

**Prepared Statement of  
The Federal Trade Commission**

Before the

**Subcommittee on  
Commerce, Justice, State, the Judiciary and Related Agencies  
of the  
Committee on Appropriations  
United States House of Representatives**

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## **I. Introduction**

Mr. Chairman, I am Timothy J. Muris, Chairman of the Federal Trade Commission ("Commission" or "FTC"). I am pleased to appear before the Subcommittee today to testify in support of the FTC's FY 2004 Appropriation request.<sup>(1)</sup> The Commission would like to thank the Chairman and members of the Subcommittee for their continued support of the agency's mission.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.<sup>(2)</sup> The agency enforces laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and it promotes 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.

The FTC consistently has pursued a vigorous and effective law enforcement program in a swiftly changing marketplace, with rapid growth in technology, and in an increasingly globalized economy. Through the efforts of a dedicated, professional staff, the FTC continues to handle an increasing workload, despite only modest increases in resources. Our testimony today summarizes some of the major activities of the past year and describes some of the planned initiatives for FY 2004.

To accomplish our missions in FY 2004, the FTC requests \$191,132,000 and 1,074 FTE. The FY 2004 request represents an increase of \$14,524,000 over the agency's FY 2003 appropriation of \$176,608,000.

During FY 2004, the FTC will address significant law enforcement and policy issues throughout the economy, devoting major portions of its resources to those areas in which the agency can provide the greatest benefits to consumers. This testimony in support of our FY 2004 appropriation highlights program priorities in the FTC's two missions. The focus of the consumer protection mission will be on broad efforts to fight fraud and deception, as well as on consumer privacy initiatives. The Commission also will continue initiatives directed at specific consumer groups, including children, Spanish-speaking consumers, and military personnel. The focus of the competition mission will be on merger and nonmerger enforcement, particularly in health care, energy, high technology, and international competition. The testimony concludes with a summary of the agency's FY 2004 appropriation request.

## **II. Consumer Protection**

### **A. Fraud and Deception**

The FTC targets the most pervasive types of fraud and deception in the marketplace, drawing substantially on data from Consumer Sentinel, the agency's award-winning consumer complaint database, and from Internet "surfs" that focus on specific types of claims or solicitations that are likely to violate the law. Since April 1, 2002, the Commission organized eight joint law enforcement efforts ("sweeps") with more than 100 law enforcement partners.<sup>(3)</sup> These

sweeps resulted in 260 law enforcement actions targeting Internet scams and telemarketing fraud, including deceptive work-at-home opportunities, deceptive Internet health claims, and advance-fee credit-related fraud. The FTC filed 66 of these cases.

Overall, in the past year, the FTC has filed 120 cases involving fraud or deception. The FTC also has enjoyed significant success in obtaining redress orders. Since April 1, 2002, the Commission has obtained more than 55 judgments ordering more than \$650 million in consumer redress.<sup>(4)</sup>

The Commission continues to ensure compliance with district court orders by bringing civil contempt proceedings when appropriate, and by assisting in criminal prosecution of FTC defendants who flagrantly violate court orders.

The Commission's actions against fraud and deception directly aid consumers. For example, in November 2002, the FTC finalized a consent order against Access Resource Services, Inc. and Psychic Readers Network, the promoters of "Miss Cleo" psychic services, who allegedly engaged in deceptive advertising, billing, and collection practices. The defendants stipulated to a court order requiring them to stop all collection efforts on accounts of, or claims against, consumers who purchased or purportedly purchased defendants' pay-per-call or audiotext services, to forgive an estimated \$500 million in outstanding consumer charges, and to pay \$5 million to the FTC.<sup>(5)</sup>

In addition, in January 2003, the FTC obtained a permanent injunction against *SkyBiz.com, Inc.*, an alleged massive international pyramid scheme. The final settlement includes \$20 million in consumer redress to be distributed to both domestic and foreign victims. The settlement also bans the principal individual defendants from multi-level marketing for a period of years.<sup>(6)</sup>

Most recently, in March 2003, the Commission announced settlements with five individual defendants who allegedly engaged in deceptive charitable telemarketing by misrepresenting both the charities that donations would benefit and the percentage of donations that the charities would receive.<sup>(7)</sup> The defendants raised more than \$27 million between 1995 and early 1999. Among other terms of the settlements, defendant Mitchell Gold is subject to a \$10 million judgment. Following an FTC criminal referral, Gold was indicted for mail and wire fraud in connection with the fundraising business and another fraudulent telemarketing scheme. Gold pled guilty and was sentenced to 96 months in prison.

## **B. Consumer Privacy**

During FY 2004, the FTC will continue to devote significant resources to protecting consumer privacy. Consumers are deeply concerned about the privacy of their personal information, both online and offline. One especially important privacy concern is that consumer information be secure, protected from theft and misuse. Although these concerns have been heightened by the rapid development of the Internet, they are by no means limited to the cyberworld. Consumers can be harmed as much by the thief who steals credit card information from a consumer's mailbox as by one who steals that information over the Internet. Of course, the nature of Internet technology may raise its own special set of issues. The following is an overview of the FTC's ongoing efforts to protect consumers' privacy.

### **1. Do-Not-Call**

In the recently enacted Omnibus Appropriations bill for FY 2003, this Subcommittee provided the FTC with the needed authority and funding to proceed with the creation and implementation of a national Do-Not-Call registry - a centralized database of telephone numbers of consumers who have asked to be placed on the list. The Do-Not-Call registry - part of the FTC's 2002 amendments to the Telemarketing Sales Rule - will help consumers reduce the number of intrusive and disruptive telemarketing phone calls they receive. The agency has contracted with a third party to create the registry and implement the system by rolling it out in specific geographic areas over two months until it covers the entire nation. Once the registry is completed, telemarketers must pay a fee to gain access to the registry and then scrub their telemarketing lists against the telephone numbers listed in the database. After telemarketers scrub their lists, consumers who have placed their telephone numbers on the registry will begin to receive fewer and fewer unwanted telemarketing calls. At the same time, the FTC will monitor industry compliance and take appropriate law enforcement action, if warranted.

### **2. Identity Theft**

The FTC's toll-free number 1-877-ID-THEFT is the central clearinghouse for identity theft complaints. Calls regarding identity theft have increased from more than 36,000 calls in FY 2000 to more than 185,000 calls in FY 2002. These complaints are available to the FTC's law enforcement partners through an online database, and now more than 650 law enforcement agencies access the data. In addition, FTC investigators, working with the Secret Service, develop preliminary investigative reports that are referred to regional Financial Crimes Task Forces for possible prosecution.

Continuing a program begun in March 2002, the FTC, the Secret Service, and the Department of Justice ("DOJ") conduct training seminars to provide hundreds of local and state law enforcement officers with practical tools to combat identity theft. To date, the Commission and its partners have conducted six regional training sessions for more than 600 law enforcement officers.

The FTC also engages in extensive education of both businesses and consumers about preventing and responding to identity theft. One of the agency's most popular publications is "Identity Theft: When Bad Things Happen to Your Good Name."<sup>(8)</sup>

### **3. Safeguarding Consumer Information**

In May 2002, the FTC finalized an order settling charges that Eli Lilly & Company unintentionally disclosed e-mail addresses of users of its Prozac.com and Lilly.com sites as a result of failures 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 reasonably anticipated threats or risks to its security, confidentiality, or integrity.<sup>(9)</sup>

In December 2002, the FTC settled charges against Microsoft Corporation that, among other things, the company misrepresented the measures it used to maintain and protect the privacy and confidentiality of consumers' personal information collected through its Passport web services.<sup>(10)</sup> Microsoft has agreed to implement a comprehensive information security program for Passport and similar services. The FTC will continue to bring actions involving claims deceptively touting the privacy features of products and services, as well as failures to maintain adequate security for personal information.

Also, in May 2002, the Commission finalized its Safeguards Rule to implement the security provisions of the Gramm-Leach-Bliley Act ("GLB").<sup>(11)</sup> The Rule establishes standards for financial institutions to maintain the security of customers' financial information, and becomes effective in May 2003. To help businesses understand and comply with the Rule, the agency issued a new publication, "Financial Institutions and Customer Data: Complying with the Safeguards Rule."<sup>(12)</sup>

Commissioner Orson Swindle, in particular, has focused on issues involving information security. During the past year, he has served as head of the U.S. delegation to the Organization for Economic Cooperation and Development ("OECD") Experts Group for Review of the 1992 OECD Guidelines for the Security of Information Systems. The group released revised guidelines in August 2002 that consist of nine principles promoting a "culture of security." The Commission has promoted the dissemination of these principles among industry and consumer groups. The FTC's consumer security web site, <[www.ftc.gov/infosecurity](http://www.ftc.gov/infosecurity)>, contains practical tips for staying secure online and features "Dewie the Turtle," a colorful cartoon mascot to promote good online security. In addition, the Commission has worked with the White House Office of Cyberspace Security to develop consumer awareness aspects of the National Strategy to Secure Cyberspace.

### **4. Children's Online Privacy Protection Act ("COPPA")<sup>(13)</sup>**

COPPA requires commercial web sites to give notice of their information practices and to obtain parental consent before collecting, using, or disclosing personal information about children under the age of 13. Since April 2001, the FTC has brought eight COPPA cases and obtained agreements requiring payment of civil penalties totaling more than \$350,000.<sup>(14)</sup> The two most recent cases involved settlements with Hershey Foods and Mrs. Fields.<sup>(15)</sup> Both companies agreed to settle charges that their web sites allegedly collected personal data from children without complying with COPPA requirements.

### **5. Spam**

Deceptive spam is an ever-growing problem that the Commission strives to address through law enforcement efforts, consumer and business education, and research. One of the most important tools the FTC uses to target law violations, identify trends and conduct research for education is its spam database. Consumers forward spam they receive to the FTC database at [uce@ftc.gov](mailto:uce@ftc.gov). The database receives over 100,000 email messages each day, and currently contains approximately 32 million pieces of spam. In addition to its own use, the FTC shares the database information with other federal and state law enforcement agencies.

In November 2002, the FTC and 12 law enforcement partners brought 30 enforcement actions as part of an ongoing initiative to fight deceptive spam and Internet scams.<sup>(16)</sup> The FTC also announced, with ten participating agencies, a "Spam Harvest," a study designed to test which actions taken by consumers online may put them at the greatest risk of receiving spam.<sup>(17)</sup>

The FTC recently settled an action against a company that allegedly profited from a particularly insidious spam scam. According to the Commission's complaint, the subject line of the e-mail said "Yahoo sweepstakes winner," and the message congratulated the recipient for being chosen as a winner of a prize in a recent Yahoo sweepstakes contest. Most often, the message mentioned that the prize was a Sony Playstation 2, making it particularly attractive to adolescents. But the message was not from Yahoo and the recipients had not won anything. Instead, after clicking through five web pages, consumers were connected to a pornographic web site at a cost of up to \$3.00 a minute. The FTC filed a complaint against the operators of the adult web site to which consumers had been driven by the spam.<sup>(18)</sup> The settlement enjoined the defendants from making misleading representations of material facts in email and other marketing, including deceptive email header information. The settlement also requires defendants to prevent third parties that promote their videotext services, through email or other means, from making deceptive statements.

In a recent nationwide law enforcement sweep, Operation License for Trouble, the FTC targeted spammers and web site operators for deceptive marketing of fake international driving permits.<sup>(19)</sup> According to Commission complaints, the defendants claimed that their driving permits (which cost up to \$375) were alternatives to state-issued drivers' licenses, and could be used (1) to drive legally in the United States; (2) to avoid points or sanctions for traffic violations; and (3) as an identification document. The FTC obtained preliminary injunctions against such practices in six federal court actions.<sup>(20)</sup>

While the Commission's efforts are important factors in stopping the rising tide of spam, the FTC is hopeful that technological fixes and other industry initiatives will provide additional solutions. To explore the impact spam has on consumers' use of email, email marketing, and the Internet industry, the FTC will host a public forum from April 30 through May 2, 2003.<sup>(21)</sup> The forum will explore the proliferation of, and potential solutions to, unwanted spam and will examine how the ability of spammers to remain anonymous assists those who perpetrate fraud and complicates law enforcement efforts.

## **6. *Pretexting***

Through its Section 5 authority as well as its jurisdiction under the GLB Act, the FTC takes action against "pretexting" - the use of false pretenses to obtain customer financial information. The agency has obtained stipulated court orders against three firms, and has sent warning letters to nearly 200 others, about apparent violations of the pretexting provisions. The Commission will continue enforcement efforts against the abusive practice of pretexting that threatens the security of consumers' personal financial information.

### **C. Deceptive Lending Practices**

One of the most important ways in which the FTC protects consumers is by taking action to stop deceptive lending practices. Unscrupulous lenders can deceive consumers about loan terms, rates, and fees. When lenders deceive mortgage borrowers in this manner, the resulting injury can be severe, including the loss of one's home. The FTC continues to conduct a vigorous enforcement program to root out deception by lenders.

Over the last year, the FTC has obtained settlements for nearly \$300 million in consumer redress for deceptive lending practices and other related law violations. The FTC has settled cases against Associates First Capital Corporation (now owned by Citigroup)<sup>(22)</sup> for alleged deceptive sales of credit insurance and alleged violations of the Equal Credit Opportunity Act<sup>(23)</sup> and the Fair Credit Reporting Act,<sup>(24)</sup> against First Alliance Mortgage<sup>(25)</sup> for allegedly imposing deceptive loan terms and origination fees; and against Mercantile Mortgage<sup>(26)</sup> for alleged deception of

consumers about loan terms and alleged violations of the Truth in Lending Act.<sup>(27)</sup> In addition to monetary relief, the Mercantile settlement gives hundreds of consumers the opportunity to refinance loans at low or no cost.<sup>(28)</sup>

## **D. Health Fraud and Deception**

Truthful and substantiated health claims in advertising can be an important source of useful information for consumers. Inaccurate information, on the other hand, can cause serious physical as well as financial harm. For that reason, combating deceptive health claims, both online and off, continues to be a priority for the FTC.

### **1. Dietary Supplements**

Challenging misleading or unsubstantiated claims in the advertisement of dietary supplements is a significant part of the FTC's consumer protection agenda. Over the past decade, the Commission has filed more than 80 law enforcement actions challenging false or unsubstantiated claims about the efficacy or safety of a wide variety of supplements.<sup>(29)</sup> The Commission focuses its enforcement priorities on claims for products with unproven benefits or that present significant safety concerns to consumers, and on deceptive or unsubstantiated claims that products treat or cure serious diseases. The FTC has taken action against all parties responsible for the deceptive marketing, including manufacturers, advertising agencies, infomercial producers, distributors, retailers, and endorsers.

### **2. Weight Loss Advertising**

Since the 1990s, the Commission has filed nearly 100 cases challenging false or misleading claims for all types of weight loss products, including over-the-counter drugs, dietary supplements, commercial weight loss centers, weight loss devices, and exercise equipment.<sup>(30)</sup> In September 2002, the FTC issued a "Report on Weight-Loss Advertising: An Analysis of Current Trends."<sup>(31)</sup> The report concluded that false or misleading claims for weight loss products, such as claims of substantial weight loss without diet or exercise, are widespread and, despite an unprecedented level of FTC enforcement activity, appear to have increased over the last decade.

The FTC continues to explore ways to stem the tide of deceptive weight loss claims. In an opinion piece in *Advertising Age*, Commissioner Sheila Anthony commented that the Commission cannot solve this problem alone and made it clear that the industry and the media have a significant role to play.<sup>(32)</sup> On November 19, 2002, the Commission held a public workshop on the Advertising of Weight Loss Products.<sup>(33)</sup> Workshop participants included government officials, scientists, public health groups, marketers of weight loss products, advertising professionals, and representatives of the media. Participants explored both the impact of deceptive weight loss product ads on the public health and new approaches to fighting the proliferation of misleading claims, including a more active role for the media in screening out patently false weight loss advertising.

## **E. Cross-Border Consumer Protection**

Cross-border complaints submitted to the Consumer Sentinel database represent 14 percent of all non-identity-theft fraud complaints received in 2002. Most of these complaints involve advance-fee credit-related schemes, prizes and sweepstakes pitches, foreign money offers, and Internet auctions. Last year, the Commission and its partners brought 22 law enforcement actions involving cross-border fraud. For example, the FTC worked with the Ontario Strategic Partnership in cases involving credit card loss protection<sup>(34)</sup> and advance-fee credit cards,<sup>(35)</sup> and with four Canadian law enforcement agencies in a case involving prize scams.<sup>(36)</sup> The Commission also has been active in the Mexico-U.S.-Canada Health ("MUCH") task force and is developing a detailed action plan to combat cross-border health care fraud in North America. In February 2003, the FTC announced a joint law enforcement action with its partners from Canada and Mexico against a Canadian corporation that marketed a purported cancer cure therapy in Tijuana, Mexico.<sup>(37)</sup>

In January 2003, the FTC launched a new web site, [www.ftc.gov/crossborder](http://www.ftc.gov/crossborder), to help consumers spot, stop, and avoid cross-border fraud. In addition, seventeen countries, including the United States, participate in [www.econsumer.gov](http://www.econsumer.gov), a web site that the FTC manages. Consumers from around the world can use the web site to file cross-border e-commerce complaints, contact international law enforcement agencies, and access educational materials in English, French, German, and Spanish.

The Commission is pursuing other initiatives to fight cross-border fraud. In February 2003, the FTC held a two-day public workshop that brought together American and foreign law enforcement officials, business representatives, and

consumer advocates to discuss private and public sector cooperation in combating cross-border fraud. In addition, the Commission has entered into Memoranda of Understanding with the United Kingdom, Australia, and Canada to combat cross-border fraud through cooperation and coordinated enforcement activities, and to provide technical assistance to developing countries.

The FTC also is working on the adoption of an OECD Recommendation on Cross-Border Fraud, through OECD's Committee on Consumer Policy. This recommendation will help develop international consensus on what constitutes consumer fraud and on the key goals of cross-border cooperation. Last spring, Commissioner Mozelle Thompson, who has been instrumental in pursuing the Commission's cross-border agenda, was elected Chair of OECD's Committee on Consumer Policy.

## **F. Initiatives Designed to Reach Specific Consumer Groups**

The FTC has implemented a variety of initiatives that assist particular consumer groups. Such groups include children, Spanish-speaking consumers, and military personnel and their families.

### **1. Marketing to Children**

**Media Violence.** The FTC continues to monitor the marketing of violent entertainment products to children. In September 2000, the agency reported that the entertainment industry targeted advertising and promotion of violent video games, movies, and music to children.<sup>(38)</sup> In response to requests from Congress, the Commission has issued three follow-up reports, in April and December of 2001 and in June of 2002.<sup>(39)</sup> These reports found substantial improvements by the movie and electronic games industries in how they marketed their products, but found no appreciable change in the music industry's marketing practices. These reports also documented widespread disclosure by the movie and electronic games industries of rating information in advertising, and some improvement by the music industry in disclosing the parental advisory label in advertising.

The FTC will prepare a fourth follow-up report on the industries' practices during the year following its last report. The Commission staff also is working with retailer trade groups on devising a consumer education message for parents, and is preparing to hold a public workshop on these issues later this year.

**Online Gambling.** In 2002, the FTC staff conducted an informal survey of over 100 online gambling sites, revealing that minors easily can access those sites and frequently are exposed to advertisements for online gambling on general use, non-gambling web sites.<sup>(40)</sup> As a result of the survey, the FTC published a consumer alert warning parents and their children that online gambling can pose huge risks, including money loss, impaired credit ratings, and addiction to gambling. The alert further advises that it is illegal in every state for minors to gamble.<sup>(41)</sup>

**Alcohol.** The FTC monitors alcohol advertising to ensure that ads for these products do not reflect potentially unfair or deceptive practices, including the targeting of alcohol advertisements to minors. In response to a Congressional request, the Commission will report on two subjects related to alcohol advertising and youth.<sup>(42)</sup> First, Congress asked the FTC to study the impact on underage consumers of the significant expansion of ads for new alcoholic beverages, sometimes referred to as 'alcopops' - sweet, flavored alcoholic beverages sometimes bearing the names of distilled spirits brands. Second, Congress asked the FTC to review the industry's response to the recommendations for improved self-regulation contained in the FTC's 1999 report to Congress. Those recommendations focused on stricter advertising placement standards and the establishment of an independent third-party review mechanism.

### **2. Spanish-Speaking Consumers**

In FY 2002, the FTC instituted a Hispanic Outreach Program, which included the addition of a Hispanic Outreach Coordinator position. This effort includes the creation of a dedicated page on the FTC site, *Protección Para el Consumidor* ("Consumer Protection"), which mirrors the English version of the consumer protection page and includes translations of several consumer education publications into Spanish. The FTC also has provided an online Spanish-language consumer complaint form and has undertaken outreach efforts to Hispanic media. The agency staff is translating additional materials and expanding the program. The FTC also has taken action against alleged law violations affecting Spanish-speaking consumers. For example, the agency settled a civil penalty action against a Houston-based debt collection company for alleged violations of the rights of Spanish- and English-speaking consumers under the Fair Debt Collection Practices Act.<sup>(43)</sup> The settlement requires, among other things, that the company make disclosures in Spanish where applicable.

### **3. *Military Sentinel***

In September 2002, the FTC and the Department of Defense ("DOD") launched *Military Sentinel*, the first online consumer complaint database specifically tailored to the unique needs of the military community. The system offers members of the military and their families a way to file complaints and gain immediate access to the FTC's full range of educational materials and information.<sup>(44)</sup> It also gives DOD and law enforcement officers secure access to the complaints entered into the database.

## **III. Maintaining Competition**

### **A. Merger Enforcement and Nonmerger Enforcement**

During the unprecedented merger wave in the late 1990s through 2000, the agency was forced to divert resources to meet its statutory responsibilities under the Hart-Scott-Rodino Act ("HSR").<sup>(45)</sup> With the significant recent decline in merger activity, the Commission has been able to restore the historical balance of resources to both merger and nonmerger areas. Since the peak in merger activity in 2000, when the agency opened only 25 nonmerger investigations, the FTC has worked to reinvigorate its nonmerger enforcement program. In 2001, the agency opened 56 new nonmerger investigations, and in 2002, the agency opened another 59 nonmerger investigations. These investigations are targeting practices with enormous potential to harm competition and consumers.

Merger enforcement continues to be a major focus of the competition agenda in FY 2004. Stopping mergers that lessen competition ensures that consumers will have the benefit of lower prices and greater choices in their selection of goods and services. The FTC continues to review numerous complex transactions that raise significant competitive issues and entail extensive investigation and analysis. Some transactions involve difficult legal questions or numerous separate product and geographic markets, each requiring detailed analysis. Further, mergers in high tech markets involve especially exacting analysis because of quickly changing markets. While the Commission resolves most merger challenges through negotiated settlements, it is sometimes necessary to litigate, particularly in those instances when the merger has been consummated. Merger litigation 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.

The following discussion addresses both enforcement and other initiatives in several key sectors of the economy and generally.

### **B. Health Care**

The health care sector remains enormously important to both consumers and the national economy. Health-related products and services account for more than 15 percent of the U.S. gross domestic product ("GDP"), and that share has grown by about 25 percent since 1990. Without effective antitrust enforcement, health costs would be greater and the share of GDP would be even higher.

#### **1. *Prescription Drugs***

Just last month, the FTC reached a major settlement with Bristol-Myers Squibb ("BMS") to resolve charges that BMS engaged in a series of anticompetitive acts over the past decade to obstruct entry of low-price generic competition for three of BMS's widely-used pharmaceutical products: two anti-cancer drugs, Taxol and Platinol, and the anti-anxiety agent BuSpar.<sup>(46)</sup> Among other things, the Commission's complaint alleged that BMS abused Food and Drug Administration ("FDA") regulations to obstruct generic competitors; misled the FDA about the scope, validity, and enforceability of patents to secure listing in the FDA's "Orange Book" list of approved drugs and their related patents; breached its duty of good faith and candor with the U.S. Patent and Trademark Office ("PTO"), while pursuing new patents claiming these drugs; filed baseless patent infringement suits against generic drug firms that sought FDA approval to market lower-priced drugs; and paid a would-be generic rival \$72.5 million to abandon its legal challenge to the validity of a BMS patent and to stay out of the market until the patent expired. Because of BMS's alleged pattern of anticompetitive conduct and the extensive resulting consumer harm, the Commission's proposed order necessarily contains strong - and in some respects unprecedented - relief.<sup>(47)</sup>

The settlement with BMS represents the latest FTC milestone in settlements regarding allegedly anticompetitive conduct by branded or generic drug manufacturers designed to delay generic entry. Other recent FTC successes in this area include:

- An October 2002 consent order settling charges that Biovail Corporation illegally acquired a license to a patent and improperly listed the patent in the FDA's Orange Book as claiming Biovail's high blood pressure drug Tiazac (under current law, the listing of the patent and the subsequent lawsuit brought by Biovail against a potential generic entrant triggered an automatic 30-month stay of FDA approval of the generic competitor).<sup>(48)</sup>
- An August 2002 settlement with Biovail and Elan Corporation, plc resolving charges that the companies entered into an agreement that provided substantial incentives for the two companies not to compete in the markets for 30 milligram and 60 milligram dosage strengths of the generic drug Adalat CC (an anti-hypertension drug).<sup>(49)</sup> and
- An April 2002 settlement resolving charges that American Home Products entered into an agreement with Schering-Plough Corporation to delay introduction of a generic potassium chloride supplement in exchange for millions of dollars.<sup>(50)</sup>

## **2. Health Care Providers**

For decades, the Commission has worked to enable innovative and efficient arrangements for the delivery and financing of health care services by challenging artificial barriers to competition among health care providers.

For example, the FTC settled with four groups of physicians for allegedly colluding to raise consumers' costs.<sup>(51)</sup> The number of physicians involved ranged from 41 in one matter in the Denver area to more than 1,200 in a case in Dallas-Fort Worth. The Commission's orders put a stop to allegedly collusive conduct that harms employers, individual patients, and health plans by depriving them of the benefits of competition in the purchase of physician services. Most of these cases involved significant numbers of doctors, and they have had a substantial impact on consumers.

## **3. Health Care Mergers**

The Commission has taken action regarding a number of proposed mergers in the health care sector. For example, in June 2002, the Commission authorized the staff to seek a preliminary injunction blocking Cytoc Corporation's ("Cytoc") proposed acquisition of Digene Corporation ("Digene").<sup>(52)</sup> Cytoc/Digene involved the merger of two manufacturers of complementary cervical cancer screening tests. Digene is the only company in the United States selling a DNA-based test for the human papillomavirus, the virus believed to cause nearly all cervical cancer cases. Cytoc's products accounted for 93 percent of U.S. liquid-based Pap tests, which currently are the most widely-used primary screening tools for the detection of cervical cancer. The complaint alleged that the likely competitive harm involved a vertical theory in which the incentive of the combined firm was to use its market power in one product to stifle increased competition in the complementary product's market. Specifically, the FTC was concerned that Digene would not support rival liquid Pap test suppliers in obtaining the necessary FDA approval for use of the Digene product in combination with the rivals' liquid test products. Thus, if the merger had been consummated, TriPath (the other liquid pap test competitor) and new entrants would be substantially impeded from competing without the merged firm's cooperation. Following the Commission's decision to authorize the staff to seek an injunction to block the merger, the parties abandoned the transaction.

The Commission has obtained consent orders in other health care merger matters. The Commission alleged that Baxter International's \$316 million acquisition of Wyeth Corporation's generic injectable drug business raised competitive concerns in the markets for the manufacture and sale of a variety of drugs, including the \$400 million market for propofol, a general anesthetic commonly used for the induction and maintenance of anesthesia during surgery, and the \$225 million market for new injectable iron replacement therapies used to treat iron deficiency in patients undergoing hemodialysis.<sup>(53)</sup> To settle this matter, the parties agreed to divestitures that are expected to maintain competition in those markets.

The FTC also obtained an agreement settling allegations that Amgen Inc.'s \$16 billion acquisition of Immunex Corporation would reduce competition for three important biopharmaceutical products: (1) neutrophil regeneration factors used to treat a dangerously low white blood cell count that often results from chemotherapy; (2) tumor necrosis factors used to treat rheumatoid arthritis, Crohn's disease, and psoriatic arthritis; and (3) interleukin-1

inhibitors used in the treatment of rheumatoid arthritis.<sup>(54)</sup> The settlement required that the companies divest certain assets and license certain intellectual property rights in these markets.

#### **4. Report on Generic Drugs**

The FTC has focused on competition in the pharmaceutical industry for several years. Commissioner Leary has a special interest in the subject of pharmaceutical competition and has addressed this topic in speeches to solicit input from affected parties and to promote dialogue regarding practical solutions.<sup>(55)</sup>

In July 2002, the FTC issued a report entitled "Generic Drug Entry Prior to Patent Expiration: An FTC Study,"<sup>(56)</sup> which evaluated whether the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act are susceptible to strategies to delay or deter consumer access to generic alternatives to brand-name drug products. The report recommended changes in the law to ensure that generic entry is not delayed unreasonably, including through anticompetitive activity. In October 2002, President Bush directed the FDA to implement one of the key findings identified in the FTC study.<sup>(57)</sup> Specifically, the FDA has proposed a new rule to curb one of the abuses uncovered by the FTC - pharmaceutical firms' alleged misuse of the Hatch-Waxman patent listing provisions - to speed up consumer access to lower-cost generic drugs.<sup>(58)</sup>

#### **5. Hearings on Health Care and Competition Law and Policy**

Consistent with the broad mandate of the FTC Act, the FTC commenced a series of hearings on "Health Care and Competition Law and Policy" on February 26, 2003.<sup>(59)</sup> The FTC is conducting these hearings jointly with the DOJ's Antitrust Division. Over the next seven months, the FTC and DOJ will spend almost 30 days of hearings examining health care issues through the lens of competition law and policy, encompassing antitrust, consumer protection, and competition advocacy. The hearings will consider the competition law and policy issues raised by hospitals, insurers, quality and consumer information, physicians, and non-price competition. The hearings also will spend time looking into pharmaceuticals, long-term care, Medicare, remedies for anticompetitive conduct, and international perspectives on competition law and policy. A public report that incorporates the results of the hearings will be prepared after the hearings.

### **C. Energy**

Antitrust law enforcement is particularly important in the oil and gas industry, because fuel price increases can strain the budgets of many consumers and also can have a direct and significant impact on businesses of all sizes throughout the U.S. economy. Enforcement of the antitrust laws helps ensure that the oil and gasoline industries remain competitive. Although most of the Commission's energy-related enforcement actions have involved mergers, the nonmerger side is equally important.

#### **1. Oil Merger Investigations**

In recent years, the FTC has investigated numerous oil mergers. When necessary, the agency has insisted on divestitures to cure potential harm to competition. In the Commission's most recent case, *Conoco/Phillips*, the Commission required the merged company to divest two refineries and related marketing assets, terminal facilities for light petroleum and propane products, and certain natural gas gathering assets.<sup>(60)</sup>

#### **2. Gasoline Standard Nonmerger Case**

The Commission recently issued an administrative complaint in an important nonmerger case involving the Union Oil Company of California ("Unocal").<sup>(61)</sup> In its complaint, the Commission alleged that Unocal violated Section 5 of the FTC Act by subverting the California Air Resources Board's ("CARB") regulatory standard-setting procedures of the late 1980s relating to low-emissions reformulated gasoline ("RFG"). According to the complaint, Unocal misrepresented to industry participants that some of its emissions research was non-proprietary and in the public domain, while at the same time pursuing a patent that would permit Unocal to charge royalties if CARB used such emissions information. The FTC alleged that Unocal did not disclose its pending patent claims and that the corporation intentionally perpetuated the false and misleading impression that it would not enforce any proprietary interests in its emissions research results. The FTC's complaint states that Unocal's conduct has allowed it to acquire monopoly power for the technology to produce and supply California "summer-time" RFG, a low-emissions fuel mandated for sale in California from March through October. The complaint states that the costs of most of the

royalties Unocal receives would be passed through to consumers in the form of higher retail gasoline prices. This case is pending before an Administrative Law Judge.<sup>(62)</sup>

### **3. Study of Refined Petroleum Product Prices**

Building on its enforcement experience in the petroleum industry, the FTC is studying the causes of the recent volatility in refined petroleum products prices. In two public conferences, held in August 2001 and May 2002,<sup>(63)</sup> participants discussed key factors that affect product prices, including increased dependency on foreign crude sources, changes in industry business practices, and new governmental regulations. The information gathered through these public conferences will form the basis for a report to be issued later this year.

### **4. Gasoline Price Monitoring**

In May 2002, the FTC announced a project to monitor wholesale and retail prices of gasoline. This project tracks retail gasoline prices in approximately 360 cities nationwide and wholesale (terminal rack) prices in 20 major urban areas. The FTC Bureau of Economics staff receives daily data purchased from the Oil Price Information Service ("OPIS"), a private data collection company. The economics staff uses an econometric (statistical) model to determine whether current retail and wholesale prices each week are "anomalous" in comparison with historical data. This model relies on current and historical price relationships across cities, as well as other variables.

As a complement to the analysis based on OPIS data, the FTC staff also regularly reviews reports from the Department of Energy's Consumer Gasoline Price Hotline, looking for prices that are significantly above the levels indicated by the FTC's econometric model, or other indications of potential problems. The results may trigger further staff inquiry to determine what factors might be causing price anomalies in a given area. These factors could include supply disruptions such as refinery or pipeline outages, changes in taxes or fuel specifications, unusual changes in demand due to weather conditions and the like, and possible anticompetitive activity.

To enhance the Gasoline Price Monitoring Project, the FTC has recently asked each state Attorney General to forward to the FTC's attention consumer complaints they receive about gasoline prices. The staff will incorporate these complaints into its ongoing analysis of gasoline prices around the country, using the complaints to help locate price anomalies outside of the 360 cities for which the staff already receives daily pricing data.

The goal of the Monitoring Project is to alert the FTC to "unusual" changes in gasoline prices so that further inquiry can be undertaken expeditiously. As part of the Monitoring Project, the Commission is working with other federal and state officials. When price increases do not appear to have market-driven causes, the FTC staff will consult with the Energy Information Agency of the Department of Energy. The FTC staff also will contact the offices of the appropriate state Attorneys General to discuss the anomaly and the appropriate course for any further inquiry, including the possible opening of a law enforcement investigation.

## **D. High Technology**

As an agency with a history of keeping pace with marketplace developments, the FTC is well-positioned to take a leading role in assessing the impact of technology on domestic and world markets. In addition to bringing enforcement actions in high tech areas, the FTC is studying the impact of the Internet and intellectual property on competition law and policy.

### **1. Standard-Setting Cases**

As technology advances, efforts will increase to establish industry standards for the development and manufacture of new products. Standard setting is often procompetitive, but anticompetitive activities can take place during the standard-setting process. The Commission's most recent action involving alleged subversion of a standard-setting process is the complaint against Unocal, discussed previously.

In another matter, the Commission issued an administrative complaint in June 2002 against Rambus, Inc., alleging that, as a participant in an electronics industry standard-setting organization, Rambus - in violation of the organization's rules - failed to disclose that it had a patent and several pending patent applications on technologies that eventually were adopted as part of the industry standard.<sup>(64)</sup> The standard at issue in *Rambus* 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 Commission'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.<sup>(65)</sup> Because standard-setting abuses can harm robust and efficiency-enhancing competition in high tech markets, the Commission will continue to pursue investigations in this important area.<sup>(66)</sup>

## **2. Intellectual Property Hearings**

In 2002, the FTC and DOJ commenced a series of hearings on "Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy."<sup>(67)</sup> The hearings responded to the increasing need to manage the issues at the intersection of competition and intellectual property law and policy. The Commission anticipates releasing a report on its findings later this year.

## **3. Internet Task Force**

In 2001, the FTC's Internet Task Force began to evaluate potentially anticompetitive regulations and business practices that could impede e-commerce. The Task Force has discovered that some state regulations may have the effect of protecting existing bricks-and-mortar businesses from new Internet competitors. The Task Force also is considering whether private companies may be hindering e-commerce through the use of potentially anticompetitive tactics. In October 2002, the Task Force held a public workshop to: (1) enhance the FTC's understanding of these issues; (2) educate policymakers about the potential anticompetitive effects of state regulations; and (3) educate private entities about the types of business practices that may be viewed as problematic.<sup>(68)</sup>

## **E. Other Enforcement**

### **1. General Merger Enforcement**

The Commission reviews and challenges mergers in any sector that have significant potential to harm competition and consumers. For example, last summer the Commission settled allegations that Bayer AG's \$6.2 billion purchase of Aventis S.A.'s crop science business raised antitrust concerns in the markets for a number of crop science products, including markets for (1) new generation chemical insecticide products and active ingredients; (2) post-emergent grass herbicides for spring wheat; and (3) cool weather cotton defoliants. These new generation products are at the forefront of pesticide, insecticide, and herbicide products, and maintaining competition in these markets is significant because they offer greater effectiveness, with less environmental impact than current generation products. In settling this matter, the Commission required Bayer to divest businesses and assets used in the manufacture of these products to parties capable of maintaining competitive conditions in these markets.<sup>(69)</sup>

Also, in October 2002, the Commission authorized the staff to seek a preliminary injunction in federal court blocking the proposed acquisition of the Claussen Pickle Company by the owner of the Vlasic Pickle Company.<sup>(70)</sup> If allowed to proceed, the combined firm would have had a monopoly share of the refrigerated pickle market in the United States. Following the FTC's decision, the parties abandoned the proposed acquisition.

### **2. Mergers Not Reportable Under HSR**

In FY 2004, the FTC will continue to devote resources to monitoring merger activities that are not subject to premerger reporting requirements under HSR, but that could be anticompetitive. In 2000, Congress raised the HSR size-of-transaction filing threshold to eliminate the reporting requirement for smaller mergers, but of course it did not eliminate the substantive prohibition under Section 7 of the Clayton Act<sup>(71)</sup> against smaller mergers that may substantially lessen competition. Consequently, the agency must identify - through means such as the trade press and other news articles, consumer and competitor complaints, hearings, and economic studies - and remedy those unreported, usually consummated mergers that could harm consumers.

One notable example is a case that the Commission brought against MSC Software Corporation.<sup>(72)</sup> In this case, the company ultimately agreed to settle FTC allegations that MSC's 1999 acquisitions of Universal Analytics, Inc. and Computerized Structural Analysis & Research Corp. violated federal antitrust laws by eliminating competition in, and monopolizing the market for, advanced versions of Nastran, an engineering simulation software program used throughout the aerospace and automotive industries. Under the terms of the settlement agreement, MSC must divest

at least one clone copy of its current advanced Nastran software, including the source code. The divestiture will be through royalty-free, perpetual, non-exclusive licenses to one or two acquirers who must be approved by the FTC.

## **F. International Competition**

Because competition increasingly takes place in a worldwide market, cooperation with competition agencies in the world's major economies is a key component of the FTC's 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 differences will result in conflicting results are likely to remain rare. The Commission 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.

### **1. ICN and ICPAC**

In the fall of 2001, the FTC, DOJ, and 12 other antitrust agencies from around the world launched the International Competition Network ("ICN"), an outgrowth of a recommendation of the International Competition Policy Advisory Committee ("ICPAC"). ICPAC suggested 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. The 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-seven jurisdictions already have joined the ICN, and the FTC staff is working on initial projects relating to mergers and competition advocacy.

### **2. OECD**

The FTC continues to participate in the 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.

## **IV. Needed Resources for Fiscal Year 2004**

To accomplish the agency's mission in FY 2004, the FTC requests \$191,132,000 and 1,074 FTE (which is the same FTE level as FY 2003). This level of resources is needed to allow the FTC to continue its past record of accomplishments in enhancing consumer protection and protecting competition in the United States and, increasingly, abroad. The FY 2004 request represents an increase of \$14,524,000 over the FTC's enacted FY 2003 appropriation. The increase includes:

- \$7,991,000 to fund mandatory and base expenses that were not funded in FY 2003; and
- \$6,533,000 to fund mandatory and base expenses requested in FY 2004.

The FTC's FY 2004 budget request is calculated based on three funding sources. Most of the funding will be derived from offsetting collections: an estimated \$159,000,000 from HSR premerger notification filing fees and an estimated \$18,000,000 from Telemarketing Sales Rule ("TSR") fees. The HSR fee is based on a three-tiered filing rate structure mandated by Congress as of February 1, 2001. The TSR fee will be assessed, collected, and used to cover the costs associated with implementing and enforcing provisions relating to a national registry of telephone numbers of consumers who choose not to receive telephone solicitations from telemarketers. The FTC anticipates that the remaining funding needed for the agency's operations will derive from the General Fund in the U.S. Treasury.

## **V. Conclusion**

Mr. Chairman, the FTC appreciates the strong support for its agenda shown by you and the Subcommittee. I would be happy to answer any questions that you and other Members may have about the FTC's budget request and programs.

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## Endnotes:

1. The written statement represents the views of the Federal Trade Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.
2. The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* With certain exceptions, the statute provides the agency with jurisdiction over nearly every economic sector. Certain entities, such as depository institutions and common carriers, as well as the business of insurance, are wholly or partly exempt from FTC jurisdiction. In addition to the FTC Act, the agency has enforcement responsibilities under more than 40 additional statutes and more than 30 rules governing specific industries and practices.
3. The Commission works with various federal and state law enforcement agencies, as well as Canadian, Mexican, and other international authorities. See, e.g., FTC 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>. See also FTC Press Release, *FTC, States Give "No Credit" to Finance Related Scams in Latest Joint Law Enforcement Sweep* (Sept. 5, 2002), available at <http://www.ftc.gov/opa/2002/09/opnocredit.htm>.
4. This figure represents the amount of redress that has been ordered by the court in over 55 orders from April 2002 to March 2003. The figure does not represent the actual amount of money that has or will be collected pursuant to those orders.
5. *FTC v. Access Resource Services, Inc.*, Civ. Action No. 02-60226-CIV Gold/Simonton (S.D. Fla. Nov. 4, 2002).
6. *FTC v. SkyBiz.com, Inc.*, Civ. Action No. 01-CV-396-EA (M) (N.D. Okla. Jan. 28, 2003).
7. *FTC v. Mitchell Gold*, Civ. Action No. SAcv 98-968 DOC (Rzx) (C.D. Cal. March 7, 2003).
8. Since the Commission first published the booklet in February 2002, the FTC has distributed more than 1.2 million paper copies and logged more than 1 million "hits" accessing the booklet on the FTC web site. The publication is available at <http://www.ftc.gov/bcp/online/pubs/credit/idtheft.htm>.
9. *Eli Lilly & Co.*, Dkt. No. C-4047 (May 10, 2002).
10. *Microsoft Corp.*, Dkt. No. C-4069 (Dec. 24, 2002).
11. Standards for Safeguarding Customer Information; Final Rule, 67 Fed. Reg. 36,484 (May 23, 2002) (to be codified at 16 C.F.R. Part 314).
12. FTC Facts for Businesses, *Financial Institutions and Customer Data: Complying with the Safeguards Rule*, available at <http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus54.shtm>.
13. 15 U.S.C. §§ 6501-6506.
14. *United States v. Hershey Foods Corp.*, Civ. Action No. 4:03-cv-00350-JEJ (M.D. Pa. Feb. 26, 2003); *United States v. Mrs. Fields Famous Brands*, Civ. Action No. 2:03cv00205 (D. Utah Feb. 25, 2003); *United States v. The Ohio Art Co.*, Civ. Action No. 3:02CV7203 (N.D. Ohio Apr. 30, 2002); *United States v. American Pop Corn Co.*, Civ. Action No. C02-4008DEO (N.D. Iowa Feb. 28, 2002); *United States v. Lisa Frank, Inc.*, Civ. Action No. 01-1516-A (E.D. Va. Oct. 3, 2001); *United States v. Looksmart, Ltd.*, Civ. Action No. 01-606-A (E.D. Va. Apr. 23, 2001); *United States v. Bigmailbox.com, Inc.*, Civ. Action No. 01-605-A (E.D. Va. Apr. 23, 2001); *United States v. Monarch Servs., Inc.*, Civ. Action No. AMD 01 CV 1165 (D. Md. Apr. 20, 2001).
15. *United States v. Hershey Foods Corp.*, Civ. Action No. 4:03-cv-00350-JEJ (M.D. Pa. Feb. 26, 2003); *United States v. Mrs. Fields Famous Brands*, Civ. Action No. 2:03cv00205 (D. Utah Feb. 25, 2003).

16. FTC Press Release, *Federal, State, and Local Law Enforcers Tackle Deceptive Spam and Internet Scams* (Nov. 13, 2002), available at <<http://www.ftc.gov/opa/2002/11/netforce.htm>>.
17. See FTC Consumer Alert, *Email Address Harvesting: How Spammers Reap What You Sow* (Nov. 13, 2002), available at <<http://www.ftc.gov/bcp/online/pubs/alerts/spamalrt.htm>>.
18. *FTC v. BTV Indus.*, Civ. Action No. CV-S-02-0437-LRH-PAL (D. Nev., Jan. 6, 2003).
19. FTC Press Release, *FTC Targets Sellers Who Deceptively Marketed International Driver's Permits over the Internet and via Spam* (Jan. 16, 2003), available at <<http://www.ftc.gov/opa/2003/01/idpfinal.htm>>.
20. *FTC v. Carlton Press, Inc.*, Civ. Action No. 03-CV-0226-RLC (S.D.N.Y. Jan. 14, 2003); *FTC v. One or More Unknown Parties Doing Business as the Institute for Int'l Licensing*, Civ. Action No. 1:03-CV-00021-RMC (D.D.C. Jan. 29, 2003); *FTC v. Jordan Maxwell*, Civ. Action No. 03-0128 (C.D. Calif. Jan. 8, 2003); *FTC v. Yad Abraham*, Civ. Action No. 03-0030 (C.D. Calif. Jan. 8, 2003); *FTC v. William Scott Dion*, Civ. Action No. 03-40005-NMG (D. Mass. Jan. 9, 2003); *FTC v. Jaguar Business Concepts, LP*, Civ. Action No. MJG03cv108 (D. Md. Jan. 13, 2003).
21. FTC Press Release, *FTC to Hold Three Day Public Spam Workshop* (Feb. 3, 2003), available at <<http://www.ftc.gov/bcp/workshops/spam/index.html>>.
22. *FTC v. Associates First Capital Corp.*, Civ. Action No. 1:01-CV-00606 JTC (N.D. Ga. 2002) (pending court approval).
23. 15 U.S.C. §§ 1691-1691f, as amended.
24. *Id.* §§ 1681-1681(u), as amended.
25. *FTC v. First Alliance Mortgage Co.*, Civ. Action No. SACV 00-964 DOC (MLGx) (C.D. Calif. 2002).
26. *U.S. v. Mercantile Mortgage Co.*, Civ. Action No. 02C 5079 (N.D. Ill. 2002).
27. 15 U.S.C. §§ 1601-1667f, as amended.
28. The Commission continues its litigation against Chicago-area mortgage broker Mark Diamond and against D.C.-area mortgage lender Capital City Mortgage Corporation. *FTC v. Mark Diamond*, Civ. Action No. 02C-5078 (N.D. Ill. filed Nov. 1, 2002); *FTC v. Capital City Mortgage Corp.*, Civ. Action No. 1: 98-CV-00237 (D.D.C. Jan. 29, 1998). The *Diamond* case represents the FTC's first litigated case against a mortgage broker. In *Capital City*, the FTC alleges that Capital City deceived consumers into taking out high-rate, high-fee loans and then foreclosed on consumers' homes when they could not afford to pay.
29. See, e.g., *FTC v. Dr. Clark Research Ass'n*, Civ. Action No. 1-03-00054-TRA (N.D. Ohio Jan. 8, 2003); *FTC v. Vital Dynamics*, Civ. Action No. 02-CV-9816 (C.D. Calif. Jan 17, 2003) (consent decree); *FTC v. Rexall Sundown, Inc.*, Civ. Action No. 00-CV-7016 (S.D. Fla. Mar. 11, 2003) (proposed consent decree subject to court approval).
30. See, e.g., *Enforma Natural Prods., Inc.*, Civ. Action No. 2:00cv04376JSL (CWx) (C.D. Cal. Dec. 9, 2002) (consent decree); *Weider Nutrition Int'l*, Dkt. No. C-3983, 2001 WL 1717579 (Nov. 15, 2000); *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263 (S.D. Fla.1999); *Jenny Craig, Inc.*, 125 F.T.C. 333 (1998) (consent order); *Weight Watchers Int'l, Inc.*, 124 F.T.C. 610 (1997) (consent order); *NordicTrack, Inc.*, 121 F.T.C. 907 (1996) (consent order).
31. FTC Staff Report, *Weight Loss Advertising: An Analysis of Current Trends* (Sept. 2002), available at <<http://www.ftc.gov/bcp/reports/weightloss.pdf>>.
32. Commissioner Sheila Anthony, *Let's clean up the diet-ad mess*, Advertising Age, Feb. 3, 2003, at 18.
33. See Public Workshop: Advertising of Weight Loss Products, 67 Fed. Reg. 59,289 (Sept. 20, 2002).

34. *FTC v. STF Group*, Civ. Action No. 03 C 0977 (N.D. Ill. filed Feb. 10, 2003).
35. *FTC v. Pacific First Benefit, LLC*, Civ. Action No. 02 C 8678 (N.D. Ill. filed Dec. 2, 2002).
36. *FTC v. BTV Indus.*, *supra* n. 18.
37. *FTC v. CSCT, Inc.*, Civ. Action No. 03 C 00880 (N.D. Ill. filed Feb. 6, 2003).
38. FTC, 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>.
39. FTC, 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>;
- FTC, 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>;
- FTC, 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>.
40. See FTC Press Release, *FTC Warns Consumers About Online Gambling* (June 26, 2002), *available at* <http://www.ftc.gov/opa/2002/06/onlinegambling.htm>.
41. FTC Consumer Alert, *Online Gambling and Kids: A Bad Bet* (June 26, 2002), *available at* <http://www.ftc.gov/bcp/online/pubs/alerts/olgamble.htm>.
42. Conference Report on the Omnibus Appropriations Bill for FY 2003, H. Rep. No. 108-10 (Feb. 13, 2003)
43. *United States v. United Recovery Systems, Inc.*, Civ. Action No. H-02-1410 (sl) (S.D. Tex. Apr. 22, 2002).
44. FTC Facts for Consumers, *Military Sentinel: Fact Sheet*, *available at* [no longer available].
45. 15 U.S.C. § 18a, as amended, Pub. L. No. 106-553, 114 Stat. 2762 (2000).
46. *Bristol-Myers Squibb Co.*, File Nos. 001-0221, 011-0046, and 021-0181 (Mar. 7, 2003) (proposed consent order accepted for public comment).
47. The proposed order includes a provision prohibiting BMS from triggering a 30-month stay based on any patent BMS lists in the Orange Book after the filing of an application to market a generic drug.
48. *Biovail Corp.*, Dkt. No. C-4060 (Oct. 2, 2002).
49. *Biovail Corp. and Elan Corp.*, Dkt. No. C-4057 (Aug. 15, 2002).
50. *Schering-Plough Corp.*, Dkt. No. 9297 (Apr. 2, 2002) (consent order as to American Home Products).
51. *System Health Providers*, Dkt. No. C-4064 (Oct. 24, 2002); *R.T. Welter & Assoc., Inc.* (Professionals in Women's Care), Dkt. No. C-4063 (Oct. 8, 2002); *Physician Integrated Servs. of Denver, Inc.*, Dkt. No. C-4054 (July 16, 2002); *Aurora Associated Primary Care Physicians, L.L.C.*, Dkt. No. C-4055 (July 16, 2002).

52. FTC Press Release, *FTC Seeks to Block Cytyc Corp.'s Acquisition of Digene Corp.* (June 24, 2002), available at [http://www.ftc.gov/opa/2002/06/cytyc\\_digene.htm](http://www.ftc.gov/opa/2002/06/cytyc_digene.htm).
53. *Baxter International Inc. and Wyeth*, Dkt. No. C-4068 (Feb. 3, 2003).
54. *Amgen Inc. and Immunex Corp.*, Dkt. No. C-4056 (Sept. 3, 2002).
55. See Thomas B. Leary, *Antitrust Issues in Settlement of Pharmaceutical Patent Disputes* (Nov. 3, 2000), available at <http://www.ftc.gov/speeches/leary/learypharma.htm>; Thomas B. Leary, *Antitrust Issues in the Settlement of Pharmaceutical Patent Disputes, Part II* (May 17, 2001), available at <http://www.ftc.gov/speeches/leary/learypharmaceuticalsettlement.htm>.
56. Generic Drug Entry Prior to Patent Expiration: An FTC Study (July 2002), available at <http://www.ftc.gov/opa/2002/07/genericdrugstudy.htm>.
57. President Takes Action to Lower Prescription Drug Prices by Improving Access to Generic Drugs (Oct. 21, 2002), available at <http://www.whitehouse.gov/news/releases/2002/10/20021021-2.html>.
58. Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed; Proposed Rule, 67 Fed. Reg. 65448 (Oct. 24, 2002).
59. The FTC web site for the hearings is <http://www.ftc.gov/ogc/healthcarehearings/index.htm>. To date, the FTC has released a detailed agenda for the hearings' sessions in February through May. All of the documents relating to the hearings appear on the web site.
60. *Conoco Inc. and Phillips Petroleum Company*, Dkt. No. C-4058 (Feb. 7, 2003) (consent order).
61. *Union Oil Co. of California*, Dkt. No. 9305 (complaint issued Mar. 4, 2003).
62. A second standard-setting case, *Rambus*, also is pending before an Administrative Law Judge. This case, which is discussed below, involves standard setting in the electronics industry.
63. FTC Press Release, *FTC to Hold Public Conference/Opportunity for Comment on U.S. Gasoline Industry in Early August* (July 12, 2001), available at <http://www.ftc.gov/opa/2001/07/gasconf.htm>; FTC Press Release, *FTC Chairman Opens Public Conference Citing New Model To Identify and Track Gasoline Price Spikes, Upcoming Reports* (May 8, 2002), available at <http://www.ftc.gov/opa/2002/05/gcr.htm>.
64. *Rambus, Inc.*, Dkt. No. 9302 (complaint issued June 18, 2002).
65. *Id.*
66. In 1996, the FTC settled a similar complaint against Dell Computer, alleging that Dell had failed to disclose an existing patent on a personal computer component that was adopted as the standard for a video electronics game. *Dell Computer Co.*, Dkt. No. C-3658 (May 20, 1996).
67. FTC Press Release, *Muris Announces Plans for Intellectual Property Hearings* (Nov. 15, 2001), available at <http://www.ftc.gov/opa/2001/11/iprelease.htm>.
68. FTC Press Release, *FTC to Host Public Workshop to Explore Possible Anticompetitive Efforts to Restrict Competition on the Internet* (July 17, 2002), available at <http://www.ftc.gov/opa/2002/07/ecom.htm>.
69. *Bayer AG and Aventis S.A.*, Dkt. No. C-4049 (July 24, 2002) (consent order).
70. *FTC v. Hicks, Muse, Tate & Furst Equity Fund V, LP*, Civ. Action No. 1:02-cv-02070-RWR (D.D.C. filed Oct. 23, 2002). A notice of voluntary dismissal was filed on October 31, 2002.

71. 15 U.S.C. § 18.

72. *MSC Software Corp.*, Dkt. No. 9299 (Oct. 29, 2002).