The FTC in 2012

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LEFT TO RIGHT: Chairman Jon Leibowitz and
Commissioners Edith Ramirez, J. Thomas Rosch, and Julie Simone Brill

The FTC in 2012

March 2012

Federal Trade Commission

Jon Leibowitz, Chairman
J. Thomas Rosch, Commissioner
Edith Ramirez, Commissioner
Julie Simone Brill, Commissioner

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Message from the Chairman



This booklet previews the first edition of the FTC's Annual Highlights online — a description of our major accomplishments since March 2011. We encourage you to access more information, links, and multimedia features at **ftc.gov/highlights**.

Our activities underscore our agency's unique dual mission to protect consumers and to promote competition and innovation critical to the recovering national economy. They show how we:

- protect consumer privacy — both online and off;
- stop scammers who use the economic downturn to pick the last dollar out of people's pockets;
- promote competition for health care providers, products, and prescription drugs; and
- work to understand new technologies, which bring tremendous benefits to consumers and the economy — and can also pose significant challenges.

The FTC also stops deceptive advertising and shady marketing practices, safeguards our children, and scrutinizes

energy markets. In our global economy, we cooperate with international partners to promote sound policy that benefits U.S. consumers and businesses.

It has been an extraordinarily productive year. We're proud that the FTC has been at the forefront of good government, effective law enforcement, and outstanding outreach to consumers, businesses, and our law enforcement partners around the world. We're also proud that of 37 federal agencies with more than 1,000 full-time employees surveyed by OPM in 2011, the FTC ranked second in leadership and knowledge management, a results-oriented culture, and talent management, and fifth in job satisfaction.

We try to be a practical and bipartisan agency, too. My colleagues, Commissioners Tom Rosch, Edith Ramirez, and Julie Brill, join me in saluting the FTC's talented and dedicated staff and their impressive work on behalf of American consumers.



Jon Leibowitz
Chairman

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Protecting Consumer Privacy



As consumers go about their lives, they share information. The companies with whom they share it must honor the promises they make — online and off — including those about privacy. The FTC began a national conversation about privacy decades ago, and has continued to raise the profile of privacy practices through law enforcement, consumer education, and policy initiatives.

FTC settlement orders against *Facebook* and *Google* resolved charges that these companies violated their privacy promises to consumers. The FTC also challenged the privacy practices of *ScanScout* and *Chitika*, online behavioral advertising networks that allegedly deceptively tracked online activities even after people opted out of such tracking. The FTC took action against *Teletrack*, charging that it violated the Fair Credit Reporting Act by selling protected consumer credit reports to marketers, and against *Upromise*, a membership reward service that allegedly collected consumers' personal information through a web browser tool.

The FTC's final report on privacy adopts three principles proposed in the draft report — privacy by design, greater

transparency, and more consumer choice — to help ensure consumer privacy and business innovation. The report continues to encourage businesses to improve their privacy practices through self-regulation, including a Do Not Track system, and notes some industry progress in this area. The report also identifies areas such as large platforms, mobile, and data brokers for further attention in the coming year, and recommends that Congress consider legislation implementing basic privacy protections.

Fighting "Last Dollar" Fraud



The FTC is on the beat to stop scammers who take advantage of the nation's most financially fragile consumers through deceptive mortgage servicing practices, abusive debt collection tactics, bogus credit repair services, mortgage, tax, and debt relief offers, and fraudulent job and business opportunity schemes. Here are a few examples:

The Commission alleged that *First Universal Lending* charged struggling homeowners $7,000 in advance fees that brought little or no mortgage relief. In May 2011, the court entered a settlement order that bans the defendants from the mortgage

modification business and requires them to pay nearly $19 million in consumer redress.

Through a settlement with *Countrywide* (now *Bank of America*), 450,000 homeowners whom the FTC says were charged excessive loan servicing fees received checks worth nearly $108 million. Several months later, *Bank of America* refunded or reversed charges for $36 million more to resolve allegations that it violated the FTC settlement.

The FTC took action against *American Credit Crunchers*, a "phantom" payday lender that made millions of collection calls from India demanding payment of "debts" that consumers did not owe. The agency reached settlements with other debt collectors that imposed civil penalties, including one for $2.5 million against *Asset Acceptance, LLC*, which allegedly used deceptive tactics to try to collect old debts, many of which were time-barred.

The Commission shut down several firms that guaranteed government grants (*Grant Connect*), jobs (*National Sales Group*), and lucrative work-at-home opportunities (*Real Wealth*), getting judgments totaling $40.2 million and orders that ban the companies from marketing in these areas. It also permanently stopped *United States Benefits, LLC*, which allegedly took advantage of unemployed, uninsured, and uninsurable people by deceptively marketing "medical discount plans" as comprehensive insurance.

Promoting Competition in Health Care



The Commission works to prevent anticompetitive mergers and conduct that might undermine competition in health care markets. Many recent FTC merger enforcement actions involved companies that provide health care services, from dialysis clinics to testing labs. In particular, the FTC has redoubled its efforts to prevent hospital mergers that may leave insufficient local options for in-patient services, challenging three such mergers in federal court in the past year.

The agency also combats anticompetitive conduct by health care providers that may raise costs or reduce options for patients. For instance, the Commission found that the *North Carolina State Board of Dental Examiners* illegally sought to prevent non-dentists from providing teeth whitening services.

On the policy front, when asked, the Commission commented on the competitive implications of state proposals that may impose burdens on health care providers without generating offsetting benefits to patients in terms of access or cost. In addition, the FTC worked with the DOJ and other agencies — most notably the Centers for Medicare and Medicaid

Services — to develop a Joint Statement of Antitrust Enforcement Policy for Accountable Care Organizations. The Statement makes clear that the antitrust laws are not a barrier to bona fide collaboration, while at the same time ensuring that any benefits from increased collaboration will not be lost to anticompetitive conduct.

Containing Costs of Prescription Drugs



With the cost of prescription drugs increasing faster than other health care costs, the FTC is committed to preventing mergers or conduct that may allow firms to raise drug prices. In the last year, the Commission challenged seven mergers involving pharmacies or pharmaceutical manufacturers, preserving competition for blood-plasma derived drugs, acne and cancer creams, and pain medicines, among others.

One of the Commission's top priorities continues to be restricting anticompetitive "pay-for-delay" patent settlements Because these agreements delay the availability of low-cost generic drugs, branded manufacturers profit by continuing to charge monopoly prices, and generic manufacturers receive

substantial compensation for agreeing not to compete. Meanwhile, consumers, businesses, and government programs such as Medicare bear the heavy costs of higher drug prices. The FTC monitors these agreements, which have increased significantly in response to permissive court rulings; has challenged several in court; and is pressing for a legislative fix to put an end to these deals.

The Commission also brought charges that CVS Caremark misrepresented the prices of certain Medicare Part D prescription drugs on important websites. As a result, some seniors and disabled consumers allegedly paid significantly more for their drugs than they had expected. CVS Caremark agreed to pay $5 million to reimburse affected Medicare Part D consumers for the price discrepancy to settle the charges.

Trending in Technology



Nearly 100 years of experience gives the FTC a unique perspective when it comes to anticipating and evaluating new technology, and using appropriate measures of enforcement, education, and public engagement to address evolving markets and business models.

It has been widely reported that the FTC has ongoing investigations into potentially anticompetitive conduct by dominant firms in certain high-profile, high-tech industries. The Commission takes a balanced approach when applying antitrust principles to fast-paced technology markets, focusing on the facts as they develop in real time to assess what competition is likely to look like in the future.

The FTC charged the developer of peer-to-peer file-sharing software with marketing an application that was likely to cause consumers to unwittingly expose sensitive personal information stored on their mobile devices. The resulting settlement requires the company to provide free upgrades to correct the unintended sharing. Following a recent surf, staff sent warning letters to six marketers of mobile apps that provide background screening reports, alerting them that

the Fair Credit Reporting Act applies in full force to FCRA-protected information shared on mobile apps.

The FTC convened a public workshop to discuss how firms negotiate rights to intellectual property when participating in standard-setting organizations. The nation's leading technology companies discussed how to avoid patent "hold-up" — a patent holder's demand for higher royalties or burdensome licensing terms after the standard is implemented, which can subvert the competitive process and lead to higher prices for consumers. Another workshop explored the privacy and security implications of facial recognition technology, which is being used in a variety of contexts from online social networks to digital signs to mobile apps.

Technological advances have made it difficult for consumers and law enforcement to identify the location of fraudsters pitching scams on the telephone. Some companies remain virtually anonymous by faking the phone number on a caller ID display. At the same time, technology has made it cheap and efficient to make large numbers of illegal pre-recorded calls, often from overseas. The FTC has taken aggressive action against some of the biggest players in the robo-call business, including permanently stopping the defendants in *Voice Marketing, Inc.*, and *VoiceBlaze*, who paid civil penalties after allegedly providing services enabling marketers to deliver tens of millions of robocalls for pennies a call.

Challenging Deceptive Advertising and Marketing



The FTC monitors advertising in all media, and has successfully challenged a number of deceptive claims about disease prevention and health promotion.

The Commission recently challenged claims that *Oreck* vacuum cleaners and air purifiers prevented the flu; that certain *Reebok* shoes toned and strengthened lower body muscles; and that *Nivea My Silhouette!* skin cream reduced users' body size. Each of these cases resulted in settlements that require the companies to refund money to consumers who bought their products: Reebok, for example, will refund $25 million.

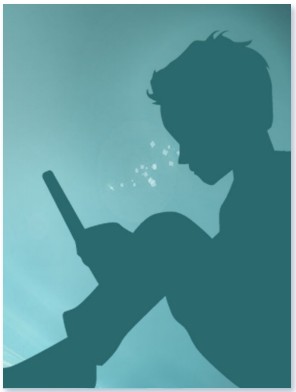
The FTC polices the internet for deceptive ads, and recently brought a slew of cases involving questionable advertising techniques. In one recent sweep, the Commission filed 10 lawsuits against online marketers, alleging that they created fake news sites where they posted phony testimonials touting acai berry supplements as effective weight-loss products.

The FTC also stopped several fraudulent online negative option schemes, obtaining settlements banning their

operators from marketing negative option programs and requiring them to surrender assets. Cases against *Jesse Willms* and *Michael Bruce Moneymaker*, both of whom allegedly charged consumers recurring fees without first getting their consent, were significant wins for consumers.

In *Millenium Telecard*, the FTC challenged a company that sold prepaid phone cards — many to immigrants who used them to call overseas — with allegedly false and deceptive claims about the number of minutes of talk time and fees that reduced the value of the cards.

Safeguarding Children



It's no secret that children and teenagers are early adopters of technology, and the Commission is focused on using enforcement, education, and engagement to safeguard them from unfair and deceptive marketing and advertising.

Recent FTC enforcement of the Children's Online Privacy Protection Act (COPPA) resulted in strong settlement orders against *Playdom*, a company operating online virtual world websites for kids; *W3 Innovations*, a developer of mobile applications, including children's games; and *Skid-e-kids*, a

social networking site targeting children ages 7 to 14. The settlement against *Playdom* included a $3 million civil penalty, the highest to date for violations of the FTC's COPPA Rule. The Commission is considering proposed amendments that are intended to ensure that the COPPA Rule continues to protect children's privacy as online technology evolves.

On the theory that the users of mobile devices are getting younger, FTC staff surveyed information available to parents before downloading mobile apps for their children in Google's Android Market and Apple's iTunes App Store. The survey found that the stores didn't offer parents any information on the kind of data collected, who is collecting it, and why. The staff recommends that industry members provide greater transparency about their data collection practices.

Other recent activities related to kids dealt with entertainment ratings for movies, electronic games and music, and child identity theft. A workshop co-hosted by the FTC and the DOJ Office for Victims of Crime addressed how best to prevent child identity theft and resolve the problems that it creates.

Monitoring Energy Markets and Enforcing Environmental Claims



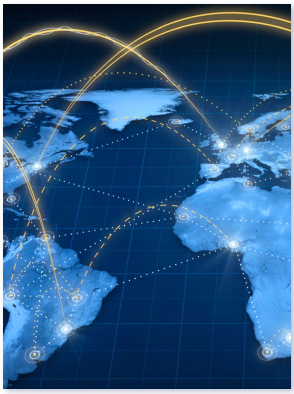
Few issues are as important to consumers as the cost of gas for their cars, and the price they pay to heat, cool, and light their homes. The FTC keeps a weather eye on energy markets, closely scrutinizes mergers and acquisitions in the energy sector, and monitors environmental marketing to make sure it is truthful and based on solid scientific evidence.

The FTC challenged an acquisition of terminal and pipeline assets, charging that it would lead to higher gasoline and diesel fuel prices in Maine. The Commission also required two of the nation's largest propane distributors to carve out overlapping assets to preserve competition for propane exchange cylinders used for backyard barbeque grills.

The FTC opened an investigation into pricing anomalies among gasoline refiners; issued a report on the key factors that influence gas prices; and tracked daily wholesale and retail gasoline and diesel price data to identify anticompetitive activities. The FTC and the Commodity Futures Trading Commission signed an MOU to facilitate information sharing in investigations in petroleum and other markets.

On the home front, five window marketers settled FTC charges that they made deceptive energy efficiency and cost-saving claims about their products. The Commission also took action against retailers who allegedly failed to post required EnergyGuide information on their websites about major home appliances; and reached a settlement that stops marketers from making bogus claims that their fuel device could boost automobile gas mileage by at least 50 percent. The FTC sought public comments on proposed changes to its Appliance Labeling Rule, which requires energy efficiency labels for major household appliances and other consumer products.

Cooperating with International Counterparts



The FTC strives to promote sound approaches to common problems by building relationships with sister agencies around the world. The FTC and DOJ recently signed a landmark MOU with China's competition agencies, and reaffirmed a set of best practices for use in US/European Union merger reviews. These efforts foster consistent outcomes in antitrust investigations, especially international mergers. For example, the FTC cooperated with 10 foreign jurisdictions to review *Western Digital's* proposed acquisition of *Hitachi*

Global Storage Technologies and design remedies to resolve allegations that the deal would likely harm competition in the personal computer hard disk drive market.

The FTC continued successful implementation of the US SAFE WEB Act. This law strengthens the FTC's ability to fight cross-border fraud that harms U.S. consumers by allowing the agency both to share information with foreign law enforcement agencies and to obtain information on their behalf.

In recent months, the Commission urged the Internet Corporation for Assigned Names and Numbers (ICANN) to implement consumer protection safeguards before it dramatically expands the internet domain name system. The FTC warned that without additional protections, the rapid expansion in the number of generic top-level domain names will increase opportunities for consumer fraud.

The agency also continued its outreach to aid effective international cooperation by creating an online virtual university for competition authorities worldwide as part of the International Competition Network's Curriculum Project. In the last year, the FTC's technical assistance to foreign agencies included intensive training for the Competition Commission of India and for consumer protection agencies in Latin America.

Practicing Good Government



The FTC reviews all its rules and guides on a 10-year cycle to ensure they are up-to-date, effective, and not overly burdensome. To foster public participation and transparency, the FTC launched a regulatory review web page at **ftc.gov/ftc/regreview**, a one-stop shop for the public to get information and comment on rules under review. Nearly a third of the Commission's rules and guides are under review in 2012 .

The Commission revised its Part III rules in 2009 to ensure that administrative litigation is not time-consuming or burdensome, and made further improvements in 2011. New timelines for discovery, motions practice, trial, and decision-making result in a faster-paced administrative process, especially in merger cases. A notable example is the *ProMedica* hospital merger case, where the Commission issued a complaint, the case was tried, and the Administrative Law Judge issued his Initial Decision within 11 months. The FTC proposed changes to its Part II Rules to keep pace with changes in electronic discovery and improve the agency process for resolving disputes during the investigatory phase.

The agency streamlined the process for approving divestitures by waiving the prior-approval requirement for modifications that do not conflict with the Commission's order and, with DOJ, made improvements to the Hart-Scott-Rodino premerger notification form.

The FTC and the new Consumer Financial Protection Bureau signed an MOU to share information and coordinate enforcement and regulatory efforts, among other activities, to ensure that policies and activities are consistent, well-informed, and not duplicative.

The FTC's Criminal Liaison Unit (CLU) works with federal and state criminal prosecutors to send recalcitrant FTC defendants to prison. In the last year, criminal authorities have charged 42 FTC defendants and their associates with crimes; 29 have been convicted or pled guilty, and received sentences totaling more than 168 years. Since its inception in 2002, the CLU program has led to more than 400 prosecutions, including charges against fraudulent telemarketers, marketers of bogus cures, sweepstakes scammers, and internet con artists.

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