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Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97-5247 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-15-M

Antitrust Division

United States v. Delta Dental of Rhode Island; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, a Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the District of Rhode Island in *United States of America v. Delta Dental of Rhode Island*, Civil Action No. 96-113P.

The Complaint in the case alleges that Delta Dental of Rhode Island ("Delta") entered into so-called "most favored nation" agreements with its panel dentists in unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Delta, a broad-panel plan contracting with over 90% of Rhode Island's dentists, required that participating dentists offer no lower price to competing dental plans. The agreements effectively restricted the willingness of panel dentists to discount fees for dental care and blocked competition from narrow-panel, lower cost dental plans.

The proposed Final Judgment eliminates Delta's most favored nation clause and enjoins Delta from engaging in other actions that would limit future discounting by its participating dentists.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; Liberty Place; 325 7th Street,

NW., Room 404, Washington, DC 20530 (202/307-5799).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division, United States Department of Justice.

United States District Court for the District of Rhode Island

[Civil Action No. 96-113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Stipulation

It is stipulated by and between the undersigned parties, their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over both of the parties, and venue of this action is proper in the District of Rhode Island.

2. The parties consent that a Final Judgment in the form attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own action, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant any by filing that notice with the Court.

3. If Plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to either party in this or in any other proceeding.

4. Defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

Dated: _____.

For Plaintiff

Joel I. Klein,

Acting Assistant Attorney General.

A. Douglas Melamed,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director, Office of Operations.

Gail Kursh,

Chief, Health Care Task Force.

David C. Jordan,

Assistant Chief, Health Care Task Force, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For Defendant

William R. Landry, #494,

Blish & Cavanagh, Commerce Center, 30 Exchange Terrace, Providence, R.I. 02903-1765, (401) 831-8900.

Steven Kramer,

William E. Berlin,

Mark J. Botti,

Michael S. Spector,

Richard S. Martin,

Attorneys, Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530, (202) 307-0997.

Sheldon Whitehouse,

United States Attorney, District of Rhode Island.

By: Anthony DiGioia,

Ass't. U.S. Attorney, 10 Dorrance Street, Providence, R.I. 02903, (401) 528-5477.

William G. Kopit,

Espstein Becker & Green, 1227 25th Street, N.W., Washington, D.C. 20037, (202) 861-9000.

United States District Court for the District of Rhode Island

[Civil Action No. 96-113P]

United States of America, Plaintiff, vs. Delta Dental of Rhode Island, Defendant.

Final Judgment

Plaintiff, United States of America, filed its Complaint on February 29, 1996. Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party of any issue of fact or law, nor a determination that any violation of law has occurred. Therefore, before the taking of any trial testimony and without trial of any issue of fact or law, and upon consent of the parties, it is

Ordered, adjudged, and decreed, as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the consenting parties. The Complaint states a claim upon which relief may be granted against Delta under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

(A) "Defendant" or "Delta" means Delta Dental of Rhode Island.

(B) "Participating Dentist's Agreement" means Delta's agreement with dentists for the provision of dental services to Delta's subscribers, including Delta's Rules and Regulations referenced in the agreement, and all amendments and additions to any such agreement.

(C) "Participating Dentist" means any dentist who has agreed to comply with the terms of the Participating Dentist's Agreement.

(D) "Most Favored Nation Clause" means:

(1) paragraph 10 of Delta's Rules and Regulations, sometimes characterized as Delta's "Prudent Buyer Policy," pursuant to which:

"Delta Dental reserves the right to limit reimbursements to dentists to such levels as such dentists have agreed to accept as reimbursement from other non-governmental dental benefits reimbursement programs;" or

(2) any contractual provision, policy, or practice which requires a dentist to charge Delta no more than the lowest fee charged by that dentist to any non-Delta plan or patient.

(E) "Usual and customary fees" means the fees for services and material that dentists usually charge, before any discounting, to their patients.

III. Applicability

This Final Judgment applies to Delta and to its successors and assigns, and to all other persons (including Participating Dentists) in active concert or participation with any of them, who have received actual notice of the Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Delta is enjoined and restrained from:

(A) maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement, or by any other means or methods;

(B) maintaining, adopting, or enforcing any policy or practice varying Delta's payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta;

(C) taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and

(D) monitoring, auditing, or obtaining from any dentist the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

V. Permitted Activities

Nothing herein shall be construed so as to preclude Delta from:

(A) establishing preferred provider networks or other forms of limited panels of providers, including discounted fee panels, recruiting dentists who are participating with other dental plans in similar panels, and negotiating bi-lateral fee arrangement with such dentists, provided that such activity does not violate any provision of Section IV;

(B) establishing provider reimbursement levels as may be reasonable and necessary to respond to market conditions and having different reimbursement levels for different categories or panels of providers, provided that Delta's criteria for differentiation in reimbursement among categories or panels of dentists are not based on their participation in other dental plans, on fees those dentists offer other dental plans or persons, or on fees those dentists agree upon with other dental plans or persons; and

(C) collecting through otherwise lawful means, including use of a survey sent to all Participating Dentists, (1) Participating Dentists' usual and customary fees for each applicable service, provided that such information is collected uniformly from all Participating Dentists; and (2) data and information, including reimbursement levels, regarding other dental plans.

VI. Nullification

Delta's Most Favored Nation Clause shall be null and void and Delta shall impose no obligation arising from it on any Participating Dentist. Within 90 days of entry of this Final Judgment, Delta shall disseminate to each Delta Participating Dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. Delta shall eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of this Final Judgment.

VII. Compliance Measures

The Delta shall:

(A) distribute, within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with Participating Dentists.

(B) distribute in a timely manner a copy of this Final Judgment to any officer, director, or employee who succeeds to a position described in Section VII(A) (1) or (2);

(C) obtain from each present or future officer, director, or employee designated in Section VII(A) (1) or (2), within 60 days of entry of this Final Judgment or of the Person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final

Judgment may result in conviction for criminal contempt of court;

(D) maintain a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VII(C), the certification has been obtained;

(E) distribute, within 60 days of the entry of this Final Judgment, a copy of the attached letter, which has been approved by the Antitrust Division, by first-class mail to all currently Participating Dentists; and

(F) report to the Plaintiff any violation of the Final Judgment.

VIII. Certification

(A) Within 100 days of the entry of this Final Judgment, Delta shall certify to the Plaintiff whether it has: (1) disseminated revised Rules and Regulations pursuant to Section VI; (2) distributed the Final Judgment in accordance with Section VII(A); (3) obtained certifications in accordance with Section VII(C); and (4) distributed copies of the attached letter in accordance with Section VII(E).

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, Delta shall file with the Plaintiff an annual Declaration as to the fact and manner of its compliance with the provisions of Sections IV, V, VI, and VII.

IX. Plaintiff's Access to Information

(A) to determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to Delta made to its principal office, shall be permitted, subject to any legally recognized privilege:

(1) Access during Delta's office hours to inspect and copy all documents in the possession or under the control of Delta, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Delta and without restraint or interference from it, to interview officers, employees or agents of Delta, who may have Delta's counsel and/or their own counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Delta's principal office, Delta shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) Delta shall have the right to be represented by counsel in any process under this Section.

(D) No information or documents obtained by the means provided in Section IX shall be divulged by the Plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(E) If at the time information or documents are furnished by Delta to Plaintiff, Delta represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Delta marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to Delta prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Delta is not a party.

(F) Nothing in this Final Judgment prohibits the Plaintiff from using any other investigatory method authorized by law.

X. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment; to modify or terminate any of its provisions, based on changed circumstances of fact or law warranting such action; to enforce compliance; and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge.

Attachment

Attachment Referred to in Section VII(E)

As you may know, Delta Dental has been involved in a lawsuit with the United States Department of Justice in the United States District Court of Rhode Island regarding Rule 10 of Delta's Rules and Regulations for Dentists, which is sometimes called Delta's "Prudent Buyer" policy. Rule 10 has allowed Delta Dental to limit its payments to dentists to the lowest level the dentist had agreed to

accept from any other non-governmental plan or from any uninsured patient.

Delta Dental and the Department of Justice have agreed to a consent decree that has been entered as an order of the District Court. As part of this consent decree, Delta has agreed to eliminate Rule 10 if its Rules and Regulations.

The consent decree declares Rule 10 null and void and prohibits Delta from varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentists charges Delta. Within the next thirty (30) days, we will forward to you a superseding set of Rules and Regulations that omits Rule 10.

Sincerely yours,

Director of Provider Relations.

[Civil Action No. 96-113P]

United States District Court for the District of Rhode Island

United States of America, Plaintiff, vs.
Delta Dental of Rhode Island, Defendant.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h), the United States submits this Competitive Impact Statement describing the proposal Final Judgment submitted to resolve this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 29, 1996, the United States filed a civil antitrust complaint alleging that Delta Dental of Rhode Island ("Delta"), enters into agreements with its participating dentists that unreasonably restrain completion by inhibiting discounting of fees for dental care in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint seeks injunctive relief to enjoin continuance of the violation.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce, or modify the Judgment or to punish violations of any of its provisions.

II. Practices Giving Rise to the Alleged Violation

If this matter had proceeded to trial, the United States would have introduced evidence as follows. Delta is Rhode Island's largest dental insurer, insuring or administering plans providing insurance to about 35-45% of Rhode Island residents covered by dental insurance. Delta seeks to offer its enrollees the broadest possible panel of dentists and contracts with over 90% of Rhode Island dentists. Delta accounts

for a substantial percentage of the professional income of most Rhode Island dentists.

Pursuant to Delta's Participating Dentist's Agreement (the "Agreement"), each contracting dentist agrees to comply with Delta's Rules and Regulations. Rule 10 of these Rules and Regulations is a Most Favored Nation (MFN) clause, which provides that Delta has the right to lower the fees it pays a dentist to the level of the lowest fees that that dentist charges any other plan. Delta has applied its MFN clause also to dentists' charges to uninsured patients. Rule 7 gives Delta the additional right to audit dentists' records to determine whether they are complying with the MFN clause.

In contrast to Delta's program, which by design includes as many dentists as possible, some dental plans such as preferred provider organizations ("PPOs") and health maintenance organizations ("HMOs"), contract selectively with a limited panel of dentists. By offering the prospect of increased patient volume, these managed care plans are able to contract with some dentists for services at fees substantially below Delta's. These plans then create financial incentives for their enrollees to use panel dentists. Selective contracting with dentists helps a managed dental care plan lower the cost of the delivery of dental service to its enrollees. Accordingly, these plans are able to offer patients lower premiums and lower out-of-pocket costs.

Delta currently provides so much more of most Rhode Island dentists' income than would any entering managed care plan that if these dentists were to reduce their fees to such plans, the resulting reduction in their income from Delta would be much greater than their added income from the entrant plan. Because few dentists in Rhode Island are not under contract with Delta, and because Delta's MFN clause gives its participating dentists strong disincentives to contract with dental managed care plans at fees below Delta's, other plans have been unable to form a competitively viable panel. By thus excluding from the dental insurance market reduced-cost plans that many consumers view as an important option, Delta's MFN clause has protected Delta from competition from such lower-cost plans at the expense of consumers.

In recent years, Delta's MFN clause has blocked the entry or expansion of several low-cost plans. For example, Delta's MFN clause caused dentists to withdraw from Dental Blue PPO—a low-cost preferred provider organization established in the fall of 1993 by Blue

Cross and Blue Shield of Massachusetts to serve Raytheon employees and their dependents, including the approximately 1,000 employees and their dependents at Raytheon's facility in Portsmouth, Rhode Island. Dental Blue PPO had initially succeeded in contracting with a number of Rhode Island dentists at substantially discounted rates—rates, by Delta's calculations, that were 14% lower than Delta's. These PPO savings would have significantly reduced or eliminated Raytheon plan members' co-payments.

After identifying Dental Blue PPO as a long-run competitive threat, Delta's senior management pursued several related tactics. First, it contacted the former chairman of the Rhode Island Dental Association ("RIDA")'s Council on Dental Programs, who supports Delta's MFN clause because he believes it sets a floor on dentists' fees. He sent RIDA's members a letter warning that because of Delta's MFN clause dentists would face "severe financial penalties" if they contracted with dental Blue PPO. Second, Delta's management sent a letter to Rhode Island dentists who Delta knew to be participating in Dental Blue PPO, announcing its intention to apply its MFN clause and describing the new, reduced payment levels they would receive from Delta if they continued to participate in Dental Blue PPO.

By the end of January 1994, all of the dentists contacted by Delta had withdrawn from Dental Blue PPO. Some of them made clear to Delta at the time that the reason for their withdrawal was Delta's decision to apply its MFN clause and requested that Delta return their payments to former levels. As a result, Raytheon employees were denied the opportunity to lower or eliminate their co-payments for dental care, and Rhode Island was denied the entry of a low-cost dental insurance plan.¹

Delta's MFN clause also caused dentists to refuse to contract, at fees below levels paid by Delta, with at least two other lower-cost plans. In one

instance, U.S. Healthcare attempted to establish a plan in Rhode Island (as it had in other states) that would have paid dentists at fee levels lower than Delta's. Rhode Island dentists uniformly refused to participate because they feared that Delta would apply its MFN clause. Similarly, Delta's participating dentists refused, because of Delta's MFN clause, to contract with dental Benefit Providers ("DBP") at fee levels below Delta's, forcing DBP to pay Delta's higher rates to enter the market and depriving consumers of a low-cost alternative.

Delta's MFN clause also prevented two other organizations—a self-insured employee group and an uninsured retiree group—from recruiting additional dentists, at fee levels substantially below Delta's, to augment their limited panels of dentists. Both had persuaded a few Rhode Island dentists to accept fees substantially below Delta's and both had avoided the application of Delta's MFN clause—despite Delta's commitment to enforce the clause—only because Delta had been unaware of their operation. Although both wanted to expand their panels, they refrained from recruiting additional dentists because of their concern that such efforts would disclose their existence to Delta and trigger Delta's enforcement of its MFN clause, causing their existing dentists to disaffiliate. As a result, some members of these groups were denied more accessible, low-cost dental care that would have been available in the absence of the MFN clause.

Although the language of Delta's MFN clause appears to apply only to fees dentists offer to insurance plans, Delta has also on occasion enforced the MFN when dentists have lowered their fees to uninsured patients. Some dentists who have been willing to serve uninsured patients at reduced rates have suffered an added financial penalty imposed by Delta. As a result, they and other dentists have been deterred from offering discounts to uninsured patients. Delta's MFN clause has thus raised the prices, and reduced the availability, of dental services to some of Rhode Island's most vulnerable consumers.

By Delta's own admission, its MFN clause has not generated any meaningful savings or other procompetitive benefits. Far from saving consumers money, Delta's MFN clause has, in fact, eliminated most discounting by dentists below Delta's fees, and—as recognized by the former chairman of the RIDA's Council on Dental Programs—set a floor on dental fees, thus raising the costs of dental services and dental insurance for Rhode Island consumers.

III. Explanation of the Proposed Final Judgment

The Plaintiff and Delta have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party of any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section X(C) of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that Delta eliminates its MFN clause and ceases all similar practices that unreasonably restrain competition among dentists and dental insurance plans.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to Delta, to its successors and assigns, and to all other persons (including Delta's participating dentists) in active concert or participation with any of them, who shall have received actual notice of the Final Judgment by personal service or otherwise.

In the Stipulation to the proposed Final Judgment, Delta has agreed to be bound by the provisions of the proposed Final Judgment pending its approval by the Court.

B. Prohibitions and Obligations

Under Section IV(A) of the proposed Final Judgment, Delta is enjoined and restrained for a period of ten years from maintaining, adopting, or enforcing any Most Favored Nation Clause or similar provision in any Participating Dentist's Agreement or by any other means or methods. Other provisions of the Final Judgment seek to ensure that the MFN clause's anticompetitive effects cannot be achieved in other ways. Specifically, Section IV(B) enjoins Delta from maintaining, adopting, or enforcing any policy or practice varying its payments to, or other treatment of, any dentist because the dentist charges any non-Delta patient or plan a fee lower than the fee the dentist charges Delta; Section IV(C) enjoins Delta from taking any action to discourage any dentist from participating in any non-Delta plan or from offering or charging to any non-

¹ Delta's application of its MFN clause to the Dental Blue PPO demonstrates that Delta has not enforced the clause when a dentist, who had initially agreed to charge another plan substantially lower fees, then raised the fees to Delta's level or disaffiliated from the plan. Delta's approach suggests that Delta applied its MFN clause to prevent the entry of a new, low-cost rival, not just to ensure that it obtained the lowest prices available.

Delta indeed did develop a contingency plan to compete on price with Dental Blue PPO by forming its own limited-panel, reduced-fee PPO. When Delta's MFN clause brought about the collapse of the Dental Blue PPO, however, Delta shelved its PPO plans. Rhode Island consumers thus remained without a limited panel, lower-cost competitive alternative to Delta's existing, mid-range plan.

Delta patient, or any non-Delta plan, any fee lower than that paid to the dentist by Delta; and Section IV(D) enjoins Delta from monitoring, auditing, or obtaining from any dentist information about the fees a particular dentist charges any non-Delta patient or any non-Delta plan, except as provided in Section V.

Section V permits Delta to engage in certain specified activities without violating the prohibitions of Section IV, including creation of a limited-panel plan, implementation of different reimbursement levels under certain circumstances, and collection through certain means of information about market rates. These activities will likely facilitate, rather than impair, competition.

Section VI of the Final Judgment declares Delta's MFN clause null and void. It directs Delta to disseminate to each Delta participating dentist revised Rules and Regulations, referenced in the Participating Dentist's Agreement, that omit the Most Favored Nation Clause. This Section also requires Delta to eliminate the Most Favored Nation Clause from all Participating Dentist's Agreements entered into after entry of the Final Judgment.

Section VII of the Final Judgment imposes various compliance measures. Section VII(A) requires Delta to distribute, within 60 days of entry of the Final Judgment, a copy of the Final Judgment to: (1) all Delta officers and directors; and (2) all Delta employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists. Sections VII(B)-(D) require Delta to provide a copy of the Final Judgment to future officers, directors, and employees who have any responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists and to obtain and maintain records of such persons' written certifications that they have read, understand, and will abide by the terms of the Final Judgment. Section VII(E) requires Delta to distribute a copy of a letter, approved by the Antitrust Division and attached to the Final Judgment, to all currently participating dentists. Section VII(F) obligates Delta to report to the Plaintiff any violation of the Final Judgment.

Finally, Section VIII obligates Delta to certify its compliance with specified requirements, summarized above, of Sections IV, V, VI, and VII of the Final Judgment. In addition, Section IX sets forth a series of measures by which the

Plaintiff may have access to information needed to determine or secure Delta's compliance with the Final Judgment.

C. Effect of the Proposed Final Judgment on Competition

By eliminating the MFN clause, the relief imposed by the proposed Final Judgment will enjoin and eliminate a substantial restraint on price competition between Delta and other dental insurance plans and among dentists in Rhode Island and its environs. It will do so by eliminating the disincentives created by the MFN clause for dentists to discount their fees and to join non-Delta plans offering payments below Delta's levels. The Judgment also prevents Delta from taking any other action to discourage dentists from discounting or participating in competing dental insurance plans. Consequently, non-Delta plans' efforts to attract and maintain viable panels of dentists to serve their members will no longer be hampered.

The proposed Final Judgment will restore the benefits of free and open competition to dental insurance plans and consumers in Rhode Island. Consequently, limited panel dental insurance plans should be able to achieve cost savings that they can pass on to consumers, and consumers should be able to choose from a wider array of dental insurance alternatives. Competition among dentists should also be invigorated.

IV. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. Such a trial would involve substantial costs to both the United States and Delta and is not warranted because the proposed Final Judgment provides all of the relief that the United States would likely obtain upon a favorable decision at the close of trial and fully remedies the violations of the Sherman Act alleged in the Complaint.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the

Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against Delta in this matter.

VI. Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; Department of Justice; Antitrust Division; 325 7th Street, N.W.; Room 404; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is necessary to protect the public interest. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: February 19, 1997.

Respectfully submitted,

Steven Kramer,
William E. Berlin
Mark J. Botti,
Michael S. Spector,
Richard S. Martin,
*Attorneys, Antitrust Division, U.S.
Department of Justice, 325 7th Street, N.W.,
Room 426, Washington, D.C. 20530, (202)
307-0997.*

United States District Court for the District of Rhode Island

[Civil Action No. 96-113P]

United States of America, Plaintiff, vs.
Delta Dental of Rhode Island, Defendant.

Certificate of Service

I certify that I caused a copy of the Stipulation, the Final Judgment, and the United States' Competitive Impact

Statement to be served on February 20, 1997, by overnight delivery to:

William R. Landry, Blish & Cavanagh,
Commerce Center, 30 Exchange
Terrace, Providence, R.I. 02903-1765
and by first class mail to:

William G. Kopit, Epstein Becker &
Green, 1227 25th Street, N.W.,
Washington, D.C. 20037.

Dated: February 20, 1997.

Steven Kramer,
Attorney, Antitrust Division, U.S. Department
of Justice, 325 7th Street, N.W., Room 426,
Washington, D.C. 20530, (202) 307-0997.

[FR Doc. 97-5151 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

**Notice Pursuant to the National
Cooperative Research and Production
Act of 1993—National Center for
Manufacturing Sciences, Inc. (NCMS)**

Notice is hereby given that, on February 4, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and providing information on the status of its research projects. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: Advanced Technology & Research Corporation, Burtonsville, MD; Lockheed Martin Corporation, Idaho Falls, ID; OMNEX Engineering & Management, Inc., Ann Arbor, MI; and Structural Dynamics Research Corporation, Milford, OH. Software Productivity Consortium NFP, Inc., Herndon, VA, was approved for affiliate membership. Cimflex Teknowledge Corporation, Palo Alto, CA, changed its name to Teknowledge Corporation, and ICAD, Inc., Burlington, MA, has changed its name to Concentra Corporation. The McNeal-Schwendler Corporation, Los Angeles, CA, acquired Aries Technology, Inc. and subsequently became a member of NCMS. The following companies have canceled their active membership in NCMS: Andersen Consulting LLP, Detroit, MI; Computer Tool & Die Systems, Inc., Ann Arbor, MI; Knowledge Based Systems, Inc., College Station, TX; Physical Sciences Inc., Andover, MA; C. Thorrez Industries,

Inc., Jackson, MI; and Weed Instrument Company, Inc., Simi Valley, CA. The following organizations have resigned from affiliate membership in NCMS: American Supplier Institute, Allen Park, MI; Les Chefs Maillleurs de la Qualite, Quebec City, Quebec, Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 24, 1996. This notice was published in the Federal Register on December 19, 1996 (61 FR 67067).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97-5246 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

**Notice Pursuant to the National
Cooperative Research and Production
Act of 1993; Ole for Process Control
(OPC) Foundation**

Notice is hereby given that, on December 18, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Ole for Process Control Foundation ("OPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: ABB Asea Brown Boveri Ltd., Zurich, SWITZERLAND; Applicorn International S.A., Caudebec Les Elbeuf, FRANCE; Biles & Associates, Houston, TX; Canary Labs, Inc., Martinsburg, PA; Ci Technologies Pty Limited, Pymble, NSW, AUSTRALIA; Dynapro Systems, Inc., New Westminster, BC, CANADA; Hardy Software Systems, Inc., Houston, TX; Honeywell, Inc., Phoenix, AZ; ICONICS, INC., Foxborough, MA; Institut fur Automation und Kommunikation e. V. Magdeburg, Barleben, GERMANY; Johnson Yokogawa Corporation, Newnan, GA;

National Instruments, Austin, TX; OMNX Control Systems, Charleston, TN; PID, Phoenix, AZ; Process Automation Systems, Inc., Vancouver, BC, CANADA; ProMicro Ltd., London, ENGLAND; RDI Software Technologies, Inc., Des Plaines, IL; Roy-G-Biv Corporation, Seattle, WA; S-S Technologies, Inc., Kitchener, ON, CANADA; Siemens AG, AUT 1E Nuremberg, GERMANY; SoftPLC Corporation, Humble, TX; Star Enterprise, Houston, TX; TA Engineering Co., Inc., Moraga, CA; The Foxboro Company, Foxboro, MA; The Software Studio, Inc., Cupertino, CA; Toshiba Corporation, Tokyo, JAPAN; Trebing & Himstedt Prozessautomation GmbH & Co. KG, Schwerin, GERMANY; and Wonderware Corporation, Irvine, CA. One member, Rockwell Software, Inc., has moved from Milwaukee, WI to West Allis, WI.

No other changes have been made in either the membership or planned activity of OPC. Membership in this venture remains open and OPC intends to file additional written notifications disclosing all membership changes.

On July 15, 1996, the Ole for Process Control Foundation ("OPC"), filed its original notification pursuant to § 6(b) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on August 14, 1996 (61 Fed. Reg. 42269).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 97-5248 Filed 3-3-97; 8:45 am]

BILLING CODE 4410-11-M

**Notice Pursuant to the National
Cooperative Research and Production
Act of 1993; VSI Alliance**

Notice is hereby given that, on November 29, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the VSI Alliance ("VSI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Advanced RISC Machines Ltd., Cambridge, ENGLAND; Cadence Design Systems, Inc., San Jose, CA; Fujitsu Limited, Kawasaki, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Sony Corporation, Tokyo, JAPAN;