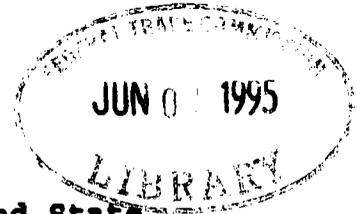


**PREPARED STATEMENT
of
JANET D. STEIGER
CHAIRMAN
FEDERAL TRADE COMMISSION**



**Before the
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
March 24, 1995**

Mr. Chairman and Members of the Subcommittee, good morning. I appreciate this opportunity to appear before you as the Chairman of the Federal Trade Commission and, in particular, to do so with Assistant Attorney General Bingaman to discuss the unique but related roles our agencies play in carrying out the federal government's antitrust enforcement responsibilities. Also, I will discuss the Commission's role as the sole federal consumer protection agency with broad jurisdiction. The Commission's two Missions complement one another to the benefit of consumers and competition.

Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. With the resources requested in this budget, the Federal Trade Commission (FTC) can continue to meet its critical responsibilities described in the President's Budget submission.

Fiscal Year 1996 Resource Request

For fiscal year 1996, the Commission seeks \$107,849,000 and 979 full-time equivalent (FTE) employees. Of the amount requested, some \$48,262,000, or 45 percent, is funded by the Hart-Scott-Rodino (HSR) filing fee, an offsetting collection. The FTE level remains at its fiscal year 1995 level of 979, or about half the Commission's strength in 1980 and about 80 percent its strength in the 1960's. This funding will ensure the completion of the FTC's information resources management training and technology infrastructure upgrade and is otherwise a current services budget. In fiscal year 1996, the Maintaining Competition Mission is requesting \$51.9 million and 470 FTE and the Consumer Protection Mission is requesting \$55.9 million and 509 FTE.

The fiscal year 1996 request includes an increase in fee-based spending authority from \$39,640,000 to \$48,262,000. This reflects a higher projected number of filings. Since fiscal year 1990, when the HSR filing fee was started, the Commission has gone from 20 to 45 percent self-funding. Data for fiscal year 1994 and the first quarter of fiscal year 1995 appear to indicate that the total number of filings would support this higher level of fee reliance.

The Administration's proposed appropriation language, which we support, continues the prohibition on spending authorized funds to implement certain provisions of the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991. FDICIA gives the Commission substantial responsibilities over certain depository institutions and their insurers. Because of specific jurisdictional exceptions in Section 5 of the FTC Act (Section 5), the FTC has no experience in regulation or enforcement concerning depository institutions. It could not perform these responsibilities without hiring or contracting for a substantial number of specialized personnel. This is in direct conflict with current Administration and Congressional goals of decreasing agency overlap. The Commission continues to believe that its responsibilities under the FDICIA would be more appropriately assigned to federal regulatory agencies with jurisdiction over financial institutions. Although the Commission has sought to address these concerns with the relevant Congressional committees and other involved federal agencies, no resolution has been reached. The Commission, therefore, believes that a continued ban on the FTC's spending of authorized funds to implement § 151 of FDICIA is appropriate.

As part of the President's Reinventing Government Initiative, all federal agencies are reexamining their mission. This includes: addressing the mission based on "customer" input; asking whether the mission could be accomplished as well or better without federal involvement; looking for ways to cut costs or improve performance through competition; and ways to put customers first, cut red tape, and empower employees. We are actively participating in this effort and will be keeping the Subcommittee fully apprised of our review.

As just one example of these efforts to improve efficiency, the staff of the Commission and the Antitrust Division have been exploring measures to reduce the burdens and costs of the Hart-Scott-Rodino merger review process. The objectives of these staff-level discussions are to reduce the burdens and costs of the merger review process on businesses, while facilitating the merger review process and insuring that it continues to protect the interests of consumers in open, competitive markets.

Federal, State and Local Cooperation

Maintaining the integrity of interstate commerce is a federal, rather than state or private, responsibility, calling for nationwide jurisdictional reach and uniform nationwide policies. The FTC's basic functions of preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce, are properly undertaken by a federal agency, to assure that businesses are not subject to conflicting requirements in either of these areas. National advertising, for example, should be held to a uniform, consistent standard of what is unfair or deceptive, and federal antitrust enforcement is also

appropriate to ensure application of consistent standards throughout the country. In addition, a national enforcement authority is needed to deal effectively with fraud artists who routinely try to escape local jurisdictions by moving their operations across state and, increasingly, national boundaries.

The FTC's jurisdiction includes some matters that may also be of local or regional importance. Overlapping enforcement responsibilities in antitrust and consumer protection, however, generally have resulted in strong and coordinated actions in which the federal and state law enforcement authorities cooperate to achieve mutually satisfactory goals. The FTC provides coordination, training, and support to state and local law enforcement officials, often in cooperation with the National Association of Attorneys General (NAAG) or the National Association of Consumer Agency Administrators. Listed are examples of the growing cooperative efforts between the Commission, state and local agencies:

Coordination of Federal, State and Local Resources Coordination has been particularly critical in the fight against telemarketing fraud. With NAAG and the National Consumers' League, the FTC set up a computer database of telemarketing complaints and investigations that is used by federal, state, and local law enforcers. In addition, during fiscal year 1994, the FTC held nine regional Telemarketing Conferences to share information and expertise with state and local law enforcement officials. The FTC is now engaged in a proceeding required by the recently enacted Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, 108 Stat. 1545 (1994), to develop a rule addressing telemarketing and other consumer fraud. Once it is promulgated, this rule will be enforceable by both the Commission and state law enforcement officials.

Joint Rule Enforcement Handbook NAAG and the FTC have prepared and distributed a Joint Rule Enforcement Handbook to aid local officials in their enforcement of certain FTC rules. The FTC often assists local officials to enforce the Commission's Used Car Rule through training and organizing "sweeps" of local used car lots that are a part of this \$290 billion market. Another example of cooperative efforts relates to the FTC rule requiring accurate fuel pump posting of octane ratings by the nation's 150,000 gasoline retailers, which can best be monitored by local officials.

Referrals to and from State and Local Enforcement Authorities The FTC has, for example, referred allegations of price-fixing to local authorities when it appeared that the effect was likely to be primarily local and where the state authorities appeared willing and able to handle the investigation and any necessary prosecution. State and local enforcement authorities often refer matters to the FTC for actions, where issues of nationwide importance are raised.

Although private actions may be brought to enforce the Sherman and Clayton Act, Congress has not authorized private actions to enforce the FTC Act. Private consumer protection or competition actions, therefore, are not an alternative to FTC enforcement.

Maintaining Competition

The Maintaining Competition Mission is based on the prohibition in Section 5 of "unfair methods of competition" and on provisions of the Clayton Antitrust Act. Section 5 encompasses the standards of other antitrust laws (the Sherman Act and the Clayton Act) and supplements them to address conduct that threatens to harm competition and thereby harm consumers. Some recent examples of FTC's unique role in competition enforcement include a 1992 order against Sandoz Pharmaceutical Corporation for allegedly tying expensive patient monitoring services to the sale of an antipsychotic drug (which resulted in savings of over \$20 million annually for one consumer, the Veterans Administration, alone), the *Infant Formula* cases of the early 1990's against alleged price fixing and unilateral practices that facilitated industry collusion in the sale of infant formula to government agencies (which resulted in restitution of infant formula to the U.S. government valued at \$25 million and rebates of \$13 million), and several cases against attempts to fix prices. Most of these cases were uniquely violations of Section 5's proscription of "unfair methods of competition."

In its Mission of maintaining competition, the Commission is confronted with a rapidly evolving landscape: competition is increasingly technology-driven, as advances in technology create new markets and offer new opportunities for both procompetitive and anticompetitive activities. U.S. firms face increasing competition from firms outside U.S. borders. Collaboration between firms has become a more vital part of competing in world markets. Competitors may attempt to defeat efforts to open markets, or cut costs, in important markets such as health care. Similarly, as markets are freed from regulation or new markets are created, competitors may attempt to displace competition rather than face the discipline of the marketplace. Moreover, the Commission addresses relatively new issues in antitrust analysis, such as defining research and development markets or analyzing new forms of collaboration.

Competition enforcement plays a vital role in the competitive landscape. That role is to scrutinize the emergence of new markets and new collaborative arrangements. Arrangements that are procompetitive or competitively neutral have gone unchallenged. Where the Commission has brought enforcement actions it has carefully crafted remedies to prevent competitive harm. That is our challenge and we have met it this year.

One example of our achievements is represented in our merger enforcement program. The number of mergers has increased substantially since 1992, and an increasing portion of these mergers are among competitors and involve more technologically intensive industries. In fiscal year 1994, the Commission brought 20 merger enforcement actions, involving important markets such as computer software, cable television, pharmaceuticals and pharmaceutical distribution, hospitals, satellites and other defense-related products, and a variety of food and other consumer goods. The markets involved in these actions exceeded \$10 billion in commerce.¹ So far in fiscal year 1995, the Commission has brought 23 enforcement actions. On the other hand, the Commission's enforcement actions did not prevent procompetitive consolidations; in almost every case brought by the Commission, the merger was ultimately consummated with a narrow divestiture or other remedy, carefully focused on the competitive problem raised by the merger.

The Commission brings to bear several core capabilities in facing our Mission of protecting the competitive process. Our attorneys and economists have substantial expertise in critical industries such as defense, health care, pharmaceuticals, and various high technology markets, to name a few. Because of this expertise the Commission staff investigates, and where appropriate, prosecutes antitrust violations in a highly effective manner. For example, the Commission has had an impressive record of success in the cases it brings before the federal courts.

In addition to enforcement action, the staff of the Commission regularly responds to requests from state and federal agencies and legislatures on the competitive implications of proposed regulations and legislation, often pointing out the benefits of allowing market forces to operate undeterred by unnecessary government regulation.

Because of the Commission's role as an independent agency, it has historically had a close relationship with Congress. As part of this relationship, the Commission has advised Congress and the American public on a wide range of competitive issues. See 15 U.S.C. § 46(d), (f). In addition, Congress has referred particular matters to the Commission that, when appropriate, have led to enforcement action. The *Infant Formula* matter is just one

¹ The potential price increases prevented by these enforcement actions greatly exceed the Commission's annual budget. The size of the markets exceeded \$10 billion. Assuming that these mergers would have resulted in anticompetitive price increases of only five percent, then the Commission's enforcement activities prevented consumer harm in excess of \$500 million -- savings almost five times greater than the FTC's entire annual budget. Although the actual savings to consumers from enforcement actions often cannot be determined, potential savings in a single litigated case in fiscal year 1993 -- the *Alliant/Olin* case -- could, by the court's estimate, have exceeded the FTC's budget for the entire year.

example of a matter that came to the Commission's attention, at least in part, as a result of a referral from Congress.

The FTC and the Antitrust Division of the Department of Justice (DOJ) have differences and similarities that justify maintaining both as protectors of the competitive process. The two agencies do not duplicate each other's enforcement work, first, because of clearance procedures to ensure that they do not investigate or prosecute the same violations. In addition, the agencies apply the same analytical standards, as reflected in the agencies' increasing practice of issuing joint guidelines, such as those already issued on horizontal mergers and health care, and guides on international antitrust and intellectual property issues, which should be issued in the near future.

For fiscal year 1996, under the Maintaining Competition Mission the Commission seeks a total of 470 FTE and \$51,948,000, for an increase of \$2,694,000 and a shift of three FTE from the Consumer Protection Mission to accommodate additional needs.

Recent accomplishments of the Maintaining Competition Mission include the following:

Innovation and Technology-Driven Markets Competition in innovation, which has always been important, may assume even greater importance based on the key role that technology and innovation will likely play in our economy in the 21st century. The Commission approaches these markets carefully in order to permit procompetitive collaborations, and to take enforcement action only where necessary to prevent mergers or other conduct that threatens to deter innovation competition to the detriment of consumers.

In the past year, the Commission has acted to protect innovation competition in several technology-driven markets including the \$6 billion worldwide polypropylene licensing and technology market; a vaccine for rotavirus, a serious diarrheal disease that each year results in the hospitalization or death of thousands of infants and children; high-technology cardiology diagnostic devices; finger implants; illustration software; and anti-shoplifting devices. In these cases, the Commission has sought to remedy competitive problems through narrowly drawn relief.

Defense Industry Consolidation As defense procurements have continued to decline, there have been an increasing number of consolidations in the defense industry. Scrutiny of defense mergers has provided benefits for the Department of Defense (DOD) and ultimately U.S. taxpayers. For example, a district court found that the Commission's 1992 challenge of the Alliant/Olin merger could save consumers and taxpayers between \$25 and \$115 million (see note 1 *supra*): Similarly, the Commission's

successful challenge of the Imo/OEC merger in 1992 led to savings of approximately \$23 million.

In fiscal years 1994 and 1995, the Commission analyzed several defense mergers, including the largest in history, the \$9.6 billion merger between Martin Marietta and Lockheed. Most of these consolidations raised no significant competitive problems. In three acquisitions where competitive problems were identified, the Commission entered into consent orders that permitted consolidation to occur while preventing potential competitive harm through narrowly-drawn remedial provisions. For example, in the Martin Marietta/General Dynamics merger, the Commission remedied competitive concerns relating to satellites (a \$3.5 billion market) while allowing the underlying acquisition of launch vehicles to proceed promptly. In at least one of these matters, the Lockheed-Martin Marietta merger, Commission action appears to have led to an increase in the number of bidders for a multi-billion dollar DOD procurement of spaced-based early warning satellite systems. In each of these defense merger investigations, the Commission staff worked closely with DOD staff.

In addition, the Commission staff participated in a DOD task force on defense industry consolidation. The purpose of the task force, which issued its report in April 1994, was to improve interagency review of defense mergers and provide clearer guidance for the industry. The task force's unanimous report reaffirmed the important role that antitrust enforcement plays in protecting consumers, while also recommending improved information-gathering and communications by DOD in assisting the antitrust agencies' investigations.

Pharmaceutical Markets Pharmaceutical competition is vital to controlling health care costs, and our enforcement actions have sought to protect a competitive marketplace for a number of vital pharmaceutical products. The Commission analyzed several pharmaceutical mergers in fiscal year 1994 and 1995, including some of the largest mergers in history, including American Home Products' \$9.7 billion acquisition of American Cyanamid and Roche Holdings, Ltd.'s \$6 billion acquisition of Syntex. Some of the pharmaceutical markets involved vaccines for diphtheria and tetanus, drugs for certain cardiac conditions, research into rotavirus vaccines, drug abuse testing agents, and drugs for chemotherapy treatment.

Another example is the Commission's analysis of the acquisition of pharmacy benefit management (PBM) firms by drug manufacturers. PBMs are increasingly important mechanisms for the management of pharmacy benefits in the health care system. By the end of the century it is anticipated that practically all Americans will receive pharmaceutical benefits through PBMs. The Commission reviewed Eli Lilly's proposed acquisition of PCS Health Systems, Inc., the largest PBM in the United States. The

Commission did not seek to enjoin the acquisition, but accepted a consent agreement for public comment designed to assure open competition.

The Commission's nonmerger enforcement also plays a vital role in assuring that competition is fostered in pharmaceutical markets. Besides the Sandoz case mentioned earlier, the Commission has also successfully challenged in several cases concerted efforts by pharmacists to stifle cost containment efforts by health care plans.

Health Care Markets Competition in the health care industry is an important element of the fundamental underpinning of government and private efforts to reduce health care costs. The FTC historically has been at the forefront of antitrust enforcement in this area, and many of our actions have helped to open health care markets to the forces of competition, leading to lower prices and better services for consumers. The Commission's pro consumer impact in this multi-billion dollar industry alone could well justify the relatively modest cost of the Commission's Competition Mission.

The FTC's past enforcement activities in non-merger cases have served to break down cartels and other barriers to competition in the health care industry, and permitted the emergence of innovative delivery systems. For example, the Commission successfully challenged medical society rules that penalized doctors who worked for a health maintenance organization. Other Commission orders have removed obstacles to cost-containment measures by third-party payors, such as action by providers to boycott proposed cost controls. The Commission has challenged other activities such as prohibitions on truthful advertising, enabling providers to communicate truthful information to consumers including offerors of innovative or unique services. The Commission also brought several cases against suppliers of infant formula, as noted above.

In response to the widespread trend toward hospital consolidation, the Commission's enforcement actions recognize the generally procompetitive nature of these consolidations, while obtaining remedies in a handful of markets to cure competitive concerns.

The FTC joined the Antitrust Division in developing and releasing both the 1993 and 1994 Statements of Antitrust Policy in the Health Care Area, which established antitrust "safety zones" and have been praised for clarifying antitrust policy in the rapidly changing health care markets. Pursuant to those statements, Commission staff has provided advisory opinions to health care providers on a regular and timely basis.

Consumer Goods Markets Consumers are directly affected by the competitive process in the purchase of consumer goods. To

prevent unlawful restraints of trade (such as price fixing) and anticompetitive mergers that could raise prices to consumers, the Commission has brought enforcement actions in a wide range of consumer goods markets including cable television, soft drinks, canned fruit, supermarkets, shoe products and pet food. In fiscal year 1994, the amount of commerce involved in these enforcement actions exceeded \$5 billion.

Competing in a Global Economy The Commission enforces its competition mandate with full awareness of the relevance of international competition. That awareness includes a sensitivity to the importance of foreign competition in analyzing the effect of collaboration between U.S. firms. The Commission may define relevant geographic markets as global, regional, hemispheric, the United States, or some portion of the country, depending on the evidence gathered in each case.

The Commission has also acted to protect the ability of U.S. firms to compete effectively abroad. A significant recent example is the Commission's action involving a joint venture between Royal Dutch Shell and Montedison, S.P.A, the two largest polypropylene producers worldwide; the joint venture allegedly threatened the ability of U.S. firms to compete in the international polypropylene licensing market. The Commission's order requires the divestiture of facilities and intellectual property rights to restore the competition eliminated by the joint venture. The potential U.S. export commerce involved exceeds \$250 million annually.

Both the FTC and DOJ have sponsored successful bilateral antitrust technical assistance programs in Central and Eastern Europe and Central America. In addition, the FTC, along with DOJ, is formulating guidelines addressing antitrust enforcement in international commerce. These guidelines specifically emphasize the agencies' willingness in appropriate cases, to challenge anticompetitive conduct abroad that harms U.S. exporters.

Consumer Protection

The Commission is the only national consumer agency with general law enforcement jurisdiction. In the Consumer Protection Mission, the Commission works to maintain a well-functioning marketplace that allows consumers to make informed decisions on how to spend their money. FTC consumer protection actions protect consumers from economic and sometimes physical injury. They also protect honest businesses from lost sales to less scrupulous competitors.

The Consumer Protection Mission is based on the prohibition in Section 5 of "unfair or deceptive acts or practices," supplemented by a number of statutes addressing particular industries or practices. Consumer protection enforcement under

Section 5 is directed at conduct that misleads consumers, impairing their ability to make free, informed market choices. Priorities mirror the issues of greatest concern to consumers such as deceptive advertising, fraud and issues related to new technologies. Within these broad areas, the focuses of the Consumer Protection Mission include health claims in food advertising; environmental advertising and labeling; health care fraud; telemarketing, business opportunity, investment and franchise fraud; and credit-related problems such as mortgage lending and discrimination. Under the Consumer Protection Mission, the Commission also enforces a wide variety of special statutes such as the Truth-In-Lending Act, the Textile, Fur, and Wool Labeling Acts, the Comprehensive Smokeless Tobacco Health Education Act, and the Federal Cigarette Labeling and Advertising Act;² and trade regulation rules addressing such diverse topics as funeral goods and services, mail- and telephone-order merchandise, used car sales, and octane ratings.³ The Mission also includes an award-winning consumer and business education program designed to inform consumers and businesses of their rights and responsibilities under the laws and regulations administered by the Commission. Finally, the Consumer Protection Mission includes a component of enforcement of Commission consumer protection cease and desist orders addressing conduct allegedly violating the laws enforced by the agency.

The Consumer Protection Mission includes five law enforcement programs: Advertising Practices, Service Industry Practices, Marketing Practices, Credit Practices, and Enforcement. The requested level for the Consumer Protection Mission will be used to continue Mission-wide strategic plans in all five of these programs. These include: (1) targeting high impact fraud cases; (2) concentrating on industry-wide problems in non-fraud areas; (3) enforcing trade regulation rules; (4) ensuring compliance with existing orders; and (5) continuing consumer and business education efforts supporting law enforcement.

² Pub. L. No. 89-92, 79 Stat. 282 (1965), as amended by Pub. L. 98-474, 98 Stat. 2204 (1984) and by Pub. L. No. 99-92, Section 11, 99 Stat. 393, 402-04, (1985), current version at 15 U.S.C. Section 1331.

³ Some of these rules are required by specific statutes and others are supported by the general provisions of the FTC Act. Rules required by specific statute include those concerning fuel ratings, appliance labeling, and 900 numbers. Trade Regulation Rules under the FTC Act include those concerning franchising, the funeral industry, used car warranties, eyeglass prescriptions, mail and telephone ordering, insulation R-value claims, and others. The Commission is currently engaged in a statutorily mandated rulemaking to prohibit deceptive telemarketing. It is Commission policy to review each of its rules and guides at least once every ten years. See 57 F.R. 52,398 (Nov. 3, 1992).

For fiscal year 1996, under the Consumer Protection Mission, the Commission seeks a total of 509 FTE and \$55,901,100, for an increase of \$2,227,000 and a decrease of three FTE.

The amount of money the Commission uses to combat unfair or deceptive acts or practices is small relative to the vast amount of commerce within the scope of the Commission's jurisdiction. Recent Commission accomplishments under the Consumer Protection Mission include the following:

General Advertising Practices In 1993, American businesses spent \$138.1 billion on all advertising, a 5.2 percent increase over 1992 advertising expenditures.⁴ A single deceptive claim in such advertising may have significant impact on consumers. In fiscal year 1994, the Commission's budget for all advertising enforcement activity was \$5.5 million. With these limited resources, the Commission has issued a number of significant cease and desist orders and has recouped substantial amounts of money as consumer redress, or, where direct consumer redress is impractical, as disgorgement of ill-gotten gains that is returned to the U.S. Treasury. For example, in one infomercial case alone, the Commission accepted a settlement providing for \$3.5 million in consumer redress, *Synchronal Corp.*, Dkt. No. 9251 (1993), and another case resulted in a \$1.4 million disgorgement payment, *L&S Research Corp.*, Dkt. No. C-3534 (1994).

Health Claims Another important area of concern to consumers is nutritional and health claims in food advertising. Advertisers spend over \$3 billion a year on food advertising. In this area, the Commission issued an enforcement policy statement to provide guidance regarding its policy with respect to the use of nutrient content and health claims in food advertising. The policy also addresses the Commission's harmonization of food advertising enforcement policy with the FDA's food labeling regulations pursuant to the Nutrition Labeling and Education Act of 1990.

Telemarketing Fraud The Commission also devotes considerable effort to the fight against telemarketing fraud. Over eight billion telemarketing calls are made each year, and in 1991 alone telemarketing sales exceeded \$250 billion. Although the vast majority of these transactions are legitimate, losses to consumers each year from telemarketing fraud may range from \$3 billion to \$40 billion, in addition to the hundreds of millions of dollars lost by financial institutions serving what turn out to be unscrupulous merchants of fraud.⁵ During the past several years, the Commission has filed well over 100 lawsuits in federal district court and successfully obtained strong injunctive

⁴ Competitive Media Reporting, *LNA/Media Watch Multi-Media Service Ad \$ Summary* (1994, 1993).

⁵ H.R. Rep. No. 421, 102d Congress, 1st Sess., "The Scourge of Telemarketing Fraud: What Can Be Done Against It?" at 7 (1991).

relief, asset freezes, and the appointment of receivers to preserve assets for ultimate distribution to consumers, if possible, or for disgorgement. The Commission has obtained and returned to consumers nearly \$100 million in consumer redress payments, and has obtained over \$4 million in disgorgement, in actions filed under Section 13(b) of the FTC Act.⁶ The Commission has obtained over \$4.5 million in redress in just the first quarter of fiscal year 1995. Where possible, enforcement action specifically targets the "root" companies that provide various services to support individual fraudulent telemarketing enterprises or "boilerrooms," consisting of banks of telephones manned by sales agents specializing in pressure sales. As in the antitrust area, the Commission's enforcement efforts against telemarketing fraud also are designed to deter the spread of this illegal activity.

Opening an important new front in the battle against telemarketing fraud, the Commission recently challenged advertising on the information superhighway for the first time and was able to halt an allegedly deceptive credit repair scheme so quickly that consumer losses totalled less than \$2,000.⁷ On another new front, the Commission has filed several Section 13(b) complaints in federal district court against telemarketers that allegedly engage in deceptive charity solicitations. Legitimate telefundraisers raise funds for bona fide charities through telephone solicitation campaigns. Fraudulent or deceptive telefundraisers, however, raise funds for themselves or for nonexistent or phony charities, although sometimes they may use the names of bona fide charities in their solicitations.⁸

The Commission has also worked closely with state officials to coordinate law enforcement efforts against fraudulent telemarketers. The Commission jointly sponsored with NAAG a series of regional telemarketing fraud conferences that brought together federal, state, and local law enforcement authorities. Participants in these regional conferences considered them a great success and the conferences have resulted in a number of

⁶ The Commission has obtained over \$425 million in judgments. For various reasons, such as defendants' inability to pay, defendants' ingenuity in hiding assets, and legal restrictions, the Commission is often unable to collect the full amount of the judgment it obtains. See November 29, 1994 Commission letter and accompanying report to the Honorable John Conyers, Jr., then-Chairman, Committee on Government Operations, U.S. House of Representatives.

⁷ *FTC v. Corzine*, CIV-S-94-1446 (DFL) (E.D. Cal. filed Sept. 12, 1994).

⁸ *FTC v. Publishing Clearing House*, No. CV-S-94-00623 (D. Nev. filed July 13, 1994); *FTC v. Genesis Enterprises*, No. CV-S-94-00624 (D. Nev. filed July 13, 1994); *FTC v. Int'l Charity Consultants, Inc.*, No. CV-S-94-00195-DWH (LRL) (D. Nev. filed March 1, 1994); *FTC v. NCH, Inc.*, No. CV-S-94-138 LDG (LRL) (D. Nev. filed Feb. 14, 1994); *FTC v. PFR*, No. CV-S-95-0074-PMP (LRL) (D. Nev. filed Jan. 25, 1995); *FTC v. Thadow*, No. CV-S-95-00075-HDM (LRL) (D. Nev. filed Jan. 25, 1995).

joint federal, state, and local actions against fraudulent telemarketers. The Commission's regional offices have institutionalized these conferences and will bring state and local law enforcers together on an annual basis to address high priority consumer protection issues. Also, the Commission has developed a telemarketing data bank providing immediate access on the latest scams to a host of other federal, state and local enforcers.

As required by the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, the Commission has issued a Notice of Proposed Rulemaking soliciting public comment on a proposed rule that would prohibit numerous deceptive or abusive telemarketing sales practices, and prohibit credit card laundering and other forms of assistance to deceptive telemarketers.

Credit and Consumers The Commission also has jurisdiction over the overwhelming majority of credit grantors in the United States. Denial of credit access for reasons unrelated to credit worthiness continues to be a serious problem. The Commission works to ensure equal credit opportunity. As a result of this effort, enforcement of the Equal Credit Opportunity Act resulted in a significant settlement agreement with a subsidiary of the third largest banking institution in New England. The settlement resolved allegations that the company violated the Equal Credit Opportunity Act by denying home mortgage loans on the basis of race and national origin, and required the company to pay approximately \$1 million in consumer redress.⁹ This case achieved an important result both in terms of dollars for individual consumers and in terms of the message it sends to mortgage lenders in general. A second case involving lending discrimination charges resulted in payment of a \$150,000 civil penalty.¹⁰

Civil Monetary Penalties Twenty-five federal district court judgments ordered approximately \$4 million in civil penalties as a result of actions brought by the Consumer Protection Mission. One administrative order enforcement action resulted in the Mission's largest civil penalty judgment. In this consent order imposing a \$2.4 million civil penalty, the Commission resolved allegations that the nation's largest seller of nutritional supplements violated prior Commission orders prohibiting false and unsubstantiated claims for food supplements.¹¹

⁹ *FTC v. Shawmut Mortgage Co.*, CIV. No. 3:93CV-2453 (AVC) (D. Conn. filed Dec. 13, 1993).

¹⁰ *FTC v. The CIT Group/Sales Financing, Inc.*, CIV. No. 94-4092 (AMW) (D. N.J., Aug. 24, 1994).

¹¹ *United States v. General Nutrition, Inc.*, Civil Action No. 94-686 (W.D. Pa. Apr. 28, 1994).

Focus on Consumer Issues Prevention of deceptive advertising and telemarketing fraud represent only two of many facets of the Commission's Consumer Protection Mission. The Commission also combats non-telemarketing fraud and enforces a variety of trade regulation rules as well as several federal statutes dealing with the extension and use of credit in commercial transactions. The productivity of the Mission has risen steadily in the past several years and was at its highest in fiscal year 1994. Since 1980, FTC Consumer Protection cases have garnered more than \$100 million for refunds to victims of allegedly illegal marketing schemes.

In addition to taking individual law enforcement actions, the Commission implemented statutory directives to update or expand several industry-wide rules, including rules requiring companies to help consumers comparison shop for energy-efficient products by giving them energy- and fuel-usage information.

Law enforcement activities in the Consumer Protection Mission in the last fiscal year addressed the issues and challenges facing American consumers today. The Commission continues to serve as the consumer's voice in the marketplace, an advocate for truthful, non-deceptive advertising, fair sales and marketing practices, and responsible credit-related services. Actions taken help ensure the continuation of a strong consumer-based economy, by stopping business practices that reduce the ability of consumers to make informed choices.

Technical Assistance Agreement

Under our reimbursable agreement with the Agency for International Development (AID), the Commission is continuing to provide technical assistance to Central and Eastern European governments in restructuring their economies. The assistance, which is funded by AID, enables the Commission to provide advice on the policies, laws, and regulations relating to the development of a competitive market environment, and on "how-to" aspects of case development and presentation. AID and the Commission are working to extend the agreement to provide further assistance into fiscal year 1995. The 1993 agreement with Jamaica has been extended through March 1995. Discussions are continuing with AID to assist several of the republics of the former Soviet Union that are not covered in the current agreement.

Management Initiatives

The Commission will make further strides in improving its financial management systems. We are moving ahead with plans for a more integrated budget, financial and program information system as clients of the Department of the Interior's Denver Administrative Service Center (ASC). In fiscal year 1996 the Commission will convert its payroll, personnel and payment

activities to the ASC, where we currently receive accounting system services. This franchising arrangement has led to faster, more accurate financial information, and the reallocation of resources to other priority needs.

The Commission is implementing a new procurement system during fiscal year 1995 which will provide full capabilities to conduct procurements electronically for commercially available products. This system has the future capability to interface with the financial management system to further streamline the agency's administrative processes.

The fiscal year 1996 request proposes to maintain Commission-wide information systems at the high quality made possible by Congressional and Executive Branch support over the past several years. This support has brought the Commission to a point where it generally has an excellent information systems infrastructure in place. In the future, ongoing investments will be required for support and maintenance; expansion and further upgrading of capabilities as requirements continue to grow and as technology continues its rapid rate of change in the marketplace; and continuation of the Commission's ongoing process of integrating these improved information systems in its basic business processes.

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Mr. Chairman and members of the Subcommittee, I believe that with the resources in the fiscal year 1996 budget, the Federal Trade Commission will remain a viable and critical agency supporting the economic well being of this nation. Thank you for this opportunity to testify before your Subcommittee, and I will be glad to respond to any questions you may have.