report and justify price increases on their major products, giving the Board an opportunity to apply persuasion and publicity to resist when it found to be excessive increases.

An Index of Administrative Inflation

As a third step, the Board should call on the BLS to create an index of administrative inflation. This index would take the items in the wholesale index in which half the market or more was supplied by four companies, cull out those inappropriate to such an index as for example beef whose price is dominated by the flexible market price of cattle, and construct a weighted index.

Direct Control of Excessive Price Increases

With such an index of administrative inflation available, the Guidance Board could be given the power to exercise direct controls in situations in which there was rapid adminstrative inflation. Thus, if the index went up at an annual rate of, say, 2 percent in two successive quarters, the Board might have the power to require pre-reporting. If the index went up at a 4 percent rate, the Board might have power to roll back or cancel planned price increases.

Indirect Control of Wage Rates

If such a price guidance program were in operation and regarded as fair and likely to be successful, labor could be expected to adhere to the wage guidelines. Not only does labor have a much greater interest in preventing administrative inflation but management tends to enforce wage guidelines.

While such a guidance program could not be expected to prevent all administrative inflation, it could be expected to bring it under substantial control. With such a program it would be possible to expand aggregate demand to the extent necessary to support optimum employment without generating either demand inflation or administrative inflation.

Twenty-eight years ago, the Congress passed the Employment Act of 1946, committing the Government to the maintenance of high employment. Today this needs to be complemented by an Act to limit administrative inflation. Economic concentration has brought to the big corporations the power to raise prices arbitrarily. Reasonable price stability is too vital to be left to the pricing discretion of concentrated industry. Government must assume a positive responsibility to prevent the abuse of market power.

How To Control Inflation Without Stagnation

(By Gardiner C. Means)

For five and a half years, the Nixon Administration sought to control inflation and failed. The index of wholesale prices rose 50 percent and the consumer index rose 40 percent.

This great failure in policy has come from a faulty diagnosis. The inflation has been treated as a traditional type of inflation—a general demand inflation coming from too much money chasing too few goods. Yet at no time in the five and a half years has there been a general excess in demand.

Most of the inflation of the last five and a half years has involved a new type of inflation. It is a type new to the theory of inflation and a type not experienced in this country prior to World War II. It grows out of the market power of big business and big labor. In the concentrated industries, the market forces of demand and cost do not determine prices. They only limit the range within which price can be set. Within this range, management has an area of discretion in pricing which can lead to inflation. And no excess in demand is necessary to bring about inflation. The new type of inflation will be referred to here as "administrative inflation" because it arises so largely from the private power to administer prices within a substantial range of discretion.

This article will briefly review the emergence of this new type of inflation, examine the bungling effort of the Nixon Administration to control it, explore its anatomy and finally propose a positive program to bring it under control.

I. THE EMERGENCE OF ADMINISTRATIVE INFLATION

The first appearance of administrative inflation came in the Eisenhower years. In the five years between 1951 and 1959, the wholesale price index went up 8 percent in spite of the fact that unemployment averaged more than 5 percent and in no year averaged as low as 4 percent. This is to be compared with the absence of inflation in 1953 when unemployment was 2.9 percent and the Korean War price controls had just been removed.

The 8 percent rise in wholesale prices was almost entirely in the concentrated industries, with at least half attributable to the direct and indirect effect of a 36 percent steel price increase. If the rise in the wholesale price index had resulted

from demand inflation it would have appeared primarily in the non-concentrated parts of the economy.

The Federal Reserve Board regarded this mild inflation as a case of traditional demand inflation and adopted a tight money policy which brought a contraction in the money stock and in general demand. This effort to control administrative inflation by a general contraction of demand produced the recession of 1957–58, yet it did not halt the administrative inflation.

Fortunately, the inability of tight money to halt administrative inflation came to be recognized at the Federal Reserve Board its policy was reversed. As Dr. Woodlief Thomas, then a chief economist of the Board, wrote in a letter to the *Washington Post* (March 12, 1959) ". . . there are unstabilizing forces in the pricing actions of the private economy—on the part of both management and labor—that cannot be effectively controlled by governmental actions in the area of fiscal and monetary policies."

The Kennedy Guideposts

In 1961 the Kennedy forces took over at a time when nearly 7 percent of the labor force was unemployed and only 73 percent of manufacturing capacity was being utilized. It set out to achieve high employment without inflation. Its economic advisers had learned the lesson of administrative inflation and adopted a program to resist such inflation through price and wage guideposts combined with persuasion, while fiscal and monetary measures were used to expand general demand.

From 1961 to 1965, general demand was increased by a third with a rise in the wholesale price index of only 3 percent. The wage and price guideposts and persuasion were over-successful in holding down wage rates and moderately successful in holding down prices in the concentrated industries. As a result of the great increase in general demand and the resistance to administrative inflation, industry was operating at 89 percent of capacity by the end of 1965 and unemployment was down to approximately 4 percent.

Unfortunately, the Kennedy guidepost for wages had been badly designed. It appropriately called for wage increases to take account of increases in national productivity, but it left no room for the natural increase in the cost of living which is an essential part of recovery from 7 percent unemployment to 4 percent.

A normal recovery would call for increased sales, production and employment in the more concentrated part of the economy, and increases in prices in the least concentrated, such as farming. Thus some "reflation" should have been expected and a cost-of-living factor should have been included in the wage guidepost.

Such a cost-of-living factor was intentionally excluded from the wage guidepost because it was believed that it would create a dangerous upward spiral as a living-cost increase in wages would be passed on in higher prices and these in turn would justify further wage increases. What was not realized was that the spiral would have been self-limiting, with each round of the spiral producing only a fraction of the price increase justified by the previous round. This would be true because labor is only part of the cost of goods and concentrated industry is only part of the total economy.

Because there was the normal price rise in the unconcentrated part of the economy, the resulting cost-of-living rise took away nearly half of the productivity gain which workers should have received over the 5 years.

The inadequate wage guidepost also allowed profit margins in the concentrated industries to be increased somewhat without adding to price increases. As a result the division of income between capital and labor shifted against labor. In the previous decade capital had received as interest, dividends and undistributed profits approximately 12½ percent of the income generated by non-financial corporations and divided between capital and labor. Labor had received 87½ percent in wages, salaries and fringe benefits. By the end of 1965 the compensation to capital had risen to 16 percent of the joint income and compensation to labor was down to 84 percent. The failure to include some cost-of-living adjustment was manifestly unfair to labor.

The Labor Revolt

Up to mid-1965 labor had in very large degree adhered to the wage guidepost, an action which was made easier by management's resistance to wage increases in excess of those indicated by the guideposts. But then the unfairness of the wage guidepost became so clear that labor rebelled and insisted on wage increases greater than the guidepost allowed.

In the following two years, there was administrative inflation as labor sought to catch up on living costs and management sought to retain its widened profit margins. In the two years from mid-1965 to mid-1967 the wholesale price index went up at the rate of 1.7 per cent a year.

This two years of administrative inflation has often been regarded as a general demand inflation resulting from the requirements of the Vietnam war. However, there is little evidence of a general excess in demand. In farm prices where a general excess would be expected to show itself first, there was only a 1.0 per cent a year price rise, which must be attributed to the decline in crop yields in 1966. Most of the two-year rise was in the more concentrated industries. In manufacturing there was a reduction in the amount of over-time hours worked and a smaller proportion of industrial capacity was used in 1967 than in 1965. These figures do not suggest an excess in general demand.

Inflation from Excess Demand

In the latter half of 1967 and early 1968 there was true demand inflation combined with some administrative inflation. While the money stock was increasing only at a normal rate (6.6 per cent in 1967 and 7.8 per cent in 1968), the economic budget was $12 billion in deficit ($25 billion deficit in the administrative budget). During the fiscal year unemployment averaged 3.5 percent and manufacturing operated at 85 percent of capacity. But there was a rise in the wholesale price index of 2.3 percent. How much of this was demand inflation and how much administrative is difficult to say.

The demand inflation was short-lived. At the beginning of 1967, Johnson, foreseeing the inflationary effect of Vietnam expenditures, requested a surtax. In the summer of 1967 and at the beginning of 1968 this request was repeated. Finally in August 1968, the 10 percent surtax was passed and by the end of 1968 was bringing in a budget surplus at the annual rate of $10 billion. This, plus a slower rate of growth in the money stock, eliminated the general excess in demand.

By early 1968, wage rates had also caught up with the cost-of-living increases and the long-run balance between compensation to labor and compensation to capital was re-established. With cost-of-living adjustments included, the guideposts and persuasion again became a reasonably effective way of controlling administrative inflation. Combined with a budget surplus and monetary growth, inflation at the wholesale level was limited to 1.1 percent in the eight months before the election in November 1968.

II. THE BUMBLING NIXON POLICIES

It is abundantly clear that Nixon and his economic advisers did not understand administrative inflation.

At the time Nixon came into office, our economy was in excellent condition. The surtax was producing a Federal surplus at the rate of $10 billion a year. The money stock was growing at the moderate rate of 4 percent a year. There was no excess in demand. The balance in external payments was favorable. Demand inflation from the Vietnam war had been brought under control and administrative inflation was being controlled by a moderate program of price-wage guidelines. Manufacturing industry was operating at 87 per cent of capacity. Employment was high, with the seasonally adjusted unemployment rate under 3.5 per cent. The wholesale price index had risen only 1.1 percent in the eight months before the election. And the balance between the compensation to capital and the compensation to labor was good. The stage was set for a period of high employment without serious inflation.

But Nixon's economic advisers were tied to the traditional conception of inflation as *demand* inflation with too much money chasing too few goods. They had not learned the lesson taught by the abortive tight-money effort to control administrative inflation in the 1950's; the partial success of the guideposts in the early 1960's; or the final success in 1968. Their thinking was dominated by the traditional idea of inflation as the result of a general excess of demand and a tight money policy as the accepted way to prevent further inflation. This conception dominated the Nixon policies.

The Five Nixon Game Plans

In the five and a half years of his incumbency, Nixon adopted five different economic game plans to control inflation. Yet the index of wholesale prices rose more than 50 percent, the rate of plant utilization was low and unemploy-

ment was high. Some of the price rise resulted from crop failures, the Arab cut-off of oil and from other foreign developments. But even leaving out farm products, food and fuel, the wholesale index went up 32 percent in the five and a half years, an average rate of approximately 6 per cent a year. It is only necessary to look at the five game plans and the faulty interpretation of actual conditions to see how little the administration advisers understood the actual workings of our economy.

Planned Stagnation

On achieving office, Nixon *immediately* cancelled the guidepost program, announcing that he would rely entirely on free market forces to determine prices and wage rates. Further, he adopted a program of planned stagnation to "bring inflation under control". This program was based on the belief that the 8 per cent rise in the wholesale price index during the preceding four years was entirely the traditional demand inflation. Thus in his first Economic Report, the President said "the growth of total spending, public and private . . . was the driving force of the inflation" and "had gathered powerful momentum by the time the Administration took office . . .". The game plan was to eliminate this assumed "momentum" by halting the growth in total demand for a year thereby intentionally increasing unemployment to more than 5 percent and then allowing some growth but holding the stagnation level for two more years.

This ruthless program was carried out, but wholesale prices rose in 1969 and 1970 faster than in any of the preceding five years in spite of a large budget surplus, almost complete cessation in monetary growth and a substantial decline in real demand. Instead of reducing inflation, the program stimulated inflation and created a recession, bringing utilization of manufacturing capacity down to 74 per cent of capacity, a 15 per cent drop, and raising the unemployment rate to 6 per cent. In two years, the wholesale price rose 7.2 per cent, an annual rate of 3.6 per cent in spite of recession.

Clearly the diagnosis was wrong. Why?

The answer is simple. At the beginning of 1969 there was no demand inflation.

The real problem was the new type of industrial inflation which arises from the market power of big business and big labor. It cannot be controlled by the traditional prescription of limiting demand.

What Nixon did on taking office was to adopt a program which could not control administrative inflation and publicly eliminated the guidepost program which had held such inflation in substantial check. He unleased the "unstabilizing forces" of market power.

The "Conversion" to Keynes

When it became clear after two years that the stagnation program was a failure, the President announced his conversion to what he called the Keynes' doctrine.

In the spring of 1970, both fiscal and monetary policy had been made somewhat expansive as was planned in the original stagnation program. But in the winter of 1970–71, unemployment seasonally adjusted averaged 6 percent and manufacturing was operating at less than 75 percent of capacity.

In these circumstances, the President in his 1971 Economic Report adopted what he called the principle of the "full employment budget". This called for a budget which would balance at full employment but would automatically provide a substantial deficit when employment is low, partly because revenues would tend to be lower and partly because government expenses, especially unemployment insurance payments, would tend to be higher.

Following this principle, the Administration developed budgets which produced the largest economic deficits since World War II. But this second game plan, like the first, relied on free markets to control prices and practically the whole of the increase in buying power that was generated by the expansionist fiscal and monetary measures was absorbed by price increases. In the eight months to August 1971, wholesale prices rose at the annual rate of 5.3 percent, partly because of poor harvests in 1970 but primarily because of the large increase in the industrial price index. It rose at the annual rate of 4.5 percent in spite of the fact that less than 75 percent of manufacturing capacity was being utilized and unemployment was still over 6 percent. No effort was made to control Administrative inflation yet the rise in prices in the presence of the large volume of unused manpower and equipment made it clear that something other than excess in demand was causing inflation.

Again the diagnosis was wrong.

The New Economic Policy

By the summer of 1971, the failure of the second game plan was also evident with inflation rampant in a depression, a condition theoretically impossible according to the traditional theory of the free market on which the advisers to the President relied.

On the 15th of August, 1971, the President suddenly announced a third game plan which the called "The New Economic Policy". This plan finally faced the fact that traditional policy could not control inflation, though it is doubtful that the reasons for this fact were well understood. The plan included a price-wage freeze to be followed shortly by Phase II with more flexible controls.

The essence of this plan was to resist inflation while a huge deficit and a more rapid expansion in the money stock expanded demand, production and employment. It was announced as a general inflation control program and made no clear distinction between the objective of controlling market prices and that of controlling administered prices.

This program was remarkably successful in limiting *administrative* inflation. In the 16 months of Phase I and II the index of industrial prices rose at the annual rate of only 2.8 percent compared to 4.5 percent in the year before the freeze, and much of this rise was in non-concentrated industrial products such as lumber, textiles and leather. In the corporate sector of the economy where most of the market power of big business and big labor resides, the inflation rate dropped from 4.0 percent in the year before the price freeze to 1.3 percent in the year after the freeze. This limiting of inflation was accomplished without markedly changing the relation between the compensation to labor and the compensation to capital.

The very substantial success in controlling administrative inflation was hidden by three developments which raised prices in the non-concentrated sections of the economy. The first was crop failures, mostly abroad, which contracted the world food and feed supply and engendered the big brain exports to Russia. The second was in the international field where a combination of dollar devaluation and heavy demand inflation abroad raised import prices and stimulated exports. The third was the normal rise in the prices of the non-concentrated products such as food, lumber and scrap steel which could be expected from the expansion in real demand which raised real GNP at the rate of 7 percent a year, brought industrial utilization up to nearly 82 percent of capacity and brought unemployment down from 6 to 5 percent.

As a result of these three developments, farm prices rose in the 16 months of Phases I and II by 21 percent, hides and leather products by 24 percent, lumber by 11 percent, fuel by 6 percent and textiles by 5 percent. These and similar competitive items accounted for most of the 7 percent rise in the wholesale price index and the 4.3 percent rise in the consumer price index in that period. None of these represented an exercise of market power by big business or big labor. And they should not be allowed to disguise the very substantial success of the Phase II program in resisting *administrative* inflation.

The rise in farm prices due to the world-wide reduction in farm supply and the partial recovery would have happened whether or not administrative inflation had been controlled and does not indicate a failure of the control program. Rather it emphasizes the inability of price control to limit a rise in traditional market prices without also introducing rationing.

The true failure was again the failure of the Nixon Administration to understand the character of the inflation. It should have accepted the small reflation as a necessary and temporary part of the process of bringing prices into balance during recovery. It should have recognized the price rise from crop failures as a misfortune that hopefully would soon be reversed by normal crops. It acted wisely in adjusting the external value of the dollar and in expanding farm acreage. It should have recognized the success of the control program in limiting administrative inflation and kept it in operation.

Dismantling Controls

Having concluded that Phase II was no longer needed, Mr. Nixon set up his fourth game plan in January 1973. It set out to dismantale the controls over a period of months. It was not only based on inapplicable theory but was so badly designed that it ended in chaos.

The new plan rested on the major assumption that there had been a "momentum" of inflation when he took office in 1969 which had been largely eliminated by Phases I and II. This is shown in the President's Economic Report of January 1973 which says that by the end of 1972, not only had there been a suppression of price increases but "a more durable change had taken place in the conditions underlying wage and price increases. Expectations of rapid inflation had diminished . . ." (p. 68). In other words, the "momentum" of inflation had been largely overcome.

This diagnosis in terms of traditional theory and the failure to understand the role of administrative inflation produced the confusion and chaos of Phase III. The Phase II control organization which had been working well in limiting the arbitrary use of market power by big business and big labor was suddenly dismantled and a new and less well designed organization was set up. Controls were abolished or made self-administered for most non-food commodities and services but kept on for foods where they could not be expected to work without rationing. Mr. Nixon's abhorrence of price controls was made clear without any clear recognition of their role in limiting administrative inflation.

Phase III was widely interpreted as a signal that price restraints had come to an end and industrial prices shot up. In five months they rose at the annual rate of 14 per cent compared to the 2.8 per cent rate of Phases I and II.

Part of this rapid increase was an adjustment for increased labor and material costs but to an important extent it was a widening of profit margins. For manufacturing corporations, profits per dollar of sales increased at an annual rate of more than 40 per cent while hourly wage rates in manufacturing went up at an annual rate of less than 6 per cent.

The developments in this period are highly confused because of the several sources of inflation, particularly the continuing effect of inflation abroad and meat prices at home. But it appears that a considerable part of this burst of inflation was administrative and not directly related to either a contraction in supply or an expansion in specific demand. And certainly it was not a product of a general excess of demand. Manufacturing in the second quarter of 1973 was operating at little more than 83 per cent of capacity and unemployment in that quarter was nearly 5 per cent.

Faced with this burst of inflation, the Nixon Administration again instituted a freeze on prices for two months and in August 1973 introduced Phase IV which expired with the law at the end of May in this year, with industrial prices (other than fuel) up 17 per cent since the end of Phase II. The in-and-out policy of the Administration, the lack of clear realization of the non-traditional character of much of the inflation, the sharp rise of prices in the last year and a half and the continued high unemployment have combined to destroy any credibility in the Administration's grasp of the inflation-employment problem.

More Planned Stagnation

During the summer we operated under the fifth Nixon game plan. As it was explained by the President on July 25th it called for more planned stagnation. The President said "In the short run we must focus on measures to restrain demand" and he outlined this restraint as follows:

> "As far as the Federal government is concerned we will cut the growth of Federal spending. We will hold down the growth of money and credit to check private spending. And I will call on state and local governments, on businesses and consumers to hold down their own spending and increase their own saving as their contribution to the fight against higher prices," adding "Most families could reduce or defer some expenditures—building their savings instead . . .".

This takes us back to square one, the planned stagnation of the first game plan, with three important differences:

(1) The Wholesale Price Index is 50 per cent higher and the industrial price index is rising at a double-digit rate whereas the rate of inflation before the 1968 election was almost negligible by comparison.

(2) National production is well below our full potential with unemployment at the rate of 5.2 percent instead of 3.5 percent and industrial plant operation at only 83.5 percent of rated capacity instead of 87.7 percent that prevailed in 1968.

(3) A dangerous degree of illiquidity has been created through the tight money policy. The money stock *in constant dollars* has been reduced in the last year by between 4 and 8 percent, depending on the price index used to deflate. This illiquidity is reflected in the highest short-term interest rates in a century.

The plan to limit demand might be appropriate if the present inflation were caused by a general excess of demand. But at no time in the last five and a half years has there been a general excess of demand or a demand inflation. For this reason, a program to limit demand would mean continued stagnation or, worse still, further recession, an aggravation of the dangerous degree of illiquidity had a continuation or stimulation of administrative inflation.

Because the current inflation is largely administrative and because we can produce much more than we are now producing, the immediate problem is to expand demand and make sure that the extra demand is not absorbed by price increases in the more concentrated industries.

Clearly the Nixon economic advisers never learned the lesson of administrative inflation which was learned with much trial and error in the Eisenhower-Kennedy-Johnson era.

III. THE ANATOMY OF ADMINISTRATIVE INFLATION

In order to reach full employment and to control administrative inflation it is first necessary to understand more clearly how the latter comes about.

According to traditional theory, administrative inflation is not possible. Prices are *determined* by supply and demand. Specific price increases can arise from unplanned reductions in supply such as crop failures or an oil cut-off and these can add to the level of prices, but the only source of general inflation is an excess in demand. This can be controlled by appropriate monetary and fiscal measures.

There would be no reason to question this theory if each product in the economy were produced by a multitude of enterprises. No producer would have significant market power. This is the condition under which wheat and cotton and hogs and scrap steel are produced. With a general fall in demand their prices fall. With a general rise in demand their prices rise. Government can limit the supply in order to support price. But it cannot for long prevent prices increases when demand rises without some form of rationing. And if price control is temporarily successful, prices rise when the controls are removed. If such products were typical of the whole economy, the only form of general inflation would be that from a general excess of demand and this type of inflation could be controlled by limiting general demand.

Traditional theory would also apply if there were only a few suppliers in each market for goods but it was easy for newcomers to break into the market. Then the few sellers, even though they had enough market power to set their own prices, would be *closely* controlled in the prices they set by the market considerations of demand and costs. With easy entry any attempt to set prices significantly above a competitive level would tend to bring in new competitors, thus reducing the share of the market held by each. This would cut profits per enterprise even though profit margins were increased. Thus, once prices were adjusted to demand and costs, those in a position to administer prices would have little pricing discretion. The fear of bringing in new competition would tend to keep prices close to costs plus a competitive profit. In these circumstances, demand inflation would be the primary type of inflation and it could be controlled by limiting demand.

It is when we examine situations involving big business, big labor and difficult entry that traditional theory does not apply. It is in industries such as steel, automobiles, and many other highly concentrated industries that the traditional principles of pricing become unreal and actual pricing can lead to administrative inflation.

Let us first consider the very difficult problem faced by management in setting prices where there is a protective wall of difficult entry and only a few producers. Then let us consider the respective contributions of management and of labor in generating administrative inflation.

Management's Pricing Problem

Traditional theory gives management a relatively simple problem in setting the price for a particular product. This is simply stated in the economist's jargon: "Set the price which will equate marginal cost and marginal revenue". The economist can show you with simple diagrams why this will result in the maximum profit. Also it is easy to show that, if all enterprises adhered to this formula, administrative inflation would not be possible.

Here we do not need to understand this formula because a big business which priced on this basis would be most unbusinesslike. The traditional economist is only talking about the price which would maximize profit *in the very short run*.—the coming week or the coming month. But the successful corporate management

is not trying to set a price which will maximize profits "this week" or "this month". It is trying to adopt a current price as a step in pricing policies which will bring in high profits over a period of years. The current price which would maximize short-run profit would almost invariably defeat this purpose.

The big problem of management with substantial pricing discretion is to set a current price which will bring in good profits now and not prevent good profits later. A current price which brought in too high corporate profits now could induce other enterprises to climb over the wall of difficult entry and take away part of the market even if they did not force lower prices. Thus the price which would be most profitable in the short run could reduce the opportunity for future profits. In this and other ways the management in its pricing has to balance greater profits now against the prospects of greater profits later. As a result, the prices actually set tend to be significantly below those which would bring in the maximum profit in the current week or month.

The necessity of balancing more short-run profits against more longer-run profits also means that there is a range of possible current prices which are just about equally good. A higher current price can mean greater current profit but a greater risk of lower profits later, whatever price is then charged. A lower current price can mean less current profits but a better prospect of future profits. Thus, even if management *knew* what its demand and costs would be, there is a range of prices among which it is difficult to choose and between which the management is likely to be relatively indifferent.

The pricing process for big business is difficult not only because of the necessity of balancing short and longer-run considerations but also because of the great uncertainty of demand and costs over any considerable period.

Pricing by Formula

Because of the great difficulty of setting prices, managements have simplified the pricing process in two major ways. First they have adopted one or another of a variety of pricing formulas: pricing for a target rate of return; full cost pricing; standard mark-up pricing; break-even pricing; and a number of others. Second, they tend to hold the prices constant for months at a time, changing them only when changed conditions call for a very substantial price change, one that is beyond the zone of relative indifference. For example, basic steel prices are so seldom changed that when a change is made of, say, 5 or 8 or 10 per cent, it becomes front page news. Similarly, the factory price of an auto is usually set for a year at a time. Just what triggers a price change thus becomes of vital importance to the problem of inflation.

The Upward Bias in Administrative Pricing

Neither the use of pricing formulas nor the practice of infrequent large price changes is in itself a cause of administrative inflation, but under them there is a tendency for management to be more sensitive to increases in costs than to cost decline. This is so for a number of reasons. For example, cost increases usually come from outside the enterprise and can be blamed on outside forces so management tends to pass them through. On the other hand, cost reductions are likely to be the result of management's own constructive activity in seeking efficiency and management naturally takes credit for them. Unless the cost reduction is large, management is not likely to reduce the price.

In this and other ways management's reaction to changes in costs is not a balanced reaction and the magnitude of the cost change needed to trigger a price rise tends to be smaller than that needed to trigger a price reduction. This characteristic of big business pricing, alone, could be expected to produce some upward creep in prices.

To this is added the tendency to make an upward price change a little larger than a cost increase calls for and to make a price reduction a little smaller than a cost reduction calls for. In each case, there tends to be a small departure from the dictates of demand and costs and in both cases the departure is up. This reinforces the upward creep.

The Price Creep from Increasing Productivity

This small tendency toward an upward price creep is reinforced by increasing productivity. There is nothing inherent in higher output per worker-hour which is inflationary. When national production per worker-hour goes up because of improved technology, it is to be expected that both labor and capital would share in the gain. This would certainly be expected in a small-enterprise economy. But in a big business economy the process by which the sharing is brought about can lead to an inflationary creep.

Under traditional theory which is for a small-enterprise economy, if the total real income produced jointly by a given body of workers and a given real amount of capital were to increase, the real compensation to workers could be expected to go up because real wage rates would rise. At the same time the compensation to capital would be expected to rise, not because profits margins increased, but because as the quantity sold increased, the same profit margin per unit would bring in a greater total profit. This could be expected where there was no pricing power.

In the presence of substantial pricing discretion and the upward bias in administrative pricing, the adjustment for increased productivity would be expected to produce an upward creep in prices in two ways. Partly the creep would come from the reaction of an average producer to the rise in wage rates required by the improved technology. Partly it would come from differences in the rate of increase in productivity in different industries.

Take first a product for which productivity has increased by just the amount of the increase in national productivity. Say that national productivity has increased 3 per cent and wage rates have appropriately increased 3 percent. Also say that in the case of a particular product, output per worker has also gone up 3 percent. In this case the labor cost per unit of output would not change and there would be no economic justification for a price increase. But with the upward bias in administrative pricing, the 3 per cent rise in wage rates is more likely to trigger a price increase than the 3 percent reduction in the hours of labor used per unit of output is likely to prevent such a triggering. The wage increase is likely to come all at once and be very visible. The productivity increase is likely to be spread out over time, be the net result of many factors and tend to be minimized or overlooked in the pricing process. Thus the perfectly offsetting rise in cost from increased wage rates and fall in costs because of increased productivity are not just offsetting in their practical effect on pricing.

This source of creep is sometimes even built into a price-adjusting formula. This is the case, for example, where a corporation, once having set its price, makes subsequent price adjustments by maintaining a weighted index of the prices of the raw materials and the cost of labor *per hour* going into its product and uses this index to raise the price whenever the index has risen by a certain amount. Since the index takes no account of the difference between labor cost per hour and labor cost per unit of output, it is automatically inflationary when there is an increase in labor cost per hour and no increase in labor cost per unit.

Probably more important is the upward creep coming from the different rates of increase in productivity for different products. If there is no increase in productivity for product A and wage rates generally go up by say 3 per cent as a result of a rise in national productivity, the labor cost per unit in producing this product goes up and this can trigger a legitimate price increase. On the other hand, if productivity in producing product B has gone up 6 per cent, and wage rates have gone up only 3 percent, the labor cost per unit will go down and this calls for a price reduction. Since the likelihood of a reduction in the price of B is much less than the likelihood of a rise in the price of A, the net effect of a 3 per cent average increase in productivity combined with a 3 per cent increase in wage rates is likely to be a rise in the average of prices.

The combination of the upward bias in pricing and the different rates of increasing productivity thus make the rising productivity resulting from improved technology a significant source of creeping inflation where there is substantial pricing discretion. It is ironical that improving technology which is one of the prides of a free enterprise system should also be a source of creeping inflation.

Leaping Administrative Inflation

So far the analysis has assumed that there is no general *expectation* that there will be further inflation. Yet after inflation has continued for a period, with no end in sight, economic decisions tend to be made not only in the light of the usual consideration of demand and costs but also in the expectation of continued inflation. The effect of this expectation in an economy of big business is quite different from that to be expected in an economy of small enterprises.

In a small-enterprise economy, the expectation of inflation leads to speculative buying of commodities which adds temporarily to the total demand. To some extent the extra demand comes from users who seek to protect their future supply. And to some extent it comes from pure speculators who foresee the price rise and hope to cash in on it. This temporary extra demand helps to push up the prices for a period. But the speculative holdings overhang the market and cause a price drop when the speculators think the price is unlikely to go higher. The users

who bought ahead use up their extra stock and so, for a time, buy less. The pure speculators sell out. The successful speculators make money at the expense of those who did not expect inflation. But the temporary speculative demand has little net effect on prices after the speculative period is over.

On the other hand, where there is substantial market power and pricing discretion, the results of an expectation of inflation can be quite different. Users can still be expected to buy ahead with much the same temporary results as under traditional conditions. But the pure speculator is seldom in a position to deal in administered-price products. Sales organizations and promotion are usually required for that. Instead we have a wholly new phenomenon in which the producers arbitrarily raise their prices without any change in demand or costs.

This price rise grows out of the fact that their prices usually represent the rough balance between short-run and longer-run considerations already discussed. An expectation of continued inflation tends to shift the balance toward the short-run and to higher prices. Producers know that extra profits made from "beating the gun" of inflation will not add to the danger of new entrants and future loss of markets. Likewise the few competitors, also expecting further inflation, will go along with big price increases.

Such arbitrary price increases tend to be a one-way street. They do not involve the build-up of extra stocks which overhang the market and later reverse the price rise. And once the price increases have been made, they tend to resist reduction. Furthermore, if general demand is maintained at the higher prices through money and fiscal measures, the expectation of further inflation leads to further arbitrary price increases with no offsetting effect such as the accumulation of speculative stocks to damp it down. There is nothing in market forces or the free enterprise system as it is now operated to prevent the continuation of this process.

Here we have a basis for leaping administrative inflation. Price leaders make large price increases, 10 or 15 percent at a time, which are accepted by their followers because they also expect more inflation.

Unlike demand inflation, such leaping inflation cannot be controlled by a tight money policy short of business collapse. Thus a simple reduction in general demand would not halt either creeping or the more dangerous leaping administrative inflation.

Labor's Contribution to Administrative Inflation

There is little evidence that labor contributes directly to leaping administrative inflation. Once that stage of administrative inflation is reached, labor is perpetually in the process of catching up. Living costs go up drastically and large wage increases become legitimate. The appropriate wage increases can then trigger another round of excessive price increases and thus prolong the period of leaping inflation:

On the other hand, the bargaining power of labor could be used to contribute to creeping administrative inflation. If there were no administrative inflation from the side of management, i.e. if price changes by management were only those justified by changes in demand and costs, it would still be possible for labor unions in their collective bargaining to force wage increases greater than increases in national productivity and increase in living costs would justify. This in turn would add to production costs per unit and lead to greater price increases than legitimate wage increases would require.

Such excessive wage increases could arise from three major sources, a misinterpretation of the indexes of productivity and living costs, a belief by labor that management has raised profit margins excessively thus leading to a labor drive to get its share, and the simple use of market power to get more income comparable to management's action to increase its income. Each of these can result in creeping inflation but could not be expected to produce leaping inflation.

Of course, creeping inflation from the side of labor tends to reinforce that from the side of management. Creeping inflation in a particular period may come from only one side or from a combination of both. However, apart from periods in which labor is catching up for increased prices or unbalanced profits, most of the administrative inflation of the last 20 years has come from the side of management with price increases periodically taking away some of labor's rightful gains from increases in national productivity, followed by a period such as the present in which labor seeks to recover lost ground.

Conclusion

This analysis of the anatomy of administrative inflation can only hope to give an outline of the forces at work in bringing it about. The process is much more complex and many other factors enter into it. Nothing has been said of the market power of labor in the few industries in which labor is well organized but entry to new enterprises is so easy that management has little market power. Nothing has been said of the way increases in the prices of imported raw materials can trigger price increases greater than the increase costs warrant. What has been important here has been to show how it comes about that economic concentration and market power can bring about this new type of inflation so different from demand inflation and so little controlled by the measures which can control inflation arising from an excess in demand.

IV. A PROGRAM FOR FULL EMPLOYMENT WITHOUT SERIOUS INFLATION

Before leaving office, the President's chief economic counsellor, Dr. Herbert Stein, recommended three or four years of stagnation as the way to control inflation. This would cost at least $60 billion a year in lost production. It would place the main burden of controlling inflation on those seeking work and unable to find it. And there is no reason to expect that such a $200 billion program would succeed in bringing administrative inflation under control.

An alternative program is to attack the arbitrary use of market power directly while expanding general demand to achieve full employment of men and machines. This would mean more real income to labor and to capital. It would put the main burden on those in a position to wield market power and this need not be a heavy burden. And experience has already indicated that the abuse of market power can be successfully limited, at least for short periods of time.

In broadest outline this program should consist of three parts:

(1) A price-guidance program applied only to the more concentrated industries.

(2) The expansion of general demand through increasing the money stock while the budget is balanced or produces a small surplus.

(3) The maintenance of a floating exchange rate to minimize the effect of foreign inflation on the domestic economy.

Of these, the price-guidance program will be the most difficult and will be discussed after the role of the other two have been considered.

Inflation Other Than Administrative

Even though most of the current inflation is administrative, some comes from abroad or from the specifies of supply.

A freely floating exchange rate tends to reduce the domestic effects of foreign inflation but is unlikely to eliminate them all. To the extent that it does not, an effort to control the internal effects by contracting the level of general demand in this country would be self defeating.

The appropriate government policy for the items involved is to stimulate production and accept the changed price relationships involved, leaving it to the free market to make the adjustments even though this means a small rise in the average of prices. When inflation abroad is overcome, there would tend to be a return to more normal price relationships.

The same stimulus to production and adjustment to temporarily higher prices would apply to crop failures and energy shortages rather than a limitation in general demand.

Expanding General Demand

The expansion of general demand could be brought about by either a budget deficit or expansion in the money stock but only the latter would deal with the danger of a liquidity crisis. The high rates of short-term interest and the low values of equity securities arise from a combination of not enough capital funds for financing new plant, equipment, inventories and consumer buying and a money stock too small to meet the public's desire to be more liquid by holding larger money balances.

To the extent that general demand is increased through a government deficit, the resultant borrowing takes capital funds out of the market and raises interest rates. To the extent that the government runs a surplus, this tends to increase the funds available for industrial and consumer borrowing thus reducing interest rates.

On the other hand, increasing general demand by expanding the money stock would not only increase the capital funds available to industry and consumers, thereby reducing interest rates, but would increase the stock of that most liquid asset, money, thereby reducing or eliminating the danger of a liquidity crisis.

Also the reduction of interest rates could be expected to bring a price rise in the stock markets, thereby making it easier for industry to obtain equity capital.

For the foregoing reasons the expansion of general demand through monetary measures would be very much superior in the present circumstances to the use of a government deficit. But an expansion of general demand could be absorbed by general inflation unless there is an effective program to control administrative inflation.

Controlling Administrative Inflation

The short-run problem of controlling administrative inflation is to minimize inflationary abuse of market power. How far this can be done through persuasion and how far it requires government sanctions remains to be seen. Here a program will be presented which can use persuasion as far as that can be effective and government sanctions beyond that.

Price and Wage Guidelines

Whether or not government sanctions are used, the first step to inhibit the inflationary abuse of market power is to draw a line between pricing actions which constitute non-inflationary use of such power and those which constitute abuse. Traditional theory gives no solid basis for such guidelines. Its dictum that price should be that which equates marginal cost and marginal revenue is irrelevant to longer-run pricing.

The problem is to distinguish betwen legitimate uses of market power and those which would contribute to administrative inflation. This is not a simple matter for either prices or wage rates. The crude guidelines of earlier attempts at intervention need to be refined.

For example, the simple guide for labor compensation which allows for increases in national productivity and for changes in living costs needs to be reconsidered. The increase in productivity which is available for general division between capital and labor is that which arises from improving technology. When output per worker goes up because a larger part of the work force is more skilled and occupies higher paying jobs, the higher pay absorbs a part of the gain in productivity and only the remainder is available for general division. The cost-of-living index may not be an accurate index for adjustment. To the extent that wage rates in different industries or activities are out of reasonable balance and are brought into better balance by raising the laggards, this absorbs some of the productivity gains and reduces those available for general division. There is some question whether higher living costs due to crop failure, in themselves justify wage increases. Thus, the guideline for the compensation of labor needs to take account of other factors than just an index of national output per hour and the cost-of-living index.

Similarly, the guideline for prices should focus on gross profit margins and should take account not only of the relation of prices to costs but should also include a cost-of-living adjustment for capital i.e. an adjustment for the changes in the buying power of the dollar.

This is not the place to spell out suitable guidelines but only to suggest that they need to be sweated out by experts who reflect the viewpoints of business, labor and consumers. Also it should be emphasized that the guidelines are concerned with *changes* in prices and wage rates not in whether the rates of return on capital are fair. Allowance would have to be made for hardship cases but the immediate inflation control program should not be made to deal with the longer-run problem of reducing market power or minimizing its harmful longer-run effects.

The Persuasive Influence of Fair Guidelines

For both business and labor, administrative inflation is a bad thing. For most big enterprises, if one could offer the management a contract which said "if you sign this contract to abide by the guidelines and adhere to them all other big enterprises and big labor will also sign and adhere" management would sign it as a "good piece of business" provided, of course, that the management thought the guidelines were fair and that others would adhere.

There is clear evidence that management and labor in the concentrated industries both recognize some degree of responsibility for administrative inflation although each tends also to blame the other perhaps even more than itself.

There is also clear evidence that both management and labor do want to exercise some responsibility for the market powers they wield. At the beginning of the Great Depression, President Hoover called on big business not to cut wage rates and for a year and a half most big business enterprises adhered to this guideline even though profits were disappearing. When President Kennedy called on big labor not to push for wage increases greater than increases in productivity this guideline was largely adhered to for nearly four years even though its unfairness was increasingly apparent. There is a substantial reservoir of responsibility on the part of management and labor which could be drawn on if a fair set of guidelines could be developed and agreed on through the joint activity of management, labor and consumers. There could also be important public pressure to adhere to such guidelines.

Private Sanctions

With a fair set of guidelines generally accepted, certain private sanctions could be expected to come into play.

The most important private sanction would be that exercised by management in the process of collective bargaining with labor. If labor sought to obtain wage increases greater than the wage guideline made legitimate, management would have an important tool to resist excessive wage increases. This is, of course, a tool which could be abused and there might be need for a labor appeals board, not to set wage rates, but to interpret the application of the wage guidepost to the facts of the concrete situation as supplied by management and labor.

A comparable sanction would arise where transactions were between big buyers and big sellers, particularly where open-ended contracts were involved. If the seller sought to raise its price more than the price guideline would make legitimate, the big buyer could use the guideline as a tool to resist.

In the case of the ultimate consumers, traditional theory makes the consumer king, giving consumers the sanction of not buying. But in practice, the consumer is not king. Refraining from buying may not hold down price. Indeed, where the practice of full-cost pricing is used, a reduction of demand would mean that the producer must spread overhead costs over a smaller volume, thus increasing full unit costs and a *higher* price may result. In the absence of collective bargaining between management and consumers, only government can provide the sanctions on pricing where management fails to abide by the guidelines.

Limiting the Scope of Government Intervention

Government sanctions to enforce the adherence to guidelines should be limited to those enterprises which have substantial market power. The existence of such power can be deduced from past price behavior, from the degree of concentration in relation to markets and from the relative importance of the products being priced. Where there is no private market power as where there are a multitude of producers of essentially the same products for the same market, there is no problem. Where entry is easy, there would usually be no problem of substantial market power on the part of management. Even where there was market power but the product was unimportant, interference in pricing might not be necessary.

Since the core of the problem lies in the market power of big business, legislation might specify that the pricing of all unregulated corporations controlling assets of more than, say, $1 billion are deemed to be vested with a public interest and *automatically* subject to government sanctions with respect to prices. Then the decision of what smaller corporations should come within the scope of intervention could be left to a government's agency responsible for such determination. A lower limit of, say, $100 million assets might be set so that any power to intervene would not apply to corporations under this size.

Such limitations would focus attention on the few hundred corporations that produce more than half of the country's manufactured goods. Of the corporations not covered, some, if not most, could be expected to abide by fair guidelines. The terms of labor contracts negotiated by such designated corporations would also come within the scope of intervention though it is doubtful if such intervention would be needed.

Such a limitation on the enterprises subject to intervention by government would make the scope of the program very much narrower than that of Phase II of the Nixon controls.

The Powers of a Price Guidance Board

In order to develop fair price and wage guidelines, and exercise such government sanctions as are essential, government would need to set up a price

guidance board with adequate powers. While the price and wage guidelines should have general application, the sanctions to enforce adherence should not only be limited to a relatively small number of enterprises and unions but should also be as limited in character as events make possible. If there were widespread voluntary adherence to the guidelines, the problem of sanctions would apply only to the few cases in which market power was being abused. If departure from the guidelines was widespread, more extensive sanctions would have to come in to play.

At least three different levels of sanction could be employed.

At the minimum, the Guidance Board would presumably have the power to publicize departures from the guidelines. This would require regular reporting and justification of price increases by the big enterprises subject to the Board's scrutiny. The likelihood of an announcement of any abuse of power found by the Board could act as a deterrent in some degree while persuasion to roll back an excessive price increase might sometimes succeed.

A stronger sanction would be available through requiring prior notification of price changes. This would give more opportunity to exercise persuasion and bring to bear the forces of public opinion and avoid the more difficult process of rollback.

A more extreme sanction would be a power in the Board to prevent what were deemed to be excessive price or wage increases.

The use of the more extreme sanction might be limited to major products while the prior notification could apply to a wider range of products and the requirement of regular reporting of price changes would apply generally to the few hundred enterprises designated by the law or the Board as within the scope of the Guidance Board's powers.

The powers of the Board to induce adherence to the Guidelines could also be limited by the rate of administrative inflation. It would be possible to develop a rough index of administrative inflation by compiling an index of prices at wholesale for the products of the more concentrated industries and a price index for the raw materials for these products. With a proper weighting for raw materials and due adjustment for appropriate cost of living adjustment in the compensation to labor and capital, it would then be possible to derive an index which tended to reflect changes in prices due to a widespread abuse of market power by management or labor. This would then reflect roughly the rate of administrative inflation. Indeed, it should be possible to develop a set of price indexes which divided up, at least crudely, the total inflation at the wholesale level into that attributable to crop failures, etc., that attributable to foreign inflation, that attributable to the abuse of market power and that, if any, due to a general excess in demand.

Once a suitable index of administrative inflation was available, the powers of the Guidance Board could be linked to it. Thus, if the index of administrative inflation rose at the rate of less than 1 percent a year, the power of the Board could be limited to price reporting. If it rose at the annual rate, say, 2 percent for each of two successive quarters, the Board would thereby automatically have the power to require prior reporting but not the power to limit or roll back prices. The direct power to control prices in the case of abuse could then accrue to the Board only if the administrative inflation index increased in two successive quarters at the annual rate of, say, 4 percent or more. Of course, it would be up to the Board to decide how extensively it should use its power as thus limited.

The Location of a Guidance Board

Where the Price Guidance Board should be located in the structure of Government is a serious problem.

The logical location would be in the administrative arm of the Government. But this would require personnel who understood the problem of controlling administrative inflation and were committed to making the controls work.

An alternative is to follow the pattern of the Federal Reserve Board but on a temporary basis. The Federal Reserve Board is responsible to the Congress, not the President. A temporary Price Guidance Board could be created which was responsible to the Congress, with its membership appointed partly by the President and partly by the Congress. It could be required that its membership reflected the three interests most concerned with pricing, business, labor and consumer.

Initiating the Program

At the present time there is a serious unbalance between the compensation to capital, the compensation to labor and living costs. In the concentrated industries, real wage rates have gone down in the last year while real profits have gone up. There is a question whether the unbalance should be corrected through a rise in wage rates or a roll back in prices. If the former it would be difficult to prevent some rise in prices without strong resistance to price increases. And a roll back would presumably require even stronger intervention.

Also a program to reflate to a reasonable level of production and employment will involve some degree of price rise in the less concentrated part of our economy.

It cannot be expected that all inflation can be halted immediately but a vigorous program to minimize administrative inflation while demand is expanded to a substantially higher level could be accomplished with a greatly reduced rate of inflation. And it would not cost any $200 billion of lost production.

Nor is there any reason to expect that a price-wage guidance program to limit administrative inflation would simply create an explosive situation as would a price control program to control inflation from a general excess of demand. In the case of demand inflation, a holding down of prices and wage rates by government only postpones the effect of the excess demand. But in the case of administrative inflation a price program which prevents the abuse of market power does not create an excess of demand. If the program of intervention is halted after a successful period, further administrative inflation will arise only if there is further abuse of market power. Whether there will be need for continued price guidance will then depend partly on how well the wielders of market power accept the responsibility which goes with wielding such power and partly on structural changes which might reduce such power.

Intervention in the Free Enterprise System

It will be said with justification that a direct effort to limit the abuse of market power is interference with the freedom of individual enterprises in the free enterprise system. But the free enterprise system has never given the individual enterprise complete freedom. The law interferes with freedom when it says one corporation shall not steal from another corporation and most don't. The law interferes with freedom when it says a corporation shall abide by contracts which it has entered into and most do. The government regulates the prices of public utilities which have the extreme of market power in the form of monopoly.

In each case the interference with the absolute freedom of enterprise arises from the substantial public interest in limiting the particular power of the individual enterprise in order to make the free enterprise system work better. The issue of interference with free enterprise thus turns not on some concept of absolute freedom but on whether the free exercise of substantial market power threatens the working of the free enterprise system.

In weighing the interference with the freedom to exercise substantial market power against complete freedom to set price, it should be recognized that the market power of corporations does not arise from "natural right". The right to combine the capital of many individuals and organize it in the form of a corporation is a right granted by government. And since enterprises would have little market power if there were no corporations, the main problem of the abuse of market power is the abuse of a power arising from a grant of power by government. In no sense would the interference with the free use of the substantial market power of the big corporations be an interference with the natural rights of individuals.

Major Changes in Economic Policy

Twenty-eight years ago the Congress made a major change in economic policy when it passed the Employment Act of 1946. This act gave the Federal Government the new function of maintaining high employment made necessary in part by the changes wrought in the national economy by the modern corporation.

Today we are faced with the need for a second basic change in national policy due to the modern corporation, that of limiting administrative inflation. In the immediate future the program outlined above would seem to be the most suitable. Over a longer period, other ways of limiting administrative inflation may be found and much effort should go into ways of limiting administrative inflation. It does not seem impossible for our society to achieve both full employment and price stability. In no sense does planned stagnation and continued rapid inflation pro-

vide a satisfactory alternative to some government intervention to limit the abuse of market power.

Senator PROXMIRE. Thank you very much, Mr. Means.

Chairman Engman.

STATEMENT OF HON. LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. ENGMAN. Thank you, Mr. Chairman.

The Federal Trade Commission very much appreciates this opportunity this morning to present our views on the impact of Commission activity on price levels, and to respond to any questions which you may have concerning our activities.

Senator PROXMIRE. I might say also, Chairman Engman, that your statement will be printed in full in the record.

Mr. ENGMAN. I understand that. And I will give a brief summary of it, Mr. Chairman.

In the course of your committee's extensive hearings on inflation and the U.S. economy or stagnation on the U.S. economy, to put it more accurately, perhaps, you have listened to a great number of points of view, and you have heard many, many recommendations. Some of them are contradictory. And indeed, I have to confess that it is hard to remain entirely calm in the midst of today's economic maelstrom, which, of course, is a worldwide problem and not just a national problem. We believe, however, that there is a need today for some calm appraisal for first principles. We hope that this can be a time for greater wisdom, and we hope that this country, without minimizing the need for action now, will recognize not only the vitality in our system, but its essential strength, strength that can serve as a base for new visions and for substantial progress.

Competition policy, which is the touchstone of our economic tradition in this country, is founded on a deeply rooted conviction that private property and private ownership of the means of production when governed by the natural forces of competition free of artificial restraints, and free of excesses of monopoly power, can produce the best goods for the least price with the greatest opportunity for innovation and change. And we frankly doubt whether any long-run solution to our economic problems in this country today can be found which fails to heed the principles of competition policy.

Now, Mr. Chairman, you asked the Commission to respond to several questions concerning our role in the Nation's economy. First of all, you asked us to comment on the possible impact of FTC action on price levels.

I have to say to you that compared with some governmental agencies the FTC has a very specialized tool box. We are not a large agency. We set rates, routes, or prices for no industry, and therefore, we have no charges, so to speak, whose efficiency we might attempt to improve. Nor do we exercise sway over interest rates or the supply of money which can relatively quickly, in some instances, at least, influence the level of activity in the economy.

But I do believe that we have one very important tool. And that is our statutory power to insure that prices are competitively deter-

mined. And I suggest further that in a period of rapidly rising periods, these responsibilities, these antitrust enforcement responsibilities, assume uncommon significance.

The importance of competition as an anti-inflationary weapon was highlighted by the President in his economic message to the Congress when he announced his determination "to return to the vigorous enforcement of the antitrust laws." When competition breaks down, that is, when prices are administered rather than determined by the market, the consumer ends up paying more for what he receives.

I have to say to you that the deterrent effect of antitrust enforcement is difficult if not impossible to measure. But that deterrent effect of antitrust enforcement is real, the impact of it. Perhaps the best measure of antitrust effectiveness is in terms of what doesn't happen—the mergers having anticompetitive consequences that do not occur, the restrictive agreements that are avoided on good advice of counsel. Antitrust, I suggest, is low-cost preventive medicine for the public overcharges that can result from the failure to adhere to competitive policy.

We believe, in summary, in the long run, that a vigorous antitrust policy is one of the best inflation fighters going.

Now, I have described one kind of governmental activity, vigorous antitrust enforcement, which I believe can help lessen the impact of inflation. We at the FTC also believe that there are other kinds of governmental activity which contribute to inflation—import quotas and tariff barriers, ad hoc intervention by Government to save a failing company or industry, and wholesale regulation of entire industries can weaken competition and can lead to higher prices.

Countervailing policy considerations unrelated to competition may justify some such activity. But we believe that at the very least, economic costs and benefits of governmental intervention should be carefully weighed. We urge that longstanding Government regulation policy should be reexamined to make sure that the tradeoff between costs and benefits which presumably brought them about is still valid. And I suspect that we may well find that some of the more costly ones look a lot less attractive in a world of 12 percent inflation than they did in a world of 3 percent inflation.

I realize that there will still be cases in which regulation is necessary. And for those cases the advice we offer is that the costs of regulation—and we mean the direct costs, the indirect costs, the present costs, and the future costs—those costs be fully understood and consistent with what we hoped to gain.

So the Commission also supports the President's call for the impact of Government regulation on the economy.

Although we are not, strictly speaking, a regulatory agency, the FTC does not believe that its policies and its processes should be immune from similar scrutiny. And that is why we welcome these hearings today. And that is why, over the past few years, we have directed a critical look inward in an effort to improve our decisionmaking process and to insure that the Commission continue to be a bargain for the American taxpayers as well as the American consumer.

Mr. Chairman, you asked us to discuss what effect the FTC has had on business practices over the past several years. In my statement I

gave a couple of examples of some evaluation of consumer savings. It is true, however, and we must recognize, that the tasks of measuring the true effects of prices on antitrust enforcement, or on prices of antitrust enforcement, is extraordinarily difficult. The data are often unavailable or costly to acquire. Our analytic methods are not yet perfect. And the results are seldom definitive.

But in spite of these limitations, the Commission over the past years has been devoting increased attention to such issues. Our staff is now required to advise the Commission of the estimated costs and consumer benefits expected from proposed enforcement activity. These estimates are carefully considered when investigations are initiated or when complaints are proposed. And I fully anticipate that these efforts will intensify in the months ahead.

We believe that our consumer protection activities also can contribute to lower prices for consumers. Here, too, the Commission is increasingly insisting upon receiving information about the benefits to consumers of the actions we undertake. And the economic benefits to consumers of these activities fall into two broad categories.

The first involves remedying the adverse effects on individual victims of unlawful business practices. For example, the Commission's program to combat fraud in interstate land sales recently produced a consent agreement with one major company that benefited particular consumers to an estimated tune of $17 million. And that amount is almost half of our total annual budget.

The second category involves assuring the accuracy and completeness of information on which consumers rely to make their purchase decisions. Accurate and reliable information is the glue that holds our consumer-oriented economy together. An example of Commission activity leading to better consumer information in enforcement of such things as the Truth-in-lending Act.

Now, to address the problem of data deficiency which I referred to earlier, the Commission has moved forward with a line of business reporting program. We regard line of business reporting as one of the most important efforts of the Commission at the present time.

And, Mr. Chairman, I would be remiss at this point if I did not pause to thank you for your very strong, effective support in the line of business program with respect to some of the challenges that were mounted against it in Congress during the past year.

You just can't examine what you can't see. And you cannot pass judgment on what you cannot understand. At the present time it is hard either to see or to understand what goes on inside some industries. Financial reporting requirements permit the aggregation of so many product lines and so many types of essentially dissimilar operations that the analyst, seeking to disentangle them, might as well be playing pickup sticks wearing a pair of boxing gloves. And this has serious consequences not only for antitrust enforcement, but for economic policy formulation in the broadest sense. It is difficult under the best of circumstances to steer an economy as large and as complex as ours is toward a given objective. But the task becomes all but impossible if the economy's current position cannot be accurately ascertained. And we believe that with line of business reporting for the first time we will have some degree of assurance that anticompetitive pricing and ex-

orbitant profits are not being obscured by a rat's nest of meaningless economic data.

Mr. Chairman, you have asked our opinion about changes needed to improve the efficiency of the Commission. This is a matter which is very close to my heart. We have made major progress, in my judgment, during the past year in improved internal management including for the first time program budgeting, case evaluation systems, and financial management. In addition, in an effort to streamline Commission procedure and to cut down on the problems of delays, we currently are in the process of conducting an in depth examination of our internal rules of procedure and our administrative practices.

Finally, Mr. Chairman, you have asked us to describe the kind of cases and investigations that the FTC has initiated recently and the kind we expect to pursue in the future.

Although we firmly intend to maintain current levels of activity in the consumer protection area, including surveillance of advertising and actions where appropriate against a wide range of unfair marketing practices, the Commission today believes that its more effective contribution to the fight against stagnation is tough antitrust enforcement. We are currently placing unprecedented emphasis at the Commission on this area. And we expect to continue to do so.

My prepared statement describes in some detail our current programs in three inflation sensitive areas.

Mr. Chairman, I have described the Commission's commitment to antitrust enforcement as an important tool in the fight against stagnation. I have also described how the Commission is attempting to improve internal management of our enforcement programs as well as its capability for economic cost-benefit analysis.

As I have indicated, we believe that our line of business reporting program is vital to the case selection process at the Commission. And as we consider these changes and implement many of them, we are mindful that as a law enforcement agency our processes by their very nature tend to be complex, and that fair proceeding can be prolonged. Like competition itself, antitrust enforcement is not an instant cure. Nor is antitrust enforcement the whole answer to stagnation. But we submit that nowhere else in the Government does the consumer get as much back for his buck.

Thank you very much.

[The prepared statement of Mr. Engman follows:]

PREPARED STATEMENT OF HON. LEWIS A. ENGMAN

Mr. Chairman and members of the committee, the Federal Trade Commission appreciates this opportunity to present to your committee its views on the impact of Commission activity on price levels, to discuss current Commission programs, and to respond to any questions which the committee may have concerning Commission activity.

FIRST PRINCIPLES: THE FREE ENTERPRISE SYSTEM

Mr. Chairman, in the course of your committee's extensive hearings on inflation and the United States economy, you have listened to various points of view and you have heard many recommendations—some of them contradictory. And indeed, it is hard to remain entirely calm in the midst of today's economic maelstrom, which, of course, is a world-wide problem and not just a national problem.

It is difficult not to choose up sides when we read about predictions of economic retaliation between the energy-rich and food-rich. It is tempting to call for quick solutions and to invoke protectionist measures for our own industries when they may appear to be coming out second-best in a world contest.

We believe, however, that there is a need for some calm appraisal of first principles. Quite simply, we can spend our energies rushing to espouse quick solutions; or we can recognize the challenge and need for a firm redeclaration of basic principles and development of forthright plans to carry those principles into action.

There are two attitudes that we find alarming in the expanding volume of commentary on today's economy. One is the view that our basic economic institutions have failed and we ought to chuck all those antiquated ideas about free enterprise and competition; the other is that what we really need is a little more regulatory tinkering by the government—a little subsidy here, a little import restriction there—to take the economic pressures off. These, we submit are mere palliatives—not long term solutions.

The problems of our economy are deep and complex. They are not just reruns of the failures to cope with the past. Simple, piecemeal solutions will not do this time. For one thing, in this country we no longer live in a geographic or economic frontier society, where excesses and mistakes can frequently be depended upon to dissipate themselves in the next rush of economic development. For another, we are now part of an emerging world trading society and confronted with other systems that don't precisely mesh with ours.

Is this, then, the signal for abandonment of old values? In recognizing that there may have been substantial accomplishments under other economic systems, should we turn away from our own traditions of competition and free enterprise?

We believe not.

Analysts may talk in terms of economic trade-offs in world control of food and energy resources, but this country ought not barter away the underlying principles of our economic system, or delude ourselves with expedient answers that ignore or erode those principles. We hope that this is a time for greater wisdom, and we hope that this country—without minimizing the need for "action-now"—will recognize not only the vitality in our system, but its essential strength—strength that can serve as a base for new visions and substantial progress.

Competition policy, which is the touchstone of our economic tradition, is founded on a deeply rooted conviction that private property and private ownership of the means of production, when governed by the natural forces of competition, free of artificial restraints and excesses of monopoly power, can produce the best goods for the least price, with the greatest opportunities for innovation and change.

There are some who would deny this, I know. They say that a system based on competition policy will lose out in a world where consumer goods are sold on the basis of power advertising, where economic power is a multi-national phenomenon, and where other nations do not share our respect for tough price competition.

But we believe that our competitive system should not be cashiered simply because doom-sayers are finding fault with today's economic performance. We have at our disposal any number of wonderfully complex proposals for monetary control, for the re-engineering of supply and demand factors, or for government dictation of what the consumer can and should have in the name of anti-inflation. Some of these measures may be necessary to deal with immediate problems on an emergency basis and to ensure that other societal values and policies are preserved. But we frankly doubt whether any long-run solution to our economic problems can be found which fails to heed the principles of competition policy.

THE ROLE OF ANTITRUST ENFORCEMENT

Mr. Chairman, you have asked the Commission to respond to several questions concerning our role in the nation's economy. First, you have asked us to comment upon the possible impact of FTC action on price levels.

In my introductory comments, I suggested that it takes many tools to overhaul a complex machine such as the U.S. economy. If we are to construct a solution to inflation, we must lay our hands on every tool at our disposal.

Compared to some government agencies, the Federal Trade Commission has a specialized toolbox. We are not a large agency. We set rates, routes, or prices

for no industry and, therefore, have no charges whose efficiency we might improve. Nor do we exercise sway over interest rates or the supply of money which can relatively quickly influence the level of activity in the economy.

But we do have one very important tool—our statutory power to ensure that prices are competitively determined.

The Federal Trade Commission is charged by law with preserving the health of the free enterprise system by ensuring that competition is both free and fair. This task is basic to the protection of the public and to the equitable distribution of economic rewards under any circumstances. But in a period of rapidly rising prices, these responsibilities assume uncommon significance.

The importance of competition as an anti-inflationary weapon was highlighted by the President in his Economic Message to the Congress when he announced his determination "to return to the vigorous enforcement of antitrust laws."

In a free economy, as contrasted with a state-administered economy, competition is the only assurance that scarce resources are allocated in accordance with the value priorities of the society. In layman's terms, competition assures the consumer of getting the optimal mix of price and quality, and the efficient businessman of getting a fair profit.

When competition breaks down—that is, when prices are administered rather than determined by the market—the consumer pays more for what he receives. Anyone who doubts this need only examine some historical examples of savings to consumers brought about by antitrust enforcement.

In 1964, for instance, the Federal Trade Commission brought proceedings against bakers in the Seattle area for price fixing. The subsequent cease-and-desist order saved consumers in the Seattle area an estimated $3.5 million annually, the amount they had been paying because of the collusive activity.

Similarly, in 1964, the Federal Trade Commission brought proceedings against the nation's producers of the drug, tetracycline. Following action by the Commission and by the Justice Department the drug's price dropped by approximately 75 percent, a nationwide annual savings to consumers of at least $60 million.

These examples point up the potential which anticompetitive conduct and abuse of market power have to cause and sustain price increases.

The deterrent effect of antitrust enforcement is difficult, if not impossible, to measure, but its impact is real. Perhaps the best measure of antitrust effectiveness is in terms of what doesn't happen—the mergers having anticompetitive consequences that don't occur; the restrictive agreements that are avoided on good advice of counsel. Antitrust is low cost preventive medicine for the public overcharges than can result from the failure to adhere to competition policy.

In summary, we believe that in the long run a vigorous antitrust policy is one of the best inflation fighters going. No system devised by man ever has, or probably ever will, totally smooth out the economic ups and downs. There are too many uncontrollable variables and interrelationships in the supply and demand equation. So, too; antitrust is not going to bring prices down when inflationary demand is forcing them up but what antitrust can do is to ensure that inflationary price increases attributable to excessive demand and short supply do not provide a cover for additional price increases resulting from anticompetitive conduct or the abuse of market power.

Even more important in the long run, antitrust can condition the system to respond competitively to economic pressures. Just as the fighter who lets himself get lazy and fat is a good candidate for a knockout, so the competitor who slides into easy ways is going to be less responsive when the crunch comes. Businesses that run lean can and do respond; and antitrust, when its enforcement is respected by the business community, is a good antidote to middle-age economic spread.

As an input to the cost of living index, one price rise may look like any other. The numbers do not distinguish increases that are market clearing in nature from increases that are, in effect, tribute exacted by sellers with the power and inclination to do so. To the consumer, it is all the same. While we cannot protect him from the former, he should not be asked to abide the latter. It is our intention to see to it that he is not.

IMPROVING ENFORCEMENT PROCESSES

I have described how one kind of government activity—vigorous antitrust enforcement—can help lessen inflation. We at the FTC also believe that other kinds of government activity can contribute to inflation. Import quotas and tariff

barriers; ad hoc intervention by government to "save" a failing company or industry; and wholesale regulation of entire industries can weaken competition and lead to higher prices.

Countervailing policy considerations unrelated to competition may justfy some such activity. But we believe that, at the very least, economic costs and benefits of government intervention should be carefully weighed. We urge that long standing government regulatory policies be re-examined to make sure that the tradeoff between costs and benefits which presumably brought them about is still valid. We may well find that some of the more costly ones look a lot less attractive in a world of 12 percent inflation than they did in a world of 3 percent inflation.

But there will still be cases in which regulation is necessary. For those cases, the advice we would offer is that the costs of the regulation—and we mean the direct costs, the indirect costs, the present costs and the future costs—be fully understood and consistent with what we hope to gain.

The Commission therefore supports the President's call for a study of the impact of government regulations on the economy.

Although not a regulatory agency, the Federal Trade Commission does not believe that its policies and processes should be immune from similar scrutiny. That is why we welcome these hearings. And that is why, over the past few years, we have directed a critical look inward in an effort to improve our decision-making process and to assure that the Commission continues to be a bargain for the American taxpayer as well as the American consumer.

Currently, this concern is reflected in several distinct but not unrelated programs.

Measuring the effects of enforcement programs

Mr. Chairman, you have asked us to discuss what effect the FTC has had on business practices over the past several years.

In general, our economists tell us that antitrust enforcement lowers prices. Unfortunately, we cannot say how much. In fact, economists know very little about the actual effects on prices from antitrust enforcement.

What little is known is encouraging. The Seattle bread case and the tetracycline cases referred to earlier are good examples.

The task of measuring the true effects on prices of antitrust enforcement is extraordinarily difficult. The data are often either unavailable or costly to acquire. Analytic methods are not perfect. The results are seldom definitive.

In spite of these limitations, the Commission, over the past year, has been devoting increased attention to such issues. Our staff is now required to advise the Commission of the estimated costs and consumer benefits expected from proposed enforcement activites. These estimates are carefully considered when investigations are initiated or when complaints are proposed. I fully anticipate that these efforts will intensify in the months ahead.

Up to this point, I have concentrated on our antitrust and economic research activities because of their obvious economic content. Our consumer protection activities can also contribute to lower prices for consumers.

Here, too, the Commission is increasingly insisting upon receiving information about the benefits to consumers of the actions we undertake. The economic benefits to consumer of these activities fall into two broad categories: the first involves remedying the adverse effects on individual victims of unlawful business practices. For example, the Commission's program to combat fraud in interstate land sales recentlly produced a consent agreement with one major company that benefited particular consumers to an estimated tune of $17 million. That amount is almost half of our agency's total annual budget.

The second category involves assuring the accuracy and completeness of information on which consumers rely to make their purchase decisions. Accurate and reliable information is the glue that holds our consumer-oriented economy together. An example of Commission activity leading to better consumer information is enforcement of the Truth-in-Lending Act. By requiring that lenders subject to the Act inform consumers in a uniform manner of the costs of credit, consumers may shop for credit and obtain the best terms available. The Commission's trade regulation rules requiring the disclosure of material product information to consumers also stimulate competition by enabling buyers to make better informed choices.

Line of Business Reporting

To address the problem of data deficiencies, the Commission has moved forward with the Line of Business Reporting Program. We regard Line of Business as one of the most important efforts of the Commission.

Under this program, large manufacturing firms will be required to report their sales and costs for major activities in slightly more than 200 product categories.

Mr. Chairman, I would be very remiss if I did not pause to thank you for your strong and effective support of the Line of Business Program.

Line of Business will not only help us to guide antitrust resources toward productive ends, it will also serve other important purposes.

You can't examine what you can't see, and you can't pass judgment on what you can't understand. At present, it is hard either to see or to understand what goes on inside some industries. Financial reporting requirements permit the aggregation of so many product lines and so many types of essential dissimilar operations, that the analyst seeking to disentangle them might just as well be playing pickup sticks wearing boxing gloves.

This deficiency has serious consequences not just for antitrust enforcement but for economic policy formulation in its broadest sense. It is difficult, under the best of circumstances, to steer an economy as large and as complex as ours toward a given objective. The task becomes all but impossible if the economy's current position cannot be accurately ascertained.

With line of business reporting, for the first time, we will have some degree of assurance that anticompetitive pricing and exorbitant profits are not being obscured by a rat's nest of meaningless economic data.

In addition, by identifying those industries in which profits are greatest, the published results will encourage new entrants whose competition will have a salutary effect on prices.

Commission Management

Mr. Chairman, you have asked our opinion about changes needed to improve the efficiency of the Commission. This is a question to which I, the Commission, and all of our senior staff devote daily attention. We have made major progress during the past year in improved internal management, including program budgeting; case evaluation, management and tracking; and financial management.

In addition, in an effort to streamline Commission procedures and cut down on delay, we are currently in the process of conducting an in-depth examination of our internal rules of procedure and our administrative practices.

Legislative Authority

Another question which you addressed to us was whether additional manpower should be added to the Commission staff and whether new legislative authority is needed.

During the last few years, the Commission's staff and budget have gradually increased. The staff has grown from 1,230 in 1969 to 1,636 in 1974. In our view, further increases could be effectively absorbed, particularly in pursuit of our antitrust activities. I am hopeful that the current budget process will produce a detailed and fully justified basis for such growth.

We are not prepared at this time to offer specific legislative proposals. Very important legislation, now pending before the Congress, would significantly affect the Commission. For example, both the House and Senate have passed legislation relating to consumer product warranties and general Federal Trade Commission authority. The Commission has endorsed the Senate bill and opposed the House bill. Until these pending issues are resolved, we are unable to recommend further legislation affecting the Commission.

We would like to add our support, however, to the pending legislative proposals of the Antitrust Division of the Department of Justice for increased investigational authority. We would also like to register our support for President Ford's proposal to increase fines and penalties for violation of the Sherman Act.

Current Specific Programs at the Federal Trade Commission

Finally, Mr. Chairman, you have asked us to describe the kind of cases and investigations that the FTC has initiated recently and the kind we expect to pursue in the future.

Although we firmly intend to maintain current levels of activity in the consumer protection area, including surveillance of advertising and action where appropriate against a wide range of unfair marketing practices, the Commission believes that its most effective contribution to the fight against inflation is tough antitrust enforcement. We are currently placing unprecedented emphasis in this area and expect to continue to do so.

To illustrate this emphasis, let me briefly describe current programs in three specific areas: energy, food and health care.

Energy

The overall Energy Program is one of the dominant themes in the Commission's antitrust activities. Taken together, the energy industries constitute one of the most important and pervasive segments of the economy, both to consumers and to businesses that depend on energy sources. To the extent that unsatisfactory competitive conditions in these industries exist, they could have substantial inflationary impact on both direct users of energy products and indirectly on the price of virtually all goods and services.

The Commission's overall energy program has two facets: a very heavy commitment to antitrust enforcement and an obligation to make a comprehensive examination of the structure, conduct, and performance of these industries and to assess the impact of government programs on them. The Commission's energy-related efforts are divided into two distinct, but interrelated, programs:

1. *Petroleum Industry Litigation Program.* This embraces the *Exxon, et al.* case. This case may be the largest, most complex piece of litigation ever undertaken by the Commission. It involves charges of monopolization against eight of the primary refiners of petroleum products.

2. *The Energy Study Program* has been mandated by Congress with the objective of producing a report, or series of reports, providing information as to competitive conditions across the energy industries including reporting of natural gas reserves, inter-fuel joint ventures, and possible violations of existing laws prohibiting certain interlocks among corporate directorates. In addition to producing reports, this effort is also directed towards the initiation of possible additional major enforcement efforts in the energy area. Initial enforcement activities have already begun with six proposed complaints involving interlocking directorates among petroleum-related firms.

Food Industry Programs. The Commission's effort in the food industry involves a broad thorough investigation of all segments of the food industries. Its objective is to utilize antitrust remedies in the most effective manner to ensure maximization of competition in this most inflation-sensitive and price-volatile area of the economy. The overall food industry effort is composed of five specific programs designed to reflect the major segments of the overall food industry.

1. *Grower-Producer.* Specifically, the Commision is examining the Capper-Volstead exemption to the antitrust law. Individual enforcement investigations are also under way involving charges of price fixing in agricultural products.

2. *Manufacturer-Processor.* Among specific activities are the "Breakfast Cereal" case (*Kellogg, et al.*), and maturing investigations in several other segments. These matters, together with an on-going surveillance of mergers in the dairy and grocery product manufacturing areas, constitute the largest portion of our food program. This program also covers the Commission's investigations into the existence, nature, and effect of backward integration of food processors into raw agricultural production.

3. *Distribution and Marketing.* This program involves application of the antitrust laws to wholesaling and distributing functions, including discriminatory practices (Robinson-Patman Act violations) and vertical restraints generally. This program is aimed at practices in the wholesale distribution area that may be limiting competitive opportunities of rival buyers or sellers.

4. *Retailing.* This includes the Commission's survey of retail food pricing practices and competitive conditions in food retailing. It also includes an examination of delivered pricing systmes in the food industry to determine whether the methods are unfair to the purchasers or ultimately to consumers.

5. *Food Commodities.* This program involves an examination of the possible application of antitrust principles and remedies to domestic and international activities and competitive conditions in food commodites.

Health Care. The Commission's newest major enforcement effort, the Health Care Program, constitutes a developing effort by the Commission to apply broad antitrust remedies to competitive problems contributing to the increasing cost of medical care. A number of investigations in the area of drugs, medical laboratories and hospital supplies are underway and may develop into major law enforcement efforts.

In addition, the health care investigations may produce recommendations to the Congress for dealing with specific competitive problems in these industries not currently correctable through antitrust remedies.

CONCLUSION

Mr. Chairman, I have described the Commission's commitment to antitrust enforcement as an important tool in the fight against inflation. I have briefly described three key programs in energy, food and health care which illustrate this commitment. I have also described how the Commission is attempting to improve internal management of enforcement programs as well as its capability for economic cost/benefit analysis. As I have indicated, we believe that our Line of Business Reporting Program is vital to the case selection process at the Commission.

As we consider these changes and implement many of them, we are mindful that as a law enforcement agency, our processes by their very nature tend to be complex and that fair proceedings can be prolonged. Like competition itself, antitrust enforcement is not an instant cure.

Senator PROXMIRE. Thank you very much.

Commissioner Thompson, go right ahead, sir.

STATEMENT OF HON. MAYO J. THOMPSON, COMMISSIONER, FEDERAL TRADE COMMISSION

Mr. THOMPSON. Thank you very much, Mr. Chairman.

Senator PROXMIRE. May I say incidentally, Mr. Thompson, you have a number of memorandums and so forth attached. And those memorandums will be incorporated in full in the record. And I appreciate very much getting that documentation.

Mr. THOMPSON. Thank you, sir.

Mr. Chairman, I appreciate this opportunity to review the work of the Federal Trade Commission and more particularly its impact on price levels in the economy.

As you have already observed, I am still a relative newcomer to the Commission and that, having no special knowledge of its work in earlier years, I would like to confine my remarks to the period of my own tenure, namely, the last 16 months, from July 2, 1973, to date.

Mr. Chairman, as I told the Commerce Committee at the time of my confirmation to the FTC, I am a conservative man. I think the free enterprise business system is the most effective device for producing and distributing goods and services ever devised by the mind of man. I believe there are very few things the Government can do that a free market could not do better—and at a great deal less cost.

One of the things a free market apparently cannot always do though, Mr. Chairman, is keep itself free and competitive. And when a market ceases to be free and competitive, it can no longer claim the support of this conservative Texas lawyer. My loyalty is to free enterprise, not to monopoly. And I do not try to slide over that distinction by denying that we have any noncompetitive industries in this country, industries that have suppressed the normal forces of competition among their members and are thus selling their products at artificially inflated prices.

Nor do I make any excuses for monopoly and price fixing. They are antisocial types of behavior and should not be allowed to occur in a society that prides itself on its efficiency and its fairness. The public has a right to buy the goods and services it needs and wants at fair competitive prices. To inflict a higher-than-competitive price on consumers is to steal from them and free enterprise cannot afford to be

associated with stealing. It is going to need all the friends it can get some day and I do not think that is the way to win them in the necessary numbers. Monopoly is not a natural part of free enterprise. It is, instead, a cancer on it, one that will surely kill it if not properly treated.

All of this is by way of explaining, Mr. Chairman, why I came to the Federal Trade Commission in the first place and why I have made various recommendations from time to time as to what I think it ought to be focusing its attention on. I joined the Commission because I thought it had something to do with maintaining the effectiveness of competition in our various markets. And I thought that was important because I also thought that competition had something to do with the long-run survival of free enterprise.

Put very candidly, Mr. Chairman, preserving free enterprise takes priority, top priority in my personal scale of values. Preserving competition is important for a number of reasons but the most important of them to me—and by a very wide margin—is that without it the days of free enterprise are clearly numbered. The American public will stand for a lot of things. But real monopoly—the kind that takes real money from real people—is not one of them.

When I came to the FTC, I had the idea that it was an economic agency, one that was supposed to do things that would have beneficial economic effects for the Nation's consumers. I did not understand then, nor do I understand now, that this tiny Government agency is charged with the duty of righting every consumer wrong from sea to shining sea. Some 25 billion dollars' worth of advertising hits the public each year and much of it, I need not tell this committee, is something less than the truth, the whole truth, and nothing but the truth. Some of these untruths and half truths are economically harmful to the consumer and ought to be dealt with accordingly. But many others are economically harmless and do not merit the expenditure of resources as potentially valuable as those held in trust for the Nation by the Federal Trade Commission. We have more important things to do, in my opinion, than try to make every advertiser in the land tell the absolute literal "truth" about every last article of the country's commerce. I ask two questions of our legal staff, Mr. Chairman, on every case that comes before us: "Who got hurt? By how much?" (Exhibit 1.) Unless I get good answers to those questions, I do not vote for the case.

I also ask those questions on the antitrust side of our work, Mr. Chairman. I came to the FTC believing, as I mentioned a moment ago, that its mission was economic in character. I did not understand then, nor do I understand now, that the FTC has a duty to "protect" any business firm—small, medium or large—from the rigors of competition. Protecting people from the consequences of their own weaknesses is a legitimate social function under appropriate circumstances but it is not one that has been, or that ought to be, assigned to the Federal Trade Commission. The FTC, as I view it, is not a "welfare" agency and should not be required to suppress competition in order that inefficient business firms can survive decade after decade. Businessmen who cannot compete, like anyone else who cannot do his job as efficiently as his competitors can do it, should take his talents and resources to another field.

Shortly after I arrived at the FTC, we received a letter from a Washington law firm requesting us to reconsider an advisory opinion in which we had suggested that "back-haul allowances" might be illegal under the Robinson-Patman Act. In substance, this meant that a customer who happened to be driving by his supplier's place of business with an empty truck and wanted to pick up a shipment could not be allowed a price reduction equal to the transportation charge he had saved the supplier. Since I thought the purpose of trucks was to haul things rather than run around empty, I began urging the Commission to revoke this advisory opinion. (Exhibit 2.) Later, we did at least limit its application. The National Commission on Productivity has estimated that $250 million per year in excess transportation costs could be saved if the country's trucks were freed from all back-haul restrictions.

Senator PROXMIRE. May I interrupt at that point and ask Chairman Engman to give us his reaction to the Interstate Commerce Commission and the FTC's interest?

Mr. ENGMAN. I think that Commissioner Thompson in his statement makes an essentially correct observation. The Commission did clarify the backhaul opinion about a year ago, in effect saying that in our view those suppliers of those individual firms using the deliberate pricing zone system would not be violative of the Robinson-Patman Act if they offered an f.o.b. price option on a nondiscriminatory basis to customers abroad. The question of whether or not there are additional problems with respect to the Interstate Commerce Commission regulation on backhaul I think is a separate kind of question, and obviously, is the kind of question that arises by the nature of their regulatory scheme and their certification process, and obviously does not have to be concerned about the Robinson-Patman Act.

Senator PROXMIRE. I take it, Commissioner Thompson, that you are not satisfied with the overall economic result as yet. You still have deadheading trucks, do you not? By legal fiat we require them to deadhead.

Mr. THOMPSON. I assume that to be the result, as the chairman has properly observed, of ICC regulations.

Senator PROXMIRE. Right.

Mr. THOMPSON. I might say that the work that the Federal Trade Commission has on this score has come to an end and it is clear what the attitude of the present Commission is as to the backhaul situation.

Senator PROXMIRE. What relief has the consumer gotten so far, and what could he receive if we ended this practice conclusively?

Mr. THOMPSON. As I have stated, Mr. Chairman, one source, the National Commision on Productivity, estimated $250 million in savings. And a retail food group suggested to me that the real figure is probably closer to $750 million per year.

Senator PROXMIRE. You are talking about the potential saving?

Mr. THOMPSON. No, sir. My recollection is, Mr. Chairman, that we modified that advisory opinion a little over a year ago, and it was projected——

Senator PROXMIRE. You are mentioning now that it would amount to $250 to $750 million?

Mr. THOMPSON. Annual savings that they anticipate would result.

Senator PROXMIRE. From the action which the FTC has taken?

Mr. THOMPSON. Correct, sir.

Senator PROXMIRE. As Chairman Engman indicated, this is an important part of the problem, but only part of it. There are still problems of trucks that are unable to pick up loads and have to deadback, is that right?

Mr. THOMPSON. I understand that to be the case.

Senator PROXMIRE. You do not have economic data on that?

Mr. THOMPSON. There is nothing, of course, we at the Federal Trade Commission could do about that. That is the reason why, as I reflected in my statement, that that matter seems to have come to an end, at least as far as the FTC is concerned.

Senator PROXMIRE. Maybe I misunderstood Chairman Engman, but I understood him to say—I was delighted to hear it, because we do not get enough of that, there is too much courtesy among the top officials in the various agencies—I understood, Chairman Engman—and you can speak for yourself—that you criticized the policies of some of the other regulatory agencies in this respect as not being sufficiently strict and tough in requiring competition; is that right?

Mr. ENGMAN. What I did, Mr. Chairman, was to indicate that in my opinion every one of these regulatory policies ought to be reexamined in the light of our situation today. I am aware of the fact that there may be some regulation on which the benefits justify the cost of that regulation. But that regulation does have costs, whether it be in deadheading requirements or whatever, and in my view we ought to on an across-the-board basis, have an examination of each and every one of those policies.

Senator PROXMIRE. I could not agree more.

As I understand it, the President of the United States, shortly after he took office, said that we ought to have an inflation impact study on all legislation. We certainly ought to have an inflation impact study of regulation, which is ongoing and within the control of the administration. And I am delighted to hear your initiative in urging that kind of reconsideration. It is good to see that the FTC has made some progress in this respect.

Go ahead. I am sorry to interrupt you.

Mr. THOMPSON. That is all right, Mr. Chairman. I guess a man gets pleased when he hears someone agree with him. In recent days I have requested and sought from our staff an economic impact statement relative to what our staff proposes to the Commission for action. I hope that we will have more of this in this area.

Senator PROXMIRE. You are saying an inflation or an economic impact statement on Federal Trade Commission action?

Mr. THOMPSON. Correct, sir; yes, sir. It relates to the same questions that I have asked all along, who got hurt and how much; it is just an extension of that same thing.

And this backhaul example that I have just given you, Mr. Chairman, illustrates what to me is a major problem in our enforcement of this particular statute—and here I am referring to the Robinson-Patman Act—and indeed, one of the major problems of the Federal Trade Commission. Now, the thrust of the Robinson-Patman Act is that, unless a supplier is willing to give a particular price concession to all of his customers in a given market, he must not give it to any. Now it so happens that suppliers value big customers more highly

than little ones and therefore compete more intensely for the patronage of the former than of the latter. If the FTC forces every chain grocery store and drug store in the land to pay the same price that is paid by the "mom and pop" grocer and the neighborhood pharmacist, the effect will inevitably be to eliminate a vast array of price discounts and thus raise the overall price in those important sectors of the economy.

Let me explain this problem a little further, Mr. Chairman. Back in September of 1973, only a couple of months after I arrived at the FTC, we received a study that had just been completed on this issue, the "Brooks Report on Pilot Survey of Robinson-Patman Orders." As I understand it, our investigators had gone out and asked a number of executives in the industries where we had entered price discrimination orders about the effects of those orders on their businesses. Some of the comments we received were very revealing. One of them, for example, gave this summary of his experience with our orders in this area: "There is less vigor," he told us, "in competitive pricing now. Prices are 'more set' than before the FTC ruling. * * * We don't have to football as much as before, therefore it is an advantage to us." And another commentator explained: "It is probable that the final furniture prices by suppliers affected by FTC action to IFB's clients would have been lower by 10 to 20 percent without the FTC decision."

Mr. Chairman, the Federal Trade Commission is faced with a dilemma here. This law, one that was born in the depths of the Great Depression and that reflects the hostility to rigorous competitive pricing that was characteristic of those dark years in our national history, strikes what to me is a tragically discordant note in this era of double-digit inflation. Is it the job of the FTC to raise prices or to lower them? Our economic staff is usually quite clear on this point. Economists are always against high prices. But our lawyers, not having absorbed with their mother's milk the notion that high prices and sin are synonymous, suffer mightily when told that it is their mission to make prices rise today and fall tomorrow, depending upon which of the various antitrust laws they happen to be suing under at the moment.

Are we the consumer's friend? Yes is the answer on those days when we're attacking price-fixing arrangements. The answer, however, is no on the alternative days when it's price cutting that we're trying to stop. Conflicting goals breed a kind of intellectual schizophrenia, a painful sense of frustration that is rather painfully reflected, I believe, in a recent memo from our Bureau of Economics that I am attaching here, one in which our economists deplore the fact that a business firm has been forced to "come to the Commission and ask for permission to engage in price competition" (exhibit 3). The Justice Department, which has equal jurisdiction to enforce this law, leaves its enforcement to the FTC. And indeed the Attorney General, Mr. Saxbe, has recently called for the repeal of a statute that reportedly has a similar price-fixing effect, the Federal fair trade law. Why should one branch of the Government be an advocate for fixed prices while another urges the opposite?

Mr. Chairman, I do not want to leave the impression that the choices faced by the Federal Trade Commission in the selection of its cases are easy ones, requiring only a firm dedication to free enterprise and

competitive pricing. The temptation to help a group of businessmen protect their price structure from erosion at the hands of invading discounters can be a strong one, particularly if they are small businessmen. And the temptation to step in on the side of truth can be equally powerful in the scores of petty fraud cases that are constantly being discovered by our legal staff in the consumer protection field.

The inescapable problem in both of these areas, however, is that, first, the general public is hurt rather than helped by action of the first kind and, second, that it is a poor use of scarce resources to pursue the second line of action. The first, in addition to raising prices on the few commodities involved, weakens our resolve to give inflationary pricing no quarter at any point along the front. The second, in consuming so much of our limited supply of funds and energy to so little avail, dulls the sense of urgency, I think we ought to have in that larger task of preserving competition. Someone has to fight petty fraud sometime. But this Nation is currently facing a grave crisis and I believe that, until that crisis is behind us, less urgent problems should yield to those of a higher priority.

All of this is by way of saying, Mr. Chairman, that I came to the FTC believing that this country was at war, that it was engaged in a life-or-death struggle with a two-headed monster called inflation and unemployment. Inflated prices mean that consumers can buy less of each commodity. Less consumer purchasing means lower volumes of output and, as I need not remind you, sir, decreased output means fewer workers are needed on the assembly lines. Lower prices, on the other hand, mean just the opposite—more consumer buying, stepped-up production levels, more workers back on the job, more and fatter pay checks, and the good free enterprise system humming once more with the kind of high-speed efficiency that has made the living standard of the average American the envy of the world.

Believing that competitive pricing was the key to all this, I have spent a good deal of my time at the Commission urging that more and more of its resources be diverted away from what I consider relatively low-yield matters and over to some others that I believe would produce much larger benefits for the consuming public. My keenest interest has been in the area of cracking down on price fixing (exhibit 4). In the past, the Commission has left this problem primarily to the Antitrust Division of the Justice Department. There've been some good reasons for this. Justice has a lot of experience with this problem and it has access to the resources of the FBI and the grand jury system.

However, if the economic literature is to be believed, however, the amount of price fixing going on in the country is not on the decline. And it is supposed to be costing the public a very large amount of money each year. While I don't know of any figures on the total cost of price fixing as such, the Commission's own chief economist, Mr. Frederick Scherer, has estimated that all anticompetitive elements in the economy are probably inflating prices by as much as 6 percent of GNP each year, or about $80 billion annually in current figures.

The impression one gets from the economic literature, then, as I pointed out to the Commission in the attached memo on this subject,

is that we are surely talking about an annual loss in the range of $10 billion or more from this terribly destructive practice of fixing prices by collusion. More funds have been allocated to this problem in our 1976 budget request but I must confess, Mr. Chairman, that I ain't yet satisfied. I would like to see the FTC in the forefront here, giving its first priority to a concentrated attack on this kind of artificial and inexcusable inflation of consumer prices.

Mr. Chairman, I think the Federal Trade Commission is moving in the right direction at the present time. I would like to see it give more emphasis to price-fixing cases however. I would like to see it focus much more single mindedly on the kinds of actions that would have the maximum impact on the consumer price index and put aside, for the duration of the present emergency, much of its traditional activity, particularly the kind of cases that are aimed at keeping prices high for the benefit of firms that don't really have the will or capacity to engage in the kind of tough competition we need so desperately at this time. And I would also like to see the Commission engaging in more of the kind of cost-benefit analysis I have been urging upon it since I joined the Agency 16 months ago, including a careful monitoring of its various actions to determine their effects, if any, on consumer prices. But I am one who believes that it is better to light a single candle than curse the darkness. I am confident that, with the support of this committee and the Congress as a whole, the Federal Trade Commission can and will play a vital role in winning the Nation's fight against its No. 1 enemy of the decade, inflation.

I thank you, Mr. Chairman.

[The exhibits referred to in Mr. Thompson's statement follow, together with a paper entitled "A Proposal for the Detection of Price Fixing":]

EXHIBIT 1

SEPTEMBER 19, 1973.

To: Commission.
From: Commissioner Thompson.
Subject: Public injury on consumer protection matters.

In a recent memo on policy planning I asked a number of questions about the feasibility of including in our cases evidence as to the amount of consumer injury involved, if any in the matters coming before us. The staff has not yet had an opportunity to respond to that memo, of course, much less to undertake a review of its current procedures in the light of those queries of mine. And short of reopening, there is little that can be done about pending cases in the adjudicative stages.

In all other cases, however, I think the staff ought to be put on notice that I am not impressed with the legal principle that it "is not complaint counsel's burden to establish that respondent's customers were injured by the [deceptive] claims." While the courts may not require such proof of us, it is by no means clear to me that we should not require it of ourselves. Evidence that someone has been hurt—and by an amount that at least equals the number of tax dollars we are going to expend on the matter—seems to me so fundamental a requirement that I have great difficulty seeing how the staff can reasonably ask for a ruling without it. In the absence of such evidence, we are forced into a technical reliance on the letter of the law rather than its spirit, a position that I find particularly unsatisfactory in a public agency like the FTC.

This memo then is my way of putting the staff on notice that my acquiescence in one or more adjudicative rulings condemning victimless law violations is not to be construed as acquiescence in the principle on which such decisions rest. In

all future matters submitted to us my office will be looking for more than just whether someone has misrepresented something to somebody. I will be reading the staff's papers with two other key issues in mind: How many people got hurt? How much? If there are no answers to these questions in the file, and if there is no explanation as to why it would be either impossible or impractical to answer them, one vote on the Commission will have been placed in serious jeopardy.

EXHIBIT 2

SEPTEMBER 7, 1973.

To: Commission.
From: Commissioner Thompson.
Subject: Back-haul allowances, advisory opinion digest No. 147.

An August 21 1973 letter to the Chairman from the Washington law firm of Ginsburg, Feldman and Bress urges the Commission to reconsider its Advisory Opinion Digest No. 147 (November 21, 1967) dealing with "back-haul" allowances. As I understand this opinion, it says that a customer who happens to be driving by his supplier's place of business with an empty truck and wants to pick up a shipment can't be allowed a reduction in the price of the goods equal to the transportation charge he would have had to pay if he had waited for the supplier to deliver it. In other words, the buyer who picks up his goods at the supplier's warehouse has to pay the same total price as those customers who get delivery from the supplier even though the former bears part of the costs that otherwise would have been borne by the seller.

Since a buyer who picks up his shipment at the supplier's warehouse can't be compensated for doing so under this Advisory Opinion, the effect is presumably to discourage such "back-haul" pick-ups and cause trucks to be running around empty that otherwise would have been doing that they're supposed to be doing, hauling things. The letter mentioned above cites the National Commission on Productivity as saying that this is costing the country an estimated $250 million per year in excess transportation costs, not to mention the effects it is having on the national consumption of fuel.

If this Advisory Opinion is causing all these ill effects, then it seems to me that we ought to revoke it unless there are some very persuasive reasons for not doing so. I move that the Bureaus of Competition and Economics give us their analysis and economic evaluation of this Advisory Opinion, along with their recommendation as to whether it should be revoked.

EXHIBIT 3

AUGUST 19, 1974.

To: General Counsel.
From: Michael L. Glassman, Chief, Division of Economic Evidence, Bureau of Economics.
Subject: Request for an advisory opinion.

I have read with interest the views of various parties within the Federal Trade Commission regarding sales incentive plan. I concur with the views of economist McCormick and attorney Dufresne. Perhaps, because I am not familiar with the subtleties of the Robinson-Patman Act, I find myself totally unable to comprehend the position taken by the Bureau of Competition on this matter.

It seems to me that has come to the Commission and asked for permission to engage in price competition. That in itself is rather remarkable since competitors in tight oligopolies tend to avoid price competition as if it were a plague. Certanly the products which intends to sell under the incentive plan are produced in highly concentrated oligopolistic markets, with frequently dominant. If the Bureau of Competition considered bringing a Section 5, shared monopoly case in this industry, it would undoubtedly bemoan the absence of price competition and seek remedies to heighten price competitiveness. Yet in this matter, the Bureau of Competition advises the Commission to say to an oligopolist "we will not approve yours plans to seek greater sales through price cuts." In addition, the Bureau of Competition suggests than an approval of the plan might cause other firms to initiate similar plans, leaving the Commission unable to attack because of the "meeting competition" defense. Thus, the Bureau of Competition appears to be even more opposed to market-wide price competition than to price competition engaged in by only.

I find it hard to believe that the Commission, which has shown a dedication to the maintenance and restoration of competition in American industry would take an action designed to restrain and inhibit competition in a highly concentrated industry.

Respectfully submitted,

MICHAEL L. GLASSMAN,
Chief, Division of Economic Evidence,
Bureau of Economics.

Approved:
JAMES M. FOLSOM,
Acting Director, Bureau of Economics.

EXHIBIT 4

JUNE 28, 1974.

To: Commission.
From: Commissioner Thompson.
Subject: Price fixing, consumer injury, and policy planning for the regional offices.

There has been considerable discussion over the past few months as to how the Commission's Regional Office resources can be used to the best advantage in terms of maximizing the interests of the consumer. The general consensus of these discussions has been, as I recall it, a reluctant acceptance of the notion that these Offices, being confined to less-than-national geographical areas, cannot be expected to consistently and continuously develop cases having a consumer benefit as large as those expected of Headquarters units. In brief, a lower standard of consumer benefits per dollar of resources expended is generally to be expected from the Regional Offices.

I have been giving some thought to what we could do, if anything, to improve the potential of these Offices. Is there, for example, some kind of effort they could undertake that would (a) minimize their geographical disadvantage and (b) produce a quantum of consumer benefits per dollar spent that would compare favorably with those produced by cases dealing with consumer problems on a national scale?

I would like to have the staff explore the question of whether the Regional Offices might not have a particularly high potential in the area of price fixing, i.e., agreements by competitors to maintain consumer prices at non-competitive levels. My office has explored this question on a very tentative basis with an economic specialist in the price-fixing field, Dr. John M. Kuhlman of the University of Missouri (Columbia). Dr. Kuhlman believes that an increased emphasis on price-fixing cases by the Commission could produce some exceptionally high consumer benefits per dollar of resources spent and that the kind of cases he has in mind would be quite well suited to the geographical scope and manpower resources of our Regional Offices.

I understand that it has been the Commission's past policy to more or less leave the price fixing area to the Antitrust Division of the Justice Department, the reasoning being that (a) that organization has special expertise in the field and (b) it has jurisdiction to bring criminal rather than merely civil proceedings where the conduct is sufficiently flagrant to warrant that kind of action, a finding that is often made in price-fixing cases. In addition, the Division has access to certain legal tools that are thought to be especially valuable in dealing with this kind of problem, e.g., the use of the FBI and the aid of the federal grand jury system. Investigative resources of this character are presumably very useful in trying to ferret out "hot" documents in corporate files or get eye-witness testimony from people who have attended meetings at which prices have been fixed by agreements between competing business firms.

Dr. Kuhlman argues, however, that some marked changes are currently taking place in the character of the proof required to prove a price-fixing case. The most important of these changes, according to Dr. Kuhlman, is the increasing willingness of the courts to relax their demands for incriminating documents or "defector" witnesses in such cases and accept, instead, economic analysis as a basis for a finding of illegal price fixing. In other words, price-fixing convictions based on the testimony of economic experts and computer print-outs of pricing patterns in particular markets are now being sustained by the courts. FBI

agents and grand juries obviously have no particular advantages over the FTC when the issue turns not on cloak-and-dagger work but on the economic inferences to be drawn from an industry's pricing patterns as revealed in computer print-outs. On the contrary, economic analysis is precisely this agency's particular forte and our "civil" remedies—which have been likened to those of a court of equity—would seem to be especially suited to the development of new cures for this ancient economic ailment.

This change in the nature of price-fixing cases is due in large part. Dr. Kuhlman suggests, to (a) a new piece of "technology," the computer, and (b) a parallel improvement in the state of the economist's art in the price fixing field. On the latter point, a considerable body of economic literature on price fixing has been developed in recent years,[1] a body of research that permits the specialist to describe in some detail the kinds of factors that make an industry especially susceptible or prone to engage in price fixing activities. In other words, the price fixing expert, after reviewing the way a particular industry is structured or organized, can now make a quite educated guess as to whether it is likely or unlikely to be engaged in price fixing. And after a review of that industry's conduct—particularly the geographic and other patterns of its prices—such an expert can allegedly testify in many cases with considerable confidence that its prices are in fact being set either (a) competitively (non-collusively) or (b) by actual agreement among the industry's member firms. In the latter case, for example, his testimony says, in substance, that there is "no way" the observed pattern of prices could have occurred in the absence of an actual price fixing agreement. (He reviews in his testimony the 3 major alternatives—i.e., conspiratorial (collusive) pricing, independent (competitive) pricing, and interdependent ("conscious parallelism") pricing—and explains why the observed conduct is consistent only with the 1st of these possibilities, actual conspiracy by the sellers in question.)

The new "technology" mentioned by Dr. Kuhlman, the computer, is important here because it reportedly makes possible an analysis of the massive amounts of price data that underpin the expert's testimony in this kind of case. The basic idea, in somewhat oversimplified form,[2] is to get a lot of invoices from each of the suspected conspirators covering their sales for a significant period of time and punch the customers' names, locations, prices charged, etc. up on IBM cards. These are then fed into the computer and, guided by a "program" designed for the purpose, the computer detects any suspicious-looking pricing patterns; e.g., price variances of say 50% on sales to customers located just across a county or state line (suggesting, of course, an artificial division of markets on a geographical basis). Prior to the coming of the computer, the sheer volume of the price data involved would have made such an analysis more or less physically impossible and/or prohibitively expensive.

As I understand Dr. Kuhlman's suggestion here, he believes it is now within the capacity of the Commission to survey the major industries in the economy at large, identify those in which price fixing is fairly likely to be going on, and then go in and verify (or disprove) that suspicion solely on the basis of readily-observeable (non-concealable) price data and thus without resort to hard-to-find "hot" documents and "defector" witnesses. This would mean, in turn, that the Commission has it within its power to discover and presumably stop substantially all important instances of price fixing in the United States economy, not just those in which some member of a price fixing conspiracy defects or the government fortuitously discovers a document someone forgot to burn after reading (as readers are often instructed to do. I'm told, on the face of such documents themselves).

The relevance of all this to Regional Offices rests on two other factors emphasized by Dr. Kuhlman, namely, (a) the fact that much if not most of the price

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[1] See, e.g., Dr. John M. Kuhlman, "Nature and Significance of Price Fixing Rings," and Dr. Walter B. Erickson, "Economics of Price Fixing," Vol. 2, No. 3, *Antitrust Law & Economics Review*, pp. 69–82 and 83–122, respectively; Dr. Bjarke Fog, "How Are Cartel Prices Determined?," *Journal of Industrial Economics*, Vol. V (November 1956); Dr. Hans Brems, "Cartels and Competition," 66 *Weltivertishaftliches Archiv* (January 1951), pp. 51–67; Dr. William Fellner, *Competition Among the Few* (1959); Dr. George J. Stigler, *The Theory of Price* (3d Ed., 1966); and "A Theory of Oligopoly," *Journal of Political Economy*, Vol. 72 (February 1964); Dr. Warren G. Nutter "Duopoly, Oligopoly and Emerging Competition," *Southern Economic Journal*, Vol. 30 (April 1964), pp. 342–352; and Dr. Joseph C. Gallo, "Oligopoly and Price-Fixing: Some Analytical Models," *Antitrust Law & Economics Review*, Vol. 4, No. 1 (Fall 1970, pp. 101–118).

[2] For the details of Dr. Kuhlman's proposal, see his attached statement, "A Proposal for the Detection of Price Fixing," prepared at my office's request.

fixing going on in the country tends to be regional rather than national in scope and (b) the fact that the gathering of the necessary price data to feed the computer requires a considerable amount of "leg work." On the first point, price fixing tends to be most common in industries that (1) are highly or at least moderately concentrated, (2) have substantial entry barriers to keep newcomers from entering and thus disturbing the fix, (3) sell a more or less homogeneous product (a fungible or commodity-type product), and (4) sell a product with a relatively inelastic consumer demand (meaning prices can be raised substantially without causing consumers to stop buying it). Bread, milk, gasoline, steel, cement—products that are generally sold, for the most part, in local or regional markets—all fit the "conspiracy-prone" profile and all have had one or more price fixing convictions over the years. The personnel in our Regional Offices, being more familiar with the industries in their respective areas than our headquarters people, would thus seem to be in an ideal position to seriously get into this problem of local and regional price fixing by industries of this collusion-prone character.

There is one other element of the Kuhlman proposal that would seem to make the Regional Offiices the ideal units to undertake a project of this kind. He believes that price fixing conspiracies are most successful—in terms of raising prices to the consumer—when, in addition to the other factors mentioned above, a significant portion of the industry's sales are made to a government agency that buys on a sealed-bid basis, e.g., a state highway commission. The reasoning here is that price fixing arrangements tend to be eroded over time unless the group can develop some kind of efficient and economical system for monitoring the prices charged by its members, i.e., unless it can find a cheap and effective way of catching "chiselers" in its midst, those who are trying to pick up some extra volume by shading the agreed-upon price. Where sales are made to a public body on a sealed-bid basis, this problem is nicely taken care of by the government agency itself—after the contract is let, all bidders are generally sent a list of all those that submitted bids and the prices each of them bid. Since all bidders know in advance that this is going to be done, any incentive to "cheat" on the price fixing agreement is removed at the outset. The result is that, according to Dr. Kuhlman, price fixing is almost universal in a wide variety of industries selling to local, state, and federal agencies. Our Regional Office people, through their close relations with the various local and state officials, would therefore seem to be, again, in an excellent position to set up a cooperative arrangement to get access to the kind of price data that would be needed here.

I realize, of course, that the FTC is restrained in this area by its jurisdictional requirement of interstate commerce. And I would not in any event want to see this agency doing work that could be done as well or better by local or state officials themselves. But many of these price fixing arrangements are regional rather than strictly local, I am told, embracing in many cases all or parts of several individual states. In addition, however, our Regional Offices might be able to render an important service to their respective local communities by (1) simply educating the local officials to the techniques of detecting and stopping price fixing arrangements and (2) turning over to the local procurement and prosecuting officials any evidence of purely local (intrastate) price fixing we might run across in the course of our wider interstate search for this kind of activity.

I know of no estimate on the aggregate amount of price fixing going on in the United States nor of its total dollar costs to the consuming public. Economic theory cuts the economy as a whole into 3 general categories for the purpose of predicting the probability of collusion of one form or another on price, namely, those industries that have "low," "moderate," and "high" degrees of concentration. In the first of these classifications, the "low" concentration group (4 largest firms with less than 25% of industrywide sales, for example), the theoretical assumption—and one that is reportedly verified by the available statistical and case-history data—is that price fixing will be regularly attempted but that it will almost invariably fail. In the next category—"moderate" degrees of concentration (25% to 50% of the industry's sales controlled by the 4 largest firms)—collusion is also regularly attempted and, I am told, successfully so in many cases. In the last of these industrial categories, those industries in which the 4 largest firms account for 50% or more of total sales, successful price fixing is supposed to be extremely common, particularly in those industries having the additional features mentioned above, e.g., homogeneous products with inelastic consumer demand. This line of reasoning would suggest, then—based on the

percentages of all United States manufacturing falling into these 3 concentration classes—that (1) price fixing is quite unlikely in ⅓rd of U.S. manufacturing, (2) occurs occasionally in another ⅓rd of it, and (3) is fairly extensive in the final ⅓rd.[3]

We are similarly lacking, I am told, in hard data on the question of how much these price fixing conspiracies tend to inflate prices above the level that would otherwise have prevailed. We do have some case studies, however, that suggest the consumer losses here might be very substantial indeed. Prices reportedly dropped by 15% to 20% in the wake of the Commission's action against the bread producers involved in the 1964 Bakers of Washington case.[4] Tetracycline prices reportedly dropped by some 75% after the entry of the Commission's decision in the Pfizer price fixing case of 1966. The price of folding seats (bleachers) allegedly fell by 32% after the entry of a Justice Department order against the major producers of that product in the 1960s.[5] And the price of electrical equipment is said to have fallen by approximately 75% immediately after the Justice Department won a price fixing conviction in the famous General Electric case of 1961.[6] Price increases of 50% or more after the formation of a new cartel in the various European industries are supposed to be more or less routine, I am told.

If one assumes, then, that price fixing is going on in 10% of the United States economy—and it is hard to escape the feeling that this would be a quite conservative estimate in the matter—this would mean that a minimum of $100 billion worth of goods or services are sold in the country each year at prices set by collusion rather than competition. This means, in turn, that consumers would be paying a minimum of $1 billion extra for each 1% by which these price fixing arrangements have raised the prices of the goods and services in question. If we assume that these conspiracies raise prices by say 10% on the average—a figure that, again, seems fairly conservative in view of the 15% to 75% figures reported in the few case histories we have seen so far—then we are talking about an aggregate consumer loss here of some $10 billion or more per year. In a period of devastating inflation such as the one currently being experienced in the United States, surely there is no better way this agency could spend its resources than by trying to "roll back" some of these illegally-inflated prices.

As a relative novice in all of these matters, I don't want to try to tell either the Commission or the staff how we should go about the job of eliminating price fixing in the United States economy. And I certainly don't want to suggest that the particular program recommended by Dr. Kuhlman in the attached statement of this is the best possible way of beginning such an effort. All I want to do, rather, is ask two questions:

1. Shouldn't we be doing more about price fixing?

2. Is the Kuhlman proposal a feasible way to get the Regional Offices involved in a program that could be expected to yield some significant benefits for the American consumer?

I would like to have the comments of the Bureaus of Competition and Economics (including Dr. Scherer's), the Office of Policy Planning, and the Executive Director on these questions.

I would also very much like to have the views of my fellow Commissioners here. Commissioner Nye has already been kind enough to counsel with me informally and I hope he and the other members will contribute their thoughts fully in this important area.

MAYO J. THOMPSON, *Commissioner.*

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[3] According to Bain, 31.3% of U.S. Manufacturing (by dollar sales volume) is accounted for by industries in which the 4 largest firms control less than 25% of sales; 36.2% of it is accounted for by industries with a 4-firm market share of 25% to 50%; and 32.5% of it is accounted for by industries with a 4-firm share of 50% to 100%. Dr. Joe S. Bain, *Industrial Organization* (1959), p. 120.

[4] Dr. Willard F. Mueller, "Effects of Antitrust Enforcement in the Retail Food Industry: Price Fixing and Merger Policy," *Antitrust Law & Economics Review,* Vol. 2, No. 2 (1968–69), pp. 86–87.

[5] Erickson, note 1, supra.

[6] See Drs. Peter Rob and Leonard White, "The 'Welfare' Costs of Conspiracy in the Electrical-Machinery Industry: Some Comments," *Antitrust Law & Economics Review* (Summer 1972), p. 71.

A Proposal for the Detection of Price Fixing

(By John M. Kuhlman, University of Missouri)

INTRODUCTION

The Federal Trade Commission is in an ideal position to undertake the development of a program which would, through analysis of bid prices, detect the existence of price fixing. It is obviously become more difficult to detect price fixing through the use of internal documents or witnesses. The only feasible alternative, then, is to examine the prices which companies charge in an effort to see whether there is any behavior which is not consistent with free competitive forces.

The capacity of the computer to handle massive amounts of data makes such a project feasible at this time. Through the use of the computer, it is possible to compare bids across space as well as through time. Peculiar patterns can be identified. Price relationships between various products can be observed. In sum, it is now possible to detect and establish the existence of price fixing through the use of the computer.

SELECTION OF COOPERATING PUBLIC AGENCIES

The Federal Trade Commission is in a position to coordinate a program involving various public purchasing agents. Obviously, the program could not involve all governments at all levels, but rather, it must select a certain set of public agencies and solicit their cooperation. Bureau of Public Roads at the national level and the various State Highway Commissions at the state level would seem to be an appropriate set of such agencies.

SELECTION OF PRODUCT LINES

Price fixing is more common among products having certain characteristics—a relatively few firms in the relevant market, a simple product, a relative absence of technological change, barriers to entry, and a demand that is relatively inelastic. In addition, the use of sealed bid purchasing practices greatly facilitates the policing of the ring. Likewise, the sale of substantial portions of the product through a public purchasing agent would seem to encourage price fixing.

The various products used in the construction of highways would seem to meet these criteria. Asphalt, redi-mix concrete, cement, reinforcing rods, aggregate, structural steel, excavation, and others have a history of price fixing. The character of these products lends themselves to price fixing. And certainly the public record is full of cases involving these several products.

THE COLLECTION OF DATA

The Federal Trade Commission in cooperation with consultants from the Bureau of Public Roads would design a reporting form for one or more of these products. In consultation with a commuter programmer, a coding system would be developed before the data was ever collected. It is extremely important to know what data is going to be collected, and what form it is to be collected, and how it is to be used before any initial collection is undertaken.

The actual collection of the data would be done by the FTC staff in the various regional offices. It would be their responsibility to go to the Highway Commission Offices in their district and obtain the necessary data.

In general terms, the data would have to include the following:

a. The agency letting the bid and its address including zip code.

b. The shipping destination of the product including zip code.

c. The point of origin including zip code.

d. Product and subproduct designation. Each product and subproduct would have to be given a code possibly based upon the SIC classification code.

e. Reporting of bid prices. Each bidding firm's price on each product or subproduct would be reported including discounts, freight allowances, etc.

f. The winning bid.

THE DETECTION OF PRICE FIXING

Specific computer programs would be used or be developed to detect such price fixing activities as:

a. Geographic market division.
b. Periodicity in bidding behavior.
c. Price relationship between bidders.
d. Price relationship between the prices of subproducts.
e. Price relationships over space.
d. Price relationships over time.

It should be emphasized that the computer programs necessary for successful prosecution of price fixing cases are not terribly sophisticated. All that is needed are programs which will indicate price behavior not readily explainable by the normal operations of a market. In this role the commuter programs would have to be interpreted by an economist. It would be the role of the economist to explain to the Administrative Law Judge, a jury or judge the significance of the data and the printouts. The commuter permits the economist to analyze large amounts of data and obtain a cost market and a temporal view of data which would not otherwise be possible.

ANALYSIS OF DATA

It would be necessary after coding the data to punch it on cards before putting the data on tapes or discs since such a project as proposed would involve the handling of massive amounts of data, it would be necessary to have an extremely large commuter system with considerable excess capacity. Some programs have been written for handling this type of data at the University of Missouri and possibly other academic centers where individual scholars are working on price fixing. But for the most part, it would probably be necessary to write many new commuter programs. This would require the services of one or more extremely competent computer programmers.

The University of Missouri has the necessary computer capacity and would be willing to explore the possibility of operating such a program for the Federal Trade Commission. This would require the closest cooperation between the staff at the Federal Trade Commission and the individuals responsible for the program at the University of Missouri. It would be necessary for the latter to have an understanding and an appreciation for the type of relationship which exists between economists and lawyers as well as law and economics.

THE OPERATION OF THE PROJECT

The field offices of the FTC would be in charge of collecting the data from the various Highway Commissions. The staff at the FTC would be in charge of designing the data gathering project in collaboration with experts from the Bureau of Public Roads as well as the staff in charge with the responsibility of running the computer. The programmer would design the code and this would have to be done before any data was ever collected. The collection and coding the data is the time consuming part of such a project. The computer programmer would have the responsibility, in cooperation with economists, for writing the programs to be used in analysis of data and operating the computer.

Senator PROXMIRE. Thank you, Mr. Thompson.

Toward the end of your statement you say the following:

The impression one gets from the economic literature, then, as I pointed out to the Commission in the attached memo on this subject, is that we are surely talking about an annual loss in the range of $10 billion or more from this terribly destructive practice of fixing prices by collusion. More funds have been allocated to this problem in our 1976 budget request, but I must confess, Mr. Chairman, I am still not satisfied. I would like to see the FTC in the forefront.

Now, what specifically do you think the FTC can and should do that would be able to bite into this $10 billion explosion of prices, this $10 billion inflation.

Mr. THOMPSON. I would be pleased to speak to that, Mr. Chairman. Attached to the statement, as you have already observed, is a rather detailed memo—exhibit 4—that I wrote back in June in which I

spelled out the utilization of our regional offices in particular to attack this problem of price conspiracy.

We have a vast army in the field that are not as effectively used as they could be, in my judgment, particularly now. And one of the things that I had in mind—because as I read the literature, most of the price conspiring that goes on is of a local or regional nature, and they are our eyes and ears out there throughout the United States that could assemble the essential elements of information and put together a good brief that would help the economy of this country temendously, even if it were local or had no interstate commerce characteristics to it, which would thus of course deprive us of jurisdiction.

We spend a great deal of money at the FTC on relations with State and local governments. We could feed that information into them, which would make it possible for them to fight price conspiracy at the local level.

Senator PROXMIRE. What you are saying is that a great deal of this at least is a matter of getting action on the local level, some of its intrastate, with getting action that the FTC could contribute to because you have people whose jobs it is to see whether or not there is effective competition and whether there is anticompetitive practices that are holding up prices. What has been the response to your June 1974 memorandum what has been done?

Mr. THOMPSON. Let me characterize that by describing the rate of travel over the ground first, or over the water. When a ship just maintains steerage way we describe its speed as dead slow ahead. That is about the present tempo, just moving along enough to keep from running into the bank or losing course. I am told that we are now picking up the tempo.

Senator PROXMIRE. Those are all general terms. Has there been a written response to your memorandum, has there been anything concrete or specific as to what is going to be done to increase activity and effective action?

Mr. THOMPSON. Yes, sir.

Senator PROXMIRE. Is that available?

Mr. THOMPSON. It is a part of our minutes, Mr. Chairman. At the time of our deliberations on the 1976 budget, considerable time was spent on this area.

Senator PROXMIRE. Will you make available to the committee the response to that memorandum?

Mr. ENGMAN. Mr. Chairman, I would like to make a comment, if I might.

Senator PROXMIRE. Yes. Mr. Chairman.

Mr. ENGMAN. I think that perhaps Commissioner Thompson is not as aware as he might be of exactly what has happened. In fact, I share many of his concerns. As you know, as you indicated in your introductory remarks, the Congress has given us the responsibility of enforcing some dozen statutes. most of them in the consumer protection area. Historically the regional offices of the Commission have been given primary responsibility for enforcement of those various consumer protection statutes. It has been my concern since I have been at the Commission—and it is a concern which I am happy to say is shared by Commissioner Thompson—that we ought to not only increase our

emphasis on antitrust enforcement on major activities, but that we ought to increase the roll of the regional offices with respect to this kind of enforcement. And I dare say that if Commissioner Thompson today would visit some of the regional offices, he would find that they have already begun to intensify their areas, their efforts in this regard. I have directed each of the regional office directors—I wanted to see more in the way of antitrust cases, I wanted to see less emphasis on consumer protection matters. And I could only say that although it may appear sometimes that things move slowly, I believe that the seeds have to be planted, and a case doesn't develop overnight. I believe we are going to see some significant results of that activity.

Senator PROXMIRE. Was this a written directive on your part? What major investigations are going on as a result?

Mr. ENGMAN. We have investigations relating to various kinds of price-fixing matters which I will be happy to discuss with this committee in a nonpublic form. Those are not public information.

Senator PROXMIRE. Do you have any overall data, not relating to specific cases, but as to the number of actions taken, and so forth?

Mr. ENGMAN. Yes. And I would be happy to supply that.

Senator PROXMIRE. I realize that it is a short time since June, but to the extent that there are any results, I would appreciate getting this too.

Mr. THOMPSON. I might add, Mr. Chairman, that I was about to say that we have now changed speed and we are moving along much better in this area, which is very pleasing.

Senator PROXMIRE. Can you tell us what industries are being investigated? Would that be a violation of any kind just to indicate the areas where you are taking action? Industries must know, so I don't see why it would hurt anything.

Mr. ENGMAN. No. I indicated in my statement that we were concentrating the bulk of our resources in antitrust enforcement. In three areas, energy, food, and also now in developing the health care area.

Senator PROXMIRE. Doesn't that all predate the June memorandum?

Mr. ENGMAN. Some of it does and some does not. The fact is that the concept put out in the June memorandum are concepts that I agree with. And we have been moving in some other areas in advance of the June memorandum.

Senator PROXMIRE. You can't tell us anything specifically that you have done as a result of that memorandum?

Mr. ENGMAN. Other than that I think it was helpful to me to know that I had an ally on the Commission. And we have intensified those efforts also in terms of our 1976 budget request. But I would reiterate my willingness to provide the committee in nonpublic form with specific investigations which are underway.

Senator PROXMIRE. We would like to know the industries if you can tell us.

Now, there is an understandable frustration and cynicism on the part of the Congress and the public as to how vigorously our antitrust laws are being enforced. There are a lot of forceful speeches, but there doesn't seem to be forceful results. And I think I have to ask, because I want to find out as much as I can about the situation, although I don't mean to be at all personal. You worked in the Nixon White House, and I understand you worked directly under John

Ehrlichman before you were named Chairman of the FTC. We are all familiar with President Nixon's opposition to antitrust enforcement. There was that famous tape in which he called for the expulsion of Mr. McClaren as antitrust chief. The President called him a "trust buster" and a "boy scout" and all kinds of things, in much stronger language than that. And apparently his views on that subject were shared by his top staff. But what I want to know is what influence the attitude of the White House on antitrust has had within the FTC, and whether since your appointment any pressure was exerted or any contact made by the President, White House staff, or other administration officials, or the officials of the Committee to Re-Elect the President, with you or your office with respect to antitrust policy on any case under investigation or pending before the FTC?

Mr. ENGMAN. First of all, Mr. Chairman, with respect to the general question, the Federal Trade Commission actually is, as well as in name, an independent agency. During the time I have been with the Commission, however many months it has been—almost 2 years, a year and a half—there has never been any contact from the White House with respect to any antitrust enforcement program or specific case that I am aware of, at least there has been no contact made to me.

With respect to my own personal views, I think I would rely upon the statement which I made in my written statement. I feel very strongly that we have not devoted enough resources in the past to a stiff policy of antitrust enforcement, and that we ought to be devoting more and more resources to that, and that we are in the process of doing now.

Senator PROXMIRE. In response to the specific question, was there any pressure of any kind, written, oral, by any of the White House officials or the Creep officials, or administration officials on the Commission?

Mr. ENGMAN. The answer to that is no. The only approach which I am aware of is—in fact, I am aware of two approaches, I guess. The first one was a letter which Secretary Simon wrote the Commission after we filed our complaint against Exxon and the other seven largest petroleum refiners in this country in which he raised certain points. That letter was intercepted before it even got to my office, and we placed it on the public record. And the only other comment which has been made is that President Ford the other day did tell me that he thought that we were doing the right thing in terms of the kind of things I have been calling for in my speeches.

Senator PROXMIRE. That statement was public too, wasn't it?

Mr. ENGMAN. I guess it was.

Senator PROXMIRE. President Ford said something like, keep it up, you are doing a good job, with respect to your statements on antitrust?

Mr. ENGMAN. That is correct.

Mr. THOMPSON. Mr. Chairman, we have increased our resources for antitrust since I have been there and Chairman Engman has been in the forefront setting the pace on this. We are giving more to antitrust now than to the traditional consumer protection area.

Senator PROXMIRE. How many of the persons working for the Federal Trade Commission were previously employed by the Committee to Re-Elect the President, and what position do they hold, if any?

Mr. ENGMAN. The Committee to Re-Elect the President?

Senator PROXMIRE. Yes, sir.

Mr. ENGMAN. At the present time there may be one or two people at the Commission. Chairman Staggers over on the House side raised some questions about this issue. But in no event, I think, never was there any more than a half a dozen or so.

The people we hire at the FTC are hired on one criteria only, that is, are they capable, competent people. I would stand our staff and the people we brought into the Commission under my tenure up against those of any other agencies in Washington. I think we have an outstanding group of young lawyers and economists.

Senator PROXMIRE. You said about six of them came from CREEP?

Mr. ENGMAN. I have a faint recollection that it is something of that order, or from the White House. One of the people accused of coming from the White House is my secretary who has been with me for 10 years. Apart from that, I reiterate, there is only one criteria in getting a job. It doesn't matter whether President Ford makes a recommendation that this is the guy to hire, or you, Senator Proxmire, we have refused those kind of recommendations across the board. We hire on merit only.

Senator PROXMIRE. Doesn't the Budget Bureau exercise control over your budget, and doesn't that give them a control which limits your independence?

Mr. ENGMAN. Well, our budget is submitted to the Office of Management and Budget, as are the budgets of the other agencies. And they obviously do have some impact in terms of what is included in the President's—they have a major impact of what is included in the President's budget recommendations to the Congress. Those budget recommendations, however, are thoroughly reviewed by the Congress, both the Senate and the House. And in fact, we have followed the practice of making available to the respective appropriations committees the material—the requests, the original requests which we made to the Office of Management and Budget, so that the members of the committee, as I feel is appropriate with respect to an independent agency, may have the benefit of what we have requested as well as what OMB allowed.

Senator PROXMIRE. Now, in recent speeches you have attacked the Interstate Commerce Commission and other agencies for their poor performance. You stated your convictions about the need for a tough antitrust policy. For example, in your October 7 speech you said: "Through a vigorous antitrust policy, we can help prevent the aggravations of private market power which permit consumer abuse and create a need for regulation."

And then in your prepared statement this morning you cite the *Exxon* case as an example of your determination to enforce the antitrust laws. Now I know that the case is pending and you do not want to comment on it, and I will not ask about any substantive matters. But I do want to ask this general question: If this case is fully litigated, how long can it be expected to take before it is completed? Is it reasonable to assume that it will take at least 10 years?

Mr. ENGMAN. I would be hesitant to put a specific number on it, Mr. Chairman. Obviously, these cases are complex. They take a number of

years. And I suppose that it is conceivable that it could take that long, depending of course upon the appeals.

Senator PROXMIRE. That is what concerns this committee greatly. We have a charge to do what we can about inflation. It is raging right now, and it is expected to continue for some months. And we would like to get prompt action. The Wall Street Journal reported this morning that the case has ground to a halt. And he doesn't want to ask you to comment on that. But at any rate, they say it won't come before an FTC law judge for an initial decision until 1978. And that would be more or less the beginning of it. And that is 3 or 4 years away.

Mr. ENGMAN. Let me respond to that.

Senator PROXMIRE. So it would seem that if we are going to get at inflation this way that it is going to take a long time unless there is some other way that we can use the antitrust power to persuade firms not to increase their prices or to hold down the increases.

Mr. ENGMAN. Let me respond to that, Mr. Chairman, by making three points.

First of all, with respect to the *Exxon* case, there have been certain motions which are now pending before the commissions relating to the procedure adopted in that case. I made some reference during my prepared statement or in my prepared statement to the fact that we do have underway a reevaluation of our internal procedures with the hope of attempting to improve them. And I obviously don't want to comment on any particular case.

The alternative I would suggest to you is that if the Commission does have reason to believe that there is a violation of the antitrust laws, that we not do it. Obviously, we want to bring those actions even though they may take a long time. They apparently are worth something.

Beyond that, Mr. Chairman, I view the Federal Trade Commission as sort of a cop on the economy beat. And I suggest to you that the mere fact that we do have a vigorous policy of antitrust enforcement can have a deterrent impact upon the judgment of people in the outside in other firms and in other industries, with respect to what they may or may not attempt to get away with. So I think first of all there is that immediate impact by having a vigorous, tough policy of antitrust enforcement.

Second, I point out to you that a number of these cases are settled, and in fact in an across-the-board kind of situation the vast majority of cases we bring are settled before they go through the normal course. When we get those settlements we put them out for public comment for 60 days, much as the Tunney bill is now suggesting that the Justice Department do. We have followed this procedure for some time. And I can only point to the recent proposal which we have put out with respect to the Xerox matter. The Commission may decide after receiving public comment that the matter should not be settled, but at least that illustrates, I think, the fact that these cases will not always run their course.

Mr. THOMPSON. Mr. Chairman, I share your anxiousness about the element of time, which is one of the reasons why I have felt so keenly about this price fixing problem. That is something that we can produce, not overnight, but quicker results than can be obtained in an antitrust

matter involving structure or divestiture or the like. So one of the things that I have tried to preach over there is that this is something that can get us some relief on the problem of inflation now.

Senator PROXMIRE. Mr. Means.

Mr. MEANS. I would like to comment on this matter, because I think there is a wide misunderstanding of what role was originally assigned to the Federal Trade Commission.

Back in the 1890's when the Sherman Act was passed, thinking focused on two concepts, the concept of competition and the concept of monopoly—and by monopoly they meant a single producer in an industry, or collusion between a number of producers in an industry. This two-way distinction carried over into the Clayton and subsequent acts.

Now, the Federal Trade Commission has been frequently attacked on the ground that it wasn't doing its job. I have defended the Federal Trade Commission on the ground that it was quite successful in doing the job that it was initially assigned; namely to prevent monopoly, that is, monopoly by one company or collusion in pricing. It has been less successful in the case of collusion. But we have no important industry in which we don't have three, four, five, or more competitors.

Now, in the language of the people who wrote the Sherman Act and the people who wrote the Clayton Act, if you had oligopoly and had four, five, or six companies competing with each other, and there was no collusion between them, this was regarded as competition. And therefore they could say that the prices were competitive.

It was a great achievement to prevent monopoly. We don't have the kind of cartels that they have had in Europe. We don't have as much monopoly as they have in Europe. This is because our Federal Trade Commission has been successful.

If the only possibilities were monopoly or classical competition, and we prevented monopoly, then we couldn't have stagflation. I think most every economist in the country would agree with me on that. The stagflation arises from the actions of oligoplists which the Federal Trade Commission was never given the power to control or break up.

Senator PROXMIRE. Then what you are saying is that we have oligopoly in these industries, and not monopoly, we have three big oil firms and five big aluminum firms, and so forth. And we have 19, 20, or 30 steel companies, but 2 or 3 of them dominate the industry. At any rate, we have these patterns of concentration. Now, you are saying that the laws that we passed in 1890 or 1914 aren't up to it, we need more, we need more effective laws?

Mr. MEANS. I think we could strengthen the Federal Trade Commission activity with new and modern legislation. But I doubt very much if we can eliminate the oligopoly of the kind that produces stagflation.

Senator PROXMIRE. So what you are suggesting instead in your prepared statement is guidelines?

Mr. MEANS. Guidelines.

Senator PROXMIRE. And that kind of discipline to watch this action which isn't responsive to competition?

Mr. MEANS. Notice that we talk of a free enterprise system. But our enterprise system is not free in any sense of the word. We have the Federal Trade Commission interfering with industry. We have the

Government interfering with the freedom of enterprise to rob from each other. If a company signs a contract with you and doesn't carry it out you can go to the Government and it will force adherence to that contract. What we have done is taken complete freedom of enterprise and we have curbed it by various methods to make the free enterprise systems more effective. And I think that what I am proposing here would be an interference with the free enterprise system which would make the free enterprise system operate more effectively.

Senator PROXMIRE. That is very helpful at this point.

I would like to follow up, however, with Chairman Engman on the point that he has made. You have indicated—and we have been aware of the fact—that there is difficulty in prosecuting cases—the *Exxon* case, for example—as a result of your own rules, the Federal Trade Commission rules and procedures, and the fact that the depositions alone could take up to 10 years to complete. One of the FTC staff persons is quoted as saying that your rules are crippling the case by placing an unusual burden on the attorneys. Can you tell us why the FTC rules—which are within your own power, within the power of you and Commissioner Thompson and other Federal Trade Commissioners, is I take it, to change—why these rules can't be modified to make it possible for you to proceed more vigorously, and why the whole case is put on the FTC to prove that they should proceed rather than put it the other way.

Mr. ENGMAN. Thank you, Mr. Chairman.

First of all, let me say that in responding to this question I want to make it clear that I am responding not specifically to the question you raise with respect to the motions filed in the *Exxon* case.

Senator PROXMIRE. I appreciate that.

Mr. ENGMAN. Those motions are before the Commission and have not yet been decided by the Commission. And I do not believe it is appropriate for me to talk about that specific motion.

Let me say in general terms, however, that one must remember that Rome wasn't built in a day, and neither can we make the FTC perfect or near perfect in a day. But one of the first things that I did as Chairman, I asked our General Counsel to reinstitute our rules committee, which has representatives from various aspects of the staff, to propose to me a number of changes, no matter how overwhelming in scope, to improve our procedure with respect to the normal case. And I can sketch out the particular problems that are involved. As a matter of of fact, I reviewed these proposals this weekend, and I will shortly be circulating them to the Commission for their comments and, hopefully, their approval. It is a continuing process, but it is something that I have been concerned about, and I have taken action. And I think we can do a great deal to simplify our procedures. And we will do so.

Senator PROXMIRE. As I understand it, those people were not talking so much about simplification as they were about effectiveness. As I understand it, the present rules make it extraordinarily difficult to proceed. They take a long time, and they also put the burden so heavily on the Federal Trade Commission to prove a case before they are allowed to proceed that it is very difficult for them to be effective.

Mr. ENGMAN. The changes that we will be proposing cover all these areas. One must be aware of the fact that this is a very complex situation, and we do have in this country a time honored belief in such constitutional processes as due process and the like, and if we stray too far from these concerns the courts will correct us. But consistent with those restraints of due process, we are moving, and I think that we will have some significant improvements.

Senator PROXMIRE. Let me just cite a specific instance, and you may or may not want to comment on it, but I think it gives some flavor to what I am talking about.

In reading the FTC Commission complaint in the *Exxon* case I notice that no relief is specified. And this seems to me unusual, as you do not say in the complaint what remedy you want to obtain. Most of the complaints I have seen, such as the one in the *Xerox* case, specifies the relief requested. I wondered if you adopted a new policy, or is there some specific reason for not specifying the relief in the *Exxon* case.

Let me suggest that a soft approach has been adopted, rather than a hard one, of specifying divestiture, for example, so that if a compromise consent agreement is reached it will not look like a retreat on the part of the Federal Trade Commission.

Mr. ENGMAN. I suppose if somebody is out after some kind of political end or accusation, he can make any kind of assumption he wants to.

Let me suggest one thing to you, Mr. Chairman, and that is, apart from the merits or the specifics of this particular case—and I again want to avoid that—that one can argue that in terms of the concept of the Federal rules of civil procedure, in terms of trying to simplify complex pieces of legislation, that it makes no sense and can do the job quicker to not have everything have to be all determined before a complaint is issued, but to let the relief rest upon what proof is adduced during the course of the trial. I would suggest that in terms of procedural pleadings most lawyers today, more than not, would agree that it makes more sense to proceed in the fashion that you have been criticizing.

Mr. THOMPSON. I would like to add to that, Mr. Chairman. I spent 24 years in the private practice of law before coming to Washington. And I saw a considerable change in the rules of procedure, both in the State and in the Federal courts. I can remember when I first started practicing that you could file what was called a general demurrer, which was in essence a defense against the basic cause of action that could lead to dismissal by summary judgment. And I have seen, particularly over the last 15 years, Federal judges who no longer want exceptions to pleadings filed. This is taken care of in pretrial and through discovery.

The fact of the matter is that subsequent to the commencement of the Exxon matter a very comprehensive set of demands or prayer for relief was formulated by the staff and is a part of the record in the case. So some of the old ways of doing things have been changed.

Senator PROXMIRE. Let me ask you now about the steel industry. I mentioned the broad authority of the Federal Trade Commission in my opening statement. As you know, you have very wide information gathering power and a strong mandate from Congress to deal with

unfair competition. But the FTC, like a number of other regulatory agencies seems to concern itself with minor infractions of the law, and to spend much of its time on cases of small consequence. For example, have you used your powers to investigate the steel industry, its patterns of pricing and the charges of price fixing and price leadership that have been made against the larger firms?

Mr. ENGMAN. We have a study of the steel industry now underway, Mr. Chairman.

Senator PROXMIRE. A study of the steel industry. Why hasn't this action been taken in the many years—I know that you have been in office a relatively limited amount of time, but why hasn't the FTC been more aggressive in this area?

Mr. ENGMAN. I think, Mr. Chairman, that the Federal Trade Commission today is very aggressive. I indicate once again that the Congress, I guess you might say, has dedicated at least half of our resources to enfroce a number of statutes. And it may be argued that the fur labeling statute is less significant. But we don't have the luxury of judging whether we would have the option of enforcing that statute. I haven't run for office. I have the status which you do. I am given the job, when I come down and take my oath of office and am confirmed by the Senate, of swearing that I will uphold and enforce the laws which we are mandated to enforce. So far we have a number of these statutes that many people have criticized as being of a minor impact, but we do have an obligation, I believe, as long as those statutes are on the book, to enforce them.

What have we seen? We have seen a total turnaround in terms of the types of matters which are being addressed by the Bureau of Competition, the Commission's antitrust enforcement arm. We have not relied upon the mailbag approach, we have instead looked to see where the principal problems appear to be in the economy. And we have launched programs and investigations in connection with those. I must say that we cannot do everything at one time. We have limitations in terms of staff and resources. But we are doing what I think is a creditable job with respect to approaching these.

The steel investigation—and it may be that I have just let a cat out of the bag, I am not sure that that was public knowledge before this morning, and perhaps I shouldn't disclose it—the study has been underway, I believe, for a couple of months.

Mr. THOMPSON. Let me say this, Mr. Chairman. In 1965, we had 585 Robinson-Patman cases. The FTC didn't have time to do anything else.

Senator PROXMIRE. Robinson-Patman cases are cases which primarily involve relatively small firms, don't they? Is that right or not?

Mr. THOMPSON. They can. We have both types. They can be small or large. And I only mention that as an example of where a great deal of the emphasis has been put in times past.

I also understood that in times past a great deal of emphasis has been put on bait-and-switch cases and similar matters.

Senator PROXMIRE. Let me interrupt to say, isn't it true that Robinson-Patman cases, No. 1, are cases that can be resolved by private litigation? Under the law a defendant party can bring the case; is that not correct?

Mr. THOMPSON. Indeed they can, yes, sir.

Senator PROXMIRE. And for that reason it would seem to me that it is not mandatory, therefore, that a Federal agency get involved.

Mr. THOMPSON. Only to the extent that we have a statute from Congress as part of our mandate.

Senator PROXMIRE. Aren't those mostly on the basis of complaint?

Mr. THOMPSON. Frequently. They may be all together as a result of complaint, I am not sure.

Senator PROXMIRE. Mr. Thompson, you wrote a memo on May 31 of this year to the Federal Trade Commission, Director of the Bureau of Competition, on "delivered prices in the steel industry." Among other things, you say in the memo that a Federal Trade Commission study attributes an overcharge of $1.25 billion to the steel industry. Will you summarize what you said in the memo and explain what you mean by an overcharge of $1.25 billion annually and tell us what response you received in your memorandum.

Mr. THOMPSON. In answer to the second question first, none.

And as to the first question, I had a look at this memo——

Senator PROXMIRE. You said you got no response to that memorandum? Did I understand you?

Mr. THOMPSON. No, you didn't misunderstand me.

Senator PROXMIRE. You got no response?

Mr. THOMPSON. I don't recall any.

Senator PROXMIRE. Could I ask you, Mr. Chairman, why was there no response to that large overage of $1.25 billion in one of the bellwether industries in our country?

Mr. ENGMAN. I was under the impression that the Bureau of Economic Competition had addressed it.

I would like to make this point. First of all, we have a liaison arrangement with the Department of Justice, as you know. We by and large have current jurisdiction over the Department of Justice to enforce the antitrust laws across the board, they have a duty on that, and we have section 5 which they don't have. But there is too much for both of us to do to be duplicating procedures. So we have a clearance procedure where matters or industries or areas are cleared on one side or the other. And this particular industry, by and large, the steel industry, is a matter which is cleared to the Department of Justice. Nevertheless, our Bureau of Economics has felt that there were activities in that area which merited a study. And that was the basis for the fact that we have instituted this effort. And the examination obviously may have some law enforcement impact down the road, although I wouldn't want to prejudge anything.

Mr. THOMPSON. I trust that that is the case. And I agree with Chairman Engman about that.

Senator PROXMIRE. Will you summarize what you said in your statement when you said that there was a $1¼ billion overcharge by the steel industry. What did you say in that memorandum?

Mr. THOMPSON. Mr. Chairman, it has been characteristic of the industry for years to use these delivered pricing systems, which include phantom freight charges. And it seemed to me that if we could strip out the artificiality of pricing based on those delivered price systems, we might very well be able to obtain a reduction in price, which was the basic thinking that I had in connection with the earlier advisory opinion on backhaul allowances. They are closely related.

Senator PROXMIRE. As I understand it, you recommended to the

Chairman action with respect to this, and an investigation, is that right?

Mr. THOMPSON. I don't think that is exactly right, sir. I didn't recommend this to the Chairman. I wrote this memorandum just alerting the staff really to a problem as I conceived it, and asked them to let me have their views.

Now, my principal law clerk advises me that we did get a response which was nonresponsive. The question simply was not spoken to.

Senator PROXMIRE. This is pretty shocking to me when a Commissioner of the Federal Trade Commission makes this kind of allegation, which I think, from what I have seen and heard—we have had hearings—might very well be a conservative expression. And the FTC doesn't seem to have any course of action that it can take.

What action would you like to see the FTC take with respect to the steel industry and that overcharge?

Mr. THOMPSON. The Chairman has just mentioned the study. I hope that what I wrote about will be a part of it. I anticipate that it will be, sir.

Senator PROXMIRE. Were you aware of that study before the Chairman just mentioned it here this morning?

Mr. THOMPSON. Yes, sir, just quite recently I learned of it, yes. It has been in the last 3 weeks.

Senator PROXMIRE. You may know that this committee had the chairman of the Board of United States Steel, Bethlehem Steel, and Inland Steel before us. And they were asked by me how they justified a 45 percent increase in the price of steel in the last year when their costs have gone up only 21 percent, and how they justified it on the basis of supply and demand when they have produced less steel this year than last year. It seems to me that this is something that should be followed up very vigorously.

Mr. ENGMAN. Let me make just one comment, Mr. Chairman, so that my remarks are not misinterpreted.

I have a feeling that sometime my fellow Commissioner Mayo Thompson is a little bolder than I am. I am always concerned that I not say something in a public forum or before this committee or else where that is going to get in trouble in terms of motions to disqualify down the road. As you know, we do wear two hats. And I have attempted to maintain a general tone to some of my comments for exactly that reason, that we are investigating the matter, and proceeding from there. And we obviously have not yet made a judgment as to whether or not there is a law violation or not.

Senator PROXMIRE. As a matter of Commission procedures, are Commissioners routinely informed of investigational activities?

Mr. ENGMAN. Members of the Commission receive on a monthly basis a summary of matters which are under investigation in all of the across the board.

Mr. THOMPSON. I haven't prejudged that matter either, Mr. Chairman. I just saw a wisp of smoke, and I wondered if it was a raging fire. So I said, give me a report on it.

Senator PROXMIRE. Mr. Chairman, the second of the major investigations recently initiated by you referred to is in the food industry. I suppose there is no industry which the price activity of which is more criticized and which we are more sensitive to than the food industry. We all buy food regularly, and we are very sensitive to price increases.

And they have been very sharp. I think your present inquiry is commendable, and I wish it well. But based on recent acts by the FTC in this area, I am puzzled. For example, last year you terminated a 4-year-old investigation into food retailing and concentration in the Washington, D.C. area. I understand that the staff was divided as to the merits of the case and there were arguments pro and con. But I have a copy of the memo from Commissioner Mary Gardiner Jones, dated July 18 of last year, in which she analyzes the arguments and vigorously recommends continuation of the investigation. She says: "I believe the staff has an important case which should be brought. The high food prices in the area compared to the rest of the country demonstrate the competitive benefits which can be gained from the case."

Why was that investigation killed?

Mr. ENGMAN. We have a little diversity of opinion in the Commission, much as you do here in the Congress, Mr. Chairman. It is my judgment—and I can only speak for myself on that particular matter—but we have to be aware that there was a particular file number, a particular investigation, arising basically from two allegations of misconduct, one a 1929 merger and the other a Robinson-Patman Act related investigation in the late 1950's. I am not quite sure about that last year. It was the unanimous judgment of our senior staff, the Director of the Bureau of Economics, and the Director of our Bureau of Competition, that the senior staff of this particular investigation was not apt to be fruitful in obtaining any relief for consumers in the Washington area. An it was on that basis, and upon my own judgment, having read through the file, that I agreed with them. And we closed that particular investigation.

Let me point out, however, that it is also a matter of public record that we have other investigations ongoing with respect to retail food prices. And as a matter of fact, the Washington area is one of the areas which is included in the retail food pricing aspect of our current food investigation.

Senator PROXMIRE. Isn't it true that concentration in the retail food business in the Washington area is very high, and it has gotten higher in recent years, with the top four stores controlling over 70 percent of the business, with the two chains, Safeway and Giant controlling about 58 percent of the business?

Mr. ENGMAN. There are studies which would dispute that, Mr. Chairman. I have seen three studies, and I think two come to that conclusion, and the other comes to another conclusion. We are, however, concerned about the situation in the Washington area, and we were sufficiently concerned to devote this investigation to it.

Senator PROXMIRE. As you say, you are now investigating chainstore food prices in other major metropolitan areas. What concerns me is that if you killed the District of Columbia food investigation, where concentration of prices and profits are among the highest——

Mr. ENGMAN. I am not saying the food investigation was killed. We have a pending investigation. Your question related to a specific investigation based upon a 1929 merger and an alleged violation of the Robinson-Patman Act in the fifties.

Senator PROXMIRE. As I understand it, you spent 4 years in an investigation of the food industry in Washington, D.C., and then you stopped that investigation, and you have another unrelated investiga-

tion, with some kind of similarity, because they are both of food, but you are investigating in a number of cities. And this is just one of them, isn't that true?

Mr. ENGMAN. I would say, Mr. Chairman, that I made the judgment that that investigation was not likely to result in a meaningful relief to the consuming public. And it was on that basis that we voted to close off that particular aspect of it.

It is also true, however, that since I have been at the Commission that we have devoted increasingly greater resources to the food area. I think this is an area in which we must expand our activity, and I think it is unfair to imply or insinuate that because for some reason a particular investigation of files is closed, that in fact we don't have an even more meaningful investigation underway now.

Let me offer to the chairman and the members of this committee the opportunity—I happen to be working at cross purposes with your assistant—the opportunity for you to receive a briefing, a private briefing by the Director of our Bureau of Competition, Mr. Halverson, on the details of this investigation. And I think if you hear that, talk to him about it, you will see that we are doing as much as we think we can in this area.

But again, I reiterate that a great amount of this information—and I am somewhat at a disadvantage—is of a nonpublic nature at this point, and making it public could jeopardize the success of some of these areas. We have a situation where in this particular matter, as a matter of fact, there has been some resistance to our investigatory hearings by at least some of the major food chains. And we are involved now in pursuing that course of action. But I would urge upon you, if you are interested in this question, to have a briefing by Mr. Halverson.

Senator PROXMIRE. Senator Javits.

Senator JAVITS. I am very interested in the phrase you use, Mr. Engman, in your prepared statement—and I apologize for not being here through the whole statement, but like a number of the other members, I have had a few distractions lately, and I am trying to catch up on my work.

Mr. ENGMAN. I would have thought you were still celebrating.

Senator JAVITS. We don't have much time for that. Besides, Senator Proxmire is a very hard taskmaster. I admire him greatly, as I think you all know.

You say that the Commission believes that its most successful contribution in its fight against inflation is tough antitrust enforcement. I think it is time—and I wonder whether you would agree with me—to look at what you mean by the antitrust laws. In other words, what are the concepts which are the antitrust laws to you, and are those concepts designed according to today's conditions to deal with inflation or even excessive concentration? For example, for many years, before I was a Senator or a Congressman, I was a trade association lawyer. And I began to see even before the war that the antitrust laws were restricting the little guy and punishing him, and doing very little to the big operator, not even a conglomerate, just an enormous horizontal or vertical aggregation of production capability.

So is there any thinking there as to what is meant by the antitrust laws today? What is your objective? What are you trying to do? Are

you trying to break down big companies, or are you trying to cut down these practices like the old saw that has been around for as long as I have been alive, Pittsburgh Plus? What are you trying to do?

Mr. ENGMAN. That is a fair question, Senator Javits.

I view the antitrust laws as basically as necessary to enable our economic system to function as it is intended. We say that we have a free market economy, that we believe in the principles of free enterprise, that our market system will bring to our consumers, to the members of the public, the highest quality goods at the lowest possible prices. The cornerstone of this concept must be that there is competition, that there is not a monopoly kind of situation or an administered price kind of situation, so that the forces of the marketplace are not able to work. And I view the job of antitrust enforcement, I view the job of the Federal Trade Commission, as being to attack those restrictions which appear within that market structure within that framework, the restrictions which impede the free flow of the marketplace. And to remove those, when we remove those or attack on the price side, that is what antitrust enforcement is, in my judgment.

And I also suggested a few days ago that there may be some of those restrictions that are imposed on the governmental side through various types of regular laws, and that we also ought to be reexamining them. I think that our job is to attempt to address and focus on the restrictions which exist.

In terms of the size of effort which we have underway, I think that the Commission recently had had a renaissance, one might say, with respect to a reevaluation of what the competition is attempting to do. I don't view our job of the antitrust enforcement as being designed to protect competitors, but to protect competition.

I would be much more concerned about the major impact on the American economy, and I think that is where we ought to be addressing our attention first. As Commissioner Thompson has mentioned earlier, we have been careful in attempting to institute and increase the kind of cost-benefit analysis which we require the staff to go through before we bring it to complaint. And we ought to be addressing those kinds of areas. And I think the kind of area that I have mentioned in my prepared statement is the kind of area where the potential payoff is large.

Senator JAVITS. Isn't it a fact, Mr. Engman, that if you proceeded along that theory without any ameliorating circumstances, that all the little guys would be put out of business, because they can't produce at the price level and the production level that you prescribe is the end game of our society? On the contrary, they are being bested by the supermarket, and by the conglomerate in many cases, and certainly by the vertical oligopoly corporations. Now, how do you deal with that? In other words, the American people also want to preserve a lot of people in competition. And where do you impinge on that?

Mr. ENGMAN. I suppose that is one of the reasons for the passage of the Robinson-Patman Act and the fact that it is still law. And we have an obligation to enforce that statute, and we do enforce that statute. I am not as pessimistic about the ability of the little guy to survive if the marketplace in which he is competing is actually a free one. I think that we have seen time and time again in this country people start from scratch, and I think it still can be done, smaller companies develop new ideas, new technology, and then become larger

companies. So I don't for a moment indicate that except for the conclusion which you suggest, that it will necessarily go back to the small guy.

Senator JAVITS. You have mentioned R. & D., for example, which is critically important. Isn't it a fact that that is the unique area in which small business is bested by large business which has the ability to engage in very extensive research and development in new products, resulting in greater efficiencies for existing products, trade machine goods, et cetera? In other words, are the large R. & D. units and the large advertising budgets in the hands of large companies the very things which suppress and discourage small business?

I am just challenging, Mr. Engman, in the sense of a devil's advocate, because I think it is very important, where we go socially if you ask us to accept the pure concept that all you do is blindly follow the doctrine of competition, wherever it takes you.

Mr. ENGMAN. I would suggest that there have been a number of products that R. & D.—that is carried on by the smaller guy—has developed. In fact, he may have more incentive to be successful. And in fact, we have seen the introduction of safety razor blades into foreign countries by a company that was not a giant. We see countless times where the small guy has come up with a good idea and then become a big company. If you look at the development of the Xerox Co. and some other companies which were not around 50 years ago. And I suggest to you that our system still can work if we give it a chance to work.

But that is one of the reasons that we have to keep at the job in attempting to remove some of these predatory or abuse-of-market power kinds or situation which prevent the small guy from having a chance.

Senator JAVITS. I don't doubt that there are millions of small businessmen that have enormously more talent, I really do. I don't think that this is the answer. But I was struck particularly by the single view, without any relationship to the social impact of business which you expressed. I doubt very much if you administer the law that way, by the way, because I have practiced before you too. But nonetheless that seemed to be the end point that you were making. And I was interested in what did you consider to be your one line direct.

Mr. ENGMAN. I would suggest, Senator, that terms of the kind of cost-benefit analysis which we are attempting to do at the present time, we tend to focus, and our resources are tending to focus, on the big guys and not the little guys. We have to be aware of the fact that numbers by themselves are not an indication by themselves of the health of competition. If we were looking at numbers only, then 19,000 truckers in this country would say that the trucking industry is the most competitive industry in the country, which we know is not the case, because of the imposition of other factors. So the problem is, how do we protect the American economy, the free flow of goods as we should? And I think an important element of those is attempting to remove those areas where an abuse of marketing power, or unfair marketing power, or whatever gives the little guy more of a shaking than he might otherwise get.

Senator JAVITS. Mr. Means, would you care to say a word about this?

Mr. MEANS. I very much doubt whether it is within the power of the Federal Trade Commission to prevent great and extensive abuses

of market power, for the reason that the abuse of market power can occur in an industry that is in one sense highly competitive. The individual business in a concentrated industry of one or more enterprises has a very considerable degree of market power, power which allows it to choose among a range of prices. And if it chooses to raise its price arbitrarily, and not because of increases in cost, it can do so, up to some limit set by the degree of competition. And most of the inflation of the last year not arising from the oil cartel has involved such an exercise of power. Maybe half of the total rise in the wholesale price index has resulted from an exercise of such power. And this is power which, under the laws which guide the Federal Trade Commission, cannot be interfered with.

At the present time whether there is abuse or not is not going to come under any of the regulations, any of the laws under which the Federal Trade Commission reaches a limit of its activity. Senator Proxmire has pointed to the long time necessary to accomplish things under the Federal Trade Commission. And this is to me important, but it is secondary to the fact that the Commission's scope is limited. Even with expanded powers, I doubt very much that it could be made effective in dealing with t he abuse of market power which can arise in oligopoly under what are today perfectly legal conditions. This means that one has to interfere with the free enterprise system in some fashion to reduce the abuse of market power, in order to make the free enterprise system work better.

Senator JAVITS. Have you given us any suggestions for law on that subject?

Mr. MEANS. Yes; I have outlined a program to control stagflation. It is in my written testimony. And I presented it here this morning.

Senator JAVITS. Thank you.

I would add one other question, Mr. Engman, and then I will yield, because my time is up.

On the theory that you have given us, isn't it a fact that it is very much more difficult to reduce prices, because in a sense there is an umbrella over those who have a strong influence on the market, the umbrella being the relative inefficiency, if it exists, of the small business enterprise? In other words, if competition doesn't have to be reflected in lower prices, though lower prices may be well within the means of a large organization, then they get off scot-free. They have no test of what they can do for the consumer, their only test is, are they efficient in relation to other competitors, and if those competitors are weak and small, they can have a big umbrella over them and they can make huge profits at the expense of the public. Have you done any thinking on that subject?

Mr. ENGMAN. If that situation exists, that means that we don't have a competitive situation in existence within that particular industry, because if there were competition, the lower prices would tend to be taken care of. The marketplace itself, under the theory, will result in a different firms of differing efficiency sizes being developed in various industries, depending upon the industry and depending upon the most efficient level of producing. I think, with due respect to Mr. Means, that our own Director of the Bureau of Economics, Dr. Frederick Scherer, who is also an international expert and economist with respect to concentration policy, has conducted some studies which

raise some questions about what level you reached that point of efficiency. And it may not always be as high as we sometimes expect. My answer to you would be again the same, that if that isn't working, if the price mechanism is isn't working, that means that there is something phony there, and that is what we ought to be attempting to focus on.

Senator JAVITS. Yes; but isn't it a fact that you can't establish an entity to compete, you have got to take what it is? In other words, if there are a lot of weak elements in the business and one strong one, you can't do anything about it, you have got to take the competition as it is?

Mr. ENGMAN. That is correct, not unless somebody is violating the law.

Senator JAVITS. Do you consider the antitrust laws, therefore, to be inadequate on that score, and you ought to be able to go in and get a reexamination where it is in the potential of a dominant factor in the field to give it.

Mr. ENGMAN. I didn't hear the last part of that question.

Senator JAVITS. I say, where it is well within the potential of a factor in the particular field to give it, and competition is not producing it.

Mr. ENGMAN. First of all, let me say that I do think that we have in section 5 of the Federal Trade Commission Act a very flexible tool. And in fact some of the areas Mr. Means has implied we might not be capable of proceeding in, I am not sure that we are or are not. We have pending litigation which will be testing the outer limits of section 5. I personally believe that it is a very flexible tool. By the same token, I do think that you and Senator Hart and others, Senator Proxmire, the chairman, have provided a service by introducing various pieces of legislation—I particularly think of 41–178—which would call for reexamination of some of these areas. I think that a reexamination across the board is always healthy for anything. It is healthy for the FTC to come up and be challenged by questions from this committee and from others. And it is in the nature of things and the way we do business in this country. I think it is apt to produce a better, more meaningful result.

So although I wouldn't want to say by my silence on the subject that we don't have the authority, since some of these legal questions are now in the process of being determined, I certainly welcomed the kind of reexamination which you have called for.

Senator JAVITS. I would say this, that I have come back myself with a new mandate. And I am hoping not to have to wait for a law to reexamine. I think the Joint Economic Committee is very able to reexamine, and is well suited for the purpose. And all it would need would be the necessary backing financially from the Senate and the House in order to do this job. And all I was trying to do, Mr. Chairman, is to bring out why this is so essential. You know, we talk about tough antitrust enforcement, it is going to bring down prices, and do this and do that. But I don't think we ourselves know what we are trying to attain. What is our objective? What is tough antitrust enforcement? It may be highly counterproductive.

Do you care to make any other comment, Mr. Means? And then I am through.

Mr. MEANS. Only that I think that the central problem of stagflation is one that cannot be effectively dealt with by Federal Trade action over any reasonably short period. I very strongly support the activity of the Federal Trade Commission, but regard it as much more limited. I think that the Commissioner has been confusing two kinds of competition, classical competition in which the seller has no market power, and administrative competition in which the individual producer is in a position to have some degree of market power. And you will find administered prices in probably 80 percent of the transactions in the United States. Their presence indicates some degree of market power. For at least a third of our economy, the market power is weak enough so that not much damage to the society can be done through its exercise. But for as much as a third, the oligopolists have sufficient market power so that its abuse can be seriously damaging to the society and destructive to the free enterprise system.

Mr. ENGMAN. May I just make one comment. With due deference to Mr. Means, I would suggest that I think that rather than my being confused on this matter, that he is not aware perhaps of some of the pending cases which we have at the Federal Trade Commission which are addressed to exactly the kind of situation where the seller does have market power and utilizes that market power, the oligopolistic kind of situation. We have a pending case in the breakfast cereal industry. And we have a number of the other cases and a number of other investigations underway. Our staff believes—and I will for the time being take myself out of it, since I occasionally have to wear a judicial hat—our staff believes that section 5 is broad enough to reach and provide effective relief in some of these kinds of situations where there is a substantial market power and use of that. Lawyers will disagree with that, but the time will come when we will finally have a legal resolution of that question.

Mr. MEANS. The time is on us now when we have to meet the problem of stagflation. We can't wait for the time to come when—5 years, 8 years from now—when this kind of a control has been adjudicated.

Senator JAVITS. I was just going to suggest that I think it would be very useful if the Chair could see its way clear to do it to find out what cases they have got, what they expect to accomplish by them, and see how profound their thinking is.

Senator PROXMIRE. Let me see if I understand the line of reasoning you have been following. I understand that you say we haven't really made an economic determination as to whether or not the size of the business represents an element of efficiency, economy of scale, so that if we should proceed with an antitrust action, for example, that required divestment or divestiture, maybe large numbers, that it might result in less efficiency and high prices, with an adverse economic effect. I think there is some evidence, certainly in some industries—in the steel industry, for example—that the small companies can compete very well indeed, that the larger firms are not the most profitable. United States Steel, the largest, is not the most profitable. Bethlehem isn't in second place either. The smaller firms seem to do better. And I think there are a number of industries where you could argue that moderate sized firms are efficient. But I think it would be very useful to have that kind of study, because I don't think it has been made

either privately or by any Government agency, and I think we ought to do just what we are doing, inquiring what will this do to the price level.

Senator JAVITS. There is just one other aspect I would like to add, and that is the fact that market competition may not compel individual units to do as much as they could do for the consumer, because market competition is very weak, and therefore it really isn't bringing out all the cost benefits that competition is supposed to. And I think that is true in a great many fields. In other words, large units could do a lot better by the consumer if they had some different standard than just competition. The competition really is keeping an umbrella over it because it is so weak.

Senator PROXMIRE. Mr. Means, do you know of any studies in the economic profession that could help us in this area? Senator Javits raised that interesting economic thought—economies of scale in various industries.

Mr. MEANS. I think John Blair's recent book, "Economic Concentration," has the most up-to-date references on that subject.

Senator PROXMIRE. Let me ask the staff to go into this and see what has been done and what we can do to get some information on this, because I would agree that we are ignorant, we should have more information than we have.

Senator JAVITS. And also if they think section 5 is flexible enough to reach problems like this, I think it would be critically important for us to find out why they think so and see if we agree. That would enormously strengthen the hands of the Commission.

Mr. ENGMAN. I might say, Mr. Chairman, that Mr. Scherer, our Director of the Bureau of Economy—and in his still unpublished—has done a substantial amount of work with respect to the level of efficiency of the concentrated firm just prior to the time he came to the Commission a few months ago. And I am sure that he would be more than willing to discuss some of these questions with the staff.

I might say that the point which we have touched on now—and I can't ever forgo any opportunity to get a plug in for a line of business reporting—but the point we are touching upon now illustrates the fact that we all feel we need more data, we all need more information about some of these areas. And that is why we believe and I believe strongly that this line of business reporting program which we now have just gotten underway is going to be tremendously healthy.

Senator PROXMIRE. You understand, Senator Javits, Mr. Scherer testified before this committee.

Mr. ENGMAN. He did.

Senator PROXMIRE. And his position is that about one-half of the annual inflation is caused by anticompetitive practices. And he is a very able economist. He has made a responsible study—he may be wrong, but this is his conclusion, and he has data upon which to base a conclusion that competition will reduce price increases.

I would like to ask you, Chairman Engman, about the degree of concentration among banks. I am very concerned about that. I realize that the FTC can't reach the banking industry under the law, isn't that correct?

Mr. ENGMAN. That is correct.

Senator PROXMIRE. Do you think that that law might be modified, so that you might be free to go after concentration in the banking industry?

Mr. ENGMAN. I think there is a feeling around the country that the banking industry does in many ways affect the market behavior on the part of business. It obviously has interlocking directorates, and it has influence—very important elements within various industries.

Senator PROXMIRE. Wouldn't it be a good thing to eliminate that exemption and give the Federal Trade Commission the authority to act if banks were violating the law as other industries do?

Mr. ENGMAN. I would never look a gift horse in the mouth, Mr. Chairman. Let me say that I don't think we ought to have any sacred cows in this country today. At this particular point in our economy, with the problems we are facing, I think that all of these special exemptions, all of these special arrangements, whether they be with respect to banks or whatever, ought to be re-examined in a very tough approach as to whether or not they make any more application in 1975.

Senator PROXMIRE. Do you have any more information or have you heard of any on the staff of the FTC with respect to banks and the concentration of economic power?

Mr. ENGMAN. We normally attempt to devote our resources to those things we do something about. We do have some investigations underway with respect to interlocking directorates, but that is a separate question.

Senator PROXMIRE. A major issue which the Congress may be confronting within a few days, and certainly in the next several months, is the question of deregulation of natural gas. Deregulation would cost the consumer a billion dollars more on his annual gas bill, and it would contribute to the already devastating inflation and energy cost, in my view—which is a view that is challenged by others. In June of 1973, after 3 years of investigation, the Federal Trade Commission officials testified before the Senate Antitrust Subcommittee that in a number of cases natural gas producers understated reserves by as much as 200 percent, 300 percent, and in one case 1,000 percent, understated the value of their reserves. You testified at that time that because of the lack of cooperation and insufficient legislative authority the investigation was taking a long time.

Now a year and a half later you have additional authority from Congress and a specific request to proceed rapidly on this study, and yet it appears that no progress has been made and no report forthcoming. Senator Hart wrote to you a month ago setting a deadline of today, November 18, to deliver some report to Congress on the progress of this study in some form, or else an explanation as to why the report hasn't been completed. It is vital to have this information on natural gas underreporting of reserves for the up-coming debate on the Buckley amendment.

What is the progress of this study, and will you produce some results in the next few months?

Mr. ENGMAN. First, Mr. Chairman, I believe we have already had that contact with the Senator and his staff. I personally discussed this matter with him 3 or 4 weeks ago, or 3 weeks ago, I believe. And there

will be an interim report which he will have or the information from that report which he will have available to him for his hearings.

Senator PROXMIRE. The reason I got into this wasn't that I wanted to butt into Senator Hart's business, but his office asked us to ask about it. They are very much concerned. There has been a lack of communication, apparently.

Mr. ENGMAN. I know that he is concerned with the matter——

Senator PROXMIRE. He was to have testified this morning, incidentally, but he wasn't able to get back.

Mr. ENGMAN. Anyway, to my knowledge—in fact I know that the interim report will be given him, in fact may already have been given him, and that we have had contact with various people on the staff.

Senator PROXMIRE. Let me get briefly into the line of business information. And I have a couple of questions for Mr. Means.

You mention the line of business report program in your statement, something that you say that you have been very interested in. Obviously, it is impossible for us to understand the operations of an industry like, for example, General Electric, with its enormous variety of products, dominating in a particular area. We don't know what their profits are, what their costs are, that their operations are. But we know what their competitors' profits are. We don't have a picture of the industry because we don't have the particular factors involved. Now, you believe it is vital to carrying out the antitrust responsibilities of the FTC to have this kind of information. Specifically you stated it is vital to the selection process of the Commission.

Now, as you know, the House has passed restrictive language in the Agricultural Appropriations bill—I fought hard against it—which would prevent use of individual company data by the Federal Trade Commission for antitrust enforcement purposes. Do you not think this language, if enacted, will severly handicap the Commission's case selection process?

Mr. MEANS. I think that——

Senator PROXMIRE. Let me ask Chairman Engman, and then if you would like to comment, that would be great. I beg your pardon. I have questions for you a little later, Mr. Means. But let me ask Chairman Engman first.

Mr. ENGMAN. Mr. Chairman, these points were raised in a letter which you sent me about a week ago, also signed by Senator Hart and Senator Magnuson. And it is an item which was on our agenda for the Commission meeting tomorrow. So I cannot really state what judgment the Commission is going to make with respect to that. But I can assure you that we will have it down here later this week.

Senator PROXMIRE. Let me ask the other questions and see if there is any you can respond to.

The House passed language also prohibits the Federal Trade Commission in providing line of business information to any other agency of Government, which I thought was outrageous, because after all if the antitrust department should proceed with a case, they should do so on the basis of the facts. Do you think that the statutory prohibition would hamper other agencies of the Government which are involved in the fight against inflation, agencies such as the Council on Wage and Price Stability, in carrying out that fight effectively.

Mr. ENGMAN. Again, these were points that were raised in that letter. The Commission has not had an opportunity to discuss the matter. that we encompass that in a letter which we will be sending down to And in fairness to the other members of the Commission, I would ask you later.

Senator PROXMIRE. Will we have that in time to be able to——

Mr. ENGMAN. You will have it if necessary tomorrow afternoon.

Senator PROXMIRE. That is fine. We do need it now the way this is moving along.

Mr. ENGMAN. That is fine.

Senator PROXMIRE. Would you like to comment on that, Mr. Means?

Mr. MEANS. No.

Senator PROXMIRE. Let me ask you, Mr. Means, what impact do you think President Ford's economic program will have in solving our economic problems?

Mr. MEANS. I am sorry, I didn't get the question.

Senator PROXMIRE. What impact will President Ford's economic program have in solving our economy's severe problems?

You have commented on that to some extent. You said that you thought that this is not a demand inflation, with which I would agree wholeheartedly. Anybody can look at the facts in recent days in particular and feel that it is. But are there any aspects of the President's economic program that you think would be helpful?

Mr. MEANS. As a minimum program, it can probably accomplish a little bit. I think it has no great ability to deal with the actual inflation.

Senator PROXMIRE. In view of the fact that the principal elements of the program, as I understand it, are inhibiting demand——

Mr. MEANS. No. 1.

Senator PROXMIRE. No. 1, he has a surtax proposal, and No. 2, he has a program of spending restraints which I applaud, but which I think has to be supplemented by actions to stimulate the private economy, or we are going to have terrific increased unemployment.

Mr. MEANS. I think if those two parts of the program are carried out, we will have much worse conditions than we have now, and it will not inhibit inflation.

Senator PROXMIRE. He asked for a sharp increase, at least arithmetically, in the penalty for violating antitrust laws. But instead of flicks on the wrist there are now taps on the wrist. It seems to me that it doesn't amount to anything. Instead of finding a company a hundred thousand dollars he would fine them a million dollars. What is a million dollars to General Motors or A.T. & T.? That is about 10 minutes income. I can't think offhand that anything he has proposed would have any bite on this particular inflation, can you?

Mr. MEANS. Well, I am not inclined to support the President's program. I think there are minor elements in its that might be good.

Senator PROXMIRE. I think you said something about businesses anticipating wage/price controls.

Mr. MEANS. Yes.

Senator PROXMIRE. By increasing prices. Can you specify the industries where this has been the case?

Mr. MEANS. I can't specify specific cases where this anticipation has taken place. There has been a lot of discussion in the trade journals of the effect of the expectation of price controls as business raises prices in anticipating such action.

To me the most important source of administrative inflation is the difference in the way business enterprises regard things that reduce their costs, and things that increase their costs. If, for example, a business has a sizable increase in wage rates, it is very conscious of that as an increase in costs. If it has an equal gain in productivity because it has introduced improved machinery or something, it pats itself on the back and takes the credit. In that respect we have a ratchet process here. Until a year or two ago this ratchet process was probably a major factor in giving us inflation, because the industries that had productivity gains didn't fully set them off against the increase in labor costs that came from raising prices, raising wage rates. And this inching process has been going on continuously.

Senator PROXMIRE. I think you are roughly right. In other words, we have a history of prices going one way in many industries, up and never down. Farm prices in the last 12 months have gone down 7 months and up 5 months. But you try to find a year in which the steel industry's prices have gone down. They never go down.

Mr. MEANS. In the last year or two the expectation of inflation has come into play. Here we have quite a different effect from the expectation of inflation in a concentrated industry, and in a highly competitive industry. You take wheat.

Speculators will come in when there is a crop failure and buy up part of the crop. And then when they can realize profits with a gain in price, they will sell out. So that there has been no effect on the price prespeculation and postspeculation except for the change in output. When you come to an administered price in a concentrated industry, you do not have any room for the independent speculator. But the company that has market power can raise its prices quite arbitrarily, simply because it expects inflation. And this is a one-way street. And there is nothing inherent in the way of a buildup of additional holding of goods off the market which then come onto the market and reverse the price rise. Thus you can have big arbitrary price increases that do not relate to a change in cost and current demand.

Senator PROXMIRE. Thank you.

In the front of your prepared statement, Mr. Means, you say that contracting the general demand for oil would be "cutting the face to spite the nose." I like that twist. But a strong domestic oil-conservation program has been discussed as a key element of U.S. energy policy.

Incidentally, John Sawhill will testify before this committee tomorrow. Do you think that we should abandon the idea of a strong energy-conservation effort?

Mr. MEANS. No, I think you have got to expand energy production and conserve—I am not an expert in this field.

Senator PROXMIRE. What do you mean when you say that contracting the general demand for oil would be in effect bad? Why wouldn't that be good under present circumstances, from the standpoint——

Mr. MEANS. Contracting the demand for oil?

Senator PROXMIRE. Contracting the general demand for oil you say would be cutting the face to spite the nose?

Mr. MEANS. No, contracting general demand for everything, by fiscal and monetary policy.

Senator PROXMIRE. I see. Would you agree that contracting the demand for oil would be good? It seems to me that would be wise under present circumstances, just as contracting the demand for sugar would be wise now.

Mr. MEANS. Yes. In the case of oil, I would give very serious consideration to rationing, or to a tax that is proposed, as a way of reducing the impact of the limited supply on the economy.

Senator PROXMIRE. Chairman Engman, a story in the Sunday Washington Star by Bailey Morris reports that a Federal Trade Commission planning document states that your agency will pursue the milk industry and enforce occupational licensing requirements and the like, but will not use antitrust as an anti-inflationary tool, and you will avoid confronting the vertically integrated and the concentrated industries. Will you comment on the story and planning document it cites.

Mr. ENGMAN. I saw the story, Mr. Chairman. I am not absolutely certain what document is being referred to in the story. I make an assumption which may not be accurate, but at least my assumption at this point is that that is one of the documents prepared by the staff for consideration by the Commission in connection with our 1976 budget discussions, and therefore does not necessarily—in fact there is no necessary correlation between the viewpoint expressed in that document and what actually was determined by the members of the Commission. I am not quite sure whether that is or is not the document, but I surmise that that is what the reference is to.

Senator PROXMIRE. As far as you know, is there any determination on the part of the Federal Trade Commission to use or not to use antitrust as an anti-inflationary tool?

Mr. ENGMAN. It is exactly the opposite, the thrust of my statements here this morning, as well as Mr. Thompson's comments, is that we believe that although it is not the entire solution, that it is part of the solution. And that is what we are about.

Senator PROXMIRE. I understand that at the present time there is no penalty on the companies that violate the antitrust laws, after a cease and desist order. Are you going to ask for restitution routinely?

Mr. ENGMAN. We have a court of appeals out in the ninth circuit which made a determination a few weeks ago that we do not have the authority to seek that. We presently have asked the Solicitor General to petition the Supreme Court for certiorari. But I think we, the present members of the Commission, have very strongly taken the position that we believe that restitution is an appropriate remedy.

Senator PROXMIRE. If you don't have that authority, would you feel that Congress should provide it?

Mr. ENGMAN. We will be knocking on your doors.

Senator PROXMIRE. I would like to ask Commissioner Thompson, Commissioner Thompson, the Washington Star story mentioned an ideological split within the Federal Trade Commission. Is there such a difference of opinion as to what the FTC ought to be emphasizing in your opinion, and if so, how would you describe the differences.

Mr. THOMPSON. I haven't seen the article. I was home, home on the range, Senator, and I missed the Star-News. But addressing the question, is there an ideological split, I suppose that all of us have our preferences as to priorities, but everybody on the Commission is speaking very strongly about emphasizing the role of our agency in antitrust. There is no difference in viewpoint there, sir.

Now, there are some differences concerning other programs. I don't believe that there is a lot of enthusiasm for Robinson-Patman cases.

Senator PROXMIRE. I am not trying to suggest that there is something wrong. I believe it is good to have differences of opinion. If everybody thinks alike you might as well just have one commissioner.

Mr. THOMPSON. There have been times when I thought that would have been real wonderful, if I could have been that one Commissioner.

Senator PROXMIRE. I would like to ask you further, Commissioner Thompson, you have recomended that cost-benefit and other economic analysis precede decisions to move on cases so that you see who gets hurt, that is what I presume you mean by that, so that you might know whether successful resolution would result in significant benefit to the consumers. Is this being done, in your opinion?

Mr. THOMPSON. It is being done more and more, I am pleased to report.

It is very important to measure the effect of what you have done, but this could require considerable expenditure of money, to look back on the action after it has been completed. While I think that is important, the next best thing is to look forward and anticipate what you might be able to accomplish as a result of an action that is proposed, and, as I have stated, cost-benefit analysis is being done more and more, Mr. Chairman.

Senator PROXMIRE. Let me ask Chairman Engman what department makes such estimates, and at what stage of process is this estimate made?

Mr. ENGMAN. We have it happening at a number of potential points, Mr. Chairman. First of all, in the broad scope, in terms of the Commission's judgment in the budget process as to where we ought to be concentrating our efforts, and the Office of Policy Planning—I don't want to sound like a bigger bureaucracy than we are, but our Office of Policy Planning makes various assessments with respect to projected costs and the importance of various kinds of programs.

With respect to specific investigations or specific cases which we have coming before the Commission, the Bureau itself, depending on where it might be originating, generally will make that kind of assessment. And there are some matters which are referred to the Bureau of Economics, or to the Office of Policy Planning for comment on an ad hoc kind of basis. But it happens at several levels.

Senator PROXMIRE. When you are considering taking action in a case, do you usually know what the economic consequences are going to be if you win the case?

Mr. ENGMAN. What we have been trying to do is to improve our capability to reach that kind of decision. And as Commissioner Thompson said, the last year has seen that kind of analysis being used much more than it has been in the past. I have to just raise a couple of caveats, I guess. And that is that one area of concern still

is the quality of the data that we have in some of those industries as it relates to line of business and everything else. And we are not kidding anyone that some of these estimates are perhaps just that, just estimates, and maybe not based on all that solid information.

And second, there may be other factors which we take into account which are less easily quantified, such as, what is the deterrent impact that is likely to flow from a particular action at a given time.

Senator PROXMIRE. Say an individual Commissioner wants to know what effect on prices bringing a particular Federal Trade Commission action would have, is he also free to get whatever is available?

Mr. ENGMAN. Oh, yes. As a matter of fact, the general memorandum from the staff which now come before the Commission more often than not include that kind of information in the presentation made to the Commission.

Senator PROXMIRE. Let me ask why a lot of people, economists and people in Congress and others, feel that antitrust may not be a very helpful tool to fight inflation. The only two successful cases of antitrust enforcement cited in your prepared statement are the Seattle bakers case and the tetracycline case, both dating from 1964. Isn't the lack of more recent and more significant cases, where you can demonstrate concrete benefit to the consumer, evidence of a failure of antitrust enforcement?

Mr. ENGMAN. I suggest not. I think the point Mr. Thompson has just made is what is applicable here; that is, that it costs money to evaluate these matters. And until recently there has been a lack of interest at the Commission in those kinds of evaluations. We are reinstituting that interest. The Office of Policy Planning has been given a directive to increase the amount of valuation that we do and the kind of activities. I think that we ought to, if we don't do it across the board, with respect to significant matters which we do do, take a backward look after we have done it and see whether we can't learn from the experience.

Senator PROXMIRE. That was not quite my question. My question was if in the last 10 years there have been any significant cases, 1964 being the last time when you had cases.

Mr. ENGMAN. I can't say that, Mr. Chairman. I urge you to view that in terms of the context in which you used those two examples. They were examples of benefits which flow from two cases where this evaluation process had taken place.

Senator PROXMIRE. What you are saying is that there are other cases, but you haven't had an opportunity to evaluate the benefits.

Mr. ENGMAN. That is right. We have had reinitiated, let me say, an interest in terms of evaluating some of our activities. And I expect we are going to see a lot more of it in the future.

Senator PROXMIRE. Can you give me example cases, or can Commissioner Thompson, that might have resulted, probably resulted in price relief for the consumer that have been successfully concluded since 1964 of significance nationwide?

Mr. THOMPSON. I don't know about any that have been successfully concluded, but I share the chairman's optimism on the results of Xerox. I can give you an example of a case that will produce substantial benefits—not a case, but an effort—in the prescription drug area,

which in even the most conservative of views will save consumers $250 million a year, and more liberal estimates indicate $1 billion a year.

Senator PROXMIRE. Where was this?

Mr. THOMPSON. This is part of our task force effort in the medical area that the chairman mentioned earlier.

Senator PROXMIRE. This is just an investigation, isn't it?

Mr. THOMPSON. It is an investigation in part, but it is more than that. It is an investigation leading perhaps to a trade regulation, Mr. Chairman.

Senator PROXMIRE. I am talking about completed cases.

Mr. THOMPSON. Completed cases. I think this *Xerox* case is one that has substantial potential benefit.

Mr. ENGMAN. I think the short answer is that I don't think there has been a great deal of answer after the fact with respect to those developments.

Senator PROXMIRE. You have as an example that Mr. Thompson has given us of a $1¼ billion ripoff by the steel industry, and we have $80 billion, one-half of the inflation every year, according to Mr. Scherer, of your Bureau of Competition, that we suffer because of price-fixing. And yet we are unable to adduce any specific saving that has been achieved since 1964, although I think that there may well have been some.

Mr. THOMPSON. May I say something, Mr. Chairman? You know, the Bible speaks about the sin of the father being visited on the next generation. We haven't been doing all that bad since early 1973. And I think that we are harvesting some poor crops that were planted in years past.

Senator PROXMIRE. You may be doing very well. But what I am trying to get at is, we would like to get just exactly what you are after, I think you are right, and Chairman Engman is right. What we have got to get, though, is as much data as we can examine and challenge if it should be challenged, so we know what we are doing here, so we know what effect this has.

Mr. THOMPSON. I think you are right.

You asked a question a moment ago on this line of business information about the other agencies, and the chairman replied to that. I sure wish you would give us a key to the door over in the Bureau of Census. We can get in that building without a permit, but we can't get any information out of it. We need to have more exchange of information. It is one people, one country, one government.

Senator PROXMIRE. You tell us exactly what access you have with respect to the Bureau of Census. We would be delighted to do what we can.

Mr. THOMPSON. It would help us tremendously if we could get over there and get some information to assist us in cost-benefit analysis.

Senator PROXMIRE. You give us a specific list of the kind of information about the other agencies, and the chairman replied to that. I sure from them.

Mr. THOMPSON. I would be delighted to.

Senator PROXMIRE. Very good. We welcome that.

You have under your own statute tremendous power here: The Commission shall have power to gather and compile information of any

corporation engaged in commerce, to file with the Commission such forms as the Commission may prescribe in writing, and make annual and special reports to Congress—it goes on and on, as you know, there is a very broad specification of authority which you have now. But you let us know, and we will be happy to do all we can to help.

I have a list of studies that we would like to get from you, Mr. Engman. I will read them very quickly.

I apologize to you for taking so much of your time. You have been here and Mr. Means has been here since 10 o'clock, and you have both been most responsive and helpful witnesses.

Let me just run over this and then I will be through. I would like to request some studies information from you and I ask that you submit the following to the Joint Economic Committee within 30 days:

One. I would like you to update and complete the 1972 FTC Estimates of Monopoly Margin in 100 Selected Manufacturing Industries. I would like this study to be expanded to cover 300 manufacturing industries and selected nonmanufacturing businesses as well.

Two. I would like a table showing all cases pending before FTC together with the docket number, name of case, description of case, industry, violation charged, relief requested, and date the complaint was issued. I might say Mr. Engman, that we have had a very difficult time obtaining a complete picture of the cases pending and I hope you can provide this to us at the earliest time.

Three. We need a study evaluating the effectiveness of FTC orders over the past 5 years. I would like to know the amount by which prices were reduced and consumers benefited and whether prices fell or were prevented from rising as a result of FTC actions.

Four. I would like you to explain why there are no current industry-wide investigations in such concentrated areas as steel, nonferrous metals, chemicals, and machinery.

Five. We would also like a comprehensive set of recommendations for legislative and budgetary action which would improve the effectiveness of FTC's antitrust efforts and the Government's antitrust efforts generally.

Finally, I have a number of written questions which I would like you to answer when you correct your transcript.

Mr. ENGMAN. Let me say with respect to that list of items, to the extent that we have that information in existence or in documents, obviously, we are willing, if it is appropriate, to do it in a public manner, otherwise in a nonpublic manner.

I suspect that some of the things you have requested us to do will require substantial amounts of manpower in the Bureau of Economics. Let me suggest that our staffs might talk about this as we go forward.

Senator PROXMIRE. All right. But what about the first question?

Mr. ENGMAN. I know that depending on what manpower effort that will be required, that you might or might not be desirous of continuing that information. If it meant that we had to stop doing everything else and pursue a particular matter, then it would raise other questions.

Senator PROXMIRE. Much of this information you have now?

Mr. ENGMAN. To the extent we have information now, we would make it available to you and to the committee under any appropriate

nonpublic stricture. We have some of the information with respect to pending matters.

[The following information was subsequently supplied for the record:]

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 5, 1975.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: This is in response to your letter of December 5, 1974, in which you transmitted a number of supplemental questions concerning current activities of the Commission.

Questions (1) and (2) ask for a descriptive table of all cases pending before the Commission or on appeal in Federal courts. Tables providing the information you request are enclosed.

Question (3) asks for a table of all investigations now underway. The Commission's law enforcement investigations against individual companies are normally nonpublic, as disclosure could result in destruction of evidence. Under recently instituted procedures, however, the Commission announces industry-wide investigations unless the public interest dictates otherwise. Attached are recent announcements of investigations in the audio components, home appliance and retail food industries.

In addition, the existence and nature of certain other investigations and studies are publicly known. These include:

(*a*) The Energy Study and related investigations of competitive conditions in the energy industries.

(*b*) American Gas Association and various members—concerning alleged under-reporting of natural gas reserves.

(*c*) Alleged monopolization and anticompetitive practices in the beer and wine industries.

(*d*) Investigation of alleged monopoly practices in the auto crash parts industry.

(*e*) Various investigations involving hospital supplies and medical laboratories.

(*f*) The "market basket" food survey.

(*g*) Investigation of prescription drug pricing and marketing.

(*h*) Investigation of product standards testing and certification.

(*i*) Investigation of unfair and deceptive practices in the funeral industry.

(*j*) Investigation of the advertising and sale of condominiums.

(*k*) Investigation of sale of credit insurance under the Truth-in-Lending Act.

Beyond this, in the antitrust area, the Bureau of Competition has approximately 90 active investigations underway; a like number of investigations is being conducted in the field by Regional Office personnel. These investigations cover the full range of our antitrust responsibilities including monopolization, mergers, vertical and horizontal restraints, with the primary emphasis on energy and food. Similarly, the Bureau of Consumer Protection is conducting some 60 investigations on matters under its jurisdiction. Although these investigations are not public, the Commission will make available to you its senior staff personnel for a specific briefing.

Question (4) requests access to all investigative files reviewed by the Commissioners from November, 1973 to November, 1974. The Committee may have access to all such investigative files. The Commission emphasizes that materials contained in such files are nonpublic and that public disclosure thereof could jeopardize ongoing law enforcement activity.

Question (5) asks why there are not current industrywide investigations in certain specified areas. The Commission evaluates areas for possible industry-wide investigation on a continuing basis. The fact that a particular industry is not the object of a formal investigation does not mean that the Commission is either unaware of or indifferent to possible anticompetitive problems in the area. Within the inevitable constraints imposed by manpower limitations and by the necessity of choosing among alternative targets, the Commission naturally hopes that its

choices will yield maximum benefit to the consuming public. If there are particular industries that you believe ought to be subjected to closer scrutiny, the senior staff of the Commission would be happy to meet with you. Naturally, the Commission would be anxious to receive any evidence the Committee may have of anticompetitive activity in these or any other industries.

In addition, I should mention that through an established liaison procedure with the Department of Justice, our respective staffs clear matters with each other to avoid needless duplication of effort and wasted resources.

Although much of the Commission's ongoing activity is preliminary and nonpublic, our staff would be pleased to bring you up-to-date with respect to current activity in the specified areas you mention.

Question (6) seeks information concerning a Bureau of Economics study of the steel industry. Three senior staff economists are working full time, and one junior economist is working approximately half time, on the steel industry study. Conduct of the study falls under the supervision of Assistant Director Michael Lynch.

The present focus of the study is very broad. It will examine the position of the U.S. steel industry in its international context, by analyzing, among other things, comparative costs; technological progress, access to raw materials and energy supplies; price competition among U.S. producers vs. that among foreign producers; impact of foreign government subsidies; probable future need for and ability to obtain additional capacity under various assumptions about domestic pricing, tariff and quota protection, and capital markets.

The staff study is scheduled to be completed in the summer of 1976.

Question (7) asks for recommendations for legislative and budgetary action to improve the Commission's effectiveness. The Commission believes that its present statutory authority is sufficient to carry out its antitrust mission. In preparing its budgetary proposals for FY 76, the Commission made a most extensive re-examination of its resource allocations with particular emphasis on the ways in which increased antitrust activity might help to alleviate present economic difficulties.

I hope these response will benefit you and the Committee in your work. If I may be of any further assistance to you, I hope you will call upon me.

By direction of the Commission.

LEWIS A. ENGMAN,
Chairman.

Enclosures.

Question 1:

CASES PENDING

I. COMPLAINTS ISSUED FOR ADJUDICATION

A. BUREAU OF COMPETITION

1. Litton Industries, Inc.—Docket 8778.
Date Issued: 4/10/69.
Violation: Cl–7.
Brief Description: Horizontal merger.
Commodity: Typewriters.
Status: Pending at Commission, after remand; oral argument heard 12/11/74.
Relief Requested: Divestiture.
Respondent's Gross Sales: $2.6 Billion.
2. Ash Grove Cement Co.—Docket No. 8785.
Date Issued: 7/8/69.
Violation: Section 5, FTC Act; Cl–7.
Brief Description: Vertical Merger.
Commodity: Cement.
Status: Motion by respondent to stay the entry of any final order 2/10/75.
Relief Requested: Divestiture.
Respondent's Gross Sales: $29 million.
3. Eaton Yale & Towne Inc.—Docket No. 8826.
Date Issued: 12/17/70.
Violation: Cl–7.
Brief Description: Horizontal Merger.
Commodity: Automotive Engine Parts.

Status: Withdrawn from Adjudication for settlement; Agreement put on public record for comments 1/30/75.
Relief Requested: Divestiture.
Respondents's Gross Sales: $1 billion.
4. American General Insurance Co.—Docket No. 8847.
Date Issued: 6/17/71.
Violation: Cl–7.
Brief Description: Horizontal & Conglomerate Merger.
Commodity: Insurance.
Status: With Administrative Law Judge (ALJ).
Relief Requested: Divestiture.
Respondent's Gross Sales: $527 million (Income of American).
5. Budd Company—Docket No. 8848.
Date Issued: 6/18/71.
Violation: Cl–7.
Brief Description: Horizontal Merger.
Commodity: Truck Trailers.
Status: With Commission for Decision.
Relief Requested: Divestiture.
Respondent's Gross Sales: $561 million.
6. Warner-Lambert Company—Docket No. 8850.
Date Issued: 6/30/71.
Violation: Cl–7.
Brief Description: Horizontal & Conglomerate Merger.
Commodity: Drugs.
Status: With Commission for Decision.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1.07 billion.
7. Crush International Limited, *et al.*—Docket No. 8853.
Date Issued: 7/15/71.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $33 billion.
8. Dr. Pepper Company—Docket No. 8854.
Date Issued: 7/15/71.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $41 million.
9. Pepsico, Inc.—Docket No. 8856.
Date Issued: 7/15/71.
Violation: Section 5, WTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $848 million.
10. Seven-Up Co.—Docket No. 8857.
Date Issued: 7/15/71.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.

NOTE: 1. Cl–7—Section 7, Clayton Act.
2. Cl–3—Section 3, Clayton Act.
3. Cl–2—Section 2, Clayton Act, as amended by the Robinson-Patman Act.
4. FTCA—Federal Trade Commission Act.

Respondent's Gross Sales: $83 million.
11. Royal Crown Cola Company—Docket No. 8858.
Date Issued: 7/15/71.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $80 million.
12. National Industries Inc., *et al.*—Docket No. 8859.
Date Issued: 7/15/71.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $353 million.
13. Beatrice Foods Co.—Docket No. 8864.
Date Issued: 10/1/71.
Violation: Cl-7.
Brief Description: Merger.
Commodity: Paint Brushes & Paint Rollers.
Status: With Commission for Decision.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1.576 billion.
14. Great Atlantic & Pacific Tea Co., *et al.*—Docket No. 8866.
Date Issued: 10/8/71.
Violation: Section 5, FTC Act—Cl-2(f).
Brief Description: Price Fixing; Price Discrimination.
Commodity: Food Product—Milk.
Status: With ALJ.
Relief Requested: Cease Practices.
Respondent's Gross Sales: $5.753 billion.
15. Norton Simon Inc., *et al.*—Docket No. 8877.
Date Issued: 3/3/72.
Violation: Section 5, FTC Act.
Brief Description: Territorial Restraints.
Commodity: Beverages-Soft Drinks.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $1.046 billion.
16. Kaiser Steel Corporation—Docket No. 8878.
Date Issued: 3/3/72.
Violation: Cl-7.
Brief Description: Acquisition.
Commodity: Steel Tubing.
Status: Withdrawn from adjudication 9/24/74.
Relief Requested: Divestiture.
Respondent's Gross Sales: $552 million.
17. Kellogg Company, *et al.*—Docket No. 8883.
Date Issued. 4/26/72.
Violation: Section 5, FTC Act.
Brief Description: Monopolization.
Commodity: Ready-to-eat Cereal.
Status: With ALJ.
Relief Requested: Not Specified in Complaint.
Respondent's Gross Sales: Kellogg Co. $614 million; General Mills $1 billion; General Foods $2 billion; Quaker Oats Co. $597 million.
18. Tysons Corner Regional Shopping Center—Docket No. 8886.
Date Issued: 5/8/72.
Violation: Section 5, FTC Act.
Brief Description: Horizontal Leasing Restraints.
Commodity: Shopping Center Leasing.
Status: Notice of Appeal from Initial Decision; Oral argument set for 3/3/75.
Relief Requested: Cease Restraints (City Stores).
Respondent's Gross Sales: $373 million.

19. Associated Dry Goods Corporation—Docket No. 8905.
Date Issued: 11/30/72.
Violation: Cl–7.
Brief Description: Horizontal Merger.
Commodity: Department Store.
Status: Withdrawn from adjudication 1/21/75.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1.06 billion.
20. Xerox Corporation—Docket No. 8909.
Date Issued: 1/6/73.
Violation: Section 5, FTC Act.
Brief Description: Monopolization.
Commodity: Office Copying Machines.
Status: Withdrawn from adjudication for settlement; Agreement containing consent order to cease and desist placed on the public record 11/15/74 to 1/13/75; consent agreement rescinded by Commission and returned to staff for recommendation, 2/25/75.
Relief Requested: Patent and Know How Licensing.
Respondent's Gross Sales: $2 billion.
21. Textron, Inc.—Docket No. 8927.
Date Issued: 5/8/73.
Violation: Section 5, FTC Act.
Brief Description: Distribution Restraints; Exclusive Dealing.
Commodity: Hearing Devices.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $1.612 billion.
22. Beltone Electronics Corporation—Docket No. 8928.
Date Issued: 5/8/73.
Violation: Section 5, FTC Act.
Brief Description: Distribution Restraints; Exclusive Dealing.
Commodity: Hearing Devices.
Status: With ALJ.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $10 million.
23. Exxon Corporation, *et al.*—Docket No. 8934.
Date Issued: 7/18/73.
Violation: Section 5, FTC Act.
Brief Description: Monopolization.
Commodity: Petroleum Products.
Status. With ALJ.
Relief Requested: Not Specified in Complaint.
Respondent's Gross Sales: Exxon—$20 billion, Texaco Inc.—$6.2 billion; Gulf Oil Corp.—$6.2 billion; Mobil Oil Corp.—$9.1 billion; Standard Oil Cal.—$5.8 billion; Standard Oil Ind.—$4.5 billion; Shell Oil Corp.—4.0 billion; Atlantic Richfield Corp.—$3.3 billion.
24. Food Fair Stores, Inc. *et al.*—Docket No. 8935.
Date Issued: 7/30/73.
Violation: Section 5, FTC Act.
Brief Description: Horizontal Leasing Restraints.
Commodity: Shopping Center Leasing.
Status: Withdrawn from adjudication 1/21/75.
Relief Requested: Cease Restraints.
Respondent's Gross Sales: $2 billion.
25. Liggett & Myers, Inc.—Docket No. 8938.
Date Issued: 8/14/73.
Violation: Cl–7.
Brief Description: Horizontal Merger.
Commodity: Dog Food.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $699 million.

26. Rubbermade Incorporated—Docket No. 8939.
Date Issued: 9/5/73.
Violation: Section 5, FTC Act.
Brief Description: Vertical Price Fixing.
Commodity: Household Supplies.
Status: Initial Decision filed; notice of intention to appeal 1/10/75.
Relief Requested: Cease Practices.
Respondent's Gross Sales: $102 million.
27. Deltown Foods, Inc., *et al.*—Docket No. 8951.
Date Issued: 1/18/74.
Violation: Section 5, FTC Act—C1-7.
Brief Description: Horizontal Merger.
Commodity: Food Products—Dairy.
Status: Withdrawn from adjudication for settlement 12/3/74.
Relief Requested: Divestiture.
Respondent's Gross Sales: $66 million (Deltown).
28. British Oxygen Company, Limited *et al.*—Docket No. 8955.
Date Issued: 2/26/74.
Violation: C1-7; Section 5, FTC Act.
Brief Description: Conglomerate Merger.
Commodity: Gases-Anesthetics-Equipment.
Status: Appeal from Initial Decision; Oral argument scheduled for 5/1/75.
Relief Requested: Divestiture.
Repsondent's Gross Sales: $1.1 billion.
29. Boise Cascade Corporation *et al.*—Docket No. 8958.
Date Issued: 4/18/74.
Violation: Section 5, FTC Act.
Brief Description: Horizontal Price Fixing (Basing Point Pricing).
Commodity: Lumber.
Status: With ALJ.
Relief Requested: Cease Practices.
Repsondent's Gross Sales: $1.32 billion.
30. RSR Corporation—Docket No. 8959.
Date Issued: 4/1/74.
Violation: C1-7.
Brief Description: Horizontal Merger.
Commodity: Lead.
Status: With ALJ.
Relief Requested: Divestiture.
Repsondent's Gross Sales: $59 million.
31. Central California Lettuce Producers—Docket No. 8970 Cooperative, *et al.*
Date Issued: 6/10/74.
Violation: Section 5, FTC Act.
Brief Description: Price Fixing; Price Maintenance.
Commodity: Lettuce.
Status: With ALJ.
Relief Requested: Dissolution of Cooperative; Prohibition of Price Fixing.
Respondent's Gross Sales: Not Available.
32. Fruehauf Corporation—Docket No. 8972.
Date Issued: 6/21/74
Violation: C1-7; Section 5, FTC Act.
Brief Description: Vertical and Conglomerate Merger.
Commodity: Trailers, Truck Wheels.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1 billion.
33. Jim Walter Corporation—Docket No. 8986.
Date Issued: 7/29/74.
Violation: C1-7.
Brief Description: Horizontal Merger.
Commodity: Roofing Materials.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $882 million.
34. Gifford-Hill & Co., Inc.—Docket No. 8989.

Date Issued: 8/7/74.
Violation: Section 5, FTC Act; C1–7.
Brief Description: Horizontal and Vertical Merger.
Commodity: Cement.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $146 million.
35. Coca-Cola Bottling Co. of New York Inc. Docket No. 8992.
Date Issued: 9/10/74.
Violation: Section 5, FTC Act: C1–7.
Brief Description: Horizontal Merger.
Commodity: Beverages, Wine.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $240 million.
36. Anaconda Company—Docket No. 8994.
Date Issued: 9/17/74.
Violation: Section 5, FTC Act; C1–7.
Brief Description: Horizontal Merger.
Commodity: Coaxial Cable.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1.05 billion (revenues).
37. Sanford Industries, Inc. *et al*—Docket No. 8997.
Date Issued: 11/4/74.
Violation: Section 5, FTC Act; C1–3.
Brief Description: Exclusive Dealing; Tying Arrangements.
Commodity: Wood Roof Trusses.
Status: Withdrawn from adjudication 1/21/75.
Relief Requested: Cease Practices.
Respondent's Gross Sales: $12 million.
38. International Telephone & Telegraph Corporation—Docket No. 9000.
Date Issued: 11/26/74.
Violation: Section 5, FTC Act; C1–2(a).
Brief Description: Monopolization; Price Discrimination.
Commodity: Bread.
Status: With ALJ.
Relief Requested: Divestiture; Trademark Licensing.
Respondent's Gross Sales: $10.2 billion.
39. Nestle Alimentana S.A., *et al*—Docket No. 9003.
Date Issued: 1/7/75.
Violation: C1–7; Section 5, FTCA.
Brief Description: Merger.
Commodity: Food; frozen prepared foods.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: Approx. $5 billion.
40. Cargill, Incorporated—Docket No. 9005.
Date Issued: 1/21/75.
Violation: C1–7.
Brief Description: Merger.
Commodity: Cement.
Status: With ALJ.
Relief Requested: Divestiture.
Respondent's Gross Sales: $5 billion.
41. Gibson Products Company, *et al.*—Docket No. 9016.
Date Issued: 2/25/75.
Violation: C1–2; Section 5, FTCA.
Brief Description: Receiving or granting illegal brokerage; Knowingly inducing discriminatory allowances from suppliers; boycott of suppliers.
Commodity: Fluid milk and other dairy products.
Status: With ALJ.
Relief Requested: Prohibit inducing and receiving allowances or services; prohibit any combination or agreement or conspiracy to eliminate or boycott suppliers; prohibit receipt of illegal brokerages.
Respondent's Gross Sales: $1.5 billion.

B. BUREAU OF CONSUMER PROTECTION

1. Coca Cola Company—Docket No. D 8824.
Date Issued: 11/20/70.
Violation: Section 5, FTC Act.
Brief Description: Failure to disclose material facts in promotional game (Big Name Bingo).
Commodity: Soft Drinks.
Status: Awaiting decision in district court on respondent's suit for injunction.
Relief Requested: Failing to disclose all prize requirements, etc.
Respondent's Net Sales: $2.1 billion.
2. Grolier Inc., *et al*—Docket No. D 8879.
Date Issued: 3/9/72.
Violation: Section 5, FTC Act.
Brief Description: Failure to disclose material facts in recruiting sales personnel and in soliciting sales.
Commodity: Door-to-Door Sales of Encyclopedia.
Status: In Trial.
Relief Requested: Cease and desist from failing to disclose material facts; affirmative disclosure.
Respondent's Net Sales: $329 million.
3. Koscot Interplanetary, Inc., *et al*—Docket No. D 8888.
Date Issued: 5/24/72.
Violation: Section 5, FTC Act—unfairness and restraints on competition.
Brief Description: Misrepresentation of business opportunity; price fixing and other restrictions on franchisees' sales.
Commodity: Multi-level Marketing Program in Cosmetics and Toiletries.
Status: Awaiting Initial Decision.
Relief Requested: Cease and desist from engaging in such marketing schemes.
Respondent's Gross Sales: $1.8 million.
4. Warner-Lambert Co.—Docket No. D 8891.
Date Issued: 6/27/72.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Representation that Listerine can cure or prevent colds.
Commodity: Listerine.
Status: Initial Decision 11/25/74 Awaiting Commission Decision.
Relief Requested: Cease and desist.
Respondent's Net Sales: $1.7 billion.
5. Bristol Myers Co.—Docket No. D 8897.
Date Issued: 9/12/72.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Representation that Dry Ban is superior to other competing products.
Commodity: Dry Ban Anti-Perspirant.
Status: Initial Decision 11/28/73.
Relief Requested: Cease and desist.
Respondent's Net Sales: $1.4 billion.
6. Encyclopedia Britannica—Docket No. D 8908.
Date Issued: 12/11/72.
Violation: Section 5, FTC Act.
Brief Description: Failure to disclose material facts in recruiting sales personnel and soliciting sales.
Commodity: Door-to-Door Sale of Encyclopedias.
Status: Awaiting Initial Decision.
Relief Requested: Cease and desist from failing to disclose material facts; affirmative disclosure.
Respondent's Gross Sales: $150 million.
7. Great Atlantic & Pacific Tea Co., Inc.
Docket No. D 8916.
Date Issued: 2/16/73.
Violation: Sections 5 and 12, FTC Act.
Brief Description: Unfair or deceptive advertising; non-availability of sale goods.
Commodity: Retail Groceries.
Status: Awaiting Initial Decision.
Relief Requested: Cease and desist from deceptive advertisings; keep reasonable stocks.

Respondent's Net Sales: $6.6 billion.
8. Bristol Myers Co., *et al*—Docket No. D 8917.
Date Issued: 2/23/73.
Violation: Sections 5 and 12, FTC Act—deceptive advertising.
Brief Description: Misrepresentations that these products are superior to aspirin without a reasonable basis; failure to disclose.
Commodity: Bufferin and Excedrin.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making claims unless reasonable basis; corrective advertising; affirmative disclosure.
Respondent's Net Sales: $1.4 billion.
9. American Home Products Corp., *et al.*—Docket No. D 8917.
Date Issued: 2/23/73.
Violation: Sections 5 and 12, FTC Act—deceptive advertising.
Brief Description: Misrepresentations that these products are superior to aspirin without a reasonable basis; failure to disclose.
Commodity: Anacin and Arthritis Pain Formula.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making claims unless reasonable basis, corrective advertising; affirmative disclosure.
Respondent's Net Sales: $1.8 billion.
10. Sterling Drug Inc., *et al*—Docket No. D 8919.
Date Issued: 2/23/73.
Violation: Sections 5 and 17 FTC Act—deceptive advertising.
Brief Description: Misrepresentations that these products are superior to aspirin without a reasonable basis; failure to disclose.
Commodity: Bayer Aspirin, Bayer Children's Aspirin; Midol, Cope and Vanquish.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making claims unless reasonable basis, corrective advertising; affirmative disclosure.
Respondent's Net Sales: $800 million.
11. Beneficial Corporation, *et al*—Docket No. D 8922.
Date Issued: 4/10/73.
Violation: Section 5 FTC Act—deceptive advertising.
Brief Description: Misrepresentations of the qualification of its personnel; use of confidential tax information for the solicitation of customers to extend consumer credit.
Commodity: Tax Preparation Service.
Status: Initial Decision 10/21/74.
Relief Requested: Cease and desist from using "Instant Tax Refunds," failing to disclose their responsibility of obligations resulting from errors in tax preparation, misrepresenting refunds and qualifications of its personnel, and using of tax information for other purposes unless they receive written permission from the consumer.
Respondent's Net Sales: 1972 Operating Income) $337 million, 602 (for finance system) +978 million (for merchandising subsidiaries.)
12. Fedders Corporation—Docket No. D 8932.
Date Issued: 6/11/73.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Misrepresentations of the cooling capacity as unique; no reasonable basis for claims.
Commodity: Air Conditioners
Status: Initial Decision 7/15/74.
Relief Requested: Cease and desist from representations without a reasonable basis.
Respondent's Net Sales: $338 million.
13. Control Data Corp.—Docket No. D 8940.
Date Issued: 10/3/73.
Violation: Section 5, FTC Act—unfair or deceptive practices.
Brief Description: Misrepresentations of demand for computer personnel, placement of their graduates, etc.
Commodity: Vocational School for Computer Training.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from representations; affirmative disclosure; notice of cancellation; cooling-off period; restitution.

Respondent's Net Sales: $948 million.
14. Electronic Computer Programming Inst.—Docket No. D8952.
Date Issued: 1/24/74.
Violation: Section 5, FTC Act—unfair or deceptive practices.
Brief Description: Misrepresentations of demand for computer personnel, placement of their graduates, etc.
Commodity: Vocational school for Computer Training.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from representations; affirmative disclosure; notice of cancellation; cooling-off period; restitution.
Respondent's Net Sales: $4 million.
15. Lear Siegler Inc., *et al*—Docket No. D 8953.
Date Issued: 1/24/74.
Violation: Section 5, FTC Act—unfair or deceptive practices.
Brief Description: Misrepresentations of demand for computer personnel placement of their graduates, etc.
Commodity: Vocational School for Computer Training.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from representations; affirmative disclosure; notice of cancellation; cooling-off period; restitution.
Respondent's Net Sales: $615,000.
16. Retail Credit Company—Docket No. D 8954.
Date Issued: 2/21/74.
Violation: Federal Trade Commission Act and Fair Credit Reporting Act.
Brief Description: Misrepresentations of agents' identity, use of information by respondent, purpose of investigation; reporting of existence of obsolete, adverse information; failure to maintain proper procedures, etc.
Commodity: Consumer Investigative Reports.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making representations from committing acts alleged in violation of FCRA; disclosure, etc.
Respondent's Net Sales: $203 million.
17. FMC Corporation—Docket No. D 8961.
Date Issued: 5/7/74.
Violation: Section 5 FTC Act—unfair or deceptive practices.
Brief Description: Misrepresentations of safety of pesticides; failure to disclose material facts.
Commodity: Marketing of Pesticides.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from representing pesticides are safe; affirmative disclosures of hazards.
Respondent's Gross Sales: $1.7 billion.
18. National Commission of Egg Nutrition—Docket No. D8987.
Date Issued: 7/23/74.
Violation: Sections 5 and 12 FTC Act.
Brief Description: Misrepresentations that no evidence of increased heart disease, or blood level cholesterol from eggs; lack of reasonable basis.
Commodity: Promotion of Eggs.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making claims unless substantiated.
Respondent's Net Sales: N/A.
19. Chrysler Corporation—Docket No. D8995.
Date Issued: 10/9/74.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Misrepresentation of gas mileage, lack of a reasonable basis.
Commodity: Automobile Manufacturer.
Status: Pretrial Proceedings.
Relief Requested: Cease and desist from making claims unless substantiated.
Respondent's Net Sales: N/A.
20. Ford Motor Company—Docket No. D9001.
Date Issued: 12/10/74.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Misrepresentation of gas mileage, lack of a reasonable basis.
Commodity: Automobile Manufacturer.
Status: Pretrial Proceedings.

Relief Requested: Cease and desist from making claims unless substantiated.
Respondent's Net Sales: N/A.
21. Standard Oil Company of California—Docket No. D8227.
Date Issued: 12/29/70.
Violation: Section 5, FTC Act—false advertising.
Brief Description: Misrepresentation that gasoline additive eliminates pollution.
Commodity: Chevron F-310 Gasoline Additive.
Status: Commission Decision 11/26/74, Motion for Clearance of Counsel, 12/24/74.
Relief Requested: Cease and desist from representations; substantiation for claims; disclosure of limited effects.
Respondent's Net Sales: $7.7 billion.
22. Crown Central Petroleum Corp.—Docket No. D8851.
Date Issued: 7/14/71.
Violation: Section 5, FTC Act—false advertising.
Brief Description: Misrepresentation that gas additive will keep engines clean; decrease air pollution.
Commodity: CA-101 Gasoline Additive.
Status: Commission Decision 11/20/74, Motion for Reconsideration 1/3/75.
Relief Requested: Cease and desist from representations; substantiation; disclosure of limited effect of product.
Respondent's Net Sales: $213 million.
23. General Motors Corporation, *et al.*, Docket No. 8907.
Date Issued: 12/11/72.
Violation: Section 5, FTC Act—deceptive advertising.
Brief Description: Misrepresentation of Vega's handling, Opel's economy; failure to have a reasonable basis for such claims.
Commodity: Automobiles (Chevrolet Vega & Buick Opel).
Status: Provisional Acceptance 10/8/74.
Relief Requested: Cease and desist from representing automobile is superior in handling.
Respondent's Net Sales: $36 billion.

C. REGIONAL OFFICES

1. Heublein, Inc.,—Docket No. D8904.
Date Issued: 11/27/72.
Violation: Section 7 of the Clayton Act.
Brief Description: Horizontal Merger.
Commodity: Wines.
Status: Adjudication.
Relief Requested: Divestiture of United Vinter and 10-year ban on acquisition.
Respondent's Net Sales: $629,845,000.
Origin: San Francisco.
2. Atlantic Industries, Inc., *et al.*—Docket No. D8941.
Date Issued: 10/31/73.
Violation: Section 5, FTC Act.
Brief Description: Deceptive pricing, misrep. salesmen's status, high pressure selling, misc. oral misrepresentations, non-cancellable contracts, deceptive debt collection practices.
Commodity: Photographic Enlargements.
Status: Withdrawn from adjudication for consent negotiations.
Relief Requested: Cease and desist from misrepresentations; cooling-off period.
Respondent's Gross Sales: $6,000,000.
Origin: Atlanta.
3. Lifetime Filter Equipment Corp., *et al.*—Docket No. D8942.
Date Issued: 11/16/73.
Violation: Section 5, FTC Act.
Brief Description: Deceptive use of term "Lifetime," deceptive guarantee.
Commodity: Swimming Pool Products.
Status: Adjudication.
Relief Requested: Cease and desist.
Respondent's Gross Sales: $330,000.
Origin: New York.
4. Maryland Carpet Outlet, Inc., *et al*—Docket No. D 8934.
Date Issued: 12/7/73.

Violation: Section 5, FTC Act.
Brief Description: Bait and switch, misrepresentations including price comparisons.
Commodity: Carpet.
Status: Initial Decision Filed.
Relief Requested: Cease and desist misrepresentations and bait and switch.
Respondent's Gross Sale: $1,000,000.
Origin: Washington.
5. Theodore Stephen Co., Inc., *et al*—Docket No. D 8944.
Date Issued: 12/17/73.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpet.
Status: Appeal before Commission.
Relief Requested: Cease and desist misrepresentations and bait and switch.
Respondendent's Gross Sales: $400,000.
Origin: Washington.
6. Tri-State Carpet, Inc., *et al*—Docket No. D 8945.
Date Issued: 12/7/73.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpet.
Status: Final Commission Decision Issued.
Relief Requested: Cease and desist misrepresentations and bait and switch.
Respondent's Gross Sales: $1,000,000.
Origin: Washington.
7. Carpets R Us Inc., *et al*—Docket No. D 8947.
Date Issued: 12/7/73.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpet.
Status: Initial Decision Filed.
Relief Requested: Cease and desist; misrepresentations including price comparisons.
Respondent's Gross Sales: $200,000.
Origin: Washington.
8. Travel King, Inc., *et al*—Docket No. D–8949.
Date Issued: 1/8/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive demonstrations of "Psychic Surgery"—deceptive advertising.
Commodity: Tour Packages for "Psychic Surgery".
Status: Adjudication.
Relief Requested: Cease and desist deceptive advertising; affirmative disclosures; restitution.
Respondent's Gross Sale: $125,000.
Origin: Seattle.
9. Reliable Mortgage Corp., *et al*—Docket No. D 8956.
Date Issued: 3/5/74.
Violation: Non-compliance with Truth-in-Lending Act.
Brief Description: Noncompliance with Truth-in-Lending Act.
Commodity: Second Mortgage Broker.
Status: Adjudication.
Relief Requested: Comply with Truth-in-Lending Act.
Respondent's Gross Sales: $2,000,000.
Origin: Chicago.
10. Walter Kidde & Co., Inc.—Docket No. D 8957.
Date Issued: 3/20/74.
Violation: Section 7, Clayton Act.
Brief Description: Merger tending to create a monopoly.
Commodity: Door Locksets, Builders' Hardware.
Status: Adjudication.

Relief Requested: Divestiture and prohibition of acquisition of door lockset manufacturer.
Respondent's Gross Sales: $837.000,00.
Origin: New York.
11. National Talent Associates, Inc., *et al*—Docket No. D 8960.
Date Issued: 4/3/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresenting ability, effectiveness, and success in placing entertainers. Misrep. earnings of former clients.
Commodity: Talent and Modeling Agency Services.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative disclosure. notice of right to cancel.
Respondent's Gross Sales: $700,000.
Origin: New York.
12. Saxony Pools, Inc., *et al*—Docket No. D 8962.
Date Issued: 4/19/74.
Violation: Section 5, FTC Act.
Brief Description: False advertising, bait and switch advertising, deceptive pricing, etc.
Commodity: Swimming Pools.
Status: Withdrawn from adjudication for consent negotiations.
Relief Requested: Cease and desist misrepresentations and excision of the word "lifetime".
Respondent's Gross Sales: $750,000.
Origin: New York.
13. LaFayette United Corp.—Docket No. D 8963.
Date Issued: 5/2/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentations re high school equivalency diplomas, job openings, placement potential, etc.
Commodity: Vocational Training Services, Correspondence.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative disclosures; cooling-off period.
Respondent's Gross Sales: $4,213,294.
Origin: Boston.
14. Leonard F. Porter, Inc.—Docket No. 8964.
Date Issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts re machine made; deceptive labeling.
Commodity: Alaskan Native Artifacts.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Repondent's Gross Sales: $130,000.
Origin: Seattle.
15. Indian Arts & Crafts—Docket No. 8965.
Date Issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts re machine and not handmade; deceptive labeling.
Commodity: Alaskan Native Products.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Respondent's Gross Sales: $1,000,000.
Origin: Seattle.
16. J. L. Houston Mfg.—Docket No. D 8966.
Date Issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts; deceptive labeling.
Commodity: Alaskan Native Products.
Status: Adjudication.

Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Respondent's Gross Sales: $700,000.
Origin: Seattle.
17. Western Novelty—Docket No. D 8967.
Date Issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts; deceptive labeling.
Commodity: Alaskan Native Products.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Respondent's Gross Sales: $170,000.
Origin: Seattle.
18. Oceanic Trading Co.—Docket No. D 8968.
Date Issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts; deceptive labeling and advertising.
Commodity: Alaskan Native Artifacts.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Respondent's Gross Sales: $170,000.
Origin: Seattle.
19. Northwest Arts & Crafts, *et al*—Docket No. D 8969.
Date issued: 6/3/74.
Violation: Section 5, FTC Act.
Brief Description: Nondisclosure of material facts re machine made; deceptive labeling.
Commodity: Alaskan Native Products.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; affirmative labeling disclosures.
Respondent's Gross Sales: $112,000.
Origin: Seattle.
20. Cambridge Camera Exchange Inc., *et al* Docket No. D 8971.
Date Issued: 6/10/74.
Violation: Section 5, FTC Act.
Brief Description: Failure to fill orders promptly.
Commodity: Mail Order Sale of Photographic Equipment and Supplies.
Status: Consent agreement provisionally accepted.
Relief Requested: Cease and desist unfilled orders.
Respondent's Gross Sales: $1,000,000.
Origin: New York.
21. Emdeko International Inc., *et al*—Docket No. D 8973.
Date Issued: 6/21/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive pricing claims; misrepresentation of salesman's status.
Commodity: Door-to-Door Sales of Housewares.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations; 3-day cooling-off period.
Respondent's Gross Sales: $30,000,000.
Origin: San Francisco.
22. Lustine Chevrolet Inc., *et al*—Docket No. D 8974.
Date Issued: 7/1/74.
Violation: Section 5, FTC Act.
Brief Description: Selling used cars as new; failure to disclose material facts.
Commodity: Automobiles.
Status: Adjudication.
Relief Requested: Cease and desist; affirmative disclosures.
Respondent's Gross Sales: $21.3 million.
Origin: Washington.
23. Rosenthal Chevrolet Co.—Docket No. D 8975.

Date Issued: 7/1/74.
Violation: Section 5, FTC Act.
Brief Description: Selling used cars as new; undisclosed extra fees; misrepresentations re warranties.
Commodity: Automobiles.
Status: Adjudication.
Relief Requested: Cease and desist; affirmative disclosures.
Respondent's Gross Sales: $26 million.
Origin: Washington.
24. Peacock Buick Inc., *et al*—Docket No. D 8976.
Date Issued: 7/1/74.
Violation: Section 5, FTC Act.
Brief Description: Selling used cars as new; extra undisclosed fees; financing misrepresentations.
Commodity: Automobiles.
Status: Adjudication.
Relief Requested: Cease and desist; affirmative disclosures.
Respondent's Gross Sales: $7.3 million.
Origin: Washington.
25. J. M. Sanders Jewelry Co., *et al*—Docket No. D 8977.
Date Issued: 6/27/74.
Violation: Truth-in-Lending Act.
Brief Description: Noncompliance with Truth-in-Lending Act.
Commodity: Jewelry, Consumer Credit.
Status: Initial Decision Filed.
Relief Requested: Comply with Truth-in-Lending Act.
Respondent's Gross Sales: $420,375.
Origin: Atlanta.
26. Borden, Inc.—Docket No. D 8978.
Date Issued: 7/2/74.
Violation: Section 5, FTC Act.
Brief Description: Attempt to monopolize, monoply, unfair methods to maintain.
Commodity: Reconstituted Lemon Juice Product.
Status: Adjudication.
Relief Requested: Divestiture of assets to form new entity; make trademark public.
Respondent's Gross Sales: $22,000,000.
Origin: Chicago.
27. Vitamin Education Institute—Docket No. D 8979
Date Issued: 7/3/74.
Violation: Sections 5 and 12, FTC Act.
Brief Description: Misrepresenting efficacy of certain vitamin supplements as weight reduction aids.
Commodity: Vitamin Products.
Status: Adjudication.
Relief Requested: Cease and desist false advertisements and false claims.
Respondent's Gross Sales: $1,000,000.
Origin: Los Angeles.
28. Central Carpet Co.—Docket No. D 8980.
Date Issued: 7/5/74.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpets.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations and bait and switch.
Respondent's Gross Sales: $200,000.
Origin: Washington.
29. Sir Carpet Co.—Docket No. D 8981.
Date Issued: 7/8/74.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpets.
Status: Initial decision filed.
Relief Requested: Cease and desist misrepresentations and bait and switch.

Respondent's Gross Sales: $200,000.
Origin: Washington.
30. Fashion Floors, Inc.—Docket No. D 8982.
Date Issued: 7/8/74.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpets.
Status: Withdrawn from adjudication for consent negotiations.
Relief Requested: Cease and desist misrepresentations and bait and switch.
Respondent's Gross Sales: $400,000.
Origin: Washington.
31. Hollywood Carpets, Inc., *et al*—Docket No. D 8983.
Date Issued: 7/8/74.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; misrepresentations including price comparisons.
Commodity: Carpets.
Status: Adjudication.
Brief Requested: Cease and desist misrepresentations and bait and switch.
Respondent's Gross Sales: $585,984.
Origin: Washington.
32. Marc Enterprises, Inc., *et al*—Docket No. D 8984.
Date Issued: 7/23/74.
Violation: Section 5, FTC Act.
Brief Description: Failure to deliver; bait and switch misrepresentations.
Commodity: Swimming Pools, Installation, Carpet Sales.
Status: Consent negotiations.
Relief Requested: Cease and desist misrepresentations.
Respondent's Gross Sales: $660,000.
Origin: Kansas City.
33. California Milk Producers Advisory Board—Docket No. D 8988.
Date Issued: 8/1/74.
Violation: Sections 5 and 12, FTC Act.
Brief Description: Non-disclosure of material facts; unsubstantiated claim.
Commodity: Advertising of Milk.
Status: Adjudication.
Relief Requested: Cease and desist misrepresentations.
Respondent's Gross Sales: N/A.
Origin: San Francisco.
34. Spiegel, Inc.—Docket No. D 8990.
Date Issued: 8/7/74.
Violation: Section 5, FTC Act.
Brief Description: Unfair venue for debt collection suits.
Commodity: Mail-Order-General Products.
Status: Adjudication.
Relief Requested: Venue must be in consumer's county of residence or where contract executed.
Respondent's Gross Sales: $387 million.
Origin: Seatle.
35. Serr of Washington, D.C., Inc.—Docket No. D 8991.
Date Issued: 8/28/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentations re hair implantation system.
Commodity: Hair Replacement Services.
Status: Initial decision filed.
Relief Requested: Cease and desist misrepresentations; affirmative disclosures; 3-day cooling off period.
Respondent's Gross Sales: $180,000.
Origin: Washington.
36. Soundtrack Chevell Industries, Inc., *et al* Docket No. D 8998.
Date Issued: 11/5/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive offers of sale of contracts for management and promotion of persons desiring careers as professional singers or entertainers.
Commodity: Talent Promotion/Service.

Status: Adjudication.
Relief Requested: Dissolution of corporation; abandonment of business by individual respondents; refunds; cease and desist from unfair or deceptive acts or practices, and all misrepresentations.
Respondent's Net Sales: Jan. 1973 through Sept. 1973, $250,000.
Origin: Dallas.
37. Sew Rite—Docket No. D 8999.
Date Issued: 12/4/74.
Violation: Section 5, FTC Act.
Brief Description: Bait and switch; deceptive pricing; misrepresentations.
Commodity: Adjudication.
Relief Requested: Cease and desist unfair and deceptive practices; affirmative disclosures; 3-day cooling-off period.
Respondent's Gross Sales: $228,000.
Origin: Washington.

II. Proposed Complaints Issued for Consent Negotiations

A. Bureau of Competition

1. Atlas Supply Co., *et al*—File No. 731 0047.
Date Issued: 10/31/74.
Violation: Section 5, FTC Act.
Brief Description: Combination to eliminate product competition.
Commodity: Tires, batteries and accessories.
Status: Proposed complaint.
Relief Requested: Divestiture.
Respondent's Gross Sales: Atlas $145 million; Exxon Corp. $25.7 billion; Standard Oil Co. (Ind.) $5.4 billion; Standard Oil (Cal.) $7.7 billion; Standard Oil (Ohio) $1.4 billion.
2. Borg-Warner, Inc.—File No. 731 0607.
Date Issued: 12/17/74.
Violation: C1–7.
Brief Description: Horizontal Merger.
Commodity: Automobile Parts.
Status: Proposed Complaint.
Relief Requested: Divestiture.
Respondent's Gross Sales: $1.148 billion (1971).
3. Standard Oil Co. (Ohio), *et al*—File No. 741 0027.
Date Issued: 6/28/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: Standard Oil Co. (Ohio) $1.4 billion; Diamond Shamrock Corp. $617 million.
4. Amerada Hess Corporation, *et al*—File No. 741 0030.
Date Issued: 6/27/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: Amerada Hess Corp. $1 billion; Newmont Mining Corp. $272 million.
5. El Paso Natural Gas Co., *et al*—File No. 741 0031.
Date Issued: 6/27/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: El Paso Nat. Gas. Co. $1.1 billion; Transcontinental Gas Pipe Line Corp. $482 billion.

6. Dixilyn Corp., *et al*—File No. 741 0035.
Date Issued: 6/27/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: Dixilyn Corp. $12 million; Austral Oil Co. $12 million.
7. General American Oil Co. of Texas, *et al*—File No. 741 0036.
Date Issued: 6/27/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: General American $58 million; Pauley Petroleum Inc. $28 million.
8. Kerr-McGee Corp., *et al*—File No. 741 0037.
Date Issued: 6/28/74.
Violation: C1–8.
Brief Description: Interlocking Directorates.
Commodity: Petroleum.
Status: Proposed complaint.
Relief Requested: Prohibit Interlocks.
Respondent's Gross Sales: Kerr-McGee $679 million; Oklahoma Nat. Gas Co. $133 million.

B. BUREAU OF CONSUMER PROTECTION

1. Sonotone Corp., *et al* File No. 732 3382.
Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aids.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $3,041,000 (figures for 1970).
2. Qualitone—File No. 732 3383.
Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aid.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $2,073,000 (figures for 1970).
3. Maico Hearing Instruments—File No. 732 3384.
Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aid.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $3,423,000 (figures for 1970).
4. Radioear Corp.—File No. 732 3385.
Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aid.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $2,262,000 (figures for 1970).
5. Dahlberg Electronics Inc.—File No. 732 3386.

Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aid.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $4,166,000 (figures for 1970).
6. Beltone Electronics Corp.—File No. 732 3387.
Date Issued: 6/5/73.
Violation: Sections 5 and 12, FTC Act—false advertising.
Brief Description: Misrepresentation of qualities and performance of hearing aids; uniqueness and superiority lack of reasonable basis for claims.
Commodity: Advertising of Hearing Aid.
Relief Requested: Cease and desist misrepresentation; affirmative disclosures; substantiation.
Respondent's Gross Sales: $10,600,000 (figures for 1970).
7. United Compucred Collection Inc.—File No. 742 3300.
Date Issued 6/24/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist; affirmative disclosures.
Respondent's Gross Sales: $784,000.
8. Transnational Credit Corp.—File No. 742 3301.
Date Issued 6/24/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist; affirmative disclosures.
Respondent's Gross Sales: $699,000.
9. Continental Collection Bureau of America. File No. 742 3302.
Date Issued: 6/24/74.
Violation: Section 5FTC Act.
Brief Description: Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist affirmative disclosures.
Respondent's Gross Sales: $600,000.
10. North American Collection Inc.—File No. 742 3303.
Dated Issued: 6/24/74
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist affirmative disclosures.
Respondent's Gross Sales: $500,000.
11. Powers Service Inc.—File No. 742 3304.
Dated Issued: 6/24/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation of company's identify, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist affirmative disclosures.
Respondent's Gross Sales: $540,000.
12. Continental Credit Corp.—File No. 742 3305.
Dated Issued: 6/24/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity: Debt Collection Agencies.
Relief Requested: Cease and desist affirmative disclosures.
Respondent's Gross Sales: $700,000.

13. Continental Collection Service—File No. 742 3306.
Dated Issued : 6/24/74.
Violation : Section 5, FTC Act.
Brief Description : Misrepresentation of company's identity, of actions to be taken of effects on credit record.
Commodity : Debt Collection Agencies.
Relief Requested : Cease and desist affirmative disclosures.
Respondent's Gross Sales : $64,000.
14. Associated Dry Goods Corp.—File No. 742 3313.
Date Issued : 6/28/74.
Violation : Section 5, FTC Act.
Brief Description : Failure to notify customers of right to refunds, and deletion without refund of credit balances.
Commodity : Retail Dry Goods.
Relief Requested : Cease and desist ; notification of refund rights.
Respondent's Net Sales : $1,247,644,000.
15. Genesco Inc.—File No. 742 3314.
Date Issued : 6/28/74.
Violation : Section 5, FTC Act.
Brief Description : Failure to notify customers of right to refunds, and deletion without refunds of credit balances.
Commodity : Retail Dry Goods.
Relief Requested : Cease and desist ; notification of refund rights.
Respondent's Net Sales : $1,250,000,000.
16. Gimbel Brothers, Inc.—File No. 742 3315.
Date Issued : 6/28/74.
Violation : Section 5, FTC Act.
Brief Description : Failure to notify customers of right to refunds, and deletion without refund of credit balances.
Commodity : Retail Dry Goods.
Relief Requested : Cease and desist ; notification of refund rights.
Respondent's Net Sales : $812,000,000.
17. Lerner Stores Corp.—File No. 742 3317.
Date Issued : 6/28/74.
Violation : Section 5, FTC Act.
Brief Description : Failure to notify customers of right to refunds, and deletion without refund of credit balances.
Commodity : Retail Dry Goods.
Relief Requested : Cease and desist ; notification of refund rights.
Respondent's Net Sales : $900,000,000.
18. Carter Hawley Hale Stores Inc.—File No. 742 3318.
Date Issued : 6/28/74.
Violation : Section 5, FTC Act.
Brief Description : Failure to notify customers of right to refunds, and deletion without refund of credit balances.
Commodity : Retail Dry Goods.
Relief Requested : Cease and desist ; notification of refund rights.
Respondent's Net Sales : $1,031,339,000.
19. Redman Industries—*File No. 742 3199.
Date Issued : 3/14/74.
Violation : Section 5, FTC Act.
Brief Description : Deceptive and unfair warranty practices including failure to perform warranted services.
Commodity : Mobile Homes.
Status : Provisional Acceptance 12/17/74.
Relief Requested : Disclosure of warranties; specific performance; establishment of service obligations.
Respondent's Gross Sales : $180,000,000 (9 mo.—'74).
20. Fleetwood Enterprises—*File No. 742 3200.
Date Issued : 3/14/74.
Violation : Section 5, FTC Act.
Brief Description : Deceptive and unfair warranty practices including failure to perform warranted services.

*Consent orders provisionally accepted.

Commodity: Mobile Homes.
Status: Provisional Acceptance 11/12/74.
Relief Requested: Disclosure of warranties; specific performance; establishment of service obligations.
Respondent's Gross Sales: $187,000,000.
21. Skyline Corporation—*File No. 742 3201.
Date Issued: 3/14/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive and unfair warranty practices including failure to perform warranted services.
Commodity: Mobile Homes.
Status: Provisional Acceptance 11/12/74.
Relief Requested: Disclosure of warranties specific performance; establishment of service obligations.
Respondent's Gross Sales: $278,000,000.
22. Commodore Corporation—*File No. 742 3202.
Date Issued: 3/14/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive and unfair warranty practices including failure to perform warranted service.
Commodity: Mobile Homes.
Status: Provisional Acceptance 11/17/74.
Relief Requested: Disclosure of warranties specific performance; establishment of service obligations.
Respondent's Gross Sales: $37,000,000.
23. Tax Corporation of America (Maryland) *et al.*—*File No. 752 3054.
Date Issued: 10/4/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive and unfair advertising of refunds, guarantees, confidentiality, service provided; unauthorized use of tax information.
Commodity: Tax Preparation Service.
Status: Provisional Acceptance 10/22/74.
Relief Requested: Cease and desist from misrepresentions; disclosure to liability to customers.
Respondent's Gross Sales: $6.4 million (1973).
24. CEB Products, *et al.*—*File No. 732 3048.
Date Issued: 8/7/74.
Violation: Section 5, FTC Act.
Brief Description: Unfair or deceptive ads re composition and use; failure to disclose dangers ads which negates label.
Commodity: Cosmetics—Eyelash and Brow Tint.
Status: Provisional Acceptance 12/17/74.
Relief Requested: Cease and desist safety affirmative disclosure; correct past packaging; substantiation.
Respondent's Gross Sales: $1,600,000.
25. Organic Masque Corp., *et al.*—*File No. 752 3018.
Date Issued: 8/5/74.
Violation: Sections 5 and 12 FTC Act.
Brief Description: Unfair and deceptive advertising of effectiveness and composition of product.
Commodity: Preparation Acne.
Status: Provisional Acceptance 12/11/74.
Relief Requested: Cease and desist representations; substantiation.
Respondent's Gross Sales: N/A.
26. National Credit Exchange—*File No. 742 3007.
Date Issued: 9/7/73.
Violation: Sections 604 and 607(a)—Fair Credit Reporting Act.
Brief Description: Furnishing credit reports to persons who do not have legitimate business need or permissible purpose; failure to maintain reasonable procedures to limit the furnishing of consumer reports.
Commodity: Debt Collection and Credit Reporting.
Status: Provisional Acceptance 12/11/74.
Relief Requested: Cease and desist furnishing consumer reports except in specified circumstances; establish procedures.
Respondent's Gross Sales: N/A.

*Consent orders provisionally accepted.

27. Hattie Carnegie Jewelry Enterprises Ltd. *File No. 752 3008.
Date Issued 7/19/74.
Violation: Section 2(b) of Hobby Protection Act and Section 5 FTC Act.
Brief Description: Failure to mark imitation gold pieces "copy".
Commodity: Manufacture and Distribution of Limitation Numismatic Items.
Status: Provisional Acceptance 10/23/74.
Relief Requested: Cease and desist from failing to mark "copy" plainly and permanently on products.
Respondent's Gross Sales: $5,000,000.

C. REGIONAL OFFICES

1. Federated Sanitary Corp., *et al.*, File No. 702 3176.
Date Issued: 6/6/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation business opportunity, probable earnings, number and success of franchises.
Commodity: Franchises and distributorships for toilet bowl clearners and air refreshers.
Status: Consent agreement provisionally accepted.
Relief Requested: Cease and Desist.
Respondent's Gross Sales: $518,000.
Origin: New York.
2. Circulation Builders, File No. 712 3011.
Date Issued: 9/9/74.
Violation: Section 5, FTC Act.
Brief Description: 1) Failure to deliver magazines, 2) misrepresentations to potential salesmen re travel profits, and 3) misrepresentations to consumer about salesmen's status and about total cost to consumers.
Commodity: Magazine subscriptions.
Status: In Consent Negotiations.
Relief Requested: 1) Cease and desist from misrepresentations; 2) refund money; and 3) 3-day cooling-off period.
Respondent's Gross Sales: $250,000.
Origin: San Francisco.
3. Prestige Industries, Inc., File No. 712 3038.
Date Issued: 11/12/73.
Violation: Section 5, FTC Act, and Truth in Lending Act.
Brief Description: False advertising and deceptive sales tactics; bait and switch, deceptive pricing, misrepresentation guarantees.
Commodity: Swimming Pools.
Status: In Consent Negotiations.
Relief Requested: Cease and Desist false ads, bait and switch ads, price misrepresentatitions; comply with the Truth in Lending Act; three-day cooling-off period, etc.
Respondent's Gross Sales: $1.6 million.
Origin: New York.
4. All Seasons Air Conditioning Corp., File No. 712 3724.
Date Issued: 8/5/74.
Violation: Truth in Lending Act.
Brief Description: Failure to take proper credit disclosures.
Commodity: Sales and installation of home air conditioning units.
Status: Returned for additional investigation. Formerly in consent statge.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $1,000,000.
Origin: Atlanta.
5. Seatle Credit Bureau, File No. 722 3145.
Date Issued: 9/20/74.
Violation: Truth in Lending Act.
Brief Description: Failure to take proper credit disclosures.
Commodity: Consumer Reports.
Status: Consent Negotiations.
Relief Requested: Compliance with FCRA.
Respondent's Gross Sales: $1,362,886.

*Consent orders provisionally accepted.

Origin: Seattle.
6. Standard Prudential Corp., *et al.*, File No. 722 3176.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to take proper credit disclosures.
Commodity: Second Mortgage Loan Brokers.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $2,000,000.
Origin: Washington.
7. Associates Mortgage Co., *et al.*, File No. 722 3181.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to take proper credit disclosures.
Commodity: Second Mortgage Loan Broker.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $235,000.
Origin: Washington.
8. Ray Hansen Mortgage Co., *et al.*, File No. 722 3182.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Loan Broker.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $400,000.
Origin: Washington.
9. Valley Acceptance Corp., File No. 722 3185.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Loan Broker.
Status: Consent Negotiations.
Relief Requested: Consent Negotiations.
Respondent's Gross Sales: $901,216.
Origin: Washington.
10. Ted Sims Real Estate, *et al.*, File No. 722 3186.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Broker.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $200,000.
Origin: Washington.
11. Virginia Mortgage Exchange, Inc., File No. 722 3187.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Loan Broker.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $242,308.
Origin: Washington.
12. Virginia Mortgage & Loan Association, Inc., File No. 732 3346.
Date Issued: 6/13/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Loan Brokers.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $2 Million.
Origin: Washington.
13. Interstate Investors Corp., File No. 732 3347.
Date Issued: 6/13/74.

Violation: Truth in Lending Act.
Brief Description: Failure to make proper credit disclosures.
Commodity: Second Mortgage Loan Broker.
Status: Consent Negotiations.
Relief Requested: Comply with Truth in Lending Act.
Respondent's Gross Sales: $1.6 Million.
Origin: Washington.
14. Commercial Service Company, Inc., File No. 732 3404.
Date Issued: 2/12/74.
Violation: Section 5, FTC Act.
Brief Description: Unfair choice of venue; unfair deceptive debt collection notices.
Commodity: Debt Collection.
Status: Consent Negotiations.
Relief Requested: 1) Bring debt collection suits where consumer resides or contract executed; and 2) deceptive notices.
Respondent's Gross Sales: $600,000.
Origin: Seattle.
15. Diesel Truck Drivers Training School, Inc., File No. 732 3406.
Date Issued: 3/5/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentation re: false earnings claims qualifications of graduates, enrollment costs, placement services, demand for drivers.
Commodity: Vocational Training Services.
Status: Consent Negotiations.
Relief Requested: Cease and desist from misrepresentations; 3-day cooling-off period.
Respondent's Gross Sales: $100,000–$800,000 (Range of several schools proceeded against).
Origin: Chicago.
16. Nationwide Heavy Equipment Training Service, File No. 732 3408.
Date Issued: 3/5/74.
Violation: Section 5, FTC Act.
Brief Description: Miscellaneous Deceptive Advertising, Deceptive Pricing, Misrepresentation employment opportunities, cost and efficacy of training, financing and refund privileges.
Commodity: Vocational Training Service.
Status: Consent Negotiations.
Relief Requested: Cease and desist misrepresentations; cooling-off period; affirmative disclosures.
Respondent's Gross Sales: $100,000–$800,000 (Range of several schools proceeded against).
Origin: Chicago.
17. Tri-State Driver Training, File No. 732 3409.
Date Issued: 3/5/74.
Violation: Section 5, FTC Act.
Brief Description: Misrepresentations re: false earnings claims, qualifications of graduates, enrollment costs, placement services, demand for drivers.
Commodity: Vocational Training Services.
Status: Consent Negotiations.
Relief Requested: Cease and desist misrepresentations; cooling-off period; affirmative disclosures.
Respondent's Gross Sales: $100,000–$800,000 (Range of sales for several schools proceeded against).
Origin: Chicago.
18. World Wide Systems, Inc., *et al.*, File No. 732 3410.
Date Issued: 3/5/74.
Violation: Section 5, FTC Act.
Brief Description: False ads and misrepresentation of wages and employment opportunities, cost and efficacy of training, financing and refund privileges.
Commodity: Vocational Training Services.
Status: Consent Negotiations.
Relief Requested: Cease and desist misrepresentations; cooling-off period; affirmative disclosures.
Respondent's Gross Sales: $100,000–$800,000 (Range of several schools proceeded against).

Origin: Chicago.
19. Hallberg Homes, Inc., File No. 742 3030.
Date Issued: 7/23/74.
Violation: Truth in Lending Act.
Brief Description: Non-compliance with advertising requirements.
Commodity: Land Development/Home Building.
Status: Consent Order Provisionally Accepted.
Relief Requested: Cease and desist from failing to comply with Truth in Lending Act.
Respondent's Gross Sales: $2,500,000.
Origin: Seattle.
20. Maraloco Enterprises, Inc., *et al.*, File No. 742 3182.
Date Issued: 4/23/74.
Violation: Section 5, FTC Act and Truth in Lending Act.
Brief Description: False ads; misrepresent adequacy of course; placement of graduates; employment; success of graduates.
Commodity: Vocational training computer programming.
Status: Consent Negotiations.
Relief Requested: Cease and desist misrepresentations; reasonable basis for claims; affirmative disclosure; cooling-off period and comply with Truth in Lending Act.
Respondent's Gross Sales: $242,000.
Origin: New York.
21. Wilson's House of Suede, File No. 732 3219.
Date Issued: 5/16/74.
Violation: Section 5, FTC Act.
Brief Description: Unsubstantiated claims of reduced prices and savings—deceptive pricing.
Commodity: Suede and Leather wearing apparel.
Status: Consent Negotiations.
Relief Requested: Cease and desist from misrepresentations; maintain adequate records to substantiate savings claims.
Respondent's Gross Sales: $3,400,000.
Origin: Los Angeles.
22. Commercial Programming Unlimited, Inc., *et al.*, File No. 742 3185.
Date Issued: 4/23/74.
Violation: Section 5, FTC Act and Truth in Lending Act.
Brief Description: Cease and desist misrepresentations; reasonable basis for claims; affirmative disclosures; cooling-off period and comply with Truth in Lending Act.
Commodity: Vocational training computer programming.
Status: Consent Negotiations.
Relief Requested: Cease and desist misrepresentations; reasonable basis for claims; affirmative disclosures; cooling-off period and comply with Truth in Lending Act.
Respondent's Gross Sales: $660,000.
Origin: New York.
23. Elkhorn Mining Company, *et al.*, File No. 742 3210.
Date Issued: 6/11/74.
Violation: Section 5, FTC Act.
Brief Description: Deceptive advertising re: curative value of raydon gas.
Commodity: Raydon Gas for mines.
Status: Consent Negotiations.
Relief Requested: Cease and desist from deceptive advertising; affirmative disclosures.
Respondent's Gross Sales: $115,000.
Origin: Seattle.
24. Buckeye Ford, File No. 742 3295.
Date Issued: 7/1/74.
Violation: Truth in Lending Act.
Brief Description: Failure to make credit disclosures.
Commodity: Automobiles.
Status: Consent Negotiations.
Relief Requested: Compliance with Truth in Lending Act.
Respondent's Gross Sales: $9,258,461.
Origin: Cleveland.

25. Martin Industries, Inc., File No. 742 3297.
Date Issued: 6/19/74.
Violation: Section 5, FTC Act and Truth in Lending Act.
Brief Description: False ads and misrepresentations re: employment in livestock buying; little if any demand for school's graduates; disclosure requirements of Reg. z have been violated.
Commodity: Vocational School Training Services. Home Study.
Status: Consent Order Provisionally Accepted.
Relief Requested: Cease and desist representing graduates will be employed or respondent offers employment; assists graduates to obtain employment; cooling-off period; Regulation Z disclosures.
Respondent's Gross Sales: $444,315.36.
Origin: Kansas City.
26. Grand Furs, Ltd., File No. 742 3310.
Date Issued: 7/8/74.
Violation: Fur Products Labeling Act.
Brief Description: Misbranding of fur products by not labeling as required and falsely invoicing fur products.
Commodity: Fur Products.
Status: Consent Order Provisionally Accepted.
Relief Requested: Cease and desist misbranding and false invoicing.
Respondent's Gross Sales: $900,000.
Origin: San Francisco.

Question 2:

CASES ON APPEAL IN FEDERAL COURTS

1. Corning Glass Works—Docket No. D 8874.
Date Issued: 8/8/73.
Violation: Section 5, FTC—restraint of trade.
Brief Description: Manufacturer requires wholesaler in free trade state to sell only to retailers in fair trade states who have signed agreement with manufacturer.
Commodity: Tableware.
Status: Affirmed by 7th Circuit on Jan. 29, 1975; time to petition for certiorari expires April 21, 1975.
Relief Requested: Cease and desist illegal resale price maintenance.
Respondent's Goss Sales: $590 million.
2. ITT Continental Baking Co., *et al.*,—Docket No. D 8860.
Date Issued: 8/24/71.
Violation: Sections 5 and 12, FTC Act—false advertising
Brief Description: Unfair and deceptive ads of nutritional value, content, uniqueness, and superiority of product (Snack Cakes); exploitation of children's aspirations and parental concern for children.
Commodity: Wonder Bread and Hostess Snack Cakes.
Relief Requested: Cease and desist misrepresentations; non-specific nutrition comparisons.
Respondent's Gross Sales: N/A.
3. Resort Car Rental—Docket No. D 8862.
Date Issued: 8/24/66.
Violation: Section 5, FTC Act.
Brief Description: Deceptive Pricing.
Commodity: Auto Rental.
Respondent's Gross Sales: $1.2 million.
4. Ger-Ro-Mar Inc.—Docket No. D 8872.
Date Issued: 6/30/70.
Violation: Section 5, FTC Act.
Brief Description: Single company monopoly and misrepresentations of business opportunity.
Commodity: Women's Clothing.
Respondent's Gross Sales: $2 million.
5. Beauty Style Modernizers Inc., *et al.*—Docket No. D 8898.
Date Issued: 10/4/71.
Violation: Section 5, FTC Act and Truth-in-Lending Act.
Brief Description: Failure to make Regulation Z disclosures.
Commodity: Home Improvements.
Respondent's Gross Sales: N/A.

6. American Aluminum Corp.—Docket No. D 8865.
Date Issued: 10/4/71.
Violation: Truth-in-Lending Act.
Brief Description: Failure to make Regulation Z disclosures.
Commodity: Aluminum Siding.
Respondent's Gross Sales: $1.7 million (1969).
7. Avnet, Inc.—Docket No. D 8775.
Date Issued: 4/1/69.
Violation: Clayton Act, Section 7.
Brief Description: Horizontal merger; questions as to relevent market.
Commodity: Automotive Parts.
Respondent's Net Sales: $146 million (1967).
8. Claude Thiret Certified Building Products, *et al.*—Docket No. D 8875
Date Issued: 2/14/72.
Violation: Section 5, FTC Act and Truth-in-Lending Act.
Brief Description: False ads and misrepresentations price efficacy and life of products; Regulation 2 disclosures.
Commodity: Home Improvements.
Respondent's Gross Sales: $600,000 (1970).

FEDERAL TRADE COMMISSION,
Washington, D.C., February 21, 1975.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: This is in response to your letter of January 10, 1975, requesting information concerning food industry investigations.

Question 1 requests information concerning investigations initiated from 1970 to present. From 1970 to date 144 formal investigations have been opened in the Bureau of Competition pertaining in whole or in part to restraint of trade questions in the food industries. Of these, 117 have been finally disposed of as detailed in response to Question 3 below; 14 such investigations have resulted in pending litigation and are identified in Appendix I. The remainder are ongoing matters that constitute the major portion of the formal investigation component of the Commission's Food Program, as discussed in response to Question 2 below.

Question 2 requests information concerning active food investigations. The Commission's law enforcement investigations against individual companies are normally non-public, as disclosure could result in destruction of evidence. However, under recently instituted procedures, the Commission announces industry-wide investigations unless the public interest dictates otherwise, and has done so in the instance of its retail food pricing investigation which is now underway. In addition, the existence and nature of certain other food investigations and studies are presently known, such as matters involving alleged monopolization and anti-competitive practices in the beer and wine industries and the Commission's "market basket" food survey.

The Commission's Food Program, in addition to previously identified matters in litigation, consists of a number of non-public individual investigations that are being conducted on a coordinated basis looking into a variety of activities within the general subject of food. The Commission will make available to you its senior staff personnel for a specific briefing on these matters.

Question 3 concerns disposition of investigations opened since January 1, 1970 that are no longer pending. As to categories A, B, and C: under internal procedures all formal investigations conducted by Commission staff can be closed only by Commission action. In all such matters formal closing recommendations are made to the Commission and result in formal action by the Commission. Specifically, the Bureau Directors do not have authority to close such investigations. In addition, the Merger Screening Committee performs only the function of initial screening of merger matters in order to recommend opening investigations. In the event that conflicting recommendations as to the disposition of a matter are made by the staff, it occasionally occurs that a draft complaint will be forwarded along with recommendations both for and against issuance.

Category D requests information concerning all closings of investigations without issuance of a complaint and order. Attached is the information requested

(Appendix II). In all but four of these matters staff recommendations for closing were unanimous and were accepted by the Commission. In two instances staff recommendations for acceptance of Assurance of Voluntary Compliance were accepted by the Commission. In the other two instances recommendations by staff attorneys for issuance of complaints were not approved by the management of the Bureaus of Competition and Economics and the Commission did not issue such complaints.

With respect to category E, review of our records discloses that there were no closings of such investigations subsequent to issuance of complaints except in those instances where consent orders were accepted as set out under category I.

With respect to categories F and G, review of our records discloses that none of the investigations was closed under the circumstances specified.

Separate schedules containing listings for categories H and I are attached. Category H covers complaints issued in investigations initiated from 1970 to date in which hearings were held before the administrative law judge and his decision was either upheld or reversed by the Commission.

I hope that these responses will be of assistance to you and the Committee in your work. If I may be of further assistance to you, I hope you will call on me.

Sincerely,

LEWIS A. ENGMAN, *Chairman.*

Enclosures.

APPENDIX I

Docket number and parties	Date of complaint	Violation alleged	Status
8853—Crush International, et al	July 15, 1971	Sec. 5, FTCA—Territorial restraints, soft drink beverages.	Before ALJ
8854—Dr. Pepper Co	do	do	Do.
8856—Pepsico, Inc	do	do	Do.
8857—Seven-Up Co	do	do	Do.
8858—Royal Crown Cola Co	do	do	Do.
8859—National Industries, Inc., et al	do	do	Do.
8866—Great Atlantic & Pacific Tea Co., et al	Oct. 8, 1971	Sec. 5, FTCA; Cl. 2(f)—price fixing, price discrimination, food products, milk.	Do.
8877—Norton Simon, Inc., et al	Mar. 3, 1972	Sec. 5, FTCA—Territorial Restraints, soft drink beverages.	Do.
8883—Kellogg Co., et al	Apr. 26, 1972	Sec. 5, FTCA—Monopolization, ready-to-eat cereal.	Do.
8951—Deltown Foods, et al	Jan. 18, 1974	Sec. 5, FTCA; Cl. 7—Horizontal merger, food products, dairy.	Provisional consent order pending.
8970—Central California Lettuce Producers Cooperative, et al.	June 10, 1974	Sec. 5, FTCA—Price fixing, lettuce.	With ALJ.
8992—Coca Cola Bottling Co. of New York, Inc.	Sept. 10, 1974	Sec. 5, FTCA; Cl. 7—Horizontal merger, beverages, wine.	Do.
9000—ITT Corp	Nov. 26, 1974	Sec. 5, FTCA; Cl. 2(a)—Monopolization, Price-Discrimination, Bread.	Do.
9003—Nestle Alimentana, S.A	Jan. 7, 1975	Sec. 7, Cl.—Acquisition of Stouffer, food products, frozen.	Do.

APPENDIX II

D. CLOSED BY THE COMMISSION PRIOR TO THE PREPARATION OF A COMPLAINT AND ORDER

	Parties	Date opened	Anticompetitive issues	Closed
701-0048	Grain Belt Breweries, Inc	Jan. 29, 1970	Clayton 2(a)(f) price discrimination; inducing price discrimination.	Nov. 2, 1970
701-0049	Reichert Bottling Co	do	do	Do.
701-0050	William Langen Associates, et. al., First National Food Stores, Inc.; Colonial Stores, Inc.; Consolidated Foods, Inc.	Jan. 30, 1970	Clayton 2(c) illegal brokerage payments.	Apr. 10, 1973
701-0052	United Dairy Farmers	Feb. 6, 1970	Clayton 2(a) price discrimination	Jan. 12, 1973
701-0053	Co-ordinated Community Services	Feb. 11, 1970	FTC 5. Conspiracy; boycott	Sept. 24, 1973
701-0067	International Industries	Apr. 1, 1970	FTC 5. Franchisee coercion	Dec. 7, 1973
701-0068	Diamond Crystal Salt Co., Inc.; International Salt Co., Morton International, Inc., Morton-Norwich Products, Inc., Leslie Salt Co.; American Salt Co.; Cudahy Co.	Apr. 2, 1970	FTC 5. Pricefixing	June 15, 1971

D. CLOSED BY THE COMMISSION PRIOR TO THE PREPARATION OF A COMPLAINT AND ORDER—Continued

	Parties	Date opened	Anticompetitive issues	Closed
701-0069	A. Greenhouse, Inc. et al	Apr. 9, 1970	Clayton 2(c) illegal brokerage payment.	July 7, 1971
701-0070	Theordore Hamm Brewing Co	do	Clayton Act 2. Resale price maintenance.	Aug. 5, 1974
701-0073	Basic Vegetable Products, Inc	May 7, 1970	Clayton 2(a) price discrimination	Feb. 11, 1972
701-0084	Graham Co., Inc	June 4, 1970	do	Apr. 19, 1972
701-0087	Independent Grocers Alliance Distributing Co.	June 12, 1970	Clayton 2(a)(d)(f) price discrimination. Discriminatory payments for services inducing price discrimination.	May 26, 1971
701-0088	Jewel Co., Inc	do	FTC 5. Sales below cost	July 27, 1973
701-0091	Carnation Co	June 22, 1970	Clayton 2(a) price discrimination	Mar. 10, 1971
701-0096	Kentucky Fried Chicken Corp	do	Clayton 3; FTC 5. Resale price maintenance tying contracts franchise misrepresentation.	Apr. 10, 1973
701-0097	McDonald's Corp	do	do	Do.
701-0098	Lum's Inc	do	do	Do.
701-0099	Arby's International	do	do	Do.
701-0100	Bonanza International, Inc	do	do	Do.
701-0102	Cobbs Country Restaurant & Gift Shoppe	do	do	Do.
701-0104	Ponderosa System, Inc	do	do	Do.
701-0106	Red Barn System, Inc	do	do	Do.
701-0107	Torch House Enterprises, Inc.; Torch House Restaurants.	do	do	Do.
701-0108	Marriott Corp.; Big Boy of California	do	do	Do.
701-0109	American Dairy Queen Co.; International Dairy Queen.	do	do	Do.
701-0110	Howard Johnson Co	do	do	Do.
701-0111	Burger King Co	do	do	Do.
701-0112	Frisch's Restaurants, Inc	do	do	Do.
701-0113	Denny's Restaurants, Inc	do	do	Do.
701-0114	Swiss of America, Inc	do	do	Do.
701-0115	Taco Bell, Inc	do	do	Do.
701-0116	Pizza Inn Inc.; Great Southwest Industrial Complex.	do	do	Do.
701-0120	Scot Lad Foods, Inc.; Convenient Food Mart, Inc.	do	do	Do.
701-0121	Farm Stores International, Inc	do	do	Do.
701-0122	Southland Corp	do	do	Do.
701-0123	Jewel Companies, Inc	do	do	Do.
701-0129	Dutch Inn	do	do	Do.
701-0131	Johnny's American Inn, Inc	do	do	Do.
701-0141	Dietetic Food Co., Inc.; Dias-Mel Companies, Inc.	June 29, 1970	Clayton 2(a) Price discrimination	May 4, 1971
701-0143	Albert Ehlers, Inc	June 30, 1970	Clayton 2(a)(d) price discrimination; discriminatory payments for services.	May 7, 1971
701-0144	Consolidated Foods Corp	do	Clayton 2(c) Illegal brokerage fees	Apr. 10, 1973
701-0628	International Multifoods, Inc	Jan. 27, 1970	Clayton 7. Acquisition	Sept. 25, 1973
701-0631	Knudsen Corp.; Borden, Inc	Mar. 31, 1970	do	[1] Dec. 21, 1971
711-0002	Martha White Foods, Inc	July 8, 1970	Clayton 2(a); price discrimination. FTC 5.	Mar. 15, 1972
711-0006	Foodmaker, Inc	July 22, 1970	FTC 5; Clayton 3. Franchise tying contracts.	Apr. 20, 1971
711-0019	Winn-Dixie	Sept. 22, 1970	FTC 5. Inducing price discrimination.	Jan. 15, 1975
711-0020	Food Fair Stores, Pantry Pride, Inc	do	FTC 5. Sales below cost	Oct. 9, 1973
711-0066	Borden, Inc	Jan. 27, 1971	FTC 5. Reciprocal dealing	Apr. 10, 1973
711-0067	ITT Continental Baking Co., Inc	do	Clayton 2(a)(d), price discrimination; Discriminatory payments for services.	Oct. 5, 1973
711-0068	Fisher Foods, Inc	Janl 28, 1971	Clayton 2(f), inducing price discrimination. FTC 5 fradulent redemption of coupons.	June 24, 1971
711-0071	Barnett Spices, Inc	Feb. 8, 1971	FTC 5. Restrictive agreements with distributors, pricefixing.	July 18, 1972
711-0099	Sidney Wangert Sons, Inc	Apr. 14, 1971	Clayton 2(a)(d) price discrimination; discriminatory payments for services.	June 14, 1973
711-0100	Durkee Famous Foods	Apr. 16, 1971	Clayton 2(a)(d)(e) price discrimination; discriminatory payments for services furnishing discriminatory services.	May 17, 1972
711-0108	Southland Corp	May 19, 1971	Clayton 7. Acquisition	[2]
711-0110	American Wholesale Grocery	May 24, 1971	Clayton 2(d). Discriminatory payments for services.	[3] July 18, 1972
711-0113	Pepsi Cola Bottling Corp	June 10, 1971	Clayton 2(c). Illegal brokerage fees	Jan. 28, 1972
711-0117	Kroger Co.; Gollatin Development Co	June 30, 1971	FTC 5. Monopolization	Feb. 8, 1972

D. CLOSED BY THE COMMISSION PRIOR TO THE PREPARATION OF A COMPLAINT AND ORDER—Continued

	Parties	Date opened	Anticompetitive issues	Closed
711-0118	Beatrice Foods Corp., Allied Supermarkets, Inc.	June 30, 1971	Clayton 2(a)(d)(f) price discrimination; discriminatory payments for services inducing discriminatory price.	Dec. 13, 1973
711-0603	Tenneco Corp	Aug. 17, 1970	Clayton 7. Acquisition	Oct. 30, 1974
711-0604	Food Distribution Industries	Aug. 8, 1970	do	Apr. 4, 1972
711-0606	Milgram Food Stores, Inc.; K-Mart Food Department.	Aug. 28, 1970	do	Dec. 16, 1970
711-0608	Loblaw, Inc	do	do	Oct. 7, 1971
711-0617	Royal Crown Cola Co	Nov. 27, 1970	do	Dec. 14, 1971
711-0624	Archer-Daniels-Midland Co	Dec. 29, 1970	do	May 24, 1973
711-0631	California Canners & Growers	Mar. 8, 1971	Clayton 7. Acquisition transferred to Justice).	May 12, 1971
711-0635	Beatrice Foods, Co	Apr. 9, 1971	Clayton 7. Acquisition	Sept. 12, 1973
721-0004	Branded Liquors, Inc.; Boston Beverage Corp.; Price Bros.; Distillers Products; Joseph E. Seagram Co., Inc.	July 20, 1971	FTC 5. Exclusive dealing; refusal to deal; allocation of territory.	July 5, 1972
721-0019	Cotton's Holsum Baking Co	Aug. 26, 1971	Clayton 2(a), price discrimination	Oct. 8, 1974
721-0021	ITT Continental Baking Co	Aug. 30, 1971	FTC 5. Price fixing. (regional office compliance check).	Jan. 15, 1975
721-0030	Schweppes (USA) Ltd	Sept. 10, 1971	FTC 5. Allocation of customers; allocation of territories.	Oct. 26, 1971
721-0044	Springfield Sugar & Products Co	Dec. 10, 1971	Clayton 7. Acquisition	Apr. 27, 1972
721-0049	Alpenrose Dairy, Inc	Feb. 23, 1972	Clayton 3. Exclusive dealing; tying	June 13, 1972
721-0050	Mayflower Farms	do	Clayton 3. Exclusive dealing	Do.
721-0057	Supermarket Broadcasting Network, Inc.	Apr. 20, 1972	Clayton 2(d), discriminatory payments for services.	Feb. 22, 1974
721-0060	Maryland Baking Co	May 26, 1972	Clayton 2(a), price discrimination	Jan. 15, 1975
721-0063	Balanced Foods, Inc	June 2, 1972	FTC 5. Resale price maintenance	June 4, 1974
721-0064	Sherman Foods, Inc	do	do	Do.
721-0611	IC Industries, Inc	Aug. 18, 1971	Clayton 7. Acquisition	Dec. 13, 1974
721-0612	Associated Coca-Cola Bottling Co. Inc	Oct. 12, 1971	do	Do.
721-0613	Los Angeles Coca-Cola Bottling Corp	Oct. 18, 1971	do	Do.
721-0617	General Cinema Corp	Nov. 19, 1971	do	Do.
721-0618	Wometco Enterprises, Inc	Jan. 20, 1972	do	Dec. 13, 1974
721-0619	Rheingold Corp	do	do	Do.
721-0620	James E. Crass Coca-Cola Bottling Plants, Inc.	Jan. 21, 1972	do	Do.
721-0621	American Bakeries Co	Feb. 2, 1972	do	Jan. 6, 1975
721-0623	Coca-Cola Bottling Co. of New York, Inc.	Feb. 18, 1972	do	Dec. 13, 1974
721-0624	Houston Coca-Cola Bottling Co	do	do	Do.
721-0628	Coca-Cola Co	Apr. 5, 1972	do	Do.
731-0001	Schiff Bio Food Products	July 6, 1972	FTC 5. Resale price maintenance	June 4, 1974
731-0016	The Great Atlantic & Pacific Tea Co., Inc.	Nov. 22, 1972	Clayton 2(a), price discrimination	Feb. 5, 1974
731-0021	Merico, Inc	Dec. 15, 1972	do	Oct. 2, 1973
731-0024	Pillsbury Co.; International Multifoods Corp.; General Mills, Inc.	Jan. 16, 1973	Clayton 8. Interlocking directorates.	Mar. 6, 1973
731-0032	Nelbro Packing Co., Inc	Feb. 16, 1973	FTC 5. Exclusive dealing	Do.
731-0033	Togiak Fisheries, Inc	do	do	Do.
731-0034	Castle & Cooke, Inc	do	do	Do.
731-0035	Queen Fisheries, Inc	do	do	Do.
731-0036	Peter Pan Seafoods, Inc	do	do	Do.
731-0037	Columbia-Wards Fisheries	do	do	Do.
731-0038	Whitney-Fidalgo Seafoods, Inc	do	do	Do.
731-0039	CWC Fisheries, Inc	do	do	Do.
731-0040	Alaska Packers Association	do	do	Do.
731-0041	Ward's Cove Packing Co., Inc	do	do	Do.
731-0042	New England Fish Co., Inc	do	do	Do.
731-0046	Unnamed Breweries & Distributors of Beer.	Apr. 23, 1973	FTC 5. Boycott	Dec. 6, 1973
731-0603	Food Distribution, Ind. (unnamed)	Sept. 1, 1972	Clayton 7. Acquisition	Jan. 30, 1974
731-0610	Interstate Brands Corp.; Beatrice Foods Co.	Mar. 5, 1973	do	Apr. 30, 1973
741-0034	Beatrice Foods Co.; Meadow Gold Dairies	Apr. 15, 1974	FTC 5. Exclusive dealing, secret rebates. [4]	Oct. 15, 1974
741-0616	Coca-Cola Co.; Coca Cola Bottling Co. of New York.	Dec. 31, 1973	Clayton 7. Acquisition	Mar. 11, 1974

[1] Staff attorneys recommended complaint. Bureau of Economics and Bureau of Complaints recommended closing.
[2] AVC: May 4, 1971; closed June 15, 1971.
[3] AVC No. 2228.
[4] Seattle R. O. recommended complaint. Bureaus of Complaint and Economics recommended closing.

H. COMMISSION UPHELD THE COMPLAINT ISSUED

Parties	Date opened	Anticompetitive issues	Determination
701-0065 Chock Full O'Nuts Corp.	Mar. 3, 1970	FTC 5. Price fixing; misrepresentation Franchisee coercion.	Complaint issued May 5, 1972; initial decision of ALJ. April 9, 1973 dismissed complaint. Commission reversed ALJ decision October 2, 1973. Entered order to cease and desist, docket 8884.

I. CASES SETTLED BY CONSENT

Parties	Date opened	Anticompetitive issues	Consent date
701-0079 (C-2378) Tastee-Freez Industries, Inc.; Chicago Tastee Freez Corp, Inc.; Tastee-Freez International, Inc.; TFI Co., Inc.; Crawford's Fast Foods, Inc.; Mason-Dison Tastee-Freez, Inc.; Tastee-Freez of Delmarva, Inc.; Tastee-Freez of North Carolina, Inc.; South Carolina Tastee-Freez, Inc.; Shenandoah Tastee-Freez of Winchester, Inc.; Shenandoah Tastee-Freez of Mortensburg, Inc.; Tastee Foods of Virginia, Inc.	May 15, 1970	FTC 5. Resale price maintenance; exclusive dealing; franchise misrepresentation.	Apr. 11, 1973
701-0635 (C-2067) Kroger Co.; Federated Department Stores, Inc.	June 10, 1970	Clayton 7. Acquisition	Oct. 26, 1971
711-0027 (C-2453) Kroger Co	Sept. 23, 1970	Clayton 2(f). Inducing price discrimination.	Sept. 12, 1973
721-0043 (C-2237) Buy-Rite Foods, Inc	Dec. 8, 1971	FTC 5. Inducement of discriminatory advertising allowances.	June 22, 1972
721-0045 (C-2575) Lawry's Foods Inc	Dec. 20, 1971	Clayton 2(d) Discriminatory payments for services.	Oct. 16, 1974
721-0632 Pepsi Co., Inc	May 31, 1972	Clayton 7. Acquisition	[1]Jan. 25, 1974
741-0612 Deltown Foods, Inc.; Kraftco Corp	Nov. 21, 1973	do	[2]Dec. 5, 1974

[1] Withdrawn from adjudication—consent order.
[2] Provisionally accepted consent decree.

RESPONSE OF HON. LEWIS A. ENGMAN TO ADDITIONAL WRITTEN QUESTIONS POSED BY SENATOR PROXMIRE

(The following questions relate to the Federal Trade Commission Investigation of Food Distributors in the Washington Metropolitan Area, File # 691-0079—later referred to as the Safeway Case.)

Question 1.—Were subpenas issued in mid-1969 and did Safeway immediately move to quash in the Northern District Courts of Texas where the FTC subpoenas were upheld? The Joint Economic Committee staff found from FTC documents that in late 1972 Safeway was still in substantial non-compliance with the subpena.

Question 2.—What level of compliance was finally achieved with Safeway?

Question 4.—What kinds of subpoenaed information did Safeway refuse to provide?

Question 5.—Why?

Answers to questions 1, 2, 4, and 5. Following the decision of the Federal District Court for the Northern District of Texas in June, 1970, Safeway began to comply with the Commission's subpena, exclusive, however, of information pertaining to profit levels. Safeway argued that information pertaining to profits constituted a trade secret.

Question 3.—What level with Giant?

Answer to question 3. Full compliance was achieved with Giant.

Question 6. Isn't it true that Safeway never did comply with the subpena?

Question 7. Did the Federal Trade Commission request the Justice Department to enforce the subpoena?

Question 8. If not, why not?

Question 9.—Why did the Federal Trade Commission allow a 3-year delay in compliance?

Question 10. Is this normal procedure at the Federal Trade Commission?

Answers to questions 6–10. Safeway was never in full compliance with the subpoena. I am advised that the Justice Department was not requested to

enforce the subpena because Commission staff believed in 1971 that the better course was to defer separate litigation with Safeway on the trade secret issue, recommending instead that the Commission issue a complaint on the basis of information already obtained. Subsequently, however, the staff recommended and the Commission voted not to issue a complaint and the file was closed. It is the Commission's practice to enforce investigatory subpoenas as expeditiously as possible and to the extent necessary to obtain all information necessary to an investigation. Recent legislation as well as reform presently underway within the Commission should further enhance our ability to get information as quickly as possible consistent with requirements of due process.

Question 11. In the last five years has the Federal Trade Commission requested the Justice Department to enforce any subpoenas?—which subpoenas?—Were they enforced by Justice?

Answer to question 11. Attached as Appendix A [1] is a list of all subpoena enforcement actions instituted since 1969. All were filed by the Department of Justice at the request of the Commission, and the overwhelming majority were handled at the district court level by Commission attorneys. The only exceptions would be those few subpoena cases brought in the United States District Court for the Southern District of New York, where the U.S. Attorney invariably insists on having his office conduct the litigation.

At the appellate level—and it should be noted that few of these cases are ever appealed—the Department of Justice handled the appeals in the cases marked with an asterisk, two of which (*Stroiman* and *Gladstone*) were contempt cases.

(The following questions relate to the current FTC six-city food chain investigation.)

Question 12. According to FTC sources, the chains have refused to respond to many questions in your investigative hearings in connection with this investigation—Is that true?

Question 13. What kinds of questions? And why?

Question 14. Will this lack of cooperation jeopardize your investigation?

Question 15. Is the Commission going to enforce compliance?

Question 16. Has the FTC issued the subpoenas in this case?

Question 17. If not, when will they be issued?

Question 18. What level of compliance do you expect from the chains in this case considering the rather dismal track record of the chains in other FTC investigations?

Question 19. Will the FTC enforce the subpoenas in this investigation?

Answers to questions 12–19. The present retail food investigation is a quite different and much broader matter than the former D.C. food store investigation. It is specifically designed to answer questions that were unresolved by the narrower former investigation, or which could not be assessed properly on the basis of evidence then available. It is also designed to address issues on a national basis. The initial phase of the present investigation is examining competitive conditions, concentration and pricing in six selected markets. The targeted markets have been chosen because they appear to represent a fair cross-section of important conditions such as concentration, profitability, and the presence or absence of discounting in retail food marketing.

Preliminary investigative hearings have been held. We are encountering some resistance to outstanding subpoenas ad testificandum and expect that enforcement proceedings may have to be instituted. Extensive compulsory process subpoenas and questionnaires directed to the food chains and other marketers in the geographic areas selected have also been prepared. Since the General Accounting Office insists upon reviewing investigatory subpoenas (a requirement not imposed by the Office of Management and Budget when it had review authority under the Federal Reports Act), these subpoenas were forwarded to GAO for review on December 3, 1974. Naturally we are prepared to enforce compulsory process to the extent necessary to conduct an effective investigation. Our staff would be pleased to meet privately with you, your Committee or your staff should you desire additional information.

(The following questions relate to the D.C. Safeway Case.)

Question 20. It has been estimated by FTC staffers that the nearly four-year investigation of the D.C. chains cost the taxpayers several hundred thousand dollars—would you provide an official estimate?

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[1] Appendix A may be found in the committee files.

Question 21. I am wondering about your administrative procedures—I understand that the "Fact Memo" on the D.C. investigation was drafted in the Summer of 1972—and it sat on Alan Ward's (the Director of the Bureau of Competition) desk for over one year while the facts got stale—isn't that true?

Question 22. How could something like that happen—considering the investment?

Question 23. Is this normal procedure?

Question 24. How are staff members chosen to review cases?

Question 25. Why was Douglas Dobson chosen to review cases?

Question 26. What was his expertise in the food area at that time?

Question 27. Isn't it true that if a case is going to be successfully guided through the Commission there has to be staff advocates?

Question 28. In the D.C. case, because of the delays by Safeway and Ward the two lead attorneys Gaines and Lipson became involved in other things—Gaines became the head attorney on the Xeroxx case and Lipson on the Exxon case.

Question 29. Isn't it true that both attorneys were assured they would not try the case if it were issued?

Question 30. Isn't that an incredible waste of resources?

Answers to questions 20–30. As the events referenced by these questions took place before I joined the Commission, I am unable to provide first-hand answers. As you know, the Director of the Bureau of Competition during most of the relevant period is no longer with the Commission.

All of the relevant documents pertaining to the D.C. food investigation have been made available to the staff of the Joint Economic Committee. These documents demonstrate that factual and legal problems raised in that investigation were very difficult and complex and involved fundamental issues pertaining to the Commission's law enforcement role and powers. These are questions on which reasonable and well-intended persons can differ, as, in fact, did occur, as the documents show.

Because of the difficulty of the issues, consideration and review of this matter took longer than would normally be expected. However, I, personally, am aware of no information that would lead me to believe that this matter was handled other than in a manner in keeping with high professional standards and integrity.

I should add that there has been considerable reform in the management of cases in the Bureau of Competition—as well as throughout the Commission—over the past two years. In the course of budget formulation and review, the Commission has the opportunity to review the progress (including resource allocation) of all Commission programs. In addition, the Commission is instituting a case tracking system that will provide frequent and easily accessible information about the progress of each investigation and allow clear identification of any matters that are lagging behind anticipated deadlines.

The assignment of attorney and economic staff to any investigation is a management responsibility of the Bureau Directors and their Assistants. It involves finding the best available professional personnel for the job under existing resource limitations and the requirements of other work. As Chairman, I would not second-guess such assignments unless I was aware of unethical conduct. In my two years at the Commission, no such conduct by a Commission employee has ever been brought to my attention. Nor, to the best of my knowledge, was any such conduct involved in the D.C. food investigation. In fact, I have been told that all of the professional personnel assigned to this matter were of high capability and integrity. Finally, it is not at all unusual for attorneys to be assigned to more than one case at a time. In fact, given our caseload, our limited resources, and the need for flexibility, it would be impossible for the Commission to function in any other manner.

I am advised that the total professional time spent on the D.C. food investigation amounted to 9,000 hours. Those hours were not wasted, if only because that work has contributed a base of expertise for the massive effort that is now underway to determine the facts and economic circumstances surrounding food retailing. It is essential to bear in mind that the number of manhours expended on a matter can never be grounds for the Commission to issue a complaint. Each matter must be independently and carefully considered by the Commission at the time the staff makes its recommendation. Each Commissioner has taken an oath to enforce the law. That duty includes the obligation to vote to issue a complaint only when there is "reason to believe" there has been a violation of law and when it is in the public interest to pursue such a violation.

In this case, a near-unanimous Commission determined that it was in the public interest to close this particular file.

Question 31. What was the Commission vote on the D.C. case?—List those who voted for and against.

Answer to question 31. Commissioners Dixon, Dennison, Thompson and I voted to close the investigation. Commissioner Jones voted in the negative.

Question 32. Why did you vote against it?

Question 34. Would you provide them to the Committee?

Answers to question 32 and 34. My reasons for voting to close the investigation are set forth in the attached Commission letter to Ms. Ann Brown, Chairman of the Consumer Affairs Committee of the Greater Washington Americans for Democratic Action. (Appendix B)[1]

Question 33. Did you put your views in writing at that time? At the time of the vote?

Answer to question 33. No.

Question 35. Did you read the Parker memo before the Commission meeting? Did you find it more factually accurate and persuasive than the Dobson memo?

Answer to question 35. I read the entire file, including the Parker memo, before the Commission meeting, just as I read the entire file on every case prior to its consideration by the Commission. It should be apparent from my vote that I did not find the Parker memo to be more persuasive than the contrary unanimous judgment of the Commission's senior staff.

Question 36. Did you have any conferences, discussions, etc. with the FTC staff, food chain representatives, attorneys, etc., other commissioners, the White House, other Administrative officials.

Question 37. Whom and what was discussed and what conclusions did you draw from those discussions?

Answers to questions 36 and 37. I had no conversations with anyone, other than staff and my fellow Commissioners, concerning this matter.

Question 38. Do you have any limits on who you will discuss Commission cases and investigations with?

Answer to question 38. Except for cases in litigation, which are covered by the Commission's *ex parte* rule, I will attempt, within the inevitable constraints on my time, to listen to anyone who wants to talk to me about Commission matters.

Question 39. Was Mary Gardner Jones the only Commissioner to write views on the case before it was presented to the Commission?

Answer to question 39. Yes.

Question 40. Would you provide to the Committee the minutes of the July 24, 1973 Commission meeting in which the D.C. investigation was closed?

Answer to question 40. Attached as Appendix C[2] is the Commission minute of July 24, 1973. In providing this minute for the Committee, the Commission wishes to emphasize its confidential nature and would therefore request that it not be made part of the public record.

(On December 7, 1973 Senator Proxmire wrote to Mrs. Ann Brown of the local ADA concerning the reasons for closing the D.C. case: "You point out that the Commission did not have reason to believe that large food chains had committed any significant violation of law in order to preserve an oligopoly position in the Washington area.")

Question 41. Many have criticized you and others at the Commission as needing "blood on the floor" before moving on a structural case. Would you please give the Committee your views on Sec. 5 of the Federal Trade Commission Act and relate those views to the proposed Count 1 (Page 104) of the Staff Fact Memorandum in the D.C. case?

Question 42. My concern here is that if you have a "blood on the floor" theory of oligopoly and Sec. 5, along with some of the top staff people at the Federal Trade Commission, there is little justification for undertaking another costly investigation of the food chains with essentially the same theory, if the theory is rejected out of hand. Would you agree that it would be a waste of money?

Answers to questions 41 and 42. The antitrust laws are designed and intended to preserve and foster competition. Recent Supreme Court interpretation has made it clear that the concept of "unfair competition" under Section 5 of the FTC Act may have application to situations that are not strictly within the scope of traditional antitrust enforcement.

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[1] Appendix B may be found in the committee files.
[2] Appendix C may be found in the committee files.

With respect to so-called "structural" cases, there is more to antitrust enforcement than counting the number of firms within an industry. Economic concentration combined with abuse of market power is a proper basis for antitrust enforcement action.

There is nothing inconsistent between the Commission's action in terminating the former investigation and commencing a substantially differently oriented investigation of pricing in the food retailing industry designed to identify pertinent economic and behavioral factors, as stated in response to previous questions. Specifically, while one aspect of the present investigation is to identify, for possible future enforcement action, any existing law violations, the investigation is also intended to collect significant economic and market data pertaining to such matters as the relationship between concentration levels and prices in six distinct geographical areas. While there is of course no way of determining beforehand what facts will be disclosed during an investigation of this sort, it is the unanimous judgment of the Commission that the investigation is worthwhile.

Question 43. Some critics argue that the FTC lacks the courage to actually force a serious divestiture—list all divestitures forced by the FTC in the last five years, the circumstances and the results?

Question 44. How many created viable independent competitors? How many of the companies subsequently reacquired the properties with FTC approval?

Answer to questions 43 and 44. Attached is a list of divertitures ordered and enforced by the Commission during the past five years, and of the two instances in which divested properties were subsequently reacquired with Commission approval. (Appendix D)[1]

Question 45. Would you agree that the anti-trust laws are aimed at maintaining competition and that concentration in fewer and fewer hands is inherently anti-competitive and that action should be taken under Sec. 5 of the FTC Act?

Answer to question 45. I agree that the antitrust laws are aimed at maintaining competition. I do not agree that concentration in the absence of market power is inherently anticompetitive.

Question 46. I understand that Basil Mezines was the Executive Director of the Federal Trade Commission throughout most of the D.C. chain investigation which centered on the actions of Giant and Safeway. Would you describe his direct and indirect involvement in this case? Did he have contact with the various attorneys that worked on the case? Did he ever attempt to influence them in any way? Is it true that he is now retained by Giant and represents Giant on FTC matters? Has his participation been cleared for possible conflicts of interest by the Commission? Would you provide the Committee with the results of these clearances?

Answer to question 46. Mr. Mezines was Executive Director from the fall of 1970 until the submission of staff recommendations to the Commission on the D.C. food store matter. For several months prior to this, he was Acting Director of the Bureau of Competition. In these capacities, he had a legitimate interest in the progress and status of the investigation. So far as is known by the present management of the Bureau, however, Mr. Mezines did not participate in any of the staff decisions in the case, nor did he attempt to assert any influence over those determinations.

Mr. Mezines does not represent Giant in all FTC matters involving Giant.

Mr. Mezines has sought and received clearance to represent Giant Stores with respect to the so-called "market basket survey." This is a Bureau of Consumer Protection matter having nothing to do with either the present food store pricing investigation or the former D.C. food store matter. Mr. Mezines' request was filed in accordance with Commission Rules, and the Commission agreed unanimously with the staff recommendation that his participation in the "market basket" matter would not involve actual or apparent impropriety.

Senator PROXMIRE. Thank you, all of you gentlemen, very, very much. As I say, it has been most helpful testimony.

Mr. ENGMAN. Thank you, Senator Proxmire.

Senator PROXMIRE. Thank you. The committee stands adjourned.

[Whereupon, at 12:53 p.m., the committee adjourned, subject to the call of the Chair.]

[1] Appendix D may be found in the committee files.