

The FTC: Protecting Consumers and Promoting Competition and Innovation

Over the past four years, with Jon Leibowitz as Chairman, the Federal Trade Commission has focused on protecting consumers' privacy online and offline; stopping scams that targeted consumers who were affected by the economic downturn; promoting competition in high-tech and health care markets and lowering the cost of prescription drugs; and working to understand new technologies such as the mobile sector through law enforcement and policy initiatives. During his tenure, the agency's talented and dedicated staff has used the entire arsenal of enforcement and policy tools available – including workshops, reports, industry studies, amicus briefs and advocacy filings, consumer and business education, and enforcement actions – to bring the FTC to the forefront of good government, promote effective law enforcement, and provide outstanding outreach to consumers, businesses, and our law enforcement partners around the world. Chairman Leibowitz leaves the FTC as an institution committed to bipartisan, consensus-driven law enforcement that follows the facts where they lead, bringing aggressive challenges to business practices when warranted and refraining from doing so when a case would not be in the public interest.

Executive Summary

During Chairman Leibowitz's tenure, to protect consumers, the FTC has:

- Stopped fraud targeting financially strapped consumers
 - Brought dozens of enforcement actions against deceptive mortgage servicers, abusive debt collectors, bogus get-rich-quick schemes, and fraudulent foreclosure rescue, debt relief, and credit repair schemes;
 - Issued new rules banning advance fees for debt relief and mortgage assistance relief services and prohibiting deceptive mortgage advertisements; and
 - Produced new consumer alerts, publications, radio PSAs, and videos, in English and Spanish, to help consumers identify and avoid fraudulent schemes.
- Protected consumer privacy through policy initiatives and enforcement actions
 - Issued a 2012 Privacy Report that advocates privacy by design, greater transparency, and more consumer choice, including a Do Not Track system, to help ensure consumer privacy and business innovation.
 - Took enforcement action and issued settlement orders against Facebook, Google, and other companies, resolving charges that they violated their promises to consumers about privacy and data security.
- Met the challenges of new technologies, with enforcement actions and other initiatives against emerging online scams, robocalls, and mobile products and services.
- Safeguarded children through COPPA enforcement, including cases involving online “virtual worlds” and celebrity fan websites. Updated the COPPA Rule to keep pace with changing technology.
- Challenged deceptive health claims, including cases against Skechers and Reebok toning shoes, POM Wonderful, Dannon, Kellogg, Nestle, Iovate, Nivea skin cream, and Oreck vacuum cleaners and air purifiers.

- Helped businesses make clear and honest environmental claims by updating the Green Guides and taking enforcement actions against deceptive claims involving LED bulbs, replacement windows, and textiles mislabeled as bamboo.
- Stepped up order enforcement, with civil contempt and civil penalty actions.
- Encouraged criminal prosecution of the FTC's most intransigent defendants with the help of the agency's criminal liaison unit.
- Fostered international consumer protection
 - Increased consumer protection cooperation with foreign law enforcement agencies.
 - Helped formulate and became a participant in the APEC Cross-Border Privacy Enforcement Arrangement.

Also under Chairman Leibowitz, the FTC has promoted competition and innovation:

- Continued to focus on health care
 - Worked both in the courts and in Congress to restrict anticompetitive and costly pay-for-delay pharmaceutical agreements;
 - Challenged anticompetitive conduct as well as pharmaceutical, medical device manufacturer, hospital, and other mergers that are likely to raise the costs of health care; and
 - Together with the Department of Justice, issued a Joint Statement of Antitrust Enforcement Policy regarding ACOs, which makes clear that the antitrust laws are not a barrier to bona fide collaborations to improve healthcare and reduce costs.
- Protected competition in key high technology markets such as smartphones and computer chips with cases against Google and Intel.
- Protected competition in manufacturing sectors through challenges to allegedly anticompetitive mergers and conduct involving battery separators, industrial finishing equipment, and pipe fittings.
- Promoted competition in the energy sector
 - Investigated petroleum industry mergers, practices, and pricing; and
 - Issued a rule prohibiting market manipulation in the wholesale petroleum industry, and monitored petroleum markets to enforce the rule.
- Challenged anticompetitive mergers and conduct in important consumer goods markets, including real estate brokerage services, car and truck rentals, soft drinks, and photochromic (light-sensitive) eyewear.
- In partnership with the Antitrust Division of the Department of Justice, promoted transparency in merger review by revising the Horizontal Merger Guidelines, the first major revision in 18 years, and by streamlining the premerger notification process.
- Continued its balanced and fact-specific approach to enforcement, taking aggressive action to protect consumers when a challenge was warranted, as in the case of Google's alleged misuse of standard essential patents, but standing down when the facts did not support an enforcement action, as in the review of the merger of pharmacy benefits managers ESI and Medco.

- Increased the use of the Commission’s Section 5 unfair methods of competition authority to stop conduct that is harmful to consumers and competition but outside the scope of the antitrust laws.
- Fostered cooperation and convergence among international antitrust enforcers
 - Deepened engagement with key antitrust authorities such as China, India, Mexico, Canada and Russia; and
 - Promoted international convergence toward sound policies and enforcement.

Protecting Consumers

Since March 2009, the FTC has:

- Filed 78 new administrative cases and 257 new federal district court cases.
- Obtained 298 consumer redress orders and distributed almost \$260 million in redress to over 5.4 million consumers.
- Obtained 52 civil penalty orders, requiring the payment of more than \$42 million.
- Obtained 13 civil contempt orders.
- Obtained administrative or federal court orders against 995 defendants.
- Obtained permanent bans against 141 defendants.
- Conducted 68 rulemaking and other statutorily mandated activities.
- Held or co-sponsored 44 workshops and conferences.

Protecting Consumers in a Troubled Economy

Stopping fraud targeting financially strapped consumers: Consumers who were most affected by the economic downturn were also the most vulnerable to scams. Scam artists seized upon new schemes to pick the last dollar out of the pockets of financially distressed consumers with false promises of mortgage assistance, jobs, government grants, and health insurance. As a result, one of the agency’s top priorities has been to stop fraud targeting financially strapped consumers. Since 2009, the agency has filed more than 50 actions challenging deceptive mortgage assistance relief, foreclosure rescue, and debt relief services.

The FTC leveraged its efforts by bringing many cases as part of coordinated law enforcement sweeps, such as Operation Stolen Hope in 2009, which included 118 actions targeting mortgage modification scams brought by 26 different agencies, and Operation Empty Promises in 2011, which included 90 actions by state and federal law enforcers against job opportunity and work-at-home scams.

Initiating action against deceptive mortgage servicing practices: In 2011, the agency returned almost \$108 million to more than 450,000 consumers who were allegedly overcharged or had their mortgage loans mishandled by Countrywide while the consumers were in default or in bankruptcy. The company later settled charges that it illegally assessed more than \$36 million in servicing fees against struggling homeowners, and agreed to refund or reverse all of those charges.

Issued new rules for mortgage relief services and deceptive marketing practices: In addition to its law enforcement efforts, the agency completed rulemakings banning the collection of up-front fees for debt relief services sold through telemarketing and for mortgage modification services, and providing additional protections for consumers purchasing these services. Pursuant to the Dodd-Frank Act, the agency also promulgated a new rule to combat deceptive mortgage advertising.

Tackling deceptive “get-rich-quick” schemes: The agency won the largest litigated judgment in its history in a case against the infomercial marketers of three get-rich-quick schemes, including the “John Beck Free and Clear Real Estate System.” A court has ordered the marketers to pay \$478 million to reimburse almost one million customers and has banned three of the defendants from the infomercial and telemarketing business for life.

Protecting consumers from abusive debt collection tactics: The agency vigorously pursued debt collectors who used misleading, unfair, or abusive tactics against consumers. This included taking action against two “phantom” debt collectors based in India that allegedly threatened consumers with arrest or lawsuits if they did not pay payday loan debts that were not actually owed. The agency charged Payday Financial, LLC, with illegally trying to garnish wages without a court order in one of two cases the FTC brought against a payday lending operation that had previously claimed its affiliation with a Native American tribe provided immunity from state enforcement.

Protecting Consumers’ Privacy

Protecting consumer privacy through policy initiatives: In 2009, the FTC kicked off a series of public roundtables that ultimately culminated in a March 2012 Privacy Report that has spurred companies to implement “privacy by design” and provide consumers with greater choice and transparency. The Privacy Report included a call for Do Not Track, and stakeholders are moving forward to implement a strong, effective, and simple Do Not Track system. The Commission has published several follow-on privacy reports concerning facial recognition technology and mobile apps.

Initiating several landmark enforcement actions to protect consumers’ privacy. Facebook, Google, and Twitter agreed to settle charges that they violated their privacy promises to consumers. The consent orders in each case require the companies to implement comprehensive privacy programs and to obtain regular, independent audits for the next 20 years. Subsequently, Google agreed to pay a record \$22.5 million civil penalty to settle charges that it misrepresented to users of Apple Inc.’s Safari Internet browser that it would not place tracking “cookies” or serve targeted ads to those users. The Commission brought other privacy cases relating to behavioral marketing, text messaging spam, and mobile apps.

Taking action to protect the security of consumer data. The Commission brought dozens of cases against companies that allegedly failed to keep consumers’ personal data secure. One area of focus was peer-to-peer (P2P) file sharing software, which poses significant security risks. The FTC took action against a P2P software developer and businesses that allowed P2P software to

be installed on their company networks, as well as notified nearly 100 public and private entities that sensitive data about their customers and employees had been shared and was available on P2P file-sharing networks. The FTC also brought enforcement actions against credit reporting agencies that failed to adequately control access to consumers' credit reports, and against entities that obtained reports without a permissible purpose.

Safeguarding children's privacy through COPPA enforcement: The FTC continued to enforce the Children's Online Privacy Protection Act (COPPA), resulting in strong settlement orders against numerous companies. For example, the agency obtained a \$3 million civil penalty against Playdom, Inc., the operator of over 20 online worlds such as Pony Stars, to settle charges that the company illegally collected and disclosed the information of hundreds of thousands of children under 13. Other COPPA cases included actions against Artist Arena, LLC, the operator of fan websites for Justin Bieber, Selena Gomez, and Rihanna, and against W3 Innovations, LLC, a mobile app developer.

Updating the COPPA Rule to keep pace with evolving technology: The updates to the COPPA Rule announced in December 2012 strengthen children's privacy protections and reflect careful consideration of the entire rulemaking record, including a public roundtable and several rounds of public comments. Among other things, the Rule now requires parental notice and consent before collection of geolocation information, and before use of tracking cookies for the purpose of serving behavioral advertising, for children under 13.

Meeting the Challenges of New Technologies and Emerging Scams

Combatting Internet fraud and evolving online scams: The FTC has made it a priority to root out deception and fraud on the Internet. The agency has taken action against massive online negative option schemes, including permanently shutting down Jesse Willms, whose online operation allegedly took in more than \$450 million by luring consumers with "free" trial offers for dietary supplement and teeth whiteners, and then charging them for additional products and services they did not agree to purchase. The FTC also brought 10 actions against online affiliate marketers and affiliate networks that used fake news web sites to advertise acai berry weight-loss products and colon cleaners. And the agency cracked down on massive tech support scams operating from India that allegedly conned consumers into believing that their computers were riddled with viruses and spyware, and then charged them hundreds of dollars to remotely access and "fix" the problem.

Enforcing the Do Not Call Rule and illegal robocalls: The National Do Not Call Registry, administered by the FTC, currently has more than 217 million registered numbers. The FTC has vigorously enforced Do Not Call Rules, filing 26 actions against 151 defendants since March 2009. Since a new rule took effect in September 2009 prohibiting commercial robocalls without written consent, the agency has filed numerous actions against marketers using illegal robocalls to pitch services such as purported extended auto warranties and fraudulent credit card interest rate reduction offers. And, for the first time, the FTC issued a technological challenge through www.challenge.gov to spur an innovative solution to the vexing problem of robocalls.

Addressing emerging mobile products and services with enforcement and policy initiatives:

With the explosion in the use of mobile technology, the FTC focused its attention on the mobile marketplace. The agency created a Mobile Technology Unit to coordinate its mobile enforcement and policy work, and established an undercover Mobile Lab with a variety of mobile devices and tools to investigate and capture evidence. The FTC brought several mobile enforcement actions, including a case targeting text message spam touting loan modification and debt relief services and cases involving mobile applications. The FTC also issued staff reports that examined the information available to parents prior to downloading mobile apps for their children in Google's Android Market and Apple's iTunes App Store. The reports call on industry members to provide greater transparency about their data practices. Finally, the FTC issued a report recommending mobile industry best practices for privacy disclosures.

Keeping consumers informed about using new technologies: The FTC's consumer education efforts include raising awareness of potential pitfalls consumers may encounter when they venture online, such as phishing scams and the risks of using peer-to-peer file sharing software. The FTC's *Net Cetera* publication is a guide for parents about how to keep their children safe online. The agency has distributed approximately 10 million copies of *Net Cetera* since introducing it in the fall of 2009.

Challenging Deceptive Advertising and Marketing

Bringing enforcement actions against national advertisers making deceptive health claims:

Since 2009, national advertising cases have been a high priority. The FTC strengthened the substantiation requirements in settlement orders in several health-related cases, including *Iovate*, *Dannon*, and *Nestle*. The FTC brought a number of actions against national advertisers for allegedly making unsubstantiated disease prevention and health benefit claims. For example, the POM Wonderful ads made unsubstantiated heart disease, prostate cancer, and erectile dysfunction claims for its pomegranate juice and pills; Reebok International Ltd. agreed to pay \$25 million to resolve FTC charges that it made unsubstantiated claims that its shoes would strengthen and tone lower body muscles; and Skechers USA, Inc. agreed to pay \$40 million to settle charges that it made unsubstantiated claims that its shoes would help people lose weight, strengthen and tone muscles, and improve circulation and aerobic conditioning. Other cases against national advertisers involved products such as Kellogg Frosted Mini-Wheats cereal, Dannon Activia yogurt, the Oreck Halo Vacuum, and Nivea My Silhouette! skin cream.

Bringing enforcement actions against deceptive marketing practices: The Commission brought enforcement actions against companies that overcharged consumers for everyday products and services. For example, the FTC brought several actions against companies offering prepaid phone cards with allegedly false and deceptive claims about the number of minutes of talk time and fees that reduced the value of the cards. Ticketmaster and its ticket reseller affiliate TicketsNow.com settled charges that they used deceptive tactics to charge consumers exorbitant prices for various popular events, including for Bruce Springsteen concert tickets. Additionally, the FTC provided refunds to nearly 13,000 consumers who paid significantly more for their drugs than they expected based on allegedly deceptive pricing claims made by CVS Caremark. The FTC charged that CVS Caremark misrepresented the prices of certain Medicare Part D prescription drugs – including drugs used to treat breast cancer symptoms and epilepsy – at CVS

and Walgreens pharmacies. The claims caused many seniors and disabled consumers to pay significantly more for their drugs than they expected and pushed them into the “donut hole” – a term referring to the coverage gap where none of their drug costs are reimbursed – sooner than they anticipated or planned.

Updating the Green Guides: The FTC amended the Green Guides to strengthen the existing business guidance on common environmental marketing claims. The amended version provides new advice for marketing claims that were not common when the Guides were last revised, such as “carbon offsets” and “renewable energy” claims.

Bringing enforcement actions against deceptive environmental and energy-related claims: The FTC also focused on ensuring that energy-related claims for products are substantiated and that consumers have truthful information to make informed purchasing decisions. For example, five online retailers agreed to pay a total of \$500,000 to resolve charges that they failed to post Energy Guide information, which informs consumers about the energy use of major home appliances and the annual cost to operate them. Also, five marketers of replacement windows settled charges that they made deceptive claims about how much money consumers could save on their energy bills by having their windows installed. In 2010, the agency charged Lights of America, Inc., with exaggerating the light output and life expectancy of its light emitting diode (LED) bulbs. Four major retailers agreed to pay penalties totaling \$1.26 million for alleged violations of the FTC’s Textile Rules by labeling and advertising products as made of bamboo, when they actually were made of rayon; while so-called bamboo textiles often are promoted as environmentally friendly, the process for manufacturing rayon – even when it is made from bamboo – is far from a “green” one.

Working with State, Federal, and International Enforcement Partners

Working with federal and state criminal prosecutors to send recalcitrant FTC defendants to prison: The FTC’s Criminal Liaison Unit (CLU) has been instrumental in increasing the criminal prosecution of the FTC’s most intransigent defendants. Since January 2009, 143 FTC defendants have been charged, 114 convicted, and 116 sentenced.

Stepping up order enforcement: Since the beginning of 2009, the agency stepped up its order enforcement program, winning litigated contempt orders in 12 cases. In that same time period, the FTC obtained record-setting civil penalty settlements in order enforcement actions. Google paid \$22.5 million to settle FTC charges that it misrepresented privacy assurances and Civic Development Group paid \$18.8 million to resolve charges of telemarketing for a non-existent charity in violation of an FTC order.

Increasing consumer protection cooperation with foreign law enforcement agencies: Since passage of the US SAFE WEB Act in 2006, the FTC has conducted more than 100 investigations with an international dimension and has filed more than 50 cases with a cross-border aspect. The agency has shared information and engaged in investigative assistance with foreign counterparts in numerous cases, resulting in enhanced enforcement cooperation in cases such as *FTC v. Pecon Software Limited*, a massive international tech support scheme. The FTC’s 2009 congressional report and 2012 testimony summarizing the agency’s enforcement activity pursuant to the SAFE

WEB Act led Congress to reauthorize the Act in 2012 for an additional seven years.

Increasing international policy engagement on privacy issues: The FTC staff provided input to European Union institutions on the revision of the EU's privacy system, including presentations to the European Parliament and various member state agencies and to other international partners that are developing or reforming their privacy systems. The FTC became a member of the International Conference of Data Protection and Privacy Commissioners and of the Asia-Pacific Privacy Authorities forum, hosting its 2012 conference. With the Department of Commerce and foreign counterparts, the agency developed this interoperable system for cross-border data transfers throughout the APEC region. The framework was endorsed by the APEC countries' leaders.

Promoting Competition and Innovation

From March 2009 through January 2013, the FTC has:

- Challenged 81 merger transactions leading to:
 - 51 consent orders,
 - 12 administrative complaints (9 with attendant requests for preliminary injunctions in federal district courts), and
 - 18 merger transactions that were abandoned or restructured after the parties learned of the Commission's concerns.
- Challenged allegedly anticompetitive conduct in 16 cases leading to:
 - 13 consent orders and
 - 3 administrative complaints.
- Obtained total dollar value of \$6.15 million in 6 civil penalty actions.
- Made 64 competition-related advocacy and amicus filings.
- Held or co-sponsored 20 competition-related workshops and conferences.
- Conducted 2 competition-related rulemaking and other statutorily mandated activities (aside from the annual revised HSR threshold notices).

Containing Costs of Prescription Drugs

Restricting anticompetitive pay-for-delay pharmaceutical agreements: By delaying the entry of cheaper generic drugs, pay-for-delay deals cost Americans \$3.5 billion annually and add to the federal deficit. The Congressional Budget Office has estimated that legislation restricting these agreements would reduce the debt by almost \$5 billion over the next decade. The FTC has challenged a number of these patent settlement agreements in court, contending that they are anticompetitive and violate U.S. antitrust laws. One case, involving the generic testosterone-replacement drug AndroGel, will be argued before the U.S. Supreme Court in March. A bipartisan Commission also has supported legislation in Congress that would restrict pay-for-delay settlements.

Taking action against anticompetitive pharmaceutical mergers: Since FY 2009, the FTC has preserved competition by taking action in no fewer than 17 mergers involving markets for

generic and branded drugs, including blood-plasma derived drugs, acne and cancer creams, and pain medicines.

Challenging merger of long-term care pharmacies: In 2012, the Commission issued an administrative complaint challenging Omnicare, Inc.'s proposed acquisition of rival pharmacy provider PharMerica Corp., two of the largest suppliers of pharmacy services to skilled nursing facilities. The FTC charged that the deal would have raised the price of drugs for Medicare Part D patients, the U.S. government, U.S. taxpayers, and other consumers. As a result, Omnicare abandoned its hostile takeover bid.

Promoting Competition in Health Care to Ensure Lower Costs, Higher Quality

Reinvigorating hospital merger enforcement: In the past several years, the Commission has challenged four hospital mergers, and won two preliminary injunctions. One of the matters, ProMedica, is on appeal in the Sixth Circuit. While the Commission recognizes the procompetitive benefits of many hospital mergers, the FTC has moved to block anticompetitive mergers that will raise prices to patients and health care plans.

Preserving competition to rein in health care costs: Many recent FTC merger enforcement actions involved companies that provide health care products and services, from dialysis clinics to testing labs to plasma-derived therapies. The Commission also has prevented consolidation among medical device manufacturers, preserving competition for plating systems used to treat wrist fractures, heart pumps, and laser microdissection tools.

Preventing anti-competitive conduct by health care providers: On the non-merger front, the FTC has challenged anticompetitive conduct by health care providers that may raise costs or reduce options for patients. One example is the FTC's action against the *North Carolina State Board of Dental Examiners*, in which the Commission ruled that the Board illegally sought to prevent non-dentists from providing teeth whitening services. The Commission also continues to challenge attempts by health care providers to raise reimbursement rates by joint negotiation or group boycotts.

Providing guidance to help health care providers form procompetitive ACOs and protect health care consumers from higher prices and lower quality care: On the policy front, the FTC worked with DOJ and other agencies, such as the Centers for Medicare and Medicaid Services (CMS), to hold a public workshop on new models for delivering health care under the new health care reform law – and to develop a Joint Statement of Antitrust Enforcement Policy for Accountable Care Organizations. The Statement makes clear that the antitrust laws are not a barrier to bona fide collaboration, while at the same time ensuring that any benefits from increased collaboration will not be lost to anticompetitive conduct. The agency continues to review ACO proposals for potential antitrust concerns.

Refining the nexus between state regulation and federal antitrust law: Two FTC health care cases are likely to have a lasting impact on the scope of the “state action” doctrine, which immunizes certain commercial activities from antitrust scrutiny, even when they lead to higher prices and reduced choices for consumers. Significantly, the Supreme Court this term heard

arguments about the proper limits on the state action doctrine in the appeal of an adverse ruling in the FTC's challenge to a merger to monopoly in Albany, Georgia. The second state action case brought under Chairman Leibowitz is North Carolina State Board of Dental Examiners, an administrative case in which the Commission ruled that the state action doctrine does not shield a self-interested panel of dentists from antitrust scrutiny of its efforts to block non-dentists from providing teeth-whitening services. Resolution of this case, currently on appeal, is likely to have broad implications for the Commission's future oversight of the conduct of professional boards.

Fostering Competition and Innovation in Technology Markets

Establishing a process for resolving licensing disputes involving standard essential patents (SEPs) without the threat of injunctive relief distorting the licensing negotiations in the landmark Google settlement: In January 2013, Google settled charges that its allegedly abusive conduct in seeking injunctions on its SEPs was harming competition in the markets for popular devices such as smartphones, tablets, and gaming consoles. Google allegedly sought to enjoin and exclude rivals that were using Google's SEPs after promising to license those patents on fair, reasonable, and non-discriminatory (FRAND) terms. Google also committed to stop certain business practices relating to its Internet search and search advertising business, ensuring that these markets are competitive and dynamic in the future, to the benefit of American consumers.

Mitigating the risk of "patent hold up": The Commission's action against Google came after its unanimous filing before the U.S. International Trade Commission in 2012 describing the risk of anticompetitive "patent hold up" from granting injunctive relief on SEPs with FRAND commitments.

Fostering competition and innovation in the computer chip market: The FTC stopped Intel's alleged decade-long effort to stall the widespread adoption of non-Intel computer chips through a course of conduct that was designed to maintain its monopoly in chips and attain a monopoly in graphic processing units. In 2010, the Commission announced a settlement order that requires Intel not only to cease certain exclusionary and deceptive conduct that had stymied rivals, but to maintain an open interface on certain CPU platforms for the near future. At the same time, the settlement leaves the company room to innovate and offer competitive pricing.

Preserving competition in computer hardware and information markets: The FTC was also active in blocking anticompetitive mergers involving technology markets, including desktop hard disk drives and computer chip interchange switches. Other technology mergers in which the Commission preserved competition over the past several years involved commercial real estate information services, educational marketing databases, and high-performance measurement instruments, to name a few.

Exploring cutting-edge policy and practices at the intersection of competition and intellectual property: The FTC's highly regarded 2011 report, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition*, recommended ways to improve policies governing patent notice (how well a patent informs the public of what technology is protected) and remedies for patent infringement (damages and injunctions). The FTC also held workshops and conferences, such as the FTC and DOJ Patent Assertion Entity workshop in 2012 and the

FTC's 2009 Evolving IP Marketplace hearings, to explore how markets for patents and technology operate in different industries and emerging business models.

Ensuring Competition in the Energy Sector

Bringing enforcement actions against anticompetitive mergers in the energy sector: Under Chairman Leibowitz's tenure, the FTC devoted significant resources to ensuring that mergers and anticompetitive practices do not harm competition in a variety of energy-related markets. As a recent example, in 2012, the FTC required Kinder Morgan, Inc., one of the largest U.S. transporters of natural gas and other energy products, to sell three natural gas pipelines and two gas processing plants and associated storage capacity in the Rocky Mountain region. In another 2012 action, the FTC issued a consent order requiring that AmeriGas L.P. amend its proposed acquisition of Energy Transfer Partners' (ETP's) Heritage Propane business. AmeriGas and ETP are two of the nation's largest propane distributors, and the FTC had charged that the acquisition would reduce competition and raise prices in the market for propane exchange cylinders that consumers use to fuel barbeque grills and patio heaters.

Adopting new rule to prohibit petroleum market manipulation: In August 2009, pursuant to its authority under the Energy Independence and Security Act of 2007, the FTC issued its Petroleum Market Manipulation Rule to prohibit fraud and deceit in wholesale petroleum markets, including omission of material information, that is likely to distort petroleum markets. The Commission established a process to monitor compliance with the Rule, and the agency continues to examine and assess the communications from the public for evidence of possible violations.

Maintaining Competition in Industrial and Consumer Markets

Protecting competition in manufacturing sectors: In the manufacturing sector, the Commission moved one step closer to a successful outcome in its effort to undo the 2008 merger of competing battery separator manufacturers, Polypore International and Microporous Products, with a victory in the Eleventh Circuit. Also, this year, the FTC stopped a proposed merger between two leaders in the worldwide market for key industrial finishing equipment. The Commission's review of other manufacturing or chemical mergers, markets that often involve millions of dollars in sales each year, has led to consent orders involving products such as road salt, portable nickel metal hydride batteries, herbicides, liquid industrial gases, specialty metal alloys, and high-performance alumina wear tile. The FTC also took action against allegedly anticompetitive conduct in the ductile iron pipe fittings market, used in municipal water systems.

Challenging anticompetitive mergers in important consumer goods markets: The Commission protected competition and consumers by challenging allegedly anticompetitive mergers involving products and services that consumers purchase every day, including groceries, rental cars, funeral homes and cemeteries, and soft drink manufacturers.

Stopping anticompetitive conduct involving household-name products: In 2010, the Commission used its stand-alone Section 5 authority to stop U-Haul in its efforts to raise prices for one-way truck rentals. The FTC also brought an important case concerning vertical restraints

by Transitions, Inc., the leading U.S. manufacturer of photochromic treatments that darken eyeglass lenses in sunlight. Under a consent order, Transitions agreed to stop using these practices, which should clear the way for consumers to choose other lenses when buying eyeglasses.

Combatting exclusionary practices in residential real estate services: The Commission's successful defense in the Sixth Circuit Court of Appeals of its opinion involving a Multiple Listing Service in southeastern Michigan saw the conclusion of a long-term effort by the Commission to combat exclusionary rules of Multiple Listing Services nationwide that had the effect of keeping discount real estate brokers from offering home sellers and buyers services at discount prices.

Using a Variety of Antitrust Enforcement and Policy Tools

Updating the Horizontal Merger Guidelines to promote transparency in merger review: In August 2010, the FTC and DOJ released a major update of the Horizontal Merger Guidelines for the first time since 1992. The Guidelines explain, in plain language, how the federal antitrust agencies evaluate the likely competitive impact of mergers and when the agencies are likely to challenge proposed mergers.

Streamlining the premerger notification program and enforcement: As part of the agency's ongoing efforts to review our regulations, ensure that they are reasonably necessary and up-to-date, and eliminate burdensome reporting requirements for business, the FTC and DOJ also released a new HSR form that is easier to fill out, reduces the burden on most merging parties, and makes the premerger notification review program more effective for both agencies. The Bureau of Competition also investigated violations of the HSR rules, bringing civil penalty cases in rare instances in which parties ignore or overlook their filing obligations. For example, the Commission last fall required Biglari Holdings, Inc., a publicly traded holding company, to pay \$850,000 to resolve alleged HSR violations in connection with its 2011 acquisition of a stake in the restaurant operator Cracker Barrel Old Country Store, Inc.

Taking a balanced and fact-specific approach to enforcement: Under Chairman Leibowitz, the Commission continued its balanced approach to antitrust enforcement, following the facts and the law in deciding whether to challenge business conduct. Where the facts suggested that aggressive action to protect consumers when a challenge was warranted, as in the case of Google's alleged misuse of its SEPs, the Commission did not hesitate to act, while refraining from filing a challenge when the facts did not support an enforcement action, as in the review of the merger of pharmacy benefits managers ESI and Medco and Google's acquisition of AdMob.

Increasing use of the Commission's Section 5 unfair methods of competition authority: When Congress created the FTC in 1914, it endowed the Commission with a unique combination of broad jurisdiction under Section 5 to stop "unfair methods of competition" with limited remedies. Section 5 reaches beyond the antitrust laws to conduct that is unfair and harmful to consumers and the competitive process, and because Section 5 is not an antitrust law the Commission's use of this authority minimizes the exposure of businesses to follow-on claims for treble damages in federal court. Under Chairman Leibowitz, the Commission relied on its unfair

method of competition authority to stop allegedly abusive practices relating to SEPs in Bosch and Google, allegedly exclusionary and deceptive conduct in Intel, and alleged invitations to collude in U-Haul.

Using all the tools at the FTC's disposal in mutually-reinforcing efforts to maintain competition and protect consumers: The FTC has a variety of tools to identify, understand and act against business practices that may be harming consumers. Workshops and conferences, such as the FTC and DOJ Patent Assertion Entity workshop, the FTC's 2009 Evolving IP Marketplace hearings, and How Will Journalism Survive the Internet Age?, are an important way for the Commission to study emerging business practices and models, to consider a range of economic and policy issues, and to understand the perspectives of various stakeholders. Reports and studies such as the FTC's 2011 report on patent notice and remedies, and the 2009 reports on competition issues relating to authorized generic and follow-on biologic drugs contribute to the public understanding of important issues relating to competition policy and consumer welfare. These tools, combined with the Commission's competition advocacy program and Congressional testimony, assist the Commission in effectively protecting American consumers.

Competition and Cooperation in a Global Marketplace

Increased and improved bilateral antitrust enforcement cooperation: The FTC cooperated with foreign counterparts on 92 matters, including agencies in Canada, China, the European Union, Japan, and Mexico. Mergers involving significant cooperation included Western Digital/Hitachi (with ten agencies), Panasonic/Sanyo, Pfizer/Wyeth, Agilent/Varian, and Intel/McAfee. The FTC also intensified cooperation on unilateral conduct matters including Intel and Google.

European Union. The FTC issued revised Best Practices on Cooperation in Merger Investigations with the European Commission's Directorate General for Competition and DOJ. The Practices provide a detailed advisory framework for cooperation when a U.S. agency and DG Competition review the same merger.

Canada and Mexico. The FTC helped organize joint consultations with the Canadian and Mexican antitrust agencies and established a merger working group to improve our cooperation. The agency worked with Canadian counterparts to bring our merger review systems into closer alignment.

China, India, Russia. The FTC, with DOJ, entered into Memoranda of Understanding with: China's three antimonopoly enforcement agencies; the Competition Commission India (CCI) and India's Ministry of Corporate Affairs; and the Russian Federal Antimonopoly Service. The FTC conducted multiple training workshops in these countries to promote sound legal and economic analysis, and hosted International Fellows to learn alongside FTC case teams.

One of the Best Agencies, One of the Best Places to Work

Reinvigorating Regulatory Review: The FTC has enhanced its longstanding program to make sure the agency's rules are up-to-date, effective, and not overly burdensome. In 2011, the

agency launched a new regulatory review web page to foster public participation and transparency, sought public comment on its regulatory review process, and accelerated the review of six rules and guides to address changes in technology and the marketplace. As a result, during Chairman Leibowitz's tenure, the FTC reviewed two-thirds of the agency's 66 rules and guides.

One of the Best Places to Work in Federal Government: Under Chairman Leibowitz's tenure, the FTC consistently has been rated one of the best places to work in Washington. The FTC was rated a top-performing agency in three out of four categories in OPM's 2012 Federal Employee Viewpoint Survey, and ranked among the top five mid-sized agencies according to the Partnership for Public Service's 2012 rankings.