



# Federal Trade Commission

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**State of the FTC  
Deborah Platt Majoras, Chairman  
March 28, 2005  
Washington, DC**

Good afternoon, and thank you for being here.

Since arriving at the Federal Trade Commission last August, I have had the privilege of speaking publicly about our agency's accomplishments and agenda on numerous occasions. Promoting our mission is an important adjunct and potential enhancement to actually accomplishing the mission. But a couple of months ago, it occurred to me that speaking to all of you as an agency was at least as important, for three reasons. First, I want each of you to understand and appreciate the breadth and scope of the work that we are doing for consumers and to take pride in it. While each of us has an assigned job, we must remain ever cognizant that each employee's individual contribution fits into a larger whole and that each of us represents the whole, not just a Bureau or Division. Second, as your Chairman, I want you to understand something of my vision and how it fits into your work. And, finally, I want to encourage our collective dialogue within this agency. No one of us has the patent on new ideas, and we are stronger when we engage one another.

So, I am beginning this week, during which we will participate in the world's largest gathering of competition and consumer protection lawyers, by discussing with you our work together. I will close the week by releasing our annual report to the public.

Over the last seven months, I have been struck by the energy and the passion that so many at this agency bring to our work. The great thing about passion is that, when harnessed

productively, it is infectious and can be transferred infinitely. Allow me to share with you several guiding principles about which I am utterly passionate. First, I have a strong level of faith in the free market and its unmatched potential to benefit consumers. Consequently, I take government interventions in the marketplace very seriously. Second, however, I feel equally strongly that “free” does not mean free of responsibility. When market participants break the rules, government has an obligation to intervene. Third, I take personal umbrage at the cowards and cheats who defraud consumers. My consumer protection advisors, Brian and Alice, have started attaching post-its, which read “Warning: This case will really make you mad,” on case recommendations. And, finally, there is no more valuable capital or asset than the human kind. I am committed to investing in our employees, and I will push hard to get the most out of each and every one of you.

## **I. Accomplishments of the Past Year**

One particularly memorable event during the past year was our celebration last September of the 90<sup>th</sup> anniversary of the passage of the FTC Act. While the anniversary offered the opportunity to celebrate achievements and reflect on past work, its focus was emphatically forward-looking. New challenges to our economy abound: spam, spyware, and information security breaches; mergers that combine intellectual property; rising energy and health care costs; valuable innovations that present new consumer issues; and the proliferation of new laws overseas, to name a few. While these challenges could not have been contemplated 90 years ago, the wealth of experience gained since that time teaches lessons that are valuable today.

If I were to chart our agency’s work on a grid, I would have columns down the side representing virtually every commercial area of significance to consumers. And, along the top, I

would place headings for all of our primary tools: law enforcement, advocacy, consumer and business education, and policy research and development. (And, if you noted that I did not divide either my horizontal or vertical columns by Bureau, you are perceptive indeed.) With this in mind, I highlight some of our significant accomplishments over the past year.

**A. Health Care**

Every person for whom we work is a consumer of health care. Health care costs now comprise 15% of our nation's GDP. And so it probably should not be a surprise that this extraordinarily important sector presents some of our nation's most difficult policy issues. Nor should it be a surprise that we are asked to play an important role in health care; we are not doctors, but we do provide a type of "care" for consumers and the market.

Within the last year, the Commission reviewed three noteworthy pharmaceutical industry mergers – *Sanofi-Synthelabo/Aventis*; *Cephalon/Cima Labs*; and *Genzyme/Ilex* – securing favorable settlements that ensure continued competition for drugs ranging from breakthrough cancer pain drugs to solid organ transplant acute therapy drugs. The Commission also required two pharmaceutical firms to disgorge \$6.25 million in illegal overcharges for children's pain medicine (*Perrigo/Alpharma*), after our investigation showed that the two firms had entered into an agreement to limit competition between them. Given the high cost of pharmaceuticals and the demand for life-saving innovations, maintaining competition through enforcement is critical.

Further battling on the side of competition, we have prosecuted several allegedly unlawful price-fixing agreements by groups of physicians and other health care providers. The agency obtained four consent orders, including one case in Part 3 litigation (*Southeastern New Mexico Physicians*, *White Sands Health Care System*, *Preferred Health Services* and *Piedmont*

*Health Alliance*), all of which require the providers to cease price fixing and bar them from such conduct in the future. In a fifth physician matter, the Commission now is considering the appeal of an Initial Decision upholding the complaint in *North Texas Specialty Physicians*.

The FTC also issued a Part 3 decision in *South Carolina State Board of Dentistry*. The Commission denied the State Board's motion to dismiss on state action grounds. The Board submitted a petition for review to the Fourth Circuit, and the Commission filed a motion to dismiss for lack of appellate jurisdiction. The Commission also has been examining a number of completed hospital mergers to determine whether those mergers had anticompetitive consequences. One of those mergers is the subject of the agency's pending administrative case in *Evanston/Highland Park*.

In addition to enforcement, the Commission continues its active research and advocacy program in healthcare. In July 2004, the Commission, together with the Department of Justice, released a report, *Improving Health Care: A Dose of Competition*. Through this document, the agencies made significant observations and recommendations about competition in health care, including the availability of information regarding the price and quality of health-care services; physician collective bargaining; insurance mandates; managed care organizations' bargaining power; and hospital group purchasing organizations. The report has become a focal point in many discussions about the future of health care policy in the United States.

Just last month, the FTC issued a report on competition in the contact lens industry, which focused on the effects of manufacturer marketing strategies, the pricing of contact lenses through various non-traditional contact lens sellers, and requirements that unnecessarily burden online contact lens sales. The FTC staff has filed several advocacy comments with state

legislators to point out the hazards to consumers of reducing competition in the provision of health care. For example, last September, FTC staff commented on a California bill that would have placed certain requirements on pharmacy benefit managers, some of which had facial appeal. But FTC staff concluded that the bill was likely to hurt consumers by increasing their insurance premiums and reducing the availability of insurance coverage for drugs. Governor Schwarzenegger vetoed the bill and released a message specifically citing to our staff's comments.

Cognizant that truthful and substantiated health benefit claims in advertising can be an important source of information for consumers, we have battled deceptive health claims and worked to ensure that consumers receive more and accurate information regarding products' health benefits. From March 2004 through February 2005, we brought 42 law enforcement actions combating deceptive health claims, a large number of which we recently announced in the "Operation Big Fat Lie" sweep. With 70 million Americans trying to lose weight have come, unfortunately, unscrupulous marketers who relieve consumers of their money, but not unwanted pounds.

Not only have we used law enforcement, but we have creatively used consumer and business education in an effort to reduce fraud in this arena. For example, we launched our own "teaser" website, which advertises effortless weight loss from use of a product made from eggplant extract named Fat Foe. After one click, our site teaches viewers that had they ordered the product, all they would have lost was their money. Creation of this website led one blogger to say, "It's great to see the government taking an active, creative role like this."

We also asked the media to partner with us by refusing to run weight loss ads if they contain any of seven bogus, or "red flag," claims. I expect that soon we will release a report suggesting that the media has responded to our challenge. We conducted a survey of weight loss advertisements in 2004 and, a year after first asking the media for help, we found that the number of ads with Red Flag claims had fallen from almost 50 to 15 percent. Fifteen percent is still too high, but the progress is remarkable. For some of the worst claims -- like the promise of substantial weight loss without diet or exercise, the results are even better -- they are down from a whopping 43 percent to 5 percent of weight loss product ads. We will continue this campaign.

Also in the food and nutrition area, we continue to advocate for allowing manufacturers to provide more accessible and useable information for consumers. We work actively with FDA on food regulation issues involving health and nutrition claims. Last week, I attended a dinner with FDA Administrator, Dr. Lester Crawford, and he emphasized, as he has previously, that the working relationship between our agencies is outstanding.

## **B. Energy**

Another industry of paramount importance to consumers and our economy is energy, and, in particular, retail gasoline. There is perhaps no other product for which consumers so vividly witness price changes and competition, as large gasoline price placards stare down at us on seemingly every urban corner. Indeed, my own Senate confirmation -- and consequently, that of Commissioner Leibowitz -- was delayed when I failed to provide one concerned senator with a detailed plan for reducing the price of retail gasoline. What I do provide, however, is a commitment to continue to protect competition in this vital sector.

Last Fall, I underscored this commitment to energy matters by appointing our own John Seesel to fill the new position of Associate General Counsel for Energy. John is playing a key role in reviewing and making recommendations on the Commission's energy-related work, and also will serve as a liaison with other federal and state agencies on energy issues.

The Commission's efforts to protect competition in the petroleum industry through enforcement include the *Unocal* case, a Part 3 matter in which the complaint alleges monopolization through manipulation of the standard-setting process in the technology market for producing gasoline that meets air quality standards in California. The complaint further alleges that the challenged behavior may have cost consumers hundreds of millions of dollars in higher gas prices. The Commission reversed an ALJ's initial decision that the *Noerr-Pennington* doctrine protected Unocal from liability, sending the matter back to the ALJ for a full trial on the merits. The Commission also took enforcement action and received competition-maintaining consent orders in three petroleum industry mergers, *Enterprise Products/GulfTerra Energy*, *Magellan/Shell*, and *Buckeye Partners/Shell*. Last spring, to protect competition in coal production, the Commission approved a preliminary injunction action to block Arch Coal's acquisition of Triton Coal and also issued a Part 3 complaint. The district court denied the injunction, and the Commission is deciding on next steps.

The past year also featured an exceptional number of research and advocacy projects involving energy. In August 2004, the staff of the Bureau of Economics released *The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement*, which presented a detailed review of structural changes and the FTC's antitrust law enforcement efforts in the petroleum industry over the past 20 years. The report concluded that thorough FTC oversight of the

industry, including both investigations and enforcement actions, has helped preserve industry competition and prevented gasoline price increases beyond those already dictated by market conditions.

To further assess our past performance and to elicit debate and constructive criticism from outsiders, last January, the FTC convened a conference featuring five outside expert econometricians to consider the effects of petroleum industry mergers. The discussion focused extensively on a report released by the Government Accountability Office in May 2004, which had concluded that oil industry mergers had increased the retail price of gasoline, and an FTC case study released in March 2004 concerning the effects of the Marathon/Ashland joint venture. We are continuing our work on this.

We also share our experience and knowledge with other policy-makers. In 2004, for example, FTC staff responded to requests from Michigan and Kansas legislators for comments on bills to ban below-cost gasoline sales. The comments cautioned that such measures might lead to higher prices for the states' consumers. In both cases, the bills died in the legislatures.

### **C. Technology**

The birth of new technologies presents exciting opportunities for consumers and invigorates our economy. It also presents new challenges for the FTC, as we retool to address any risks to consumers that new technologies may pose and to protect competition within markets heavily characterized by ownership of intellectual property. In particular, we continue our work to restore and protect consumers' confidence in the integrity and privacy of the digital world.

Spam is one of the most intractable problems that we have ever faced. The FTC now receives 300,000 spam messages a day, which consumers forward to our spam database (our “refrigerator”). We continue to devote significant enforcement resources to fighting illegal spam. Thus far, we have filed 68 spam cases against 198 individuals and companies. We will continue to pursue spammers who violate the FTC Act’s prohibition on deceptive and unfair practices as well as the various provisions of the CAN-SPAM Act. We also continue to educate consumers and businesses about how to protect themselves and others from unwanted spam. Teaching consumers, for example, to simply delete “phishing” messages could wipe out the practice; by contrast, through enforcement, we typically could shut down phishers just one at a time. And we are working to encourage and facilitate private market innovations. Last November, the agency, together with the Commerce Department, sponsored an Email Authentication Summit with the goal of invigorating a search for an authentication standard. We must not allow spam to undermine consumer confidence in e-commerce.

Spyware poses another threat to consumers’ confidence in their use of the Internet. Like spam, spyware is widely distributed and is causing great frustration and sometimes substantial harm. We took our initial swipe last October when we filed our first spyware case, *FTC v. Seismic Entertainment Productions, Inc.*, alleging that the defendants violated the FTC Act by loading spyware onto consumers’ computers that changed their web browsers and barraged them with pop-up advertisements, in addition to installing other software programs without the consumers’ knowledge or consent. Then, after creating computer crashes and other malfunctions, the defendants launched pop-up ads that offered to sell an anti-spyware solution for \$30. Fortunately, the court granted us a preliminary injunction. Earlier this month we filed

our second case, this one against purveyors of alleged worthless spyware protection software (*Spyware Assassin*). Also this month, we released a staff report discussing spyware, which followed on a public spyware workshop held last spring.

High-tech matters also raise important competition issues, especially in the areas of standard setting and patents. The Commission currently is considering an appeal from an ALJ's dismissal of the complaint in a Part 3 proceeding against Rambus, Inc. We recently received a disappointing decision in which the United States Court of Appeals for the Eleventh Circuit in the *Schering* matter overturned the Commission's decision; we are evaluating the decision and our options. In December, the Commission successfully resolved its challenge to Aspen Technology's acquisition of the Hyprotech software assets, which had been headed toward an administrative trial.

While not necessarily considered to be within the high-tech realm, the recently reviewed proposed acquisition of Hollywood by Blockbuster was indicative of mergers proposed in markets in transition, given changes in technology or consumer demands. After an investigation made more difficult by Blockbuster's failure to comply with the Second Request, which led us to file only the third (g)(2) action since HSR enforcement began in 1977, Blockbuster last Friday withdrew its tender offer for Hollywood's shares.

Last April, the FTC co-sponsored, "Ideas into Action: Implementing Reform of the Patent System," a conference with the National Academy of Sciences (NAS) and the Berkeley Center for Law and Technology to address patent reform and possible implementation. In February and March, the FTC co-sponsored, with the National Academies' Board on Science, Technology and Policy and the American Intellectual Property Law Association, three town

meetings around the country to discuss patent reform, an important policy issue facing our nation. We will hold the final such meeting in Washington in early June.

Finally, in December, the Commission held a public workshop on another prominent technology issue, peer-to-peer or “P2P” file sharing, which addressed a full range of consumer protection and competition issues presented by this technology that illustrates the tension between encouraging development of new technologies and preventing misuse of those technologies.

#### **D. Privacy**

As new technologies have eliminated geographic barriers and connected consumers to a degree barely imagined only a few years ago, protecting consumer privacy has become a greater challenge. The National Do Not Call Registry continues its success, with now over 86 million telephone numbers registered. In September 2004, we were proud that our Do-Not-Call Team received the Service to America Social Services Medal for its outstanding work creating and implementing the Registry. And the Pulitzer-prize winning humorist, Dave Barry, called the Registry the most popular government program since the Elvis stamp. The FTC also has made enforcement of the Registry a top priority, bringing ten actions alleging violations in 2004. And last month, we announced the first civil penalty settlements for violations of the Registry.

In 2004, 40 percent of the non-Do Not Call consumer complaints we received resulted from identity theft. As the recent revelations regarding Choicepoint and other companies experiencing data security breaches make clear, privacy and financial matters are areas of continuing concern for consumers. Last November, the FTC announced its fifth case against companies that allegedly misrepresent the security provided to consumers’ personal information.

The same month, we announced our first cases enforcing the Gramm-Leach-Bliley Safeguards Rule. We continue to educate consumers and businesses about the risks of identity theft and to assist victims and law enforcement officials. Currently, we are assessing the need for additional legislative measures to protect consumers.

#### **E. Fraud Program**

Just as you did not throw away your pen and paper when you bought your computer, so too do many fraudsters stick with more traditional tools and methods. The cornerstone of the FTC's mission to protect consumers against deceptive and unfair practices in the marketplace is aggressive law enforcement against fraud, and that includes fraud through more traditional means.

From April 2004 through February 2005, the FTC filed 83 actions in federal district court and obtained 75 judgments ordering the return of more than \$474 million in redress to consumers. The frauds we attacked ranged from work-at-home scams to advance-fee credit card scams. Our work prompted one consumer who fell victim to a biz-op scam to write us a letter, which begins, "Thank-you for watching out for 'sucker consumers,' like me." She goes on to explain that, at the time, she was "unemployed and grasping for anything that might provide an honest income." She thanked us for refunding a portion of the money she lost and for prosecuting the company for its "dishonesty and greed." And when we obtain these orders, we expect defendants to follow them. Project Scofflaw seeks civil and criminal contempt sanctions against individuals who flout Commission orders. In 2004, six defendants were prosecuted criminally and sentenced, collectively, to 278 months in prison.

The frauds we prosecute civilly often are, of course, crimes that should be handled accordingly. The Criminal Liaison Unit, or CLU, has stepped up our cooperation with criminal authorities – a dramatic illustration of our efforts to bring the collective powers of different government agencies to bear upon extremely serious misconduct. From April 2004 to March 2005, the FTC assisted in 38 matters involving criminal prosecutions of FTC defendants or their associates. Indeed, last month’s Project Biz Opp Flop, in which we, together with federal and state law enforcement partners, announced more than 200 actions, included the filing of criminal charges against 14 individuals. This year, CLU initiated a new program to familiarize criminal law enforcement agencies with the FTC’s work and to provide hands-on assistance in selecting criminal prosecutions.

The Hispanic Law Enforcement and Outreach Initiative, announced in April 2004, targets consumer fraud against Spanish-speaking consumers through law enforcement, media outreach, consumer education, and inter-agency cooperation. During the past year, the FTC has announced 21 cases involving alleged frauds using the Spanish language. In one such case, a fraudster taunted a young single mother who was victimized by a scam by saying, “Go ahead, contact the FTC, they can’t touch us.” They were wrong. We secured a permanent injunction, and that company is now out of business.

#### **F. Financial Matters**

For most consumers, access to credit is essential for full participation in the nation’s economy. Bogus organizations target consumers with bad credit or significant consumer debt, falsely promising to help obtain credit or manage their debt. The Commission now has brought six cases involving alleged bogus credit counseling, debt management services, or debt

negotiation services. Just last week, we announced a settlement in the *AmeriDebt* matter.

Fortunately, AmeriDebt's allegedly, deceptively-obtained client accounts will be transferred to a credit counselor that has pledged to educate and counsel these consumers. On Wednesday, the Bureau of Consumer Protection will hold a news conference to announce further developments in several other debt counseling cases.

We have spent considerable time over the past year implementing the Fair and Accurate Credit Transactions (FACT) Act, enacted in December 2003. This statute created an especially active agenda for the FTC: it requires the Commission, alone or in conjunction with other agencies, to adopt 18 rules, publish eight studies, and conduct three consumer education campaigns. We are undertaking all of these actions to help prevent identity theft, assist victims, enhance the accuracy of credit report information, and increase consumer access to such information. Over the past year, ten FACT Act rules have been completed, two more have been proposed, and the rest are on their way. The Bureau of Economics has two large Congressionally-requested studies of credit reporting underway. One study examines the accuracy and completeness of consumers' credit reports, and the other examines the effects of credit scores on insurance sales.

## **I. International Cooperation**

My summaries of our work have demonstrated the importance of cooperation with other domestic agencies. This applies with equal force to international cooperation, which we continue to increase and incorporate into our work. We worked closely with the EU, Canada, and other nations on several mergers and conduct cases of mutual interest. We strengthened relationships through bilateral meetings with the EU, China, Russia, and others, and so far this

year, we have signed Memoranda of Understanding with Mexico's consumer protection agency, and with Spain's data protection agency, and a Positive Comity Agreement on competition enforcement with Canada. We also devote significant resources to multilateral fora, such as the International Competition Network, ICPEN, OECD, and the recently formed London Action Plan. And in 2004, we conducted 25 technical assistance missions to 16 countries in the developing world, employing 33 different FTC employees. Through these and related vehicles, we are seeking to build an institutional infrastructure that will support law enforcement and other policy cooperation in an economy marked by a growing level of cross-border commerce.

## **II. New Initiatives**

While I have attempted to describe for you the rich array of work we are doing primarily by taking a snapshot of some other achievements over the past year, in fact, that work is continuing. Let me now turn to describing some institutional improvements that are underway, as well as a few of the many new initiatives that I recently have announced.

### **A. Institutional Improvements**

Every year, we must seek to improve the Commission's institutional capacity to serve as a strong advocate for consumers. We will continue to succeed only if we invest effort in activities, such as replenishing our human capital and improving our physical infrastructure, that lack the prominence of more visible endeavors but supply the essential foundation for implementing our competition and consumer protection programs.

#### **1. Budget**

I am happy to report that the FTC continues to do well in budget appropriations. Currently, in Fiscal Year 2005, we are operating under a \$205 million budget – our first one to

top the \$200 million mark. This amounts to 10 percent increase over last year's budget. The President also has requested a modest increase for the FTC for Fiscal Year 2006, in a national budget in which many other agencies are being cut. These budget increases should be seen as a vote of confidence from both the Congress and the President for the excellent and important work done by the FTC, and we do not intend to let them down. We will continue to squeeze everything we can from every dollar we receive, mindful that we are spending the taxpayers' hard-earned dollars.

## **2. Technology**

It is essential for us to have the technology to do our jobs efficiently and effectively. I want to give you the tools you need to litigate and educate in this high-tech legal environment, and our office of Information Technology and Management will continue to work with you to achieve this.

For example, we will expand our "Laptops for Litigators" program. Approximately one third of agency staff has been issued laptops to date. Our goal over the next two years is to provide a laptop to every employee who needs one for his or her work. We also have a three-month pilot program underway to evaluate the use of blackberries at the FTC. Once we have completed this pilot, we will examine the extent to which we will be able to deploy these devices. In addition, our agency-wide Litigation Support Working Group is identifying opportunities to better utilize the technologies we have and, where appropriate, to inject new technologies in our workplace. I am expecting great things from this group over the coming months.

As we bring new technologies and tools into the FTC, however, we need to remember that they can be potential pathways to expose critical sensitive or private data that we must protect. Each of us must take responsibility for our crucial role in keeping this data safe.

### **3. Safety and Security**

Speaking of safety, since the tragic events of 9-11, all government agencies have increased protections for their work forces. With two buildings just blocks away from the U.S. Capitol, the FTC has special concerns. During the past 12 months, we have retrofitted the historic headquarters building with blast-proof windows to protect us from flying glass. Also, we have participated in government-wide exercises that test our ability to communicate with other agencies in the event of a catastrophe. In the upcoming months, we will continue periodically to conduct both evacuation and shelter-in-place drills in both buildings.

### **4. Facilities Updates**

We have completed the historic roof renovation project of the headquarters building. Our Western Region – San Francisco and Southwest Region offices also have undergone recent renovations.

### **5. Combined Federal Campaign**

Last fall, we set out to raise \$185,000 in the Combined Federal Campaign. I am pleased to report that you exceeded that goal by 8%, collectively donating just under \$200,000 (\$199,800). This represents an average employee gift exceeding \$600 per employee, and I want to thank you for your generosity and continued support of the Combined Federal Campaign.

## **5. Wellness Committee**

As we all know, a healthy lifestyle improves the quality of life. It is also a fact that most of us spend about a quarter of our lives at work, and, I have quickly learned, FTC employees work hard. That is a good thing; I am a fan of working hard. But also it is important that we balance our hard work with a healthy lifestyle. Accordingly, I have established a Wellness Program at the FTC to provide opportunities, information, and support for employees wishing to incorporate aspects of a healthier lifestyle into their own routines.

I have established a Task Force, represented by a cross section of employees from throughout the agency under Anna Davis's leadership, which has been meeting over the last month to make preliminary recommendations regarding nutrition, exercise, weight loss, and stress reduction that will be implemented into a Wellness Program. Because a critical step in this process is employee input— learning from you what we should do to make this program the most beneficial – the Task Force has developed a survey that will be used to determine the specific focus of the program in order to best meet the needs of the employees. Copies of the survey are available here today, and more information on the survey will be provided in the FTC Daily. I hope you will complete one and return it to the Task Force. We want to ensure that we make this the best program for you.

### **B. New Initiatives**

We cannot predict with certainty the next merger to be proposed or the next new fraud to be perpetrated on consumers. But we can continually improve our processes and our knowledge base so that we will be ready for the next challenges. In addition to the many investigations in the pipeline, several projects are underway, and I will highlight a few.

## **1. Merger Process Reform**

As many of you know, I have long pushed for improvements in merger review procedures, both as a government enforcer and private practitioner. As we learned in the 2004 Merger Enforcement Workshop, the Second Request process still needs work. Without question, effective merger review often requires analyzing a large amount of market information. The trick is to zero in as soon as possible on the information that is relevant. And, after more than 25 years of HSR enforcement and 12 years of experience with the Horizontal Merger Guidelines, we have gained knowledge that we should be putting to use. If we are not sufficiently disciplined and rigorous in collecting and dissecting information during the merger review process, then we are not spending the taxpayer's dollar appropriately. Similarly, if firms are not appropriately cooperative and responsive during this process, then they are wasting the shareholder's dollar. Either way, consumers lose.

In addition, to a significant degree, the impressions of outsiders about the quality of our competition policy program are formed on the basis of how we execute our merger review responsibilities. I have established a task force of FTC attorneys and economists, led by Marian Bruno, to recommend ways to improve our merger review process. I ask for everyone's creative input and cooperation in this effort. We cannot improve if we are firmly wedded to old habits.

In addition, at a retreat that our competition managers will have with their counterparts at the Antitrust Division next month, we hope to share best practices on this topic and more with our enforcement colleagues who face the same issues that we do.

## **2. Merger Guidelines Commentary**

In February 2004, the FTC and the DOJ jointly sponsored a three-day Merger Enforcement Workshop to assess the practical efficacy of the 1992 Merger Guidelines. The principal take-away from the workshop was that the Guidelines' framework is now deeply embedded in mainstream thinking about what factors must be considered in sound merger analysis, but that further explication of how the Guidelines are applied in practice would be useful.

To provide greater transparency to the application of the Guidelines, I have established a task force of attorneys and economists, led by Jeff Brennan, to develop a Commentary on the Guidelines – a kind of guide to the Guidelines. Staff from both the FTC and the Antitrust Division will work together to develop the Commentary. Informed by the experience of the last twelve years, the Commentary should bring greater transparency to the agencies' merger analysis and greater certainty to businesses and merger practitioners. I expect the Commentary to cover each major area of the Guidelines and to explain more fully how the Guidelines are applied in practice. I expect the Commentary will seek to clarify how the agencies apply individual provisions of the Guidelines in an integrated manner to answer the key question before us: Is the merger under review likely substantially to lessen competition?

## **3. Childhood Obesity Workshop**

Earlier this month, I announced an important research initiative that seeks to contribute to the policy debate arising from the alarming increase in childhood obesity. This summer, the FTC and the Department of Health and Human Services will hold a two-day "Food Marketing to Children Workshop" here in Washington to provide a forum for discussion of ongoing industry

self-regulatory efforts to address concerns regarding the marketing of food and beverages to children.

Why take this step? Like everyone else, I worry when I see the rising numbers on the incidence of childhood obesity and how this affects children's health. And, there are many causes -- from eating too many snacks, to watching too much television, to not getting enough exercise, to eating too large a serving at a favorite restaurant, and on and on.

In seeking to find a fix for childhood obesity, many shine the spotlight on marketing of food to children. No matter what the answer is to the question of whether food marketing plays a role in childhood obesity, we should all be able to agree that advertising can play a positive role and be part of a solution.

The goal of the FTC/HHS workshop is to look forward. The agencies will learn from the experiences of industry members who have stepped forward with their own programs to address concerns about food marketing to children and to examine best practices. And, of course, the agencies need to hear criticisms of existing efforts and thoughtful suggestions concerning what more can be done. After the workshop, we will prepare a report summarizing what we have learned.

I want to be clear that we are talking about facilitating industry self-regulation and that I do not see the next step being government regulation. The FTC tried that approach in the 1970s, and it failed. But I believe that a public dialogue on these issues is appropriate.

#### **4. Communications Technology Convergence**

We will continually face, from both a policy and law enforcement perspective, issues arising from technology convergence. We inhabit a world in which communication and information technologies and related devices are rapidly converging -- providing new and exciting opportunities for consumers, and at the same time opening new avenues for fraud and other abuses. In response, we have just begun a project to identify and study consumer protection issues that arise as a result of convergence.

One issue we are studying is Voice over Internet Protocol (or “VOIP”) in place of plain old telephone services. VOIP can provide a low-cost, high-tech alternative to local and long distance phone service. But it also can raise consumer protection concerns. It is important that VOIP plans are marketed truthfully and with full disclosure about their limitations, as well as their benefits. We are also concerned that VOIP may provide scam artists with some wonderful tools. For example, using VOIP, telemarketers can blast huge numbers of voice mails to consumers at a very low cost. Imagine the annoyance of spam transferred to your phone system; in fact, there is already an acronym for it, “SPIT,” short for “spam over Internet telephony.”

The goal of the convergence project is to ensure that consumers, faced with a dizzying array of choices, can be confident that these industries are held to the same level of truthful and accurate marketing as other industries, can turn to the FTC for helpful consumer education materials, and can rely on the FTC to ferret out bad actors and put a stop to deceptive and unfair practices.

## **5. Financial Education Project**

Shortly after I started at the Commission, I visited Woodson High School in Northeast D.C. to present a lesson on identity theft to a group of high school students. It was a wonderful event – the students were interested, they asked great questions, and I came away thinking that the FTC has a great opportunity to do more to help students understand their financial rights and responsibilities.

Now we are taking advantage of that opportunity. Representatives from the Bureau of Consumer Protection’s Division of Financial Practices and Office of Consumer and Business Education, and the Office of Public Affairs have been meeting to lay the groundwork for a series of high school financial education presentations that will begin in April – Financial Literacy for Youth Month. The first FTC presentation will be back at Woodson High School at the end of next week. It is the start of what I hope will be a successful outreach initiative here in the D.C. area, and around the country.

## **6. Cross-Border Fraud**

During the previous congressional session, we worked with Congress to draft proposed legislation that was known as the International Consumer Protection Act (ICPA). When passed, ICPA will improve our ability to share information with our counterparts in other countries and conduct investigations when requested by a foreign counterpart investigating fraud. For example, currently, although we are allowed to share certain investigative information with state and local law enforcement agencies, we are statutorily prohibited from sharing such information with our foreign counterparts. This is true even if the FTC and its foreign counterpart are investigating the same company that is defrauding U.S. and foreign consumers. ICPA would

allow us to share this information with foreign counterparts in appropriate circumstances. The Senate passed its version of ICPA, but the bill did not pass the House before Congress adjourned. I believe this bill is critical to our efforts to fight fraud that crosses international boundaries, and I will continue our dedicated work on behalf of this legislation.

#### **IV. Conclusion**

My colleagues, our agency is strong, balanced, flexible, and creative. We are achieving important victories for consumers in which I hope you take great pride. But we must take nothing for granted, save the need to improve; we do not rest on past success or brush off past mistakes. The citizens of our great nation have entrusted us with an important mission: to stand up for the market and to stand up for them within that market. We humbly accept the job as the privilege that it is, and we promise to earn consumers' trust every day. I charge you to push yourselves, each other, my fellow Commissioners, and myself to accept new challenges and to set and strive to reach the highest standards of effectiveness and integrity. I charge you further to support each other, aware that you work for a team and that all victories and losses belong to the team, and ultimately, to the consumers we protect. And I charge you to acknowledge mistakes, which we all make, and to allow all on your team to learn with you from them.

I conclude by thanking all of you who have made the FTC the successful and respected institution that it is today. Thank you to my Commission colleagues – Commissioners Swindle, Leary, Harbour, and Leibowitz – for their wisdom, collegiality, and friendship. Thank you to my senior staff for their outstanding guidance and impressive work. Thank you to my personal staff for their encouragement and counsel. And thank you to the professional and administrative staff of this agency. Not a day goes that I do not learn from you and admire your tireless dedication

to the well-being of consumers. Thank all of you for the privilege of serving as your Chairman.