sale of glassware products to Food Service Customers in the United States,'' and expressly includes assets that Newell may have internally transferred to other divisions on or after June 10, 2002. Order ¶ I.G. Anchor's Food Service Business does not include items that are generally available, are not unique to the glassware industry, or are minimally used in the production of food service glassware, such as sand, scrap metal, and office equipment, *Id.*

V. Opportunity for Public Comment

The Proposed Order has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and will decide whether to make the Proposed Order final. By accepting the Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved.

The Commission invites public comment to aid the Commission in determining whether it should make final the Proposed Order contained in the Consent Agreement. The Commission does not intend this analysis to constitute an official interpretation of the Proposed Order, nor does this analysis modify in any way the terms of the Proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–21970 Filed 8–27–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 011 0175]

R.T. Welter and Associates, Inc., *et al.*; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 19, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington DC 20580, (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34(f) of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 20, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/08/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with R.T. Welter and Associates, Inc. (''RTWA''), R. Todd Welter, and the following medical group practices (hereinafter ''Respondent Practice Groups''): Cohen and Womack, M.D., P.C.; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mike High OB/GYN Associates; P.C.; The OB–GYN Associates Professional Corporation; Rocky Mountain OB–GYN, P.C.; Westwide Women's Care, L.L.P.; and The Women's Health Group, P.C. Mr. Welter, RTWA and the Respondent Practice groups are collectively referred to as ''Respondents.'' The agreement settles charges that Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among the obstetricians and gynecologists represented by Mr. Welter to fix prices and other terms of dealing with health insurance firms and other third-party payors (hereinafter, ''payors''), and to refuse to deal with payors except on collectively determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any Respondent that said Respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint

The allegations in the Commission's proposed complaint are summarized below.

Mr. Welter is a non-physician consultant who, through his company RTWA, organized approximately 88 physicians specializing in obstetrics and gynecology (''OB/GYNs'') into a concerted group for the purpose of

negotiating as a bloc with payors over contract terms. Respondents called their group ''Professionals in Women's Care'' (''PIWC''). About half of PIWC's physicians practice medicine through one of the eight Respondent Practice Groups, all but one of which are corporations (the other is a partnership), consisting of OB/GYNs practicing medicine. Except to the extent that competition has been restrained in the manner set forth in the proposed Complaint, the Respondent Practice Groups and other physicians who participated in PIWC compete with each other in the provision of OB/GYN services in the Denver, Colorado metropolitan area.

PIWC came together in 1999 in response to a proposed contract that PacifiCare Health Systems of Colorado (''PacifiCare''), a payor doing business in the Denver area, offered to OB/GYNs in the region. The Respondent Practice Groups opposed the fees and other provisions contained in PacifiCare's offer, and convened a meeting among all of them to discuss strategies for resisting PacifiCare's terms and forcing it to offer a contract that was more lucrative for the physicians. The Respondent Practice Groups retained Mr. Welter to negotiate a different contract on their collective behalf with PacifiCare.

PIWC became a vehicle for the OB/GYN to use their collective bargaining power to negotiate for higher fees and other, more advantageous terms in contracts with payors than they could have obtained by negotiating unilaterally. The Respondent Practice Groups formed a ''Steering Committee'' among themselves to determine contract strategy and give instruction and guidance to Mr. Welter in his dealings with payors over contract terms. Mr. Welter and the Respondent Practice Groups also recruited additional OB/GYNs into PIWC—bringing its total membership to more than 80 physicians.

The PIWC physicians authorized Mr. Welter to advise PacifiCare that they rejected its latest contract offer. Mr. Welter told PacifiCare, among other things, that the physicians had joined together to secure higher fees, that they refused to sign a contract without those fees, and that the physicians would negotiate only through him. To be competitively marketable to employers and other purchasers in the Denver metropolitan area, a payor must include in its network of participating physicians a large number of OB/GYNs. Faced with the prospect of having no contracts with the OB/GYNs involved in PIWC, PacifiCare agreed to the terms that Mr. Welter and the PIWC physicians demanded.

Mr. Welter and Respondent Practice Groups, through PIWC, exploited their collective bargaining strength in contract negotiations with several other payors as well. In some cases, at the urging of Mr. Welter, large numbers of PIWC physicians sent contract termination notices to payors that refused to negotiate with Mr. Welter or that resisted the fee increases he demanded on their behalf. Faced with the threat of a boycott and the inability to include this large group of OB/GYNs in their networks of participating physicians, these payors ultimately acceded to Mr. Welter's demands for the PIWC physicians. In these ways, the PIWC physicians received contract terms that were more economically advantageous to them than they could have obtained by negotiating individually rather than collectively. They also received fees that were higher than those that payors were paying to other OB/GYNs in the Denver metropolitan area.

Sometimes a network of competing physicians uses an agent to convey to payors information obtained individually from the physicians about fees or other significant contract terms that they are willing to accept. The agent may also convey to the physicians all payor contract offers, which the physicians then unilaterally decide whether to accept or reject. Such a ''messenger model'' arrangement, which is describe in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice (see *http://www.ftc.gov/reports/hlth3s.htm.*), can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms. Such a messenger may not, however, consistent with a competitive model, negotiate fees and other competitively significant terms on behalf of the participating physicians, or facilitate the physicians' coordinated responses to contract offers by, for example, electing not to convey a payor's offer to the physicians bases on the messenger's opinion on the appropriateness, or lack thereof, of the offer.

Mr. Welter purported to operate as a messenger, but, in practice, he did not do so. Rather, Mr. Welter used the information he gathered from the PIWC participants, including Respondent Practice Groups, to negotiate fees and other competitively significant terms on the PIWC participants' collective behalf. Mr. Welter, with the Steering Committee's concurrence, would not convey a contract offer to the group of PIWC physicians if he believed that the contract's terms were deficient.

Mr. Welter and the Respondent Practice Groups solicited de facto exclusivity to increase PIWC's collective bargaining power with payors. They persuaded PIWC physicians to terminate affiliations with professional organizations such as independent practice associations and practice management groups to force payors that wanted contracts with the PIWC physicians to deal with Mr. Welter.

Respondents' joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. PIWC participants did not accept any form of financial risk-sharing, through arrangements such as capitation or fee withholds, and they have not clinically integrated their practices to create sufficiently substantial potential efficiencies. Respondents' actions have restrained price and other forms of competition among the PIWC participants, caused fees for obstetrical and gynecological services to rise, and harmed consumers, including payors, employers, and individual patients.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of these illegal concerted actions, while allowing Respondents to engage in legitimate conduct that does not impair competition. The proposed order's core prohibitions are contained in Paragraphs II. and III.

Paragraph II. is intended to prevent the Respondents from participating in, or creating, future unlawful physician agreements.

Paragraph II.A. prohibits RTWA, Mr. Welter, and Respondent Practice Groups from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the Respondents.

Paragraph II.B. prohibits these Respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C. prohibits them from attempting to engage in any action prohibited by Paragraph II.A. or II.B. Paragraph II.D. prohibits them from inducing anyone to

engage in any action prohibited by Paragraph II.A. through II.C.

Paragraph II. also contains two provisos intended to clarify certain types of agreements that Paragraph II. does not prohibit. The first proviso applies to RTWA and Mr. Welter, and the second to the Respondent Practice Groups. Each provides that nothing in Paragraph II. prohibits the applicable Respondent from engaging in conduct that is reasonably necessary to form, participate in, or act in furtherance of, a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.''

As defined in the proposed order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions. First, all physician participants must share substantial financial risk through the arrangement and thereby create incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the Health Care Statements.

As defined in the proposed order, a ''qualified clinically-integrated joint arrangement'' also must satisfy two conditions. First, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns, creating a high degree of interdependence and cooperation among physicians, in order to control costs and ensure the quality of services provided. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement. This definition also reflects the analysis contained in the Health Care Statements.

Paragraph II.'s provisos also provide that Paragraph II. does not prohibit the Respondents from facilitating an agreement solely between physicians who are part of the same medical group practice. The proposed order defines such a practice as a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, members, or employees or in which only one physician practices medicine.

Paragraph III. prohibits RTWA and Mr. Welter, for a period of three years, from negotiating with any payor on behalf of any PIWC physician, and from advising any PIWC physician to accept or reject any term, condition, or requirement of dealing with any payor.

Mr. Welter is not prohibited from performing legitimate ''messenger'' services, including with respect to PIWC physicians. As noted above, a properly constituted messenger can efficiently facilitate the establishment of physician-payor contracts and avoid fostering unlawful agreements among the participating physicians. As set forth in the proposed complaint, however, while Mr. Welter purported to operate as a legitimate messenger, in practice he fostered anticompetitive physician agreements by negotiating directly with payors for higher fees on behalf of all PIWC participants, and by advising the PIWC participants collectively to reject various payor offers and to engage in concerted refusals to deal. For this reason, Paragraph III. is a necessary and appropriate supplement to Paragraph II.'s provisions. Under the proposed order, Mr. Welter may serve as a messenger for PIWC physicians, but, pursuant to Paragraph III., may not negotiate for or advise any PIWC physician with respect to payor contracts.

Paragraphs IV.A. and IV.B. require RTWA to distribute the complaint and order to all physicians who participated in PIWC and to the payors that negotiated contracts with RTWA or Mr. Welter on behalf of any Respondent Practice Group. Paragraph VI.A. requires Respondent Practice Groups to terminate, without penalty, at any payor's request, current contracts, with respect to providing physician services, negotiated by Mr. Welter with payors. This provision is intended to eliminate the effects of Respondents' anticompetitive concerted actions.

The remaining provisions of Paragraphs IV. through VIII. of the proposed order impose obligations on Respondents with respect to distributing the proposed complaint and order to various persons and reporting information to the Commission. For example, Paragraph IV.C. and V.A. require RTWA and Mr. Welter, respectively, to distribute copies of the complaint and order to the physicians on whose behalf they negotiate payor contracts, and to those payors. Paragraphs IV.E., V.B., and VI.B require the Respondents to file periodic reports with the Commission detailing how the Respondents have complied with the order. Paragraph VIII. authorizes Commission staff to obtain access to Respondents' records and officers, directors, partners, and employees for the purpose of determining or securing compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–21971 Filed 8–27–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Meeting/Opportunity for Public Comment: Framework Convention on Tobacco Control (FCTC)

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science/ Office of Global Health Affairs.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is soliciting comments on the Framework Convention on Tobacco Control (FCTC), a proposed international legal instrument intended to address the global problem of tobacco use. Individuals and organizations are encouraged to comment on the FCTC in one or both of the following ways: (1) In writing, by submission through the mails, or e-mail; (2) in person, at a public meeting that will be convened in Nashville, TN.

DATES: Written comments may be submitted until September 27, 2002. Comments can be submitted by mail or electronically (electronic submissions are encouraged).

ADDRESSES: To submit electronic comments, send via e-mail to *FCTC.OGHA@osophs.dhhs.gov.* To submit comments by mail, send to: FCTC Comments (Attn: Ms. Gail Zaslow), Office of Global Health Affairs, 5600 Fishers Lane, Room 18–105, Rockville, MD 20857.

The public meeting will be held on September 20, 2002, from 9:15 a.m. to 5 p.m. at the Nashville Public Library, 615 Church Street, Nashville, TN 37219. Seating capacity is 125 people. Comments also will be accepted during the public meeting. Those who wish to attend are encouraged to register early with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.D.T. on September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Epstein, Office of Global Health Affairs, 5600 Fishers Lane, Room 18–105, Rockville, MD 20857, 301–443–