FTC Says Justice Dept. Stalls Cases

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For at least the last 10 years, the Justice Department has been refusing to file charges or delaying action against scores of companies alleged to have violated Federal Trade Commission orders, internal FTC documents show.

The Justice Department, which serves as the "law firm" for government agencies such as the FTC, delayed on one case so long that the defendant died and the company went bankrupt, according to the documents. This and other cases involve alleged violations of FTC orders forbidding firms from engaging in monopolistic or deceptive practices.

In one case on which the Justice Department did move, department attorneys so reduced the FTC charges that the case resulted in little more than a paper victory, the documents say.

According to FTC documents obtained by The Washington Post from Capitol Hill sources, large and small companies alike are escaping enforcement of laws they have allegedly violated.

The causes of delays generally appear to be less political than legal and bureaucratic. The matter has become a cause of some concern to FTC Chairman Miles W. Kirkpatrick and Assistant Attorney General Richard W. McLaren.

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The two have been meeting in an attempt to solve the problem.

A bill is pending in the Senate that would allow FTC lawyers to take cases directly to court themselves, intead of relying on the Justice Department. The department is opposed to such powers for the Ftc, but the Trade Commission has been quietly pushing the measure and part of its rationale has been past Justice Department performance.

On the matter of delays, McLaren explaned in an interview Friday night that the type of evidence required by administrative agencies with quasi-judicial functions, such as the FTC, are frequently not the same as those required by the courts. Thus, some of the cases referred by the FTC to the Justice Department require further investigation.

Furthermore, McLaren noted, the FTC has on occasion sent cases to the Justice Department aimed at winning monetary penalties the defendants would be unable to pay—either because they don't have the money or because they have gone bankrupt.

McLaren believes, however, that "any sort of procedure can be improved" and he says that on the basis of his discussions with Kirkpatrick" "some different procedures will be inaugurated."

'Trivial' Violations?

FTC lawyers have been told by their Justice Department counterparts that some Trade Commission cases involve "trivial violations. But FTC compliance official Jerry Z. Pruzan said in an August memo that the Justice Department "has no discretion to second guess the commission on what cases should be filed."

Pruzan, in a Sept. 2 memo to FTC General Counsel Joseph Martin Jr., said, "Delay can effectively destroy a case. Witnesses disappear, evidence is lost, and the net effect is that the deceptive practice continues unchecked.

"Moreever," Pruzan continued, "the department's refusal to file or its delay in filing is only a part of the problem: once Justice finally transmits the case to the U.S. attorney (in a city) for filing, it may (a) either languish for an indefinite period without ever being filed or (b) although filed, not be pursued to judgment."

FTC lawyers, according to the documents, frequently are not consulted by local U.S. attorneys assigned to the cases.

"Our cases are not generally the sexy, page one types of cases that the U.S. attorneys like to pursue," Pruzan wrote. He said FTC lawyers should help the U.S. attorneys in handling the special antitrust and consumer deception laws administered by the Trade Commission.

Joseph J. Gercke, another FTC compliance official, says in another memo, however, that sometimes U.S. attorneys offer "marked resistance" to the participation of experienced FTC personnel in the handling of negotiation and argument on these cases.

A similar complaint against Justice Department delays has been made by William W. Goodrich, counsel for the Food and Drug Administration.

He has said that during the mid-1960s, the FDA met resistence in the department to the initiation of prosecution of manufacturers of prescription drugs for false and misleading advertising to the medical profession.

A few years ago, Goodrich

also was upset by the refusal of the department to convene a grand jury, with subpoena power, to pursue the case of a prominent Boston physician whose drug-testing enterprise had been conducting studies on hospital patients who later were shown to have died before the tests were performed.

Stalled Cases

Among the FTC cases stalled at the Justice Department is one against the National Electrical Manufacturers Association. The FTC sent the case to Justice on Aug. 1, 1968, accusing the association of violating an order against price fixing and recommending $6.9 million in penalties.

Almost a year later the Justice Department advised the FTC that there was "insufficient evidence" in its case but after another year of FTC-Justice Department talks, the case is now "receiving active reconsideration."

One of the smaller cases involved a coat maker who allegedly violated an FTC order against the mislabeling of wool coats. The Trade Commission sent the case to Justice in June, 1957, recommending $40,000 in penalties. The department filed charges in court four years later. On Oct. 2, 1968, the case was dismissed for lack of action, the FTC documents say.

Another small case involved Max Stone and Stone and Stone, Inc., charged by the FTC with willful mislabeling fur products. The FTC asked the Justice Department in October of 1962 to file criminal charges against Stone. They were filed a year later.

On June 28, 1968, the case was dropped.

"This was a good strong case but it laid in the U.S. Attorney's office and finally Max Stone died and the corporation went bankrupt," according to an FTC memo on the case.

Some of the FTC cases sent to the Justice Department involve larger companies. In April, 1966, the FTC asked the department to take action against P. H. Hanes, a maker of underwear, for alleged price fixing. The Trade Commission recommended $140,000 in penalties.

The Justice Department took the matter to a grand jury advising that it would file the FTC's civil penalty action afterward. The grand jury did not return a true bill and Justice "then refused to file a penalty case," an FTC memo said.

"In the meantime," the memo continued, "the (alleged) price fix continued and at present half the staff is reinvestigating Hanes."

In a case this year against PepsiCo, Inc., the Justice Department moved within three months of receiving the matter from the FTC. But "in settling, Justice granted so broad a release in the judgment that such release, in effect, granted total immunity for any type of order violation occurring prior to entry of the judgment," the FTC memo said. Justice did win a $15,000 penalty.

One case in which the Justice Department has not taken action after almost a year involves Ancorp National Services Corp.

The inactive Ancorp National case involves an alleged violation of a 1961 FTC cease-and-desist order barring discriminatory payments by newspapers to Union News Co., the largest newstand chain in the country, which is owned by nCorp. The Trade Commission recommended a penalty of $765,000.

The Justice Department declined to comment last week on whether investigations of Ancorp and its chairman, Henry Garfinkle, by Justice's antitrust unit and the New York Organized Crime Strike Force are continuing.

FTC officials also declined to comment on the case—even to verify whether Justice has bucked it back to the Trade Commission.

New FTC Powers

In one of FTC official Pruzan's memos, he says that he is "convinced that in view of the numerous congressional complaints which we receive, if the Congress were aware of the problems, actions to expedite passage of S. 3201 would be immediate."

He refers to a bill that would provide the FTC with broad new powers. The bill, expected to be reported out of the Judiciary Committee this week, would allow the Trade Commission to obtain preliminary injuctions against companies and it would allow FTC attorneys to go directly to court to seek relief for consumers.

The bill further provides that FTC lawyers, instead of relying on Justice Department lawyers, may go directly to the courts to seek civil penalties for violations of the agency's orders.

Over the past few months, the Justice Department has been fighting the provisions in the bill that would give the FTC some autonomy as far as court cases are concerned. Quietly, the FTC has been fighting to retain those provisions in the measure.

McLaren said that "our position on the FTC going to court is that since 1870 it has been the general policy, frequently reaffirmed by Congress, that the Justice Department is the agency through which the government goes to court."

McLaren said the Justice Department does not oppose the FTC's proposed power to obtain preliminary injunctions.