

Prepared Remarks of
Commissioner Pamela Jones Harbour

Before the
United States Senate
Committee on Commerce, Science, and Transportation

Hearing on Reauthorization

April 8, 2008
10:00 a.m.

Chairman Dorgan, Vice Chairman Stevens, and Members of the Commerce Committee: I am Pamela Jones Harbour, a Commissioner of the Federal Trade Commission. I am pleased to appear before you today to testify about the proposed bill to reauthorize the Federal Trade Commission.

My colleague, Chairman Kovacic, shared his thoughts about the agency's growth and our continued efforts to pursue vigorous and effective law enforcement in the rapidly changing marketplace. In particular, I would like to highlight recent efforts and accomplishments of the Commission in both the competition and consumer protection areas.

Merger investigations are always a high priority at the Commission. This past January, the Commission enjoyed a resounding "win" on the merger front, when the U.S. Court of Appeals for the Fifth Circuit upheld a Commission order in the *Chicago Bridge & Iron* matter. In 2005, the Commission had ruled that CB&I's acquisition of assets from a competitor was likely to substantially lessen competition, or tend to create a monopoly, in markets for cryogenic storage tanks used in a variety of industrial applications. The Commission had ordered divestitures to undo the deal and restore competition. The Fifth Circuit's recent opinion fully endorsed the Commission's findings. The court agreed with the Commission's analytical approach to the merger

as well as the ordered relief.

Pharmaceutical markets have long been a critical focus area for the Commission, and we continue to be vigilant in protecting pharmaceutical competition. For example, this past February, the Commission filed a case charging that Cephalon, a pharmaceutical manufacturer, unlawfully blocked competition for a branded drug by paying four generic firms to stay off the market until 2012. We are investigating similar “exclusion payments” involving other pharmaceutical firms, as well.

Of course, we also pay close attention to a wide range of issues in energy markets. We are considering how best to use our new enforcement authority regarding manipulation of wholesale crude oil, gasoline, and petroleum distillate markets. It is also worth noting the Commission’s recent challenge of the proposed acquisition by Equitable Resources of the Peoples Natural Gas Company, a subsidiary of Dominion Resources. The parties abandoned the transaction in January 2008.

In April 2007 we unsuccessfully attempted to keep gasoline prices from going up in Albuquerque, NM. We sought a preliminary injunction in federal court in New Mexico to stop Western Refining, Inc.’s acquisition of Giant Industries, Inc. Unfortunately, the district court did not believe the merger would cause gasoline prices to go up.

On the consumer protection front, last week the Commission announced settlements with retailer TJX and data brokers Reed Elsevier and Seisint, settling charges that the companies failed to provide reasonable and appropriate security for sensitive personal information. These cases bring the total number of data security enforcement actions to 20.

But rather than celebrate this milestone, we will use it to remind ourselves – and the larger business community – how more work awaits us in this important area. Our data security cases

typically allege multiple and systemic security vulnerabilities that were easily and inexpensively avoidable. This suggests that companies must do more to protect sensitive customer information. Security is an ongoing process, not a static exercise.

The Commission will continue to educate consumers and businesses about protecting personal information, and we will continue to hold companies accountable for their information security practices. As you will hear from my colleague, Commissioner Leibowitz, additional civil penalty authority in areas including data security will reinforce the deterrent effect of the cases the agency brings.

We are tremendously gratified that Congress expanded the Commission's ability to cooperate with our foreign counterparts through the U.S. SAFE WEB Act. The law added new information sharing tools into the Commission's law enforcement arsenal. This allows us to pursue a wider range of cross-border enforcement matters involving spam, spyware, telemarketing fraud, misleading health and safety claims, and privacy and security breaches – all challenges we face in an increasingly global marketplace.

The Commission continues to expand its international enforcement cooperation efforts using the tools provided by the SAFE WEB Act. Cross-border enforcement cooperation is one of the most important issues in consumer protection and consumer privacy, and its importance is only going to grow further. Harmful practices affecting consumers no longer confine themselves within national borders. Just as a strong domestic enforcement program is important to reap the benefits of good privacy laws, strong cross-border enforcement capabilities are equally essential in a global economy.

In the past year, the Commission focused on implementing the SAFE WEB Act. We published new (and amended) rules to facilitate international information sharing. Since the rules went into effect in May 2007, the FTC has shared information 17 times with foreign agencies in

cross-border consumer protection matters involving fraudulent telemarketing scams, deceptive mail schemes, and spam cases. For example, when investigating a Canadian-based bogus lottery and prize-promotion scam, SAFE WEB enabled us to share key information with our Canadian enforcement partners. Another case involved an international spam enterprise in which spammers drove traffic to web sites selling phony weight-loss and anti-aging products. Defendants were located in Canada and Australia as well as here in the United States; we shared information with both of our foreign enforcement partners.

The Commission has also used its new authority to provide investigative assistance to foreign agencies in multiple Internet-related investigations. In short, the increasing use of the FTC's new authority is removing some of the key roadblocks to effective international enforcement cooperation.

The Commission will continue to focus on the SAFE WEB Act in 2008. We hope to enter into cooperation agreements with several important foreign jurisdictions. We also seek to improve our ability to obtain remedies in cross-border cases, including restitution for injured U.S. and foreign consumers.

Mortgage lending has long been a Commission priority. In the past decade, the agency has brought 21 actions focused on the mortgage lending industry, alleging that mortgage brokers, lenders, and servicers have engaged in unfair or deceptive acts and practices. These cases have collectively returned more than \$320 million to consumers.

In February, the Commission announced three actions against companies that allegedly made false guarantees to homeowners that they would save their homes from foreclosure. In one case, the Commission charged that the company enticed consumers into a second mortgage or home equity line of credit on unfavorable terms without fully disclosing the costs, risks, and consequences

of doing so.

In conjunction with these cases, the Commission launched a related consumer education effort: a fact sheet on how to avoid foreclosure rescue scams; a series of radio PSAs, in English and Spanish; and warnings about foreclosure rescue schemes, which we will place in the classified ad sections of English- and Spanish-language community newspapers.

The Commission likewise has been active in its efforts to protect consumers of non-mortgage financial services. The agency also announced in February consent agreements with three Internet payday lenders who advertised the cost of their loans without disclosing their annual percentage rate in violation of the Truth in Lending Act. The violation makes it far more difficult for consumers to comparison shop between payday loans as well as between payday loans and other short term forms of credit.

I appreciate the opportunity to present remarks on these important issues, and I welcome your questions on these and other topics. Thank you.