U.S. Department of Justice

Antitrust Division

Office of the Deputy Assistant Attorney General *Washington, D.C. 20530*

December 22, 1993

Thane D. Scott, Esquire
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

Re: U.S. v. Brown University, et al.

Dear Mr. Scott:

This confirms that the attached letter and its attachment form the basis for the settlement of our litigation with MIT.

Sincerely,

Robert E. Litan
Deputy Assistant Attorney General

PALMER & DODGE

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Boston, Massachusetts 02108

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December 17, 1993

VIA FACSIMILE AND OVERNIGHT COURIER

Robert E. Litan, Esq.
Deputy Assistant Attorney General
Antitrust Division
United States Department of Justice
Room 3208, 10th & Constitution Ave., N.W.
Washington, D.C. 20503

Re: U.S. v. Brown University, et al.

Dear Mr. Litan:

I am writing on behalf of the Massachusetts Institute of Technology ("MIT"), which has authorized me to make the following representations regarding United States v. Brown University, et al., No. 91-CV-3274 (E.D. Pa.). MIT acknowledges that Federal Rule of Civil Procedure 65(d) precludes it from acting in concert with any of the Ivy League colleges in a manner that violates the Final Judgment entered on September 19, 1991 in United States v. Brown University, et al. ("Consent Decree"). If MIT does so, it may be subject to contempt sanctions unless the conduct falls within Section IX of the Consent Decree ("Limiting Conditions") or a subsequent modification of the Consent Decree.

The United States agrees to use its best efforts to modify the Consent Decree as described in the attached document ("Proposed Modifications"), and to apply the terms of the document in its enforcement of the antitrust laws with respect to intercollegiate financial aid arrangements. As MIT has agreed to observe the terms of the Proposed Modifications in its interactions with other institutions, the United States will dismiss the pending case against MIT. MIT understands that the Justice Department is amenable to this resolution because of the special procedural posture of this case and the Third Circuit's holding that unique standards apply to the awarding of financial aid by colleges.

Very truly yours,

Thane D. Scott

TDS:cas
Enclosure

PROPOSED MODIFICATIONS

The United States agrees to apply the following principles in its enforcement of the antitrust laws with respect to intercollegiate financial aid arrangements, and the participating institutions agree to observe these principles in interacting with each other:

1. Any non-profit institution of higher education may participate in the cooperative financial aid arrangements set forth below ("Participating Schools), provided that it:

   a) practices need-blind admissions; that is, admits all United States citizens to its undergraduate programs without regard to family financial circumstances, other than those admitted from a wait list; and

   b) provides financial aid sufficient to meet the full need of all such students.

2. Participating Schools may agree to provide only need-based financial aid and to prohibit merit scholarships.

3. Participating Schools may jointly discuss and agree on principles of need analysis, but may not thereby completely eliminate all professional judgment on the part of individual financial aid officers.

4. Before financial aid awards are made, Participating Schools may utilize a central data processor to exchange data on commonly-admitted applicants regarding family and student assets, income, allowances against assets and income, number of family members, and the number of siblings in college.

5. After financial aid award letters are sent to students, each participating school may submit financial aid data to an independent third-party for analysis. The independent third party shall tabulate and disclose the following to all Participating Schools:

   a) For each pair of schools:

      (1) the total number of cross-admitted applicants who receive financial aid; and

      (2) the number of such cross-admitted applicants for whom the family contribution of one school exceeds the family contribution of the other school by at least (a) 20%, and (b) 50%, of the average family contribution of all aided applicants across all Participating Schools;

b) For each Participating School, the number of students, if any, for whom the sum of family contribution plus financial aid from all sources (1) exceeded, and (2) fell short of, the school's student budget.

6. Until the graduation of each admitted class, each Participating School shall maintain with respect to that class (a) all reports received from the independent third party, and (b) data consisting of the number of students offered financial aid and the number admitted from a wait list.

7. Participating Schools may jointly develop uniform applications for collecting data from financial aid applicants, but each shall remain free to request and utilize additional or different data from its applicants.

8. Participating Schools may not discuss or agree upon family contributions to be expected from individual aid applicants.

9. Participating Schools may not discuss or agree upon the mix of grants and self-help to be awarded individual aid applicants.

10. Participating Schools may not agree upon or exchange prospective tuition or general faculty salary levels.