COMMENTS OF PROFESSOR R. PRESTON MCAFEE

REGARDING COMMISSION ISSUES FOR STUDY

Much has been written in the economic and legal literature, and in judicial opinions, concerning the definition and measurement of market power by sellers – monopoly power. In contrast, market power on the buyer side – monopsony power – has received little attention, which is particularly unfortunate now because monopsony power has recently become a more significant factor in the U.S. economy. This development is pronounced in retailing, healthcare, and agriculture, which together account for a significant portion of U.S. GDP. As a result, issues arising in the context of buyer power deserve further study and may call for amendment to the antitrust laws and/or guidelines.

There are multiple reasons why the ability to exercise monopsony power is likely to occur at lower market share levels than for monopoly power. When a monopsonist reduces its purchases (or perhaps the purchases of its competitors through exclusionary conduct) in order to lower input prices, it reduces costs on the units it continues to buy. The decreased purchases, however, may also reduce its sales (or those of its competitors) and drive up prices for the output. Thus, the monopsonist is likely to benefit in two markets.

In addition, input suppliers' abilities to realize scale economies may require access to distributors or retailers accounting for a substantial majority of a downstream market (e.g. 80%). Thus, a buyer with relatively low share (e.g. 20%) can mean the difference between the success or failure of a new product sold by an input supplier.

These reasons and others suggest that mergers among, and exclusionary conduct by, buyers may become problematic at lower market share levels than for sellers. Accordingly, a reassessment of market-share thresholds used by antitrust agencies and courts to evaluate monopsony power may be necessary.