competitor and the possible elimination of substantially *all* competition in those areas.

Whitcomb is in the aggregate and asphalt paving business, primarily in the states of New Hampshire and Vermont. Pike Industries is Whitcomb's primary competitor. Whitcomb and Pike are the only competitors in Vermont with the exception of occasional minimal competition in the southeast and northeast corners of the State. Pike is a subsidiary of Oldcastle Northeast, Inc., and an indirect subsidiary of CRH, Inc., defendants in the above-referenced matter.

Tilcon is a large regional aggregate and paving company that, Whitcomb believes, works primarily in New York, parts of New England, and the Middle Atlantic States. At present, it is not a direct competitor in most of Whitcomb's market area as described above, but it is a potential competitor.

Since 1993, Whitcomb has been considering the sale of portions or all of its business. In 1993, Whitcomb sold an asphalt plant located in Keene, New Hampshire (which is in the southwestern part of the State) to a subsidiary of Tilcon. As a part of that sale Tilcon also purchased a Right of First Refusal to purchase other plants and real estate owned by Whitcomb. (A copy of the portion of the sale contract relating to the Right of First Refusal is attached hereto.) We understand that as part of the purchase of Tilcon by Oldcastle, this Right of First Refusal has been assigned to Oldcastle.

The proposed acquisition of Tilcon by Oldcastle threatens competition in the aggregate and asphalt paving business in Vermont and south-central New Hampshire in two ways. First, it eliminates Tilcon as a potential competitor. Before the acquisition, the market consisted of two significant actual competitors, Pike and Whitcomb, and at least one potential competitor, Tilcon. After the acquisition, Tilcon will no longer offer potential competition.

Second, with the assignment of the Right of First Refusal to Oldcastle, the proposed acquisition threatens to eliminate competition in the Whitcomb market area almost completely. Whitcomb would like to sell all or part of its business to an entity that can provide viable competition in the market area. The existence of the Right of First Refusal in the hands of its principal competitor makes it difficult to find such a purchaser. Knowledge on the part of a potential purchaser that a competitor could prevent any purchase of Whitcomb or its assets will discourage most entities from attempting to buy Whitcomb or any part of it. If Oldcastle is permitted to exercise the Right of First Refusal, then competition in Vermont will be almost completely eliminated and competition in south-central New Hampshire will be significantly impaired.

As is set forth in the compliant and the competitive impact statement in this case, there are high entry barriers into the manufacture and sale of asphalt concrete. The paving business itself, with the extensive use of expensive heavy equipment, is also capital intensive.

There are no real substitutes for asphalt concrete products, and manufacturers and buyers of asphalt concrete recognize asphalt as the distinct product. Transportation costs and delivery time make it difficult for entities outside of a geographic market—in this case the Whitcomb market area of Vermont and south-central New Hampshire—to compete with competitors located in the market.

In this case, the United States decided to sue Tilcon and CRH/Oldcastle because the acquisition would reduce the number of competitors operating hot mix plants in the greater Hartford area from 3 to 2 and reduce the number of competitors supplying asphalt concrete construction projects in that area from 2 to 1. The proposed acquisition has a comparable competitive effect in the Whitcomb market area. It reduces by 1 the number of potential competitors, by eliminating Tilcon; and it threatens to reduce the number of competitors supplying asphalt concrete construction projects in the market area from 2 to 1, in the event that Oldcastle is able to exercise the Right of First Refusal to purchase all or a substantial part of Whitcomb. In such an event, Oldcastle would control the price of asphalt concrete in the State of Vermont.

The potential harm stemming from the acquisition is particularly substantial in this case because the main purchasers of asphalt concrete for paving projects are tax-supported government entities such as the State of Vermont.

Under the circumstances, we request that the Justice Department withdraw its consent to the proposed acquisition unless and until there is an agreement by both Tilcon and the acquiring companies that the Right of First Refusal is null and void, and that they will not exercise or attempt to exercise it. In the alternative, if the government declines to take any action relating to the Right of First Refusal, then the Court should modify the Consent Decree to add such a provision.

Thank you for your attention to this matter. Please do not hesitate to call me if you should have any questions.

Very truly yours,

James A. Dunbar

Attachment

16. *Right of First Refusal.* (a) As an additional inducement to enter into this Agreement, Seller agrees that Seller shall not, directly or indirectly, sell or transfer (whether by sale of stock, acquisitive merger, business combination or otherwise), or offer to sell, transfer or lease (other than a lease for a term of not more than three years) (any such sale, lease, transfer or offer therefor herein as ''Transfer'') any of its business real estate, now owned or hereafter acquired (except the real estate identified on *Schedule 16.1*), to any other person without first offering to Transfer such assets to the Buyer. If the Buyer and Seller are unable to agree on the price and the terms of any Transfer after full disclosure of information and negotiating in good faith for a period of sixty (60) days, then Seller shall be free to solicit offers on such property to or from any third parties, but only at a price and on terms no more favorable to the purchaser than the price and terms offered to the Buyer. In the event that the Seller receives a bona fide offer to purchase or lease any such property, directly or indirectly, Seller shall provide Buyer with notice of its intent to Transfer. Buyer shall have thirty (30) days to decide internally whether it wishes to purchase or lease the property at such price and on such terms, and, if so, Buyer shall have another thirty (30) days to obtain the approval of its parent corporation(s). Seller agrees to provide Buyer with notice of the acquisition of any after-acquired real estate used in connection with its aggregate and hot mix business, and Seller agrees to execute any such instruments for recordation on the appropriate land records as Buyer shall reasonably request. For purposes of this Section 16, the term ''Seller'' shall include not only the Frank W. Whitcomb Construction Corp. (''FWWCC''), but also any other company, corporation, trust, partnership, association or entity of any form in which either FWWCC, Claire R. Whitcomb, Frank L. Whitcomb or the Frank W. Whitcomb Trust shall have an interest whether direct or indirect.

(b) Frank L. Whitcomb and the Frank W. Whitcomb Trust, (the ''shareholders'') agree not to sell or transfer more than one-third of the outstanding shares of stock of Seller to any other person without in each and every case first offering to sell any such business assets or shares of stock at the same price and on the same terms as offered to any such person. As to any proposed sale exceeding one-third of the share, Buyer shall have sixty (60) days in which to exercise the right of first refusal granted hereunder. The sixty (60) day period shall commence after written notice to Buyer and the delivery of all information reasonably necessary to enable Buyer to make a decision. Notwithstanding the foregoing, the shareholders shall be free to transfer shares to any family member or any trust or other entity established for the benefit of any family member provided that the transferee agrees to be bound by the same terms and conditions hereof.

(c) Seller agrees that it shall not issue any shares of stock, or warrants, options or other rights to acquire shares of stock, to any persons other than Frank L. Whitcomb or the Frank W. Whitcomb Trust if the issuance of such shares of stock would result in the aggregate ownership of the Frank L. Whitcomb or the Frank W. Whitcomb Trust (or any transferees permitted under paragraph (b) above) to be less than two-thirds of the total stock issued and outstanding, computed on a fully diluted basis.

[FR Doc. 96–31468 Filed 12–10–96; 8:45 am]

BILLING CODE 4410–11–M

Antitrust Division

United States of America v. Westinghouse Electric Corporation and Infinity Broadcasting Corporation; Proposed Final Judgment and Competitive Impact Statement

The consent decree in *United States* v. *Westinghouse Electric Corporation and Infinity Broadcasting Corporation*

which was filed with the United States District Court for the District of Columbia, Civil Action No. 96–02563 was published in the Federal Register on December 2, 1996. Page two of the stipulation was not included.

In the Federal Register published December 2, 1996, on page 63861, in the third column, the following text should be set forth after the word ''record.'' in paragraph(a) and before the word ''available''.

Constance K. Robinson,

Director of Operations.

* * * * *

(3) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, 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 the parties and by filing that notice with the Court.

(4) The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(5) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestitures required by Section IV of the Final Judgment, notwithstanding the good faith efforts of the defendants and any prospective Acquirer, as defined in the Final Judgment. In this circumstance, plaintiff will, in the exercise of its sole discretion, acting in good faith, give special consideration to forebearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies.

* * * * *

[FR Doc. 96–31467 Filed 12–10–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The ATM Forum

Notice is hereby given that, on October 30, 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 ATM Forum (''Forum'') 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 extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: GIE COFiRA, Paris, FRANCE; IT Concept PTE Ltd., Singapore, SINGAPORE; LGIC Anyang, KOREA; Lockheed Martin Corporation, Sunnyvale, CA; Paradyne Corporation, Melbourne Beach FL; and Teltrend Inc., St. Charles, IL have been added to the venture. Company name changes include the following: Telecom Lab MOTC ROC to Telecommunications Labs, Chunghwa Telecom Co.; and Cray Communications to Case Technology. Agile Networks has withdrawn from the venture. National Communications has changed from an auditing member to a principal member.

No changes have been made in the planning activities of the Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the ATM Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on June 2, 1993 (58 FR 31415). The last notification was filed on August 1, 1996 and the Department of Justice published a notice in the Federal Register on September 3, 1996 (61 FR 46488).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–31466 Filed 12–10–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; PNGV Fuel Cell Technical Team

Notice is hereby given that, on October 30, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), General Motors Corporation filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a research and development 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 Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Auburn Hills, MI; and Ford Motor Company, Dearborn, MI.

The parties have established a Fuel Cell Technical Team to conduct joint research aimed at developing and demonstrating a viable fuel cell powertrain. The activity encompasses several related tasks including research and development efforts on fuel cells, stacks, modules and components as well as development of fuel processing technologies, fuel cell systems integration, and fuel cell/vehicle integration. The results of this effort will support the Partnership for a New Generation of Vehicles (PNGV) effort and allow each party to better service customers around the world. PNGV is the joint effort of the Federal Government and the U.S. auto industry to develop affordable, fuel-efficient, low-emission automobiles that meet today's performance standards. To meet these objectives, the parties will collect, exchange and analyze research information, interact with government, auto industry and other entities interested in this area and perform other acts allowed by the Act that would advance these goals.

Contact: Steven J. Cernak, General Motors Corporation Legal Staff, 3031 West Grand Boulevard, P.O. Box 33122, M.C. 482–207–700, Detroit, MI 48232, (313) 974–7735.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–31462 Filed 12–10–96; 8:45 am]

BILLING CODE 4410–11–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Intelligent Network Forum

Notice is hereby given that, on November 1, 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 Intelligent Network Forum (''INF'') 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: Acorn Communications,