

**STATEMENT OF COMMISSIONER ORSON SWINDLE
CONCERNING**

**FEDERAL TRADE COMMISSION v. THE HEARST TRUST
FILE NO. 991 0323**

Although I am largely satisfied with the relief obtained in this case, I agree with Commissioner Leary⁽¹⁾ that the disgorgement aspect of the remedy largely confirms the concerns that we expressed last April,⁽²⁾ when the Commission decided to terminate settlement negotiations and proceed in federal court under Section 13(b) of the Federal Trade Commission Act.

Both the divestiture to Wolters Kluwer and the requirement that First DataBank allow customers to terminate extant contracts represent significant relief that should benefit consumers. On the other hand, with regard to disgorgement, Commissioner Leary raises a serious question whether we might have achieved a better result had we concluded an accord with defendants that appeared to be within reach eight months ago.⁽³⁾ One thing seems clear: because the Commission's \$19 million in disgorgement will be subtracted from the at least \$26 million obtained against defendants by class action plaintiffs, the Commission's months-long pursuit of disgorgement has yielded a monetary recovery that adds no real value to the private remedy.

As my vote in favor of the *Mylan* settlement⁽⁴⁾ indicates, I support -- and believe that there is a statutory basis for -- the Commission's efforts to obtain disgorgement in appropriate competition matters. In the present case, however, I continue to think that the decision to seek disgorgement was incorrect and that the remedy that the Commission has obtained may not be the most that we could have achieved.

Endnotes:

1. Statement of Commissioner Thomas B. Leary, Concurring in Part and Dissenting in Part, *Federal Trade Commission v. The Hearst Trust*, FTC File No. 991-0323.

2. Dissenting Statement of Commissioners Orson Swindle and Thomas B. Leary, available at <www.ftc.gov/os/2001/04/hearstdisswinleary.htm>.

3. If, as appeared quite possible, the Commission had obtained a more substantial civil penalty in April -- a sum not capable of being offset against a class action recovery -- then the overall amount that defendants would have had to pay could have been considerably greater.

4. *Federal Trade Commission v. Mylan Laboratories, Inc., et al.*, FTC File No. X990015, available at <www.ftc.gov/opa/2000/11/mylanfin.htm>.