The FTC in 2007: A Champion for Consumers and Competition

Federal Trade Commission
April 2007

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Federal Trade Commission

Deborah Platt Majoras, Chairman
Pamela Jones Harbour, Commissioner
Jon Leibowitz, Commissioner
William E. Kovacic, Commissioner
J. Thomas Rosch, Commissioner

"May this permanent home of the Federal Trade Commission stand for all time as a symbol of the purpose of the Government to insist on a greater application of the Golden Rule to the conduct of corporations and business enterprises in their relationship to the body politic."

Franklin D. Roosevelt
Address at the Cornerstone Laying Ceremonies for the New Federal Trade Commission Building, July 12, 1937

The online version of this report contains hyperlinks to news releases, reports, cases, campaigns, and other information referenced in this report. The report is available at www.ftc.gov/os/2007/04/ChairmansReport2007.pdf.

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In Memoriam

Sally Dean McGhee (1952 - 2007)

Martha Stringer Schoenborn (1947 - 2007)

LETTER FROM THE CHAIRMAN

The Federal Trade Commission is responsible for ensuring that competition in U.S. markets is free of distortion and that consumers are protected not *from* the workings of markets but *through* the workings of markets unburdened by anticompetitive conduct and government-imposed restrictions. We enforce our nation's antitrust and consumer protection laws, which act as complements, each bringing discipline and strength to the other. This work is critical, indeed central, to the well-being of the American people.

This Annual Report reflects the agency's achievements and accomplishments over the past year and demonstrates our continued commitment to championing consumers by promoting competition and consumer welfare in U.S. markets – from traditional "brick and mortar" industries to emerging technology markets.

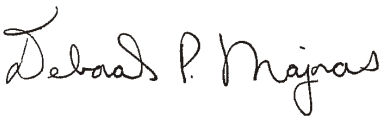
The Digital Decade is here, and the Internet has fundamentally changed our lives. It has made the world bigger in the sense that it expands our reach in offering and acquiring knowledge, opinions, or goods and services, and smaller in the sense that it makes communicating and transacting around the globe a cinch. It has provided a wide array of new and unique products and services for consumers, but at the same time, presents new challenges for consumers and, thus, law enforcement agencies. The very role of consumers themselves is rapidly evolving in response to new technologies. Consumers are no longer the passive recipients of commercial messages. New technologies give consumers greater options concerning when, where, and how they receive commercial messages, and consumers are increasingly engaged in the marketplace of ideas on the Internet, too, sharing non-commercial content and ideas as well as building communities.

As an agency with broad general jurisdiction, the FTC is often at the forefront of new markets, new technologies, and unfortunately, new illegal practices. We tackle our responsibilities through what a sports enthusiast would describe as a combination of various offensive and defensive schemes. Our offense includes aggressive law enforcement that must adapt quickly to changing schemes and be able to execute the "fast break." The Commission then combines a "zone defense," through our cooperative efforts with partners both private and public, domestic and international, with a

"prevent defense," through our consumer and business education that helps to make sure that consumers and businesses have good equipment to protect themselves.

The accomplishments discussed in this Report reflect our implementation of these strategies. The relatively small size of the Commission necessitates that we use these strategies to extend the reach of what we accomplish. And by bringing competition enforcement actions in industries such as energy, real estate, health care, and technology, we protect competition in areas of our economy that are most vital to consumers. Developing consumer education to help educate people about avoiding scams is essential, but we can greatly extend the reach of our messages when we partner with other federal, state, and local agencies, trade associations, consumer groups, and foreign entities.

True competition requires fair play. The FTC is committed to improving our effectiveness, strengthening our work with strategic partners, and increasing our knowledge and understanding of new and emerging technologies. At its core, the goal of our work is to improve consumer welfare, and we will continue to work toward that critical goal.



Deborah Platt Majoras
Chairman

"... the FTC leverages its limited resources by focusing its efforts on industries and practices that most directly affect consumers."

A YEAR IN HIGHLIGHTS

The Federal Trade Commission (FTC or Commission), the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy, is committed to ensuring that American consumers are protected from deceptive, unfair, and anticompetitive trade practices that harm consumer welfare. To accomplish this goal, the agency embraces its dual, but complementary, missions. First, the FTC aggressively enforces the nation's antitrust laws to protect consumers from anticompetitive mergers and business conduct. Second, the Commission actively engages in enforcement efforts to protect consumers from fraudulent, deceptive, and unfair business conduct, and to safeguard consumers' privacy and personal information. While the FTC's competition and consumer protection missions focus on different types of conduct, they share the same overall goal: that consumers obtain truthful information about products and services that they can then use to make purchase decisions in a competitive marketplace in which their personal information is safeguarded. This purpose has assumed even greater importance in this dynamic, digital, and global marketplace.

To accomplish these goals, the FTC leverages its limited resources by focusing its efforts on industries and practices that most directly affect consumers; by buttressing its enforcement and advocacy work through coordination with other federal and state agencies, criminal authorities, and international partners; by utilizing its broad array of databases and other resources to support its enforcement work; by informing itself of consumers' concerns and business conduct through hearings, workshops, and public comments; by promoting its pro-consumer agenda through speeches, reports, advocacy comments, *amicus* briefs, and testimony; and by educating consumers and businesses with practical guidance on a wide range of marketplace issues on paper and online, in English and in Spanish. The FTC efficiently and effectively utilizes all of these tools to protect competition and consumers.

In the past year, the FTC accomplished a great deal in a broad spectrum of industries, while making improvements to its organization and processes. For example, the Commission:

- Protected consumers' access to low cost generic drugs by policing noncompetition agreements between branded and generic drug manufacturers.
- Continued to protect consumers against deceptive health, safety, and weight loss schemes, business opportunity fraud, and deceptive lending and other credit scams.
- Encouraged greater competition in the real estate brokerage industry by challenging efforts to prevent lower cost, nontraditional listings from being posted on Multiple Listing Services or the Internet.

> *"Our competition and consumer protection missions are not wholly separate functions that just happen to reside in one agency. Rather, they are related sets of tools designed to accomplish the same goals – promoting efficiency and preventing consumer harm."*
>
> Chairman Majoras
> Remarks before the Dallas Bar Association Antitrust and Trade Regulation Section
> (Jan. 18, 2005)

- Evaluated the impact of technological innovation on consumer protection policy through its Tech-ade hearings.
- Lowered heath care costs by challenging agreements among physicians to fix prices and boycott health care payers, and by advocating for competition in lieu of regulation for pharmacy benefit managers.
- Protected consumers' privacy and information security through aggressive enforcement against spyware, adware, and spam under the FTC Act and the CAN-SPAM Act.
- Resolved the *Rambus* case, holding that the company engaged in anticompetitive "hold up" in the computer memory industry after engaging in deceptive conduct before an industry standards-setting body, and preventing Rambus from charging monopoly rates to license its technology.
- Developed a strategic plan for the federal government to better prevent identity theft through the FTC's leadership role in the President's Identity Theft Task Force, and began to implement the Task Force's interim recommendations at the agency.
- Preserved competition in energy industries, and expanded public understanding of energy markets, by challenging a merger in the natural gas market and an acquisition in the terminaling of gasoline market, issuing reports on gasoline price manipulation and ethanol market concentration, and organizing a public forum for discussing competition in energy markets.

- Analyzed the antitrust implications of single-firm conduct under Section 2 of the Sherman Act through a series of hearings organized with the Department of Justice.
- Issued a report on childhood obesity that included recommendations on the nutritional profiles of foods marketed to children, and that led to the adoption of a self-regulatory initiative by 11 major companies to promote healthier eating choices and lifestyles.
- Created the Office of International Affairs to better coordinate the FTC's international competition, consumer protection, and technical assistance programs, and to best utilize the agency's new authority under the U.S. SAFE WEB Act.
- Improved the transparency of its public actions by issuing the FTC Volumes of Decision for the years 1969 through 2005 online.
- Gave the FTC's website a new look to make it easier for visitors to navigate the site and created new industry-specific mini-websites, including one for the petroleum industry, to provide information specific to those sectors.
- Appointed the Commission's first Chief Privacy Officer to coordinate and strengthen the FTC's own privacy and data security policies.

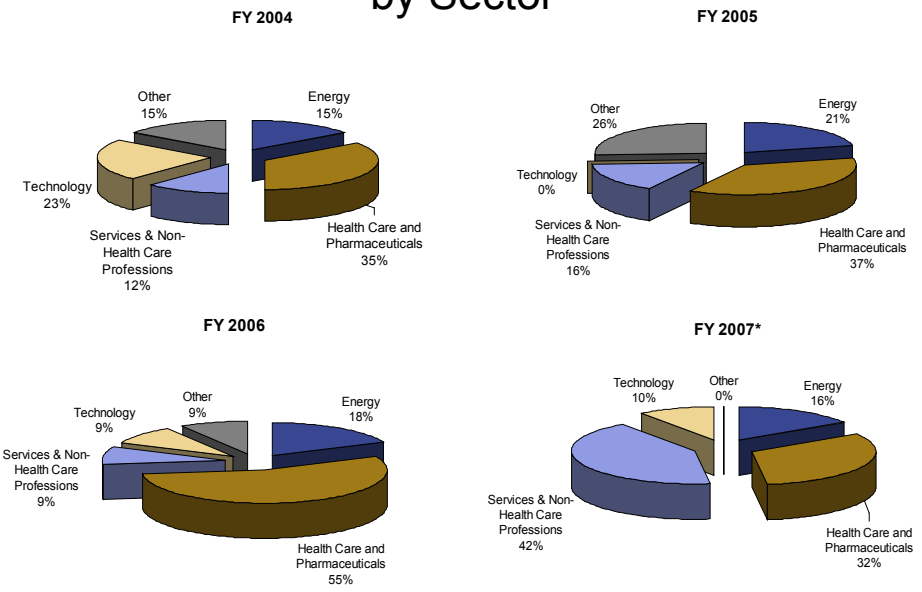
The FTC stands prepared to face the challenges of today's marketplace as a champion for consumers and competition. The agency's integrity and effectiveness have recently earned it several distinctions: a ranking as one of the "most trusted federal agencies" to safeguard personal information in a Ponemon Institute study; an Office of Government Ethics award for outstanding ethics program; and the Office of Management and Budget's highest rating in a performance assessment of federal agencies. The FTC will continue to do its utmost to maintain such high standards as it confronts new challenges in the future.

"Aggressive competition ... gives consumers the benefits of lower prices, higher quality products and services, additional choice, and greater innovation."

SECTION ONE: COMPETITION MISSION

Competition is critical to maintaining the free and open markets that are the foundation of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, additional choice, and greater innovation. The goal of the FTC's competition mission is to remove the obstacles that impede competition and prevent its benefits from flowing to consumers.

Total Yearly Enforcement Actions by Sector



* Represents Fiscal Year 2007 through March 31, 2007.

The Commission's competition mission continues to be highly productive and focuses on industries that most directly affect consumers, such as health care, energy, real estate, and technology. In the past year, the Commission pursued a broad range of merger and nonmerger enforcement actions in these and other industries. For example, on the merger front, the FTC has taken action to guarantee consumers greater access to generic drugs and other key medical devices and services, and to prevent higher prices and preserve services in the natural gas and industrial gas markets. Prompt FTC action has also caused transactions in other key areas – such as in the energy industry – to be withdrawn when the parties involved have not been able to resolve competitive concerns.

The FTC's nonmerger enforcement efforts have also been active, particularly in the real estate, health care, and technology markets. For example, the FTC has safeguarded consumers by challenging anticompetitive practices that limited the ability of home buyers and sellers to obtain low-cost

real estate brokerage services. In the health care industry, the FTC continued to bring cases against physician groups engaged in price fixing agreements, and successfully challenged the existence of a noncompetition agreement aimed at delaying the entry of generic drugs into the marketplace. In the technology area, the FTC issued important decisions in the *Rambus* case resolving complex issues involving standards-setting in the computer memory industry.

Chapter 1. Competition Law Enforcement

A. Merger Enforcement

The FTC's merger enforcement workload has steadily increased in the last three years. Compared to FY2004 levels, in FY2006 the agency experienced an increase of almost 30 percent in the number of filings and an even greater increase in the percentage of second requests issued. Based on data for the first six months of FY2007, the FTC anticipates that the merger review process will continue to play an increasingly demanding role in the year to come.

HSR Transactions, Second Requests, and Merger Enforcement Actions

Fiscal Year	HSR Transactions		Second Requests Issued		Merger Enforcement Actions	
	#	% Change from previous year	#	% Change from previous year	#	% Change from previous year
2004	1377	42%	20	33%	15	-29%
2005	1610	17%	25	25%	14	-7%
2006	1746	8%	28	12%	16	14%
2007*	983	19%**	18	80%**	11	83%**

* Represents Fiscal Year 2007 through March 31, 2007.
** The % change is calculated using data for the first six months of FY 2006.

1. Health Care Merger Enforcement

The health care industry plays a crucial role in the U.S. economy in terms of the impact that it has on consumer spending and welfare. Health care expenditures in the U.S. represent almost $2 trillion annually and have been increasing steadily for the last 30 years. Consumers feel the sting of increasing health care costs most prominently in their escalating insurance premiums and in the cost of medicines and medical procedures. During the past year, the FTC protected consumers by vigorously reviewing proposed merger transactions in the health care industry and taking action to prevent potential anticompetitive effects. The Commission challenged seven mergers and obtained substantial relief by obtaining consent orders in the areas of generic

"The FTC is committed to ensuring that consumers are able to reap the maximum benefit from generic competition while at the same time recognizing the need to protect relevant intellectual property rights."

drugs, over-the-counter (OTC) medications, injectable analgesics, and medical devices and diagnostic services.

Generic and Nonprescription Pharmaceuticals. Generic preparations exert considerable competitive pressure on branded pharmaceuticals by making available lower-cost generic drugs that are identical in chemical composition and therapeutic value to the branded drug. The FTC is committed to ensuring that consumers are able to reap the maximum benefit from generic competition while at the same time recognizing the need to protect relevant intellectual property rights. The FTC similarly protects competition for non-prescription and OTC drugs.

- **Barr/Pliva.** The FTC settled charges in this matter with a consent order finalized in December 2006. The complaint alleged that Barr Pharmaceuticals' (Barr) proposed $2.5 billion acquisition of Pliva would have eliminated current or future competition between the firms in certain markets for generic pharmaceuticals. The consent order required Barr to sell its generic antidepressant trazodone and its generic blood pressure medication triamterene/HCTZ, divest either Pliva's or Barr's generic drug for use in treating ruptured blood vessels in the brain, and divest Pliva's branded organ preservation solution.

- **Watson/Andrx.** In order to maintain competition in the markets for 13 generic drug products, in December 2006 the FTC approved a final consent order with the parties in this matter. Watson was required to end its marketing agreements with Interpham Holdings, divest Andrx's right to develop, make, and market generic extended release tablets that correct the effects of type 2 diabetes, and divest Andrx's rights and assets related to the developing and marketing of 11 generic oral contraceptives.

- **Hospira/Mayne Pharma.** In January 2007, the FTC accepted a consent order subject to public comment requiring the companies to sell assets used to manufacture and supply five generic injectable pharmaceuticals, including those for injectable opioid analgesics and for an injectable treatment for acute iron poisoning and chronic iron overload.

- **Johnson & Johnson/Pfizer.** The FTC had concerns about anticompetitive issues in the markets for OTC H-2 blockers used to prevent and relieve heartburn, hydrocortisone anti-itch products, nighttime sleep aids, and diaper rash treatments, in the matter of Johnson & Johnson's proposed $16.6 billion acquisition of Pfizer's Consumer Health Division. The issues were settled with a final consent order approved in January 2007, requiring that Pfizer sell its Zantac, Cortizone, and Unisom divisions, and that Johnson & Johnson sell its Balmex division.

Medical Devices and Diagnostic Systems. The FTC also aggressively policed mergers in the medical device and diagnostic systems industry to ensure that health care consumers receive the benefits of lower cost and higher quality products.

- **Boston Scientific/Guidant.** The FTC approved a final consent order in July 2006 in the matter of the proposed $27 billion acquisition of Guidant Corp. by Boston Scientific Corp. The two companies were the largest market share holders in several coronary medical device markets in the U.S., together accounting for 90% of the U.S. PTCA balloon catheter market and 85% of the U.S. coronary guidewire market. The consent order required the divestiture of Guidant's vascular business to an FTC-approved buyer.

> *"If there is one thing that I have learned, it is that we cannot take for granted what we have. Free market and competition principles are continually under attack and need powerful champions. And it is not enough to simply bring good enforcement cases. Being a forceful advocate for competition also means fulfilling our special public charter of fostering a culture of competition here at home and around the world."*
>
> Chairman Majoras
> *Creating a Global Competition Culture*
> (Sept. 7, 2005)

- **Hologic/Fischer Imaging.** In August 2006, the Commission approved a final consent order to ensure the maintenance of competition in the market for prone stereotactic breast biopsy systems (SBBSs). The Commission had challenged this merger, which was consummated in 2005. The order required Hologic to divest Fischer's prone SBBS assets to Siemens, a company well positioned to become a competitor in this market.

- **Thermo Electron/Fisher Scientific.** To maintain competition in the market for centrifugal vacuum evaporators (CVEs), a tool used in the health care industry, the FTC approved a final order in December 2006 to settle charges that Thermo Electron Corporation's proposed $12.8 billion acquisition of Fisher Scientific International, Inc. would have greatly decreased competition in the industry. The order requires that Thermo Electron divest Fisher's Genevac division, which includes all CVE operations for the company.

Hospitals and Other Institutional Providers. The FTC also reviews carefully mergers between the nation's hospitals to preserve competition. In May 2006, the Commission heard oral arguments in the appeal of the **Evanston Northwestern Healthcare Corp.** matter. In October 2005, the FTC's Administrative Law Judge found that Evanston's acquisition of an important competitor, Highland Park Hospital, resulted in higher prices and a substantial lessening of competition for acute-care inpatient services in parts of Chicago's northern suburbs, and ordered the divestiture of Highland Park Hospital. The FTC is currently reviewing the competitive effects of several other announced hospital mergers.

STAFF PROFILE

Peter Richman

BC/Mergers III

Deputy Assistant Director of the Mergers III Division, Peter recently supervised the drafting of the Commission's important report to Congress, "*Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases*." The report documents the supply and demand dynamics in several energy markets in the aftermath of hurricanes Katrina and Rita, and informs policy makers regarding securing energy supplies in the future.

Peter has led litigation and investigation teams in numerous Commission petroleum matters over the past 17 years, including Marathon/Ashland, Exxon/Mobil, Chevron/Texaco, and Valero/UDS. Peter's energy expertise contributes to FTC initiatives to promote competition in critical energy markets.

2. Energy Merger Enforcement

The energy sector is one of the pillars of the United States and world economies. The FTC closely scrutinizes this industry for anticompetitive activity, devoting substantial resources to investigate proposed mergers and acquisitions, and litigating against such mergers when appropriate. These endeavors ensure that harmful conduct is stopped and strong remedies are imposed when a transaction is likely to lessen competition, while permitting transactions that are unlikely to harm or may benefit competition. To achieve this goal, the FTC carefully reviews proposed mergers between firms engaged in, for example, the production and distribution of oil, gasoline, diesel, coal, natural gas, and natural gas liquids (NGLs). NGLs are light hydrocarbons – such as ethane, propane, and butane – that are used as fuel for heating or industrial processes, in blending components for gasoline, and as feedstocks in the production of plastics. The FTC's enforcement actions are aimed at maintaining competition and ensuring that Americans enjoy competitive prices for all energy products and their derivatives.

- **Equitable Resources/Dominion Peoples.** In March 2007, the Commission filed an administrative complaint challenging Equitable Resources' proposed acquisition of The Peoples Natural Gas Company, a subsidiary of Dominion Resources. Equitable Resources and Dominion Peoples are each other's sole competitors in the distribution of natural gas to nonresidential customers in certain areas of Allegheny County, Pennsylvania, which includes Pittsburgh. The complaint alleges that the proposed transaction would result in a monopoly for many customers who now enjoy competition.

- **Kinder Morgan/Carlyle Group and Riverstone Holdings.** In January 2007, the Commission challenged the terms of a proposed $22 billion deal whereby energy firm Kinder Morgan would be taken private by its management and a group of investment firms, including The Carlyle Group and Riverstone Holdings. The Commission's complaint alleged that Carlyle and Riverstone held significant positions in Magellan Midstream, a major competitor of Kinder Morgan in the terminaling of gasoline and other light petroleum products in the southeastern U. S., and that the proposed transaction would threaten competition in those markets. In settling the Commission's complaint, Carlyle and Riverstone agreed to turn their investment in Magellan passive and to restrict the flow of sensitive information between Kinder Morgan and Magellan.

- **EPCO/TEPPCO.** In October 2006, the FTC issued a final consent order settling charges related to Enterprise Product Partners' (EPCO) $1.1 billion acquisition of TEPPCO Partners' NGLs salt dome storage businesses. The FTC's order required TEPPCO to divest its interests in the world's largest NGLs storage facility in Mont Belvieu, Texas, to an FTC-approved buyer. In February 2007, the Commission approved that divestiture following a public comment period.

- **Chevron/USA Petroleum.** In November 2006, Chevron and USA Petroleum abandoned a transaction in which Chevron would have acquired most of the retail gasoline stations owned by USA Petroleum, the largest remaining chain of service stations in California not controlled by a refiner. The FTC was concluding its investigation of the proposed acquisition at the time and USA Petroleum's president stated that the parties abandoned the transaction because of resistance from the FTC.

3. Defense and Security Industry Merger Enforcement

Given America's vital interests and significant investments in our military and national security industries, the FTC scrutinizes proposed mergers in these industries for anticompetitive effects.

- **Boeing/Lockheed Martin.** In October 2006, the Commission intervened in the formation of United Launch Alliance (ULA), a proposed joint venture between Boeing and Lockheed Martin. The FTC's complaint alleged that the formation of ULA as originally structured would have reduced competition in the markets for U.S. government medium to heavy launch services and space vehicles. In settling the Commission's charges, the parties agreed to take certain actions (such as implementing nondiscrimination requirements and firewalls) to address ancillary competitive harms not inextricably tied to the national security benefits of ULA.

- **General Dynamics/SNC Technologies.** In December 2006, the Commission challenged General Dynamics' proposed $275 million acquisition of SNC Technologies. The FTC's complaint alleged that the planned deal would have undermined competition by bringing together two of only three competitors providing the U.S. military with melt-pour load, assemble, and pack services used during the manufacture of ammunition for mortars and artillery. Under the terms of the consent agreement, General Dynamics was required to sell its interest in American Ordinance to an FTC-approved buyer.

4. Other Merger Enforcement

In the past year, the FTC also investigated and took enforcement action with respect to mergers in other industries where necessary to protect competition.

- **Linde/BOC Group.** Industrial gases such as oxygen, nitrogen, and helium play a crucial role in many segments of our economy, including health care, oil and gas, agriculture, and manufacturing. In August 2006, the FTC approved a final consent order relating to the proposed $14.4 billion acquisition of the BOC Group by Linde requiring Linde to divest air separation units, bulk refined helium assets, and other assets in eight localities across the U.S. The consent order aims to maintain

Under the threat of a preliminary injunction sought by the Commission, Warner Chilcott waived the provision in its agreement that kept the generic competition off the market.

competition for liquid oxygen, liquid helium, and bulk refined helium in several U.S. markets.

- **Service Corp International (SCI)/Alderwoods.** In January 2007, the Commission approved a final consent order settling charges that SCI's proposed acquisition of Alderwoods Group likely would lessen competition in certain markets for funeral and cemetery services. Under the settlement, SCI agreed to sell funeral homes in 29 markets and cemeteries in 12 markets across the United States.

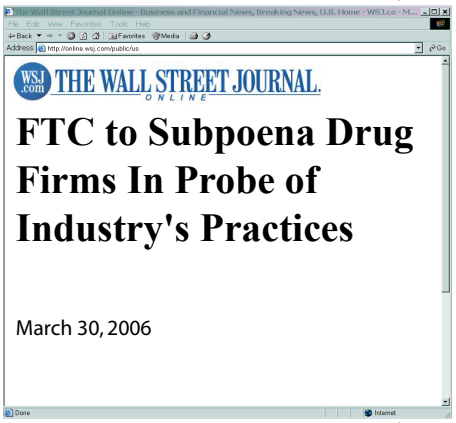
B. Nonmerger Enforcement

In the last year, the FTC has continued to pursue aggressively nonmerger matters in the health care and real estate sectors, as well as in the market for computer memory technology. The agency has utilized a combination of enforcement, policy, and outreach tools to educate businesses and consumers on how potentially restrictive business practices are evaluated under the law. Moreover, the FTC has designed appropriate tools to educate consumers on how these practices can affect them directly.

1. Health Care Nonmerger Enforcement

The FTC continues to be vigilant in the detection and investigation of agreements between drug companies that delay generic drug entry. The Commission also actively brought enforcement actions against agreements among physicians designed to boycott third-party payers and fix prices. Further, the agency successfully fought off a challenge to an administrative decision in a case in which it has alleged anticompetitive practices that were detrimental to children's dental care. By challenging these kinds of anticompetitive practices, the FTC strives to ensure that essential health care services will be available to consumers at prices established in an open, competitive market.

Agreements That Delay Generic Entry. The Commission continues to vigorously investigate agreements between pharmaceutical companies that delay the entry of generic drugs to the detriment of consumers.


THE WALL STREET JOURNAL.
ONLINE

FTC to Subpoena Drug Firms In Probe of Industry's Practices

March 30, 2006

- **Warner Chilcott/Barr Labs.** In November 2005, the Commission filed a complaint in federal district court challenging an agreement between Warner Chilcott and Barr Laboratories in which Barr had agreed not to market a lower-priced generic version of Warner Chilcott's Ovcon 35, an oral contraceptive drug, in exchange for $20 million. In September 2006, under the threat of a preliminary injunction sought by the Commission, Warner Chilcott waived the exclusionary provision in its agreement, and the next day Barr announced its intention to start selling generic Ovcon in the U.S. Under the terms of the October 2006 order settling the Commission's charges, Warner Chilcott agreed to certain terms to protect generic entry into the market. Though Warner Chilcott settled, the FTC's case against Barr continues.

The Commission continues to challenge physician price fixing schemes that harm "competition and consumers by raising prices for health care services and health care insurance coverage and by reducing consumers' choices."

The Commission also continues to investigate patent settlements between pharmaceutical companies that are required to be filed with the Commission under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Some of these settlements may be anticompetitive. For example, in "exclusion payment settlements," the brand name firm pays its potential generic competitor to abandon a patent challenge and delay entering the market, essentially sharing the brand's profits between them, and postponing consumers' access to lower-priced generic drugs.

Physician Price Fixing. In the past year, the FTC challenged three separate matters alleging illegal agreements whereby competing physicians jointly set their prices and collectively agreed to withhold their services if health care payers did not meet their fee demands. This conduct harms competition and consumers by raising prices for health care services and health care insurance coverage and by reducing consumers' choices. In each case, the Commission's consent order prohibits the physician groups from, among other things, facilitating agreements among competing physicians that restrict the ability of any physician to deal individually with a health plan payer.

- **Puerto Rico Association of Endodontists.** In August 2006, the Commission approved a final consent order settling charges alleging that 30 competing association members acted unlawfully by agreeing to set the prices they would charge dental insurance plans and by refusing to deal with plans that would not accept the collectively determined prices.

- **New Century Health Quality Alliance.** In October 2006, following the public comment period, the Commission approved a final consent order settling Commission charges alleging that two independent practice associations and 18 member physician practices in the Kansas City, Missouri, area refused to deal with health care plans, except on collectively agreed-upon prices and other terms.

- **Advocate Health Partners.** In February 2007, the Commission approved a final consent order settling the FTC's challenge against the conduct of several organizations representing more than 2,900 independent Chicago-area physicians for agreeing to fix prices and for refusing to deal with certain health plans except on collectively determined terms. The FTC continues to monitor a clinical integration plan set up by respondents for any anticompetitive effects.

Anticompetitive Practices Affecting Children's Dental Care. During the past year, the Commission also prevailed against a challenge to the Commission's June 2004 interlocutory opinion in **South Carolina State Board of Dentistry** that denied state action immunity to a state board of dentistry. The Commission alleged that the state board engaged in anticompetitive conduct that restricted the availability of preventive dental services to school-aged children in South Carolina. The court of appeals agreed with the


The New York Times

Five Multiple Listing Services Agree to Equal Treatment for Discount Brokers

October 13, 2006

Commission's request to dismiss the appeal for lack of jurisdiction, and the Supreme Court denied the board's petition for *certiorari*.

2. Real Estate Nonmerger Enforcement

Purchasing or selling a home is one of the most significant financial transactions most consumers will ever make. The FTC has actively investigated restrictive practices in the residential real estate industry, including efforts by private associations of brokers to impede competition from brokers who use non-traditional listing arrangements. In this last year alone, the FTC brought eight enforcement actions against associations of realtors or brokers who adopted rules that withheld the valuable benefits of the association-controlled Multiple Listing Services (MLSs) from consumers who chose to enter into non-traditional, and often less expensive, listing contracts with real estate brokers. Such association policies limit home sellers' ability to choose a listing type that best serves their specific needs.

"The real estate industry is critical to our citizens. For many, the purchase of a home represents tangible fulfillment of the American dream, the reward for hard work and dedication, sometimes spanning decades. ... Competition in the real estate industry, therefore, is not merely of interest to those involved in the real estate industry... but to anyone who has ever bought or sold, or is thinking about buying or selling, a house."

Chairman Majoras
Opening Remarks at FTC/DOJ Workshop on Competition in the Real Estate Industry
(Oct. 25, 2005)

- **Austin Board of Realtors.** In September 2006, the FTC entered into a final consent order settling charges against the Austin Board of Realtors (ABOR) for its practice of preventing consumers with listing agreements for potentially low-cost, unbundled brokerage services from marketing their listings on public real estate-related Internet sites. In settling the charges, ABOR is prohibited from adopting or enforcing any rule that treats one type of real estate listing agreement more advantageously than any other or from interfering with its members' ability to enter into any lawful listing agreement with home sellers.

- **Real Estate Competition Law Enforcement Sweep: Williamsburg Area Association of Realtors, Inc.; Monmouth County Association of Realtors; Northern New England Real Estate Network, Inc.; Realtors Association of Northeast Wisconsin, Inc.; Information and Real Estate Services, LLC; RealComp II Ltd; MiRealSource, Inc.** In October 2006, the FTC's Bureau of Competition filed its first law enforcement sweep, which challenged rules in seven jurisdictions that withheld valuable benefits of the MLSs they control from consumers who chose to enter into non-traditional listing contracts with real estate brokers. Six of the seven rules blocked non-traditional, less-than-full-service listings from being transmitted by the MLS to a wide range of popular Internet sites, while the seventh blocked such non-traditional brokerage contracts from the MLS entirely. The Commission announced in October 2006 consent agreements with five of the groups

operating MLSs in parts of Colorado, New Hampshire, New Jersey, Virginia, and Wisconsin that agreed to stop discriminating against non-traditional listing arrangements. Two real estate groups in the Detroit, Michigan, area did not settle, and the FTC issued administrative complaints alleging anticompetitive practices against the groups. In February 2007, the Commission settled with one of these Michigan groups, which agreed to abandon the challenged practices.

3. Technology Nonmerger Enforcement

The Commission also places great emphasis on safeguarding competition in the high technology sector, such as the computer hardware and software industries.

Rambus. During the past year, the FTC issued two decisions resolving its administrative complaint alleging anticompetitive conduct in the markets for computer memory technology. In July 2006, the FTC issued an opinion by Commissioner Pamela Jones Harbour concluding that Rambus, Inc. unlawfully monopolized markets for four computer memory technologies that have been incorporated into industry standards for dynamic random access memory (DRAM) chips. DRAMs are widely used in personal computers, servers, printers, and cameras. The Commission found that, through a course of deceptive conduct, Rambus was able to distort a critical standard-setting process and engage in an anticompetitive "hold up" of the computer memory industry. The Commission held that Rambus' acts of deception constituted exclusionary conduct under Section 2 of the Sherman Act and contributed significantly to Rambus' acquisition of monopoly power in the four relevant markets.

In February 2007, Chairman Majoras issued the opinion of the Commission on remedy. In that opinion, the Commission prescribed a set of remedies barring Rambus from making misrepresentations or omissions to standard-setting organizations, requiring Rambus to license its SDRAM and DDR SDRAM technology and setting limits to the royalty rates it can collect under its licensing agreements including with those firms that may have already incorporated its DRAM technology. The order also requires Rambus to employ a Commission-approved compliance officer to ensure it discloses relevant patent information to any standard-setting organizations in which it participates.

4. Retail Goods Nonmerger Enforcement

The FTC also guards against anticompetitive conduct in the retail sector and brings enforcement cases where necessary.

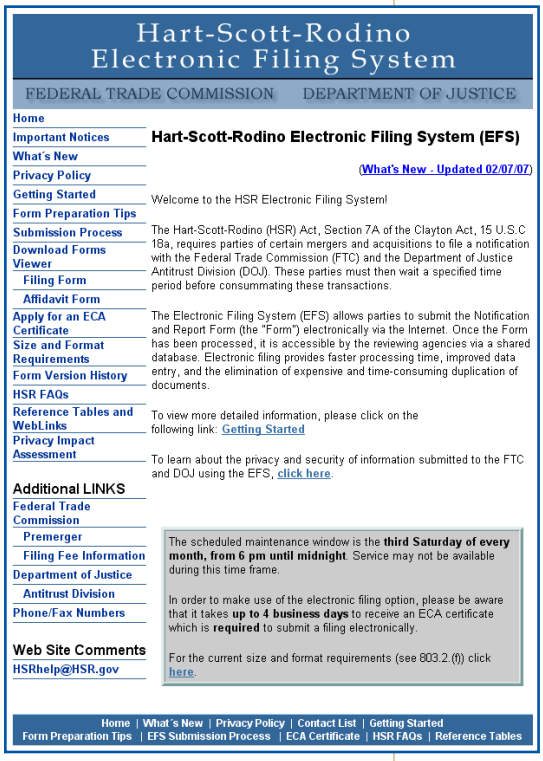
- **Missouri Funeral Board.** In March 2007, the Commission announced for public comment a proposed order settling charges that the Missouri State Board of Embalmers and Funeral Directors illegally restrained competition by defining the practice of funeral directing to include

selling funeral merchandise to consumers on an at-need basis. The Board's regulation permitted only licensed funeral directors to sell caskets to consumers on an at-need basis, thereby discouraging other retailers from selling caskets. The Board ended the restriction last year and agreed that it will not prohibit or discourage the sale of caskets, services, or other funeral merchandise by unlicensed persons.

C. Guidance, Transparency, and Process Improvements

During the last year, the FTC implemented two measures aimed at streamlining the merger review process: merger review process reform and e-filing.

Merger Review Process Reform. In February 2006, Chairman Majoras announced significant merger process reforms aimed at streamlining the review process and reducing the costs borne by both the FTC and merging parties. During the past year, the FTC has implemented these reforms including reducing the number of custodians for which parties must search for information, reducing the time period during which parties are required to provide documents, allowing parties to preserve fewer back-up tapes under certain circumstances, and significantly reducing the amount of information required in the parties' privilege logs.


Hart-Scott-Rodino
Electronic Filing System

FEDERAL TRADE COMMISSION DEPARTMENT OF JUSTICE

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HSRhelp@HSR.gov

Hart-Scott-Rodino Electronic Filing System (EFS)

(What's New - Updated 02/07/07)

Welcome to the HSR Electronic Filing System!

The Hart-Scott-Rodino (HSR) Act, Section 7A of the Clayton Act, 15 U.S.C 18a, requires parties of certain mergers and acquisitions to file a notification with the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division (DOJ). These parties must then wait a specified time period before consummating these transactions.

The Electronic Filing System (EFS) allows parties to submit the Notification and Report Form (the "Form") electronically via the Internet. Once the Form has been processed, it is accessible by the reviewing agencies via a shared database. Electronic filing provides faster processing time, improved data entry, and the elimination of expensive and time-consuming duplication of documents.

To view more detailed information, please click on the following link: Getting Started

To learn about the privacy and security of information submitted to the FTC and DOJ using the EFS, click here.

The scheduled maintenance window is the **third Saturday of every month, from 6 pm until midnight**. Service may not be available during this time frame.

In order to make use of the electronic filing option, please be aware that it takes **up to 4 business days** to receive an ECA certificate which is **required** to submit a filing electronically.

For the current size and format requirements (see 803.2.(f)) click here.

Home | What's New | Privacy Policy | Contact List | Getting Started
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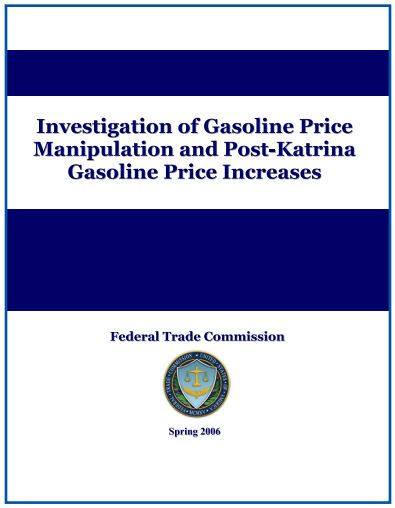
E-filing. In June 2006, the FTC and the DOJ Antitrust Division, implemented an electronic filing system that provides merging parties the option to submit premerger notification filings required by the Hart-Scott-Rodino (HSR) Act via the Internet. With this new process, electronic filings may be submitted quickly and easily, eliminating the time and expense entailed in duplicating and delivering paper documents.

Chapter 2. Competition Policy Tools

The FTC's competition enforcement mission is complemented by a broad series of activities, including research and reports, workshops, advocacy filings, and *amicus* briefs. Through this work, the Commission learns about emerging and important issues and shares this information with other policymakers, businesses, the antitrust bar, and the public in order to provide leadership on significant antitrust-related matters.

A. Research and Reports

During the last year, the FTC continued to develop its policy agenda by performing research and publishing reports on a wide scope of relevant competition issues. These include topics of perennial interest, such as energy and health care, as well as increasingly important topics such as Internet access.



1. Energy

- **Report on Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases.** In May 2006, the FTC released the findings of a Congressionally-mandated investigation into whether gasoline prices nationwide were "artificially manipulated by reducing refinery capacity or by any other form of market manipulation or price gouging practices," as well as into gasoline pricing in the aftermath of Hurricane Katrina. In its investigation, the FTC examined evidence relating to a broad range of possible forms of manipulation and found no instances of illegal market manipulation that led to higher prices during the relevant time periods. While the Commission did find 15 examples of pricing fitting the relevant legislation's definition of evidence of "price gouging," it concluded that other factors – such as regional or local market trends – appeared to explain the increased prices in nearly all cases.

- **Report on Ethanol Market Concentration.** In December 2006, the Commission issued a report that examined the current state of ethanol production in the U.S. and measured market concentration using capacity and production data. The study, which is the second in a series of annual reports, concluded that U.S. ethanol production currently is not highly concentrated and that market concentration based on production capacity decreased over the past year. The study also examined the possible effect on concentration of agreements between ethanol producers and third-party marketers. The study concluded that current concentration levels in ethanol production do not indicate that a single firm, or a small group of firms, could wield sufficient market power to set or coordinate price or output levels.

2. Health Care

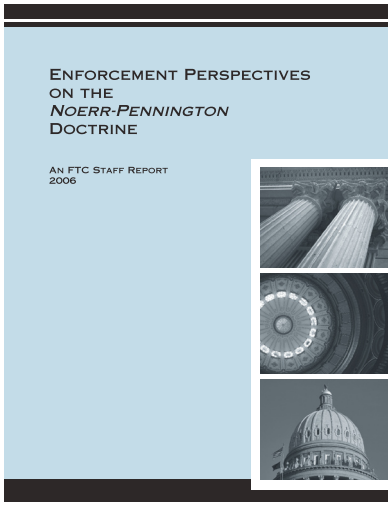
- **Authorized Generics Study.** In March 2006, the FTC staff initiated a study on authorized generic drugs. The study is intended to help understand the circumstances under which innovator companies launch generics; to provide data and analysis regarding the effects of authorized generics on short-term price competition, particularly during the Hatch-Waxman Act's exclusivity period, and on long-term prospects for generic entry; and to add to the research on the effect of generic drug entry on prescription drug prices. Currently, staff is reviewing public comments on the proposed methodology for the study.

3. Technology

- **Wi-Fi Report.** In September 2006, the FTC published a staff report, *"Municipal Provision of Wireless Internet,"* which provided a decision-tree framework to policymakers considering whether and how municipalities should provide Internet service. The report identifies the

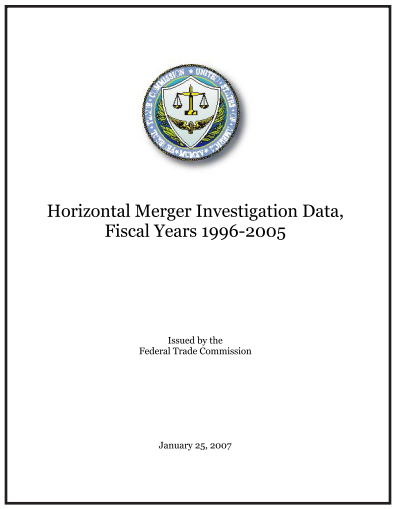
potential benefits and risks to competition and consumers associated with municipal provision of wireless Internet service. The report was the first publicly released work from the FTC's Internet Access Task Force, which was convened by Chairman Majoras in August 2006.

- **Second Report on Intellectual Property and Competition.** In Spring 2007, the FTC and DOJ are issuing the second report addressing issues arising at the intersection of antitrust and intellectual property law and policy. The Report will make recommendations for competition law and policy, and follows an initial report issued in 2003 after extensive hearings on this issue.



4. Other

- ***Noerr-Pennington* Report.** In November 2006, the Commission released a report that provided enforcement perspectives on the *Noerr-Pennington* doctrine, which precludes application of the antitrust laws to certain private acts that urge government action. The report provided the staff's views on how best to apply the doctrine to conduct that imposes significant risks to competition, but does not further the important First Amendment and governmental decision-making principles underlying the doctrine.

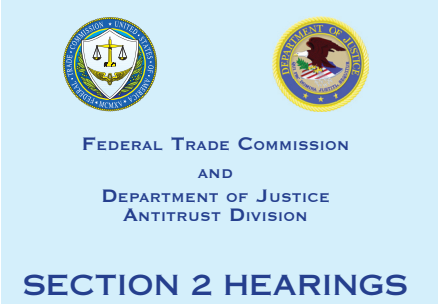


- **Report on Horizontal Merger Investigation Data, Fiscal Years 1996-2005.** To promote greater transparency in merger enforcement, the Commission published a report in January 2007 showing the trend in merger enforcement investigations for the fiscal years 1996-2005. Staff analyzed certain market structure information in connection with the Commission's decision whether or not to seek relief in the specific markets investigated. Further, for those investigations involving three or fewer markets, staff tabulated the Commission's enforcement decisions based on the presence or absence of "hot documents," "strong customer complaints," and "entry conditions."

B. Hearings and Workshops

Hearings and workshops organized by the FTC represent a unique opportunity for the agency to develop policy research and development tools and to help foster a deeper understanding of the complex issues involved in the economic and legal analysis of antitrust law. Typically, these events bring together representatives reflecting a wide range of perspectives and provide an opportunity for experts from the legal, business, academic, and government communities to share ideas, confront positions, and identify new areas of interest.

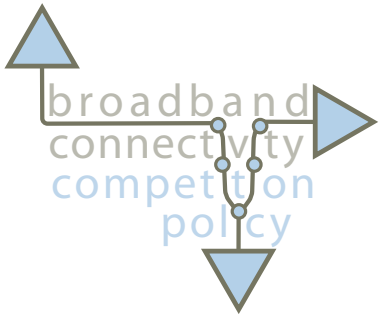
1. Hearings



➤ **Single-Firm Conduct Hearings.** Starting in June 2006, the FTC and DOJ Antitrust Division held a series of joint public hearings – in Washington, D.C., Berkeley, California, and Chicago, Illinois – to study the antitrust implications of single-firm conduct. The hearings have sought public input regarding how best to analyze whether and when specific types of single-firm conduct may be anticompetitive and violate Section 2 of the Sherman Act, and whether and when conduct is pro-competitive and lawful. The hearings have specifically focused on the identification and analytical meaning of monopoly power; circumstances that determine exclusionary conduct; unilateral refusals to deal; predatory pricing; loyalty and bundled discounts; exclusive dealing; tying; misleading and deceptive conduct; remedies; historical and strategic business perspectives; the use of empirical data; and international perspectives. After the hearings conclude, agency staff will prepare a report of the hearings' results and relevant research.

2. Workshops

➤ **Competition in Energy Markets.** In April 2007, the FTC hosted a public conference to explore a range of energy issues of importance to American consumers, as well as to the U.S. and global economies. The three-day conference, *"Energy Markets in the 21st Century: Competition Policy in Perspective,"* covered topics such as the relationship between market forces and government policy in energy markets; the dependence of the U.S. transportation sector on petroleum; the effects of electric power industry restructuring on competition and consumers; technological developments in the industry; the security of U.S. energy supplies; and the government's role in maintaining competition and protecting energy consumers.



➤ **Broadband Connectivity Competition Policy.** In February 2007, the FTC hosted a public workshop to explore the many competition and consumer protection issues relating to broadband Internet access, including so-called "network neutrality." Among the topics discussed were the current and future state of competition in the market for broadband Internet access; the capabilities and incentives of broadband Internet service providers to discriminate against, degrade, block, or charge fees for prioritized delivery of unaffiliated content and applications; and the potential effects of network neutrality regulation on innovation and competition in the market for broadband Internet access. The FTC plans to release a report based on this workshop later this year.

➤ **Economics in the Pharmaceutical Industry.** In October 2006, the FTC's Bureau of Economics hosted a non-public conference discussing recent economic research related to competition and consumer

"... broadband is an 'information service' – not a 'common carrier service' exempt from FTC jurisdiction ..."

Online Initiatives

In an August 2006 speech, Chairman Majoras discussed several FTC initiatives to protect competition and consumers in the online world, including the creation of the FTC's Internet Access Task Force to educate the Commission on Internet access issues. She also reiterated the Commission's position that it may assert jurisdiction to challenge deceptive or anticompetitive conduct by broadband service providers, noting that broadband is an "information service" – not a "common carrier service" exempt from FTC jurisdiction – a position reflecting recent judicial and regulatory developments.

protection issues in the pharmaceutical industry. The discussion included the economic impact of direct-to-consumer advertising, spillovers and mergers in pharmaceutical research and development, and economic incentives for new drug development.

C. Advocacy Letters and Comments

The promotion of competition principles to policymakers is a fundamental complement to the agency's enforcement activities. Experience has shown that government-imposed restrictions are among the most effective and durable constraints on competition. The Commission's competition advocacy program applies rigorous antitrust analysis and empirical evidence to provide information to government officials with the goal to limit or eliminate public impediments to competition that may harm consumers. Over the last year, the FTC's advocacy filings generally have sought to achieve one of three objectives: (1) facilitating entry, (2) eliminating perverse market incentives, or (3) making it easier for consumers to get useful information. The FTC's recent advocacy efforts have contributed to several positive consumer outcomes.

- **Wine Direct Shipping.** In 2006, FTC staff filed comments on legislation in Florida and Ohio that would allow direct shipment of wine from out-of-state manufacturers to consumers in those states, provided that certain requirements were met. The proposed legislation was designed to bring Florida and Ohio law into compliance with the recent Supreme Court decision in *Granholm v. Heald*, which held (relying on the FTC's 2003 Wine Report) that states may not discriminate against out-of-state, and in favor of in-state, wineries. Staff concluded that, if enacted, the proposed legislation would benefit consumers by providing greater wine selection and lower prices, while also allowing each state to meet its other public policy goals, such as preventing underage access to alcohol and collecting taxes. Staff also noted that the provision which limits the ability of large producers to import wine into Florida would likely reduce the benefits to consumers.

- **Patent Rules of Practice.** In May 2006, the FTC submitted comments to the U.S. Patent and Trademark Office (PTO) in response to the PTO's statement of proposed rulemaking regarding its proposed rules on continuations, whereby patent applicants may amend their claims or present additional arguments and evidence supporting patentability. The Commission supported the PTO's proposed rules and urged their adoption, as they accommodate the legitimate uses of continuations, limit abuses that can harm the competitive process, and promote the patent system's ability to provide incentives to innovate to the extent they reduce the pendency of patent applications.

- **Online Auction Trading Assistants.** In May 2006, FTC staff provided comments on proposed Louisiana state legislation exempting individuals and firms assisting consumers in selling goods through

online auction houses (*e.g.,* eBay) to hold an auctioneer's license. The comments noted that the use of trading assistants lowers the price for consumers to use online auction houses and that staff had found no evidence of consumer harm from the use of such trading assistants.

- **Online Attorney Matching Services.** In May 2006, FTC staff filed comments with the Texas Bar Association's Professional Ethics Committee providing analysis of the likely effects on consumers of the bar association's opinion finding it unethical for Texas attorneys to participate in online legal matching services. Staff concluded that such a restriction likely would harm Texas consumers by increasing the costs associated with finding legal representation and, ultimately, the price for legal services. The comments further noted that there is no evidence that online legal matching services have caused consumer harm that would justify banning them.

- **Unauthorized Practice of Law.** In June 2006, the FTC and DOJ jointly filed comments with a committee in the New York State Assembly opposing proposed legislation to expand the scope of activities constituting the unauthorized practice of law. In particular, parties to a real estate transaction in New York presently routinely rely on non-attorneys to conduct title abstracting and to prepare basic transactional documents. The proposed legislation would define all such work as the practice of law and by definition exclude non-attorneys from nearly all aspects of real estate transactions. The agencies believe that non-attorneys should be permitted to compete with attorneys in such matters, "except where specialized legal knowledge and training is demonstrably necessary to protect the interests of consumers."

- **Pharmacy Benefit Managers.** In October 2006, FTC staff provided comments on legislation in Virginia that would regulate the contractual relationship between pharmacy benefit managers and health benefit plans. The comments argued that such regulation would limit the ability of the parties to enter into efficient, mutually advantageous contracts and might increase pharmaceutical prices. For example, according to FTC staff, the bill likely would hamper initiatives by health plans to encourage consumers to use certain lower-priced drugs, and ultimately might decrease the number of consumers with insurance coverage for pharmaceuticals without producing offsetting benefits.

D. *Amicus* Briefs

In one of the most active Supreme Court terms for antitrust cases in decades, the FTC participated in several *amicus* briefs submitted to aid the Court in analyzing and resolving competition-related issues. The matters in which the agency intervened range from Section 2 cases, to price fixing matters, to vertical price restraints.

The Commission's argument in the government's *amicus* brief in *Weyerhaeuser* — that the test which applies to claims of predatory pricing also applies to claims of predatory bidding — was subsequently adopted by a unanimous Supreme Court.

- ***Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber.*** In two joint *amicus* briefs, filed in May and August 2006, the FTC and DOJ urged the U.S. Supreme Court to grant *certiorari* and reverse the Ninth Circuit Court of Appeals decision which: 1) held that the standard for a predatory pricing claim articulated by the Supreme Court in *Brooke Group Ltd v. Brown & Williamson Tobacco Corp.* did not apply to a case in which the plaintiff alleged "predatory bidding" in violation of Section 2 of the Sherman Act; and 2) approved instructions that allowed a jury to find a violation based on assessments of factors such as "fairness" and "necessity." In February 2007, a unanimous Supreme Court agreed with the government and vacated the Ninth Circuit's decision, holding that the *Brooke Group* test applies to predatory bidding claims.

- ***Latino Quimica-Amtex S.A., v. Atofina S.A.*** In June 2006, the Commission and DOJ filed jointly an *amicus* brief in this case which involved an international price fixing conspiracy by manufacturers of two chemicals. The chemicals, sodium monochloroacetate and monochloroacetic acid, are used in manufacturing foods, pharmaceuticals, herbicides, and plastics. At issue was the Sherman Act claims of several foreign companies that purchased the chemicals from manufacturers located outside the U.S., for delivery outside of the United States. In keeping with the position previously advanced in the *Empagran* litigation, the brief urged the Second Circuit to affirm the dismissal of the complaint for lack of jurisdiction. Shortly after the brief was filed, the parties withdrew the appeal.

- ***Leegin Creative Leather Products, Inc. v. PSKS, Inc.*** In January 2007, the DOJ and FTC filed a joint *amicus* brief in the U.S. Supreme Court addressing the question whether an agreement between a supplier and its dealer that sets the dealer's minimum retail price constitutes a *per se* violation of Section 1 of the Sherman Act or is instead properly analyzed under the rule of reason. The brief argued that the *per se* rule against vertical minimum resale price maintenance established in *Dr. Miles Medical Co. v. John D. Park & Sons Co.* is irreconcilable with the Court's modern antitrust jurisprudence and should be overruled.

- ***Credit Suisse First Boston v. Glen Billing.*** In January 2007, the FTC, DOJ, and Securities and Exchange Commission (SEC) jointly filed an *amicus* brief addressing the application of the antitrust laws to activities subject to SEC regulation. The brief argued that collaborative underwriting activities occurring during the initial public offering of securities that are expressly or implicitly authorized under the securities laws, as well as conduct inextricably intertwined with such activities, are immune from the antitrust laws. At the same time, the brief cautioned that not all underwriting activities occurring in connection with an initial public offering enjoys a blanket antitrust exemption. The brief urged

the Court to vacate the lower court rulings, neither of which struck the appropriate balance between the interests of the antitrust and securities laws.

Commission staff also participated in discussions with the DOJ and other federal agencies regarding the position taken by the United States as *amicus* in several cases involving intellectual property, which had important implications for competition and consumer interests. In the cases decided to date, the Supreme Court has vacated or reversed lower court rulings that threatened consumer interests by taking an unduly rigid approach to patent litigation and remedies.

E. Congressional Testimony

During the last year, the Chairman and other Commissioners, as well as senior Commission staff, provided key testimony on a number of significant competition-related subjects, including health care, energy, real estate brokerage, and patent law reform.

"In our advocacy work, we also frequently weigh in on proposed federal legislation, and are frequently successful in preventing the passage of legislation that would impede competition or protect market participants from antitrust enforcement."

Chairman Majoras
Remarks at 2005 ABA Annual Meeting
(Aug. 6, 2005)

- **Health Care.** From July 2006 through February 2007, Commissioners and other FTC staff presented prepared testimony on health care-related issues on four separate occasions. The topics included enforcement and advocacy activities regarding branded and generic pharmaceutical competition, including potentially anticompetitive payments used to settle patent disputes, FTC interventions against physicians adopting collective price fixing and boycotting agreements, and the oversight of competition in the contact lens market.

- **Energy.** Chairman Majoras provided testimony in May 2006 discussing major issues addressed in the FTC's report concerning gasoline price manipulation, presenting the Commission's findings and related policy implications, and offering recommendations for Congress to consider in its ongoing efforts to protect consumers in petroleum markets. The testimony focused on market forces and competitive dynamics affecting gasoline prices, including general price-gouging issues, as well as the repercussions and disruptions in the petroleum industry caused by Hurricane Katrina.

- **Real Estate Brokerage.** Senior Commission staff testified in July 2006 regarding competition in the real estate brokerage industry. The testimony addressed the recent growth in alternative, Internet-based business models in the industry, as well as actions on the part of competitors and state governments that make it more difficult for

such alternative models to compete against traditional brokers. The FTC reiterated that it will continue to aggressively bring enforcement actions against anticompetitive conduct and advocate against legislation detrimental to consumers in this industry.

- **Patent Law Reform.** Commission staff testified in February 2007 that patent policy stimulates innovation by providing an incentive to develop and commercialize inventions, but that invalid or questionable patents can increase costs and hinder competition. The staff testified that implementing the patent reform recommendations the FTC made in its 2003 report, *"To Promote Innovation: The Proper Balance of Patent and Competition Law and Policy,"* would increase the likelihood that issued patents are valid and that challenges to invalid patents will proceed more efficiently.

Chapter 3. Competition – Consumer and Business Education and Outreach

In addition to its aggressive law enforcement and advocacy efforts, the FTC is committed to enhancing consumer confidence in the marketplace through public education and outreach. In the past year, Commission staff launched a multi-dimensional outreach campaign emphasizing that antitrust enforcement helps consumers reap the benefits of competitive markets by keeping prices low and the quality of services high, and by encouraging more choices in the marketplace. The Commission is building a library of brochures, fact sheets, articles, reports and other products – both in print and online – in its efforts to reach consumers, attorneys, and business people. Further, the FTC plans to partner with other public and private organizations to broaden the dissemination of this important message.

- **Competition Counts.** *"Competition Counts: How Consumers Win When Businesses Compete"* is a brochure that introduces consumers and businesses to the importance of competition, and the role that antitrust enforcement plays in benefitting both the economy and our nation's citizens.

- **New industry-specific mini-websites.** The Commission's website continues to grow in size and scope with resources on competition policy in a variety of vital industries. This year, the FTC launched new industry-specific websites for oil and gas, health care, real estate, and, most recently, technology-related issues. These mini-websites serve as a convenient place for consumers and businesses to learn about the FTC's efforts to advance competition in these important business sectors. For example, these websites include the FTC's latest law enforcement actions, detailed staff reports, conference schedules, and "tip sheets" for consumers.

STAFF PROFILE

Shira Pavis Minton

Office of the General Counsel

As the Assistant General Counsel for Ethics, Shira helps administer the FTC's Ethics Program which this year won the U.S. Office of Government Ethics' Award for Outstanding Achievement in Managing an Ethics Program. The FTC is committed to the highest level of ethical conduct, and Shira and the ethics staff provide ethics training for all FTC employees.

In speaking at the National Ethics Conference recently, Shira emphasized that the main reason for the success of the FTC Ethics Program is the "culture of compliance" that flows from the very highest level of the agency.

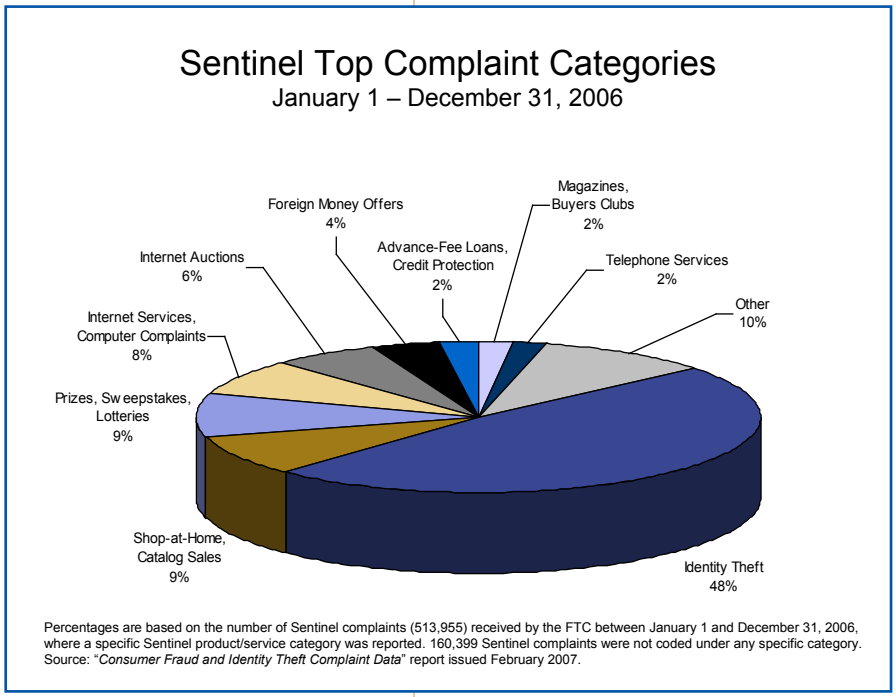
- **Case-related consumer education.** In the past year, the Commission continued to integrate its competition enforcement activities with consumer and business education, so that the public can better identify the signs of anticompetitive behavior and understand the economic impact of corporate mergers or other restrictive business practices. In conjunction with the initiation or settlement of enforcement cases, the Commission issued practical tips for consumers in a wide variety of industries, including how to select a real estate agent and shop for funeral services and generic drugs, as well as "plain language" information on oil and gas availability and pricing.

- **Expanding media coverage.** In the past year, news coverage of FTC competition activities has grown due to both the increasing interest in antitrust enforcement, as well as the implications enforcement activities have on consumers. For example, major metropolitan daily newspapers reported on the FTC's suits in several states against real estate groups that blocked access by discount brokers to Multiple Listing Services. National publications, including *The Wall Street Journal*, reported on FTC enforcement actions in the health care industry, covering news of several health care merger cases that resulted in divestitures, and reported on Commission testimony before the Senate concerning potentially anticompetitive conduct between generic and branded drug firms in settling patent disputes. Gasoline pricing was the most widely covered competition issue during the past year, and reporters covering the latest trends in the energy industry consulted the Commission's oil and gas mini-website. The FTC's competition advocacy work was also widely reported with several magazines running stories on the competition for legal services, wine, and contact lenses.

"The FTC uses its law enforcement powers to actively fight fraudulent and deceptive practices that harm consumers."

SECTION TWO: CONSUMER PROTECTION MISSION

The FTC's consumer protection mission is to protect the public from fraud, deception, and unfair practices in the marketplace. During the past year, the agency focused on issues of critical importance to consumers, including misleading credit and debt-related practices, deceptive health claims, business opportunity schemes, spyware, data security, pretexting, unwanted telemarketing calls, protecting children online, and spam. In some cases, enforcement can culminate in a referral by the FTC's Criminal Liaison Unit, which works with criminal authorities to seek the prosecution of the worst offenders.



Percentages are based on the number of Sentinel complaints (513,955) received by the FTC between January 1 and December 31, 2006, where a specific Sentinel product/service category was reported. 160,399 Sentinel complaints were not coded under any specific category. Source: "*Consumer Fraud and Identity Theft Complaint Data*" report issued February 2007.

The agency's law enforcement efforts are supported by information gathering tools that help the agency stay at the forefront of emerging technologies and consumer threats, and inform policymakers, businesses, and the public as a whole. The FTC's tools include workshops, rulemakings, reports, and complaint databases.

Chapter 4. Consumer Protection Law Enforcement

A. Fraud and Deception Law Enforcement

The FTC uses its law enforcement powers to actively fight fraudulent and deceptive practices that harm consumers. From April 2006 through March 2007, the FTC filed 59 actions in federal district court and obtained 120 judgments

The "ABCs" of Financial Practices

In a February 2007 speech before the Consumer Federation of America, Chairman Majoras emphasized the Commission's ongoing commitment to protecting consumers in the financial services marketplace. In announcing the Commission's agenda, Chairman Majoras stated that the Division of Financial Practices will focus on the "ABCs" of financial practices:

***A**lternative mortgages*. The Commission will continue to target deceptive or unfair mortgage lending practices, particularly the deceptive advertising of nontraditional or alternative mortgages that entice consumers with lower initial payments, but often pose significant long-term financial risks.

***B**ad debt collection*. The Commission will continue to guard against deceptive and abusive debt collection practices, and will hold a workshop in the Fall 2007 to examine current practices in this industry.

***C**redit-related deception*. The FTC will maintain its vigilance in challenging deceptive debt negotiation and similar credit repair schemes.

ordering defendants to pay $414 million in redress to consumers, and $12 million in civil penalties. In many of these cases, the FTC worked with other law enforcement entities to achieve effective results. The following are examples of enforcement actions initiated by the Bureau of Consumer Protection challenging different types of illegal conduct in various industries.

Deceptive Lending and Other Credit Schemes. The FTC targets abusive, deceptive, and unfair financial practices, including abusive debt collection practices, deceptive debt reduction claims, and misleading loan promises. These practices can have severe consequences for consumers, including high cost loans, ruined credit histories, and unwarranted fears of arrest and incarceration.

- **Debt Collection.** In January 2007, the FTC charged a collection agency, Rawlins & Rivera, Inc., and its principals with falsely threatening and illegally harassing consumers to pay their debts. The FTC also alleged the defendants had improper communications with third parties about consumers' debts, used abusive and obscene language in calls, and continued collection activities after receiving timely dispute letters from the consumers. In March 2007, the Commission obtained a preliminary injunction to halt the unlawful and abusive practices.

- **Debt Negotiation.** In August 2006, a federal district court granted the FTC's request for an *ex parte* temporary restraining order and asset freeze against several related debt negotiation companies, including National Support Services. The complaint charged that the defendants falsely claimed that they could reduce a consumer's unsecured debts by as much as 40 to 60 percent. The FTC alleged that many consumers who enrolled in the defendants' program saw their credit ratings worsen substantially and their debts grow as a result of following the defendants' advice to stop making payments on their debts. Similarly, in January 2007, the FTC filed a complaint against Select Management Solutions and its director alleging that the defendants falsely promised they could lower consumers' credit card rates thereby saving them thousands of dollars, and in February 2007 obtained a preliminary injunction against the defendants. The Commission worked jointly with its Canadian partners to halt this unlawful scheme.

- **Mortgages Para Hispanos.Com.** In September 2006, a mortgage broker settled FTC charges that he promised customers with little or no English proficiency one set of loan terms verbally in Spanish, while requiring them to sign English-only closing documents with less favorable terms. One feature of the settlement requires the broker and his company to provide Spanish-speaking consumers with a Spanish disclosure statement and consumer education brochure.

Deceptive Health, Safety, and Weight Loss Claims. The FTC continues to combat the deceptive marketing of health products, particularly products

making disease prevention or weight loss claims, and products targeted to children. From April 2006 through March 2007, the FTC initiated or resolved 14 law enforcement actions challenging 27 products as making such claims. Two of the actions were part of the FTC's Hispanic Initiative and six involved marketing in languages other than English.

- **Q-Ray Bracelet.** In September 2006, a federal district court found that the defendants' claims for their purported pain relief ionized bracelets were false and unsubstantiated. At trial, the defendants argued that the bracelets had a placebo effect, but the court ruled that even if they had a placebo effect, consumers were "duped." The court required the individual and corporate defendants to pay up to $87 million in refunds to consumers.

- **Xenadrine EFX, CortiSlim, TrimSpa, and Bayer's One-A-Day WeightSmart.** In January 2007, the Commission announced in four separate cases that the marketers of these extensively advertised products had settled charges that they had made false or unsubstantiated weight loss or weight-control claims. In settling, the marketers surrendered cash and other assets collectively worth at least $25 million and agreed to limit their future advertising claims.

Significant Civil Penalty Cases
April 2006 - March 2007

Richard L. Prochnow	$5.4 million
Bayer Corporation	$3.2 million
The Broadcast Team, Inc.	$1.0 million
Xanga.com, Inc.	$1.0 million

Business Opportunity Sweep. For more than a decade, the FTC has spearheaded a federal-state partnership to combat business opportunity and work-at-home frauds, and to educate the public to detect and avoid these scams. In December 2006, the FTC announced Project FAL$E HOPE$, which consisted of more than 100 law enforcement actions brought by the FTC, DOJ, Postal Inspection Service, and state law enforcers. The FTC contributed nine new cases, in each of which it successfully obtained temporary relief to halt the fraud alleged. Project FAL$E HOPE$ also announced the continuing successes of the 2005 business opportunity sweep, Project Biz Opp Flop. In 2006, 23 individuals charged in Project Biz Opp Flop were convicted and 28 defendants were sentenced to prison terms ranging from one year to more than 15 years.

Deceptive Sweepstakes Scams. In October 2006, the FTC filed an action in federal district court against the National Prize Information Group Corp. and its owner alleging that they bilked consumers upwards of $9 million through misleading claims that consumers had won large sweepstakes prizes that could be collected for a small fee. The court found the defendants' disclaimers inadequate and issued a preliminary injunction and an asset freeze.

Misleading Gift Cards. In March and April 2007, the Commission announced its first two enforcement actions involving gift cards. Both Kmart Corp. and Darden Restaurants, Inc. (which owns Red Lobster and Olive Garden)

"... the court ordered the defendants to pay $26 million in consumer redress."

Another Multimillion Dollar Judgment

The Commission brings enforcement actions against all sorts of fraudulent money-making schemes. For example, in Davison & Associates, the Commission charged that the defendants had engaged in deceptive practices in connection with their invention promotion business.

After a three-week trial, the court ordered the defendants to pay $26 million in consumer redress. Based on the record of "blatant, varied, and repeated misrepresentations," the court also ordered that in future dealings with consumers, the company make specific, detailed disclosures about their track record in helping inventors market their ideas.

allegedly promoted their gift cards as equivalent to cash, but failed to disclose adequately fees assessed when a gift card is not used for 24 consecutive months. Kmart also allegedly misrepresented that its gift cards never expire. In settling, both companies agreed to disclose dormancy fees prominently in future advertising, disclose the existence of such fees on the front of their gift cards, and provide refunds to affected consumers.

Hispanic Law Enforcement Initiative. The FTC continues to combat consumer fraud against Hispanics aggressively. Since the introduction of its Hispanic Initiative in 2004, the FTC has filed 39 actions against 131 businesses and individuals alleged to have fraudulently sold a myriad of purported products and services to Spanish-speaking consumers. During the April 2006 Hispanic Multimedia Surf, conducted by law enforcement partners across the United States and in five Latin American countries, the FTC identified numerous potentially deceptive ads and sent warning letters to 166 advertisers and 77 media outlets. Further, as part of this initiative, the Commission co-hosted an Hispanic outreach workshop with other agencies in September 2006 to identify problems of particular concern to the Hispanic community and to discuss solutions.

- **QTX.** In September 2006, the FTC obtained preliminary relief in federal court which shut down a work-at-home scheme that promised Spanish-speaking consumers earnings of $500 a week for assembling "bead houses." The Commission alleged that the defendants routinely rejected the work of the purchasers even when they managed to fully assemble one of the items. In February 2007, the Commission settled with one of the main defendants, permanently halting this deceptive scheme.

Project Scofflaw. This FTC initiative focuses on individuals and companies that are already subject to FTC and federal court orders as a result of prior FTC law enforcement actions. The FTC places a high priority on enforcing orders against repeat offenders as well as against those who act in concert with them.

Project Scofflaw - 2006 Criminal Contempt Prosecutions
3 defendants sentenced
25 years in prison
more than $18 million in total criminal restitution ordered

- **Gumpel.** The FTC initiated a civil contempt action in January 2007 against Julian Gumpel and related businesses for allegedly violating the core provisions of a 1998 federal court order issued in connection with an invention promotion scheme. The Commission charged that the contempt defendants violated the prior order by falsely claiming that consumers would reap huge financial benefits by using their invention promotion services. By charging consumers $5,000 to $40,000 for their services, defendants netted more than $60 million. The court ordered preliminary relief, froze the defendants' assets, and appointed a receiver.

STAFF PROFILE

Kellie Cosgrove Riley

BCP/Division of Privacy and Identity Protection

An attorney in the Division of Privacy and Identity Protection, Kellie has worked on a number of privacy, ID Theft, and credit-related projects. For example, Kellie represents the FTC on the Public Sector Data Security working group of the President's Task Force on Identity Theft, and serves on the FTC's Privacy Steering Committee.

Kellie has also been responsible for rulemaking projects under the Fair and Accurate Credit Transactions Act and the Gramm-Leach-Bliley Act, and planned the FTC's public forum, "*The Consumer and Credit Scoring*."

- The Commission filed or settled other contempt actions between April 2006 and March 2007, including **Neiswonger**, which involved a business opportunity scheme; **Lane Labs**, involving a purported cure for male infertility and a so-called "superior" calcium supplement; **ConsumerInfo.com**, relating to nationwide television ads for a credit monitoring service; and **Vocational Guides, Inc.** concerning government grants.

Criminal Liaison Unit. The Criminal Liaison Unit coordinates the FTC's work with criminal authorities to prosecute the criminal activity that underlies many of the FTC's more serious consumer fraud cases. From April 2006 to March 2007, the FTC assisted in the criminal prosecution of 130 FTC defendants or their associates, many of which resulted in convictions and substantial sentences ranging from one year to more than 17 years in prison. In several cases, FTC attorneys were designated as Special Assistant United States Attorneys in order to directly prosecute the offenders.

- **American Entertainment Distributors.** Based on an FTC referral, the DOJ brought criminal charges against ten defendants who sold fraudulent DVD kiosk business opportunities that cost 400 consumers a total of $19 million. The FTC filed a parallel civil case against some of the same defendants, as well as a motion to hold one defendant in civil contempt for violation of a prior FTC injunction. That defendant, who also faces a criminal contempt charge, is incarcerated in Costa Rica and is awaiting extradition. In the past year, eight defendants involved in this scheme were sentenced to prison terms ranging from one year to more than ten years.

B. Privacy and Data Security Law Enforcement

Protecting consumers' privacy and data security continues to be a central part of the FTC's consumer protection mission. While the explosive growth of the Internet and sophisticated computer systems have provided huge benefits to consumers, the public will lose faith in these technologies unless their personal information is protected. The FTC has taken the lead to protect consumers from technology-driven threats to the security of their personal data, computers, and email. Privacy concerns range from protecting consumers from unwanted pornographic email to protecting children from the collection of their personal information. The Commission's Division of Privacy and Identity Protection (DPIP), created a little over one year ago, spearheads law enforcement and related policy work in this area.

Spyware and Adware. Since April 2006, the FTC has announced five new cases involving software programs that take control of or damage consumers' computers, or send high volumes of disruptive advertising. These cases reinforce three important principles: (1) a consumer's computer belongs to him or her, not to the software distributor; (2) buried disclosures do not work, just as they have never worked in more traditional areas of commerce; and (3) if a

"The settlement requires future disclosure of DRM limitations on product packaging."

Digital Rights Management

In January 2007, Sony BMG Music Entertainment settled FTC charges that it failed to disclose adequately to consumers that some of its music CDs installed digital rights management (DRM) software that limited how consumers could use the CDs. Among other things, the software prevented consumers from making more than three copies of the music and from playing the music on many portable digital devices.

The settlement requires future disclosure of DRM limitations on product packaging. In announcing the consent agreement in this case, Chairman Majoras emphasized that if new technologies contain material limitations on their use, including that they are not interoperable so that the product does not perform as expected, then it may be deceptive to fail to disclose adequately the restrictions to consumers.

distributor puts a program on a consumer's computer that the consumer does not want, the consumer must be able to uninstall or disable it.

- **Zango.** In November 2006, this company, formerly known as 180solutions, settled FTC charges that through distributors it surreptitiously installed its adware on millions of consumers' computers and deliberately made the adware programs difficult for consumers to identify and remove. Zango agreed to disgorge $3 million in ill-gotten gains, stop sending ads to consumers affected by its previous practices, obtain consumers' express consent before downloading software onto consumers' computers, and implement user-friendly complaint and uninstall mechanisms.

- **ERG Ventures.** The FTC filed a complaint in October 2006 alleging that the defendants tricked millions of consumers into downloading malevolent software by hiding it within seemingly innocuous free software. The software allegedly degraded computer performance, disabled anti-spyware programs, and exposed consumers to a barrage of disruptive ads. The FTC obtained preliminary injunctions enjoining the defendants' deceptive and unfair practices and freezing their assets.

- **Seismic Entertainment Productions.** The FTC concluded its litigation against a group of spyware purveyors who downloaded onto unsuspecting consumers' computers spyware that changed the computers' default settings, hijacked their search engines, and then bombarded consumers with messages offering to sell them additional software to fix the very problem the defendants had caused. In May and November 2006, the court entered permanent injunctions with monetary relief against all defendants and ordered the mastermind of the scheme, Sanford Wallace, to disgorge over $4 million.

Data Security and Identity Theft. Data security breaches continued to make headlines this past year, with successive press reports on companies and government agencies that suffered losses or thefts of sensitive consumer information. The FTC has taken a multi-faceted approach to protecting the privacy and security of consumers' personal information, focusing on all phases of the life cycle of personal data, including its collection, storage, use, and disposal. The FTC's tools include laws and regulations such as the Safeguards Rule issued under the Gramm-Leach-Bliley Act which requires financial institutions to take reasonable measures to protect customer data, and the Disposal Rule under the FACT Act which requires companies to dispose of credit report data in accord with a set of practices designed to prevent others from using that data without authorization. To date, the FTC has brought 14 cases challenging inadequate security practices by companies that handle sensitive consumer data.

- **Nations Title Agency.** In May 2006, the FTC announced a settlement with Nations Title and related parties resolving charges that the

"... companies must maintain reasonable and appropriate measures to protect sensitive consumer information."

Data Security for Business

In receiving the 2007 RSA Conference Award for Public Policy in February 2007, Chairman Majoras emphasized that "companies must maintain reasonable and appropriate measures to protect sensitive consumer information."

For example, businesses must:

- make sure claims about data security are accurate.
- be aware of, and protect against, well-known and common security threats.
- know with whom they are sharing their customers' sensitive information.
- not retain sensitive consumer information that they do not need.

company tossed consumer home loan applications in an open dumpster and allowed hackers to gain access to its computer network. The settlement bars the company from making deceptive claims about privacy and security, bars future violations of several federal privacy and security rules, and requires the company to implement a comprehensive information security program and obtain independent biennial security audits for 20 years.

- **Guidance Software.** In November 2006, the FTC announced a settlement resolving allegations that this software company failed to implement simple, inexpensive, and readily available security measures to protect consumers' personal information, contravening express claims about security precautions on its website. According to the FTC's complaint, hackers were able to exploit the company's security vulnerabilities (such as its practice of permanently storing sensitive data in readable text on its servers) and access sensitive credit card information for thousands of consumers. The settlement requires a comprehensive information security program and security audits.

Pretexting Sweep. The FTC also focused its law enforcement resources in the last year on the use of pretexting and other illegal practices to obtain and sell consumers' telephone and financial records. In May 2006, the FTC filed five complaints in federal court against online data brokers who allegedly obtained confidential telephone records without consumers' knowledge or consent and then sold the records to third parties. The FTC alleged that the data brokers committed unfair practices by disclosing customer phone records without their knowledge or consent. In October 2006 and February 2007, two of those lawsuits settled with the defendants agreeing to permanent injunctions halting the sale of phone records and to disgorge their ill-gotten gains.

Do Not Call. This past year, the FTC vigorously enforced the Telemarketing Sales Rule (TSR), including the Do Not Call (DNC) provisions that prohibit most telemarketing to consumers who place their telephone numbers on the National Do Not Call Registry, as well as provisions prohibiting "abandoned calls" which fail to connect consumers to a live operator within two seconds. Since the FTC began enforcing compliance with the Registry in October 2003, the agency has filed 25 enforcement actions against 52 individual and 73 corporate defendants, alleging that they had called consumers protected by the Registry. In 19 of those cases, the FTC obtained settlements with orders requiring payment in the aggregate of more than $8 million in civil penalties and more than $8 million in consumer redress. Compliance with the Registry has been high and American consumers have praised its effectiveness.

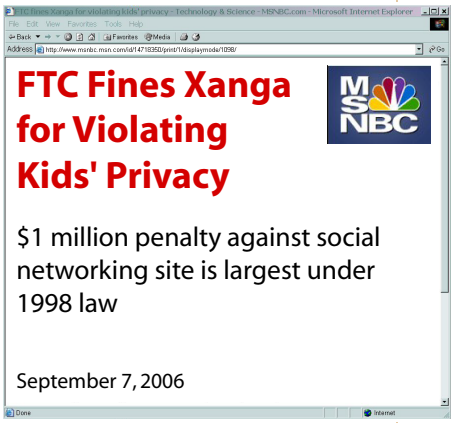
- **The Broadcast Team.** The FTC successfully resolved litigation against The Broadcast Team, Inc. (TBT), a telemarketer that specialized in broadcasting prerecorded calls. The DOJ filed a civil penalty action on the FTC's behalf in December 2005 alleging that TBT called numbers on the Registry and made millions of abandoned calls. Prior to this

Significant Redress Orders March 2006 - March 2007	
Seasilver USA, Inc.	$119.2 million
Q-Ray Company	$87.0 million
Transnet Wireless Corp.	$48.1 million
Telecard Dispensing Corp.	$28.6 million
Davison and Associates	$26.0 million
Internet Marketing Group, Inc.	$15.0 million
Robert Chinery, Jr.	$12.8 million
Window Rock Enterprises Inc.	$12.0 million
Peter J. Salzano	$10.0 million

filing, TBT had preemptively challenged the FTC's authority to apply the TSR's call abandonment provision to prerecorded charitable solicitation calls made by for-profit telefunders. In April 2006, a federal district court granted the Commission's motion to dismiss TBT's suit. In February 2007, TBT and its owners settled the DOJ action, agreeing to comply with the TSR and pay a $1 million civil penalty.

- **Peoples Benefit Services.** In June 2006, the FTC filed the first case that highlighted the application of the DNC provisions to corporate affiliates. The defendants asserted that they were permitted to call consumers on the DNC Registry on the basis of a purported established business relationship between the consumers and the seller's corporate affiliates, but the FTC contended the relationship did not meet the "consumer expectation" test for allowing such calls. The Commission also challenged the defendants' access of the Registry via a separately incorporated affiliate as a failure to pay the access fees. The defendants settled this suit and agreed to pay $350,000 in civil penalties.

COPPA. The Children's Online Privacy Protection Act (COPPA) and the FTC's implementing rule give parents the power to determine whether and what information is collected online from their children under age 13, and how such information may be used.



- **Xanga.com.** In September 2006, the FTC filed its 12th COPPA action, a civil penalty settlement with the social networking site Xanga.com, Inc. and its principals. The FTC's complaint alleged that Xanga collected, maintained, and disclosed the personal information of over one million children under age 13 by creating over 1.7 million separate online accounts for those children without first obtaining the required parental consent or complying with other COPPA Rule requirements. The settlement requires Xanga.com to comply with the rule, delete all information collected in violation of the rule, and pay civil penalties of $1 million, the largest penalty ever collected for a COPPA violation.

CAN-SPAM Act/Adult Labeling Rule. Since 1997, when the FTC brought its first case involving unsolicited commercial email (spam), the FTC has aggressively pursued deceptive and unfair spam practices through 89 law enforcement actions against 241 individuals and companies, 26 of which targeted violators of the CAN-SPAM Act. In the past year, it brought eight new law enforcement cases challenging deceptive spam. The Act generally prohibits deceptive sender and subject-line content in commercial email and provides consumers with the right to opt out of future commercial email campaigns. The Adult Labeling Rule mandates warning labels on email that contains sexually explicit material.

- **Jumpstart Technologies.** In March 2006, the FTC settled an action and obtained $900,000 in civil penalties against Jumpstart Technologies, which allegedly promised "free" movie tickets to consumers if they divulged the email addresses of several friends. According to the complaint, Jumpstart then repeatedly emailed those friends, making the messages appear as if they originated from the consumer's own email address. The FTC alleged that Jumpstart's use of misleading "from" information and subject lines violated the CAN-SPAM Act. The settlement also prohibits the company from engaging in future email campaigns with deceptive sender information or content. The civil penalty is the largest obtained by the FTC for illegal spam.

- **TJ Web Productions.** In December 2006, a federal court approved a settlement in a Commission case alleging that the defendant's affiliates sent sexually explicit emails that violated the CAN-SPAM Act and the Adult Labeling Rule. The FTC obtained $465,000 in civil penalties, and the defendant is required to monitor closely any affiliates (or email "button pushers") who it hires to send commercial email messages.

C. Consumer Protection Law Enforcement Tools

The FTC's tools for identifying fraud and deception, as well as privacy and data security violations, involve the collection and analysis of information about consumer experiences in the marketplace. This function – carried out through various databases and other Commission resources – is critically important to the FTC's consumer protection mission.

"(Company X) installed malware/spyware on my computer. ... tried to charge me to remove it, and required me to spend 5 hours and $100 to get it removed. This is criminal that companies like this can continue to prey on people and try to blackmail a payment out of them."

New York Consumer
April 2006

Consumer Response Center. The Consumer Response Center (CRC), which recently celebrated its 10th anniversary, remains a vital resource for both consumers and law enforcement. Each week, the CRC handles more than 31,000 inquiries and complaints from consumers and businesses. These contacts come via the FTC's toll–free numbers (1-877-FTC-HELP and 1-877-ID-THEFT), the FTC's website, and the mail.

Consumer Sentinel. Consumer Sentinel, the FTC's fraud and identity theft complaint database, contains over 3.5 million fraud and identity theft complaints and is accessible to 1,650 law enforcement agencies which use the database to share information, coordinate investigations, and pursue leads.

National Do Not Call Registry. The Registry continues to protect consumers from unwanted commercial telemarketing calls. As of April 2007, consumers have placed more than 142 million telephone numbers on the

NATIONAL
DO NOT CALL
REGISTRY
WWW.DONOTCALL.GOV

Registry, which continues to accept new telephone numbers. Additionally, the Registry collects do not call complaints from consumers and shares them through Consumer Sentinel. The National Registry has provided a model for the international community: in the past eighteen months, the Canadian and Australian governments have authorized their own do not call programs.

Identity Theft Tools. Identity theft continues to be the leading consumer fraud complaint received by the FTC. Consumers file complaints and receive advice concerning identity theft from the FTC's toll-free hotline and website operated by the CRC. Nearly 1,550 law enforcement agencies have access to identity theft complaints through Consumer Sentinel. The FTC also coordinates ID theft law enforcement training for state and local law enforcers. To date, the FTC, in conjunction with its partners, has conducted 24 training seminars attended by more than 3,240 officers from more than 1,075 agencies.

Spam Database. "Spam," the popular name for unsolicited commercial email, remains a significant source of concern for Internet users. The FTC has maintained since 1998 an electronic address to which the agency encourages consumers and businesses forward spam (spam@uce.gov). This address now receives approximately 250,000 pieces of spam daily. The total amount of spam

Commissioner Rosch
Thoughts on the Future of the Commission's Consumer Protection Mission

In a January 2007 speech before ABA Section of Antitrust Law, Consumer Protection Conference, Commissioner J. Thomas Rosch discussed his "wish list" for the Commission's consumer protection mission for the next several years:

- First, the Commissioner would like to see the Commission and its international counterparts coordinate their efforts so that the international flow of data and personal information — so crucial to global commerce — are subject to consistent rules.
- Second, he expressed a desire that the Commission take full advantage of its authority under the newly-enacted U.S. SAFE WEB Act and work with other consumer protection agencies to better combat cross-border fraud.
- Third, he would like to see the Commission and its international counterparts modernize their arsenal of law enforcement remedies so that they can combat effectively high-tech threats — such as spam, spyware, and data security vulnerabilities — that injure consumers.
- Fourth, he would like the Commission, along with the Department of Agriculture, state and local school authorities, and the media, to encourage the food and beverage industries to make serious efforts to combat the national epidemic of childhood obesity. In particular, he noted that the snack food and fast food industries must increase their efforts to protect the health of our young people.
- Fifth, and finally, he noted that on the antitrust front, he would like to see more elements of consumer welfare theory integrated into the Bureau of Competition's law enforcement and educational initiatives.

received by the FTC has increased by 100 million in the past year to more than 407 million. The spam database remains vital to the development of the FTC's CAN-SPAM Act enforcement activities as well as cases brought by other federal and state agencies.

Chapter 5. Consumer Protection Policy Tools

The FTC applies a distinctive set of policy tools to complement its consumer protection law enforcement efforts. The FTC works with industry, other government entities, the media, and the public to collect and disseminate information to establish policies that protect consumers.

A. Rulemaking

The FTC carefully engages in rulemakings so that its rules are consistent with its statutory authority, and with the aim to benefit consumers without overly burdening business.

- **FACT Act "Red Flags."** In July 2006, pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), the FTC, together with several financial regulatory agencies, published proposed regulations that would require financial institutions and creditors to implement procedures to detect, prevent, and mitigate identity theft in connection with account openings and existing accounts. The proposed regulations include lists of patterns and specific forms of activity that might raise a "red flag" signaling a possibility of identity theft, *e.g.*, a request for a change of address which is followed closely by a request for a replacement credit card.

- **Franchise Rule.** In January 2007, following extensive input from the public, the FTC approved final amendments to this rule. The modifications harmonize federal and state franchise pre-sale disclosure laws; address changes in the marketing and sale of franchises, including online; and reduce unnecessary compliance costs by, among other things, creating exemptions for sophisticated prospective franchisees. The revised rule will go into effect in July 2007.

- **Business Opportunity Rule.** In April 2006, the Commission proposed a rule to protect consumers from unfair and deceptive practices in the sale of non-franchise business opportunities. Among other things, the proposed rule would require a one-page disclosure document. Until a final decision is made, those portions of the original Franchise Rule that dealt with non-franchise business opportunities continue to apply.

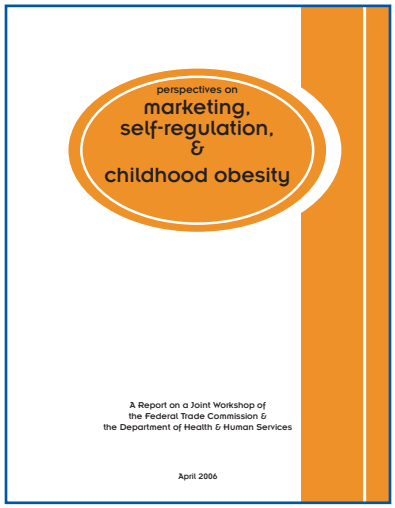
"I came across an ad for vending machines; the ad also promised locations and free training ... I could go on and on about the outright lies [the company] made to me ... the businesses [the company's recommended locator] found were neither "high traffic" nor were they "prearranged" ... while [the company] did not guarantee any income, the company represented that the national average for the machine I purchased was $90 net profit per week per machine. On my best week, I did not even make $9 per machine. I hope that other consumers will learn from my experience and not fall victim to this type of scam."

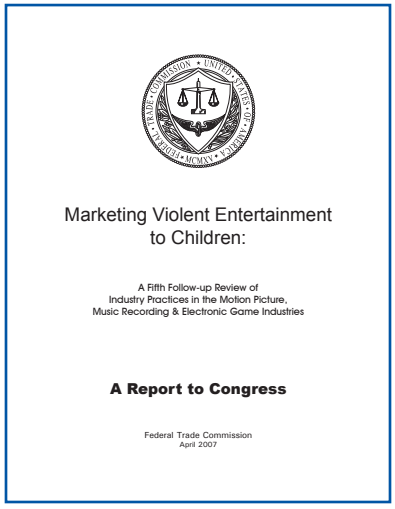
Pennsylvania Consumer
December 2006

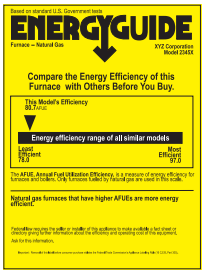

The Washington Times

FTC Not Sweet on Junk-Food Ads Targeting Children

November 7, 2006







➤ **Appliance Labeling Rule.** In January 2007, the FTC proposed improving the familiar yellow and black Energy Guide label for major consumer appliances. Based on substantial consumer research, the FTC's proposed label features operating cost as the most prominent measure of energy performance.

B. Reports

The FTC analyzes marketplace issues affecting consumers, often after holding public hearings or workshops involving industry and consumer representatives, and publishes its findings in reports.

➤ **Childhood Obesity Report.** In April 2006, following a two-day workshop, the FTC and the Department of Health and Human Services issued a joint report that looked at ways to encourage industry and media companies to promote healthier foods and beverages to children. The report recommended that industry members improve the nutritional profiles of foods they promote to children and that the Council of Better Business Bureau's (CBBB) Children's Advertising Review Unit consider setting minimum nutritional standards for foods marketed to children. Since the report's issuance, 11 major food manufacturers have agreed to participate in a self-regulatory initiative through the CBBB that seeks to shift the mix of advertising to children under age 12 to encourage healthier eating choices and lifestyles.

➤ **Media Violence Report.** In April 2007, the FTC released its sixth report analyzing the marketing to children of violent entertainment products by the motion picture, music recording, and video game industries. The report encourages enforceable self-regulatory restrictions on the advertising of violent R-rated movies, explicit content recordings, and M-rated games. It notes the substantial improvement of video game retailers in restricting the sale of M-rated games to unaccompanied children, as opposed to retailers of R-rated DVDs and explicit content recordings who failed to improve significantly. It also reports that an FTC survey shows that most parents are familiar with the video game ratings system and use it regularly, although a significant minority believe it could provide better information.

C. Hearings and Workshops

As new developments arise in the marketplace, the FTC holds hearings and workshops to study emerging issues that may cause consumer injury and to learn from the experiences of consumers, businesses, academia, as well as government and other experts in various fields.

➤ **"Tech-ade" Hearings.** In November 2006, as a follow-up to its 1995 Global Hearings, the FTC held "*Protecting Consumers in the Next Tech-ade*"

PROTECTING CONSUMERS IN The Next Tech-ade

hearings to discuss the impact of technological innovation on consumer protection policy over the next decade. More than 100 panelists spoke over the course of three days about new technologies on the horizon and their potential effect on consumers, including the widening gap between older and younger consumers in their use of technologies. During an additional non-public day, government officials, including foreign representatives, discussed how they can work together more effectively to protect consumers. In February 2007, the Chairman announced a series of Tech-ade Town Hall meetings to solicit public input into this issue, and the Commission intends to issue a report later this year discussing the key findings from the hearings and meetings, and recommending changes in consumer protection law, practice, and procedure. Finally, the FTC is developing a Technology Research and Policy Development Plan for 2008 that will include all of the hearings, workshops, conferences, and similar events related to technology that the Commission intends to hold during the year.

- **Mortgage Lending Workshop.** The FTC sponsored a public workshop in May 2006, *"Protecting Consumers in the New Mortgage Marketplace,"* to explore the financial benefits and risks of new residential mortgage products. Participants focused on the two types of alternative mortgage products that have experienced the greatest growth in popularity and market share in the past two years: interest-only loans and payment option adjustable rate mortgages.

Negative Options
An FTC Workshop Analyzing Negative Option Marketing

- **Negative Option Workshop.** In January 2007, the FTC hosted a workshop analyzing the marketing of goods and services through offers with negative option features – *i.e.*, offers where sellers interpret a consumer's failure to take an affirmative action to reject goods or services, or to cancel a sales agreement, as acceptance of the offers. Participants discussed the costs and benefits of such offers, the online marketing of such offers, and ways to make effective disclosures when such offers are made online.

FTC PUBLIC WORKSHOP
Proof Positive
New Directions for ID Authentication

- **Identity Authentication Workshop.** In the fight against identity theft it is crucial to address not only how personal information is stolen but also how businesses can prevent thieves from using stolen data successfully to impersonate their victims. The Commission will host a two-day public workshop in April 2007, *"Proof Positive: New Directions for ID Authentication,"* to explore the role of verification and authentication of a consumer's identity in financial and other commercial transactions.

- **Rebate Workshop.** In April 2007, the Commission will host a workshop in San Francisco, California, to address the costs and benefits of mail-in rebate offers by manufacturers and retailers. Topics will

FTC's Own Privacy Initiatives

As a corollary to its law enforcement efforts challenging commercial practices that threaten consumer privacy, the Commission has intensified its efforts to strengthen its own privacy and data security policies and to raise the awareness of Commission staff about privacy issues. In the past year, the agency implemented new policies and procedures that address the collection, use, storage, sharing, retention, and disposal of consumer and corporate data generally, with a particular emphasis on personally identifiable information and sensitive health information. To coordinate these efforts, the Chairman appointed Marc Groman as the FTC's first Chief Privacy Officer in September 2006, and expanded the role of the agency-wide Privacy Steering Committee. As part of the agency's expanded employee outreach, in March 2007 the FTC kicked off its inaugural "Privacy Week" – a week-long series of programs, events, and training designed to further embed privacy into the workplace culture of the FTC.

include deceptive and unfair practices, as well as "best practices," in the offering and fulfillment of rebates.

D. Inter-governmental Task Force

The FTC plays a role in improving government practices by working with its fellow federal and state agencies to tackle significant consumer-related issues, such as identity theft.

- **Identity Theft Task Force.** In May 2006, the President created an Identity Theft Task Force, chaired by the Attorney General and co-chaired by the Chairman of the FTC, and comprised of 18 federal agencies. Its goals are to develop a strategic plan for the federal government to better prevent identity theft, coordinate prosecution, educate citizens on how to avoid becoming victims and businesses on steps to protect personal data, and ensure recovery for victims. In September 2006, the Task Force delivered an interim set of recommendations that addressed, among other things, how federal agencies respond when they have data breaches, how they safeguard sensitive consumer data, and how they collect and use Social Security numbers as identifiers. The interim recommendations also addressed the development of an online "universal police report" that identity theft victims can use to help restore their identities. In December 2006, the Task Force solicited public comments on ways to improve the effectiveness and efficiency of federal government efforts to reduce identity theft.

E. Advocacy Letters and Comments

The agency also lends its expertise to other federal and state agencies that are considering rules or other actions that affect consumers. Advocacy continues to be an important adjunct to law enforcement in order to advance the FTC's consumer protection mission.

- **Attorney Advertising.** In September 2006, FTC staff submitted a comment to the New York State Unified Court System regarding proposed restrictions on attorney advertising. According to staff, some of the proposals would have prevented non-misleading advertising that may convey useful information to consumers. The court subsequently issued revised rules, adopting nearly all of staff's recommendations. In March 2007, FTC staff submitted comments to the Louisiana State Bar Association and the Florida Bar urging those entities to reconsider their proposed restrictions on attorney advertising, which staff argued were unnecessarily broad and potentially harmful to competition and consumers.

- **Whole Grain Labeling.** In April 2006, FTC staff provided a comment letter to the FDA regarding its draft guidance for labeling statements

about the whole grain content of food products. The comment recommended that the FDA reconsider allowing claims such as "good source" of whole grain or provide other means to give consumers context as to the amount of whole grain in a product, consider establishing definitive percentage content standards for making unqualified claims such as "whole grain" or "made with whole grain," and seek relevant consumer research.

- **State Child Protection Registry.** In March 2006, at the request of a Hawaii State Senator, FTC staff provided a comment regarding a proposal to establish a state-based Child Protection Registry and to make it unlawful to send a registrant spam advertising products minors cannot legally buy or containing adult content. The comment recommended against creation of the registry, explaining that the registry can easily be abused by pedophiles and that publishing a list of verified email addresses could unintentionally increase the amount of spam received by registrants. The Hawaii legislature ultimately did not adopt this bill.

F. *Amicus* Briefs

The Commission also regularly files *amicus* briefs as an important adjunct to its core enforcement mission, and to aid appellate courts in the proper interpretation of consumer protection-related statutes.

- ***Safeco Ins. Co. v. Burr; GEICO Gen. Ins. Co. v. Edo.*** In November 2006, the FTC joined in an *amicus* brief filed in the Supreme Court by the United States in these consolidated cases, urging vacatur and remand in *Safeco*, and reversal in *GEICO*. The brief argued that, under the Fair Credit Reporting Act (FCRA), the phrase "willful noncompliance" encompasses both knowing violations and reckless disregard for the law. The brief also argued that an insurance company must provide an applicant with an adverse action notice whenever that company offers a consumer a higher insurance rate than it would have offered if the consumer's report had been more favorable.

- ***Whitfield v. Radian Guaranty, Inc.*** In March 2006, the FTC filed an *amicus* brief supporting consumers in this case arising under the FCRA. The brief argued that the district court erred in holding that a mortgage insurance company was not required to provide a consumer with an FCRA adverse action notice even though, as a result of information in a consumer report, the insurance company charged a higher premium for mortgage insurance. The brief explained that the FCRA requires such a notice because the insurance company's action relates to the consumer, even though the consumer is not the beneficiary of the policy.

G. Congressional Testimony

Commissioners and senior Commission staff presented congressional testimony in the past year on a wide range of important consumer protection-related issues, including privacy, data security, and other Internet-related issues.

- **Social Networking Websites.** In June 2006, testifying for the FTC, Commissioner Pamela Jones Harbour told a House subcommittee that there is a need for social networking websites to develop and implement safety features to protect children who visit their sites.

Commissioner Harbour Protecting Children On Social Networking Websites

In testimony before Congress and at the Commission's Tech-ade hearings, Commissioner Pamela Jones Harbour discussed the newfound benefits and risks to children and teens created by the online social networking phenomenon. While acknowledging the positive sense of camaraderie and community that such websites can provide, Commissioner Harbour also warned that social networking websites raise heightened privacy and security concerns for children and teens, especially from sexual predators. She emphasized that "parents, children, industry, and government have a shared interest and responsibility in creating a safe and secure online environment."

Commissioner Harbour strongly encouraged a meaningful and immediate industry response to the risks online social networking poses for children and teens, including the creation of industry best practices. At the same time, she emphasized the Commission's aggressive law enforcement efforts against website operators who collect, use, and disclose personal information in violation of the Children's Online Privacy Protection Act and Section 5 of the FTC Act. By combining law enforcement, industry self-regulation, and consumer education, the Commission is committed to helping create a safer online experience for children and all consumers.

- **Broadband Internet Access Services.** Testifying for the FTC in June 2006 before the Senate Judiciary Committee, Commissioner William E. Kovacic told Congress that it should preserve the FTC's existing authority to protect consumers against deceptive practices and to maintain competition in the broadband services industry. The testimony also urged Congress to eliminate the gap in the FTC's jurisdiction created by the telecommunications common carrier exemption, because that exemption is likely to frustrate the FTC's ability to stop deceptive and unfair practices.

- "**Whois**" **Databases.** In July and September 2006, BCP Deputy Director Eileen Harrington and Commissioner Jon Leibowitz testified, respectively, before congressional subcommittees regarding Whois databases – the directories that contain information about website operators. The testimony noted that Whois provides information

Helping Consumers Save Money at the Pump

Important variables, such as how drivers fuel, drive, and maintain their cars, can offer increased fuel efficiency and save consumers money at the pump. In May 2006, the FTC released a new website, www.ftc.gov/savegas, with a "bumper-to-bumper" interactive guide and tips for consumers on what they can do to conserve gasoline. The FTC also released a consumer alert entitled "Saving Money at the Pump." During the past year, the Commission released a series of columns at its mini-website, www.ftc.gov/oilandgas, summarizing current market conditions that may impact gas prices and the FTC's role in petroleum industry enforcement.

In August 2006, the Commission also announced a settlement with International Research and Development Corp. and its principal for falsely claiming that their magnetic "FuelMAX" device would reduce automobile emissions and increase gas mileage. The defendants agreed to pay $4.2 million in consumer redress and are banned from selling or manufacturing magnetic fuel savings devices.

Commissioner Leibowitz Protecting Against Deceptive Internet Schemes

Commissioner Jon Leibowitz has been an outspoken advocate of the Commission's efforts to protect the online experience for consumers. The Commission continues its aggressive law enforcement efforts to stop a wide variety of Internet-related abuses, ranging from deceptive spam, spyware, and unauthorized adware to Internet auction fraud, illegal pyramid schemes, and business opportunity scams. In June 2006, Commissioner Leibowitz represented the Commission at an ICANN conference in Morocco to raise concerns about proposed limitations to the use of Whois databases, which provide contact information for website operators. Commissioner Leibowitz stated that the Commission relies strongly on these databases to protect consumers' privacy and welfare, for example, by identifying targets in spyware and spam cases. He emphasized that:

> "The FTC believes that the Whois databases, despite their limitations, are nevertheless critical to the agency's consumer protection mission, to other law enforcement agencies around the world, and to consumers.... The FTC is concerned that any attempt to limit Whois... will put its ability to protect consumers and their privacy in peril."

These efforts are part of the Commission's broad commitment to ensuring that consumers enjoy the benefits of the Internet while being protected against online fraud, deception, and invasions of privacy.

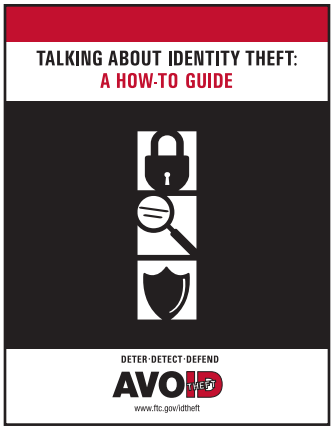
critical to the FTC's consumer protection investigations, and recommended that the organization responsible for Whois data not limit public access and consider measures to improve the accuracy and completeness of domain name registration information.

- **Phone Pretexting.** In September 2006 and March 2007, DPIP Associate Director Joel Winston and BCP Director Lydia Parnes testified before a congressional subcommittee and committee, respectively, concerning the Commission's aggressive law enforcement efforts against firms engaging in pretexting to obtain consumers' telephone records and other personal information. They also discussed legislative proposals that would assist the FTC's efforts to curtail telephone records pretexting.

Chapter 6. Consumer Protection - Consumer and Business Education and Outreach

The FTC's plain-language consumer and business education materials provide practical guidance on a wide range of topics relevant to day-to-day marketplace activities. Education enhances law enforcement efforts and

empowers consumers. Between April 2006 and March 2007, the FTC distributed more than 11.8 million print publications in both English and Spanish and logged more than 41.2 million accesses to the Commission's publications online. In addition, the FTC worked through the media and other partners to reach millions more. The FTC also takes a leading role in promoting its law enforcement and education efforts during National Consumer Protection Week in February.



- **"Deter, Detect, Defend" Campaign Targets ID Theft.** In May 2006, the FTC launched this campaign in both English and Spanish to let consumers know how to reduce their risk of identity theft and how to respond if it happens. The FTC's ID Theft Consumer Education Kit includes a 10-minute video with tips from the FTC and consumers who have dealt with identity theft and its consequences, a brochure, and tips for community education events. Hundreds of organizations, including those assisting older consumers, are distributing the FTC's information on identity theft and linking to the redesigned www.ftc.gov/idtheft website. In the past year, the FTC has distributed more than 4.4 million copies of its identity theft publications and logged over 5.7 million accesses to its identity theft website.

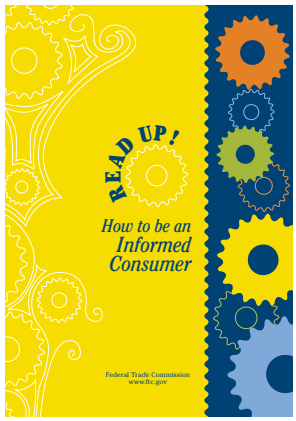
DETER·DETECT·DEFEND
AVOID THEFT
www.ftc.gov/idtheft

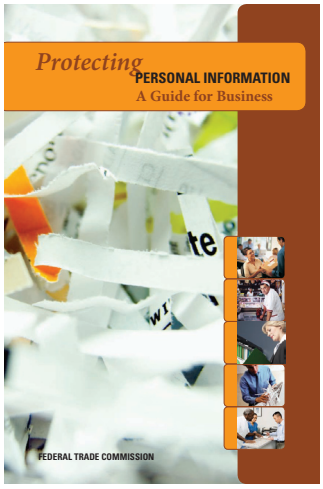
- **"We Don't Serve Teens."** In October 2006, the FTC launched this campaign to reduce underage drinking by encouraging adults to stop providing teens with access to alcohol. The campaign's centerpiece is www.DontServeTeens.gov, a website sponsored by a coalition of public and private sector organizations. It features information on the risks of underage drinking, ways to talk to teens and other parents about the issue, and ideas for community outreach. The bottom line message to neighbors, relatives, and friends who may serve teens: "Don't serve alcohol to teens. It's unsafe. It's illegal. It's irresponsible."

- **OnGuardOnline.** OnGuardOnline.gov – an interagency website managed by the FTC to help computer users guard against Internet fraud, secure their computers, and protect their personal information – added new modules on social networking and online investment scams. Since its launch in late 2005, OnGuardOnline has attracted more than 3.5 million visits. Many of the most popular social networking websites link to OnGuardOnline's module on social networking, making it the most viewed page on OnGuardOnline.

OnGuard Online
YOUR SAFETY NET™

- **FTC Encourages Bilingual Consumer Literacy.** In January 2007, the FTC released *"Read Up! How to be an Informed Consumer"* (*"¡Entérate! Cómo ser*





un consumidor informado") – a new bilingual compendium of information for Spanish-speakers and Hispanic organizations on consumer rights, managing finances, making major purchases, avoiding scams and rip-offs, and being safe and secure online – and related materials to help organizations incorporate consumer information into their outreach programs.

- **Business Education Program.** Educating business executives and their attorneys about advertising and marketing is an FTC priority. The FTC continues to spread the word about business compliance at legal education events, trade shows, industry conferences, and Better Business Bureau meetings across the nation.

- **Business Guide for Data Security.** The FTC also provides guidance to businesses to assist them in protecting consumers' information. For example, the Commission published "*Protecting Personal Information: A Guide for Business*," a how-to handbook on data security.

- **Teaser Site on Health Claims.** In October 2006, the FTC posted a "teaser" website for Glucobate, a purported all-natural diabetes remedy at www.wemarket4u.net/glucobate. When consumers click for more information, they are taken to the FTC's "Be Smart. Be Skeptical" website with tips on evaluating online health claims. Numerous blogs, bulletin boards, and newsgroups have used the Glucobate story to warn about deceptive product claims. This site follows the success of another teaser site, FatFoe, that purported to sell a product that guaranteed weight loss with no diet or exercise.

"Through the OIA, the FTC will continue to build a strong network of cooperative relationships with foreign competition and consumer protection agencies...."

Fostering International Cooperation

The FTC continues to promote sound policy with nations that are at the early stages of developing market-based competition and consumer protection laws. Last April, for example, Chairman Majoras became the first FTC Chairman to visit China. She met with government officials and National People's Congress representatives responsible for developing the first comprehensive competition law in China, as well as with agencies in charge of enforcing China's consumer protection laws.

Last month, she also led an FTC delegation to Hungary and Romania, both of which are long-term beneficiaries of the FTC's technical assistance program and which have recently joined the European Union.

Her work to strengthen these relationships helps to foster greater cooperation in the FTC's competition and consumer protection missions.

SECTION THREE: INTERNATIONAL ACTIVITIES

"Competition and consumer protection are complements, and both have gone global." With these words, Chairman Majoras launched the FTC's new Office of International Affairs (OIA) in January 2007 to coordinate more effectively the full range of the FTC's international activities. The OIA brings together formerly separate international antitrust, consumer protection, and technical assistance programs under one office whose Director, Randolph W. Tritell, reports to the Chairman. The OIA will bring increased prominence to the FTC's international work, and will enhance the FTC's ability to coordinate its enforcement efforts effectively to promote convergence toward best practices with our counterpart agencies around the world.

Through the OIA, the FTC will continue to build a strong network of cooperative relationships with foreign competition and consumer protection agencies, and to play a lead role in key multilateral fora. One of the OIA's first priorities will be to take advantage of new opportunities provided by the U.S. SAFE WEB Act to more effectively address cross-border fraud by providing the Commission new tools to overcome barriers to cross-border cooperation in consumer protection investigations and cases. The OIA will also continue the Commission's work assisting nations that are moving toward market-based economies to develop and implement sound polices that support competition and protect consumers.

Chapter 7. Competition

A. Promoting Cooperation and Convergence Through Bilateral Relationships

Cooperation with antitrust agencies abroad is a key component of the FTC's competition enforcement agenda, resulting in closer collaboration on cross-border actions and convergence toward internationally consistent consumer welfare-based competition policies. The FTC routinely coordinates with colleagues in foreign antitrust agencies on the analysis and resolution of

cases of mutual concern. This results in more efficient and effective review of multijurisdictional mergers and suspected anticompetitive conduct. Recent examples of international coordination in merger enforcement include:

- **Boston Scientific/Guidant.** Boston Scientific's proposed $27 billion bid to take over Guidant raised concerns in several medical device markets, particularly stents and other devices used to treat vascular diseases. The FTC coordinated its review with the European Commission (EC), the Canadian Competition Bureau, and the Japan Fair Trade Commission. The FTC's review resulted in a consent order requiring the divestiture of Guidant's vascular business to an FTC-approved buyer. Canada closed its investigation because remedies obtained by the FTC and the EC adequately resolved competition concerns in Canada.

- **Linde/BOC Group.** Linde's proposed $14.4 billion acquisition of the BOC Group raised competitive concerns in numerous local markets for atmospheric gases, and in the world market for bulk refined helium in which a combined Linde/BOC would have become the largest supplier. FTC staff worked with EC and Australian competition agency staff to address these concerns and cooperated on the remedial phase of the case to maintain competition in the worldwide helium market.

Through the OIA, the FTC continues to foster its bilateral ties through consultations in Washington, D.C. and in foreign capitals, as well as through continued formal and informal case coordination. The OIA maintains regular contacts with the competition agencies of our major trading partners such as Canada, Mexico, the European Union (EU) and its principal member-states, Japan, Korea, and Australia. Cooperation with other important jurisdictions such as Brazil, the Russian Federation, and countries in Central and Eastern Europe continues to grow as well.

The FTC also continues to work closely with the two most populous countries in the world, China and India, as they seek to develop and implement effective competition laws. The Chairman and senior staff visited China in the past year and, with the DOJ Antitrust Division, have been providing valuable input to Chinese authorities as they draft their anti-monopoly law.

The FTC also builds on its strong bilateral relationships to promote policy convergence through formal and informal working arrangements with other agencies, many of which seek the FTC's views on new policy initiatives. For example, during the past year, the FTC consulted with the EC regarding the EC's review of its policies on abuse of dominance and on remedies policies, with the Canadian Competition Bureau on merger remedies and health care, and with the Japanese Fair Trade Commission on abuse of dominance and revisions to its merger guidelines. The Commission also is consulting with the EC on its new draft guidelines for the review of non-horizontal mergers. The FTC will continue to seek opportunities to share its experience with competition agencies around the world.

Commissioner Kovacic
Realizing the Benefits of Comparative Study

Commissioner William E. Kovacic has focused extensively on how U.S. and foreign competition and consumer protection agencies can benefit by studying the experience of other jurisdictions. He has emphasized that modern international experience provides valuable opportunities for any single jurisdiction to improve its own operations by emulating superior techniques from others.

Commissioner Kovacic has identified two elements of effective comparative study. The first is an accurate understanding of the jurisdiction whose experience is to be studied. To foster understanding of the U.S. experience, Commissioner Kovacic has written extensively and delivered many presentations in the United States and abroad about the evolution of modern U.S. competition and consumer protection enforcement norms and on the intellectual foundations of modern U.S. policy.

The second element is a process to identify superior practices. Multilateral bodies such as the International Competition Network (ICN) and the Organization for Economic Cooperation and Development (OECD) are useful means to this end. In discussions with foreign officials at meetings of the ICN and OECD, Commissioner Kovacic has explained how the FTC since the late 1970s has used the evaluation of past litigation and non-litigation programs to guide decisions about future policies. These presentations have helped encourage the world's competition and consumer protection authorities to conduct assessments of completed projects, institutional arrangements, and operational procedures. Among other results, the efforts of Commissioner Kovacic and FTC officials played a major part in leading the OECD Competition Committee to convene a session on *ex post* evaluation in 2005 and to conduct a planned follow-up session later in 2007.

B. Promoting Convergence Through Multilateral Competition Fora

Multilateral competition fora provide significant opportunities for antitrust agencies to promote mutual understanding and further international cooperation. The FTC participates actively in several such fora, including the International Competition Network (ICN), the Organization for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), and the Asia-Pacific Economic Cooperation (APEC).

ICN. The ICN, which includes 100 competition agency members from 88 jurisdictions, is an important forum for international competition officials to work towards procedural and substantive convergence, including promoting best practices in antitrust enforcement and policy. The FTC plays a leadership role in the ICN's major projects. For example, the FTC co-chairs the ICN's Unilateral Conduct working group, which is producing a report on the objectives of unilateral conduct rules and the definition and assessment of dominance and market power. The Commission chairs the ICN subgroup on Merger Notification and Procedures and is preparing a report on defining

STAFF PROFILE

Pablo Zylberglait

Office of International Affairs

Pablo has networked with our law enforcement partners all over the world. He negotiated memoranda of understanding with consumer protection agencies in Ireland (2003), Mexico (2005), and Costa Rica (2006), and worked with the U.S. Trade Representative on consumer protection provisions for several free trade agreements, most notably Chile (2003) and Singapore (2003).

Pablo also coordinates the Commission's technical cooperation efforts in consumer protection and serves as the FTC's principal staff delegate to the ICPEN and the Iberoamerican Forum of Consumer Protection Agencies.

the scope of transactions subject to merger review. The FTC also plays a key role in the ICN's working group on Competition Policy Implementation, which assists new competition agencies to strengthen their institutional capacity and performance. Finally, the Commission serves on the ICN's Steering Group and will continue to play an active part in this organization, including at the ICN's seventh annual conference in Moscow in May.

OECD. The OECD Competition Committee is an important venue for antitrust officials from developed countries to share their experiences and promote best practices. The Committee recently held sessions on competition and energy security, competition and innovation, analysis of bidding markets in merger investigations, assessment of vertical mergers, and enhancing competition in real estate transactions. Upcoming topics include competition in legal services, guidance to the business community on the assessment of dominance, efficiencies in merger investigations, competition issues in public procurement, and the evaluation of actions and resources by competition agencies.

The OECD is planning to hold a Global Forum on Competition, with representatives from more than 20 agencies in non-member developing countries. The FTC is also helping to design a major session on the relationship between competition and consumer protection, and will also participate in other regional OECD programs targeted to non-members such as the Latin America Competition Forum.

UNCTAD. The FTC participates in UNCTAD's Intergovernmental Group of Competition Experts and selected regional competition programs. During the past year, the FTC participated in UNCTAD's programs on the relation between competition agencies and regulatory authorities, and on competition provisions in regional trade agreements. The Commission will continue to be involved in UNCTAD's upcoming work including programs on *ex post* evaluations of competition initiatives.

Free trade agreements. U.S. free trade agreements often include a chapter on competition issues. The FTC participates in U.S. delegations that negotiate competition chapters of free trade agreements, which in the past year included Korea, Thailand, and Malaysia.

Chapter 8. Consumer Protection

Rapid increases in technology and globalization have accelerated the pace of new consumer protection challenges, such as spam, spyware, telemarketing fraud, data security, and privacy that cross national borders and raise both enforcement and policy issues. The Internet and modern communications devices, such as Voice over Internet Protocol (VoIP), have provided tremendous benefits to consumers but have also aided telemarketing fraud and raised

fresh privacy concerns. To address these issues, the FTC has a comprehensive international consumer protection program that focuses on providing consumers in the global marketplace with sound and effective protections that maximize economic benefit and consumer choice.

A. The U.S. SAFE WEB Act

In the coming year, the FTC will implement the U.S. SAFE WEB Act of 2006, which was signed into law in December 2006, and which provides the FTC with updated tools for the 21st century. It allows the FTC to cooperate more fully with foreign law enforcement authorities in the area of cross-border fraud and other practices harmful to consumers that are increasingly global in nature, such as fraudulent spam, spyware, misleading health and safety advertising, privacy and security breaches, and telemarketing fraud.

> *"Congress has taken an important step in the fight to combat cross-border fraud by passing the U.S. SAFE WEB Act. Just as today's marketplace has gone global, so have scams and deception. Scammers cannot hide behind foreign borders to escape FTC law enforcers."*
>
> Chairman Majoras
> Statement on Passage of U.S. SAFE WEB Act
> (Dec. 11, 2006)

Specifically, the U.S. SAFE WEB Act enhances FTC authority in four areas that are essential to cross-border enforcement cooperation. First, the Act authorizes the FTC to share confidential information, such as documents and testimony, with appropriate limitations and assurances of confidentiality, with its foreign law enforcement counterparts. This will help the Commission's law enforcement efforts and U.S. consumers. Second, it permits the FTC to use its investigative power on behalf of foreign law enforcement agencies if it determines that the cooperation is consistent with the U.S. public interest. Third, the Act permits the FTC to protect the confidentiality of information it receives from foreign agencies. Finally, the Act contains several provisions that will strengthen the FTC's bilateral and multilateral enforcement relationships, such as permitting the FTC to enter into international cooperation agreements and staff exchanges with foreign counterparts. The U.S. SAFE WEB Act also confirms the FTC's authority to take action in cross-border cases and obtain remedies, including restitution for injured U.S. and foreign consumers.

B. International Law Enforcement Cooperation

Increased globalization also requires the FTC to cooperate in international policy and law enforcement efforts to develop flexible market-oriented standards to address long standing, as well as emerging, consumer protection issues. To achieve these goals, the FTC works directly with its consumer protection and other law enforcement partners in international organizations and foreign agencies. For example, the FTC continues to participate actively in the International Consumer Protection Enforcement Network (ICPEN) and supported the ICPEN's operations this year by hosting the Secretariat. The FTC will also continue to work within the OECD and the Organization of American States on consumer protection matters, for example, by developing dispute resolution and redress guidelines and model laws. FTC staff also met directly

with hundreds of foreign officials in Washington, D.C. on consumer protection issues, and reciprocated by meeting with their foreign counterparts in official visits to over 20 countries in the past year.

Privacy and Information Security Issues. The FTC has in particular undertaken recent steps to strengthen international cooperation on privacy and information security issues, including work within both APEC and the OECD to coordinate the enforcement of privacy laws. In 2006, for example, the FTC and its foreign partners called for increased cross-border law enforcement and public/private sector cooperation to combat spam. The OECD provided recommendations in this area in April 2006 when it issued the OECD Toolkit to Combat Spam, a comprehensive report that focuses on legislation, enforcement, education, technology, and public-private partnerships to fight spam. The FTC also co-chairs the London Action Plan (LAP) on international spam enforcement cooperation. The LAP's December 2006 meeting, held jointly with the European Union's Contact Network of Spam Authorities, focused on online threats beyond spam, including spyware and malware.

Canada. The FTC also continues to build its special relationship with its Canadian counterparts by expanding its partnerships with Canadian regional entities to fight cross-border fraud, including mass marketing fraud by Canadians targeting U.S. and Canadian consumers. The FTC participates in several regional partnerships with Canadian enforcers in Ontario, British Columbia, Quebec, Alberta, and the Atlantic Provinces. In February 2007, for example, working in cooperation with the local and provincial police in Ontario, the FTC obtained a court order that shut down a Canadian telemarketer that targeted consumers throughout the U.S., falsely claiming it could reduce their credit card interest rates.

"I received the following pages, unsolicited, from British Columbia regarding a mega-million lottery. I did not call or contact them in any way prior to, or after, receiving their communication that I am a 'winner.' I do hope this information is helpful in protecting others against this fraud."

Washington Consumer
February 2007

Cross-Border Cases. In 2006, the FTC's Bureau of Consumer Protection, with assistance from its international consumer protection personnel, filed eight new cases with a significant international aspect in federal court and continued to litigate and investigate dozens of other matters involving foreign parties, witnesses, and evidence. The FTC contacted and received assistance from agencies in approximately 15 countries in these cases and investigations.

Chapter 9. International Technical Assistance

The FTC, through the OIA, is also renewing its commitment to assist developing nations as they move toward market-based economies by assisting with development and implementation of competition and consumer protection laws and policies. Last year was another busy period for the FTC's international technical assistance program, which provides training and other education. Since its inception in the early 1990s, the program has

conducted hundreds of training missions in developing nations, employing the Commission's legal and economic expertise. In a typical training mission, a lawyer and economist team conducts a three or four day interactive case simulation with staffs from the newly created enforcement agencies that involve substantive and procedural issues likely to be encountered in a real investigation. These activities, funded mostly by the U.S. Agency for International Development (USAID), are an important part of the FTC's efforts to promote sound competition and consumer protection policies around the world. The FTC works in close cooperation with the DOJ Antitrust Division in conducting its antitrust activities in this program. During the coming year, the FTC will work with USAID and other funding agencies to find opportunities to expand the program, particularly in the consumer protection area.

In 2006, the FTC sent 34 different staff experts on 30 technical assistance missions to 17 countries. The FTC was most active this year in the ten-nation ASEAN community, India, Russia, Azerbaijan, South Africa, Central America, and Egypt. The Commission also conducted missions in Jordan and Ethiopia, and concluded a highly successful program in Mexico. As part of its ASEAN program, the FTC continues to maintain a resident advisor in Jakarta, Indonesia, who works with the ASEAN Office of the Secretary General, as well as with the competition and consumer protection authorities in Indonesia and Vietnam.

"The agency will continue to provide guidance to consumers in how to avoid the latest scams and frauds, and to businesses in how to comply with their legal obligations."

LOOKING AHEAD

The FTC's accomplishments in the past year presage the challenges and opportunities we will face in the next 12 months as we renew our commitment to champion for consumers and competition. With merger activity on the rise, we will review hundreds of mergers, increasingly in dynamic industries characterized by significant intellectual property interests. We will continue to focus our nonmerger antitrust scrutiny on areas that have a tremendous impact on consumers' lives – health care and pharmaceuticals, energy, technology, and real estate – with special attention directed at the interface between antitrust and intellectual property. We will root out and prosecute fraudulent business schemes in broad sectors of the economy, seeking restitution for consumers where appropriate, and use the new tools that the U.S. SAFE WEB Act provides for combatting cross-border fraud. And we will continue our pursuit of a "culture of security" through our work to protect consumers' privacy and data security and eradicate identity theft.

"Our ultimate goal is to identify future challenges and opportunities in fulfilling our core mission of protecting consumers. At the FTC, we recognize that being prepared for the future is critical if we are to foster confidence in consumers that they will benefit from new technologies, while being protected from undue risks that they create."

Chairman Majoras
Remarks at Public Hearings on Protecting Consumers in the Next Tech-ade
(Nov. 6, 2006)

As always, the FTC's enforcement efforts will be buttressed and informed by its many policy tools, including hearings, workshops, and studies to learn about the newest developments, emerging technologies, and concerns in the marketplace. For example, on the competition side, the Commission intends to conduct a study on authorized generic drugs and issue reports on broadband connectivity and the relationship between intellectual property and competition law and policy; while its consumer protection mission will be informed by workshops on spam and current debt collection practices, as well as by the Tech-ade town hall meetings. The agency will continue to provide guidance to consumers in how to avoid the latest scams and frauds, and to businesses in how to comply with their legal obligations. It will also draw on resources from its newly-created Office of International Affairs to most effectively coordinate with its foreign partners to combat international threats, and will continue to work with other domestic law enforcement agencies in its fight against consumer fraud. We are honored to work on behalf of American consumers and will strive continuously to protect the free market from those that would distort or cheat it.

Left to right: Michael Salinger, Nancy Ness Judy, Donald S. Clark, Jeanne Bumpus, Charles Schneider, Lydia Parnes, Jeffrey Schmidt, Brian Huseman, Maureen K. Ohlhausen, Randolph W. Tritell, William Blumenthal.

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Chief Administrative Law Judge	Stephen J. McGuire
Inspector General	Howard L. Sribnick

FTC ANNUAL AWARDS - OCTOBER 2006

Chairman's Award

Carolyn Shanoff

Louis D. Brandeis Award

Joseph Brownman

Janet D. Steiger Outstanding Team Award

E-Premerger Deployment Team
Identity Theft Team
Schering-Plough Team
Spyware Team

Richard C. Foster Award

Darlene Cossette
Joyce Moore
Louise Woodson

James M. Mead Award

Dawne Holz
Patricia Thompson
Howard Shapiro

Paul Rand Dixon Award

David Balan
Christopher Couillou
Christopher Garmon
Geoffrey Green
David Narrow
Alain Sheer
Kim Vandecar

Mary Gardiner Jones Award

Pamela Timus

Award for Excellence in Supervision

Sherron Greulich
Deborah Kelly
Carrie Klein
Daniel Salsburg
Thomas Syta

Otis B. Johnson Award

Claudia Bourne Farrell
Allyson Himelfarb
Alan Krause
Stefano Sciolli

Excellence in Economics Award

Keith Anderson

Outstanding Scholarship Award

Christopher Taylor

Stephen Nye Award

Rozina Bhimani
Malini Mithal
Mary Elizabeth O'Neill

Leon Higgenbotham, Jr. Award

Jill Coleman
Robert Sussman

Eleanor F. Greasley Award

Emily Anderson
Tammy John
Lula Little

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"The record of accomplishments in the interest of fair competition ... warrant that this body shall have a habitation adequate to its needs and in keeping with the importance of the tasks which it has accomplished and will continue to perform in the protection of American trade."

Franklin D. Roosevelt
Address at the Cornerstone Laying Ceremonies for the New Federal Trade Commission Building, July 12, 1937

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