

**Prepared Statement
of
The Federal Trade Commission**

on

Reauthorization

**Before the
Subcommittee on Consumer Affairs, Foreign Commerce and Tourism
of the
Committee on Commerce, Science, and Transportation
United States Senate**

Washington D.C.

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I. INTRODUCTION

Mr. Chairman and Members of the Subcommittee, the Federal Trade Commission (FTC) is pleased to appear before you to support our reauthorization request for Fiscal Years 2003 to 2005. Since our last reauthorization hearing in February 2000, the FTC has continued to take innovative and aggressive actions to protect consumers and promote competition.

The FTC is the only federal agency with both consumer protection and competition jurisdiction over broad sectors of the economy.⁽¹⁾ We enforce laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers. We also promote informed consumer choice and public understanding of the competitive process. The work of the FTC is critical in protecting and strengthening free and open markets in the United States and, increasingly, the world.

The FTC is a small agency, but one with a large mission. The FTC has shouldered an ever-increasing workload as the economy becomes more global and more high tech. The agency has met its broad responsibilities with only modest increases in resources. Highlights of recent accomplishments include:

- Enhancing consumer privacy and security. Since April 2001, the FTC has brought 22 cases involving privacy and security issues, ranging from "pretexting" (obtaining personal information under false pretenses) and children's privacy to "spam" (unsolicited commercial e-mail). The agency also has held three workshops to address privacy issues such as financial privacy notices and the security of consumer information.
- Recovering as much as \$60 million for nearly 18,000 consumers who were victims of fraudulent lending under the terms of a proposed settlement that requires court approval. Working with the AARP, six states, and individual plaintiffs, in March 2002 the FTC settled charges against a mortgage company and its CEO for misleading consumers about fees they would be charged, which amounted to 10 to 15 percent of the loans.
- Attacking fraud. Since June 2001, the FTC has filed 98 federal court actions and obtained judgments for more than \$160 million.

- Stopping branded drug manufacturers from eliminating competition from cheaper generic equivalents. Recent cases addressing conduct allegedly stifling generic competition have involved drugs for high blood pressure, anxiety, and angina and other cardiac problems.
- Preventing anticompetitive effects of mergers in the petroleum industry. Last year, the FTC reviewed three multi-billion dollar oil mergers and, where necessary, required divestitures in two of the proposed mergers to ensure continued competition in refining, distribution, and retail sales of gasoline in markets across the United States.
- Ensuring competition among health care providers. The FTC is challenging as illegal agreements among providers to fix fees and boycott health plans that resist paying higher fees. The FTC's goal is helping to insure the existence of a competitive health care industry that consistently delivers high-quality care at competitive costs.

In accomplishing these goals, there is a high degree of unity among the five Commissioners. In fact, there is near unanimity in voting patterns, particularly with respect to votes concerning law enforcement matters. The near unanimity of voting patterns reflects both a broad consensus among the Commissioners about the types of cases the Commission should pursue, and the careful and deliberate process by which the Commissioners consider matters, consulting with the staff to address the issues and concerns of individual Commissioners. As Chairman Muris has stated,⁽²⁾ through the efforts of a talented, dedicated, and professional staff, the current Commission is building on the extraordinary work of former Chairman Robert Pitofsky.

II. MISSION FOCUS

In the next few years, the FTC will focus its resources in significant areas of the economy through law enforcement actions, consumer and business education campaigns, and continuing assessment of ongoing developments in the marketplace. As we explain in detail below, the FTC's activities fulfill its mission on behalf of American consumers by:

- Continuing emphasis on critical areas of law enforcement - stopping and preventing consumer fraud and deception as well as stopping anticompetitive mergers;
- Enhancing consumer privacy and security;
- Preventing deceptive and anticompetitive health care practices;
- Promoting and maintaining competitive energy markets;
- Keeping pace with technology and the changing marketplace;
- Targeting special initiatives to specific groups of consumers; and
- Advancing efficient law enforcement.

A. CONTINUING EMPHASIS ON CRITICAL AREAS OF LAW ENFORCEMENT

Two areas in the FTC's jurisdiction have become staples of its law enforcement agenda - (1) fighting consumer fraud and deception, and (2) preventing anticompetitive mergers. Since 1995, the FTC has attacked fraud and deception by bringing 1,052 federal court and administrative actions, and obtaining orders for more than \$825 million in consumer redress.⁽³⁾ During the same time period, the FTC reviewed over 26,000 proposed mergers worth a total of nearly \$10 trillion, opened about 1,600 formal investigations (issuing "Second Requests" in more than 300 matters), and took enforcement action in over 230 transactions. Over the next few years, the FTC plans to

devote significant resources to build on its solid record of achievement in these areas.

1. Consumer Fraud and Deception

The FTC targets both traditional types of fraud and deception and those types that capitalize on new technologies. Simply stated, our mission is to identify the most egregious forms of fraud and deception; to bring cases, on our own and with our law enforcement partners across the country and around the globe; and to educate industry about complying with the law, consumers about how to protect themselves from fraud and deception, and ourselves about emerging issues.

The FTC has two toll-free telephone numbers and an online form available to consumers who have questions or complaints. Consumer complaints are entered into a number of FTC databases, which are accessible to increasing numbers of domestic and foreign law enforcement partners. To identify the most pervasive forms of fraud and deception, and to target wrongdoers for law enforcement actions, we analyze the information collected through the following data systems:

- **Consumer Response Center.** The FTC's Consumer Response Center (CRC) fields complaints and inquiries on a wide variety of consumer protection issues. Consumers can use a toll-free number (1-877-FTC-HELP), as well as an online form and the mail, to contact the CRC with complaints and inquiries. The CRC now responds to more than 55,000 inquiries and complaints a month.
- **Consumer Sentinel.** Established by the FTC in 1997, Consumer Sentinel⁽⁴⁾ is a fraud database available online to law enforcement agencies across the U.S. and Canada. It receives complaints from the FTC's CRC and from a growing number of other organizations in the U.S. and Canada. *Sentinel* now contains more than 680,000 complaints, and is the richest source of consumer fraud data available to law enforcement agencies. Since June 2001, the FTC has recruited 115 new *Sentinel* members, bringing the total number of *Sentinel* users to more than 460 law enforcement agencies. Law enforcement agencies can use this centralized database to identify trends and target companies that have received a large number of consumer complaints. Consumers also can access publicly available sections of this Web site for statistics about fraud, including the schemes that garner the most consumer complaints, the location of companies subject to complaints, and tips on how to avoid fraud.
- **Identity Theft.** Another FTC toll-free number, 1-877-ID-THEFT, is a central clearinghouse and a critical source of consumer complaint data on ID theft. Calls have increased from 2,200 calls per week one year ago to over 3,000 today. Building on its experience with *Consumer Sentinel*, the FTC began making the data available to its law enforcement partners through an online database. More than 350 law enforcement agencies - 46 separate federal agencies and 306 state and local agencies - now can access the data. Among the agencies represented are more than half of the state Attorneys General, as well as law enforcement authorities from a number of major cities including Baltimore, Dallas, Los Angeles, Miami, San Francisco, and Philadelphia. To encourage even greater participation, we have conducted law enforcement training and outreach since April of this year to demonstrate the efficacy of the clearinghouse. As one example of positive results from these efforts, within three weeks after our most recent training seminar in Chicago, approximately a third of the participating agencies without prior access to the clearinghouse had signed up. We will continue to focus resources and to devise new methods to expand law enforcement access to the database. Finally, FTC investigators, working with the Secret Service, have started to prepare preliminary investigative reports based on clearinghouse data, which are referred to Financial Crimes Task Forces for possible prosecution.
- **Spam Database.** Since 1998, the FTC has maintained an electronic mailbox

(uce@ftc.gov) to which Internet customers can forward unsolicited commercial e-mail, commonly known as "spam." This database currently receives, on average, 42,000 new pieces of spam every day. The total number of spam e-mails has grown from 700,000 in the first year to more than 10 million today. The FTC staff searches the database to identify trends and select law enforcement targets.

- **Surf Days.** The FTC ferrets out online fraud and deception through "Surf Days." First used in 1996 to look for online pyramid schemes, the law enforcement surf is now a staple of FTC online scheme identification, usually conducted with other law enforcement agencies. It provides both a window to learn about online practices and a way to alert new Web site providers - some of whom are new entrepreneurs unaware of relevant laws - that their sites appear to violate the law. Since May 2001, the FTC has conducted six surfs with more than 140 partners, focusing on claims about unsubscribing from spam, remedies or preventive products for anthrax and other serious diseases, bioterror protection devices, e-tailer holiday shipping, and ultrasonic pest-control devices.

Drawing on consumer complaint data and information gathered from Surf Days, the FTC targets fraudulent and deceptive practices. The FTC's cases reflect a broad range of illegal activity, including telemarketing fraud, franchise fraud, business opportunity and work-at-home schemes, advance fee loan and credit loss protection schemes, and false and unsubstantiated claims for health and weight loss products. The FTC also has continued to bring deceptive advertising cases, focusing in particular on cases that involve health or safety issues, or significant economic injury. Recent cases include:

- **Project Busted Opportunity.** In June 2002, the FTC, the Department of Justice, and 17 state law enforcement agencies announced law enforcement actions against 77 targets engaged in the sale of business opportunities or work at home schemes. The targets allegedly used deceptive earnings claims and paid "shills" to promote their schemes or otherwise violate consumer protection laws.⁽⁵⁾
- **Operation Dialing for Deception.** In April 2002, the FTC announced the filing of 11 federal district court complaints challenging "in-bound" telemarketing fraud - situations in which consumers call companies based on classified ads, Internet banners, or other promotions. Among those charged were the purveyors of advance-fee loans and credit cards, at-home medical billing programs, work-at-home envelope stuffing schemes, and a "consumer protection" agency that was, in reality, no more than a shill for a vending machine business opportunity.⁽⁶⁾
- **Magazine Telemarketing.** A federal court ordered a group of magazine subscription telemarketers to pay \$39 million in consumer redress for violating the terms of a 1996 FTC settlement. Among other provisions, the FTC's 1996 order barred the defendants from misrepresenting the cost of subscriptions, charging consumers' accounts without authorization, and threatening to harm consumers' credit ratings. To facilitate the redress process, the FTC established a special hotline for consumers who think that defendants may have billed them improperly.⁽⁷⁾
- **"Miss Cleo."** The FTC obtained a federal court order against the promoters of "Miss Cleo" psychic services after charging that defendants misrepresented the cost of services, billed for services never purchased, and engaged in deceptive collection practices. Among other provisions, the court's order enjoins the defendants from any future misrepresentations about the cost of psychic readings and from making harassing telemarketing calls. The FTC estimates that the defendants billed consumers \$360 million in connection with this alleged illegal scheme.⁽⁸⁾
- **Ab Devices.** In "Project ABsurd," the FTC challenged widely advertised "ab" devices. In

suits against three marketers of electronic abdominal exercise belts, the FTC charged that infomercials falsely advertised that users would get "six pack" or "washboard" abs without exercise. The 30-minute infomercials were heavily aired on national cable television stations, such as USA, TNN, Lifetime, E!, FX, and Comedy Central, and were among the ten most frequently aired infomercials in weekly U.S. rankings. The FTC's action seeks a permanent injunction to stop future false or deceptive claims and the payment of redress to consumers who bought the devices.⁽⁹⁾

- **Wonder Bread.** In March 2002, the FTC announced a settlement with the marketers of Wonder Bread concerning allegedly deceptive ads claiming that Wonder Bread could improve children's brain function and memory.⁽¹⁰⁾
- **Palm, Inc.** Palm, the leading manufacturer of Personal Digital Assistants (PDAs), agreed to a settlement concerning its claims that its PDAs come with built-in wireless access to the Internet and e-mail, as well as other common business functions - claims that the FTC alleged were not true for many models of the popular PDAs. Announced in March 2002, the settlement requires Palm to disclose, clearly and conspicuously, when consumers have to buy add-ons to perform advertised functions.⁽¹¹⁾

2. Anticompetitive Mergers

Merger enforcement also continues to be a staple of the FTC's enforcement agenda. Stopping mergers that substantially lessen competition ensures that consumers pay lower prices and have greater choice in their selections of goods and services than they otherwise would. The level of merger activity in the marketplace, along with other factors, affects the FTC's merger workload. During the 1990s, record-setting levels of mergers, both in numbers and in size, required extraordinary efforts by the FTC staff to manage the necessary reviews within statutory time requirements. Recent economic conditions have reduced merger activity, and amendments to the Hart-Scott-Rodino Act⁽¹²⁾ have cut the number of proposed mergers reported to the government. Even so, FTC merger enforcement remains a significant challenge for the following reasons:

- **The size, scope, and complexity of mergers have increased.** The number of mergers still remains relatively high by historic standards, and mergers also continue to grow in size, scope, and complexity. The dollar value of last year's reported mergers was about 82 percent higher, in nominal terms, than the 1995 total, even without any adjustment for the different filing thresholds. In fact, the \$1 trillion total in 2001 exceeded the average annual total dollar value of reported transactions during the booming 1991-2000 decade. The size of mergers affects the FTC's workload because mergers among large diversified firms are likely to involve more products than mergers among smaller firms, and thus generally involve more markets requiring antitrust investigation. In addition, larger firms are more likely to be significant players in the markets in which they compete - increasing the need for antitrust review. Finally, as new technologies continue to grow and as the economy becomes more knowledge-based, the resulting complexity of many mergers requires more extensive inquiry.
- **Large numbers of mergers still require scrutiny.** The number of proposed mergers raising competitive concerns remains significant. Despite fewer reported transactions, the FTC's level of enforcement activity remains at a high level. Through the first eight months of this year, for example, we opened well over 100 merger investigations and issued 20 requests for additional information under the HSR Act (Second Requests), numbers only slightly below those during the peak merger wave years 1996 through 2000. Thus far in FY 2002, the FTC has taken enforcement action in 21 mergers. Thus, despite a drop in the number of merger filings, our merger enforcement workload remains high because the workload derives mostly from the number of transactions raising antitrust concerns, not

from the overall number of filings.

- **Non-reportable mergers now require greater attention.** Although fewer proposed mergers remain subject to the reporting requirements of the HSR Act, the standard of legality under Section 7 of the Clayton Act remains unchanged.⁽¹³⁾ Consequently, we need to identify through means such as the trade press and other news articles, consumer and competitor complaints, hearings, and economic studies, those unreported, usually consummated, mergers that could harm consumers. So far this fiscal year, the FTC has challenged two non-reportable mergers.⁽¹⁴⁾
- **Resource-intensive litigation is more frequently needed.** While the FTC resolves most merger challenges through settlement, it is sometimes necessary to litigate, particularly when the merger at issue already has been consummated. Merger litigation requires enormous resources. At the height of preparation, a single merger case requires the full-time attention of numerous staff members - not only lawyers, but also economists, paralegals, and support staff. To counter arguments and evidence presented by merging parties, these cases also require analysis and testimony by outside experts with specialized knowledge, which can be extremely costly. Since the fiscal year began, the FTC has filed two administrative actions,⁽¹⁵⁾ and has authorized federal court challenges to five proposed mergers involving products including rum,⁽¹⁶⁾ food service glassware,⁽¹⁷⁾ pigskin and beef hide gelatin,⁽¹⁸⁾ telescopes,⁽¹⁹⁾ and cervical cancer screening products.⁽²⁰⁾

B. PROTECTING CONSUMER PRIVACY AND SECURITY

A major focus of the FTC for the next several years will be the protection of consumer privacy and security. Consumers are deeply concerned about the privacy and security of their personal information, both online and offline. Although privacy concerns have been heightened by the rapid development of the Internet, concerns are by no means limited to the cyberworld. This fiscal year, we have substantially increased resources dedicated to privacy protection. The agency has undertaken several major privacy initiatives to reduce the serious consequences to consumers that can result from the misuse of personal information.

1. Do Not Call Initiative

The FTC has proposed amending the Telemarketing Sales Rule (TSR)⁽²¹⁾ to create a national do-not-call list that would be binding on telemarketers and allow consumers to make one call to remove their names from most telemarketing lists. The proposal also would restrict the use of "preacquired account information" - lists of names and credit card numbers of potential telemarketing customers - to ensure that these lists are not used to bill consumers for unwanted goods or services. To date, the FTC has received over 40,000 comments on the TSR proposal, reflecting a high degree of public interest.

2. Public Workshops

In December 2001, the FTC co-hosted, with seven other federal agencies, a public workshop titled *Get Noticed: Effective Privacy Notices under Gramm-Leach-Bliley*, which assessed the impact of GLB privacy notices, identified successful privacy notices, discussed strategies for communicating complex information, and encouraged industry "best practices" and consumer and business education.⁽²²⁾ In May 2002, the FTC hosted a two-day public workshop to explore issues related to the security of consumers' computers and the personal information stored in them or in company databases.⁽²³⁾

3. ID Theft

In 2001, identity theft was the number one consumer complaint made to the FTC. To help stamp out this growing consumer problem, the FTC has undertaken a number of initiatives:

- **Identity Theft Law Enforcement Training.** Last March, the FTC, the U.S. Secret Service, and the Department of Justice kicked off a series of nationwide training seminars to provide hundreds of local and state law enforcement officers with practical tools to enhance their efforts to combat identity theft.
- **ID Theft Affidavit.** In October 2001, the FTC joined with several companies and privacy organizations to create a universal identity theft affidavit for victims of identity theft to submit to creditors. Available online, the form helps victims recoup their losses and restore their legitimate credit records more quickly.
- **Identity Theft Education.** The FTC has coordinated with other government agencies and organizations to develop and disseminate comprehensive consumer education materials for victims of identity theft and those concerned with preventing this crime. Since its publication, the FTC has distributed more than 850,000 hard copies of its best-selling publication, "Identity Theft: When Bad Things Happen to Your Good Name," and has logged over 700,000 visits to its Web version. The FTC also launched an outreach effort to Spanish-speaking victims of identity theft, releasing Spanish versions of the identity theft booklet (Robo de Identidad: Algo malo puede pasarle a su buen nombre) and the ID Theft Affidavit. We have added Spanish-speaking phone counselors to our hotline staff and will soon launch a Spanish version of our online complaint form.

4. Privacy Enforcement Actions

The FTC brings law enforcement actions when it has reason to believe that laws protecting privacy have been violated. Recent FTC privacy enforcement actions include:

- **Children's Privacy.** Over the past year, the FTC brought six cases involving the rule implementing the Children's Online Privacy Protection Act (COPPA) for alleged violation of the requirement that commercial Web sites give notice of their information practices and obtain parental consent before collecting, using, or disclosing personal information about children under 13. As part of these settlements, the companies agreed to pay civil penalties totaling \$175,000.⁽²⁴⁾
- **Eli Lilly.** The FTC settled charges that Eli Lilly & Company unintentionally had disclosed the e-mail addresses of users of its Prozac.com and Lilly.com Web sites by failing to take reasonable steps to protect the confidentiality and security of that information. The settlement requires Lilly to establish a security program to protect consumers' personal information against any reasonably anticipated threats or hazards to its security, confidentiality, or integrity.⁽²⁵⁾
- **Pretexting Cases.** The FTC has taken its first steps to enforce prohibitions against "pretexting" - the use of false pretenses to obtain customer financial information - which is prohibited under the Gramm-Leach-Bliley Act.⁽²⁶⁾ FTC staff found apparent violations after a surf of 1,000 Web sites and a review of 500 publications. The FTC sent warning notices to 200 firms and settled three actions in federal court involving the most egregious situations.⁽²⁷⁾
- **Preacquired Account Information.**⁽²⁸⁾ A group of "buying clubs" has agreed to pay \$9 million to settle charges by state Attorneys General and the FTC that they deceptively enticed consumers into accepting free trial memberships and deceptively obtained billing information from the consumers, which they used to bill consumers for membership in the "buying clubs" without the consumers' knowledge or authorization.⁽²⁹⁾
- **Spam.** In February 2002, the FTC announced federal court settlements with seven individuals who allegedly were disseminating deceptive chain-letter e-mails involving

pyramid schemes with "get rich quick" schemes.⁽³⁰⁾ In April 2002, the FTC announced a law enforcement action challenging "spam" e-mail messages that deceptively claimed that consumers had won a free Sony PlayStation 2 or other prize through a promotion purportedly sponsored by Yahoo, Inc. When consumers responded to the e-mail message, they were routed to an adult Internet site via a 900-number modem connection that charged them up to \$3.99 a minute.⁽³¹⁾

C. PREVENTING DECEPTIVE AND ANTICOMPETITIVE HEALTH CARE PRACTICES

The cost of health care has become increasingly significant to both the economy and the American family. Health-related products and services account for over 13 percent of gross domestic product, up from 10.9 percent in 1988.⁽³²⁾ A major FTC objective is to root out deceptive practices that waste consumer dollars on ineffective or bogus remedies, and to stop collusion and other anticompetitive practices that drive up health care costs and decrease quality.

1. Internet Health Fraud and Deception

The Internet has become the newest venue for marketing snake oil. Promoters of fraudulent products and services continue to use the Internet to plague consumers searching for cures for various diseases and preventative treatments to manage their health. The FTC has in place several programs to protect consumers from scam artists who prey upon consumers' fears and concerns about their health.

- **Bioterrorism Project.** Following the tragedies of September 11 and the anthrax attacks, the FTC targeted purveyors of phony products related to bioterrorism diseases. Last October, staff from the FTC, the Food and Drug Administration (FDA), and the offices of 30 state Attorneys General conducted a surf and followed it up with warning letters to 121 Web sites. These sites were exploiting bioterrorism fears by marketing ineffective products, ranging from oregano oil to gas masks. To date, over 70 of the 121 warned sites have eliminated their objectionable claims. In February, the FTC announced settlements with marketers of an ineffective anthrax home test kit⁽³³⁾ and an on-line seller of a colloidal silver product advertised to treat anthrax.⁽³⁴⁾
- **"Teaser" Web Sites.** One of the principal challenges facing the FTC is reaching consumers *before* they fall victim to a fraudulent scheme. Knowing that many consumers use the Internet to shop for information, agency staff have developed 14 different "teaser" sites that mimic fraudulent sites and that are found easily by consumers who conduct research on the Internet with popular search engines. Within three clicks, the teaser sites link back to the FTC's site, where consumers can find practical, plain language information on recognizing fraudulent claims on a range of topics, including health care products. Feedback from the public on FTC teaser sites has been overwhelmingly positive.⁽³⁵⁾
- **"Operation Cure.All."** In June 2001, the FTC, in cooperation with the FDA, Health Canada, and various state Attorneys General, announced "Operation Cure.All," the latest round of enforcement actions against online purveyors of health products that purported to cure serious diseases. The FTC challenged allegedly unfounded claims regarding a DHEA hormonal supplement, St. John's Wort, various multi-herbal supplements, colloidal silver, and a variety of electrical therapy devices.

Commissioner Sheila Anthony recently discussed Operation Cure.All before the Food and Drug Law Institute's 45th Annual Educational Conference in a speech titled "Combating Deception in Dietary Supplement Advertising" (April 16, 2002).⁽³⁶⁾ This speech discussed the FTC's recent law enforcement actions and proposed a strengthened self-regulatory response and more media responsibility to address the widespread problem of deceptive and unsubstantiated health claims

for dietary supplement products.

2. Collusion and Other Anticompetitive Practices

During the past year, the FTC has placed renewed emphasis on stopping collusion and other anticompetitive practices that raise health care costs and decrease quality.

(a) Antitrust Investigations Involving Pharmaceutical Companies. The growing cost of prescription drugs is a significant concern for patients, employers, and government. Drug expenditures doubled between 1995 and 2000.⁽³⁷⁾ In response, the FTC dramatically has increased its attention to pharmaceutical-related matters in both merger and non-merger investigations. The agency now focuses one-quarter of all competition mission resources on this industry. We also have opened increasingly more pharmaceutical-related investigations. In 1996, less than 5 percent of new competition investigations involved pharmaceuticals, while in 2001, the percentage of new investigations involving pharmaceutical products was almost 25 percent.

- **Mergers Affecting the Pharmaceutical Industry.** Last year, the FTC took action to restore competition in the market for integrated drug information databases in a case involving violations of both Sections 7 and 7A of the Clayton Act. This case marked the first time the FTC sought disgorgement of profits as a remedy in a merger case. The case resulted from the 1998 acquisition by Hearst Corporation of the Medi-Span integratable drug information database business. Pharmacies, hospitals, doctors, and third-party payors rely on such databases for information about drug prices, drug effects, drug interactions, and the eligibility for drugs under various payment plans. At the time of the acquisition, Hearst already owned First DataBank, Medi-Span's only competitor. The FTC alleged that the acquisition created a monopoly in the sale of integratable drug information databases, causing prices to increase substantially to all database customers.⁽³⁸⁾ We negotiated a settlement requiring Hearst to divest the Medi-Span database and to disgorge \$19 million in illegal profits, which will be distributed to injured consumers.⁽³⁹⁾
- **Pharmaceutical Firms' Efforts to Thwart Competition from Generic Drugs.** In its non-merger enforcement cases, the FTC focused on efforts by branded drug manufacturers to slow or stop competition from lower-cost generic drugs. While patent protection for newly developed drugs sometimes limits the role of competition in this industry, competition from generic equivalents of drugs with expired patents is highly significant. The Congressional Budget Office reports that consumers saved \$8 to 10 billion in 1994 alone by buying generic versions of branded pharmaceuticals.⁽⁴⁰⁾ The first generic competitor typically enters the market at a significantly lower price than its branded counterpart, and gains substantial share from the branded product. Subsequent generic entrants typically bring prices down even further.⁽⁴¹⁾ Anticompetitive "gaming" of certain provisions of the Hatch-Waxman Act⁽⁴²⁾ to forestall generic entry has been a major focus of FTC enforcement actions. FTC Hatch-Waxman abuse cases have fallen into three categories:

(i) Agreements Not to Compete. The first category involves agreements between manufacturers of brand-name drugs and manufacturers of generics in which the generic firm allegedly is paid not to compete. The FTC has settled three such cases, including a recent settlement with American Home Products (AHP). That settlement resolved charges that AHP entered into an agreement with Schering-Plough Corporation to delay introduction of a generic potassium chloride supplement in exchange for millions of dollars. The FTC had alleged that an AHP generic would have competed with Schering's branded K-Dur 20, used to treat low potassium conditions, which can lead to cardiac problems.⁽⁴³⁾

(ii) Fraudulent "Orange Book" Listings. The second category deals with

unilateral conduct by branded manufacturers to delay generic entry. Pursuant to the Hatch-Waxman Act, a branded drug manufacturer must list any patent claiming its branded drug in the FDA's "Orange Book." Companies seeking FDA approval to market a generic equivalent of that drug before patent expiration must provide notice to the branded manufacturer, which then has an opportunity to file a patent infringement action. The filing of such an action within the statutory time frame triggers an automatic 30-month stay of FDA approval of the generic drug. Certain branded manufacturers have attempted to "game" this regulatory structure by listing patents in the Orange Book improperly. Such a strategy permits the company to abuse the Hatch-Waxman's stay provision to block generic competition without advancing any of the Act's procompetitive objectives. The FTC recently filed an action against Biovail Corporation (Biovail), alleging that it had illegally acquired a license to a patent and engaged in such an anticompetitive patent listing strategy with respect to its high blood pressure drug, Tiazac. The matter was resolved through a consent order, which requires Biovail to: (1) transfer certain rights in the acquired patent back to their original owner; (2) terminate its infringement suit against the generic competitor, thereby terminating the 30-month stay; (3) refrain from any action that would trigger another 30-month stay; (4) refrain from future improper Orange Book listing practices; and (5) provide the FTC with prior notice of the acquisitions of any patents it intends to list in the Orange Book.⁽⁴⁴⁾

The FTC also recently filed an *amicus* brief in pivotal private litigation involving allegations of fraudulent Orange Book listing practices.⁽⁴⁵⁾ *In re Buspirone* - which is the subject of continuing litigation - involves allegations that Bristol-Myers Squibb Co. ("BMS") violated the antitrust laws by fraudulently listing a patent on its branded drug, BuSpar, in the FDA's Orange Book, thereby foreclosing generic competition. BMS argued that the conduct in question was covered by the *Noerr-Pennington* doctrine - a legal rule providing antitrust immunity for conduct that constitutes "petitioning" of a governmental authority. In its *amicus* brief opposing *Noerr* immunity, the FTC argued that submitting patent information for listing in the Orange Book did not constitute "petitioning" the FDA and that, even if it did, various exceptions to *Noerr* immunity applied. The district court subsequently issued an order denying *Noerr* immunity and adopting much of the Commission's reasoning.⁽⁴⁶⁾ The Court's ruling does not mean that all improper Orange Book filings will give rise to antitrust liability. An antitrust plaintiff must still prove an underlying antitrust claim. The *Buspirone* decision merely establishes that Orange Book filings are not automatically immune from the antitrust laws or exempt from their scrutiny.

(iii) Agreements Between Generic Manufacturers. The third category of cases involves agreements among manufacturers of generic drugs. In our recent complaint against Biovail and Elan Corporation, plc (Elan), the FTC alleged that the companies violated the FTC Act by entering into an agreement that provided substantial incentives not to compete in the market for the 30 mg and 60 mg dosage forms of generic Adalat CC. Biovail and Elan are the only companies with FDA approval to manufacture and sell 30 mg and 60 mg generic Adalat products. In October 1999, Biovail and Elan entered into an agreement involving both companies' generic Adalat products. Under their agreement, in exchange for specified payments, Elan would appoint Biovail as the exclusive distributor of Elan's 30 mg and 60 mg generic Adalat products and allow Biovail to profit from the sale of both products. Our complaint alleged that the companies' agreement substantially reduces their incentives to introduce competing 30 mg and 60 mg generic Adalat products. The proposed order, which has a ten-year term, remedies the companies' alleged anticompetitive conduct by requiring them to terminate the agreement and barring them from engaging in similar conduct in the future.⁽⁴⁷⁾

Commissioner Thomas B. Leary has written and spoken in depth about the issues that we must confront as we proceed with these cases at the intersection of intellectual property rights and antitrust enforcement.⁽⁴⁸⁾

- **Generic Drug Study.** The FTC currently is conducting an industry-wide study focused on certain aspects of generic drug competition under the Hatch-Waxman Amendments. The study has examined whether the Commission's enforcement actions against alleged anticompetitive agreements, which relied on certain Hatch-Waxman provisions, were isolated examples or representative of conduct frequently undertaken by pharmaceutical companies. The study also has examined more broadly how the process that Hatch-Waxman established to permit generic entry prior to expiration of a brand-name drug product's patents has worked between 1992 and 2000.⁽⁴⁹⁾

(b) Antitrust Investigations Involving Health Care Providers. So far this year, the agency has reached settlements with three groups of physicians for allegedly engaging in collusive practices that drove up consumers' costs. In May, the FTC announced a settlement with two Denver-area physician organizations to resolve charges that they entered into agreements to fix fees and to refuse to deal with health plans. According to the complaints, primary care doctors - who compete with each other as internists, pediatricians, family physicians, or general practitioners - formed groups to negotiate contracts for higher fees and other terms more advantageous than they could obtain by bargaining separately. The FTC's proposed orders put a stop to further anticompetitive collusive conduct.⁽⁵⁰⁾

Earlier this year, the FTC settled charges that a group of Napa County, California, obstetricians and gynecologists agreed to fix fees and other terms of dealing with health plans and refused to deal with health plans except on collectively determined terms. The FTC's complaint further alleged that the physicians' actions harmed employers, individual patients, and health plans by depriving them of the benefits of competition in the purchase of physician services. To resolve the matter, the physicians agreed to refrain from engaging in similar conduct in the future, and to dissolve the organization through which they conducted their allegedly anticompetitive activity.⁽⁵¹⁾

(c) Workshop on Health Care and Competition Law and Policy. On September 9-10, 2002, the Commission will hold a public workshop focusing on the impact of competition law and policy on the cost, quality, and availability of health care, and the incentives for innovation in the field. Given the significance of health care spending in the United States, it is important that competition law and policy support and encourage efficient delivery of health care products and services. Competition law and policy should also encourage innovation in the form of new and improved drugs, treatments, and delivery options. Developing and implementing competition policy for health care raises complex and sensitive issues. The goal of this workshop is to promote dialogue, learning, and consensus building among all interested parties (including, but not limited to, the business, consumer, government, legal, provider, insurer, and health policy/health services/health economics communities).

D. PROMOTING AND MAINTAINING COMPETITIVE ENERGY MARKETS

Representing a significant portion of total U.S. economic output, energy is vital to the entire economy. The FTC focused considerable resources on energy issues, including conducting in-depth studies of evolving energy markets and investigating numerous oil company mergers.

1. Oil Merger Investigations

In recent years, the FTC has investigated numerous oil mergers. Last year, the agency reviewed three large oil mergers and analyzed the competitive effects in a host of individual

product/geographic market combinations. When necessary, the agency has insisted on remedial divestitures to cure potential harm to competition. In Chevron/Texaco, the FTC accepted a consent agreement that allowed the proposed \$45 billion merger to proceed but required substantial divestitures to cure the possible anticompetitive aspects of the transaction in 10 separate relevant product markets and 15 sections of the country comprised of dozens of smaller relevant geographic markets.⁽⁵²⁾ In Valero/Ultramar, the FTC obtained a settlement requiring Valero to divest a refinery, bulk gasoline supply contracts, and 70 retail service stations to preserve competition.⁽⁵³⁾ In Phillips/Tosco, applying the same standards, the Commission concluded that the transaction did not pose a threat to competition and voted unanimously to close the investigation.⁽⁵⁴⁾

2. Study of Refined Petroleum Prices

Building on its enforcement experience in the petroleum industry, the FTC is studying the causes of the recent volatility in refined petroleum product prices. During an initial public conference held in August 2001, participants identified key factors, including increased dependency on foreign crude sources, changes in industry business practices, restructuring of the industry through mergers and joint ventures, and new governmental regulations. This information assisted the agency in structuring a second public conference in May 2002, focusing in greater depth on those factors identified as most important in the earlier conference. The information gathered through these public conferences will form the basis for a report to be issued later this year.

3. Gasoline Price Monitoring

The FTC also recently announced a project to monitor wholesale and retail prices of gasoline. FTC staff will inspect wholesale gasoline prices for 20 U.S. cities and retail gasoline prices for 360 cities. Anomalies in the data will prompt further inquiries and likely will alert the agency to the possibility of anticompetitive conduct in certain parts of the country. It will also increase our understanding of the factors affecting the price of gasoline.

4. Consumer Gas-Savings Tips

In addition to focusing resources on protecting competition to keep the family gasoline budget down, the FTC developed a series of consumer education publications to help families fuel up wisely: *Gas-Saving Products: Facts or Fuelishness?*; *The Low-Down on High Octane Gasoline*; *How To Be Penny Wise, Not Pump Fuelish*; and *Gas-Saving Products: Proceed with Caution*. Two of the publications were produced in cooperation with the American Automobile Association. To date, distribution totals for the four publications exceed 277,000.

E. KEEPING PACE WITH TECHNOLOGY AND THE CHANGING MARKETPLACE

As an agency with a history of studying marketplace developments,⁽⁵⁵⁾ the FTC is well-positioned to take a leading role in assessing the impact of high technology and globalization on domestic and world markets. In 1995, the agency held 23 days of hearings on these twin phenomena, which culminated in a comprehensive, two-volume Staff Report.⁽⁵⁶⁾ Building on this base, the FTC continues to study the impact of technology in general and specific innovations, such as the Internet, and to work increasingly with foreign government agencies and international bodies to promote competition and protect consumers both at home and around the globe. The FTC organizes numerous task forces, workshops, hearings, and conferences to gather information.

1. Technology

- **Internet Lab.** To keep pace with rapidly changing Internet technology, the FTC established an Internet Lab in 1999. Equipped with state-of-the-art personal computers,

the lab is a resource for ongoing efforts to understand the medium and to search for fraud, deception, and anticompetitive practices in a secure environment. It provides the necessary equipment and software to capture Web sites and preserve them as evidence. The lab also provides the latest tools for staff to track the manner in which technology is changing the way that commercial information is transmitted to consumers. Unlike advertising in traditional media, for example, advertising in electronic media may vary in content and appearance depending on the appliance and Web browser used by the consumer. FTC Internet enforcement cases reflect the broad range of illegal activity carried out online, from traditional scams like pyramid schemes, health fraud, and bogus investments to high-tech frauds that take advantage of the technology itself to scam consumers. Since June 2001, the FTC has brought over 51 cases involving fraudulent or deceptive Internet marketing practices, bringing the total number of Internet cases filed since 1994 to 236.

- **Internet Task Force.** In August 2001, an Internet Task Force began to evaluate potentially anticompetitive regulations and business practices that could impede e-commerce. The Task Force grew out of the already-formed State Action Task Force, which had been analyzing potentially anticompetitive state regulations generally, and out of the FTC's longstanding interest in the competition aspects of e-commerce. Over the past year, the Task Force has met with numerous industry participants and observers, including e-retailers, trade associations, and leading scholars, and reviewed relevant literature. The Task Force discovered that many states have enacted regulations, ostensibly for other purposes, that have the clear effect of protecting existing bricks-and-mortar businesses from new Internet competitors. The Task Force also is considering whether private companies may be curtailing e-commerce by employing potentially anticompetitive tactics, such as by collectively pressuring suppliers or dealers to limit sales over the Internet. To date, three advocacy filings have resulted in large part from the Task Force's efforts: (1) a joint FTC/DOJ comment before the North Carolina state bar expressing concerns about the impact on consumers of ethics opinions requiring that an attorney be physically present for all real estate closings and refinancings; (2) a joint FTC/DOJ comment before the Rhode Island legislature on similar requirements in a real estate bill; and (3) an FTC staff comment before the Connecticut Board of Opticians, which is considering additional restrictions on out-of-state and Internet contact lens sellers.⁽⁵⁷⁾
- **Internet Competition Workshop.** In October, the Commission will hold a public workshop on possible efforts to restrict competition on the Internet. The workshop will include panel discussions to address certain specific industries that are important to consumers and that have experienced some growth in commerce via the Internet, but that may have been hampered by potentially anticompetitive state regulations or business practices. For example, the workshop will include panels on some or all of the following industries: retailing, automobiles, cyber-charter schools, real estate, health care, wine sales, auctions, contact lenses, and caskets. The Internet Task Force expects that the workshop will (1) enhance the Commission's understanding of these issues, (2) help educate policymakers about the effects of possibly protectionist state regulations, and (3) help educate private entities about the types of business practices that may or may not be viewed as problematic.
- **Standards Setting.** As technology advances, there will be increased efforts to establish industry standards for the development and manufacture of new products. While the adoption of standards is often procompetitive, the standards setting *process*, which involves competitors' meeting to set product specifications, can be an area for antitrust concern. In a complaint filed last month, the FTC charged that Rambus, Inc., a participant in an electronics industry standards-setting organization, failed to disclose - in violation of the organization's rules - that it had a patent and several pending patent applications on

technologies that eventually were adopted as part of the industry standard.⁽⁵⁸⁾ The standard at issue involved a common form of computer memory used in a wide variety of popular consumer electronic products, such as personal computers, fax machines, video games, and personal digital assistants. The FTC's complaint alleges that once the standard was adopted, Rambus was in a position to reap millions in royalty fees each year, and potentially more than a billion dollars over the life of the patents, all of which would be passed on to consumers through increased prices for the downstream products.⁽⁵⁹⁾ Because standard-setting abuses can harm robust and efficiency-enhancing competition in high tech markets, the FTC will continue to pursue investigations in this important area.⁽⁶⁰⁾

- **Intellectual Property Hearings.** In February 2002, the FTC and the DOJ commenced a series of hearings on "*Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy*."⁽⁶¹⁾ The hearings respond to the growth of the knowledge-based economy, the increasing role in antitrust policy of dynamic, innovation-based considerations, and the importance of managing the intersection of intellectual property and competition law to realize their common goal of promoting innovation. During the hearings, business persons, consumer advocates, inventors, practitioners, and academics are focusing on:
 - (a) what economic learning reveals, and does not reveal, regarding the relationships between intellectual property and innovation, and between competition and innovation;
 - (b) "real-world" experiences with patents and competition;
 - (c) procedures and substantive criteria involved in prosecuting and litigating patent claims;
 - (d) issues raised by patent pools and cross-licensing and by certain standard-setting practices;
 - (e) the implications of unilateral refusals to deal, patent settlements, and licensing practices;
 - (f) international comparative law perspectives regarding the competition/intellectual property interface; and
 - (g) jurisprudential issues, including the role of the Federal Circuit.

A public report that incorporates the results of the hearings, as well as other research, will be prepared after the hearings.

- **Wireless Workshop.** In March, FTC staff released a summary and update of the proceedings of its December 2000 workshop, "The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues."⁽⁶²⁾ The workshop addressed five topics: (1) an overview of the relevant technologies; (2) privacy issues raised by these technologies; (3) security issues; (4) advertising and disclosures in the wireless area; and (5) self-regulatory programs. The FTC will continue to monitor the development of wireless technologies, along with the privacy, security, advertising, and other consumer protection issues they raise.

2. Globalization

- **International Antitrust.** Because competition increasingly takes place in a worldwide market, cooperation with competition agencies in the world's major economies is a key component of our enforcement program. Given differences in laws, cultures, and priorities, it is unlikely that there will be complete convergence of antitrust policy in the foreseeable future. Areas of agreement far exceed those of divergence, however, and instances in which our differences will result in conflicting results are likely to remain rare. The agency has increased its cooperation with agencies around the world, both on individual cases and on policy issues, and is committed to addressing and minimizing policy divergences.
- **ICN and ICPAC.** Last fall, the FTC, the DOJ, and twelve other antitrust agencies from around the world launched the International Competition Network (ICN). The ICN is an outgrowth of a recommendation of the International Competition Policy Advisory Committee (ICPAC) that competition officials from developed and developing countries convene a forum in which to work together on competition issues raised by economic globalization and the proliferation of antitrust regimes. ICN provides a venue for antitrust officials worldwide to work toward consensus on proposals for procedural and substantive convergence on best practices in antitrust enforcement and policy. Sixty-one jurisdictions already have joined the ICN, and we are working on initial projects on mergers and competition advocacy.
- **Free Trade Agreement of the Americas.** The FTC is working with the nations of our hemisphere to develop competition provisions for a Free Trade Agreement of the Americas.
- **OECD.** The FTC is participating in the continuing work of the OECD on, among other things, merger process convergence, implementation of the OECD recommendation on hard-core cartels (*e.g.*, price-fixing agreements), and regulatory reform.
- **Technical Assistance.** For the past ten years, the FTC has been able to participate in assisting developing nations that have made the commitment to market and commercial law reforms. With funding principally from the U.S. Agency for International Development, and in partnership with the DOJ, about thirty nations have received technical assistance with development of their competition and consumer protection laws. Currently, the technical assistance program is active in South and Central America, South Africa, and Southeastern Europe. The program emphasizes the development of investigative skills, and relies on a combination of resident advisors, regional workshops, and targeted short term missions. These activities have enabled a large number of career staff to share their expertise, although great care is taken to avoid any intrusions on the time and planning for domestic enforcement projects. Future plans are focused on expanding this reimbursable program to the former Soviet Union and to Asia.
- **International Consumer Protection.** The number of consumer protection cases with an international component continues to rise. Consumers now increasingly participate in a global marketplace, often receiving telemarketing or e-mail solicitations from vendors outside the U.S. Increasingly, the FTC is called upon to lead or participate in international organizations. Last year, Commissioner Swindle became head of the U.S. delegation to the OECD Experts Group for Review of the 1992 OECD Guidelines for the Security of Information Systems. The revised guidelines will be released in early September and will promote a "culture of security" in which we all have a role to play. This spring, Commissioner Thompson was elected Chair of the OECD's Committee on Consumer Policy.

- **Cross-Border Fraud.** The FTC is increasing its efforts to counter fraud that transcends borders. In particular, our partnerships with Canadian officials allow the FTC to respond more effectively to telemarketing scams emanating from Canada. The FTC has forged two city-specific partnerships to coordinate our law enforcement efforts: the Ontario Strategic Partnership, in which the FTC's Midwest Regional Office has worked with Canadian law enforcers to focus on Toronto-based telemarketing; and Project Emptor, in which the Northwest Regional Office has partnered with British Columbia officials to target Vancouver boiler rooms. Drawing on these partnerships, in June 2002 the FTC and 17 Canadian and U.S. law enforcement and consumer protection agencies announced a coordinated criminal and civil law enforcement initiative to stop fraudulent cross border schemes and recover money for victims, many of whom are elderly. Fraudulent schemes targeted by the initiative included illegal international lottery scams, phony advance-fee credit card offers, and bogus credit card loss-protection schemes.⁽⁶³⁾ The FTC has brought seven actions and obtained nine final orders in cases involving cross-border fraud between the U.S. and Canada in 2002.
- **IMSN Findings on Cross-Border Remedies.** Last spring, the International Marketing Supervision Network - an organization of consumer protection agencies from 29 countries - under the leadership of the FTC, issued "Findings on Cross-Border Remedies," which outlines obstacles to cross-border enforcement of consumer protection laws and suggestions for overcoming these obstacles.
- **econsumer.gov.** In April 2001, 13 countries and the OECD launched econsumer.gov , a public Web site where consumers can file cross-border e-commerce complaints with law enforcement agencies around the world, access education materials about e-commerce, and contact consumer protection agencies. The site is available to consumers in English, French, Spanish, and German. Since its launch, three additional countries have joined the project. To date, we have received over 1,700 complaints from consumers in six continents about companies in more than 68 countries. Next steps for this project include adding additional members, increasing outreach and publicity, adding consumer education materials, and adding information about alternative dispute resolution for e-commerce complaints on the site.

F. TARGETING SPECIAL INITIATIVES TO SPECIFIC CONSUMER GROUPS

The FTC has initiated a variety of programs that seek to assist specific consumer groups. Among these groups are children, minorities and non-English speaking sections of the U.S. population, and homeowners who may be special prey for fraudulent lenders.

1. Children and Violent Media

In response to Congressional requests, the FTC continues to monitor violent media directed toward children. An FTC September 2000 report concluded that the entertainment industry targeted advertising of violent video games, movies, and music to children.⁽⁶⁴⁾ Subsequently, Congress directed that the FTC continue its efforts through three related initiatives: consumer research and workshops, an underage shopper retail compliance survey, and marketing and data collection.⁽⁶⁵⁾ In response, the FTC released a follow-up report, in April 2001, outlining improvements in the movie and electronic game industries but finding no appreciable change in the music industry's target marketing practices.⁽⁶⁶⁾ The FTC's second follow-up report, in December 2001, found that the movie and electronic game industries had made continued improvements, and that although the music industry had made progress in disclosing parental advisory label information, it had not altered its marketing practices.⁽⁶⁷⁾ The FTC's third follow-up report, released in June 2002, found continued progress by the movie and electronic game industries and improvement by the music industry in including rating information in advertising that would help parents identify material that may be inappropriate for their children. This most recent

report also showed compliance by the movie and electronic games industries with industry promises to limit ad placements, although the report found advertisements by all three industries continue to appear in some media popular with teens.⁽⁶⁸⁾ The report concludes that the music industry continues to advertise music with explicit content on television shows and in print magazines popular with teens.

2. Children and Gambling

The FTC also is assessing the marketing of online gambling sites to children. In June, the FTC announced the results of an informal survey of web sites to determine the access and exposure that teens have to online gambling.⁽⁶⁹⁾ The FTC visited over 100 popular gambling web sites and found that minors can, indeed, access these sites easily, and that minors often are exposed to ads for online gambling on non-gambling web sites. The FTC staff has met with representatives of the online gambling industry to seek voluntary corrective action, and with interested consumer advocates. The FTC, in conjunction with industry representatives, has launched a consumer and business education campaign warning about the dangers of underage online gambling. Online gambling industry representatives have advised FTC staff that they will devise a "Guide to Best Practices" regarding clear and conspicuous warnings about prohibited underage gambling, effective blocking methods, and restricted placement of industry advertisements.

3. Spanish-Speaking Consumers

To reach the expanding population of Spanish-speaking consumers in the United States, the FTC instituted an Hispanic Outreach Program in January 2002. This effort includes the creation of a dedicated page on the FTC Web site, *Proteccion para el Consumidor*, that will mirror the English page, and translation of 14 consumer publications, printed or posted to the Web. We also translated the FTC Consumer Complaint Form into Spanish. In addition, the FTC is conducting media outreach and providing interviews in Spanish.

4. Native Americans

The FTC has partnered with the Indian Arts and Crafts Board, the Alaska State Council on the Arts, and the Alaska Attorney General's office in developing and distributing more than 100,000 postcards and brochures to assure the authenticity of Alaskan Native art and help prevent fakes. The materials provide numerous tips - mostly centered on a "Silver Hand" certification program - on how to be confident that Alaskan Native art is truly Native.

5. Homeowners

The FTC also has focused its consumer protection efforts on homeowners, especially those in poorer urban areas, who sometimes are the victims of deceptive lending practices. Since 1998, the FTC has brought 15 cases involving a variety of deceptive lending practices. This past March, the FTC, six states, AARP, and class action and individual plaintiffs settled claims against First Alliance Mortgage Company and its chief executive officer. The complaint alleged that the defendants misled consumers about the existence and amount of origination fees for their loans (which typically constituted 10 to 25 percent of the loan) and the interest rate and monthly payments of their adjustable rate mortgage loans. Consequently, according to the complaint, consumers believed they were borrowing less money at lower interest rates than they actually were. The settlement, which requires court approval, creates a consumer redress fund that will include all of the remaining assets of First Alliance and its affiliates, now under liquidation in bankruptcy court, as well as a payment of \$20 million from the company's principals. Nearly 18,000 borrowers could receive as much as \$60 million in redress, making this one of the FTC's largest cases ever.

G. ADVANCING EFFICIENT LAW ENFORCEMENT

The FTC has undertaken a variety of efforts to streamline its practices, leverage its resources, and minimize the burden on the public. These ongoing "good government" initiatives share a common theme: they represent efforts to go beyond the regular, ongoing work of the agency and to find ways to make the FTC's work more effective, more efficient, and less costly for businesses and consumers. We seek to use our limited resources wisely, because each day or dollar saved can be applied to additional activities that benefit consumers.

1. Sweeps and Partnerships with Enforcement Agencies

The FTC leverages its resources through coordinated enforcement actions with other law enforcement agencies, both state and federal. In particular, the FTC conducts "sweeps" to investigate and bring actions against specific types of frauds and deceptions. In the past 12 months, the FTC and 12 partners have participated in sweeps covering Internet health fraud, cold-call telemarketing, Internet scams, and business opportunities, resulting in over 170 separate law enforcement actions.

2. Training Staff from Other Agencies

Another way that the FTC promotes efficient law enforcement is to train staff from other law enforcement agencies in new technologies or techniques pioneered by the FTC. One example is the FTC's ongoing Internet fraud training program. The FTC has created a series of regional "Netforces" made up of law enforcement agencies that have participated in our training. On April 2, 2002, the FTC began the first of these efforts by joining eight state agencies in the northwest United States and four Canadian agencies in an initiative targeting deceptive spam and Internet fraud. Together, these agencies have brought 63 law enforcement actions against Web-based scams ranging from alleged auction fraud to bogus cancer cure sites, and have sent more than 500 letters warning of the illegality of deceptive spam.

3. Streamlining Merger Review

A major focus of FTC efficiency efforts is the merger review process. The FTC is working on a number of reforms to speed the process and reduce the burden on merging parties without sacrificing the sufficiency of information required by the agency.

- **Electronic Premerger Filing.** As part of an overall movement to make government more accessible electronically, the FTC, working with the DOJ, will accelerate its efforts in FY 2003 to develop an electronic system for filing HSR premerger notifications. E-filing will reduce filing burdens for both businesses and government, and also will create a valuable database of information on merger transactions to inform future policy deliberations.
- **Burden Reduction in Investigations.** The agencies have taken steps to reduce the burden in document productions responsive to Second Requests. In response to legislation amending the HSR Act, the FTC amended its rules of practice to incorporate new procedures. The rule requires Bureau of Competition staff to schedule conferences to discuss the scope of a Second Request with the parties and also establishes a procedure for the General Counsel to review the request and rule promptly on any remaining unresolved issues. Measures adopted include a process for seeking modifications or clarifications of Second Requests, and expedited senior-level internal review of disagreements between merging parties and agency staff; streamlined internal procedures to eliminate unnecessary burdens and undue delays; and implementation of a systematic management status check on the progress of negotiations on Second Request modifications.

- **Merger Investigation Best Practices.** The FTC is conducting a series of national public workshops regarding modifications and improvements to the merger investigation process. The FTC will solicit input from a broad range of interest groups, including corporate personnel, outside and in-house attorneys, economists, and consumer groups, on topics such as using more voluntary information submissions before issuance of a Second Request, reducing the scope and content of the Second Request, negotiating modifications to the Second Request, and focusing on special issues concerning electronic records and accounting or financial data.⁽⁷⁰⁾
- **Merger Remedies.** Other "best practices" workshops will solicit comments on merger remedies. Among the issues to be addressed are structuring asset packages for divestitures, timing of divestitures (*i.e.*, up front or after consummation), evaluating the competitive adequacy of proposed buyers, and assessing the preservation of competition after divestitures.

4. Consumer and Business Education

Yet another way the FTC seeks to make law enforcement more efficient is by disseminating information about deceptive practices in the marketplace. The less often consumers are victimized by deceptive practices, the fewer enforcement actions the FTC must bring. Further, the more that businesses, especially small businesses, understand their obligations, the more readily they can comply. Thus, consumer and business education is the first line of defense against fraud and deception.

With each major consumer protection enforcement initiative, the FTC launches a comprehensive and creative education campaign. Between May 2001 and May 2002, the FTC issued 108 consumer protection publications: 94 for consumers and 14 for businesses. Of those publications, 67 are new and 41 are revisions; 23 are translations into Spanish, and six are joint efforts between the public and private sectors. The FTC continues to exceed previous distribution records. In the last year, the FTC distributed more than 5.6 million printed publications to the public, and received more than 12.5 million "hits" on publications posted on the consumer protection portion of the FTC's Web site. Special FTC educational undertakings include:

- **National Consumer Protection Week.** For the fourth consecutive year, the FTC took the lead in organizing National Consumer Protection Week. This year, the event focused on privacy. Other participants were the National Association of Consumer Agency Administrators, AARP, the National Consumers League, the Council of Better Business Bureaus, the Consumer Federation of America, the U.S. Postal Service, the U.S. Postal Inspection Service, the National Association of Attorneys General, and the DOJ.
- **www.consumer.gov.** The FTC continues to manage www.consumer.gov and to recruit new members to participate in the site, which offers one-stop access to federal consumer information. In the past year, the number of members has grown from 135 to 178.
- **Response to 9/11.** In the wake of September 11th, the FTC worked with other groups to alert consumers to possible fund-raising fraud. The FTC released a Consumer Alert, *Helping Victims of the Terrorist Attacks: Your Guide to Giving Wisely* on September 21, at a press conference held by the FTC's Northeast Regional Office in conjunction with the New York Attorney General and the New York Better Business Bureau.

III. LEGISLATIVE RECOMMENDATIONS

To improve the FTC's ability to implement its mission and to serve consumers, we make the

following recommendations for legislative changes. We would be happy to work with the Committee to develop appropriate language.

A. ELIMINATE THE FTC ACT'S EXEMPTION FOR COMMUNICATIONS COMMON CARRIERS

The FTC Act exempts common carriers subject to the Communications Act from its prohibitions on unfair and deceptive acts or practices and unfair methods of competition. This exemption dates from a period when telecommunications were provided by government-authorized, highly regulated monopolies. The exemption is now outdated. In the current world, firms are expected to compete in providing telecommunications services. Congress and the Federal Communications Commission (FCC) have dismantled much of the economic regulatory apparatus formerly applicable to the industry. Telecommunications firms also have expanded into numerous non-common carrier activities. Oversight by the FTC of telecommunications firms' activities thus has become increasingly important.

The FTC Act exemption has proven to be a barrier to effective consumer protection, both in common carriage and in other telecommunications businesses. The exemption also has prevented the FTC from applying its legal and economic expertise regarding competition to mergers and other possible anticompetitive practices, not only involving common carriage, but in other high-tech fields involving telecommunications. We believe that Congress should eliminate the special exemption to reflect the fact that competition and deregulation have replaced comprehensive economic regulation.

FTC efforts to halt fraudulent or deceptive practices by telecommunications firms have sometimes been stymied by the common carrier exemption. While common carriage has been outside the FTC's authority, we believe that the FTC Act applies to non-common carrier activities of telecommunications firms, even if the firms also provide common carrier services.⁽⁷¹⁾ Continuing disputes over the breadth of the FTC Act's common carrier exemption hamper the FTC's oversight of the non-common carrier activities. These disputes have arisen even when the FCC does not have, or does not exercise, jurisdiction over the non-common carrier activity. These disputes may increase the costs of pursuing an enforcement action, or may cause the agency to narrow an enforcement action - for example, by excluding some participants in a scheme - to avoid protracted jurisdictional battles and undue delay in providing consumer redress.

The FTC has the necessary expertise to address these issues. The FTC is the federal agency with broad consumer protection and competition experience covering nearly all fields of commerce. The FTC has extensive expertise with advertising, marketing, billing, and collection, areas in which significant problems have emerged in the telecommunications industry. In addition, the FTC has powerful procedural and remedial tools that could be used effectively to address developing problems in the telecommunications industry if the FTC were authorized to reach them.

The common carrier exemption also significantly restricts the FTC's ability to engage in effective antitrust enforcement in broad sectors of the economy. The mix of common carrier and non-common carrier activities within particular telecommunications companies frequently precludes FTC antitrust enforcement for much of the telecommunications industry. Further, because of the expansion of telecommunications firms into other high-tech industries and the growing convergence of telecommunications and other technologies, the common carrier exemption increasingly limits FTC involvement in a number of industries outside telecommunications.

B. TECHNICAL CHANGES

The FTC also requests two new limited grants of authority: (1) the ability to accept reimbursement for expenses incurred by the FTC in assisting foreign or domestic law enforcement authorities,

and (2) the ability to accept volunteer services, in-kind benefits, or other gifts or donations. Both new authorities would be useful as the FTC tries to stretch its resources to meet its statutory responsibilities.

The authority to accept reimbursement for expenses incurred in assisting foreign or domestic law enforcement authorities would be especially useful, since the FTC has been working closely with domestic and foreign law enforcement authorities to address possible law violations. Partnering with these law enforcement authorities has resulted in enhanced law enforcement efforts and greater sharing of significant information. In some of these situations, our foreign or domestic partner is interested in reimbursing the FTC for the services it has provided or in sharing some of the costs of investigating or prosecuting the matter. Without specific statutory reimbursement authority, however, the FTC cannot accept and keep such reimbursements because of constraints under appropriations law.⁽⁷²⁾

In addition, the FTC requests authority to accept donations and gifts, such as volunteer services and in-kind benefits. Congress has conferred this authority by statute on various agencies, including the Office of Government Ethics, the FCC, and the Consumer Product Safety Commission.⁽⁷³⁾ Without this authority, the FTC cannot accept services or keep items because of appropriations law constraints. This broad restriction on acceptance of gifts sometimes limits the FTC's ability to fulfill its mission in the most cost-effective manner. For example, the FTC cannot accept volunteer services from individuals wishing to provide such services to the agency. In addition, agency officials must sometimes refuse donated items that could otherwise be useful in carrying out the agency's mission, such as books and similar mission-related items.

IV. CONCLUDING REMARKS

Mr. Chairman and Members of the Subcommittee, we appreciate this opportunity to provide an overview of the Commission's efforts to maintain a competitive marketplace, free of deceptive and unfair practices, for American businesses and consumers. We believe that the Commission's antitrust and consumer protection enforcement has demonstrable benefits for consumers and the American economy - benefits that far outweigh the resources allocated to maintaining our mission. We would be pleased to respond to any questions you may have.

ENDNOTES

1. The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* The statute provides the agency with jurisdiction over the most of the economy. Certain entities, such as depository institutions and common carriers, are wholly or partially exempt from FTC jurisdiction, as is the business of insurance. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 statutes.

2. Timothy J. Muris, *Chairman Robert Pitofsky: Public Servant and Scholar*, Remarks Before the American Antitrust Institute, Second Annual Conference (Washington, D.C., June 12, 2001), available at <<http://www.ftc.gov/speeches/muris/muris010612.htm>>.

3. Much of what the FTC challenges in its consumer protection mission is hard-core fraud, and given the transient nature of many of these illegitimate operations, we frequently are unable to collect the full amount of the monetary judgment ordered. The judgment amount, however, gives some indication of the extent of fraud and deception stopped by the FTC.

4. This web site is available at <<http://www.sentinel.gov>>.

5. Press Release, *State, Federal Law Enforcers Launch Sting on Business Opportunity, Work-at-*

Home Scams (June 20, 2002), available at <<http://www.ftc.gov/opa/2002/06/bizopswe.htm>>.

6. Press Release, *FTC Sweep Protects Consumers from "Dialing for Deception"* (Apr. 15, 2002), available at <<http://www.ftc.gov/opa/2002/04/dialing.htm>>.

7. *FTC v. H.G. Kuykendall, Jr.*, No. CIV-96-388-M (W.D. Okla. Mar. 4, 2002).

8. *FTC v. Access Resource Servs., Inc.*, No. 02-60226 (S.D. Fla. Feb. 20, 2002).

9. *FTC v. Electronic Products Distribution, L.L.C.*, No. 02CV0888 H(AJB) (S.D. Cal. May 7, 2002); *FTC v. United Fitness of America, LLC*, No. CV-S-02-648-KJD-LRL (D. Nev. May 7, 2002); *FTC v. Hudson Berkley Corp.*, No. CV-S-0649-PMP-RJJ (D. Nev. May 7, 2002).

10. *Interstate Bakeries Corp.*, Docket No. C-3402 (Apr. 16, 2002) (consent order).

11. *Palm, Inc.* Docket No. C-4044 (April 18, 2002) (consent order)

12. 15 U.S.C § 18a, as amended, Pub. L. No 106-553, 114 Stat. 2762 (2000).

13. See 15 U.S.C. § 18a, as amended, Pub. L. No. 106-553, 114 Stat. 2762 (2000).

14. *MSC Software Corp.*, Docket No. 9299 (Oct. 10, 2001) (complaint issued) (alleging that two MSC acquisitions violated Clayton Act).

15. *MSC Software Corp.*, Docket No. 9299 (Oct. 10, 2001) (complaint issued) (involving engineering software); *Chicago Bridge Iron Co., Inc.*, Docket No. 9300 (Oct. 25, 2001) (complaint issued) (pertaining to field-erected specialty industrial storage tanks).

16. Press Release, *FTC Authorizes Suit to Block Joint Acquisition of Seagram Spirits and Wine by Diageo PLC and Pernod Ricard S.A.* (Oct. 23, 2001), available at <<http://www.ftc.gov/opa/2001/10/diageo.htm>>.

17. *FTC v. Libbey, Inc.*, Civ. Act. No. 02-0060 (RBW) (Memorandum Opinion) (D.D.C. Apr. 22, 2002) (granting FTC's request for a preliminary injunction).

18. Press Release, *FTC to Challenge DGF Stoess's Proposed Acquisition of Leiner Davis* (Jan. 15, 2002), available at <<http://www.ftc.gov/opa/2002/01/gelatin.htm>>.

19. Press Release, *FTC Authorizes Injunction to Pre-empt Meade Instruments' Purchase of All, or Certain Assets, of Tasco Holdings, Inc.'s Celestron International* (May 29, 2002), available at <<http://www.ftc.gov/opa/2002/05/meadecelstron.htm>>.

20. Press Release, *FTC Seeks to Block Cytac Corp.'s Acquisition of Digene Corp.* (June 24, 2002), available at <http://www.ftc.gov/opa/2002/06/cytac_digene.htm>.

21. Telemarketing Sales Rule, 67 Fed. Reg. 4492 (Jan. 30, 2002) (proposed Rule amendments).

22. Press Release, *Workshop Planned To Discuss Strategies for Providing Effective Financial Privacy Notices* (Sept 24, 2001), available at <<http://www.ftc.gov/opa/2001/09/glbwksshop.htm>>.

23. Press Release, *FTC to Host Public Workshop on Consumer Information Security* (Mar. 12,

2002), available at <<http://www.ftc.gov/opa/2002/03/security.htm>>.

24. *United States v. The Ohio Art Co.*, No. 3:02CV7203 (N.D. Ohio filed Apr. 19, 2002); *United States v. American Pop Corn Co.*, No. C02-4008DEO (N.D. Iowa Feb. 28, 2002) (consent decree); *United States v. Lisa Frank, Inc.*, No. 01-1516-A (E.D. Va. Oct. 3, 2001) (consent decree); *United States v. Looksmart, Ltd.*, No. 01-606-A (E.D. Va. Apr. 23, 2001) (consent decree); *United States v. Bigmailbox.com, Inc.*, No. 01-605-A (E.D. Va. Apr. 23, 2001) (consent decree); *United States v. Monarch Servs., Inc.*, No. AMD 01 CV 1165 (D. Md. Apr. 20, 2001) (consent decree).

25. *Eli Lilly & Company*, Docket No. C-4047, (May 10, 2002) (final order).

26. 15 U.S.C. § 6801.

27. *FTC v. Information Search, Inc.*, No. AMD-01-1121 (D. Md. Mar. 15, 2002); *FTC v. Guzzetta*, No. CV-01-2335 (E.D.N.Y. Feb. 25, 2002); *FTC v. Garrett*, No. H 01-1225 (S.D. Tex. Mar. 26, 2002).

28. The cases challenging the misuse of preacquired account information and deceptive spam also involved issues of fraud.

29. *TechnoBrands, Inc., and Charles J. Anton*, Docket No. C-4041 (Apr. 15, 2002) (decision and order), available at <<http://www.ftc.gov/os/2002/04/technobranddo.pdf>>; *FTC v. Technobands, Inc.*, No. 3:02-CV-86 (E.D. Va. filed Feb. 15, 2002); *FTC v. Ira Smolev*, No. 01-8922 CIV ZLOCH (S.D. Fla. filed Oct. 23, 2001).

30. *FTC v. Boivin*, No. 8:02-CV-77-T-26 MSS (M.D. Fla. Jan. 15, 2002) (consent decree); *FTC v. Estenson*, No. A3-02-10 (DND Feb. 5, 2002) (consent decree); *FTC v. Larsen*, No. 8:02-CV-76-T-26MAP (M.D. Fla. Jan. 16, 2002) (consent decree); *FTC v. Lutheran*, No. 02 CV 0095 K (RAB) (S.D. Cal. Jan. 18, 2002) (consent decree); *FTC v. Va*, No. 02-60062-Civ-Zloch (S.D. Fla. Jan. 18, 2002) (consent decree); *FTC v. Pacheco*, No. 02-CV-31L (D.R.I. Jan. 22, 2002) (consent decree).

31. *FTC v. BTV Industries*, No. CV-S-02-0437-LRH (PAL) (D. Nev. filed Mar. 7, 2002).

32. Katharine Levit *et al.*, *Inflation Spurs Health Spending in 2000*, 21 *Health Affairs* 172 (Jan. - Feb. 2002).

33. *FTC v. Vital Living Products, Inc.*, No. 3:02CV74-MU (W.D. N.C. Mar. 13, 2002).

34. *FTC v. Pletschke*, Docket No. C-4040 (Feb. 22, 2002) (decision and order).

35. The titles of the teaser sites are: Looking for Financial Freedom?; The Ultimate Prosperity Page; Nordicalite Weight Loss Product; A+ Fast Ca\$\$h for College; EZTravel: Be an Independent agent; EZTravel: Certificate of Notification; EZToyz Investment Opportunity; HUD Tracer Association; CreditMenders Credit Repair; NetOpportunities: Internet is a Gold Mine; National Business Trainers Seminars; VirilityPlus: Natural Alternative to Viagra; ArthritiCure: Be Pain-Free Forever.

36. Commissioner Sheila F. Anthony, Remarks Before the Food & Drug Law Institute, 45th Annual Educational Conference, *Combating Deception in Dietary Supplement Advertising* (Apr. 16, 2002), available at <<http://www.ftc.gov/speeches/anthony/dssp2.htm>>.

37. See National Health Expenditures, by Source of Funds and Type of Expenditures, Health Care

Financing Administration, available at <<http://www.hcfa.gov/stats/nhe-oact/tables/t3.htm>>

38. *FTC v. The Hearst Trust, The Hearst Corp., and First DataBank, Inc.*, Civ Act. No.1:01CV00734 (D.D.C. Apr. 5, 2001) (complaint) (Commissioner Leary and Commissioner Swindle dissenting).

39. *FTC v. Hearst*, Civ. Act. No. 1:01CV00734 (D.D.C. Nov. 9, 2001) (Stipulation for Entry of Final Order and Stipulated Permanent Injunction).

40. Congressional Budget Office, *How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry* (July 1998), available at <<http://www.cbo.gov>>.

41. *Id.*

42. See Federal Food, Drug, and Cosmetics Act, 21 U.S.C. § 301 *et seq.* The Hatch-Waxman amendments were contained in the Drug Price Competition and Patent Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585 (codified at 15 U.S.C. §§ 68b, 68c, 70b; 21 U.S.C. §§ 301 note, 355, 360cc; 28 U.S.C. § 2201; 35 U.S.C. §§ 156, 271, 282 (1984)).

43. *Schering-Plough Corp.*, Dkt. 9297 (Apr. 2, 2002) (consent order as to American Home Products). In an initial decision filed on June 27, 2002, an FTC Administrative Law Judge (ALJ) dismissed all allegations of anticompetitive conduct in a March 2001 Federal Trade Commission complaint against pharmaceutical manufacturers Schering-Plough Corporation (Schering) and Upsher-Smith Laboratories (Upsher-Smith). *Schering-Plough Corp.*, Dkt. 9297 (June 27, 2002) (initial decision) (available at <<http://www.ftc.gov/os/2002/07/scheringinitialdecisionp1.pdf>, and <http://www.ftc.gov/os/2002/07/scheringinitialdecisionp2.pdf> . An appeal is pending with the Commission.

44. *Biovail Corp.*, File No. 011-0094 (Apr. 23, 2002) (proposed consent order accepted for placement on public record for comment).

45. *In re Buspirone Patent Litigation/In re Buspirone Antitrust Litigation*, Memorandum of Law of *Amicus Curiae* the Federal Trade Commission in Opposition to Defendant's Motion to Dismiss available at <<http://www.ftc.gov/os/2002/01/busparbrief.pdf>>.

46. *In re Buspirone*, 185 F. Supp. 2d 363 (S.D.N.Y. 2002).

47. *Biovail Corp.*, File No. 011-0132 (June 27, 2002) (proposed consent order accepted for placement on public record for comment).

48. See Thomas B. Leary, Commissioner, *Antitrust Issues in Settlement of Pharmaceutical Patent Disputes, Part II*, Remarks Before the American Bar Association's Antitrust Healthcare Program, Washington, D.C., (May 17, 2001) <<http://www.ftc.gov/speeches/leary/learypharmaceuticalsettlement.htm>>; Thomas B. Leary, Commissioner, *Antitrust Issues in Settlement of Pharmaceutical Patent Disputes*, Address Before the Sixth Annual Antitrust Healthcare Forum, Northwestern University School of Law, Chicago, Illinois (Nov. 3, 2000), available at <<http://www.ftc.gov/speeches/leary/learypharma.htm>>. The Commission also submitted testimony this Spring on competition in the pharmaceutical industry before the Committee on Commerce, Science, and Transportation, U.S. Senate. The testimony is available at <<http://www.ftc.gov/os/2002/04/pharmtestimony.htm>>.

49. See 65 Fed. Reg. 61334 (Oct. 17, 2000); 66 Fed. Reg. 12512 (Feb. 27, 2001).

50. *Physician Integrated Servs. of Denver, Inc., Michael J. Guese, M.D., and Marcia L. Brauchler*, File No. 011-0173 (May 13, 2002) (proposed consent order accepted for placement on public record for comment); *Aurora Associated Primary Care Physicians, L.L.C., Richard A. Patt, M.D., Gary L. Gaede, M.D., and Marcia L. Brauchler*, File No. 011-0174 (May 13, 2002) (proposed consent order accepted for placement on public record for comment).

51. *Obstetrics and Gynecology Med. Corp. of Napa Valley*, File No. 011-0153 (May 14, 2002) (final order).

52. *Chevron Corp./Texaco Inc.*, Docket No. C-4023 (Jan. 2, 2002) (consent order).

53. *Valero Energy Corp./Ultramar Diamond Shamrock Corp.*, Docket No. C-4031 (Feb. 19, 2002) (consent order).

54. *Phillips Petroleum Corp./Tosco Corp.*, File No. 011-0095 (Sept. 17, 2001) (Statement of the Commission).

55. For example, an FTC study of the broadcasting industry influenced passage of the Radio Act of 1927 (a predecessor to the Federal Communications Act of 1934), and the FTC's disclosure of securities abuses played a role in heightening Congressional recognition of the need for securities regulation and led to the Securities Act of 1933.

56. Staff of the Federal Trade Commission, *Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace* (May 1996).

57. Letter from Timothy J. Muris, Chairman, Federal Trade Commission and Charles A. James, Assistant Attorney General (Antitrust), Department of Justice, to The Honorable John B. Harwood, Speaker of the Rhode Island House of Representatives (regarding proposed bill H. 7462, Restricting Competition From Non-Attorneys In Real Estate Closing Activities) (Mar. 29, 2002); Letter from Timothy J. Muris, Chairman, Federal Trade Commission and Charles A. James, Assistant Attorney General (Antitrust), Department of Justice, to Ethics Committee, North Carolina State Bar (regarding North Carolina State Bar Opinions Restricting Involvement of Non-Attorneys in Real Estate Closings and Refinancing Transactions) (Dec. 14, 2001); and Comments of The Staff of the Federal Trade Commission, Intervenor, *In Re: Declaratory Ruling Proceeding On the Interpretation and Applicability of Various Statutes and Regulations Concerning the Sale of Contact Lenses* (Ct. Bd. Of Examiners for Opticians, Mar. 27, 2002).

58. *Rambus Inc.*, Docket No. 9302 (June 18, 2002) (complaint), available at <<http://www.ftc.gov/os/2002/06/rambuscmp.htm>>.

59. *Id.*

60. In 1996, the FTC brought a similar case against Dell Computer, alleging that Dell had failed to disclose that it had an existing patent on a personal computer component that was adopted as the standard by a video electronics group. *Dell Computer Co.*, Docket No. C-3658 (May 20, 1996) (consent order) (Commissioner Azcuenaga dissenting).

61. See 66 Fed. Reg. 58146 (Nov. 20, 2001).

62. Federal Trade Commission, *Public Workshop: The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues* (Feb. 2002), available at <<http://www.ftc.gov/bcp/reports/wirelesssummary/pdf>>.

63. Press Release, *U.S., Canadian Law Enforcers Target Cross-Border Telemarketing* (June 10, 2002), available at <<http://www.ftc.gov/opa/2002/06/crossborder.htm>>.
64. Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Sept. 2000), available at <<http://www.ftc.gov/reports/violence/vioreport.pdf>>.
65. See Conf. Rep. No. 107-278, at 162 (Nov. 9, 2001).
66. Federal Trade Commission, *Marketing Violent Entertainment to Children: A Six-Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Apr. 2001), available at <<http://www.ftc.gov/reports/violence/violence010423.pdf>>.
67. Federal Trade Commission, *Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Dec. 2001), available at <<http://www.ftc.gov/os/2001/12/violencereport1.pdf>>.
68. Federal Trade Commission, *Marketing Violent Entertainment to Children: A Twenty-One Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (June 2002), available at <<http://www.ftc.gov/reports/violence/mvecrpt0206.pdf>>.
69. Press Release, *FTC Warns Consumers about Online Gambling and Children* (June 26, 2002), available at <<http://www.ftc.gov/opa/2002/06/onlinegambling.htm>>.
70. See Press Release, *FTC Initiates "Best Practices Analysis" for Merger Review Process* (Mar. 15, 2002), available at <<http://www.ftc.gov/opa/2002/03/bcfaq.htm>>.
71. See, e.g., *FTC v. Verity Int'l, Ltd.*, 194 F. Supp. 2d 270 (S.D.N.Y. 2002).
72. The Securities and Exchange Commission (SEC) currently has authority to accept payment and reimbursement for investigative or other assistance that it provides to a foreign securities authority. See 15 U.S.C. § 78d(f). If Congress were to grant the FTC similar authority, that would permit the agency to accept reimbursement from foreign or domestic law enforcement authorities for services provided or for cooperative investigative or law enforcement activities.
73. See 5 U.S.C. App. 4, §403(b); 47 U.S.C. § 154(g)(3); and 15 U.S.C. § 2076(b)(6).