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Federal Trade Commission

CHAIRMAN JANET D. STEIGER

FEDERAL TRADE COMMISSION

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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It is a pleasure for all of us from the Federal Trade Commission to meet again with our friends at NAAG and to have a chance to address the Plenary Session about where the Commission has been recently.

Of course, the views expressed will be my own and not necessarily those of the Commission or other Commissioners.

One of my original goals as Chairman was to eliminate the appearance of a somewhat confrontational attitude between the Commission and the states. That effort, I hope you will agree, has been successful. We are working together on a variety of projects, some of which I will describe and when we disagree -- as we sometimes do -- we manage not to be disagreeable.

The result of our cooperation should be the improvement of our law enforcement efforts through increased effectiveness of our all too scarce resources in a variety of areas -- competition matters, fraud cases, rule enforcement, advertising issues, and consumer education.

Our objective in the competition area is to prevent or eliminate unreasonable restraints on competition in the marketplace. Ultimately, competition benefits consumers by providing the greatest array of goods and services at the lowest price. We investigate and, where appropriate, take action against mergers and acquisitions that may tend to lessen

competition, and against a variety of other activities in restraint of trade.

I am pleased with the extent of cooperation between the Commission and the states, in terms of case referral, information sharing and general discussions. The Executive Working Group sessions have been very helpful in highlighting what is of interest to you. Our 10 Regional Offices have been particularly valuable to our cooperation efforts, facilitating cooperative investigations, seminars and communications.

The bulk of our antitrust work involves mergers, so I want to discuss that area briefly before discussing our non-merger work. Within the limits imposed by Hart-Scott-Rodino provisions, we have worked to cooperate in a number of matters. We have had discussions with some of you about possible theories of violations, the course of investigation we would pursue in a particular type of matter, and the like. We also greatly appreciate the assistance you have given us both procedurally and substantively. In the investigation of CNBC's proposed acquisition of FNN numerous states supported the Commission's request that the U.S. bankruptcy court in the Southern District of New York allow us time to review the matter. States have often provided useful information to us, or even affidavits of complaining customers, which have been of enormous assistance.

In those matters not falling within the HSR rubric, information has been readily shared and decisions have been jointly made as to which entity should have responsibility for

examining a particular matter so as to avoid duplication. There has been a two-way referral between the Commission and the states and ongoing dialogues on non-HSR mergers involving hospitals, grocery stores, and other industries. I hope you have found the efforts as beneficial as we have.

We have also taken action in matters involving a variety of conduct. Perhaps the one you are most familiar with is Nintendo, a resale price maintenance case. The Commission accepted a consent agreement with Nintendo to settle allegations that it fixed the prices at which dealers advertise and sell Nintendo home video-game hardware to consumers. The most significant aspect of this case is that it represents a milestone in federal-state cooperation. Led by the states of Maryland and New York, 39 states to date have accepted a consent requiring the same prospective relief as required by the Commission order. Thus, Nintendo is subject to the same rules nationwide, rather than having separate obligations in each state, and consumers and dealers are afforded the same rights.

The health care area, in particular, is one where cooperative efforts have been especially fruitful. As you know, the Commission has been in the forefront in extending the reach of antitrust to the professions.

When the anticompetitive conduct and effects of such collaboration occur largely within one state, state officials may be the ideal enforcement authorities. You are the officials who are best positioned to assess the subtle effects of such

anticompetitive conduct and the proposed remedies. In addition, you are "on the spot" to manage enforcement actions efficiently. We are trying to make the Commission's expertise and experience, both legal and economic, available, when possible, to reinforce your efforts both through our headquarters and our regional offices. Indeed, I know that our regional offices can prove to be an invaluable liaison with the states, and a vital conduit for information and advice flowing in both directions.

The list of cases referred to the states involves such diverse issues as collective price negotiations by physicians, restraints on podiatrist advertising, an agreement on advertising among non-profit hospitals, and a threatened boycott to deny hospital privileges to a competitor. We have received referrals involving formation of an allegedly sham joint venture by service providers to a school system and purported agreement by realtors to limit open house hours.

The Commission continues to bring non-merger antitrust cases. Just last week, the Commission accepted for public comment a consent agreement from Sandoz arising out of its sales of clozapine, a drug used in treating schizophrenia. The complaint alleges that Sandoz requires patients who purchase clozapine also to purchase monitoring services from Sandoz. The Veterans Administration and other providers believe they can provide patient monitoring services at much lower costs without a decrease in patient safety. These patient monitoring services are required to detect agranulocytosis, a potential fatal blood

disorder. The proposed consent prohibits Sandoz from requiring any purchaser of clozapine to buy other goods or services from Sandoz, or any person designated by Sandoz. Sandoz can refuse to sell the drug to anyone who fails to provide adequate monitoring services if the decision is made on objective standards. It is our hope that this unbundling will reduce the cost of clozapine.

The Commission also accepted for comment two consent agreements with two Florida hospitals and issued a complaint against a medical director on charges that they threatened boycotts to restrain competition. In 1984, Cleveland Clinic sought to establish a fully integrated, multi-specialty group practice. The clinic needed access to a tertiary care hospital in order to provide a full range of services. The complaints allege that the medical staffs of two hospitals conspired to prevent Cleveland Clinic physicians from becoming staff members and threatened to stop admitting patients if the hospitals agreed to affiliate with Cleveland Clinic. The consent agreement requires that respondents cease the allegedly illegal conduct.

Another area our staff is investigating is a generic type of sham association that arises in the health care field: that is, sham independent practice associations ("IPAs"). Legitimate IPAs are integrated physician organizations that contract with health maintenance organizations to provide care. They reflect financial integration in the form of risk sharing and normally provide significant services on behalf of their physician members. We have heard allegations that groups of doctors who

are not integrated have joined together in the guise of an IPA to negotiate on price. Where it is possible that an IPA label merely masks naked price-fixing, the Bureau of Competition will be quick to investigate.

Turning now to consumer protection matters, in fraud cases we are reaching new levels of intensity and sophistication in our shared enforcement efforts. But so have the con artists, and our enhanced efforts are needed merely to "keep up with competition." Some recent examples remove any doubt about the utility of and the need for, our joint efforts. As you know, the Commission in the last few years increasingly has been looking to the suppliers and facilitators of fraud, as well as at the boilerroom operators. In two recent cases, the Commission sued suppliers of boilerrooms, one of whom described itself in national advertising as offering a "turn-key" operation for telemarketers. The Commission's complaint alleged that the defendants provided boilerrooms with product, scripts, access to the credit card payment system, lists of leads -- everything, in fact, but the bank of telephones. The defendants, according to the complaint, even offered to set up a 900-number for its customers. At least two state attorneys general had brought cases against some of these boilerroom customers. Without being able to piece together information that shows the hub-and-spoke structure of the operation, the states and the Commission alike could shut down these individual boilerrooms without recognizing the central role of the supplier.

We are taking a fresh look at, and proposing improvements to, the telemarketing fraud database that we share. For several years it has been an important symbol of our cooperation. Now it is time to ensure that it provides a user friendly basis for accessing the right kind of information for combating the increasingly sophisticated frauds that we see.

The challenge of cooperation in fraud cases -- trying to stay close to, if not even with, scam artists -- is hard enough. But it pales by comparison with the challenge of coordinating advertising policy generally, and approaches in specific advertising cases in particular. I have heard, as you have, how much more difficult it is to market products on a 50-state basis than it used to be. Different states, like different federal agencies, will continue to have differences in approach but, I think that federal, state and local agencies should redouble our efforts to achieve more uniform, predictable and reasonable approaches to advertising to the extent possible.

I do not mean to suggest that we have not made substantial progress in the advertising area in the last two years. We have. The active involvement of our Bureau of Consumer Protection in three sets of hearings that State Attorneys General have sponsored into green claims and 900-telephone numbers proves that the States and the FTC are backing up their rhetoric with meaningful action. In addition, our consent orders with Miles and CPC-Mazola, and the complaint in our injunction action against Immune Plus were developed in close cooperation with a

group of State Attorneys General. They demonstrate that the Commission and the States are indeed looking at the same kinds of issues, raising the same questions, and pursuing more consistent remedies.

I do not want to underestimate the importance of consumer and business education. We have recently targeted education campaigns where a traditional case-by-case method is less likely to succeed. Indeed, as I announced at the Consumer Protection Committee meeting, we will be doing a joint video public service announcement on credit repair fraud that I hope will prove to be an imaginative and cost effective way to reach consumers. Other themes, such as "900 phone numbers cost money," are simple messages in which self-help remedies can probably save consumers much more money than a long string of individual cases. We also worked with Southwestern Bell to develop a bill insert on 900 numbers which was distributed in February and March to Southwestern Bell's approximately 9 million customers in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

In the last two years many have asked me to describe my approach to law enforcement and regulation generally. There is certainly no mystery to the Commission's current approach, which is simple and straightforward. We work to formulate standards that are reasonable and predictable, and then enforce them vigorously.

We have demonstrated our willingness to hear the concerns of industry groups and consumer groups alike. I have been very

pleased with the reaction of the business community to our efforts. For example, our recent announcement of two settlements involving 900-number phone advertising directed at children brought favorable responses both from a major industry trade association and the consumer organization that had urged action in this area. I would like to think that a substantial reason for the generally positive reaction to the Commission's law enforcement efforts is our serious effort to communicate with industry associations about what we are doing, and why, and to solicit their input. Enforcement of reasonable standards is no threat to the legitimate business community. To the contrary, maintaining a "level playing field" reassures competitors in like circumstances that they will be treated similarly.

Planning a law enforcement program, however, does not mean that the same approach works for each industry. The Commission has tried to tailor approaches to the problems in a particular industry, rather than use a one-size-fits-all solution.

In the 900-telephone number industry, for example, the Commission has taken actions against practices that threaten to sap the potential of a new use of telecommunications technology. Rather than bring as many cases as possible, the Commission has concentrated on a variety of selected cases -- involving programing directed both at adults and children, that highlight problems -- and then used that knowledge to work with the Congress and the Federal Communications Commission to seek reasonable industry-wide solutions to the problems.

The credit repair fraud area shows that, in some instances, the case-by-case method may not be as effective as consumer education and possible legislative solutions. A review of the dozen or so cases the Commission has brought suggests case-by-case enforcement has not done much to eliminate or substantially reduce the problem. Ads in almost every major daily newspaper still promise to "erase" bad credit, characterizing even bankruptcy as "no problem." Our joint efforts at this meeting to produce a high-quality video PSA to educate consumers is a major first step in combating this fraud.

None of us in the law enforcement business can operate in a vacuum, there is both room and need for cooperation between officials at the national, state and local levels. Enforcement efforts benefit from uniform standards uniformly applied. I hope our successes of the last two years will lead us to increase our efforts to work together for sound and sensible approaches to law enforcement issues.